

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 read with Sections 56(1), 56(3) and 56(4), Section 60 and Section 73(2) of the Companies Act, 1956 in the matter of Magnox Infraprojects Limited

In respect of:

Ser al no.	Entity Name	PAN	DIN
	Shri Manoj Kumar Pradhan	ALYPP9588R	03618675
	Shri Bhimsen Soren	CKHPS4470D	03618672
	Shri Rasmiranjan Swain	DEXPS0145Q	03616716
	Shri Jyotiranjana Panda	BEAPP0928K	03616711
	Shri Anil Kumar Senapati	CWDPS5006B	03616708
	Shri Amrit Bhunia	BCXPB3598L	03616701

CASE FACTS

1. Magnox Infraprojects Limited (hereinafter referred to as “MIL”/ “the Company”) is a Public company incorporated on October 28, 2011 and registered with Registrar of Companies–Kolkata with CIN: U45400WB2011PLC168933. Its registered office is at Chandberia, Mecheda Bye Pass, Near Chandi Mandir, Contai, Purba Medinipur, West Bengal - 721401.
2. Securities and Exchange Board of India ("SEBI") received a copy of Writ Petition No. 13997 of 2014 – Ashru L. Das vs. Union of India & Others filed before the Hon'ble

Calcutta High Court, wherein it was, *inter alia*, stated that MIL was mobilizing funds through issue of redeemable preference shares ("**Offer of RPS**"). SEBI undertook an enquiry to ascertain whether MIL 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 MIL had issued Redeemable Preference Shares to 2,110 persons in the year 2012-13 ("hereafter referred to as Offer of RPS"), and collected an amount of Rs. 2.31 crores from 2,110 allottees. As the above said Offer of RPS was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated August 22, 2014 and issued directions mentioned against MIL and its Directors namely, Shri Dipankar Das, Shri Sudip Rauth, Shri Debasish Debnath, Shri Samrat Bikash Barua, Shri Vim Cent Pal and Shri Purnendu Sekhar Halder.
4. Thereafter, SEBI vide Final Order bearing no. WTM/PS/36/ERO/AUGUST/2015 dated August 13, 2015 ("Final Order"), passed directions against MIL and its Directors, viz. Shri Dipankar Das, Shri Sudip Rauth, Shri Debasish Debnath, Shri Samrat Bikash Barua, Shri Vim Cent Pal and Shri Purnendu Sekhar Halder, for violating the provisions of Section 56, Section 60 read with Section 2(36) and Section 73 of the Companies Act, 1956, by engaging in fund mobilising activity from the public, through the issue of RPS.
5. As per the findings contained in the Final Order, the offer and allotment of Redeemable Preference Shares made by MIL to 2,110 investors during the Financial Year 2012–2013, has been held to be a public issue of securities within the first proviso to Section 67(3) of the Companies Act, 1956.
6. It was observed by SEBI that in addition to the Directors restrained in the said order dated August 13, 2015, the following persons were earlier directors of MIL during the Offer of RPS, viz. Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotirnanjan Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia (hereinafter

collectively referred to as “**Noticees**”). Thereafter, SEBI passed an interim order dated November 20, 2015 (hereinafter referred to as “**interim order**”), against the aforesaid Noticees.

7. *Prima facie findings/allegations*: Vide the order dated August 13, 2015, SEBI has held MIL and its directors, viz. Shri Dipankar Das, Shri Sudip Rauth, Shri Debasish Debnath, Shri Samrat Bikash Barua, Shri Vim Cent Pal and Shri Purnendu Sekhar Halder, liable for the issuance of RPS to 2,110 allottees and raising an amount of Rs. 2.31 crores. In the interim order dated November 20, 2015, the following *prima facie* findings were recorded.
8. The Noticees, viz. Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia, were also engaged in the aforesaid fund mobilising activity from the public, in their capacity as Directors of MIL, through the Offer of RPS, and as a result of the aforesaid activity, had violated Sections 56(1) and 56(3) read with Section 56(4), Section 60 and Section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act.
9. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated November 20, 2015 with immediate effect.
 - i. “The past Directors of MIL, viz. Shri Manoj Kumar Pradhan (PAN: ALYPP9588R; DIN: 03618675), Shri Bhimsen Soren (PAN: CKHPS4470D; DIN: 03618672), Shri Rasmiranjan Swain (PAN: DEXPS0145Q; DIN: 03616716), Shri Jyotiranjana Panda (PAN: BEAPP0928K; DIN: 03616711), Shri Anil Kumar Senapati (PAN: CWDPS5006B; DIN: 03616708) and Shri Amrit Bhunia (PAN: BCXPB3598L; DIN: 03616701), 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 MIL 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 MIL shall provide a full inventory of all their assets and properties.”

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

- i. Directing them jointly and severally to refund money collected through the Offer of RPS 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.

11. Vide the said interim order, the Noticees 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.

12. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated November 23, 2015 which was delivered only to Shri Amrit Bhunia. Thereafter, the interim order was affixed at the premises of Shri Anil Kumar Senapati and Shri Bhimsen Soren. Vide letter dated June 14, 2016, the said interim order was sought to be served on Shri Bhimsen Soren, which was delivered. Pursuant to the aforesaid letter dated June 14, 2016, SEBI received a letter dated July 14, 2016 from Shri Bichitra Nanda

Muni, Advocate, on behalf of Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Anil Kumar Senapati and Shri Amrit Bhunia. Vide the said letter, the Noticees inter alia, requested for a personal hearing in the matter.

13. Vide notifications dated October 15, 2017 published in the newspapers *The Times of India* and *Anand Bazar Patrika*, the Noticees were notified by SEBI, that interim order dated November 20, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter. Vide the said notifications, the Noticees were also notified that they will be given the final opportunity of being heard on November 21, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record. However, it was noted that SEBI had received a letter dated July 14, 2016 from Shri Bichitra Nanda Muni, Advocate for Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Anil Kumar Senapati and Shri Amrit Bhunia, seeking for an opportunity of personal hearing. Therefore, it was felt appropriate that the hearing notice should have been attempted to have been delivered on the aforesaid Noticees through their Advocate, before opting for substituted service. Therefore another opportunity of personal hearing was granted to the aforesaid Noticees on January 16, 2018 which was delivered on the said Noticees through their Advocate vide letter dated December 27, 2017.
14. *Hearing and submissions*: vide letter dated December 30, 2017, Shri Bichitra Nanda Muni, Advocate has confirmed his presence for the said personal hearing on January 16, 2018 on behalf of his clients Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Anil Kumar Senapati and Shri Amrit Bhunia and has enclosed, inter alia, the documents submitted by him on behalf of MIL in relation to recovery proceedings before SEBI in connection with Order no. WTM/PS/36/ERO/AUGUST/2015 dated August 13, 2015 wherein MIL and its present directors were held liable for the issuance of RPS. Vide written submission dated January 16, 2018, and oral submissions made by Shri Bichitra Nanda Muni, Advocate on behalf of Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Anil Kumar Senapati and Shri Amrit Bhunia, it was

submitted *inter alia*, that:

- a. Allotment of Redeemable Preference Shares was on August 4, 2012 and allotments were made to 2,110 persons, mobilizing Rs. 2.31 crores.
- b. Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Anil Kumar Senapati and Shri Amrit Bhunia had already handed over all charges/liabilities and responsibilities of the Company upon the present management/Board of Directors,
- c. Accordingly the present management has duly committed towards refunds to the investors. Certain proposals were drawn up for such refund by the present management, which were being implemented.

15. Advocate Shri Bichitra Nanda Muni was handed over certain documents as obtained from the MCA records, wherein his clients had signed subsequent to their claimed dates of resignation as available on record. The Noticees were given time till January 31, 2018 to file their response specifically addressing the aforesaid documents. However, no submission has been received as on date.

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

- (1) *Whether the company came out with the Offer of RPS as stated in the interim order.*
- (2) *If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.*
- (3) *If the findings on Issue No.2 are found in the affirmative, whether the Noticees 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.*

17. I have perused the interim order dated November 20, 2015 and I note that neither the company nor the directors filed any reply disputing the same.
18. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the records from MCA, that MIL has issued and allotted RPS to 2,110 investors during the financial years 2012-2013 and raised an amount of Rs. 2.31 Crores. I also note that the number of allottees and funds mobilized has been collated from the documents collected from the documents / information obtained from the MCA 21 Portal.
19. I therefore conclude that MIL came out with an offer of RPS as outlined above. The same has also been decided vide order dated August 13, 2015.

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

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

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

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

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

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

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

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

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

21. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI* (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the “**Sahara Case**”), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

“Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the “section of the public”. Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and

receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”

22. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

23. In the instant matter, I find that RPS were issued by MIL to 2,110 investors in the financial

years 2012-2013. I find that MIL has mobilized an amount of Rs. 2.31 Crores over the financial year 2012-2013. The above findings lead to a reasonable conclusion that the *Offer of RPS* by MIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

24. I find that MIL has not claimed 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 MIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
25. The Noticees have not contended that the *Offer of RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
26. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that “In terms of Section 67(3) of the Companies Act any issue to ‘50 persons or more’ is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning”.
27. Therefore, in view of the material available on record, I find that the *Offer of RPS* by MIL 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 MIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956. The same has also been

decided vide order dated August 13, 2015.

28. Further, since the offer of RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.
29. The allegations of non-compliance of the above provisions were not denied by the 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 MIL has contravened the said provisions. The Noticees have not provided any records to show that the amount collected by MIL is kept in a separate bank account. Therefore, I find that MIL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with. The same has also been decided vide order dated August 13, 2015.
30. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RPS was a deemed public issue of securities, MIL 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 MIL has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that MIL has not complied with the

provisions of section 60 of the Companies Act, 1956. The same has also been decided vide order dated August 13, 2015.

31. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. The Noticees has not produced any record to show that MIL 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, MIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956. The same has also been decided vide order dated August 13, 2015.
32. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *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"

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

34. In view of the above findings, I am of the view that MIL was engaged in fund mobilizing activity from the public, through the offer of RPS and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956. The same has also been decided vide order dated August 13, 2015.

ISSUE No. 3- If the findings on Issue No.2 are found in the affirmative, whether the Noticees are liable for the same?

35. From the MCA records and from the reply of Shri Bichitra Nanda Muni, Advocate on behalf of Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Anil Kumar Senapati and Shri Amrit Bhunia, the details of appointment and resignation of the past directors are as follows:

Name of the directors	Date of appointment	Date of cessation
Manoj Kumar Pradhan	October 28, 2011	June 15, 2012
Bhimsen Soren	October 28, 2011	December 30, 2013
Rasmiranjan Swain	October 28, 2011	June 15, 2012
Jyotiranjana Panda	October 28, 2011	September 23, 2013
Anil Kumar Senapati	October 28, 2011	June 15, 2012
Amrit Bhunia	October 28, 2011	December 30, 2013

36. However, on perusal of documents available on MCA website, I find that the signature of Shri Anil Kumar Senapati appears on the list of allottees of RPS, dated August 4, 2012, i.e. after the claimed date of resignation as per MCA records. I also find his signature on the Board Resolution dated July 6, 2012 of MIL, increasing the authorized share capital of the Company. I further find that as per the resignation letter dated September 23, 2013 of Shri Jyotiranjana Panda, the resignation was accepted by Shri Anil Kumar Senapati. Even after giving an opportunity to address/explain the said issue, the Noticees have not made any submission with regard to the same as on date. Therefore, I am of the view that the MCA filing made by MIL with respect to the date of resignation of Shri Anil Kumar Senapati is suspect because he was in fact acting as a director of the Company till as late as September 23, 2013. I therefore find that Shri Anil Kumar Senapati had acted as a director of MIL during the issuance of RPS even as on August 4, 2012.
37. From the aforesaid resignation letter dated September 23, 2013 of Shri Jyotiranjana Panda, I note that the resignation was also accepted by Shri Rasmiranjan Swain and Shri Manoj Kumar Pradhan. Therefore, I am of the view that the MCA filing made by MIL with respect to the dates of resignation of Shri Rasmiranjan Swain and Shri Manoj Kumar Pradhan are also suspect because they were in fact acting as directors of the Company till

as late as September 23, 2013. I therefore find that Shri Rasmiranjan Swain and Shri Manoj Kumar Pradhan had acted as directors of MIL during the issuance of RPS on August 4, 2012. From the records as available on the MCA website, as given in paragraph 35, Shri Bhimsen Soren and Shri Amrit Bhunia acted as directors of MIL till December 20, 2013 and Shri Jyotiranjana Panda acted as director of MIL till September 23, 2013. Therefore, all the above Noticees were continuing as directors at the time of the allotment, i.e. August 4, 2012.

38. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, the Noticees are held liable for the violation of sections 56(1), 56(3) read with section 56(4) and 60 of the Companies Act, 1956.
39. From the replies filed by Shri Bichitra Nanda Muni, Advocate on behalf of his clients, Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Anil Kumar Senapati and Shri Amrit Bhunia, I note that it has been submitted that since the past directors had handed over all the responsibilities and liabilities of the Company to the present directors, the past directors are not liable for any refund liability. In this regard I am of the opinion that 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%. In view of the above, I find no merit in the submission made by Shri Bichitra Nanda Muni, Advocate on behalf of Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Anil Kumar Senapati and Shri Amrit Bhunia, vide the written submission dated January 16, 2018, that the past directors had handed over all the responsibilities to the present Board of Directors, and was therefore discharged of all liabilities of the Company.

40. From the documents obtained from the *MCA21 Portal* and the details of the appointment and resignation of the Noticees as reproduced in paragraph 35 of this Order, it is noted that the Noticees 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 MIL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 the Noticees, as officers in default, are liable to make refund, jointly and severally with MIL and the other directors as mentioned in the order dated August 13, 2015, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the Noticees are co-extensively responsible along with the Company and other directors for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act. Therefore, I find that Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia, jointly and severally along with MIL and its other Directors as mentioned in the order dated August 13, 2015, are liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

41. I note that all the Noticees were directors of the Company during the financial years 2012-2013. MIL through Offer of RPS, had collected an amount of Rs. 2.31 Crores from various allottees. Therefore, in view of the 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 Noticees to refund the amount with interest jointly and severally with MIL and its other directors are limited to the extent of amount collected during their tenure as director of MIL.
42. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct the Noticees, viz. Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Noticees 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 Noticees.
43. I also note that, vide the interim order dated November 20, 2015, the Noticees were directed to provide a full inventory of all their assets and properties. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided by the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications and service of the same on the Noticees as stated in paragraph 13 of this Order.
44. In view of the discussion above, appropriate action in accordance with law needs to be initiated against the Noticees viz. Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia.
45. I note that Shri Abhilash Das (DIN: 07711743) has been appointed as a director of MIL

on December 22, 2016, i.e. after the passing of the order dated August 13, 2015 with respect to MIL and its present directors extant as on said date. Since, the issuance of RPS occurred before the appointment of Shri Abhilash Das as a director, I find that Shri Abhilash Das, is liable to ensure refund the investors. In view of this, appropriate direction in accordance with law needs to be passed against Shri Abhilash Das.

ORDER

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

- a. Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia, jointly and severally with MIL and other directors as mentioned in Order dated August 13, 2015 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. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.
- c. Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia, 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, belonging to them.
- d. Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia 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. Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia in their personal capacity to make refund and Shri Abhilash Das, in the capacity of a present director, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- f. After completing the aforesaid repayments, Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia in their personal capacity and Shri Abhilash Das in his capacity as a present director, on behalf of MIL, 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 Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia 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 persons liable to refund, as specified in paragraph 46(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

- h. Shri Manoj Kumar Pradhan, Shri Bhimsen Soren, Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia and present director Shri Abhilash Das 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.
- i. This above directions will take effect as final order against Shri Abhilash Das on the expiry of 30 days from the date of service of this order, unless Shri Abhilash Das, within such period of 30 days from the date of service of this order files his objections. If objections are filed, the following directions shall be applicable against Shri Abhilash Das, till the time of disposal of the said objection, after which this order shall come into effect:
- i) Shri Abhilash Das 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,
 - ii) Shri Abhilash Das is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly,
 - iii) Shri Abhilash Das shall not divert any funds raised from public at large through the Preference Shares Issue, which are kept in bank account(s) and/or in the custody of MIL.
- j. The above directions with respect to Shri Manoj Kumar Pradhan, Shri Bhimsen Soren,

Shri Rasmiranjan Swain, Shri Jyotiranjana Panda, Shri Anil Kumar Senapati and Shri Amrit Bhunia shall come into force with immediate effect.

46. I note that a Writ Petition bearing no. 13997W of 2014 - *Ashru L. Das vs. Union of India and others*, has been filed before the Hon'ble High Court of Calcutta in the present matter. However, no significant orders which might affect the directions passed in this order, have been passed in the said matter. In view of the same, this Order is being passed in accordance with the relevant provisions of securities law.
47. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories, registrar and transfer agents, for information and necessary action.
48. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the director.
49. A copy of this Order shall also be forwarded to Local Police/ State Government for information.

DATE: February 20th, 2018

MADHABI PURI BUCH

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA