

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 Silicon Projects India Limited

In respect of:

- 1. Mr. Shib Narayan Das (PAN: AGBPD7440C; DIN: 02414547).**
- 2. Ms. Antara Mukherjee (PAN: AWZPM5169R; DIN: 02418378).**
- 3. Ms. Sayanti Sen (PAN: DGIPS5090H; DIN: 03442949).**

1. Silicon Projects India Limited (hereinafter referred to as “**SPIL**”/ “**the Company**”) is a Public Company incorporated on February 05, 2009 and registered with Registrar of Companies–Kolkata with CIN: U70102WB2009PLC132445. Its registered office is at Krishnapur, Purbapara, Bank Para Gali, PO Krishnapur, PS Baguiati, Kolkata, West Bengal-700102.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons against SPIL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether SPIL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).
3. On enquiry by SEBI, it was observed that SPIL had made an offer of NCDs in the financial

years 2009-2010, 2010-2011 and 2011-2012 (hereinafter referred to as “**Offer of NCDs**”) and raised an amount of Rs.18.03 Crores from 406 allottees. The number of allottees and funds mobilized has been collated on the basis of Balance Sheet of the Company as on March 31, 2010 and also from the documents submitted by the Company.

4. As the above said *Offer of NCDs* was found to be a deemed public issue in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an Order dated March 03, 2016 and issued certain directions (including debarment and refund to investors) against SPIL and its Directors viz., Mr. Bijay Pratap Mishra, Mr. Biswajit Bera, Mr. Aresh Mitra, Mr. Tapan Sahoo, Mr. Jugal Kishore Gupta, Mr. Swarup Kumar Dutta, Mr. Tushar Jana and Mr. Debashis Dey and its Debenture Trustee Mr. Afzal Hussain. On account of failure to comply with the Directions contained in the final Order dated March 03, 2016, SEBI initiated Recovery Proceedings against the Company and its Directors.
5. It has come to the notice of SEBI that Mr. Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen were earlier Directors of the SPIL during the *Offer of NCDs*. By virtue of their Directorship during the *Offer of NCDs* which was found to be a deemed public issue, SEBI *prima facie* found that Mr. Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen were also engaged in the fund mobilising activity thereby violated the respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations. In view of the same, SEBI passed an interim order dated July 07, 2016 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against the past Directors of SPIL viz., Mr. Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen (hereinafter collectively referred to as “**Noticees**”).
6. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. SPIL had made an *Offer of NCDs* during the financial years 2009-2010, 2010-2011 and 2011-2012 and raised an amount of Rs.18.03 Crores as shown below:

Year	No. of Debentures	Face Value (In Rs.)	Amount raised (in Rs.)	No. of Allottees
2009-10	NA	100	2,10,74,802	NA
2010-11	2,32,160	100	2,32,16,000	368
2011-12	13,60,259	100	13,60,25,900	38
	15,92,416		*18,03,16,702	^406

**^ No. of allottees and funds mobilized has been collated on the basis of balance Sheet of the Company as on March 31, 2010 and also from the documents submitted by the Company.*

7. The above *Offer of NCDs* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) and sections 117B and 117C of the Companies Act, 1956 read with section 27(2) of the SEBI Act and the relevant provisions of the ILDS Regulations were not complied with by the past Directors of SPIL viz., Mr.Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen in respect of the *Offer of NCDs*.
8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated July 07, 2016 with immediate effect.
 - i. *“The past Directors of SPIL viz. Mr.Shib Narayan Das (PAN: AGBPD7440C; DIN: 02414547), Ms. Antara Mukherjee (PAN: AWZPM5169R; DIN: 02418378), Ms. Sayanti Sen (PAN: DGIPS5090H; DIN: 03442949), 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;*
 - ii. *The abovementioned past Directors of SPIL 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;*
 - iii. *The abovementioned past Directors of SPIL shall provide a full inventory of all their assets and properties”*

9. The interim order also directed the abovementioned past Directors of SPIL 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 taken against them:
- i. *“Directing them jointly and severally to refund money collected through the Offer of NCDs along with interest, if any, promised to investors therein;*
 - ii. *Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;*
 - iii. *Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period”.*
10. Vide the said interim order, the abovementioned past Directors of SPIL 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 that 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.
11. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated July 08, 2016. Subsequently, vide notification dated November 09, 2016 published in newspaper *Times of India* and notification dated November 08, 2016 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI that interim order dated July 07, 2016 was issued against them and they were given a final opportunity to submit their reply in the matter.

Replies:

12. In response to the interim order, Ms.Sayanti Sen vide letter dated July 19, 2016 submitted *inter alia* as under:

- i. *“In the year 2009 I was appointed as a receptionist in Silicon Projects India Ltd. (SPIL) Company and at that point of time I was paid Rs.3000/- (Rupees Three thousand only) per month and that also in cash. In the year 2010, my salary was enhanced (sic) Rs.1000/- (Rupees One Thousand Only) and I was paid Rs.4000/- per month in cash.*
- ii. *On March 18, 2011, I stepped in as a Director of the Company and my salary enhanced (sic) further Rs.1000/- (Rupees One Thousand only) and I was paid salary to the tune of Rs.5000/- (Rupees Five Thousand only) per month and that was also in cash.*
- iii. *Be it noted that I only stepped in as a Director of the said Company on March 18, 2011 but I was not intimated anything about the Books of Accounts of the Company and its group or the list of investors year wise, scheme wise and date of deposit with amount paid/unpaid or otherwise.*
- iv. *For being a Director of the said Company since March 18, 2011, I was only paid salary and that too also in cash to the tune of Rs.5000/- (Rupees Five Thousand only) per month.*
- v. *Furthermore, due to my personal cause I have tendered my resignation from the Board of Directors of the Company by letter dated December 01, 2011 and the said fact of my cessation of Director of the said Company has been reflected in Form 32”.*
- vi. *In support of her submissions, Ms.Sayanti Sen has submitted her bank passbook, resignation letter and Form 32.*

12.1 Mr. Shib Narayan Das vide letter dated July 28, 2016, submitted *inter alia*, as under:

- a. *“That in the month of February, 2009, I stepped in as Director of Silicon Projects India Limited, i.e. since the inception of the Company and then due to difference of opinion with some of the Directors of the Company, I expressed my intent not to continue as a Director of the Company any further and on November 1, 2011, I tendered my with effect from November 1, 2011 and since then I have terminated all connections with the Company and its Group till date.*

- b. *It is pertinent to mention here that since after November 1, 2011, I had no access in the office of the Company or its Group and its quite natural that I could not gather any document or information relating to the Company or its Group.*
- c. *I have no objection if the said assets of the Company are being taken over by SEBI. The undersigned hereby undertakes not to issue prospectus or any other document or issue advertisement for soliciting money from the public...”*

12.2 Further, Mr. Shib Narayan Das has also submitted the following details:

- a. List of 6 Directors including him, Mr.Purnendu Mullik and 4 other Directors whose names have been included in the SEBI orders.
- b. Company's six bank account details.
- c. Name and address of Chartered Accountant who prepared audited financial statements of the Company.
- d. Details of three Company properties which were executed by him.
- e. Form 32 filed with RoC

12.3 Ms.Antara Mukharjee vide letter dated December 01, 2016, has replied in Bengali language. The gist of the letter is summarized as under:

- a. *“I Antara Mukherjee belongs to a very simple family. I lost my father in 2004. I become graduate with ordinary marks in 2005. I did various works as freelancer. I got a chance of Acting and also as Assistant Director in a serial of Kolkata Doordarshan in 2007. Since then I worked as an Assistant Director. From that source I came to know a Company named ‘Shivam Production’ was going to start a new film. I started to work with Shivam Production. The owner of the Company was Shib Narayan Das. There my job was to hear scripts from different Directors. I would get a chance as assistant Director in upcoming film. It was proposed a TV Channel might start and I would get a job of program Director in the same channel.*
- b. *I had no PAN number then. He said it is mandatory to have a PAN card for the job. To get PAN card he (Shib Narayan Das) collected the copy of my Voter I Card, few copies of photograph and took my signature in different papers. I expected a fix job*

and fixed salary in the new T.V Channel. I could not question him as I was scared to lose the job. But he was not impressed with any of the scripts. As a result the film could not be started.

- c. After a long time he (Shib Narayan Das) came in contact with me for the 'Announcement Function' of new film under Shivam Production. I was then very busy in the job of another production. In that function Shiv Narayan introduced myself as a Director of the Company. I tried to contact him, but he ignored me in different excuses.*
- d. I was working as assistant Director and acting in the same TV serial. I worked for 15-16 hours. There was no break. I had to go to the studio daily. Along with the disturbance. I kept trying to contract him repeatedly, one day he said "why are you sticking with the same thing, I have omitted your name. I needed a name to start the Company so I included your name"*
- e. I believe on his words. I was not aware that there are specific rules and regulations to enter or exit as a 'Director' in a Company. I thought that I unnecessarily bothered the person.*
- f. My marriage was arranged in November 2010. Possibly on 7th February 2011, I gave my wedding card and he took my signature on resignation too.*
- g. I was neither given any appointment letter as the Director of Silicon Projects India Ltd. nor any official document. I have never attended any meeting of the Company and never received any notice or letter. I have no idea of the activity of the Company. I was never involved in the activity of the Company.*
- h. There was no financial transaction between me and Silicon Projects India Ltd. I had not received any honorarium as Director from the Company. I am submitting all the statements of all my bank accounts as proof. I never collected any money from anyone on behalf of the Company.*
- i. My name as Director in Silicon Projects India Ltd. was used without my consent. My name was mentioned in your order (WTM/SR/SEBI-ERO/IMD/-30/07/2016) as I was*

Director for some time only. So I am requesting you to omit my name from the order (published in Anandabazar Patrika dated 8th November 2016, Tuesday).’’

13. Vide notification dated June 10, 2017 published in newspaper *Anand Bazar Patrika* and notification dated June 10, 2017 published in newspaper *Times of India*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on July 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.
14. *Hearing and submissions:* On July 06, 2017 Mr.Sandipan Banerjee and Mr. Nandan Lahiri, Advocates, Authorized Representatives (ARs) appeared on behalf of Mr. Shib Narayan Das and Ms.Sayanti Sen for hearing and made the following oral submissions in line with their replies available on record:
 - a. In 2016, CBI had investigated the case against the Silicon Projects India Limited (SPIL) including Mr.Shib Narayan Das but not against Mr.Sayanti Sen. All the Directors including Mr.Shib Narayan Das was arrested by CBI and all the documents of SPIL were seized by the CBI.
 - b. Ms.Sayanti Sen was interrogated by the CBI but did not arrest her.
 - c. CBI had filed the charge sheet and the copy of the same was submitted.
 - d. ARs requested for a copy of order in the matter of SPIL dated March 03, 2016 and a copy of interim order dated July 07, 2016.
 - e. ARs requested 2 weeks’ time to file the written submissions on behalf of Mr.Shib Narayan Das and Ms.Sayanti Sen in the matter.

Further, ARs of Mr. Shib Narayan Das and Ms.Sayanti Sen were directed to produce the following documents relating to the Company:

- i. Details of Bank accounts with name of Banks and Branches held by SPIL from the year 2011 till date with names of the Bank signatories;

- ii. Details of all properties held by SPIL from the year 2011 till date;
- iii. Books of Account from the Financial Year 2010-11 till date;
- iv. Details of Debenture issue and repayment from the Financial Year 2010-11 till date and Debenture Balance as on June 30, 2017.

14.1 Ms. Antara Mukharjee vide letter dated June 30, 2017 requested for a hearing at Kolkata due to her financial incapacity. Considering the same, hearing in respect of Ms. Antara Mukharjee was adjourned to July 24, 2017 through video conference at SEBI, Eastern Regional Office (ERO), Kolkata. On July 24, 2017, Ms. Antara Mukherjee appeared for hearing and made the following oral submissions (in Bengali) in line with replies available on record:

- (a) She joined Mr. Shib Narayan Das' Company as an Assistant Director for production of Bengali Movies and T.V. Channel. Her role was to attend the meeting with script writer only. She didn't go to office daily.
- (b) In the public event held during January/February 2010, she came to know about her Directorship in SPIL.
- (c) She got married in February, 2011. She didn't receive any salary from SPIL, however, at the time of her marriage she had received a gift of Rs. 50,000/- from Shri Shib Narayan Das through Cheque.
- (d) On forceful coercion from Shri Shib Narayan, she deposited the cheque in bank, which was credited on February 09, 2011.
- (e) She signed the document/resignation letter before her marriage without any date on the said letter.

Post hearing submissions of the Noticees:

15. Ms. Antara Mukherjee vide letter dated July 24, 2017 reiterated her earlier submissions and also submitted details of her work done in film industry/TV serials, etc., along with the following supporting documents:

- i. Copy of Voter Card, PAN Card and Wedding Card;
- ii. Bank Statements showing financial transactions of all bank A/Cs (Copy)
- iii. Information as regards her work i.e.:
 - 13 DVDs of films and tele serials of Ms. Antara Mukherjee.
 - Copy of Membership card as Assistant Director of Broadcast Quality Video Technicians and Workers Association West Bengal.
 - Copy of membership card of West Bengal Motion Picture Artist Forum.
 - Copy of Film diary of West Bengal Motion Picture Artist Forum.
 - Copy of two payment vouchers received for working as Programmer in mega-serial for the year 2011 (only these two vouchers were available).
 - Certificate from Mr. Ajoy Sarkar, Director stating that Ms. Antara Mukharjee was working with him as an Assistant Director in his serial 'Jagaran and Somay Asomay';
 - Certificate from Mr. Sanat Kumar Dasgupta stating that Ms. Antara Mukharjee was his Assistant in his documentary film 'Derojio and Haritage Building'. He has also certified that Ms. Antara Mukharjee was working with him since 2007 as an Unit Member;
 - Certificate from Mr. Amlan Dutta stating that Ms. Antara Mukharjee was his Associate in 'Vastab' Telifilms;
 - Certificate from Dr. Amit Ranjan Biswas stating that Ms. Antara Mukharjee worked with him as Assistant Director in my feature film 'Bridge' in Feb-Mar 2014.

15.1 Mr. Sandipan Banerjee, Advocate, vide letter dated July 26, 2017 filed additional written submissions on behalf of Mr. Shib Narayan Das since he was in Judicial Custody in connection with CBI case. The submissions are summarised as under:

- i. *"Under instructions from and on behalf of my above said client, I would like to inform you that in the month of February, 2009, my said client stepped in as Director of Silicon Projects India Limited, i.e. since the inception of the Company and then due to difference of opinion with some of the Directors of the Company,*

on November 1, 2011, he tendered his resignation from the Company and since then he has no relationship with SPIL. The said termination of relationship of my client reflects in the Form 32 and since after November 1, 2011, my client has no access in the Company or its group.

- ii. Pursuant to a notice published by the Securities and Exchange Board of India in the Ananda Bazar Patrika on June 10, 2017, the authorized representatives appeared on his behalf (as he is already in Jail custody in connection with a CBI Case) on July 6, 2017 and were directed to submit certain documents related to Silicon Projects Limited.
- iii. That by our letter dated July 19, 2017 (as my client is in jail custody), the documents were sought for from the office of the Silicon Projects India Limited situated at 91/A/2, NSC Bose Road, Kolkata-700 040 vide speed post and a copy of the said letter was also served upon you for your necessary perusal.
- iv. That the said letter has returned undelivered with the information that the addressee moved from the said address. But on further enquiry we have verified that the addressee has not moved and the office staffs therein are avoiding any such letters/communications to the said office.
- v. Although, on prior occasion, in reply to SEBI Order dated July 7, 2016 my client had given you certain information regarding the Directors of Silicon Projects India Limited.
- vi. It was stated there further that he had no objection if the assets of the Company were being taken over by SEBI in accordance with law and sold to refund money to investors, provided the SEBI authorities should take a decision as to whether he at all has such lawful authority and/ or entitlement to give such no objection.
- vii. It was also undertaken by my client there that he would not issue prospectus or any other document or issue advertisement for soliciting money from the public.
- viii. It was again categorically stated therein that he has no authority whatsoever after November 1, 2011 to buy or sell or otherwise deal in securities of the Company.

- ix. *Now, so far as personal immovable assets of my said client are concerned, he has purchased only one flat purchased after expiry of about one year from the date of resignation of my said client from the Company (SPIL). This is the only property purchased in the name of my client and that too also after expiry of about one year from the date of his tendering resignation from the Company (SPIL).*
- x. *So far the question of filing Income Tax Return, I have already sent you Xerox copies of the same for the Assessment Years 2007- 2008 to 2012- 13. The Income Tax Return copies for the said years are relevant for your perusal because my client tendered his resignation from the Company (SPIL) on November 1, 2011.*
- xi. *As already stated hereinabove, that a letter dated July 19, 2017 was sent to the Company (SPIL) seeking the said documents, but it returned undelivered with the intimation "Addressee Moved". However, a further attempt was made to find out any other or new address of the Company (SPIL) for getting the said documents pursuant to your direction on July 6, 2017. As the other and/ or new address was available, a further letter dated 27.7.20.17 was served upon the Manager, SPIL at their new address at Krishnapur, Purbapara Bank Para Goli, PS- Baguiati, Kolkata-700102, but the same finally returned with the noting in the envelop- 'Addrssee cannot be located'. So it is not possible for my client to get hold of the Company and its documents and you have long hands to get hold of them. However, my client is relying upon the facts and circumstances as mentioned in the letter dated 26.7.2017 and the documents enclosed there with."*

15.2 Ms.Sayanti Sen vide letter dated July 27, 2017 sought the documents from the Company and marked a copy to SEBI.

16. Considering the replies received from Mr.Shib Narayan Das, Ms.Antara Mukherjee and Ms.Sayanti Sen and their oral submissions before me, the Noticees were granted an opportunity for further submission of additional documentary evidence if any, in support of their submissions. The same was communicated to the Noticees vide SEBI's letter dated

September 06, 2017.

16.1 In response, Mr. Shib Narayan Das vide letter dated September 12, 2017 reiterated his earlier submissions made vide letters dated July 28, 2016 and July 26, 2017 along with the documents contained therein.

16.2 Ms. Sayanti Sen vide letter dated September 13, 2017 reiterated her earlier submissions made vide letter dated July 19, 2016 along with the documents contained therein. In addition, she made the following submissions:

- i. *“Please note that the case was also taken up by the CBI, Kolkata & CBI, Guwahati and my name is not appearing in the Charge sheet filed by them.*
- ii. *Further note as per your direction based on the hearing done at your SEBI, Mumbai office dt. July 06, 2017 between you and my authorized representative lawyers – Sandipan Banerjee & Nandan Lahiri, I have already written to Silicon Projects India Ltd. (SPIL) vide letters dated July 14, 2017 and July 27, 2017 for producing the necessary documents as I have no other documents with me. I have also marked you a copy of this letter to you. It has been also directed in the letters to send you a copy of the documents too. Please note I have got no response from them as mentioned to you vide letters dated July 18, 2017 and August 04, 2017 respectively.”*

16.3 Ms. Antara Mukherjee vide letter dated September 18, 2017 submitted that she had already submitted her statement and various documents vide letter dated July 24, 2017. Further, she has submitted the following:

- a. *“I have submitted a copy of my wedding card in support to my statement. But the copy was incomplete so I am providing full copy of my wedding card along-with this letter.*
- b. *Further, I am providing a copy of photograph of a scene of serial “Jagaran” of Kolkata Doordarshan of me along-with my co-artists published in page 5 of Cine Advance Magazine dated 1st February 2008, Friday (her name is also published therein).*
- c. *I have already submitted all the information of my work and bank accounts and other details in the matter of Silicon Projects India Ltd. to Central Bureau of Investigation (CBI) authority (Case no. RC – 29(S)/2014-Kol) in 2016.”*

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

(1) Whether the Company came out with the Offer of NCDs as stated in the interim order.

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

(3) 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 NCDs as stated in the interim order.*

18. I have perused the material available on record such as SEBI's order dated March 03, 2016, interim order dated July 07, 2016, documents/ information obtained from the 'MCA 21 Portal', etc., for the allegation of *Offer of NCDs*. I note that neither the Company nor the the Noticees herein disputed the same.

19. It is noted that SPIL has issued and allotted NCDs to 406 investors during the financial years 2009-2010, 2010-2011 and 2011-2012 and raised an amount of Rs.18.03 Crores. I also note that the number of allottees and funds mobilized has been collated on the basis of Balance Sheet of the Company as on March 31, 2010 and also from the documents submitted by the Company.

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

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

21. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of NCDs* made to the public. Therefore the primary question that arises for consideration is whether the issue of NCDs is ‘public issue’. At this juncture, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

"67. (1) Any reference in this Act or in the articles of a Company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the Company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) any reference in this Act or in the articles of a Company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the Company concerned or as clients of the person issuing the prospectus or in any other manner.

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

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

***Provided further** that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956). ”*

22. 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.”

23. 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*.
24. In the instant matter, I find that NCDs were issued by SPIL to 406 investors during the financial years 2009-2010, 2010-2011 and 2011-2012 and raised an amount of Rs.18.03 Crores. I also note that the number of allottees and funds mobilized has been collated on the basis of Balance Sheet of the Company as on March 31, 2010 and also from the documents submitted by the Company. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by SPIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
25. It is noted from SEBI’s Order dated March 03, 2016 that *“Though the Company, in its Balance Sheet for 2011-12 has stated that “The Company has raised money by issuing debentures from various parties. These parties are Directors and Company shareholders, relatives, friends, relative’s friend, friend’s friend and friend’s relative etc”, considering that it had made offer and issued NCDs to more than 406 persons during FY 2009-10, 2010-11 and 2011-12, I conclude that the Company made a public issue of NCDs in terms*

of the first proviso to section 67(3) of the Companies Act.”

26. I find that SPIL 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 SPIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
27. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the *"Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged."* In respect of those issuances, the Directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that *"In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the 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"*.
28. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by SPIL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of NCDs* are deemed to be public issues and SPIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
29. Further, since the offer of NCDs is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a

Company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the Company is required to forthwith repay with interest all moneys received from the applicants.

30. The allegations of non-compliance of the above provisions by the Company were not denied by the Noticees. 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 SPIL has contravened the said provisions. SPIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that SPIL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.
31. Section 2(36) of the Companies Act read with section 60 thereof, mandates a Company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of NCDs was a deemed public issue of securities, SPIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that the Noticees have not submitted any record to indicate that SPIL has registered a prospectus with the RoC, in respect of the offer of NCDs. I, therefore, find that SPIL has not complied with the provisions of section 60 of the Companies Act, 1956.
32. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a Company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a Company,

unless the form is accompanied by abridged prospectus, containing disclosures as specified. The Noticees have not produced any record to show that SPIL 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, SPIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

33. As regards the allegation of section 117C of the Companies Act, 1956, it may be seen that the said provision mandates the Company to create a debenture redemption reserve for the redemption of such debentures, to which every year, adequate amounts should be credited out of its profits, until such debentures are redeemed. None of the Noticees denied this allegation. There is no material on record to show that such debenture reserve was created. Therefore, I hold that the Company has violated section 117C of the Companies Act, 1956.
34. ILDS Regulations are applicable to the public issue and listing of debt securities. Regulation 2(e) of the ILDS Regulations defines debt securities to mean non-convertible debt securities which create or acknowledge indebtedness, and include debentures. In view of the finding that SPIL has made a public issue of debt securities, the ILDS Regulations is also applicable to the instant offer of NCDs. Therefore, I find that the Company has violated the following provisions of the aforesaid ILDS Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.
- i. Regulation 4(2)(a) – Application for listing of debt securities
 - ii. Regulation 4(2)(b) – In-principle approval for listing of debt securities
 - iii. Regulation 4(2)(c) – Credit rating has been obtained
 - iv. Regulation 4(2)(d) – Dematerialization of debt securities
 - v. Regulation 4(4) – Appointment of Debenture Trustees
 - vi. Regulation 5(2)(b) – Disclosure requirements in the Offer Document
 - vii. Regulation 6 – Filing of draft Offer Document
 - viii. Regulation 7 – Mode of disclosure of Offer Document
 - ix. Regulation 8 – Advertisements for Public Issues

- x. Regulation 9 – Abridged Prospectus and application forms
 - xi. Regulation 12 – Minimum subscription
 - xii. Regulation 14 – Prohibition of mis-statements in the Offer Document
 - xiii. Regulation 15 – Trust Deed
 - xiv. Regulation 17 – Creation of security
 - xv. Regulation 19 – Mandatory Listing
 - xvi. Regulation 26 – Obligations of the Issuer, etc.
35. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara Case*, had observed that:
- "We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."*
- "SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"*
36. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase “intend to get listed” in the context of deemed public issue the Hon'ble Supreme Court in *Sahara Case* observed-
- “...But then, there is also one simple fundamental of law, i.e. that no-one can be*

presumed or deemed to be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...”

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

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

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

38. It is pertinent mention here that considering the fact that SPIL and its present Directors and Debenture Trustee violated the aforesaid provisions of law, SEBI passed an Order dated March 03, 2016 and issued certain directions (including debarment and refund to investors) against SPIL and its Directors viz., Mr. Bijay Pratap Mishra, Mr. Biswajit Bera, Mr. Aresh Mitra, Mr. Tapan Sahoo, Mr. Jugal Kishore Gupta, Mr. Swarup Kumar Dutta, Mr. Tushar Jana and Mr. Debashis Dey and its Debenture Trustee Mr. Afzal Hussain. On account of failure to comply with the Directions contained in the final Order dated March 03, 2016, SEBI initiated Recovery Proceedings against the Company and its present Directors. The current order relates to three of its past Directors who were Directors during the period of fund mobilization of SPIL through issuance of NCDs.

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

39. Before dealing with the above issue, it would be appropriate to deal with the submissions/objections of the Noticees. The same are as under:

39.1 It is noted that Mr. Shib Narayan Das vide his replies dated July 28, 2016 admitted that he was a Director of SPIL since inception and later on tendered his resignation on November 01, 2011. The same is also evident from the Form 32 filed with RoC. Further, from the documents available on record I note that Mr. Shib Narayan Das was the Director of SPIL at the time of issuance of NCDs. In this regard, I note that being a Director of the Company during the relevant period he cannot wriggle out of his responsibility as Director of the Company.

39.2 Similarly, Ms. Sayanti Sen vide her reply dated July 19, 2016 contended that she was appointed as a receptionist of the Company and on March 18, 2011 she was appointed as a Director of the Company. However, she claimed that she was not intimated anything about the Books of Accounts of the Company and its group or the list of investors year wise, scheme wise and date of deposit with amount paid/unpaid or otherwise. Though Ms. Sayanti Sen had resigned from the Directorship of the Company on December 01, 2011, from the material available on record I note that she was nonetheless Director of SPIL during the period when NCDs were issued by the Company. Hence, I find that she cannot wriggle out of her responsibility as the Director of the Company and plead ignorance of the affairs of the Company.

39.3 Ms. Antara Mukherjee vide her reply dated December 01, 2016 contended that she was not aware of the fact that she was Director of SPIL. She has contended that her name was used without her consent by one of the Directors of the Company viz., Mr. Shib Narayan Das. She was never given any appointment letter as the Director of SPIL nor attended any meeting or involved in the activity of the Company. Ms. Antara Mukherjee has also contended that she was an actress in Bengali Films/TV Serials and submitted various documents to prove the same. From the submission of Antara Mukherjee, she has admitted handing over various signed papers. It was however contended by her that the said papers were handed over to Shiv Narayan Das for the purpose of getting PAN. Ms.

Antara Mukherjee also contended that she believed Mr. Shiv Narayan Das when he stated that PAN is mandatory for the job. However, a perusal of the copy of the voter's ID of Ms. Antara Mukherjee, which according to her was given for application of PAN, shows that the same was issued by Election Commission of India only on November 30, 2011. This goes to disprove her version that she gave signed papers, copy of Voter ID etc., for the purpose of getting PAN to Shiv Narayan Das in the year 2009. Though she contended that she has not given consent to act as the Director, the material on record shows that a consent letter signed by her to act as a Director has been sent to the Registrar of Companies. It may be noted that she has not challenged the signature of the consent letter which is a public document (since Registrar of Companies are statutorily keeping the private record- consent letter, this falls in the category of public records kept in any State). Therefore, the fall out of the above discussion leads to the conclusion that there is evidence on record to the effect that Ms. Antara Mukherjee has acted as Director as evidenced by the consent letter signed by Ms. Antara Mukherjee. Further, I find from the Power of Attorney annexed to the Articles of the Association of the Company, Ms. Antara Mukherjee has signed as one of the subscribers/ promoters of SPIL. The same has been done on the stamp paper. There is no case that she signed a blank stamp paper. Further in the "statement in lieu of prospectus" dated February 6, 2009, Ms. Antara Mukherjee has signed as Director/proposed Director of SPIL. Further, on perusal of the signatures in consent letter, "statement in lieu of prospectus" dated February 6, 2009 and "power of attorney" with the copy of the PAN card, there is no case that such public documents have not been signed by her.

39.4 In view of the above facts and circumstances, the contention that she is not aware of her directorship is not borne out by any proof and it is only an after thought which is liable to be rejected. Therefore, as evidenced by MCA records, I note that Ms. Antara Mukherjee was a Promoter cum Director of the Company. Though Ms. Antara Mukherjee ceased to be a Director of the Company in April 02, 2011, I find that she was nonetheless consenting Director of SPIL during the period when NCDs were issued by the Company.

Further Ms. Antara Mukherjee has contended that she has not attended any board meetings of SPIL. In this regard, it is pertinent to mention the Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, wherein Hon'ble SAT has considered the contentions similar to that of these Directors that merely lending name to be a Director and non involvement in the day to day affairs of the Company and has held that this would not absolve the Directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act.

40. From the documents available on record, I note that Mr. Shib Narayan Das, Ms. Antara Mukherjee, Ms. Sayanti Sen, who were earlier Directors in SPIL, 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. Shib Narayan Das	February 05, 2009	November 01, 2011
Ms. Antara Mukherjee	February 05, 2009	April 02, 2011
Ms. Sayanti Sen	March 18, 2011	December 01, 2011

41. 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, SPIL and its Directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

42. 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%.

43. From the material available on record and the details of the appointment and resignation of the Directors of SPIL as reproduced in paragraph 40 of this Order, it is noted that Mr. Shib Narayan Das, Ms. Antara Mukherjee, Ms. Sayanti Sen were Directors at the time of the issuance of NCDs. Since these persons were acting as Directors during the period of issuance of NCDs, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified Director of SPIL 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 SPIL, 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 past Directors of SPIL, viz. Mr. Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen 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.

44. I note that during the financial years 2009-2010, 2010-2011 and 2011-2012, SPIL through Offer of NCDs, had collected an amount of Rs.18.03 Crores from various allottees. I note that Mr.Shib Narayan Das was Director of SPIL during financial years 2009-2010, 2010-2011 and 2011-2012. I note that Ms. Antara Mukherjee was Director of SPIL during financial years 2009-2010, 2010-2011 and 2011-2012. I note that Ms. Sayanti Sen was Director of SPIL during financial years, 2010-2011 and 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 the Company and other Directors are limited to the extent of amount collected during his/her tenure as Director of SPIL.
45. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 34 of this order, the liability is on the Company to comply with the requirements therein.
46. 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 the past Directors of SPIL, viz. Mr.Shib Narayan Das, Ms. Antara Mukherjee, Ms. Sayanti Sen to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors, to safeguard the interest of the investors who had subscribed to such NCDs issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.
47. I also note that, vide the interim order dated July 07, 2016, the past Directors of SPIL were directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. In

this regard, I note that Mr. Shib Narayan Das has furnished the details of his immovable properties and some information/documents regarding the assets of the Company which are reproduced at paragraph 12.2 above. Further, Ms. Antara Mukherjee has submitted her details of bank accounts and fixed deposits. Ms. Sayanti Sen has submitted details of bank accounts and stated that she doesn't have any bond, fixed deposits or movable/immovable assets except her residence which is in the joint name of her father and brothers.

48. In view of the discussion above, appropriate action in accordance with law needs to be initiated against SPIL and its Directors, viz. Mr. Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen. Though the Noticees are jointly and severally liable to refund the money collected by SPIL, in this case, Mr. Shib Narayan Das is shown to be the authorized signatory for all the documents filed before RoC during the tenure of his Directorship in the Company i.e. from February 2009 to November 2011. For instance, the documents such as Form 1 i.e. Application and declaration for incorporation of a Company, Form 2 for Return of Allotment dated August 10, 2010, Form 10 for particulars of Registration of Charges for Debentures for the years 2009 and 2011, Form 20B for filing Annual Return for the years 2010 and 2011 were filed by Mr. Shib Narayan Das. Further, the documents such as MoA of the Company, Audit Report of the Company for the period of February 05, 2009 to March 31, 2011, Annual Report for the Financial Year 2010-2011, etc. were signed by Mr. Shib Narayan Das. Further, it is noted that the Notice of 2nd Annual General Meeting of members of SPIL was signed by Mr. Shib Narayan Das in the capacity of Chairman and Director. This clearly shows that Mr. Shib Narayan Das was the key person of the Company. In view of this, though the Noticees are jointly and severally liable for the refund, and if there is a failure to refund, it would be appropriate that the recovery may be considered against the assets of Mr. Shib Narayan Das, at first, if there are sufficient assets are available and thereafter against the other Noticees. Appropriate directions in this regard is issued in this order.

49. 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) Mr. Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen shall forthwith refund the money collected by the Company, during their respective period of Directorship through the issuance of NCDs including the application money collected from investors during their respective period of Directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
- (b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.
- (c) Mr. Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen are directed to provide complete/updated 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) Mr. Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen 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.
- (e) Mr. Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen 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.
- (f) After completing the aforesaid repayments, Mr. Shib Narayan Das, Ms. Antara

Mukherjee, Ms. Sayanti Sen 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") holding such certificate.

(g) In case of failure of Mr.Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen 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 Directors liable to refund as specified in paragraph 49(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws. The recovery officer may consider proceeding against Mr.Shib Narayan Das at first and thereafter against the other Noticees for the reasons stated in paragraph 48 of this order.

(h) Mr.Shib Narayan Das, Ms. Antara Mukherjee and Ms. Sayanti Sen 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.

50. The above directions shall come into force with immediate effect.

51. The Hon'ble Calcutta High Court has passed an Order dated August 04, 2016 in W.P. No. 11809(W) of 2015 in the matter of Monilal Das &Ors. Vs. Union of India and Ors. in respect of the Company and its Directors. Therefore, the effect and implementation of the

aforesaid directions shall be subject to the directions passed by the Hon'ble High Court in its Order dated August 04, 2016.

52. Copy of this Order shall be forwarded to the Recognised Stock Exchanges and Depositories and Registrar and Transfer Agents for information and necessary action.
53. 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: January 16, 2018

PLACE: MUMBAI

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