

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 Ravi Kiran Realty India Ltd.

In respect of:

1. **Shri Animesh Chowdhury (PAN: ACPPC9026K; DIN: 03119948).**

-
1. Ravi Kiran Realty India Ltd. (hereinafter referred to as “**RKRIL**”/ “**the Company**”) is a Public company incorporated on July 30, 2010 and registered with Registrar of Companies—Kolkata with CIN: U45400WB2010PLC151842. Its registered office is at 18/30, Dover Lane 2nd Floor Kolkata West Bengal - 700029.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons on May 27, 2013, against RKRIL in respect of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether RKRIL 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 RKRIL had made an offer of RPS in the financial years 2012-2013 (hereinafter referred to as “**Offer of RPS**”) and raised an amount of Rs. 131.00 lakhs from 1176 allottees.
 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 August 08, 2014 and issued directions mentioned therein against RKRIL and its Directors namely

Order –Animesh Chowdhury in the matter of Ravi Kiran Realty India Limited

Mr. Gopal Roy Banik, Mr. Biswajit Chowdhury, Ms. Manisha Chatterjee, Mr. Swapan Kumar Paul and Mr. Kaushik Chatterjee.

5. Thereafter, SEBI vide Final Order bearing no. WTM/PS/173/ERO/IMD/MAR/2016 dated March 01, 2016, passed certain directions as mentioned at paragraph 16 thereof, against RKRIL and its Directors, viz. Mr. Gopal Roy Banik, Mr. Biswajit Chowdhury, Ms. Manisha Chatterjee, Mr. Swapan Kumar Paul and Mr. Kaushik Chatterjee, for violating the provisions of Section 56, Section 60 read with Section 2(36), Section 73 by engaging in fund mobilizing activity from the public, through the issue of RPS.
6. Subsequently it came to the notice of SEBI that **Shri Animesh Chowdhury** was earlier Director of RKRIL and thus SEBI passed an interim order dated November 20, 2015 (hereinafter referred to as “**interim order**”) against **Shri Animesh Chowdhury** (hereinafter referred to as “**Noticee**”) for the alleged violation of aforementioned provisions of the Companies Act, 1956, the SEBI Act and the Rules and Regulations framed thereunder.
7. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings were recorded. RKRIL had made an *Offer of RPS* during the financial years 2012-2013 and raised an amount of Rs. 131 lakhs as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2012-2013	RPS	131.00	1176
Total		131.00	1176

8. 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 RKRIL in respect of the *Offer of RPS*.
9. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated November 20, 2015 with immediate effect.

dated November 23, 2015. The interim order was duly served on the noticee. The noticee vide letter dated December 14, 2015 sought extension of one month time to file reply. Thereafter vide letter dated January 15, 2016 the noticee sought further extension of two weeks to file reply on account of bad health. Vide letter dated January 29, 2016 noticee filed his reply and made interalia the following submissions-

- a) That since 1994 he was engaged in family business of running nursing home. While carrying on business in or about 2009, he started another business of supply of Medical Oxygen to various Nursing homes, houses and other institutions. In carrying on the said business he was in search of assistants and necessary funds for setting up the bottling plant for Medical Oxygen.
- b) Pursuant to the same, one of his common friends, Gopal Roy Banik introduced him with Mr, Kaushik Chaterjee. It was apprised to him that Mr. Kaushik Chaterjee was interested in financing the project.
- c) With such intent a company RKRIL was formed where Mr. Chaterjee joined as major shareholder and he and Mr. Gopal Roy Banik both contributed a sum of Rs. 65000/- and obtained 6500 shares each.
- d) That he was named Director of the Company and had acted as In charge of the project for setting up the Medical Oxygen bottling unit. As a Project Director he had been looking after setting up of the aforesaid Oxygen bottling plant as he has the basic knowledge in setting up an Oxygen bottling plant.
- e) That to his surprise in 2013 the project was stopped abruptly and after several request for completing the project he was intimated that due to shortage of funds the company is unable to proceed with the work of setting up the Oxygen bottling plant.
- f) That RKRIL found no interest in completing the project, he tendered his resignation from the Board of the Company on May 17, 2013.
- g) That he is also not holding any shares of the company and has sold his shares at face value.
- h) That he was paid salary in the company as Project in charge and he received Rs. 90,000/- in 2011-2012 and Rs 1,80,000/- in 2012-2013 as salary.

- i) That he never participated in the affairs of the company or day today business or management of the Company.
- j) That the company was supposed to hold Board Meeting but at no point in time any Board Meeting was ever held barring one or two meetings to select Mr. Kaushik Chatterjee as Chairman. At all point of time whenever his signature was required, he was called by Mr. Kaushik Chatterjee to sign which he signed in good faith. That the entire management of the company at all point of time was controlled by Mr. Kaushik Chaterjee.
- k) That with regard to his assets and properties , he submitted that he has one Flat in Baruipur, South 24 Parganas, West Bengal

13. Vide notification dated October 15, 2017 published in newspaper *Times of India* and notification dated October 15, 2017 published in newspaper *Anand Bazar Patrika* , the Noticee was notified by SEBI, that interim order dated November 20, 2015 was issued against him and he was given a final opportunity to submit his reply in the matter. Vide the aforesaid notification dated October 15, 2017 published in newspaper *Times of India* and *Anand Bazar Patrika*, the Noticee was also notified by SEBI that he will be given the final opportunity of being heard on November 02, 2017 at the time and the venue mentioned therein. The Noticee was advised that in case he 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. Vide email dated October 29, 2017, noticee confirmed his attendance at the time of hearing and along with the email attached written submissions dated October 28, 2017. The physical copy of written submissions dated October 28, 2017 was also send by the noticee. Vide his written submissions dated October 28, 2017, the noticee reiterated his earlier submissions dated. January 29, 2016 and interalia made the following submissions-

- a) That the noticee had no disbursal capacity in the company and the noticee neither intended to flout any law nor had acted in any manner with intent to flout any law or the SEBI Act or Regulations framed thereunder.
- b) That though the noticee was a director of the company and was having 6500 paid up equity shares, yet the noticee never received any benefit from the Company.
- c) That on 18th June, 2011, the noticee was paid an advance of Rs.1,25,000/-. The said sum was paid to the noticee as advance for purchase of a motor car and with the institutional loan of Rs. 3,10,177/- from Tata Motor Finance disbursed on 17th March, 2012. The noticee purchased a Tata Indigo at the cost of Rs.5,59,087/- on 30th March, 2012. The company on 31st March, 2013 purchased the said car from the noticee for a sum of Rs.4,50,000/- out of which the company adjusted the advance of Rs.1,25,000/- so advanced on 18th June, 2011 and paid the noticee a sum of Rs.3,25,000/- by RTGS in OD Account No. 4047 8100010052 in Bank of India on 17th March, 2012. Out of the said sum of Rs.3,25,000/- the noticee repaid the Institutional Loan of Tata Motors Finance Ltd. of Rs.3,10,177/- so taken from Tata Motors Finance Ltd.
- d) That the noticee is a victim of misrepresentation by Mr. Kaushik Chatterjee and also of the circumstances.
- e) That the noticee, therefore, submits that the name of the noticee be expunged from the proceeding as the noticee had neither been a part of any fraudulent act committed by the company nor was ever benefited for any wrongful act of the company as alleged in the Show Cause notice.

15. *Hearing and submissions:* The noticee appeared for personal hearing and reiterated his earlier submissions made vide letter dated 29/01/2016 and 28/10/2017. The noticee interalia made the following oral submissions-

- a) That he was into bottling business of Medical Oxygen and was in search of institutional finance. On account of same his friend Mr. Gopal Roy Banik introduced him to Mr. Kaushik Chatterjee who proposed to form a company wherein Mr.

Chatterjee will invest and also arrange for necessary fund for setting up a bottling plant for Medical Oxygen.

- b) That he was working as a Project Director in the company and his work was mainly in field in project site.
- c) That certain plant and machinery was setup, however the project was stopped abruptly in 2013 and after several request for completing the project he was told that due to shortage of funds the company is unable to complete the project. Thereafter he resigned from the company in 2013.
- d) That he was not involved in day to day affairs of the company and the entire finance of the company was handled by Mr. Kaushik Chatterjee who assured him that the same is done within purview of law.
- e) That in absence of Mr. Gopal Roy, he was asked to sign Balance Sheet/Account Statement of the company, however he was not at all aware of the finance of the company.
- f) That he was taken for some meetings with agents by Mr. Kaushik Chatterjee, however entire dealing was done by Mr. Kaushik Chatterjee and he had no role to play.
- g) That in his tenure, 2 Board meetings took place and he signed papers in good faith.

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 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, whether the noticee is liable for the violation committed?*

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

17. I have perused the interim order dated November 20, 2015 for the allegation of *Offer of RPS*. I note that the noticee has not 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 filing made by the Company with RoC and information available with the MCA portal, that RKRIL has issued and allotted RPS to 1176 investors during the financial years 2012-2013 and raised an amount of Rs. 131.00 lakhs.
19. *I therefore conclude that RKRIL came out with an offer of RPS as outlined above.* The same has also been decided vide Order dated March 01, 2016.

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

20. 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).”

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, I find that RPS were issued by RKRIL to 1176 investors in the financial years 2012-2013 for the amount of 131.00 lakhs. The above findings lead to a reasonable conclusion that the *Offer of RPS* by RKRIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
24. I find that the noticee has not claimed RKRIL 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 RKRIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

25. The noticee has not contended that the *Offer of RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
26. 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 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".
27. Therefore, in view of the material available on record, I find that the *Offer of RPS* by RKRIL 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 RKRIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956. The same has also been decided vide Order dated March 01, 2016.
28. 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.

29. The allegations of non-compliance of the above provisions were not denied by the noticee. I also find that no records have been submitted to indicate that RKRIL has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that RKRIL has contravened the said provisions. The noticee has not provided any records of RKRIL to show that the amount collected by the company is kept in a separate bank account. Therefore, I find that RKRIL 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. The same has also been decided vide Order dated March 01, 2016.
30. 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, RKRIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that the noticee has not submitted any record to indicate that RKRIL has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that RKRIL has not complied with the provisions of section 60 of the Companies Act, 1956. The same has also been decided vide Order dated March 01, 2016.
31. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is

accompanied by abridged prospectus, containing disclosures as specified. The noticee has not produced any record to show that RKRIL 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, RKRIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956. The same has also been decided vide Order dated March 01, 2016.

32. 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 *Sabara 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"

33. 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 *Sabara 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...”

34. In view of the above findings, I am of the view that RKRIL 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, The same has also been decided vide Order dated March 01, 2016.

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

35. From the documents available on record, I note that Shri Animesh Chowdhury, who was earlier Director in RKRIL, has since resigned.

36. Shri Animesh Chowdhury submitted that Shri Kaushik Chatterjee took the overall charges of the company and the entire finance & financial matters were controlled by him. Shri Animesh Chowdhury submitted that the day to day functioning and operation of the Company including the financial transactions were looked after by Shri Kaushik Chatterjee and that Shri Animesh Chowdhury was not in charge of the Company's day to day management, affairs, functioning and operations, and had no part and role to play in finance related matters. He submitted that he signed certain cheque /papers in good faith and was not aware of legal position of money mobilization since he was assured by Shri Kaushik Chatterjee that the money has been collected within the purview of law. In this regard I note that ignorance of law is not an excuse. I also note that Shri Animesh Chowdhury has himself admitted that he was taken for some meetings with agents by Mr. Kaushik Chatterjee which implies that he was fully aware of the money mobilization though he further stated that entire dealing was done by Mr.

Kaushik Chatterjee and he had no role to play. At this juncture I would also like to rely on Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI wherein Hon'ble SAT has observed that-

"Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956."

Thus in view of SAT decision of Manoj Agarwal vs. SEBI, the contention of Shri Animesh Chowdhury w.r.t not being involved in company's affair and finances is not acceptable.

37. The noticee has not disputed his details of appointment and resignation. The details of the appointment and resignation of the director is as following:

Name of the directors	Date of appointment	Date of cessation
Shri Animesh Chowdhury	July 30, 2010	May 17, 2013

38. 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, the noticee is held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
39. 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%.

40. From the material available on record and the details of the appointment and resignation of the noticee as reproduced in paragraph 37 of this Order, it is noted that Shri Animesh Chowdhury was director at the time of the issuance of RPS. Since this person was acting as director during the period of issuance of RPS, he was an officer 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 RKRIL 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 the noticee is an officer in default and is liable to make refund jointly and severally with RKRIL and other directors as mentioned in Order dated March 01, 2016 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. 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 noticee is co-extensively responsible along with the Company and other directors as mentioned in Order dated March 01, 2016 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 Shri Animesh Chowdhury jointly and severally with RKRIL and other directors as mentioned in Order dated March 01, 2016 is 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.
41. I note that Shri Animesh Chowdhury was director of RKRIL during financial years 2012-2013, i.e. at the time of issuance of RPS. 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 Shri Animesh Chowdhury to refund the amount with interest jointly and severally with RKRIL and other directors is limited to the extent of amount collected during his tenure as director of RKRIL.

42. 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 Shri Animesh Chowdhury to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the noticee, to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Noticee.
43. 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. Shri Animesh Chowdhury jointly and severally with RKRIL and other directors as mentioned in Order dated March 01, 2016 shall forthwith refund the money collected by the Company, during his period of directorship through the issuance of RPS including the application money collected from investors during his 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” or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents..
 - c. Shri Animesh Chowdhury is directed to provide an upto date inventory of all his assets and properties and details of all his bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.

- d. Shri Animesh Chowdhury is prevented from selling his assets, properties and holding of mutual funds/shares/securities held by him 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.
- e. Shri Animesh Chowdhury in his personal capacity to make refund jointly and severally with RKRIL and other directors as mentioned in Order dated March 01, 2016, 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.
- f. After completing the aforesaid repayments, Shri Animesh Chowdhury in his personal capacity jointly and severally with RKRIL and other directors as mentioned in Order dated March 01, 2016 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**")
- g. In case of failure of Shri Animesh Chowdhury to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts from Shri Animesh Chowdhury liable to refund as specified in paragraph 43(a) of this Order, in accordance with section 28A of the SEBI Act.
- h. Shri Animesh Chowdhury is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is 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. Shri Animesh Chowdhury is also restrained from associating himself 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.

- i. The above directions shall come into force with immediate effect.
- 44. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories, registrar and transfer agents, for information and necessary action.
- 45. 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 director.
- 46. A copy of this Order shall also be forwarded to Local Police/ State Government for information.

DATE: November 28, 2017

PLACE: Mumbai

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