

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Fantasy Infraventure & Agrimart India Limited

In respect of:

- 1. Fantasy Infraventure & Agrimart India Limited (PAN:AABCF8236)**
- 2. Shri Ranjeet Kumar (PAN: BDMPK7608E; DIN: 03638923).**
- 3. Shri Ram Kailash (PAN: AVNPK2820L; DIN: 03638923).**
- 4. Shri Rajoo (PAN: AZQPR8625K; DIN: 03638915).**

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1. Fantasy Infraventure & Agrimart India Limited (hereinafter referred to as “**FIAIL**”/ “**the Company**”) is a Public company incorporated on October 11, 2011 and registered with Registrar of Companies–Kanpur with CIN:U45400UP2011PLC046932. Its registered office is at 588/A, OM Sadan, Ground Floor, Hanuman Nagar, Bahadur Ganj Road, Bhity, Maunath Bhanjan, Uttar Pradesh, India -275101.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons against FIAIL in respect of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether FIAIL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder.
 3. On enquiry by SEBI, it was observed that FIAIL had made an offer of RPS in the financial year 2012-2013 (hereinafter referred to as “**Offer of RPS**”) and raised an amount of Rs.19,96,600/- from 127 allottees. The number of allottees and funds

Order in the matter of M/s Fantasy Infraventure & Agrimart India Limited

mobilized has been collated from the documents submitted by the company to the RoC.

4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated March 30, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against FIAIL and its Directors viz. Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo. (hereinafter collectively referred to as “**Noticees**”)
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. FIAIL had made an *Offer of RPS* during the financial year 2012-2013 and raised an amount of Rs. 19,96,600/- as shown below:

Financial Year	Date of Allotment	No. of RPS allotted	Amount Mobilised (Rs.)	No. of Allottees
2012-2013	12/06/2012	1,000	1,00,000	14
	09/11/2012	18,966	18,96,600	113
Total		19,966	19,96,600[^]	127*

^{*^} No. of allottees and funds mobilized has been collated from the documents submitted by the company to the RoC.

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), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by FIAIL 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 March 30, 2015 with immediate effect.
 - i. “FIAIL shall forthwith cease to mobilize any fresh funds from investors through the offer of RPS 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. *FIAIL and its Directors, viz. Shri Ranjeet Kumar (DIN:03638923, PAN:BDMPK7608E), Shri Ram Kailash (DIN:03638921, PAN:AVNPK2820L) and Shri Rajoo (DIN:03638915) 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. *FIAIL, its abovementioned Directors 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;*
- iv. *FIAIL shall provide a full inventory of all its assets and properties;*
- v. *FIAIL's abovementioned Directors shall provide a full inventory of all their assets and properties;*
- vi. *FIAIL, its abovementioned Directors 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 RPS, without prior permission from SEBI;*
- vii. *FIAIL, its abovementioned Directors shall not divert any funds raised from public at large through the offer of RPS, which are kept in bank account(s) and/or in the custody of FIAIL;*
- viii. *FIAIL, its abovementioned Directors shall furnish complete and relevant information within 21 days from the date of receipt of this Order.”*

8. The interim order also directed the FIAIL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act should not be passed against them:

- i. *“Directing them jointly and severally to refund money collected through the Offer of NCDs along with 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, FIAIL, its abovementioned Directors 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 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 vide letter dated April 27, 2015 which were not delivered. Subsequently, vide notification dated August 23, 2016 published in newspaper *Times of India* and notification dated August 23, 2016 published in newspaper *Dainik Bhaskar*, the Noticees were notified by SEBI, that an interim order dated March 30, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.
11. Replies: FIAIL and its Directors vide letter dated April 07, 2015 submitted as under:
- i. “It is submitted the company did not receive any of the complaints either from the complainants or from any of the authorities and is not aware of the issue referred in the Interim Order cum Show Cause Notice.*
 - ii. The Company had not received letter dated 08 March, 2013 or its reminder letter dated 11th June, 2013 referred in the order. Had the company received any communication, it definitely had complied the directions. We are enclosing herewith the documents which are required by you.*
 - iii. The Company had offered private placement of redeemable preference shares under various plans and the proceeds were meant for investment after due diligence in the corporate sectors including food products, water treatment plants soda water, real estate & Hotel etc. The RPS was offered on private placement basis. The company had received good response for subscription of the RPS.*
 - iv. The directors judiciously exercised their wisdom and allotted the RPS and filed Form No.2 with the Registrar of Companies for allotment of 1000 RPS in prescribed time. Copy of the Form No.2 filed is attached herewith for your reference please. The Company had also filed another Form No.2 for allotment of 18966 RPS. Copy of this Form No.2 too is attached for your reference. However, the Directors could not arrive on conclusion that number of allottees has to be restricted to fifty. The*

directors in compliance of the terms and conditions of the offer document allotted the RPS.

- v. Since the offer was on private placement basis, the directors opined that requirement of getting them listed on recognized stock exchange is not applicable in this case and consequently did not apply for listing of RPS.*
- vi. The company is always following the provisions of the Companies Act, 1956 and/or other applicable statutes and a law abiding entity. However in view of the factual innocence as to the number of allottees to be restricted to fifty (that too on account of assumption of issue of RPS on private placement basis and not by way of public offering), it might have violated un-intentionally not complied the provisions of Section 67 of the Companies Act, 1956.*
- vii. However, despite full ignorance of the restriction as to number of allottees, the company undertakes to honour the direction for refund of the money raised by issue of RPS as advised by SEBI.*
- viii. In addition, the company hereby request for allowing period of six months post personal hearing to sell its property (ies) to pay off the entire proceeds of the issue of RPS”.*

12. Vide notification dated August 23, 2016 published in newspaper *Times of India* and notification dated August 23, 2016 published in newspaper *Dainik Bhaskar* the Noticees were granted an opportunity of hearing on September 07, 2016. Subsequently, the said hearing was rescheduled to September 28, 2016. Meanwhile, the Authorised Representatives of the Noticees vide e-mails dated September 05, 2016 and September 06, 2016 sought inspection of documents in the matter. The same was granted and conducted on September 09, 2016.

13. Vide notification dated June 10, 2017 published in newspaper *Times of India* and notification dated June 10, 2017 published in newspaper *Dainik Bhaskar*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on August 22, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed 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.

14. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on August 22, 2017.

15. I have considered the allegations and materials available on record. On perusal of the same, 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 56, Section 60 and Section 73 of 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.*

16. I have perused the interim order dated March 30, 2015 for the allegation of *Offer of RPS*.

17. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted that FIAIL has issued and allotted RPS to 127 investors during the financial year 2012-2013 and raised an amount of Rs.19,96,600/- I also note that the number of allottees and funds mobilized has been collated from the documents filed by the Company to the RoC. It is also noted from the reply dated April 07, 2015 filed by the company and Form 2 filed with the RoC that FIAIL had allotted RPS on June 12, 2012 and November 09, 2012 to 127 allottees. The said fact was not disputed by the company and its directors.

18. *I therefore conclude that FIAIL came out with an offer of RPS as outlined above.*

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

19. 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 issue’. At this juncture, reference may be made to sections 67(1) and 67(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).”

20. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. 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:-

“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.

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.”

21. 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*.
22. FIAIL vide its reply dated April 07, 2015 contended that the the RPS was offered on private placement basis. Since the offer was on private placement basis, the directors opined that requirement of getting them listed on recognized stock exchange is not applicable in this case and consequently did not apply for listing of RPS and no prospectus was prepared and filed with the RoC. Further, the Noticees also contended that the issue of RPS and mobilisation of funds restricted to the known persons and entities hence the issue cannot be contrued as public offering and provisions of Section 56, 60 read with 2(36) were not attracted. However, based on the Form 2 filed by the Company to the RoC, I find that FIAIL issued RPS to 127 investors in the financial year 2012-2013 and raised Rs.19,96,600/-. The said fact is not disputed by the company.

In this connection, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "*Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged.*" In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that "*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, I find that the Offer of RPS by FIAIL was a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

Further, FIAIL has also contended factual ignorance regarding the restriction of number of allottees to be fifty and claimed that FIAIL had un-intentionally not complied with the provisions of the Companies Act. I do not accept the said contention of FIAIL and its directors. I find that those who bear the responsibility of issuance of RPS cannot take shelter under lack of knowledge, as ignorance of law cannot be a defense to get exemption from liability arising under law due to such non-compliance. In this regard, I also note that various courts have taken the view that ignorance of law is not an excuse. In this connection, I place reliance in the decisions High Courts in the matter of *Moodabidri Gurugala Basadi Vs. Anantaraja Indira and Ors.* (2015(2)KarLJ363) and *Mrs. Annu M. Gurunasinghani vs. Swami Shanti Prakash Education Board and Ors.* (2011(1) BomCR 49). Further, the Hon'ble Supreme Court ('SC') vide an Order dated May 23, 2006 in the matter of *The Chairman, Sebi Vs Shriram Mutual Fund & Anr* (AIR

2006 SC 2287) observed that *“penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant.”* The Hon’ble SC further observed that if the same is allowed *“it will set the stage for various market players to violate statutory regulations with impunity and subsequently plead ignorance of law...”*

Hence, I find that FIAIL and its directors are liable for their non-compliance with the provisions of the Companies Act.

23. I find that FIAIL has not claimed it to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that FIAIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

24. Therefore, in view of the material available on record, I find that the *Offer of RPS* by FIAIL 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 FIAIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

25. 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.

26. I note that 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 FIAIL has contravened the said provisions. FIAIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that FIAIL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.
27. Section 2(36) of the Companies Act read with section 60 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), "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, FIAIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that FIAIL 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 FIAIL has not complied with the provisions of section 60 of the Companies Act, 1956.
28. 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. Neither FIAIL 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, FIAIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

29. Further, 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"

30. 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...”

31. In view of the above findings, I am of the view that FIAIL 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?

32. From the documents available on record including the reply of the company, I find that the present Directors in FIAIL are Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo. The details of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Ranjeet Kumar	October 11, 2011	Continuing
Shri Ram Kailash	October 11, 2011	Continuing
Shri Rajoo	October 11, 2011	Continuing

33. 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, FIAIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

34. 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 Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.
35. From the material available on record and the details of the appointment of the directors of FIAIL as reproduced in paragraph 32 of this Order, it is noted that Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo 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 FIAIL 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 past and present directors of FIAIL, 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. Therefore, I find that FIAIL and its Directors, viz., Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo 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.

36. I note that during the financial year 2012-2013, FIAIL through Offer of RPS, had collected an amount of Rs.19,96,600/- from various allottees. I note that Shri Ranjeet Kumar has been director of FIAIL since financial year 2012-2013 till present date. I note that Shri Ram Kailash has been director of FIAIL since financial year 2012-2013 till present date. I note that Shri Rajoo has been director of FIAIL since financial year 2012-2013 till present date. 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 the obligation of the director to refund the amount with interest jointly and severally with FIAIL and other directors are limited to the extent of amount collected during his/her tenure as director of FIAIL.
37. 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 FIAIL and its Directors, viz., Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo to refund the monies collected, with interest to such investors. It is noted that the directors have expressed their willingness to refund the money raised by the company alongwith interest to the RPS holder. However, I note that in the years since the issuance of the RPS, neither the company nor the directors have given any proof that they have taken any effective steps to make the refund till date. I also note that, vide the interim order dated March 30, 2015 FIAIL was

directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of FIAIL 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 FIAIL or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 12 of this Order.

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, I am constrained to issue appropriate directions against the Company and the Directors.

38. In view of the discussion above, appropriate action in accordance with law needs to be initiated against FIAIL and its Directors viz., Shri Ranjeet Kumar, Shri Ram Kailash, and Shri Rajoo.
39. 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. FIAIL, Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective period of directorship, 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. FIAIL, Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo 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.
- d. FIAIL, Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo 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.
- e. FIAIL, Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo 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.
- f. FIAIL, Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo 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.
- g. After completing the aforesaid repayments, FIAIL, Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo in their personal capacity 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**")

- h. In case of failure of FIAIL, Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo to comply with the aforesaid applicable 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 specified in paragraph 41(a) of this Order, 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;
- i. FIAIL, Shri Ranjeet Kumar, Shri Ram Kailash and Shri Rajoo 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.

- j. The above directions shall come into force with immediate effect.
40. 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 FIAIL and its directors and other key persons.
41. Copy of this Order shall be forwarded to the recognised Stock Exchanges, Depositories and Registrar and Transfer agents for information and necessary action.
42. 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 12, 2017

PLACE: Mumbai

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