

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Express Cultivation Limited

In respect of:

- 1) Express Cultivation Limited (CIN: U01403WB2010PLC152644)
- 2) Shri Sushree Mazumder (DIN: 02903594; PAN: AKWPM4705A);[*alias* Shri Sushree Majumder],
- 3) Shri Tanmoy Mridha (DIN: 03138184; PAN: BBFPM1003G),
- 4) Shri Sagar Majumder (DIN: 03138125; PAN: AZJPM5650L),
- 5) Shri Manoj Kumar Dhali (DIN: 03138115; PAN: ASSPD0037G),
- 6) Shri Ashish Dhali (DIN: 03303210; PAN: AYDPD5439P),
- 7) Shri Sankar Baidya (DIN: 03327920; PAN: AZUPB7887R),
- 8) Shri Santosh Sardar (PAN: CWMPS0434E),
- 9) Shri Subhasree Majumdar (PAN: AOAPM8358M) and
- 10) Shri Sunil Baran Majumdar (PAN: AKXPM7590E).

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1. Express Cultivation Limited (hereinafter referred to as “**ECL**” or “**Company**”) was incorporated on August 28, 2010, with ROC– Kolkata with CIN as U01403WB2010PLC152644. Its Registered Office address is at 68B/30, Raja Subodh Chandra Mullick Road, Bagha Jatin, Kolkata–700092, West Bengal, India.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an examination into the fund-raising activity of ECL in respect of issue of *Redeemable Preference Shares* (hereinafter referred to as “**RPS**”).
 3. On enquiry by SEBI, it was observed that ECL had made an offer of RPS during the financial years 2010-11, 2011–12 and 2012–13 (hereafter referred to as “**Offer of RPS**”) and raised an amount of Rs.102.46 lakh to 970 allottees.

4. As the above said Offer of RPS was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Companies Act, 1956, SEBI passed an interim order dated January 08, 2016 (hereinafter referred to as “**Interim Order**”) and issued directions mentioned therein against ECL and its promoters, past and present Directors, viz. Shri Sushree Mazumder, Shri Tanmoy Mridha, Shri Sagar Majumder, Shri Manoj Kumar Dhali, Shri Santosh Sardar, Shri Subhasree Majumdar, Shri Sunil Baran Majumdar, Shri Ashish Dhali and Shri Sankar Baidya (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings/allegation were recorded. ECL had made an offer of RPS during the Financial Years 2010-11, 2011-12 and 2012-13 and raised an amount of Rs.102.46 lakh as shown below:

Type of Security	Year	No. of persons to whom preference shares were allotted	Total Amount (₹ in Lakhs)
Redeemable Preference Shares	2010-11	45	3.45
	2011-12	558	66.88
	2012-13	367	32.13
Total		970	102.46

6. The above offer of RPS and pursuant allotment were deemed public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under Section 60 read with Section 2(36), Section 56, Sections 73(1), (2) and (3) of the Companies Act, 1956 read with Section 27(2) of SEBI Act were not complied with by ECL in respect of the offer of RPS.
7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated January 08, 2016 with immediate effect.
- i. “ECL shall not mobilize any fresh funds from investors through the Offer of Redeemable Preference Shares or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either

- directly or indirectly till further directions;*
- ii. ECL, its Promoters and present Directors, viz. Smt Sushree Mazumder (DIN: 02903594; PAN: AKWPM4705A), Shri Tanmoy Mridha (DIN: 03138184; PAN: BBFPM1003G), Shri Sagar Majumder (DIN: 03138125; PAN: AZJPM5650L), Shri Manoj Kumar Dhali (DIN: 03138115; PAN: ASSPD0037G) and also its Promoters, viz. Shri Santosh Sardar (PAN: CWMPS0434E), Smt Subhasree Majumdar (PAN: AOAPM8358M) and Shri Sunil Baran Majumdar (PAN: AKXPM7590E), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;*
 - iii. The past Directors of ECL, viz. Shri Ashish Dhali (DIN: 03303210; PAN: AYDPD5439P) and Shri Sankar Baidya (DIN: 03327920; PAN: AZUPB7887R), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;*
 - iv. ECL and its abovementioned past and present Directors and Promoters, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*
 - v. ECL shall provide a full inventory of all its assets and properties;*
 - vi. ECL's abovementioned past and present Directors and Promoters, shall provide a full inventory of all their assets and properties;*
 - vii. ECL and its abovementioned present Directors and Promoters, shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of Redeemable Preference Shares, without prior permission from SEBI;*
 - viii. ECL and its abovementioned present Directors and Promoters, shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares, which are kept in bank account(s) and/or in the custody of ECL;*

- ix. *ECL and its abovementioned past and present Directors and Promoters, shall furnish complete and relevant information (as sought by SEBI letter dated October 22, 2015), within 14 days from the date of receipt of this Order.*”
8. The interim order also directed the Noticees to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act should not be passed against them:
- i. *“Directing them jointly and severally to refund money collected through the Offer of Redeemable Preference Shares alongwith interest, if any, promised to investors therein;*
 - ii. *Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;*
 - iii. *Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.”*
9. Vide the said interim order, the Noticees were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim Order. The order further stated that the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
10. **Service of interim order:** The copy of the said interim order was sent to the Noticees by letter dated January 08, 2016. Further, a press release was also issued by SEBI in this regard and the same was placed on SEBI website. The copy of the interim order was returned undelivered from ECL, Shri Tanmoy Mridha, Shri Sagar Majumder, Shri Manoj Kumar Dhali, Shri Santosh Sardar, Shri Sushree Mazumder, Shri Sankar Baidya and Shri Ashish Dhali. The copy of the interim order was delivered to Shri Subhasree Majumdar. The proof of delivery is not received from Shri Sunil Baran Majumdar. The copy of the

interim order was also affixed at the available addresses of the Noticees viz., ECL, Shri Tanmoy Mridha, Shri Santosh Sardar and Shri Sushree Mazumder. Subsequently, vide notification dated November 08, 2016 published in newspaper *Ananda Bazar Patrika* and notification dated November 09, 2016 published in newspaper *Times of India*, Noticees were notified by SEBI that interim order dated January 08, 2016 was issued against them and they had been given final opportunity to submit their reply in the matter.

11. *Replies*: Other than Mr. Subhasree Majumdar none of the Noticees replied to the interim order. Mr. Subhasree Majumdar replied vide letter dated January 14, 2016 received on January 18, 2016. Vide the said letter he had submitted *inter alia* the following:

- i. *“I had been involved with the company only during its incorporation and that too because of my brother Mr.Sushree Majumder was actively involved in the formation and promotion of the company.*
- ii. *I had merely purchased 2500 (two thousand five hundred) Equity shares in the company for Rs. 25,000/- since the required legal minimum subscribers to the Memorandum and Articles of Association were not available.*
- iii. *I had also demanded at that time that I would not like to continue with the company for long and would exit the shareholding as soon as some other suitable investor was found.*
- iv. *Around October or November 2011, I sold off my Equity shares to two persons, Mr. Shankar Baidya and Mr. Ashis Dhali and completely severed my association with the company.”*

12. *Opportunity of Hearing and post hearing Submissions*: The Noticees were given an opportunity of hearing on July 11, 2017. Vide notification dated June 10, 2017 published in newspaper *Ananda Bazar Patrika*, and notification dated June 10, 2017 published in newspaper *Times of India*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on July 11, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they fail to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.

13. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on July 11, 2017.

14. I have considered the allegations and materials available on record and the reply including documents downloaded from MCA 21 Portal. On perusal of the materials available on record, the following issues arise for consideration. Each question is dealt with separately under different headings.

- (1) *Whether the company came out with the Offer of RPS as stated in the interim order?*
- (2) *If so, whether the said issues are in violation of Section 60, Section 56 and Section 73 the Companies Act, 1956?*
- (3) *If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1 - *Whether the company came out with the Offer of RPS as stated in the interim order?*

15. I have perused the interim order dated January 08, 2016 for the allegation of offer of RPS. I note that neither the company nor the directors filed any reply disputing the same.

16. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted that ECL has issued and allotted RPS to 970 investors during the financial years 2010-11, 2011-12 and 2012-13 and raised a total amount of Rs. 102.46 lakh.

ISSUE No. 2 - *If so, whether the said issues are in violation of Section 60, Section 56 and Section 73 the Companies Act, 1956?*

17. The provisions alleged to have been violated and mentioned in Issue No.2 are applicable to the offer of RPS made to the public. Therefore the primary question that arises for consideration is whether the issue of RPS is 'public issues'. At this juncture, reference

may be made to section 67(1) & (3) of the Companies Act, 1956:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub- section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."

18. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI* (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the “*Sahara Case*”), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

"84. Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the —section of the public//. Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

85. The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. ...”(Emphasis supplied)

19. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.
20. In the instant matter, I find that RPS were issued by ECL to 970 investors in the financial years 2010-11, 2011-12 and 2012-13 which indicates that the Offer of RPS was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956. Neither ECL nor its directors have contended that the Offer of RPS does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956. Therefore, in view of the material available on record, I am of the opinion that the Offer of RPS by ECL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the Offer of RPS are deemed to be public issues and ECL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
21. Moreover, reference may be made to the order dated April 28, 2017 of Hon’ble Securities Appellate Tribunal in the matter of *Neesa Technologies Limited vs. SEBI* (Appeal No. 311 of 2016) wherein it was observed “*In terms of Section 67(3) of the Companies Act any issue to “50 persons or more” is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS*

Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning". Therefore, in view of the material available on record, I find that the Offer of RPS by ECL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the Offer of RPS are deemed to be public issues and ECL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

22. Further, since the offer of RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.
23. The allegations of non-compliance of the above provisions were not denied by ECL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that ECL has contravened the said provisions. ECL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that ECL has also not complied with the provisions of section 73(3) of Companies Act, 1956 which mandates that the amounts received from investors shall be kept in a separate bank account and failed to repay the same in accordance with section 73(2) of Companies Act, 1956 as observed above.
24. Section 2(36) of the Companies Act 1956 read with section 60 of Companies Act, 1956 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36) of Companies

Act, 1956, “prospectus” means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RPS was a deemed public issue of securities, ECL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that ECL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that ECL has not complied with the provisions of section 60 of the Companies Act, 1956.

25. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. The allegation of non-compliance of the above provisions was not denied by the company or directors. Neither ECL nor its directors produced any record to show that it has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, ECL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

26. I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara Case*, had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and

transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

27. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase “intend to get listed” in the context of deemed public issue the Hon’ble Supreme Court in Sahara Case observed-

“...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...”

“...Listing of securities depends not upon one’s volition, but on statutory mandate...”

“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”

28. In view of the above findings, I am of the view that ECL was engaged in fund mobilizing

activity from the public, through the offer of RPS and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956.

ISSUE No. 3 - If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?

29. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, ECL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

30. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%. Therefore, I find that ECL and Directors, viz. Shri Sushree Mazumder, Shri Tanmoy Mridha, Shri Sagar Majumder, Shri Manoj Kumar Dhali, Shri Ashish Dhali and Shri Sankar Baidya are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

31. I find from the material available on record that the details of the appointment and resignation of the directors were provided by RoC, which is reproduced below:

Sr. No.	Name of the directors	Date of appointment	Date of cessation
1.	Sushree Mazumder	28/08/2010	Continuing
2.	Manoj Kumar Dhali	28/08/2010	Continuing
3.	Tanmoy Mridha	28/08/2010	Continuing
4.	Sagar Majumder	28/08/2010	Continuing
5.	Ashish Dhali	01/02/2013	31/03/2013
6.	Sankar Baidya	01/02/2013	31/03/2013

32. From the above table it is noted that Shri Ashish Dhali and Shri Sankar Baidya joined and resigned as above. All of the said persons were directors at the time of the issuance of RPS. Since these persons were acting as directors during the period of issuance of RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of ECL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the directors of ECL as officers in default, are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. None of the Noticees disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made. The above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act.

33. Further, I noted that during the Financial Years 2010–11, 2011–12 and 2012–13, ECL through offer of RPS, had collected an amount of Rs. 102.46 lakh from various preferential allottees. I also note that during the FY 2010–11, 2011–12 and 2012–13 the directors of ECL were Shri Sushree Mazumder, Shri Tanmoy Mridha, Shri Sagar Majumder, Shri Manoj Kumar Dhali, Shri Ashish Dhali and Shri Sankar Baidya. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that obligation of the director to refund the amount with interest jointly and severally with ECL and other directors are limited to the extent of amount collected during their tenure as director of ECL.
34. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct the Company and its Directors, viz. Shri Sushree Mazumder, Shri Tanmoy Mridha, Shri Sagar Majumder, Shri Manoj Kumar Dhali, Shri Ashish Dhali and Shri Sankar Baidya to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its directors, to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.
35. I find that Shri Santosh Sardar, Shri Subhasree Majumdar and Shri Sunil Baran Majumdar are promoters of ECL and therefore, are liable as promoters for the *Offer of RPS* against the norms of deemed public issue. The said Noticees have not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue and public interest requires that the persons who had such knowledge/connivance/consent be made accountable to the investors. While Shri Subhasree Majumdar vide his reply dated January 14, 2016 contended that he had severed his relationship with the Company in October or November 2011, it is noted from the

Form 2 filed with MCA by the company that he was a Promoter during the period ECL had allotted RPS on March 01, 2011, July 01, 2011, etc. In view of the same, I find that Shri Subhasree Majumdar is liable to be debarred for an appropriate period of time since he was acting as a Promoter during the relevant period. Further, the other Noticees viz., Shri Santosh Sardar and Shri Sunil Baran Majumdar have neither denied knowledge of issuance or their role in the issuance. Therefore, they are liable to be debarred as Promoters for an appropriate period of time.

36. I also note that, vide the interim order dated January 08, 2016, ECL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the directors and promoters of ECL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided either by ECL or its directors despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 10 of this order.

37. In view of the discussion above, appropriate action in accordance with law needs to be initiated against ECL and its Directors and Promoters, viz. Shri Sushree Mazumder, Shri Tanmoy Mridha, Shri Sagar Majumder, Shri Manoj Kumar Dhali, Shri Ashish Dhali, Shri Sankar Baidya, Shri Santosh Sardar, Shri Subhasree Majumdar and Shri Sunil Baran Majumdar.

38. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:

- (a) ECL, Shri Sushree Mazumder, Shri Tanmoy Mridha, Shri Sagar Majumder, Shri Manoj Kumar Dhali, Shri Ashish Dhali and Shri Sankar Baidya shall forthwith refund the money collected by the Company through the issuance of RPS including the money collected from investors, till date, pending allotment of securities, if any, with

an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

- (b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.
- (c) Shri Ashish Dhali and Shri Sankar Baidya are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (d) ECL, Shri Sushree Mazumder, Shri Manoj Kumar Dhali, Shri Tanmoy Mridha and Shri Sagar Majumder are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
- (e) ECL, Shri Sushree Mazumder, Shri Manoj Kumar Dhali, Shri Tanmoy Mridha and Shri Sagar Majumder are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- (f) ECL, Shri Ashish Dhali, Shri Sankar Baidya, Shri Sushree Mazumder, Shri Manoj Kumar Dhali, Shri Tanmoy Mridha and Shri Sagar Majumder are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a

nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

- (g) ECL, Shri Ashish Dhali, Shri Sankar Baidya, Shri Sushree Mazumder, Shri Manoj Kumar Dhali, Shri Tanmoy Mridha and Shri Sagar Majumder in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- (h) After completing the aforesaid repayments, ECL, Shri Sushree Mazumder, Shri Tanmoy Mridha, Shri Sagar Majumder, Shri Manoj Kumar Dhali, Shri Ashish Dhali and Shri Sankar Baidya shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI").
- (i) In case of failure of ECL, Shri Sushree Mazumder, Shri Tanmoy Mridha, Shri Sagar Majumder, Shri Manoj Kumar Dhali, Shri Ashish Dhali and Shri Sankar Baidya to comply with the aforesaid directions, SEBI, on the expiry of three months period from the date of this Order:
 - i. may recover such amounts, from the company and the directors liable to refund [as per paragraph 38(a)], in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

- ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.
 - iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds;
- (j) ECL, Shri Ashish Dhali, Shri Sankar Baidya, Shri Sushree Mazumder, Shri Manoj Kumar Dhali, Shri Tanmoy Mridha and Shri Sagar Majumder are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.
- (k) Shri Santosh Sardar, Shri Subhasree Majumdar, Shri Sunil Baran Majumdar are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years from the date of this Order. The above said persons are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years from the date of this order.

(l) The above directions shall come into force with immediate effect.

39. This Order is without prejudice to any action that SEBI may initiate under securities laws, as deemed appropriate in respect of the above violations committed by ECL and its promoters, directors and other key persons.

40. Copy of this Order shall be forwarded to the recognised Stock Exchanges, Depositories and Registrar and Transfer Agents for information and necessary action.

41. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.

DATE: OCTOBER 03, 2017

PLACE: MUMBAI

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**