

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 Idol India Projects Limited

In respect of:

1. Idol India Projects Limited (PAN: AACCI5234R)
2. Shri Pintu Sarkar (PAN: AYQPS1691H; DIN: 03089042).
3. Shri Bappaditya Majumder (PAN: AKNPM5664R; DIN: 03323655).
4. Shri Ajay Kumar (PAN: BCGPK9225A; DIN: 05307850).
5. Shri Shribas Chandra Das (PAN: AFTPD2362Q; DIN: 03089046).

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1. Idol India Projects Limited (hereinafter referred to as “**IIPL**”/ “**the Company**”) is a Public company incorporated on December 29, 2010 and registered with Registrar of Companies—Kolkata with CIN: U70109WB2010PLC156329. Its registered office is at 28, Pranabananda Road, 1st Floor, P. O. Garia, Kolkata—700084, West Bengal, India.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had conducted an examination into the fund—raising activities of IIPL in respect of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether IIPL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder
 3. On enquiry by SEBI, it was observed that IIPL had made an offer of RPS in the financial years 2010-2011 and 2011-2012 (hereinafter referred to as “**Offer of RPS**”) and raised an amount of Rs. 39.87 lakhs from 386 allottees.

4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956, SEBI passed an interim order dated October 09, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against IIPL and its Directors and viz. Shri Pintu Sarkar, Shri Bappaditya Majumder, Shri Ajay Kumar, Shri Shribas Chandra Das (hereinafter collectively referred to as “**Noticees**”)
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. IIPL had made an *Offer of RPS* during the financial years 2010-2011, 2011-2012, and raised an amount of Rs. 39.87 lakhs as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2010-2011	RPS	1.72	14
2011-2012		38.15	372
Total		39.87	386

6. The above *Offer of RPS* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by IIPL in respect of the *Offer of RPS*.
7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated October 09, 2015 with immediate effect.
- i. IIPL (PAN: AACCI5234R) shall not mobilize any fresh funds from investors through the *Offer of Redeemable Preference Shares* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - ii. IIPL and its present Directors, viz. Shri Pintu Sarkar (PAN: AYQPS1691H; DIN:

03089042), Shri Bappaditya Majumder (PAN: AKNPM5664R; DIN: 03323655) and Shri Ajay Kumar (PAN: BCGPK9225A; DIN: 05307850), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;

- iii. The past Director of IIPL, viz. Shri Shribas Chandra Das (PAN: AFTPD2362Q; DIN: 03089046), is 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;*
- iv. IIPL 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. IIPL shall provide a full inventory of all its assets and properties;*
- vi. IIPL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;*
- vii. IIPL 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, without prior permission from SEBI;*
- viii. IIPL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares, which are kept in bank account(s) and/or in the custody of IIPL;*
- ix. IIPL and its abovementioned Directors shall furnish complete and relevant information in respect of the Offer of Redeemable Preference Shares (as sought by SEBI letters dated March 3, 2015 and April 13, 2015), within 14 days from the date of receipt of this Order.*

8. The interim order also directed IIPL 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 including the following should not be taken/imposed against them:

- i. Directing them jointly and severally to refund money collected through the Offer of Redeemable Preference Shares along with interest, if any, promised to investors therein;*
 - ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;*
 - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.*
9. Vide the said interim order, IIPL, its abovementioned Directors were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
10. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letters dated October 10, 2015, however service to all the noticees is not available on record. IIPL vide its letter dated December 12, 2015 submitted its reply and made interalia the following submission-
- i. That pursuant to the notice of investigation by SEBI, though prima-facie view of the applicant company is that the said proceedings is not maintainable in as much as the company never made any public issue in contravention to Section 67 of the Companies Act and as such the consequent violation of Section 73, Section 56 of the Companies Act, 1956 read with Section 55A of the Companies Act, 1956 does not arise at all.*
 - ii. That the company never made any intentional default and always tried to make good the value invested by the investors while arranging funds for its construction and infrastructure business.*
 - iii. That the Adjudicating authority considering the representation of the applicant*

company vide order dated October 09, 2015 after reposing confidence upon the directors to refund money collected through the offer of RPS along with interest, if any, promised to investors, invited reply from the company with specified period for obtaining personal hearing according to the law of land.

- iv. That the company has already stopped all its business operation and also stopped issuing any private issue and/or issuing prospectus and/or dealing with securities and declares that there is no outstanding due in the securities market as per the records available with the company and reiterate the fact that it was never a money market company engaged in the business of grabbing illegal money from the public in general, rather it engaged in the business of real estate projects and for the purpose of raising capital issued share capital through the domestic concerns as per the provisions of the Companies Act, 1956 and while doing its legal business duly submitted its accounts before the ROC and never flouted Companies (Share Capital and Debenture) Rules and/or Preference Shares Regulation of Dividends Act, in a manner most unbecoming of the securities market.
- v. That while issuing domestic concerns the company always made such allotment within 60 days of receiving application money, issued Share Certificate under Form SH-1 and made entries of such allotment under Registrar of Members maintained in Form MGT-1, as per the provisions of Companies(Management and Administration) Rules and therefore such allotment cannot be treated as deposits within the meaning of the Companies (Acceptance of Deposit) Rules and therefore consequent violation of Section 73 of the Companies Act does not arise at all.
- vi. That though the company never issued RPS, public in nature, as been adjudicated, but for the sake of investors together with the securities market at large, complied the direction given therein and paid all the dues to the investors and/or creditors and as per the official report of the company there is no outstanding liability as on date.

- vii. However, in reply to the order impugned, it is submitted that the company intends to pay-off all its dues, if there is any remaining, and prays before SEBI to invite dues by making proper insertion/advertisement in newspaper keeping in mind the order passed by SEBI, upon tendering appropriate notice and shall provide the reasonable opportunity to the company to defend its stand, upon providing a date of hearing according to SEBI Act, 1992 and rules framed thereunder.
- viii. That the company is ready to submit all its paper and documents pertaining to the disbursement of legal dues on the date of hearing with report showing the due and substantial compliance to the direction of the order dated October 09, 2015 in terms to the settled principles of law.

Subsequently, vide notification dated August 28, 2016 published in newspaper Times of India, Kolkata and notification dated August 28, 2016 published in newspaper Anand Bazar Patrika, Kolkata, all the Noticees were notified by SEBI, that interim order dated October 09, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.

11. Vide the aforesaid notification dated August 28, 2016 published in newspaper Times of India, Kolkata and notification dated August 28, 2016 published in newspaper Anand Bazar Patrika, Kolkata, the Noticees were also notified by SEBI that they will be given the final opportunity of being heard on October 20, 2016 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. The Hearing Notice dated August 12, 2016 was also given to the noticees intimating the date of hearing on October 20, 2016 at the time and the venue mentioned therein. However the hearing was rescheduled.
12. Thereafter, vide notification dated October 15, 2017 published in newspaper *Times of India, Kolkata* and notification dated October 15, 2017 published in newspaper *Anand Bazar Patrika, Kolkata*, the Noticees were notified by SEBI that they will be given the final opportunity of

being heard on December 06, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.

13. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on December 06, 2017. The Noticees have neither filed any replies nor has sought any adjournment pursuant to the hearing.

14. I have considered the allegations and materials available on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

(1) *Whether the company came out with the Offer of RPS as stated in the interim order.*

(2) *If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.*

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

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

15. I have perused the interim order dated October 09, 2015 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.

16. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the information obtained from the *MCA21 Portal* and return of allotment filed by IIPL with RoC that IIPL has issued and allotted RPS to 386 investors during the financial years 2010-2011, 2011-2012 and raised an amount of Rs. 39.87 lakhs.

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

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

18. 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).”

19. 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.”

20. 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*.

21. In the instant matter, I find that RPS were issued by IIPL to 386 investors in the financial years 2010-2011, 2011-2012 and IIPL has raised an amount of Rs. 39.87 lakhs. The above findings lead to a reasonable conclusion that the *Offer of RPS* by IIPL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
22. I find that IIPL 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 IIPL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
23. IIPL has claimed that for the purpose of raising capital it has issued share capital through the domestic concerns and it has never issued RPS which is public in nature, however, IIPL has not submitted any proof to substantiate its claim.
24. In any case, IIPL has issued RPS to more than 50 persons and it is noted that in the financial year 2010-2011 and 2011-2012, RPS has been issued to 386 allottees. 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”.

25. Therefore, in view of the material available on record, I find that the *Offer of RPS* by IIPL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS* are deemed to be public issues and IIPL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
26. Further, since the offer of RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. The allegations of non-compliance of the above provisions were denied by IIPL. IIPL submitted that the company never made any public issue in contravention to Section 67 of the Companies Act and as such the consequent violation of Section 73, Section 56 of the Companies Act, 1956 read with Section 55A of the Companies Act, 1956 does not arise at all. However, I have found that the present issue is a public issue and thus the provision of Section 73, Section 56 of the Companies Act, 1956 read with Section 55A of the Companies Act, 1956 are applicable to IIPL. Further IIPL has also submitted that though the company never issued RPS, public in nature, but for the sake of investors together with the securities market at large, complied the direction given therein and paid all the dues to the investors and/or creditors and as per the official report of the company there is no outstanding liability as on date. IIPL also submitted that it is ready to submit all its paper and documents pertaining to the disbursement of legal dues on the date of hearing with report showing the due and substantial compliance to the direction of the order dated October 09, 2015 in terms to the settled principles of law, however neither any

of the noticees appeared for hearing nor submitted any material to substantiate the aforesaid claim.

27. 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 IIPL has contravened the said provisions. IIPL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that IIPL 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.
28. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RPS was a deemed public issue of securities, IIPL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that IIPL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that IIPL has not complied with the provisions of section 60 of the Companies Act, 1956.
29. 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 IIPL 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 IIPL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
30. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act,

1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sabara Case*, had observed that:

"We, therefore, hold that so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

31. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase “intend to get listed” in the context of deemed public issue the Hon'ble Supreme Court in *Sabara Case* observed-

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

“...Listing of securities depends not upon one's volition, but on statutory mandate...”

“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”

32. In view of the above findings, I am of the view that IIPL was engaged in fund mobilizing activity from the public, through the offer of RPS and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956,

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

33. From the documents available on record, I find that the present Directors in IIPL are Shri Pintu Sarkar, Shri Bappaditya Majumder, Shri Ajay Kumar. I also note that Shri Shribas Chandra Das, who was earlier Director in IIPL, has 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 Pintu Sarkar	December 29, 2010	Continuing
Shri Bappaditya Majumder	December 29, 2010	Continuing
Shri Shribas Chandra Das	December 29, 2010	June 19, 2012
Shri Ajay Kumar	June 19, 2012	Continuing

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

35. 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%.

36. From the material available on record and the details of the appointment and resignation of the directors of IIPL as reproduced in paragraph 33 of this Order, it is noted that Shri Shribas Chandra Das, Shri Pintu Sarkar and Shri Bappaditya Majumder were directors at the time of the issuance of RPS. Since these persons were acting as directors during the period of issuance of RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of IIPL 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 IIPL, 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. IIPL has submitted that the company never issued RPS, public in nature and also denied noncompliance of provisions of Section 73 of the Companies Act, 1956. However it has not submitted any material to substantiate the same. Further, the reply of the noticees have already been dealt in pre-para 26 of this Order. 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 IIPL and its Directors, viz., Shri Shribas Chandra Das, Shri Pintu Sarkar and Shri

Bappaditya Majumder 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.

37. I note that during the financial years 2010-2011 and 2011-2012 IIPL through Offer of RPS, had collected an amount of Rs. 39.87 lakhs from various allottees. I note that Shri Pintu Sarkar has been director of IIPL since financial years 2010-2011, 2011-2012 till present date. I note that Shri Bappaditya Majumder has been director of IIPL since financial years 2010-2011, 2011-2012 till present date. I note that Shri Shribas Chandra Das was director of IIPL during financial years 2010-2011, 2011-2012. 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 IIPL and other directors are limited to the extent of amount collected during his/her tenure as director of IIPL.
38. In this regard, I note that Shri Ajay Kumar was appointed as a director of IIPL only on June 19, 2012 i.e. after the period of issuance of RPS. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that Shri Ajay Kumar is not liable for refund of money as he was not a director during the relevant time of fund mobilization. Further, Shri Ajay 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. "

39. 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 Ajay Kumar was also responsible for all the deeds/acts of the Company during the period of his directorship and was obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Ajay Kumar is liable to be debarred for an appropriate period of time.
40. 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 IIPL and its Directors, viz., Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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 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.
41. I also note that vide the interim order dated October 09, 2015, IIPL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of IIPL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 14 days of the receipt of the order. However, I find that no such inventory has been provided either by IIPL or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 10 of this Order.
42. In view of the discussion above, appropriate action in accordance with law needs to be initiated against IIPL and its Directors viz. Shri Pintu Sarkar, Shri Bappaditya Majumder, Shri

Ajay Kumar and Shri Shribas Chandra Das.

43. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:
- a. IIPL, Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
 - b. If the Company, IIPL had repaid/redeemed the amount collected through RPS as stated in its reply to its investors as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions from paragraphs 43(c) to 43 (j), shall be applicable for the amounts due to be returned to the investors. However, such prior repayments/redemption should have been made by the Company as per the requirement laid down in paragraph 43(c) below, and the same shall be certified by Chartered Accountants, as directed in paragraph 43(j) below.
 - c. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.
 - d. Shri Shribas Chandra Das is directed to provide a full inventory of all his assets and properties and details of all his bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
 - e. IIPL and Shri Pintu Sarkar, Shri Bappaditya Majumder 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.

- f. Shri Ajay Kumar (on behalf of the Company) is directed to provide 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.
- g. IIPL, Shri Ajay Kumar, Shri Pintu Sarkar, Shri Bappaditya Majumder 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.
- h. IIPL, Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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.
- i. IIPL and on its behalf the present director who joined subsequent to the issues (Shri Ajay Kumar) and Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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.
- j. After completing the aforesaid repayments, IIPL and on its behalf the present director who joined subsequent to the issues (Shri Ajay Kumar) and Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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")

- k. In case of failure of IIPL, Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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 43(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - l. IIPL, Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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.
 - m. Shri Ajay Kumar is 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 person is also restrained from associating himself with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years from the date of this order.
 - n. The above directions shall come into force with immediate effect.
44. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.

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

DATE: December 21, 2017

PLACE: Mumbai

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