

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER cum SHOW CAUSE NOTICE

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF VIBGYOR ALLIED INDUSTRIES LTD.-

Sr. No.	Noticees	PAN
Company		
1.	Vibgyor Allied Industries Ltd.	AAGCS7590C
Directors		
2.	Rabindra Nath Dey	ADEPD0040N
3.	Raja Bhadra	AGVPB3263D
4.	Rana Bhadra	AIDPB1831B
5.	Dipak Sarkar	AYZPS9417J
6.	Sarit Chakraborty	ACQPC2143N
7.	Santanu Bhattacharyya	ADWPB9936B
Debenture Trustees		
8.	Nikhil Kumar Chakraborty	N.A.
9.	Tapas Kumar Basu	N.A.
10.	Rajat Bera	N.A.
11.	Mohammad Quddus	N.A.

The aforesaid entities are hereinafter referred to by their respective names or collectively as "the Noticees".

1. Securities and Exchange Board of India ("SEBI") was in receipt of complaints against Vibgyor Allied Industries Ltd (hereinafter referred to as "**VAIL**"/ "**the company**") alleging that the company raised money from public by issuing Secured Redeemable Debentures ("**SRDs**") and that it was now not refunding money to the investors.
2. SEBI sought information pertaining to the collection of money by VAIL. Details of the correspondence and replies are as under:
 - (i) Letter dated December 01, 2014 was sent to VAIL and its present directors

namely, Rabindra Nath Dey, Santanu Bhattacharyya and Sarit Chakraborty requesting them to furnish the information regarding mobilization of funds from public. The letter sent to the company and the directors were delivered

- (ii) By letter dated January 27, 2015, Rabindra Nath Dey, on behalf of the company and the directors, informed that the company had not collected any funds from public.
- (iii) Since, there was not enough information to ascertain whether the company had mobilized money from public, letters dated January 05, 2017 were sent to VAIL and all its directors namely, Rabindra Nath Dey, Santanu Bhattacharyya, Sarit Chakraborty, Raja Bhadra, Dipak Sarkar and Rana Bhadra requesting them to furnish the information regarding mobilization of funds from public. On behalf of the noticee company, Advocate Md. Bani Israil submitted vide his letter dated 13.01.2017 that several writ petitions had been filed before the Hon'ble High Court, Calcutta for refunding money to the investors and the same were pending before the Division Bench comprising Justice Aniruddha Bose and Justice Joymalya Bagchi. The Advocate added that his client had filed an affidavit of asset and liability, a copy of which was served on the advocate appearing for SEBI as well and by way of the said affidavit, his client had expressed its desire to make payment to investors through the Justice Sailendra Prasad Talukdar Committee formed by the Hon'ble High Court of Calcutta.

3. Information obtained from the Registrar of Companies (RoC) and its MCA21 Portal revealed that the noticee company was originally incorporated in the name of Satellite Funds & Fiscal Ltd (SFFL) on 10.05.1989. The said company changed its name to Vibgyor Allied Industries Ltd w.e.f. 24.03.2008. The details of VAIL's CIN, PAN and addresses are listed below:

TABLE 1

CIN	U01132WB1989PLC046854
PAN	AAGCS7590C
Registered Office Address	Vibgyor Tower" 87,Dr.Suresh Sarkar Road Kolkata WB 700014
Correspondence Address	Satyam Building, 6 th Floor, Block DP, Plot No. 5, Sector V, Kolkata 700091

ISSUE OF DEBENTURES

4. On perusal of Form 10 filed with RoC (i.e. the document relating to charge created on assets of the company) and its enclosures, it was observed that the noticee company had issued debentures in the name of VAIL and SFFL since 2006-07. It was also observed that though the noticee company had changed its name from SFFL to VAIL w.e.f. 24.03.2008, it had continued to issue debenture certificates in the name of SFFL even after the aforesaid date. The number and value of debentures issued and allotted, based on the information seen from the Form 10 documents filed with RoC, are listed below:

TABLE 2

Year	No of Allottee	Amount (Rs.)
2006-07	90	4,38,500
2007-08	134	15,36,000
2008-09	51	7,35,500

5. Though the MCA21 portal lists the number and value of debentures issued by the noticee company, these do not appear to correspond to the number and value of debentures computed based on complaints received by SEBI. It appears that in addition to the allottees disclosed in Form 10 filed in MCA21, the noticee company had also made allotments to the complainants. Taking into account the details provided in the complaints as well those from attachments to the Form 10 documents filed with RoC, the total number of allottees and value of SRDs (debentures) issued are computed as follows:

TABLE 3

Year	No. of Allottee	Amount (Rs.)
2006-07	90	4,38,500
2007-08	134	15,36,000
2008-09	136	29,26,500
2009-10	57	6,28,000
2012-13	36	6,38,000
Total	453	61,67,000

Since statutory filings have not been made by the company with RoC since 2011, it is not ascertainable as to whether the noticee company had made a public issue during 2012-13. From the aforesaid data, it can be inferred that VAIL had made a public issue of SRDs. However the actual magnitude of the funds raised and details of

investors are not available due to the non-cooperation of the noticee company and its directors. Based on the available information *(and subject to the fact that more complaints are being received by way of alleged allotments)*, it may be inferred that VAIL has issued SRDs to at least 453 persons during the years 2006 to 2013 *(hereinafter collectively referred to as "offer and allotment of debentures")*.

6. From the copy of Form 10 filed with the RoC, it is also observed that the noticee company has created a charge on 05.08.2009 for an amount of Rs. 32,93,06,200/- for the issue of debentures. Nikhil Kumar Chakraborty, Tapas Kumar Basu and Rajat Bera were appointed as debenture trustees. All of them had submitted their consent letters to become the trustee for the issuance of SRDs and signed the debenture trust deed. The said charge was modified on 10.04.2010 and Tapas Kumar Basu resigned from trusteeship and Mohammad Quddus was appointed as a trustee in his place. Based on the above, details of debenture trustees appointed by the noticee company are provided below:

TABLE 4

Sl	Name of Trustee	Address	PAN if any	Appointment date	Resignation date
1	Nikhil Kumar Chakraborty	S/o Late Sudhir Kumar Chakraborty P-75A, Lake Road, P.S. Lake, Kolkata 700029	NA	27.07.2009	-
2	Tapas Kumar Basu	S/o Late Samir Kumar Basu Kondalia, Bandel Dist Hooghly, West Bengal 712123	NA	27.07.2009	06.04.2010
3	Rajat Bera	S/o Late Mahipati Bera Vill& P.O Belsingha (Nimtala) P.S. Falta, Dist South 24 Parganas, West Bengal 743504	NA	27.07.2009	-
4	Mohammad Quddus	39, Royd Street P.S. Park Street, Kolkata 700016	NA	10.04.2010	-

7. Details of the charge created by VAIL against immovable properties held by the company, as per Form 10 documents are as follows:

(i) Property located at Various Dags under P.S. Baruipur 24-Pags, West Bengal

TABLE 5

Sl	Dag Nos	Character of Land	Land Area in Dec.
1	R.S and L.R Dag No -7169	Sali	31 Decimals
2	R.S and L.R Dag No -7170	Bandh	34 Decimals
3	R.S and L.R Dag No -7171	Sali	1 Acre 34 Decimals
4	R.S and L.R Dag No -7173	Bandh	16 Decimals
5	R.S and L.R Dag No -7181	Sali	86 Decimals
6	R.S and L.R Dag No -7182	Sali	1 Acre 01 Decimals
7	R.S and L.R Dag No -7185	Danga	4.5 Decimals
8	R.S and L.R Dag No -7186	Sali	21 Decimals
9	R.S and L.R Dag No -7172	Bandh	401 Decimals
10	R.S and L.R Dag No -7180	Sali	1 Acre 84 Decimals
Total valuation			Rs. 16,65,00,200/-

(ii) Property located at various locations within district, Jalpaiguri (Dooars Anchal, West Bengal)

TABLE 6

Sl	Property No	Deed No	Area in Decimal	Potential Value (Rs.)
1	Property No I	No. 248883	349	8,44,58,000
2	Property No II	No 1986	76	1,93,11,600
3	Property No III	No 253515	238	5,90,36,000
Total			663	16,28,05,600

ISSUES FOR DETERMINATION

8. In the context of the abovementioned details of the offer and allotment of preference shares, the issue for determination in the instant matter is whether or not the mobilization of funds by VAIL as described above by way of issue of SRDs, during the Financial Years 2006-07 to 2012-13 is in accordance with the provisions of the Companies Act, 1956 read with the provisions of the SEBI Act, 1992.

RELEVANT PROVISIONS OF LAW AND PRIMA FACIE FINDINGS

9. Section 67 of the Companies Act, 1956 deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

"Construction of reference to offering shares or debentures to the public, etc.

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)."*

10. For ascertaining whether the *offer and allotment of debentures* by VAIL would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the Company is crucial. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. In this regard, it is observed from the documents obtained from RoC and

complaints received, that VAIL has offered and allotted SRDs to atleast 453 persons thereby mobilizing an amount of atleast ₹ 61,67,000 during the period 2006 to 2013. Further, with the exception of the financial year 2012-13, number of persons to whom SRDs were allotted, in each of the aforesaid financial years, exceeded 49. However details of each instance of offer and allotment of SRDs made by the company remain unavailable due to non-cooperation on the part of the noticee company and its directors. Therefore on the basis of complaints received, and available information recorded above, the *offer and allotment of debentures* by VAIL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

- 11.** Such a public issue makes it imperative for VAIL to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act, 1956 is reproduced as under:

"Allotment of shares and debentures to be dealt in on stock exchange.

73. (1) *Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.*

(1A) ...

(2) *Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, **the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, 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, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.***

...." (emphasis supplied)

- 12.** As the *offer and allotment of debentures* is, *prima facie*, a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement for such shares to be dealt on a recognised stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. Therefore I find that VAIL is *prima facie* in breach of the provisions of Section 73 as well.

13. Further, in connection with the public issue, Section 56 of the Companies Act, 1956 mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that VAIL has complied with the provisions of Sections 56 and 60 of Companies Act, 1956, in respect of the *offer and allotment of debentures*. In view of the same, I find that VAIL is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the subject offer and allotment of debentures.

14. Further, public issue of debentures requires compliance with the norms issued by SEBI. Debentures issued till 2008 were governed by the provisions of the SEBI (Disclosure and Investment Protection) Guidelines, 2000 ("**DIP Guidelines**"). The relevant provisions of the DIP Guidelines required to have been complied with in the given facts and circumstances are listed as under:

- (i) Clause 2.1.1. (*filing of offer document*)
- (ii) Clause 2.1.4 (*application for listing*)
- (iii) Clause 2.1.5. (*issue of securities in dematerialized form*)
- (iv) Clause 2.8. (*means of finance*)
- (v) Clause 4.1. (*promoters contribution in a public issue by unlisted companies*)
- (vi) Clause 4.11. (*lock-in of minimum specified promoters contribution in public issues*)
- (vii) Clause 4.14 (*lock-in of pre-issue share capital of an unlisted company*)
- (viii) Clause 5.3.1 (*memorandum of understanding*)
- (ix) Clause 5.3.3 (*due diligence certificate*)
- (x) Clause 5.3.5 (*undertaking*)
- (xi) Clause 5.3.6 (*list of promoters group and other details*)
- (xii) Clause 5.4 – (*appointment of intermediaries*)
- (xiii) Clause 5.6 (*offer document to be made public*)
- (xiv) Clause 5.6A (*Pre-issue Advertisement*)
- (xv) Clause 5.7 – (*dispatch of issue material*)
- (xvi) Clause 5.8 – (*no complaints certificate*)
- (xvii) Clause 5.9 – (*mandatory collection centres*) and Clause 5.9.1. (*minimum number of collection centres*)
- (xviii) Clause 5.10 – (*authorized collection agents*)
- (xix) Clause 5.12.1. (*appointment of compliance officer*)
- (xx) Clause 5.13 – (*abridged prospectus*)

- (xxi) Clause 6.0 – *(contents of offer documents)* - Clause 6.1 to Clause 6.15 *(contents of prospectus)*, Clause 6.16 to Clause 6.34 *(contents of abridged prospectus)* including Clause 6.17.13 and Clause 41.6 – *rating for the proposed debentures/preference shares issue, if any, obtained from credit rating agencies)*
- (xxii) Clause 8.3 - *(Rule 19(2)(b) of SC(R) Rules, 1957)*
- (xxiii) Clause 8.8.1- *(Opening & closing date of subscription of securities)*
- (xxiv) Clause 9 – *(guidelines on advertisements by issuer company)*
- (xxv) Clause 10.1. *(Requirement of credit rating)*
- (xxvi) Clause 10.5 – *(Redemption)*

The relevant provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“**ILDS Regulations**”) required to have been complied with in the given facts and circumstances are listed as under:

- (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 16(1) – *Debenture Redemption Reserve;*
- (xv) Regulation 17 – *Creation of security;*
- (xvi) Regulation 19 – *Mandatory Listing;*
- (xvii) Regulation 26 – *Obligations of the Issuer, etc.*

15. I find that there is no evidence on record to indicate that VAIL has complied with the aforesaid provisions of the DIP Guidelines and ILDS Regulations in the context of the *offer and allotment of debentures*. I therefore find VAIL to be in *prima facie* breach of the aforestated clauses of the DIP Guidelines and regulations of the ILDS Regulations.

16. Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or*

deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act". Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("**DT Regulations**"), provides that:

"No person shall be entitled to act as a debenture trustee unless it is :—

(a) a scheduled bank carrying on commercial activity; or

(b) a public financial institution as defined sub-section (72) of section 2 of the Companies Act, 2013; or

(c) an insurance company; or (d) body corporate as defined under sub-section (11) of section 2 of the Companies Act, 2013."

In the instant case, Form 10 records that Nikhil Kumar Chakraborty, Tapas Kumar Basu and Rajat Bera were appointed as debenture trustees by the noticee company and later in place of Tapas Kumar Basu, Mohammad Quddus had been appointed as debenture trustee. It is noted that none of the debenture trustees appointed by the noticee company were registered in accordance with the mandate of section 12(1) of the SEBI Act nor were eligible to seek registration under the DT Regulations. In view of the above, I find Nikhil Kumar Chakraborty, Tapas Kumar Basu, Rajat Bera and Mohammad Quddus to be *prima facie* in breach of section 12(1) of the SEBI Act, 1992 read with regulation 7 of the DT Regulations. Section 117B of the Companies Act, 1956 provides for mandatory appointment of debenture trustees with respect to issue of debentures through prospectus or letter of offer to the public. As per regulation 2(ea) of the DT Regulations, "issue" means an offer of sale of securities to the public or by way of private placement of debentures made by a listed company. Therefore by not appointing a registered debenture trustee, I find VAIL to be *prima facie* in breach of the provisions of section 117B of the Companies Act, 1956. Similarly section 117C of the Companies Act, 1956 imposes an obligation on companies issuing debentures to create a debenture redemption reserve. It is not evident from the material available on record that VAIL had created such a reserve. Therefore I find VAIL to be *prima facie* in breach of the provisions of section 117C of the Companies Act, 1956 as well.

- 17.** SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 55A of the Companies Act, 1956, confers the jurisdiction on SEBI *inter alia* to administer provisions specified therein, in relation to public issue of securities. Under section 11

of the SEBI Act, SEBI is empowered to take such measures as it deems fit for fulfilling its legislative mandate. Further, sub-section (4) of section 11 lists measures that SEBI may take, by an order in writing, either pending or on completion of investigation or inquiry, in the interest of investors in the securities market. Section 11B empowers SEBI to issue such directions as may be appropriate, in the interest of investors in securities and the securities market, *inter alia*, to any company in respect of issue of capital, transfer of securities etc.

- 18.** In terms of Section 73(2), the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). Further, in terms of Section 62 of the Companies Act, every person who *inter alia* is a director of the company at the time of the issue of the prospectus and every person who is a promoter of the company, are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein. As per available information, the details of the directors of VAIL, including the dates of appointment/cessation as directors, are as under:

Name of the directors	DIN	PAN	Present Residential Address	Date of appointment	Date of cessation
Rabindra Nath Dey	646404	ADEPD0040N	13/1/1, Kali Das Singha Lane, Kolkata, West Bengal - 700009, India	27/09/2006	-
Raja Bhadra	627516	AGVPB3263D	375, Prince Anwar Shah Road, Flat -34C and 35C, Tower-2, South City, Kolkata, West Bengal - 700068, India	27/09/2006	28/11/2011
Dipak Sarkar	2697115	AYZPS9417J	760/1 Jawpur Road, Kolkata, West Bengal - 700074, India	12/03/2010	01/07/2013
Sarit Chakraborty	2694093	ACQPC2143N	95/B Ananda Palit RD, Kolkata, West Bengal - 700014, India	12/03/2010	-
Rana Bhadra	627557	AIDPB1831B	Alipur Paschim (Priyanath School Road), 22, Nimta (N) PS-NIMTA, KOLKATA, West Bengal - 700049	27/09/2006	02/05/2012
Santanu Bhattacharyya	1467960	ADWPB9936B	26A,, School Row, Kolkata, West Bengal - 700025, India	01/07/2013	-

19. From the above table, it is noted that Rabindra Nath Dey, Raja Bhadra, Dipak Sarkar, Sarit Chakraborty, Rana Bhadra and Santanu Bhattacharyya were the directors of VAIL at the time of the issue and allotment of SRDs (debentures) and were responsible for the affairs of VAIL at the relevant point of time. Further, Rabindra Nath Dey, Sarit Chakraborty and Santanu Bhattacharyya are currently the directors of VAIL and are presently responsible for its affairs.

DIRECTIONS

20. From the information obtained from MCA21 Portal, it can be reasonably inferred that the money mobilization on the part of VAIL is potentially placing investors at risk by not following the requirements of law applicable to a public issue. In the light of the facts in the instant matter, I find this to be a fit case to pass interim directions against VAIL and the abovenamed Directors/Promoters along with the Debenture Trustee.

21. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-

- (i) VAIL and its Directors, viz. Rabindra Nath Dey, Raja Bhadra, Dipak Sarkar, Sarit Chakraborty, Rana Bhadra and Sanatanu Bhattacharyya along with the Debenture Trustees viz. Nikhil Kumar Chakraborty, Tapas Kumar Basu, Rajat Bera and Mohammad Quddus shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves as directors with any listed company or company intending to raise money from the public;
- (ii) VAIL and its Directors, viz. Rabindra Nath Dey, Raja Bhadra, Dipak Sarkar, Sarit Chakraborty, Rana Bhadra and Sanatanu Bhattacharyya shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through the *offer and allotment of debentures*;
- (iii) VAIL and its Directors, viz. Rabindra Nath Dey, Raja Bhadra, Dipak Sarkar, Sarit Chakraborty, Rana Bhadra and Sanatanu Bhattacharyya shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of debentures* sought vide letters

dated December 01, 2014 and January 05, 2017.

22. The preliminary findings contained in paragraphs 10 - 19 of this Order are made on the basis of the information obtained from *MCA21 Portal* and other relevant material on record. VAIL and all the abovenamed Directors along with the abovenamed Debenture Trustees (Collectively referred to as “**Noticees**”) are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, viz. –

- (i) VAIL and its Directors, viz. Rabindra Nath Dey, Raja Bhadra, Dipak Sarkar, Sarit Chakraborty, Rana Bhadra and Sanatanu Bhattacharyya, to jointly and severally refund the money collected through the offer and allotment of debentures, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act till the date of actual payment) within a period of 180 days from the date of receipt of this Order, supported by a Certificate of two independent Chartered Accountants to the satisfaction of SEBI; and
- (ii) VAIL and its abovenamed Directors to be restrained/prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.
- (iii) The Debenture Trustees viz. Nikhil Kumar Chakraborty, Tapas Kumar Basu, Rajat Bera and Mohammad Quddus –
 - (a) to be restrained/prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of this Order.
 - (b) to be restrained/prohibited from acting as Debenture Trustee in respect of debentures of VAIL and from taking up any assignment or involve itself in any issue of securities in a similar capacity whatsoever, directly or indirectly, without obtaining registration as a Debenture Trustee under the DT Regulations.

23. The Noticees may, within 21 days from the date of receipt of this Interim Order–cum–Show Cause Notice, file their respective replies. VAIL and the abovenamed Directors are

directed to furnish an inventory of their assets in their reply. In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. In the event of the respective Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paragraphs 10-19 of this Order shall become final and absolute against the respective Noticees automatically, without any further orders. Consequently, the Noticees shall automatically be bound by the directions contained in paragraphs 21 and 22, as applicable.

- 24.** In case of failure by the respective Noticees to comply with the aforesaid directions within a period of 180 days from the date of receipt of this Order, SEBI may initiate appropriate enforcement action under SEBI Act including Recovery proceedings, Adjudication or Prosecution in addition to making a suitable reference to State Government/Local Police.
- 25.** I also note that there have been several writ petitions filed against the Vibgyor Group of companies before the Hon'ble High Court of Calcutta, *inter alia* alleging illegal money mobilisation. Vide order dated February 15, 2017 the Hon'ble High Court directed that the writ petitions pertaining to the Vibgyor group of companies be placed before the Justice Sailendra Prasad Talukdar Committee. *(The said Committee had been constituted by the Hon'ble High Court of Calcutta, vide its Order dated December 23, 2015, to deal with several complaints pertaining to illegal money mobilisation schemes being carried out by MPS Group of companies. The Committee was tasked with the responsibility of inter alia identifying assets of the MPS Group, sale of its assets and repaying to the investors.)* In reply to the said writ petition filed against the Vibgyor group of companies, the director of VAIL - Rabindranath Dey, i.e. Noticee No. 2 had filed an affidavit admitting that the total liability of the Vibgyor group companies is worth Rs. 318 crore of which the liability of Vibgyor Allied Industries Ltd is Rs. 100 crore. However it is not clear whether the said liability pertains to only SRDs. Since the matter relating to repayment of investors of Vibgyor group of companies has been seized off by the Committee appointed by the Hon'ble High Court of Calcutta, the directions at paragraphs 21 and 22 of this Order shall be subject to the directions of the Hon'ble High Court of Calcutta.

26. Copy of this Order shall be forwarded to the recognized Stock Exchanges and Depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on VAIL and the abovenamed Directors along with the abovenamed Debenture Trustees.

DATE: March 09, 2018

G. MAHALINGAM

PLACE: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA