

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 BNP Real Estate and Allied Limited

In respect of:

- 1. BNP Real Estate and Allied Limited (PAN: AADCB2189H)**
- 2. Mr. Sanjeev Kumar Purwansi (PAN: AQQPP3214P).**
- 3. Mr. Munendra Kumar (PAN: ATVPK1011B).**
- 4. Mr. Mukesh Kumar Sharma (PAN: BCKPS7359M).**
- 5. Mr. Mahesh Paliwal (PAN: BBIPP4520L).**
- 6. Mr. Santosh Sharma (PAN: ADKPS7156A).**
- 7. Mr. Raghvendra Singh Narwaria (PAN: ADPPN6255N).**
- 8. Ms. Surekha Sharma (PAN: BNUPS4121C).**
- 9. Mr. Umesh Narwaria (PAN: ACOPN4971B).**
- 10. Mr. Ravindra Singh (PAN: BHAPS1632N).**
- 11. Mr. Kunver Singh (PAN: BOUPS2175H).**
- 12. Ms. Kishori Sharma (PAN: BDVPS3534A).**
- 13. Mr. Padam Singh Narwaria (PAN: ACOPN4986E).**
- 14. Ms. Gyanesh Rawat alias Ms. Gyanesh Sharma (PAN: ANQPG7900G).**
- 15. Mr. Devendra Kumar Sharma (PAN: CGEPS8222C).**

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1. BNP Real Estate and Allied Limited (hereinafter referred to as “**BNP**”/ “**the Company**”) is a Public company incorporated on May 17, 2007 and registered with Registrar of Companies–Gwalior with CIN: U45200MP2007PLC019536. Its registered office is at M-7, Trishul Apartment 5, Sanghi Colony, A.B.Road Indore MP 452001.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received letter/complaints from some persons against BNP in respect of issue of Redeemable Preference Shares with an option to convert into Equity Shares (“**RPS**”) and Equity
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Order in the matter of BNP Real Estate and Allied Limited

Shares and undertook an enquiry to ascertain whether BNP had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder Including SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as “**DIP Guidelines**”) read with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations**”)

3. On enquiry by SEBI, it was observed that BNP had made an offer of RPS in the financial years 2008-2009, 2009-2010, 2011-2012, 2012-2013 and 2013-2014 (hereinafter referred to as “**Offer of RPS**”) and raised an amount of Rs.9.85 Crores from 2,993 allottees. Further, BNP had also made an offer of 1,09,151 Equity Shares at the face value of Rs. 10/- per share to 179 allottees during the financial year 2009-2010 and raised an amount of Rs.10,91,510 (hereinafter referred to as “**Offer of Equity Shares**”; hereinafter collectively referred to as “**Offer of RPS and Equity Shares**”).
4. As the above said *Offer of RPS and Equity Shares* 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 September 29, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against BNP and its Directors and Promoters, viz. Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal, Mr. Santosh Sharma, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat and Mr. Devendra Kumar Sharma (hereinafter collectively referred to as “**Noticees**”)
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. BNP had made an *Offer of RPS* during the financial years 2008-2009, 2009-2010, 2011-2012, 2012-2013 and 2013-2014 and raised an amount of Rs. 9.85 Crores as shown below:

Year of allotment	Number of allottees		Number of preference shares	Amount (Rs.)
	As per Company	As per Form 2		
2008-09	29	29	3,52,600	35,26,000
2009-10	252	252	4,55,946	45,59,460
2011-12	1,806*	1,806	45,46,000	4,54,60,000
2012-13	12	12	25,00,000	2,50,00,000
2013-14	896	894	20,00,000	2,00,00,000
	2,995	2993	98,54,546	9,85,45,460

** The money appears to be collected during the financial years 2010-11 and 2011-12. However, the preference shares were allotted in 2011-12.*

6. BNP had made continuous allotment of RPS in various tranches and had attempted to retain the number of investors to below 50 in each tranche, as detailed hereunder:

Date of allotment	No. of preference shares allotted	Amount mobilized (Rs.)	No. of allottees	
			As per Company	As per Form 2
2009-10				
25/3/2010	24,649*	2,46,490	16	16
26/3/2010	90,800	9,08,000	49	49
27/3/2010	71,003	7,10,030	49	49
28/3/2010	93,483	9,34,830	49	49
30/3/2010	77,011	7,70,110	49	49
31/3/2010	99,000	9,90,000	40	40
2011-12				
23/11/2011	74,000	7,40,000	48	48
24/11/2011	1,34,000	13,40,000	44	44
25/11/2011	79,500	7,95,000	20	20
26/11/2011	61,500	6,15,000	45	45
27/11/2011	72,000	7,20,000	46	46
28/11/2011	63,500	6,35,000	45	45
29/11/2011	71,900	7,19,000	41	41
30/11/2011	79,000	7,90,000	45	45
01/12/2011	75,050	7,50,500	39	39
02/12/2011	99,350	9,93,500	38	38
03/12/2011	1,01,500	10,15,000	39	39
04/12/2011	59,650	5,96,500	47	47
05/12/2011	58,050	5,80,500	40	40
06/12/2011	87,500	8,75,000	49	49
07/12/2011	73,000	7,30,000	34	34

08/12/2011	91,200	9,12,000	49	49
09/12/2011	64,200	6,42,000	49	49
10/12/2011	70,500	7,05,000	45	45
11/12/2011	70,500	7,05,000	46	46
12/12/2011	66,000	6,60,000	45	45
13/12/2011	63,750	6,37,500	44	44
14/12/2011	69,250	6,92,500	47	47
15/12/2011	61,450	6,14,500	44	44
16/12/2011	56,350	5,63,500	27	27
17/12/2011	70,400	7,04,000	46	46
21/12/2011	1,27,500	12,75,000	49	49
22/12/2011	1,46,300	14,63,000	49	49
23/12/2011	1,42,300	14,23,000	49	49
24/12/2011	1,07,500	10,75,000	49	49
25/12/2011	1,39,000	13,90,000	48	48
26/12/2011	1,50,000	15,00,000	48	48
27/12/2011	1,28,000	12,80,000	49	49
28/12/2011	1,38,000	13,80,000	49	49
29/12/2011	1,33,500	13,35,000	49	49
02/1/2012	1,16,350	11,63,500	49	49
03/1/2012	1,51,000	15,10,000	49	49
04/1/2012	1,40,200	14,02,000	49	49
05/1/2012	57,250	5,72,500	25	25
06/1/2012	6,93,000	69,30,000	44	44
07/1/2012	1,59,000	15,90,000	48	48
08/1/2012	1,44,000	14,40,000	41	41
2013-14				
10/2/2014	1,26,425	12,64,250	49	49
11/2/2014	74,555	7,45,550	47	47
12/2/2014	98,875	9,88,750	47	47
13/2/2014	1,17,750	11,77,500	50	48
14/2/2014	84,400	8,44,000	49	49
15/2/2014	1,12,605	11,26,050	48	48
17/2/2014	1,00,325	10,03,250	48	48
18/2/2014	94,175	9,41,750	48	48
19/2/2014	98,675	9,86,750	47	47
20/2/2014	79,160	7,91,600	46	46
21/2/2014	85,755	8,57,550	48	48
22/2/2014	1,14,115	1,14,11,500	47	47
24/2/2014	79,555	7,95,550	46	46
25/2/2014	1,30,715	13,07,150	47	47
26/2/2014	97,535	9,75,350	47	47
27/2/2014	99,445	9,94,450	47	47
28/2/2014	1,43,450	14,34,500	48	48
01/3/2014	1,17,150	11,71,500	45	45
03/3/2014	1,45,335	14,53,350	42	42

7. BNP had offered the following schemes for issuing **RPS** (the sample application form for allotment of **RPS** submitted by the Company):

a.	Option-1	3 Years @ 9.26% (p.a.)
b.	Option-2	5 Years @ 8.13% (p.a.)
c.	Option-3	6 Years @ 9.20% (p.a.)
d.	Option-5	8 Years @ 5.46% (p.a.)
e.	Option-6	1 Year @ 5.83 % (p.a.)
f.	Option-7	4 Years @ 11.85% (p. a.)
g.	Option-A	3 Years @ 9.14 % (p.a.)
h.	Option-B	6 Years @ 12.25 % (p.a.)
i.	Option-C	8.5 Years @ 11.38 % (p.a.)
j.	Option-D	11 years @ 13.43 % (p.a.)

- The following terms and conditions were attached with the application form for **RPS**:
 - i. An applicant can apply for minimum of 4 RPS (Rs.10/- per RPS). For any additional RPS, the applicant can procure the same after paying Rs.100/- per additional RPS per month for a period of 60 months. Payment option for the same were weekly, monthly, quarterly, half yearly.
 - ii. The period of the RPS will be minimum for 12 months and maximum for 132 months.
 - iii. The payments could be made by cash.
 - iv. The RPS holder can enjoy the facility of converting to fully paid up equity share of Rs.10/- against the RPS value and its accrued interest, on completion of term.
 - v. If an RPS holder makes the payment for a minimum period of 36 months, he can avail a secured loan equivalent to 50% of the total amount deposited.

8. BNP provided the following scheme wise details of the amount mobilised by the issuance of RPS:

Scheme Name	2008-09		2009-10		2010-11		2011-12		2012-13		2013-14		Total	
	Amount (Rs.)	Allottees	Amount (Rs.)	Allottees	Amount (Rs.)	Allottees	Amount (Rs.)	Allottees	Amount (Rs.)	Allottees	Amount (Rs.)	Allottees	Amount (Rs.)	Allottees
Plan D Year 11	0	0	12,27,000	76	0	0	2,86,69,500	1,061	1,36,54,500		49,21,500	200	4,84,72,500	1,349
Plan A Year 03	0	0	10,000	1	0	0	4,75,000	4	40,22,600		0	0	45,07,600	5
Plan 2 Year 05	35,13,100	28	1,220,540	75	0	0	50,000	1	6,25,600		38,70,000	253	92,79,240	357
Plan 3 Year 06	12,900	2	11,94,480	77	0	0	1,55,19,000	710	66,72,300		1,11,57,000	476	3,45,55,680	1,265
Plan 4 Year 6.25	0	0	1,66,840	17	0	0	0	0	0		0	0	1,66,840	17
Plan 5 Year 8	0	0	7,00,600	17	0	0	0	0	0	12	11,500	1	7,12,100	18
Plan C Year 8.25	0	0	40,000	2	0	0	7,46,500	30	25,000		40,000	2	8,51,500	34

9. In addition to the above, BNP had also issued equity shares. BNP vide Special Resolution dated March 20, 2010 had *inter alia* approved the allotment of 1,09,151 equity shares to 178* persons. The details of the allotment of equity shares as per the 'Form 2', was as under:

S.No.	Date of allotment	No. of shares	No. of allottees
1.	22/03/2010	27,330	49
2.	23/03/2010	30,224	49
3.	24/03/2010	26,928	49
4.	25/03/2010	24,669*	32
Total		1,09,151	179*

* The Company in its reply had explained the discrepancy and submitted that one entry was wrongly repeated and thus there were 179 allottees.

10. The above Offer of RPS and Equity Shares 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 BNP in respect of the *Offer of RPS*.

11. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated September 29, 2015 with immediate effect.

- a. *“The Company, **BNP Real Estate and Allied Limited** [PAN: AADCB2189H], its promoters and directors namely **Mr. Sanjeev Kumar Purwansi** [PAN: AQQPP3214P], **Mr. Munendra Kumar** [PAN: ATVPK1011B], **Mr. Mukesh Kumar Sharma** [PAN: BCKPS7359M], **Mr. Mahesh Paliwal** [PAN: BBIPP4520L], **Mr. Santosh Sharma** [DIN: 02643085], **Mr. Raghvendra Singh Narwaria** [PAN: ADPPN6255N], **Ms. Surekha Sharma** [PAN: BNUPS4121C], **Mr. Umesh Narwaria**[PAN: ACOPN4971B], **Mr. Ravindra Singh** [PAN: BHAPS1632N], **Mr. Kunver Singh** [PAN: BOUPS2175H], **Mr. Kishori Sharma** [PAN: BDVPS3534A], **Mr. Padam Singh Narwaria** [PAN: ACOPN4986E], **Mr. Gyanesh Rawat** [DIN: 01498588], **Mr. Devendra Kumar Sharma** [DIN: 03346208] and **Mr. Gyanesh Sharma** [DIN: 02498403] are restrained from mobilizing funds through the issue of **convertible RPS and equity shares** or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.*
- b. *The Company, its promoters and directors 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.*
- c. *The Company, its promoters and directors shall not dispose off any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.*
- d. *The Company, its promoters and directors shall not divert any funds raised from public at large through the issuance of the impugned equity shares, kept in its bank*

accounts and/ or in the custody of the Company without prior permission of SEBI until further orders.

- e. The Company, its promoters and directors are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.*
- f. The Company, its promoters and directors shall co-operate with SEBI and shall furnish all the documents.*
- g. The Company, its promoters and directors are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.”*

12. The interim order also directed the BNP and its Directors/promoters to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 read with Section 27(2) of the SEBI Act should not be passed against them:

- a. “directing them jointly and severally to refund the money collected through the issue of equity shares that are impugned in this Order, along with interest at 15% per annum from the date when the refunds became due to the investors till the date of repayment;*
- b. 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;*
- c. directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;*

d. directing them and other companies in which their directors hold substantial or controlling interest, to not access the capital market for an appropriate period.”

13. Vide the said interim order, BNP, its abovementioned Directors/promoters 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 October 12, 2015. Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma and Mr. Santosh Sharma vide letter dated December 04, 2015 acknowledged the receipt of the interim order. The company vide letter dated nil received on November 05, 2015 acknowledged the receipt of the interim order. Subsequently, vide notification dated May 01, 2017 published in newspaper *Patrika*, Gwalior edition and notification dated May 01, 2017 published in newspaper *Amar Ujala*, Agra Edition the Noticees were notified by SEBI, that interim order dated September 29, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.
15. Reply: BNP vide letter dated December 12, 2015 stated that it has neither started any new scheme in the last one year nor collected any funds from the investors. BNP has also admitted that from 2008-09 it had collected funds by issuing preference shares. The company also stated that it has invested the same in real estate and they have to repay money to investors in 2015-16 and 2016-17. The company has sought permission of SEBI to sell its properties so as to repay its investors.
16. Vide the notifications tabulated below, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on November 01, 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.

Name of the Noticees	Name of the Newspaper	Date of Notification
1) Mr. Kunver Singh, 2) Mr. Munendra Kumar and 3) Mr. Sanjeev Kumar Purwansi.	<i>Dainik Jagran, Lucknow Edition</i>	October 17, 2017
1) BNP Real Estate and Allied Limited, 2) Mr. Gyanesh Rawat, 3) Mr. Gyanesh Sharma, 4) Mr. Padam Singh Narwaria, 5) Mr. Ravindra Singh, 6) Mr. Umesh Narwaria and 7) Mr. Raghvendra Singh Narwaria.	<i>‘Dainik Bhaskar’, Bhopal edition,</i>	October 17, 2017
1) Mr. Padam Singh Narwaria, 2) Mr. Ravindra Singh and 3) Mr. Umesh Narwaria.	‘Patrika’ Gwalior Edition	October 13, 2017
1) Mr. Kunver Singh.	‘Amar Ujala’ Agra Edition	October 13, 2017
1) Mr. Munendra Kumar and 2) Mr. Sanjeev Kumar Purwansi.	‘Aaj Ka Vichar Rashtriya Vichar’, Etawah edition,	October 13, 2017
1) BNP Real Estate and Allied Limited and 2) Mr. Raghvendra Singh Narwaria.	‘Ajay Bharat’, Bhind edition,	October 13, 2017
1) Mr. Devendra Kumar Sharma, 2) Ms. Kishori Sharma, 3) Ms. Surekha Sharma, 4) Mr. Santosh Sharma, 5) Mr. Mukesh Kumar Sharma and 6) Mr. Mahesh Paliwal.	‘Free Press’ Indore edition	October 13, 2017
1) Mr. Devendra Kumar Sharma, 2) Ms. Kishori Sharma, 3) Ms. Surekha Sharma, 4) Mr. Santosh Sharma, 5) Mr. Mukesh Kumar Sharma and 6) Mr. Mahesh Paliwal.	‘Patrika’ Indore edition	October 13, 2017

17. *Hearing and submissions:* No one appeared on behalf of the Company, Mr. Mukesh

Kumar Sharma, Mr. Santosh Sharma, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh and Mr. Padam Singh Narwaria nor they filed any reply. Mr. Sanjiv Kumar Purwansi, Mr. Munendra Kumar, Mr. Mahesh Paliwal, Ms. Kishori Sharma, Mr. Devendra Sharma and Ms. Gyanesh Rawat appeared in person for the hearing on November 01, 2017 and made the following submissions:

16.1 Submissions of Mr. Sanjiv Kumar Purwansi :

- i. *“I am associated with the company from 2007 and Mr. Mukesh Kumar Sharma and Mr. Santosh Sharma introduced me in the company;*
- ii. *Mr. Raghvendra Singh Narwaria, Mr. Mukesh Kumar Sharma and Mr. Santosh Sharma started the company.*
- iii. *I was an agent of Sahara India in Etawah and Mr. Raghvendra Singh Narwaria who was known to me invited to join the company and offered good remuneration.*
- iv. *Later, I came to know through another person working in BBN Company that Mr. Raghvendra Singh Narwaria was a fraud. However, by that time I was made a Board member. I used to get salary of Rs.2,000/- per month.*
- v. *Mr. Raghvendra Singh Narwaria took my signature in some papers but later on Mr. Raghvendra Singh Narwaria forged my signature in all the papers. My name was used as a Director by Mr. Raghvendra Singh Narwaria and others. Thereafter Mr. Raghvendra Singh Narwaria left the company.*
- vi. *I was told to continue in the company and offered a monthly salary of Rs. 4,000/- which was received for two years. I used to attend Board Meeting and received Travel Allowance for the same.*
- vii. *Since my relatives have invested money and I am aware that I am responsible for the same hence, I did not resign from the company.*
- viii. *Mr. Raghvendra Singh Narwaria, Mr. Mukesh Kumar Sharma and Mr. Santosh Sharma are in jail now as various FIRs were lodged against them.*
- ix. *I studied upto intermediate and also did ITI and now working as an agent in Bajaj Alliance Life Insurance for my livelihood.”*

16.2 Submissions of Mr. Munendra Kumar:

- i. *“I have joined the company in 2007. I was introduced to Mr. Raghvendra Singh Narwaria by Mr. Sanjiv Kumar Purwansi who was my neighbour.*

- ii. *I was a motor mechanic and I used to repair the scooter of Sanjiv Kumar Purwansi and he invited me to join the company as an agent.*
- iii. *I was given salary of Rs.4000/- per month later enhanced to 19000/-. Due to an accident in 2013 I stopped working.*
- iv. *Our relatives and friends also invested in the company.*
- v. *All the properties and company are in the name of Mr. Raghvendra Singh Narwaria and Sharmas.*
- vi. *I have not signed any document nor are any properties in my name.”*

16.3 Submissions of Mr. Mahesh Paliwal:

- i. *“Mr. Santosh Sharma CMD of the Company made me a Director in the Company during 2007. I had given signed copy of PAN Card and Driving License.*
- ii. *Mr. Santosh Sharma was a Doctor in our colony and I know him. After my studies he offered me a job of a Clerk in the Company. I used to work from 10 am to 6 pm. My work profile was to forward applications received in the company to Mr. Mukesh Kumar Sharma.*
- iii. *I was given a salary of Rs.5,000/- per month which was enhanced to Rs.7,000/- per month. After 3 -4 years I left the job and took up the job as a driver.*
- iv. *I have not signed any documents. I was not aware of the responsibility of a director in the company.”*

16.4 Submissions of Ms. Kishori Sharma and her husband Mr. Devendra Sharma (in Jail):

- i. *“I am a house wife and I stay in Indore. I was made a Director in 2007 by Mr. Mukesh Sharma and Mr. Santosh Sharma who are maternal uncles of my husband Mr. Devendra Sharma.*
- ii. *As the company was managed by the relatives I was not aware of the affairs of the company. Later on my husband Mr. Devendra Sharma told me to resign as we are not aware of the affairs of the company.*
- iii. *As my husband Mr. Devendra Sharma took up my resignation with uncles in 2010, they took signatures of my husband Mr. Devendra Sharma as Additional Director in the company.*

- iv. *Since my husband Mr. Devendra Sharma was in Government Job (Teacher), he has also tendered his resignation in 2012.*
- v. *I have not signed any documents.”*

16.5 Submissions of Ms. Gyanesh Rawat:

- i. *“I am Gyanesh Rawat and Gyanesh Sharma is my maiden name. Mr. Devendra Sharma is my Nephew. Mr. Santosh Sharma and Mr. Mukesh Sharma are my brothers.*
- ii. *My photographs were with my big brother Mr. Santosh Sharma which were used by him to appoint me as a Director of the company. I came to know about my directorship in the company during the year 2011 when an office of the company was opened in Bhopal. Thereafter, I resigned on 14.2.2011.*
- iii. *I have not signed any documents. I was not involved in the day to day affairs of the company.”*

18. 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 and Equity Shares as stated in the interim order.*
- (2) If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.*
- (3) If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

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

19. I have perused the interim order dated September 29, 2015 for the allegation of Offer of RPS. I note that neither the company nor the directors disputed the same.

20. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and information submitted by the Company and other documents available on records. It is noted from the sample copy of the application form for allotment of RPS that BNP had offered various schemes such as Option-1 for 3 years, Option-2 for 5 years, etc., for issuing RPS. Considering the various schemes offered by BNP along with its terms and conditions reproduced at paragraph 7 *supra*, I note that BNP issued RPS to the member of public and mobilized funds under various schemes in a regular and sustainable manner. It is noted that BNP has issued and allotted RPS to 2993 investors during the financial years 2008-2009, 2009-2010, 2011-2012, 2012-2013 and 2013-2014. Further, BNP had also issued 1,09,151 equity shares to 178 persons during the financial year 2009-2010 and raised an amount of Rs.10,91,510/-. BNP had raised an amount of Rs.9.85 Crores through issuance of RPS.

21. *I therefore conclude that BNP came out with an offer of RPS and equity shares as outlined above.*

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

22. 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).”

23. 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.”

24. 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*.

25. In the instant matter, I find that RPS were issued by BNP to at least 2993 investors in the financial years 2008-2009, 2009-2010, 2011-2012, 2012-2013 and 2013-2014 and BNP also issued 1,09,151 equity shares to 178 persons during the financial year 2009-2010. The above findings lead to a conclusion that the *Offer of RPS and equity shares* by BNP was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
26. I find that BNP 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 BNP is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
27. Neither BNP nor its directors have contended that the *Offer of RPS and Equity Shares* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
28. It is noted from the details of allotments of RPS and Equity Shares that the Company had made continuous allotments of RPS and Equity Shares, in various tranches and had attempted to retain the number of investors to below 50. For instance, BNP had made continuous allotment of RPS to 16, 49, 49, 49, 49 and 40 investors on March 25, 2010, March 26, 2010, March 27, 2010, March 28, 2010, March 30, 2010 and March 31, 2010 respectively, aggregating to 252 investors and raised an amount of Rs.45,59,460/-. Similarly, the Company had made continuous allotment of Equity shares to 49 each on March 22, 2010, March 23, 2010, March 24, 2010 and 32 investors on March 25, 2010 respectively, aggregating to 179 investors and raised an amount of Rs.10,91,510/-. Further, BNP vide letter dated December 12, 2015 admitted that from 2008-09 it had

collected funds from investors through issuance of preference shares. Even 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".

29. Therefore, in view of the material available on record, I find that the *Offer of RPS* by BNP falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS and Equity Shares* are deemed to be public issues and BNP was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
30. Further, since the offer of RPS and Equity Shares 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.

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

34. The Company was also required to comply with the following provisions of the DIP Guidelines read with regulation 111 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“the ICDR Regulations”) in respect of the offer and allotments made during FY 2008–09:

- Clause 2.1.1. – (Filing of offer document);*
- a. Clause 2.1.4 – (Application for listing);*
- b. Clause 2.1.5 – (Issue of securities in dematerialized form),*
- c. Clause 2.8 – (Means of finance),*
- d. Clause 4.1 – (Promoters contribution in a public issue by unlisted companies),*
- e. Clause 4.11 – (Lock-in of minimum specified promoters contribution in public issues),*
- f. Clause 4.14 – (Lock-In of pre-issue share capital of an unlisted company)*
- g. Clause 5.3.1 – (Memorandum of understanding),*
- h. Clause 5.3.3 – (Due Diligence Certificate)*
- i. Clause 5.3.5 – (Undertaking),*
- j. Clause 5.3.6 – (List Of Promoters Group And Other Details),*
- k. Clause 5.4 – (Appointment of intermediaries),*
- l. Clause 5.6 – (Offer document to be made public),*
- m. Clause 5.6A – (Pre-issue Advertisement),*
- n. Clause 5.7 – (Despatch of issue material),*
- o. Clause 5.8 – (No complaints certificate),*
- p. Clause 5.9 – [Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)],*
- q. Clause 5.10 – (Authorised Collection Agents),*
- r. Clause 5.12.1 – (Appointment of compliance officer),*
- s. Clause 5.13 – (Abridged prospectus),*
- t. Clause 6.0 – (Contents of offer documents),*
- u. Clause 8.3 – (Rule 19(2)(b) of SC(R) Rules, 1957),*

- v. *Clause 8.8.1 – (Opening & closing date of subscription of securities),*
- w. *Clause 9 – (Guidelines on advertisements by Issuer Company),*
- x. *Clause 10.1 – (Requirement of credit rating),*
- y. *Clause 10.5 – (Redemption).*

35. As per Regulation 111(1) of the ICDR Regulations, the DIP Guidelines "*shall stand rescinded*". However, Regulation 111(2) of the ICDR Regulations, provides that:

"(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations."

36. The company was also required to comply with the following provisions of ICDR Regulations:

- *“Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)(d)),*
- *Appointment of merchant banker and other intermediaries (Regulation 5),*
- *Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),*
- *Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),*
- *Satisfy the conditions of initial public offer (Regulation 25 and 26),*
- *Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)*
- *Keeping the public issue open for the specified period (Regulation 46),*
- *Pre issue advertisement for public issue (Regulation 47)*

- *Manner of disclosures in the offer documents (Regulation 57)*
- *Refrain from offering any incentive to any person making application for allotment of specified securities (Regulation 59).*
- *Issuer to appoint compliance officer who would be responsible for monitoring the compliance of securities laws and for redressal of investors' grievances. (Regulation 63)''.*

37. 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"

38. 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...”

39. In view of the above findings, I am of the view that BNP was engaged in fund mobilizing activity from the public, through the offer of RPS and Equity Shares 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 and above mentioned provisions pertaining to the SEBI DIP Guidelines read with SEBI ICDR Regulations.

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

40. Before dealing with the above issue, it would be appropriate to deal with the submissions of the Noticees viz., Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mahesh Paliwal, Ms. Kishori Sharma, Ms. Gyanesh Rawat and Mr. Devendra Kumar Sharma.

- i. Mr. Sanjeev Kumar Purwansi submitted that he has joined the company as a Director at the behest of Mr. Raghvendra Singh Narwaria and he was not aware of the fraud committed by him. However, Mr. Sanjeev Kumar Purwansi has admitted that he is Director of the Company and responsible for the affairs of the same. It is also admitted that he has received remuneration from the company and also signed some of the papers of the company. Further, I note that he had

submitted that he had attended Board meetings of the Company and he did not resign on account of the fact that his friends and relatives had invested money in the Company. I also note that as per the Memorandum of Association of the Company, Mr. Sanjeev Kumar Purwansi is also a promoter of the Company. From the MCA records, I note that Mr. Sanjeev Kumar Purwansi is a Director of the company from the date of inception till present date. Being the Director of the Company during the issuance of RPS and Equity Shares, I find that Mr. Sanjeev Kumar Purwansi is liable for the same.

- ii. Mr. Munendra Kumar submitted that he was introduced to Mr. Raghvendra Singh Narwaria by Mr. Sanjeev Kumar Purwansi and joined the company as an agent. He has also admitted that he had received remuneration from the company. Though Mr. Munendra Kumar claimed that he has not signed any papers, I note that as per the Memorandum of Association of the Company he is a promoter of the Company. Further, from the MCA records, I note that Mr. Munendra Kumar is a Director of the company from the date of inception till present date. Being the Director of the Company during the issuance of RPS and Equity Shares, I find that Mr. Munendra Kumar is liable for the same.
- iii. Mr. Mahesh Paliwal contended that he was a clerk in the Company and he received salary for the same. He has submitted that he was made a Director by Mr. Santosh Sharma and he was not aware of the responsibility of Director and he has not signed any documents. Further, I note that as per the Memorandum of Association of the Company, Mr. Mahesh Paliwal is also promoter of the Company. From the MCA records I note that Mr. Mahesh Paliwal is a Director of the company from the date of inception till present date. Considering the same, the contention of Mr. Mahesh Paliwal that he was not aware of the responsibilities of a Director is not acceptable. Being the Director of the Company during the issuance of RPS and Equity Shares, I find that Mr. Mahesh Paliwal is liable for the same.
- iv. Ms. Kishori Sharma submitted that she was made a Director by her relatives Mr.

Mukesh Sharma and Mr. Santosh Sharma and she was not aware of the affairs of the company and she had resigned from the directorship of the company on December 10, 2010. From the perusal of MCA records I note that Ms. Kishori Sharma was a promoter cum Director of the Company. Though Ms. Kishori Sharma has resigned from the company in 2010, I find that she was nonetheless director of BNP during the period of issuance of RPS and Equity Shares. In view of the same, I find that Ms. Kishori Sharma is responsible for the issuance of RPS.

- v. Further, Ms. Kishori Sharma has also made submissions for her husband Mr. Devendra Kumar Sharma who is in judicial custody. Ms. Kishori Sharma stated that her husband was appointed as an additional director by his uncles Mr. Mukesh Sharma and Mr. Santosh Sharma. Mr. Devendra Kumar Sharma had resigned from the directorship of the company as he was in government job. I note from the MCA records that Mr. Devendra Kumar Sharma has joined the Company on December 10, 2010 and resigned on June 06, 2012. Though Mr. Devendra Kumar Sharma resigned from BNP, I find that he was nonetheless a Director of BNP during the FY 2011-12 when the Company issued and allotted the maximum number of RPS (i.e.1,806 allottees).
- vi. Ms. Gyanesh Rawat contended that she was appointed as a Director without her consent by her brother Mr. Santosh Sharma and she was not aware of the day to day affairs of the company. In this regard, I note that the signatures of Ms. Gyanesh Rawat on the KYC documents and her signature on the Memorandum of Association of the Company appears to be similar. In view of the same, I am not inclined to accept her contention. Further, I note that Ms. Gyanesh Rawat was a promoter cum Director of the Company from the date of inception of the Company till the date of her resignation. From the MCA records, I note that Ms. Gyanesh Rawat resigned on February 14, 2011. Though Ms. Gyanesh Rawat resigned from BNP, I find that she was nonetheless a Director of BNP during the issuance of RPS and Equity Shares.

I note from the submissions of Ms. Gyanesh Rawat that Ms. Gyanesh Sharma was her maiden name. Considering the KYC documents submitted by Ms. Gyanesh Rawat, I am inclined to accept that Noticees arrayed as Mr. Gyanesh Rawat at Sl.No.14 and Mr. Gyanesh Sharma at Sl. No.16 in the interim order is one and the same.

41. From the documents available on record, I find that the present Directors in BNP are Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal and Mr. Santosh Sharma. I also note that, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Mr. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat, Mr. Devendra Kumar Sharma, who were earlier Directors in BNP, 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
Mr. Sanjeev Kumar Purwansi	May 17, 2007	Continuing
Mr. Munendra Kumar	May 17, 2007	Continuing
Mr. Mukesh Kumar Sharma	May 17, 2007	Continuing
Mr. Mahesh Paliwal	May 17, 2007	Continuing
Mr. Santosh Sharma	May 17, 2007	Continuing
Mr. Raghvendra Singh Narwaria	May 17, 2007	April 02, 2008
Ms. Surekha Sharma	May 17, 2007	February 14, 2011
Mr. Umesh Narwaria	May 17, 2007	April 15, 2009
Mr. Ravindra Singh	May 17, 2007	December 15, 2008

Mr. Kunver Singh	May 17, 2007	April 15, 2009
Mr. Kishori Sharma	May 17, 2007	December 10, 2010
Mr. Padam Singh Narwaria	May 17, 2007	April 15, 2009
Ms. Gyanesh Rawat	May 17, 2007	February 14, 2011
Mr. Devendra Kumar Sharma	December 10, 2010	June 06, 2012

42. I find that Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Mr. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat are also promoters of BNP.
43. 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, BNP and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
44. 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%.

45. From the material available on record and the details of the appointment and resignation of the directors of BNP as reproduced in paragraph 41 of this Order, it is noted that Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat, Mr. Devendra Kumar Sharma, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal, Mr. Santosh Sharma were directors at the time of the issuance of RPS. Further, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal, Mr. Santosh Sharma, Ms. Surekha Sharma, Ms. Gyanesh Rawat and Mr. Devendra Kumar Sharma were directors at the time of issuance of Equity Shares. Since these persons were acting as directors during the period of issuance of RPS and Equity Shares, 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 BNP 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 BNP, 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 BNP and its Directors viz. , Mr. Raghvendra Singh Narwaria, Ms.

Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat, Mr. Devendra Kumar Sharma, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal, Mr. Santosh Sharma 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.

46. I note that during the financial years 2008-2009, 2009-2010, 2011-2012, 2012-2013 and 2013-2014 BNP through Offer of RPS, had collected an amount of Rs.9.85 Crores from various allottees. I also note that during the financial year 2009-2010 BNP issued 1,09,151 Equity Shares to 179 investors and collected an amount of Rs.10,91,510 . I note that Mr. Sanjeev Kumar Purwansi has been director of BNP since financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 till present date. I note that Mr. Munendra Kumar has been director of BNP since financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 till present date. I note that Mr. Mukesh Kumar Sharma has been director of BNP since financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 till present date. I note that Mr. Mahesh Paliwal has been director of BNP since financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 till present date. I note that Mr. Santosh Sharma has been director of BNP since financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 till present date. I note that Mr. Raghvendra Singh Narwaria was director of BNP during financial years 2008-2009. I note that Ms. Surekha Sharma was director of BNP during financial years 2008-2009 and 2009-2010. I note that Mr. Umesh Narwaria was director of BNP during financial years 2008-2009 and 2009-2010. I note that Mr. Ravindra Singh was director of BNP during financial year 2008-2009. I note that Mr. Kunver Singh was director of BNP during financial years 2008-2009 and 2009-2010. I note that Ms. Kishori Sharma was director of BNP during financial years 2008-2009 and 2009-2010. I note that Mr. Padam Singh Narwaria was director of BNP during financial years 2008-2009 and 2009-2010. I

note that Ms. Gyanesh Rawat was director of BNP during financial years 2008-2009, 2009-2010 and 2010-2011. I note that Mr. Devendra Kumar Sharma was director of BNP during financial years 2010-2011, 2011-2012 and 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 BNP and other directors are limited to the extent of amount collected during his/her tenure as director of BNP.

47. I find that Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat are also promoters of BNP and therefore, are liable as promoters for the *Offer of RPS and Equity Shares* against the norms of deemed public issue. Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mahesh Paliwal, Ms. Kishori Sharma and Ms. Gyanesh Rawat denied any knowledge of affairs of the company. Being the Promoters of the Company, pleading that they are not aware about the affairs of the company cannot be accepted. From the Memorandum of Association of the Company, I note that Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mahesh Paliwal, Ms. Kishori Sharma and Ms. Gyanesh Rawat are/were promoters of the Company. In view of the same, I find that Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mahesh Paliwal, Ms. Kishori Sharma and Ms. Gyanesh Rawat are liable to be debarred for an appropriate period of time in the capacity of promoters. Further, the other Noticees viz., Mr. Mukesh Kumar Sharma, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh and Mr. Padam Singh Narwaria have not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue and public interest requires that the persons who had such knowledge/connivance/consent be made accountable to the investors. Therefore, the said Noticees are liable to be debarred for an appropriate period of time as promoters.

48. 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 BNP and its Directors, viz. Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat, Mr. Devendra Kumar Sharma, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal, Mr. Santosh Sharma to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors and promoters, to safeguard the interest of the investors who had subscribed to such RPS and Equity Shares 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.
49. I also note that, vide the interim order dated September 29, 2015, BNP was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors/promoters of BNP were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that the Noticees have not provided the up-to-date inventory despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 14 of this Order.
50. I also note that BNP vide its reply dated December 12, 2015 stated that they had collected funds by issuing preference shares and invested the same in real estate. BNP has also sought permission to sell its properties and repay the money collected from its investors. Considering the same, I am inclined to permit the Company to sell its assets for the sole purpose of making refund to its investors. In case of failure of refund, it would be a fit case where recovery proceedings may be considered against the Company first, in case sufficient assets are available, and only thereafter recovery proceedings may be initiated against the Directors of the Company. Appropriate directions in this regard is

issued in this order

51. In view of the discussion above, appropriate action in accordance with law needs to be initiated against BNP and its Directors and promoters, viz., Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal, Mr. Santosh Sharma, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat and Mr. Devendra Kumar Sharma.
52. 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. BNP, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat, Mr. Devendra Kumar Sharma, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal and Mr. Santosh Sharma shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS and Equity Shares 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. Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat and Mr. Devendra Kumar Sharma are directed to provide a full inventory of all their assets and properties and details of all their bank

accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.

- d. BNP, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal and Mr. Santosh Sharma are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
- e. BNP, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal and Mr. Santosh Sharma 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. BNP, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat, Mr. Devendra Kumar Sharma, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal and Mr. Santosh Sharma are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- g. BNP, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat, Mr. Devendra Kumar Sharma, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal

and Mr. Santosh Sharma in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.

- h. After completing the aforesaid repayments, BNP, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat, Mr. Devendra Kumar Sharma, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal and Mr. Santosh Sharma 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 BNP, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria, Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat, Mr. Devendra Kumar Sharma, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal and Mr. Santosh Sharma 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 52(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws. Recovery proceedings may be considered against the Company first, in case sufficient assets are available, and only thereafter may be initiated against the Directors of the Company.
- j. BNP, Mr. Raghvendra Singh Narwaria, Ms. Surekha Sharma, Mr. Umesh Narwaria,

Mr. Ravindra Singh, Mr. Kunver Singh, Ms. Kishori Sharma, Mr. Padam Singh Narwaria, Ms. Gyanesh Rawat, Mr. Devendra Kumar Sharma, Mr. Sanjeev Kumar Purwansi, Mr. Munendra Kumar, Mr. Mukesh Kumar Sharma, Mr. Mahesh Paliwal and Mr. Santosh Sharma are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The existing holding of securities of the aforesaid entities shall stand frozen during the period of restraint. 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. The above directions shall come into force with immediate effect.

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

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

DATE: December 21, 2017

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA