

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 Pailan Park Development Authority Limited

In respect of:

1. Pailan Park Development Authority Limited (PAN: AADCP2087Q)
2. Shri Sekhar Chandra Koley (PAN: BUOPK8353F; DIN: 06454703).
3. Shri Bipin Kumar Singh (PAN: BOGPS0921F; DIN: 03395216).
4. Shri Chandan Chakraborty (PAN: ARCPC9106E; DIN: 05120821).
5. Shri Avijit Chowdhury (PAN: APEPC8255N; DIN: 05358817).
6. Shri Atul Agarwal (PAN: AZIPA5516C; DIN: 05143420).
7. Shri Vivek Kumar (PAN: ADNPK9149E; DIN: 03524074).
8. Shri Apurba Kumar Saha (PAN: AUIPS7765C; DIN: 00952457).
9. Debenture Trustees, viz., Shri Dilip Kumar Das (address – 34/1, New Santoshpur Mail Road, Dist. South 24 PGS, Kolkata, West Bengal – 700075) and Shri Laxmi Narayan Sharma (address – Chini Patti, 9/1, Ramakumar Raksit Lane, Kolkata – 700007)

1. Pailan Park Development Authority Limited (hereinafter referred to as “PPDAL”/ “the Company”) is a Public company incorporated on December 18, 2003 and registered with Registrar of Companies–Kolkata with CIN: U45201WB2003PLC097469. Its registered office is at 1/27 Baishnab Ghata, P.O. –Panchasayar, Patuli Township, Block–Q, Kolkata–700094, West Bengal, India.
2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received reference against PPDAL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “NCDs”) and Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether PPDAL had made any public

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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 PPDAL had made an offer of NCDs in the financial years, 2011-2012 and 2012-2013 (hereinafter referred to as “Offer of NCDs”) and raised at least an amount of Rs. 15 Crores from at least 75 allottees. Further, it was observed that PPDAL had made an offer of RPS in the financial years 2010-2011, 2011-2012 and 2012-2013 (hereinafter referred to as “Offer of RPS”) and raised an amount of at least Rs. 13.26 Lakhs from at least 31 allottees.
4. The number of allottees has been collated from the documents submitted with the complaints received by SEBI and the funds mobilized has been collated from MCA records. 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 PPDAL created a charge for an amount of Rs. 5 Crores on April 07, 2011 and appointed *Shri Dilip Kumar Das* as Debenture Trustee for the Offer of NCDs by that company and created another charge for an amount of Rs. 10 Crores on September 26, 2011 and appointed *Shri Laxmi Narayan Sharma* as Debenture Trustee for the Offer of NCDs by that company.
5. 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 July 27, 2015 (hereinafter referred to as “interim order”) and issued directions mentioned therein against PPDAL and its Directors viz., *Shri Sekhar Chandra Koley*, *Shri Bipin Kumar Singh*, *Shri Chandan Chakraborty*, *Shri Avijit Chowdhury*, *Shri Atul Agarwal*, *Shri Vivek Kumar*, *Shri Apurba Kumar Saha* and its Debenture Trustees, viz. *Shri Dilip Kumar Das* and *Shri Laxmi Narayan Sharma*. (hereinafter collectively referred to as “Noticees”).



6. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings were recorded. PPDAL had made an *Offer of NCDs* during the financial years, 2011-2012 and 2012-2013 and raised at least an amount of Rs. 15 Crores as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in crores)	Number of allottees
2011-2012	NCDs		33
2012-2013			42
Total		15 [^]	75*

[^]* 4. The number of allottees has been collated from the documents submitted with the complaints received by SEBI and and the funds mobilized has been collated from MCA records. However, actual no. of allottees and amount mobilized could be more than the above indicated figures.

7. Further, PPDAL had made an *Offer of RPS* during the financial years, 2010-2011, 2011-2012 and 2012-2013 and raised at least an amount of Rs. 13.26 Lakhs as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2010-2011	RPS		Not available
2011-2012			26
2012-2013			5
Total		13.26 [^]	31*

[^]* The number of allottees has been collated from the documents submitted with the complaints received by SEBI and and the funds mobilized has been collated from MCA records. However, actual no. of allottees and amount mobilized could be more than the above indicated figures.

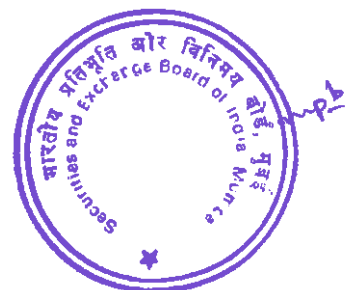
8. Further, PPDAL created a charge for an amount of Rs. 5 Crores on April 07, 2011 and appointed *Shri Dilip Kumar Das* as Debenture Trustee for the Offer of NCDs by that company and created another charge for an amount of Rs. 10 Crores on September 26,



2011 and appointed *Shri Laxmi Narayan Sharma* as Debenture Trustee for the Offer of NCDs by that company.

9. The above *Offer of NCDs and 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) and sections 117B and 117C of the Companies Act, 1956 and the relevant provisions of the ILDS Regulations were not complied with by PPDAL in respect of the *Offer of NCDs and RPS*. Further, the Debenture Trustees viz. *Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma* have 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**").
10. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated July 27, 2015 with immediate effect.
- "PPDAL (PAN: AADCP2087Q) shall forthwith cease to mobilize fresh funds from investors through the *Offer of Redeemable Preference Shares and 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;
 - PPDAL and its present Directors, viz. *Shri Sekhar Chandra Koley* (PAN: BUOPK8353F; DIN: 06454703), *Shri Bipin Kumar Singh* (PAN: BOGPS0921F; DIN: 03395216), *Shri Chandan Chakraborty* (PAN: ARCPC9106E; DIN: 05120821), *Shri Avijit Chowdhury* (PAN: APEPC8255N; DIN: 05358817), *Shri Atul Agarwal* (PAN: AZIPA5516C; DIN: 05143420) and *Shri Vivek Kumar* (PAN: ADNPK9149E; DIN: 03524074), 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;
 - The past Director of PPDAL, viz. *Shri Apurba Kumar Saha* (PAN: AUIPS7765C; DIN: 00952457), is prohibited from issuing prospectus or any offer document or

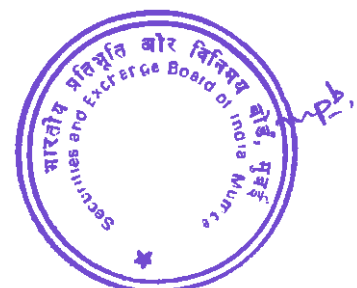
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- issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
- iv. PPDAL and its abovementioned past and present Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
 - v. PPDAL shall provide a full inventory of all its assets and properties;
 - vi. PPDAL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;
 - vii. PPDAL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of Redeemable Preference Shares and Offer of NCDs*, without prior permission from SEBI;
 - viii. PPDAL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of Redeemable Preference Shares and Offer of NCDs*, which are kept in bank account(s) and/or in the custody of PPDAL;
 - ix. The Debenture Trustees, viz. *Shri Dilip Kumar Das* and *Shri Laxmi Narayan Sharma*, are prohibited from continuing with their assignment as debenture trustees in respect of the *Offer of NCDs* of PPDAL and also 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."

11. The interim order also directed PPDAL 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 should not be passed against them:

- i. Directing them jointly and severally to refund money collected through the *Offer of Redeemable Preference Shares and Offer of NCDs* alongwith interest, if any, promised to investors therein;
- ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;



- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
12. Similarly, the Debenture Trustees, Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma were 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 them from accessing the securities market and further restraining them from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
13. Vide the said interim order, PPDAL, its abovementioned Directors along with its Debenture Trustees 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.
14. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated July 28, 2015 which were delivered to Shri Sekhar Chandra Koley, Shri Avijit Chowdhury, Shri Chandan Chakraborty, Shri Atul Agarwal, Shri Apurba Kumar Saha and Shri Dilip Kumar Das by hand-delivery and to Shri Bipin Kumar Singh and Shri Laxmi Narayan Sharma through affixture. Subsequently, vide notification dated November 09, 2016 published in newspaper *Times of India*, notification dated November 08, 2016 published in newspaper *Ananda Bazar Patrika* and vide notifications dated November 25, 2016 in Hindustan Times and Navbharat Times, the Noticees, Shri Atul Agarwal and Shri Vivek Kumar were notified by SEBI, that interim order dated July 27, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.
15. Vide notification dated October 15, 2017 published in newspaper *Times of India*, notification dated October 15, 2017 published in newspaper *Ananda Bazar Patrika* and notification dated October 15, 2017 published in newspaper *Daily Excelsior* the Noticees



were notified by SEBI that they will be given the final opportunity of being heard on November 21, 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.

16. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on November 21, 2017. PPDAL has replied vide letters dated August 21, 2015, September 3, 2015, August 12, 2016 and August 17, 2016 and its submissions in brief are as under:

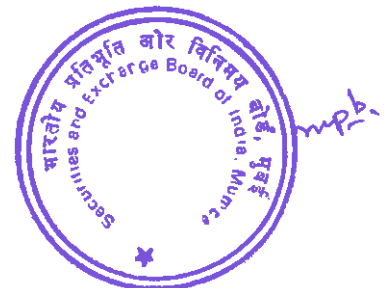
- i. Various documents are required to be collated so that they can give a proper and comprehensive response to the Interim Order and the Company is in the process of gathering the data to give a suitable reply and in the meanwhile, the Company shall act in accordance with the directions given in the notice.
- ii. The Company has always acted in a manner to support the investigations conducted by SEBI and it has always been the endeavor of the Company to pay its investors their dues at the relevant point of time.
- iii. The Company is not engaged in fund mobilization activities and there was never intention to defraud any investors.
- iv. It has ceased to mobilize any funds from investors since April 2015 in any manner whatsoever and has not knowingly or otherwise violated any provisions of the Companies Act or SEBI Act etc. and ought not be penalized.
- v. Compliance of directions of SEBI may not be treated as an admission of any violation of any provisions of Companies Act, etc. It is requested that the Company may be allowed to invest in the securities market as a legitimate investor.
- vi. The Company is willing to comply with the directions of SEBI and has already submitted the entire list of investors to SEBI along with the inventory of its assets and properties and enclosed the list of all landed properties owned in the name of the Company.



- vii. The Company intends to repay its investors by selling the landed properties and using the consideration towards refund to the investors, subject to approval of SEBI and Calcutta High Court.
- viii. Mr. Apurba Saha has resigned as Director from the Company and was not involved in day to day affairs of the Company and has not issued any prospectus or offer documents since receipt of order of SEBI.
- ix. A sum of Rs. 412.90 crores was only mobilized.
- x. Referred to the writ petitions filed before Hon'ble High Court of Calcutta wherein Court has passed order restraining the Company from disposing of the assets. The Company has filed a scheme for payment to the investors which is under contemplation of Hon'ble High Court. The Company is willing to refund to the investors subject to sanction and finality of the scheme submitted to High Court.

17. Shri Avijit Chowdhury replied vide letter dated September 1, 2016 and his submissions in brief are as under:

- i. He was director of PPDAL for 6 months and 10 days. He never attended any Board Meetings of the Company during his stay as director of the Company and has no shareholding in his name.
- ii. He was an unemployed person, started working in a company named PAILAN group, however, no formal letter was issued. PAILAN Group asked him to join as a director in the PPDAL. In that time, PAILAN group received SEBI notices and key managerial persons of the Company resigned. The Company used his name as a dummy director and he did not have any idea about the consequences to become a director of the Company.
- iii. As mentioned in the letter, his date of appointment was August 8, 2014. After coming to know that the Company is offering NCDs and has violated provisions of Companies Act, he resigned from the Company by filing DIR 11 and requested the Company to file DIR 12 but they never accepted his appeal or



resignation.

- iv. He has not signed any papers of Pailan Agro India Ltd. as a director and have not received salary from the Pailan group. He was not authorized signatory of any A/c of PPDAL. In case Company has submitted any papers after his resignation, the same should be treated forged signature.
- v. He requested for personal hearing.

18. Shri Sekhar Chandra Koley replied vide letter dated July 20, 2016 and his submissions in brief are as under:

- i. He was director of the Company from May 7, 2014 to February 13, 2015. He was director of PPDAL by chance and by cheating of the management of the Company, M/s. GR Agro Projects Ltd. in which he was the erstwhile employee.
- ii. He was employed by M/s. GR Agro Projects Ltd. as a data entry operator and his personal documents were collected by the management for official use and used the documents to make him director of the Company. After a few days, he came to know that he became director of PPDAL.
- iii. He enquired the fact from the management and searched from MCA portal regarding his appointment, that he was appointed in the Company from May 7, 2016 and on asking the management of M/s. GR Agro Projects Ltd. as to why they appointed him as director of the Company, they said that they have promoted him as director of the Company. Not only in PPDAL, he was appointed as a director in 12 different companies in same time. As unemployed youth, he had no option but to shut his mouth and was threatened to be dismissed from the job if he opposed.
- iv. During May 7, 2014 to February 13, 2015, he did not sign any papers of the Company and did not attend any Board Meeting and has not received any remuneration from PPDAL and in the period of his directorship, no AGM was held.
- v. He does not have a single shareholding in the Company and his digital signature



was also in the custody of the management of M/s. GR Agro Projects Ltd. and after several attempts, he did not get his DSC back from the management. When he came to know about the actual working of these companies, he immediately stepped down and submitted his DIR 11 to ROC Kolkata.

vi. He requested to avail opportunity of personal hearing.

19. 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.

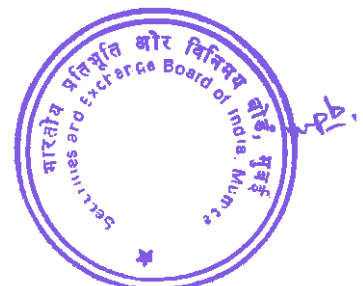
- (1) *Whether the company came out with the Offer of NCDs and RPS as stated in the interim order.*
- (2) *If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.*
- (3) *Whether appointment of Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma as the Debenture Trustees by PPDAL is in violation of Section 117B of the Companies Act, 1956 and whether Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma 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.*

20. I have perused the interim order dated July 27, 2015 for the allegation of *Offer of NCDs and RPS*. I note that neither the company nor the directors have disputed the same.

21. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and

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other documents available on records. It is noted, from the investors' complaints received by SEBI and MCA records in the matter that PPDAL has issued and allotted NCDs to at least 75 investors during the financial years, 2011-2012 and 2012-2013 and raised at least an amount of Rs. 15 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 and MCA records. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 75 allottees and Rs. 15 Crores respectively.

22. Further, it is noted from the investors' complaints received by SEBI and MCA records that PPDAL has issued and allotted RPS to at least 31 investors during the financial years 2010-2011, 2011-2012 and 2012-2013 and raised an amount of at least Rs. 13.26 Lakhs. Further, I also note that complainants have forwarded copies of RPS certificates showing the allotment of RPS to at least 19 more allottees. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI and MCA records. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 50 allottees and Rs. 13.26 Lakhs respectively.

23. I therefore conclude that PPDAL came out with an offer of NCDs and RPS 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.

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

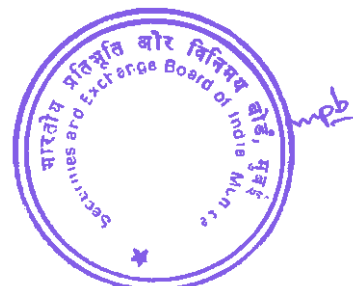
(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(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)."



25. 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."



26. 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*.
27. PPDAL in its reply has, *inter-alia*, stated that the Company has always acted in a manner to support the investigations conducted by SEBI and it has always been the endeavor of the Company to pay its investors their dues at the relevant point of time and that the Company has ceased to mobilize any funds from investors since April 2015. The Company further submitted that it has not knowingly or otherwise violated any provisions of the Companies Act or SEBI Act etc. and ought not be penalized and there was never intention to defraud any investors. The Company also submitted that it is willing to comply with the directions of SEBI and has already submitted the entire list of investors to SEBI along with the inventory of its assets and properties and enclosed the list of all landed properties owned in the name of the Company. The Company also submitted that it intends to repay its investors by selling the landed properties and using the consideration towards refund to the investors, subject to approval of SEBI and Calcutta High Court. The Company submitted that a sum of Rs. 412.90 crores was only mobilized and has already filed a scheme for payment to the investors which is under contemplation of Hon'ble High Court and is willing to refund to the investors subject to



- sanction and finality of the scheme submitted to High Court.
28. In regards the aforesaid submissions of the Company, I find that the Company has not disputed the issue of NCDs or RPS and is willing to repay the investors. Further, the Company's submission that it has not knowingly violated any provisions of the Companies Act or SEBI Act etc. and ought not be penalized and there was never intention to defraud any investors will not absolve the Company from responsibility for violation of law as ignorance of law is not an excuse and the Company will have to abide by law as well as the repercussions for violation of law.
29. In the instant matter, I find that NCDs were issued by PPDAL to at least 75 investors in the financial years, 2011-2012 and 2012-2013. However, this number is not conclusive as it is based on the documents received by SEBI along with complaints and MCA records and the actual number of investors could be more than 75. I find that PPDAL has mobilized at least an amount of Rs. 15 Crores over the financial years, 2011-2012 and 2012-2013 which is not a conclusive value as it is based on the complaints received by SEBI and MCA records. Further, I find that PPDAL has created a charge of Rs. 5 Crores on April 07, 2011 and Rs. 10 Crores on September 26, 2011. I also find that RPS were issued by PPDAL to at least 31 investors in the financial years, 2010-2011, 2011-2012 and 2012-2013. Further, I also note that complainants have forwarded copies of RPS certificates showing the allotment of RPS to at least 19 more allottees. However, this number is not conclusive as it is based on the documents received by SEBI along with complaints and MCA records and the actual number of investors could be more than 50. I find that PPDAL has mobilized at least an amount of Rs. 13.26 Lakhs 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 and MCA records. The above findings lead to a reasonable conclusion that the *Offer of NCDs* and RPS by PPDAL was a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956. Neither PPDAL nor its directors have contended that the *Offer of NCDs and RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act,



1956.

30. I find that PPDAL 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 PPDAL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
31. 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".
32. Therefore, in view of the material available on record, I find that the *Offer of NCDs and RPS* by PPDAL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of NCDs and RPS* are deemed to be public issues and PPDAL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
33. Further, since the offer of NCDs and RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section



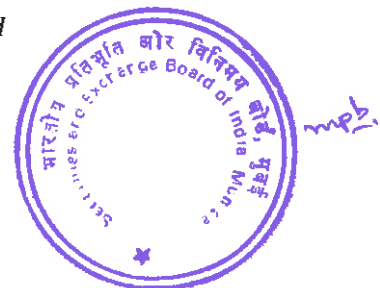
73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

34. The allegations of non-compliance of the above provisions were not denied by PPDAL 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 PPDAL has contravened the said provisions. PPDAL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that PPDAL 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.
35. 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 and RPS were a deemed public issue of securities, PPDAL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that PPDAL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of NCDs and RPS. I, therefore, find that PPDAL has not complied with the provisions of section 60 of the Companies Act, 1956.
36. 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 PPDAL 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, PPDAL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

37. 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.
38. 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 PPDAL 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

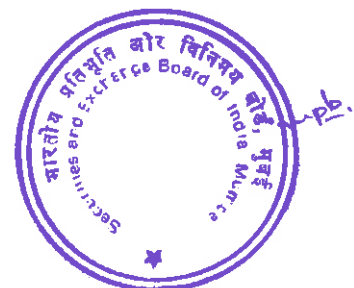


- vii. Regulation 6 – Filing of draft Offer Document
- viii. Regulation 7 – Mode of disclosure of Offer Document
- ix. Regulation 8 – Advertisements for Public Issues
- x. Regulation 9 – Abridged Prospectus and application forms
- xi. Regulation 12 – Minimum subscription
- xii. Regulation 14 – Prohibition 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.

39. 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"



40. 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-

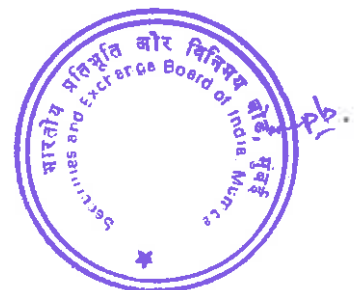
“...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...”

“...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...”

41. In view of the above findings, I am of the view that PPDAL was engaged in fund mobilizing activity from the public, through the offer of NCDs and RPS 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 Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma as the Debenture Trustees by PPDAL is in violation of Section 117B of the Companies Act, 1956 and whether Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma violated Section 12(1) of SEBI Act*



and regulation 7 of the Debenture Trustees Regulations.

42. I find that PPDAL had created a charge for an amount of Rs. 5 Crores on April 07, 2011 and appointed *Shri Dilip Kumar Das* as Debenture Trustee for the Offer of NCDs by that company and created another charge for an amount of Rs. 10 Crores on September 26, 2011 and appointed *Shri Laxmi Narayan Sharma* as Debenture Trustee for the Offer of NCDs by that company.
43. 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.*
44. *Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma* are not eligible to obtain a certificate of registration since they do not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. None of the Noticees claimed that *Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that *Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma* 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.
45. 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 PPDAL has appointed *Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma* 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 PPDAL 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?

46. Shri Avijit Chowdhury in his reply has stated, *inter-alia*, that he was director of PPDAL for 6 months and 10 days and he never attended any Board Meetings of the Company during his stay as director of the Company and has no shareholding in his name. He also submitted that he was an unemployed person who started working in a company in the PAILAN group, however, no formal letter was issued and that PAILAN Group asked him to join as a director in the PPDAL. He also stated that in that time, PAILAN group received SEBI notices and key managerial persons of the Company resigned and the Company used his name as a dummy director and he did not have any idea about the consequences to become a director of the Company. He also submitted that as mentioned in the letter, his date of appointment was August 8, 2014 and after coming to know that the Company is offering NCDs and has violated provisions of Companies Act, he resigned from the Company by filing DIR 11 and requested the Company to file DIR 12 but they never accepted his appeal or resignation. He further submitted that he has not signed any papers of Pailan Agro India Ltd. as a director and have not received salary from the Pailan group and was not authorized signatory of any A/c of PPDAL and in case the Company has submitted any papers after his resignation, the same should be treated forged signature. In regard to the submissions of Shri Avijit Chowdhury that he never attended any Board Meetings of the Company during his stay as director and was a



dummy director and did not have any idea about the consequences to become a director of the Company, I do not find these submissions tenable as he was a director of the Company and after accepting the position of director, he cannot wriggle out of his responsibility as director. Hon'ble Securities Appellate Tribunal (SAT) vide its order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act. Further in regards his submissions that he became a director on August 8, 2014 and was a director for 6 months and 10 days, I note that as per the MCA records, Shri Avijit Chowdhury was director of the Company from May 7, 2014 and is still continuing as director. However, I also note from the MCA records that Shri Avijit Chowdhury has filed Form DIR-11 showing his resignation from directorship of the Company from February 18, 2015. Therefore, I find that Shri Avijit Chowdhury was a director of the Company from May 7, 2014 till February 18, 2015, which was subsequent to the period in which funds were raised.

47. Shri Sekhar Chandra Koley in his reply has submitted, *inter-alia*, that he was director of the Company from May 7, 2014 to February 13, 2015 and that he was director of PPDAL by chance and by cheating of the management of the Company, M/s. GR Agro Projects Ltd. in which he was the erstwhile employee. He further submitted that he was employed by M/s. GR Agro Projects Ltd. as a data entry operator and his personal documents were collected by the management for official use and used to make him director of the Company. He further submitted that when he came to know that he became director of PPDAL, he enquired the fact from the management and searched from MCA portal regarding his appointment, that he was appointed in the Company from May 7, 2016 and on asking the management of M/s. GR Agro Projects Ltd. as to why they appointed him as director of the Company, they said that they have promoted him as director of the Company. He submitted that as an unemployed youth, he had no



option but to shut his mouth and was threatened to be dismissed from the job if he opposed and during May 7, 2014 to February 13, 2015, he did not sign any papers of the Company and did not attend any Board Meeting and has not received any remuneration from PPDAL and in the period of his directorship, no AGM was held. He also submitted that he does not have a single shareholding in the Company and his digital signature was also in the custody of the management of M/s. GR Agro Projects Ltd. and after several attempts, he did not get his DSC back from the management and when he came to know about the actual working of these companies, he immediately stepped down and submitted his DIR 11 to ROC Kolkata. As per the MCA records, I find that Shri Sekhar Chandra Koley was a director of the Company from May 7, 2014 and is still continuing as a director. However considering the Form no. DR-11 submitted by Shri Sekhar Chandra Koley in support of his resignation form directorship, I am willing to accept his submission regarding resignation. However, I do not find his submissions that as an unemployed youth, he had no option but to shut his mouth and was threatened to be dismissed from the job if he opposed and he did not sign any papers of the Company and did not attend any Board Meeting and has not received any remuneration from PPDAL tenable as he was a director of the Company and after accepting the position of director, he cannot wriggle out of his responsibility as director. Hon'ble Securities Appellate Tribunal (SAT) vide its order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act. However, I find that he was a director of the Company from May 7, 2014 to February 13, 2015 which was subsequent to the period in which funds were raised.

48. The Company in its reply had submitted that Mr. Apurba Saha has resigned as Director from the Company and was not involved in day to day affairs of the Company and has not issued any prospectus or offer documents since receipt of order of SEBI. In this



regards I find that as per MCA records, Mr. Apurba Saha was director of the Company from December 18, 2003 till May 08, 2014. Therefore, the submissions of the Company that Mr. Apurba Saha was not involved in day to day affairs of the Company are not tenable as he was a director of the Company and after accepting the position of director, he cannot wriggle out of his responsibility as director. Hon'ble Securities Appellate Tribunal (SAT) vide its order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act.

49. Further, I note that as per MCA records, Shri Vivek Kumar was director of the Company from April 30, 2015 and is still continuing as director of the Company. Similarly, Shri Atul Agarwal was director of the Company from February 23, 2015 and is still continuing as director of the Company. However, I also find that as per MCA records, that Shri Vivek Kumar has filed DIR-11 showing his resignation from directorship of the Company from February 11, 2017 and Shri Atul Agarwal has filed DIR-11 showing his resignation from directorship of the Company from January 9, 2016. In view thereof, I find that Shri Vivek Kumar was director of the Company from April 30, 2015 till February 11, 2017 and Shri Atul Agarwal was director of the Company from February 23, 2015 till January 9, 2016, both of which were subsequent to the period in which funds were raised.
50. From the documents available on record, I find that the present Directors in PPDAL are Shri Bipin Kumar Singh and Shri Chandan Chakraborty. I also note that Shri Apurba Kumar Saha, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Vivek Kumar and Shri Sekhar Chandra Koley who were earlier Directors in PPDAL 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 Sekhar Chandra Koley	May 07, 2014	February 13, 2015
Shri Bipin Kumar Singh	March 25, 2011	Continuing
Shri Chandan Chakraborty	September 30, 2011	Continuing
Shri Avijit Chowdhury	May 07, 2014	February 18, 2015
Shri Atul Agarwal	February 23, 2015	January 9, 2016
Shri Vivek Kumar	April 30, 2015	February 11, 2017
Shri Apurba Kumar Saha	December 18, 2003	May 08, 2014

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

52. 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%.

53. From the material available on record and the details of the appointment and resignation of the directors of PPDAL as reproduced in paragraph 50 of this Order, it is noted that Shri Apurba Kumar Saha, Shri Bipin Kumar Singh and Shri Chandan Chakraborty were directors at the time of the issuance of NCDs and RPS. Since these persons were acting as directors during the period of issuance of NCDs and RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of PPDAL 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 PPDAL, 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 PPDAL and its Directors, viz., Shri Apurba Kumar Saha, Shri Bipin Kumar Singh and Shri Chandan Chakraborty 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.

54. I note that during the financial years, 2011-2012 and 2012-2013, PPDAL through Offer



of NCDs, had collected at least an amount of Rs. 15 Crores from various allottees and during the financial years, 2010-2011, 2011-2012 and 2012-2013, PPDAL through offer of RPS had collected an amount of at least Rs. 13.26 Lakhs. I note that Shri Bipin Kumar Singh has been director of PPDAL since financial years 2010-2011, 2011-2012, 2012-2013 till present date. I note that Shri Chandan Chakraborty has been director of PPDAL since financial years, 2011-2012, 2012-2013 till present date. I note that Shri Apurba Kumar Saha was director of PPDAL during financial years 2010-2011, 2011-2012, 2012-2013. 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 PPDAL and other directors are limited to the extent of amount collected during his/her tenure as director of PPDAL.

55. 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, PPDAL 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 Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
56. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 38 of this order, the liability is on the Company to comply with the requirements therein.
57. In this regard, I note that Shri Sekhar Chandra Koley, Shri Avijit Chowdhury , Shri Atul Agarwal , Shri Vivek Kumar were appointed as directors of PPDAL only on May 07, 2014, May 07, 2014, February 23, 2015 and April 30, 2015 respectively i.e. after the period of issuance of NCDs and RPS. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that Shri Sekhar Chandra Koley,



Shri Avijit Chowdhury , Shri Atul Agarwal and Shri Vivek Kumar are not liable for refund of money as they were not directors during the relevant time of fund mobilization. However, Shri Sekhar Chandra Koley, Shri Avijit Chowdhury , Shri Atul Agarwal and Shri Vivek Kumar had the responsibility of ensuring that refund of money was made to the investors 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.

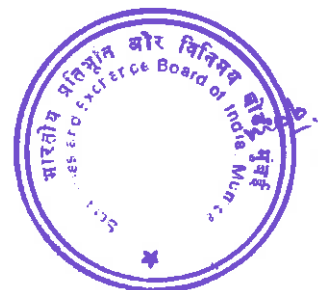
14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability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

58. 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 Sekhar Chandra Koley, Shri Avijit Chowdhury, Shri Atul Agarwal and Shri Vivek Kumar were also be responsible for all the deeds/acts of the Company during the period of their directorship and were 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 Sekhar Chandra Koley, Shri Avijit Chowdhury, Shri Atul Agarwal and Shri



Vivek Kumar are liable to be debarred for an appropriate period of time.

59. 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 PPDAL and its Directors, viz., Shri Apurba Kumar Saha, Shri Bipin Kumar Singh and Shri Chandan Chakraborty 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 and RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.
60. I also note that, vide the interim order dated July 27, 2015, PPDAL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of PPDAL 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. In this regard, I note the Company's submissions that it has submitted the list of inventory of its assets and properties to SEBI and I find that the Company has submitted valuation reports of the different companies of Pailan Group vide letter dated December 3, 2014 and has subsequently in terms of Hon'ble Calcutta High Court Order dated October 8, 2015 furnished copies of title deeds of assets of PPDAL vide letter dated November 20, 2015. I also note that Shri Sekhar Chandra Koley has also provided details of assets. However, I find that the other Noticees have not submitted list of inventory despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 14 of this Order.
61. In view of the discussion above, appropriate action in accordance with law needs to be initiated against PPDAL and its Directors and debenture trustees, viz. Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Vivek Kumar, Shri Apurba Kumar Saha, Shri



Dilip Kumar Das and Shri Laxmi Narayan Sharma.

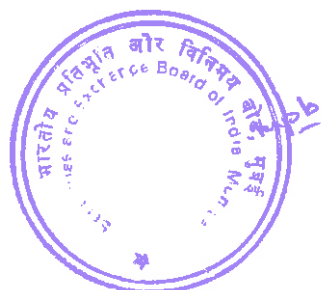
62. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:

- (a) PPDAL, Shri Apurba Kumar Saha, Shri Bipin Kumar Singh and Shri Chandan Chakraborty shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs and RPS including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
- (b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable".
- (c) Shri Apurba Kumar Saha is directed to provide a full inventory of all his assets and properties and details of all his bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (d) PPDAL, Shri Bipin Kumar Singh and Shri Chandan Chakraborty are directed to provide a full inventory of all the assets and properties and details of all the bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the Company (in case of any change from the last list of assets furnished by the Company) and their own.
- (e) PPDAL, Shri Bipin Kumar Singh and Shri Chandan Chakraborty 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) Shri Apurba Kumar Saha, Shri Bipin Kumar Singh and Shri Chandan Chakraborty 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) PPDAL and Shri Apurba Kumar Saha, Shri Bipin Kumar Singh and Shri Chandan Chakraborty 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, PPDAL and Shri Apurba Kumar Saha, Shri Bipin Kumar Singh and Shri Chandan Chakraborty in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI")
- (i) In case of failure of PPDAL, Shri Apurba Kumar Saha, Shri Bipin Kumar Singh and Shri Chandan Chakraborty 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 the company and the directors liable to refund as specified in paragraph 62(a) of this Order, in accordance with section 28A of the SEBI Act



including such other provisions contained in securities laws.

- (j) PPDAL, Shri Apurba Kumar Saha, Shri Bipin Kumar Singh and Shri Chandan Chakraborty are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.
- (k) Shri Sekhar Chandra Koley, Shri Avijit Chowdhury, Shri Atul Agarwal and Shri Vivek Kumar are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years from the date of this Order. The above said persons are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years from the date of this order.
- (l) Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma 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.



63. I find that the hearing notice has not been issued to the Debenture Trustees, Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma. Further, I note that Shri Avijit Chowdhury and Shri Sekhar Chandra Koley had sought personal hearing in their replies. In view of this, this order will take effect as final order against the said Noticees, Shri Dilip Kumar Das, Shri Laxmi Narayan Sharma, Shri Avijit Chowdhury and Shri Sekhar Chandra Koley on the expiry of 30 days from the date of service of this order against the respective Noticees, unless any of the Noticees, within such period of 30 days from the date of service of this order file their objections. If no objections are filed, the interim directions vide Interim order dated July 27, 2015 shall continue against the said Noticees till the time of said thirty days period, after which this order will come into effect. If objections are filed by any of the Noticees, the interim directions vide Interim order dated July 27, 2015 shall continue qua that Noticees till disposal of the said objections qua that Noticees and the directions passed herein against that Noticees shall be made applicable subject to the determination on the objections.
64. In respect of all other Noticees (except for Shri Dilip Kumar Das, Shri Laxmi Narayan Sharma, Shri Avijit Chowdhury and Shri Sekhar Chandra Koley as stated in paragraph 63), the above directions at paragraph 62 shall come into force with immediate effect.
65. Hon'ble Calcutta High Court has passed order dated January 15, 2016 in W.P. 11795 (W) of 2015- Sumita Chakraborty & Anr. v. Union of India & Ors. in respect of Pailan Group. Therefore, the effect and implementation of the aforesaid directions stated in paragraph 62, 63 and 64 shall be subject to the directions passed by the Hon'ble High Court in its Order dated January 15, 2016.
66. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.



67. 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.

68. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: December 07, 2017

PLACE: Mumbai



Madhabi Puri Buch

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA