

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 Ambitious Diversified Projects Management Limited

In respect of:

1. Ambitious Diversified Projects Management Limited (PAN: AAICA9397H)
2. Shri Rajkumar Yadav (DIN:02411346).
3. Shri Pradeep Ojha (PAN: AARPO7824P; DIN: 03563844).
4. Shri Satyendra Singh Bhadouria (PAN: BSWPB8332F; DIN: 06627978).
5. Shri Kunaal Tiwary (PAN: AHEPT6376K; DIN: 03275175).
6. Shri Onkar Singh (PAN: CVPPS0839B; DIN: 03286706).
7. Shri Arshad Hussain (PAN: ABWPH9754M; DIN: 03275176).
8. Shri Nimai Kumbhakar (PAN: ALUPK1326J; DIN: 03337142).
9. Shri Apurba Kumar Mondol (PAN: AYAPM9092Q; DIN: 06443833).
10. Shri Pradip Kumar Kundu (PAN: AMRPK9676M; DIN: 02925124).
11. Shri Mriganka Sekhar Chakraborty (PAN: AHNPC3667M; DIN: 06443869).
12. Shri Mohammad Sohaib (PAN: CVFPS3456N; DIN: 06443855).
13. Shri Arindam Kundu (PAN: CASPK9438A; DIN: 06446876).
14. Shri Iftekhar Hussain (PAN: ACLPH2788P; DIN: 06432160).
15. Shri Rakesh Sharma (PAN: CJEPS7584N; DIN: 06369047).
16. Debenture Trustee, viz. Ambitious Diversified Trust (Represented by its Trustees, viz. Smt. Sriparna Gupta) Address- 1st Floor, 19B, Syed Amir Ali Avenue, P.S. Karaya, Kolkata, West Bengal- 700017

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1. Ambitious Diversified Projects Management Limited (hereinafter referred to as “ADPML”/ “the Company”) is a Public company incorporated on November 03, 2010 and registered with Registrar of Companies–Kolkata with CIN: U74999WB2010PLC154440. Its registered office is at 19B, 1st Floor, Syed Amir Ali Avenue, Kolkata – 700017, West Bengal, India.

Order in the matter of Ambitious Diversified Projects Management Limited

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons against ADPML in respect of issue of Non-Convertible Secured Redeemable Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether ADPML 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 including the Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).
3. On enquiry by SEBI, it was observed that ADPML had made an offer of NCDs in the financial years 2010-2011, 2011-2012 and 2012-2013 (hereinafter referred to as “**Offer of NCDs**”) and raised at least an amount of Rs.1.63 Crores from at least 54 allottees(NCD certificate holders). The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures. It was also observed that ADPML created a charge for an amount of Rs. 50.00 Crores on November 15, 2010 and appointed *Ambitious Diversified Trust (represented by its trustee, viz. Smt. Sriparna Gupta)* as Debenture Trustee for the Offer of NCDs by the company.
4. As the above said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an interim order dated February 15, 2016 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against ADPML and its Directors viz. Shri Rajkumar Yadav, Shri Pradeep Ojha, Shri Satyendra Singh Bhadouria, Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftekhar Hussain, Shri Rakesh Sharma and its Debenture Trustee *Ambitious Diversified Trust*

(represented by its trustees, viz. Smt. Sriparna Gupta) (hereinafter collectively referred to as “**Noticees**”).

5. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings were recorded. ADPML had made an *Offer of NCDs* during the financial years 2010-2011 , 2011-2012 and 2012-2013 and raised at least an amount of Rs.1.63 Crores as shown below:

Year of Issue	Security Issued	Amount raised (in crores))	Number of NCD holders/ allottees
2010-2011	NCDs	0.32	Not available
2011-2012		1.06	21
2012-2013		0.25	33
Total		1.63^	54*

^{*^} The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. However, actual number of allottees and amount mobilized could be more than the above indicated figures.

6. Further, ADPML created a charge for an amount of Rs. 50.00 Crores on November 15, 2010 and appointed *Ambitious Diversified Trust* (represented by its trustee, viz. Smt. Sriparna Gupta) as Debenture Trustee for the Offer of NCDs by the company. *Ambitious Diversified Trust* (represented by its trustee, viz. Smt. Sriparna Gupta) was not registered as debenture trustee for the offer of NCDs by that company.
7. The above *Offer of NCDs* 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) and sections 117B and 117C of the Companies Act, 1956 read with section 27(2) of the SEBI Act and the relevant provisions of the ILDS Regulations were not complied with by ADPML in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Ambitious Diversified Trust* (represented by its trustee, viz. Smt.

Sriparna Gupta has *prima facie* violated section 12(1) of the SEBI Act and regulation 7 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "**Debenture Trustees Regulations**").

8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated February 15, 2016 with immediate effect.
- i. *“ADMPL shall forthwith cease to mobilize funds from investors through the Offer of NCDs 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. *ADPML and its Directors Shri Rajkumar Yadav (DIN: 02411346), Shri Pradeep Ojha (DIN: 03563844; PAN: AARPO7824P), Shri Satyendra Singh Bhadouria (DIN: 06627978; PAN: BSWPB8332F), Shri Kunaal Tiwary (DIN: 03275175; PAN: AHEPT6376K), Shri Onkar Singh (DIN: 03286706; PAN: CVPPS0839B), Shri Arshad Hussain (DIN: 03275176; PAN: ABWPH9754M), Shri Nimai Kumbhakar (DIN: 03337142; PAN: ALUPK1326J), Shri Apurba Kumar Mondol (DIN: 06443833; PAN: AYAPM9092Q), Shri Pradip Kumar Kundu (DIN: 02925124; PAN: AMRPK9676M), Shri Mriganka Sekhar Chakraborty (DIN: 06443869; PAN: AHNPC3667M), Shri Mohammad Sohaib (DIN: 06443855; PAN: CVFPS3456N), Shri Arindam Kundu (DIN:06446876; PAN: CASPK9438A), Shri Iftekhhar Hussain (DIN: 06432160; PAN: ACLPH2788P), Shri Rakesh Sharma (DIN: 06369047; PAN: CJEPS7584N) 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. *ADMPL and 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. *ADMPL and its abovementioned Directors, shall provide a full inventory of all its*

assets and properties;

- v. *ADPML and its present Directors viz., Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria 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 NCDs, without prior permission from SEBI;*
 - vi. *ADPML and its present Directors viz., Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria shall not divert any funds raised from public at large through the Offer of NCDs, which are kept in bank account(s) and/or in the custody of ADPML;*
 - vii. *ADPML and its abovementioned Directors shall furnish complete and relevant information (as sought by SEBI letters dated April 01, 2014 and April 07, 2014), within 14 days from the date of receipt of this Order;*
 - viii. *The Debenture Trustee, viz. 'Ambitious Diversified Trust' represented by Smt. Sriparna Gupta, is prohibited from continuing with its assignment as debenture trustee in respect of the Offer of NCDs of ADPML. They are also prohibited from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions."*
9. The interim order also directed the ADPML 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, 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 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.”*
10. Similarly, the Debenture Trustee, viz. viz. ‘*Ambitious Diversified Trust*’ represented by Smt. Sriparna Gupta was advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining it/them from accessing the securities market and further restraining it/them from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
11. Vide the said interim order, ADPML, its abovementioned Directors along with its Debenture Trustee viz. ‘*Ambitious Diversified Trust*’ represented by Smt. Sriparna Gupta 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.
12. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated February 16, 2016. The copy of the interim order sent to Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Pradip Kumar Kundu, Shri Mohammad Sohaib and Shri Iftekhhar Hussain was delivered. The proof of delivery is available on record. The copy of the interim order sent to ADPML, Shri Rajkumar Yadav, Shri Pradeep Ojha, Shri Satyendra Singh Bhadouria, Shri Kunaal Tiwary, Shri Onkar Singh, Shri Apurba Kumar Mondol, Shri Mriganka Sekhar Chakraborty, Shri Arindam Kundu, Shri Rakesh Sharma and Debenture Trustee viz., *Ambitious Diversified Trust* (represented by Smt. Sriparna Gupta) was returned undelivered.
- 12.1 Subsequently, vide notification dated November 08, 2016 published in newspaper *Anand Bazar Patrika* and notification dated November 09, 2016 published in newspaper *Times of India*, the Noticees viz., ADPML, Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar

Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftekhar Hussain, Shri Rakesh Sharma and Debenture Trustee viz., Ambitious Diversified Trust (represented by Smt. Sriparna Gupta) were notified by SEBI that interim order dated February 15, 2016 was issued against them and they were given a final opportunity to submit their reply in the matter.

12.2 Vide notification dated November 26, 2016 published in newspaper *Dainik Bhaskar* and notification dated November 26, 2016 published in newspaper *Times of India*, (Madhya Pradesh Edition), the remaining Noticees viz., Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria were notified by SEBI, that interim order dated February 15, 2016 was issued against them and they had given final opportunity to submit their reply in the matter.

13. *Replies:* The following Noticees have filed their replies pursuant to the interim order dated February 15, 2016.

13.1 Shri Mriganka Sekhar Chakraborty vide separate but identical letters dated March 15, 2016 and March 16, 2016 had submitted his reply to the interim order. His submissions in brief are as under:

- (a) He had joined ADPML on December 01, 2010 with a salary of Rs. 30,000 per month. His designation was Sr. Area Manager at head office Kolkata. In April 2013, he came to know that he was appointed as director of ADPML without his prior permission. He offered his resignation to the company on October 17, 2013, sent by the registered post with acknowledgement and also intimated the Registrar of Company (RoC) on November 08, 2013 through registered post with acknowledgement.
- (b) He never applied for DIN before RoC. His appointment as director as well as DIN application was made with forged documents and signature.
- (c) An email dated November 04, 2013 was sent to ROC requesting for removal of his name as director of ADPML.

13.2 Shri Nimai Kumbhakar vide letter dated March 12, 2016 had submitted his reply to the interim order. His submissions in brief are as under:

- (a) He had joined ADPML on in April 2012 with a salary of Rs. 24,000 per month. His designation was Area Manager of Purulia and Bankura. In September 2013, he came to know that he was appointed as director of ADPML without his knowledge and with forged signature and documents.
- (b) In October 2013, he send his resignation letter with a request to remove his name from directorship. After non-receipt of reply from the company, an email dated November 04, 2013 in respect of the same was sent to all concerned officials.
- (c) An email dated November 05, 2013 was sent to RoC requesting for removal of his name as director of ADPML.

13.3 Shri Mohammad Sohaib vide letter dated March 10, 2016 had submitted his reply to the interim order. His submissions in brief are as under:

- (a) He had joined ADPML on February 02, 2011 with a salary of Rs. 20,000 per month. His designation was Area Manager at head office Kolkata. In May 2013, he came to know that he was appointed as director of ADPML without his prior permission. He offered his resignation to the company on June 14, 2013.
- (b) He never applied for DIN before RoC. His appointment as director as well as DIN application was made with forged documents and signature.
- (c) Again another resignation letter was forwarded by him to the company on October 18, 2013. After non-receipt of reply from the company, an email dated November 05, 2013 in respect of the same was sent to all concerned officials.
- (d) An email dated November 07, 2013 was sent to RoC requesting for removal of his name as director of ADPML.

14. Thereafter, vide notification dated June 10, 2017 published in newspaper *Anand 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 June 06, 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.

15. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on June 06, 2017.

16. 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 NCDs as stated in the interim order.*

(2) *If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.*

(3) *Whether appointment of Ambitious Diversified Trust (represented by its trustee, viz. Smt. Sriparna Gupta), as the Debenture Trustee by ADPML is in violation of Section 117B of the Companies Act, 1956 and whether Ambitious Diversified Trust and Smt. Sriparna Gupta violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations*

(4) *If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?*

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

17. I have perused the interim order dated February 15, 2016 for the allegation of *Offer of NCDs*. I note that neither the company nor the directors filed any reply disputing the same.

18. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted from the Debenture Certificates enclosed with investors' complaints received by SEBI in the matter that ADPML has issued debenture certificates to at least 21 allottees during the financial year 2011-12 and at least 33 debenture certificates during FY 2012-13. Therefore, it is clear that at least 54 certificates were issued to 54 allottees during financial year 2011-13. I also note that during the financial years 2010-2011, 2011-2012 and 2012-2013 ADPML had raised at least an amount of Rs.1.63 Crores. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than Rs.1.63 Crores.

19. *I therefore conclude that ADPML came out with an offer of NCDs as outlined above.*

ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.

20. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of NCDs* made to the public. Therefore the primary question that arises for consideration is whether the issue of NCDs 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).”

21. 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.”

22. 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*.

23. In the instant matter, it is noted from the “list of proposed Offerees of the Debentures” enclosed with the Debenture Trust Deed of ADPML (furnished by one of the Complainants) that the NCDs were proposed to be issued to the Directors of ADPML, Debenture Trustee, etc. The number of Debentures offered is 10,000 each to seven Offerees mentioned therein aggregating to 70,000 Debentures having face value of Rs.100/- each. If the proposed allottees were the only allottees, then the company could raise only upto seventy lacs. However, as per the Board Resolution dated November 15, 2010, ADPML decided to raise a sum of Rs.50 crores through issue of Debentures of Rs.100/- each. It is specifically mentioned in the Trust Deed that the said issue consists of series of 30,00,000 (30 lacs) Debentures of Rs.100/- each aggregating to Rs.30,00,00,000/- (Rs.30 crores) with an option of retaining the over subscription of another 20,00,000 (20 lacs) Debentures of Rs.100/- each aggregating to Rs.20,00,00,000/- (Rs.20 crores). The fact that Rs.50 crores were decided to be raised shows that that the Offer of NCDs were not limited to the number of Offerees (seven) as mentioned in the list enclosed with the Trust Deed.
24. I have also perused the ‘Letter of Allotment’ and ‘Certificates’ issued by the company (as furnished by the Complainants). I note that the Letter of Allotment and Debenture Certificates issued by ADPML clearly shows that the NCDs of face value of Rs.100/- were also offered to members of general public as per different interest schemes other than the proposed allottees.

In view of the same, as already found, ADPML has issued NCDs to at least 54 investors (during 2011-12 to 2012-2013). However, this number is not conclusive as it is

based on the documents received by SEBI along with complaints and the actual number of investors could be more than 54. I find that ADPML has mobilized at least an amount of Rs. 1.63 Crores over the financial years 2010-2011, 2011-2012 and 2012-2013 which is not a conclusive value as it is based on the complaints received by SEBI. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by ADPML was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

25. Neither ADPML nor its directors have contended that the *Offer of NCDs* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
26. I find that ADPML 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 ADPML is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
27. Even in cases where the allotments are considered separately, 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 appellants 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”.

28. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by ADPML falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of NCDs* are deemed to be public issues and ADPML was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
29. Further, since the offer of NCDs 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.
30. The allegations of non-compliance of the above provisions were not denied by ADPML 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 ADPML has contravened the said provisions. ADPML has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that ADPML 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.
31. 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 NCDs was a deemed public issue of securities, ADPML was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that ADPML has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of NCDs. I, therefore, find that ADPML has not complied with the provisions of section 60 of the Companies Act, 1956.

32. 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 ADPML 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, ADPML has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
33. As regards the allegation of section 117C of the Companies Act, 1956, it may be seen that the said provision mandates the company to create a debenture redemption reserve for the redemption of such debentures, to which every year, adequate amounts should be credited out of its profits, until such debentures are redeemed. None of the Noticees denied this allegation. There is no material on record to show that such debenture reserve was created. Therefore, I hold that the company has violated section 117C of the Companies Act, 1956.
34. ILDS Regulations are applicable to the public issue and listing of debt securities. Regulation 2(e) of the ILDS Regulations defines debt securities to mean non-convertible debt securities which create or acknowledge indebtedness, and include debentures. In view of the finding that ADPML has made a public issue of debt securities, the ILDS Regulations is also applicable to the instant offer of NCDs. Therefore, I find that the

Company has violated the following provisions of the aforesaid ILDS Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- i. Regulation 4(2)(a) – Application for listing of debt securities
- ii. Regulation 4(2)(b) – In-principle approval for listing of debt securities
- iii. Regulation 4(2)(c) – Credit rating has been obtained
- iv. Regulation 4(2)(d) – Dematerialization of debt securities
- v. Regulation 4(4) – Appointment of Debenture Trustees
- vi. Regulation 5(2)(b) – Disclosure requirements in the Offer Document
- vii. Regulation 6 – Filing of draft Offer Document
- viii. Regulation 7 – Mode of disclosure of Offer Document
- ix. Regulation 8 – Advertisements for Public Issues
- x. Regulation 9 – Abridged Prospectus and application forms
- xi. Regulation 12 – Minimum subscription
- xii. Regulation 14 – Prohibition of mis-statements in the Offer Document
- xiii. Regulation 15 – Trust Deed
- xiv. Regulation 17 – Creation of security
- xv. Regulation 19 – Mandatory Listing
- xvi. Regulation 26 – Obligations of the Issuer, etc.

35. 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"

36. 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..."

37. In view of the above findings, I am of the view that ADPML was engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act, 1956, and above mentioned provisions pertaining to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.

ISSUE No. 3-Whether appointment of Ambitious Diversified Trust (represented by its trustee, viz. Smt. Sriparna Gupta) as the Debenture Trustee by ADPML is in violation of Section 117B of the Companies Act, 1956 and whether Ambitious Diversified Trust and Smt. Sriparna Gupta have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

38. I have perused the copy of the Debenture Trust Deed dated November 15, 2010. I find that ADPML had created a charge of Rs.50 Crores for the Offer of NCDs by the Company. I further find that ADPML had appointed *Ambitious Diversified Trust (represented by its trustee, viz. Smt. Sriparna Gupta)* as the debenture trustee by way of trust deed dated November 15, 2010
39. Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993, states that *only a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body corporate alone are eligible to get a certificate of registration as Debenture Trustee.*
40. *Ambitious Diversified Trust (represented by its trustee, viz. Smt. Sriparna Gupta)* is not eligible to obtain a certificate of registration since it does not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. None of the Noticees claimed that *Ambitious Diversified Trust (represented by its trustee, viz., Smt. Sriparna Gupta)* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that *Ambitious Diversified Trust* and *Smt. Sriparna Gupta* have dealt in the impugned *Offer of NCDs* as debenture trustees,

without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992.

41. Under section 117B of the Companies Act, 1956 no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. I find that ADPML has appointed *Ambitious Diversified Trust (represented by its trustee, viz. Smt. Sriparna Gupta)* who do not have a certificate of registration. Therefore, the appointment of the same is in violation of section 117B of the Companies Act, 1956. Further, since ADPML has not issued a prospectus with the relevant information and therefore, the requirement of stating the consent of the debenture trustee to be so appointed on the face of the prospectus has not been complied with.

ISSUE No. 4- If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?

42. Before dealing with the above issue, it would be appropriate to deal with the submissions/objections of the Noticees viz., Shri Mriganka Sekhar Chakraborty, Shri Nimai Kumbhakar and Shri Mohammad Sohaib.

- 42.1 Shri Mriganka Sekhar Chakraborty contended that he was appointed as Sr.Area Manager at head office of ADPML at Kolkota. Shri Mriganka Sekhar Chakraborty has also contended that he was unaware of the fact of appointment as Director in the company till April 2013 and on October 17, 2013 he had resigned from the company. He has also contended that his appointment as director as well as DIN application was made with forged documents and signature.

From the documents submitted by Shri Mriganka Sekhar Chakraborty along with his reply, it is noted that vide letter dated December 01, 2012, Shri Mriganka Sekhar Chakraborty was offered an appointment as Sr. Area Manager at ADPML

head office. Though Shri Mriganka Sekhar Chakraborty has claimed that his signatures were forged in the documents of appointment as director and DIN application, I note that he has neither submitted any proof of the same nor filed any complaint against the company in this regard. From the perusal of resignation mails sent to the company, I note that he has not even whispered his claim of appointment as director by way of forgery of his signature. On the other hand the contents of the resignation letter evidences that he was well aware of the fact of his directorship. Neither the contents of the resignation letter nor his reply to SEBI refer to the circumstances under which he came to know about the appointment as director. Further, an opportunity of being heard was also granted to Shri Mriganka Sekhar Chakraborty on July 06, 2017 which was not availed by him to substantiate his claim of forgery. Therefore, I find that his claim of forgery remains unsubstantiated. However, from the documents submitted regarding the resignation from the directorship of the company, I am inclined to accept that Shri Mriganka Sekhar Chakraborty resigned from the company with effect from October 17, 2013 as there is evidence that the same has been sent to the directors of Company even though the MCA records show his date of resignation as February 25, 2014. In view of the above discussion, I find from MCA records that Shri Mriganka Sekhar Chakraborty was a Director of ADPML with effect from December 10, 2012 and from the resignation letter till October 17, 2013 which was during the period of issuance of NCDs.

Shri Nimai Kumbhakar contended that he was Area Manager of ADPML at Purulia and Bankura and in September 2013, he came to know that he was appointed as director of ADPML without his knowledge and with forged signature and documents hence, he has tendered his resignation in October 2013. Though Shri Nimai Kumbhakar has claimed that his signatures were forged in the documents of appointment as director and DIN application, I note that he has neither submitted any proof of the same nor he showed any proof of even filing of any complaint of

forgery. From the perusal of resignation mails sent to the company, I note that he has not stated therein his claim of appointment as director by way of forgery of his signature. The contents of the resignation letter indicate that he was well aware of the fact of his directorship. Neither the contents of the resignation letter nor his reply refer to the circumstances under which he came to know about the appointment as director. Further, an opportunity of being heard was also granted to Shri Nimai Kumbhakar on July 06, 2017 which was not availed by him to substantiate his claim of forgery. Therefore, I find that his claim of forgery remains unsubstantiated. However, from the documents submitted regarding the resignation from the directorship of the company, I am inclined to accept that Shri Nimai Kumbhakar resigned from the company with effect from October 17, 2013 as there is evidence that the same has been sent to other directors of Company, even though the MCA records show his date of resignation as February 25, 2014. In view of the above discussion, I find from MCA records that Shri Nimai Kumbhakar was a Director of ADPML with effect from December 10, 2012 and from the resignation letter till October 17, 2013 which was during the period of issuance of NCDs.

42.2 Shri Mohammad Sohaib contended he was also Area Manager of ADPML at its head office at Kolkata and he came to know that he was appointed as director of ADPML without his permission and with forged signature and documents. He had resigned on July 14, 2013.

From the documents submitted by Shri Mohammad Sohaib along with his reply, it is noted that vide letter dated February 10, 2011, Shri Mohammad Sohaib was offered an appointment as Area Manager at ADPML head office. Though Shri Mohammad Sohaib has claimed that his signatures were forged in the documents of appointment as director and DIN application, I note that he has neither submitted any proof of the same nor filed any complaint against the company in this regard. From the perusal of resignation mail dated June 14, 2013 sent to the company, I note

that he has not stated therein his claim of appointment as director by way forgery of his signature. The contents of the resignation letter indicates that he was well aware of the fact of his directorship. Neither the contents of the resignation letter nor his reply to SEBI refer to the circumstances under which he came to know about the appointment as director. Rather in his resignation letter he has ‘felicitated the members of the Board for their unstinted faith and co-operation with him during his tenure’. Therefore, it is clear that he was well aware of the fact of his directorship in the company. Further, an opportunity of being heard was also granted to Shri Mohammad Sohaib on July 06, 2017 which was not availed by him which was not availed by him to substantiate his claim of forgery.

Therefore, I find that his claim of forgery remains unsubstantiated. However, from the documents submitted regarding the resignation from the directorship of the company, I am inclined to accept that Mohammad Sohaib resigned from the company with effect from October 18, 2013 as there is evidence that the same has been sent to other directors of Company, even though the MCA records show his date of resignation as February 25, 2014. In view of the above discussion, I find from MCA records that Mohammad Sohaib was a Director of ADPML with effect from December 10, 2012 and from the resignation letter till October 18, 2013 which was during the period of issuance of NCDs.

43. From the documents available on record, I find that the present Directors in ADPML are Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria. I also note that Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftekhhar Hussain and Shri Rakesh Sharma, who were earlier Directors in ADPML, have since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Rajkumar Yadav	February 24, 2014	Continuing
Shri Pradeep Ojha	February 24, 2014	Continuing
Shri Satyendra Singh Bhadouria	February 24, 2014	Continuing
Shri Kunaal Tiwary	November 03, 2010	February 25, 2014
Shri Onkar Singh	January 01, 2011	February 25, 2014
Shri Arshad Hussain	November 03, 2010	February 25, 2014
Shri Nimai Kumbhakar	December 10, 2012	October 17, 2013.
Shri Apurba Kumar Mondol	December 10, 2012	February 25, 2014
Shri Pradip Kumar Kundu	November 03, 2010	March 05, 2012
Shri Mriganka Sekhar Chakraborty	December 10, 2012	October 17, 2013.
Shri Mohammad Sohaib	December 10, 2012	October 18, 2013
Shri Arindam Kundu	December 10, 2012	December 11, 2012
Shri Iftekhar Hussain	December 10, 2012	December 11, 2012
Shri Rakesh Sharma	December 10, 2012	December 11, 2012

44. 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, ADPML and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
45. 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%.

46. From the material available on record and the details of the appointment and resignation of the directors of ADPML as reproduced in paragraph 43 of this Order, it is noted that Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftekhar Hussain and Shri Rakesh Sharma were directors at the time of the issuance of NCDs. Since these persons were acting as directors during the period of issuance of NCDs, 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 ADPML 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 ADPML, 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 ADPML and its Directors, viz., Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib 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.

47. I also note that Shri Arindam Kundu, Shri Iftekhhar Hussain and Shri Rakesh Sharma were directors of ADPML only for a day i.e. from December 10, 2012 to December 11, 2012 during the time of the issuance of NCDs.
48. I note that during the financial years 2010-2011, 2011-2012 and 2012-2013 ADPML through Offer of NCDs, had collected at least an amount of Rs 1.63 Crores from various allottees. I note that Shri Kunaal Tiwary was director of ADPML during financial years 2010-2011, 2011-2012 and 2012-2013. I note that Shri Onkar Singh was director of ADPML during financial years 2010-2011, 2011-2012 and 2012-2013. I note that Shri Arshad Hussain was director of ADPML during financial years 2010-2011, 2011-2012 and 2012-2013. I note that Shri Nimai Kumbhakar was director of ADPML during financial year 2012-2013. I note that Shri Apurba Kumar Mondol was director of ADPML during financial year 2012-2013. I note that Shri Pradip Kumar Kundu was director of ADPML during financial years 2010-2011 and 2011-2012. I note that Shri Mriganka Sekhar Chakraborty was director of ADPML during financial year 2012-2013. I note that Shri Mohammad Sohaib was director of ADPML during financial year 2012-2013. Shri Arindam Kundu, Shri Iftekhhar Hussain and Shri Rakesh Sharma were directors only for a day as discussed above. 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 ADPML and other directors are limited to the extent of amount collected during his/her tenure as director of ADPML. Shri Arindam Kundu,

Shri Iftekhhar Hussain and Shri Rakesh Sharma are liable to refund the money collected, if any, during their short span of one day tenure.

49. As far as the liability under sections 117B and 117C of the Companies Act, 1956, is concerned, the liability is on the company to comply with the said provisions. Therefore, ADPML is liable for the violation of sections 117B and 117C of the SEBI Act. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the Trustee who act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that both Ambitious Diversified Trust and Smt. Sriparna Gupta are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
50. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 34 of this order, the liability is on the Company to comply with the requirements therein.
51. In this regard, I note that Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria was appointed as a director of ADPML only on February 24, 2014 i.e. after the period of issuance of NCDs. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria are not liable for refund of money as they were not directors during the relevant time of fund mobilization. However, I note that the company has continuing liability to refund the money collected from the public through issuance of NCDs pursuant to its failure to comply with public issue norms for said issuance. The fact that Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria are the present and continuing directors of ADPML, I find that Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria are indeed responsible to ensure that ADPML makes refund of money to the allottees as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High

Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

" 13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956. "

52. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The noticee cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria were also be responsible for all the deeds/acts of the Company during the period of their directorship and was obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria are liable to be debarred for an appropriate period of time.

53. 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 ADPML and its Directors, viz., Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftekhhar Hussain and

Shri Rakesh Sharma 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 NCDs 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.

54. I also note that, vide the interim order dated February 15, 2016, ADPML was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of ADPML 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 ADPML or the other Noticees despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 12 of this Order.
55. In view of the discussion above, appropriate action in accordance with law needs to be initiated against ADPML and its Directors and debenture trustee, viz. Shri Rajkumar Yadav, Shri Pradeep Ojha, Shri Satyendra Singh Bhadouria, Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftexhar Hussain, Shri Rakesh Sharma, Ambitious Diversified Trust (*represented by its trustees, viz. Smt. Sriparna Gupta*).
56. It is noted that the Hon'ble Calcutta High Court has passed an Order dated March 16, 2017 in W.P. 422(W) of 2016 in respect of ADPML. The effect and implementation of this order is subject to the directions passed by the Hon'ble Court vide its Order dated March 16, 2017.
57. 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) ADPML, Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftekhar Hussain and Shri Rakesh Sharma shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs 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) Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftekhar Hussain and Shri Rakesh Sharma 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) Shri Rajkumar Yadav, Shri Pradeep Ojha, Shri Satyendra Singh Buhadoria 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.
- (e) ADPML, Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria 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) ADPML, Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftekhar Hussain and Shri Rakesh Sharma 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) ADPML and, on its behalf the present directors viz., Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria who joined subsequent to the issues and Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftekhar Hussain and Shri Rakesh Sharma 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, ADPML, Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftekhar Hussain, Shri Rakesh Sharma, Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria 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 aforesaid present directors viz., Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may initiate appropriate action against him, including adjudication proceedings against them, in accordance with law.
- (j) In case of failure of ADPML, Shri Kunaal Tiwary, Shri Onkar Singh, Shri Arshad Hussain, Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka Sekhar Chakraborty, Shri Mohammad Sohaib, Shri Arindam Kundu, Shri Iftexhar Hussain and Shri Rakesh Sharma 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 57(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;
- (k) ADPML, Shri Kunaal Tiwary, Shri Onkar Singh , Shri Arshad Hussain , Shri Nimai Kumbhakar, Shri Apurba Kumar Mondol, Shri Pradip Kumar Kundu, Shri Mriganka

Sekhar Chakraborty, Shri Mohammad Sohaib, 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.

- (l) Shri Rajkumar Yadav, Shri Pradeep Ojha and Shri Satyendra Singh Bhadouria 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.
- (m) Ambitious Diversified Trust and Smt. Sriparna Gupta are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.
- (n) Shri Arindam Kundu, Shri Iftekhar Hussain and Shri Rakesh Sharma 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 2 (two) years from the date of this order. 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 2 (two) years from the date of this order. The above directions shall come into force with immediate effect.

(o) This Order shall be harmoniously read with the Orders passed by Hon'ble Calcutta High court in W.P.422(W) of 2016 in the matter of Rosena Bibi & Anr Vs. Union of India & Ors.

58. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.

59. 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: November 13th, 2017

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA