

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 Re: Deemed Public Issue

In the matter of Nava Diganta Capital Services Limited

In respect of:

S. No.	Entity	PAN	DIN
1.	Nava Diganta Capital Services Limited	AADCN7151R	-
2.	Smt. Harapriya Jena	ARIPJ8232A	03590194
3.	Shri Kartikeya Parida	ADJPP0069J	03584594
4.	Shri Sanyasi Pradhan	ASRPP5394B	03584735
5.	Smt. Smita Patra	BQVPP6664H	03594573
6.	Shri Pradeep Kumar Pattnaik	ADAPP6395C	03584625
7.	Shri Ramachandra Hansdah	AFFPH5989B	03584671
8.	Smt. Nirupama Sahoo	CLPPS9856Q	03584569
9.	Shri Hitesh Kumar Bagarti	AJDPB3589R	03589561
10.	Smt. Subarna Naik	ACOPN1603L	03584722
11.	Shri Anjan Kumar Baliyarsingh	AIDPB2960M	03629822

1. Nava Diganta Capital Services Limited (hereinafter referred to as “**NDCSL**”/ “the

Order in the matter of Nava Diganta Capital Services Limited

Company”) is a Public company incorporated on August 12, 2011 and registered with Registrar of Companies–Bhubaneswar with CIN: U67120OR2011PLC014034. Its registered office is at N1–14, IRC Village, Nayapalli, Bhubaneswar–751015, Odisha, India.

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a complaint dated September 19, 2014 from some persons against NDCSL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether NDCSL 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 NDCSL had made an offer of Redeemable Preference Shares (hereinafter referred to as “**RPS**”) in the financial years 2011-2012, 2012-2013, 2013-2014 and raised an amount of Rs. 2.24 Crores from 874 allottees. It was also observed that NDCSL had also made an offer of NCDs in the financial year 2011-2012 and raised an amount of Rs. 2.77 Crores.
4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956 and said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an interim order dated May 07, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against NDCSL and its Directors viz. Smt. Harapriya Jena, Shri Kartikeya Parida, Shri Sanyasi Pradhan (erroneously mentioned as Smt. Sanyasi Pradhan in the interim order), Smt. Smita Patra, Shri Pradeep Kumar Pattnaik, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, Shri Anjan Kumar Baliyarsingh (hereinafter collectively referred to as “**Noticees**”).

Prima facie findings/allegations:

5. In the said interim order, the following *prima facie* findings were recorded.

- a) NDCSL had made an *Offer of RPS* during the financial years 2011-2012 , 2012-2013 , 2013-2014 and raised an amount of Rs. 2.24 Crores as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in crores)	Number of allottees
2011-2012	RPS	1.25	501
2012-2013		0.84	334
2013-2014		0.14	39
Total		2.24^	874*

[^]*The data is collated from Form 2 (Form for Return of Allotment – filed by NDCSL with the ROC in accordance with the provisions of the Companies Act, 1956) for the Financial Years 2011–12; 2012–13 and 2013–14

- b) NDCSL had made an *Offer of NCD* during the financial years 2011-2012 and raised an amount of Rs. 2.77 Crores as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in crores)	Number of allottees
2011-2012	NCDs	2.77	Details not available
Total		2.77 [^]	

[^]The data is collated from Form 20B (Form for filing Annual Return – filed by NDCSL with the ROC in accordance with the provisions of the Companies Act, 1956)

The breakup of the *Offer of NCD* during the financial years 2011-2012 is as under-

Year	Debentures	Amount Raised (Rs.)	No. of Allottees
2011 – 12	Non-Convertible Unsecured Redeemable Debentures (Long Term)	41,00,000	Not available
	Non-Convertible Unsecured Redeemable Debentures (Short Term)	2,14,26,000	Not available
	Non-Convertible Unsecured Redeemable debenture application money received pending for allotment	21,76,750	Not available
	Total	2,77,02,750	

6. The above *Offer of RPS* and *NCDs* 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) of the Companies Act, 1956 were not complied with by NDCSL in respect of the *Offer of RPS and NCD*. Further, the resultant requirement under sections 117B and 117C of the Companies Act, 1956 and the relevant provisions of the ILDS Regulations were also not complied with by NDCSL in respect of the *Offer of NCDs*.
7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated May 07, 2015 with immediate effect.

- i. *“NDCSL (PAN: AADCN7151R) shall not mobilize funds from investors through the Offer of Redeemable Preference Shares and Offer of NCDs or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*
- ii. *NDCSL and its present Directors, viz. Shri Anjan Kumar Baliyarsingh (PAN: AIDPB2960M; DIN: 03629822), Shri Kartikeya Parida (PAN: ADJPP0069J; DIN: 03584594) and Shri Pradeep Kumar Pattnaik (PAN: ADAPP6395C; DIN: 03584625), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;*
- iii. *The past Directors of NDCSL, viz. Smt. Harapriya Jena (PAN: ARIPJ8232A; DIN: 03590194), Shri Sanyasi Pradhan (PAN: ASRPP5394B; DIN: 03584735), Smt. Smita Patra (PAN: BQVPP6664H; DIN: 03594573), Shri Ramachandra Hansdah (PAN: AFFPH5989B; DIN: 03584671), Smt. Nirupama Sahoo (PAN: CLPPS9856Q; DIN: 03584569), Shri Hitesh Kumar Bagartti (PAN: AJDPB3589R; DIN: 03589561) and Smt. Subarna Naik (PAN: ACOPN1603L; DIN: 03584722), 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;*
- iv. *NDCSL and its abovementioned past and present Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*
- v. *NDCSL shall provide a full inventory of all its assets and properties;*
- vi. *NDCSL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;*
- vii. *NDCSL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of Redeemable Preference Shares and Offer of NCDs, without prior permission from SEBI;*
- viii. *NDCSL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares and Offer of NCDs, which are kept in bank account(s) and/or in the custody of NDCSL;*

- ix. *NDCSL and its abovementioned past and present Directors shall furnish complete and relevant information (as sought by SEBI letters dated September 24, 2014 and October 27, 2014), within 14 days from the date of receipt of this Order”.*
8. The interim order also directed the NDCSL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them
- i. *“Directing them jointly and severally to refund money collected through the Offer of Redeemable Preference Shares and 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”.*
9. Vide the said interim order, NDCSL, its abovementioned Directors were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

Service of interim order:

10. The copy of the said interim order was sent to the Noticees vide letter dated May 07, 2015. The interim order could not be served to all the noticees at the addresses available on record. Thus, vide notification dated 23rd August 2016 published in newspaper *Times of India*, and notification dated 23rd August 2016 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI that interim order dated May 07, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.

Hearing and submissions:

11. Vide letter dated June 01, 2015, Shri Anjan Kumar Baliyarsingh has submitted his reply and had *interalia* submitted that-

- a. That Directors namely Shri Anjan Kumar Baliyarsingh, Shri Pradeep Kumar Pattnaik, Shri Kartikeya Parida, Shri Ramchandra Hansdah, Shri Subarna Naik and Shri Hitesh Kumar Bagartti were arrested on October 26, 2014 by CBI and till date they are in custody as their case is in investigation by CBI on instructions of Supreme Court of India
- b. That all documents such as memorandum, articles of associations, vouchers, offer details, resolutions copy, subscription detail etc were seized and kept with CBI. Also their bank accounts, offices were seized by CBI.
- c. That they have started collections (NCDs & RPS) from October 02, 2011 to May, 2013 and every fifteen days they filed details of allotments with ROC and stopped collections from markets on May, 2013 after making resolutions of all directors.
- d. That they have paid more than 80% of dues till their arrests (October 14) and were in the process to refund balance amount which is also reflected in CBI charge sheet.
- e. That the company is ready to pay balance amount to investors but it is possible after Court's Order as case is *sub-judice* right now.
- f. That the company will not mobilize money from market, will not access securities market, will not divert or dispose of any company property till getting court order.
- g. That their office was shifted, seized and locked by CBI and no staff are there to co-operate, hence it is requested to communicate to them in this Jail Address, if required.

12. Thereafter, vide hearing notice dated August 04, 2016, Noticees were granted an opportunity of personal hearing on August 31, 2016 at the time and the venue mentioned therein. The same was also notified to the noticees vide notification dated 23rd August 2016 published in

newspaper *Times of India*, and notification dated 23rd August 2016 published in newspaper *Anand Bazar Patrika*.

Hearing on August 31, 2016

13. Vide letter dated 20/08/2016, Pradeep Kumar Pattnaik showed his inability to appear for personal hearing on account of medical reasons and had submitted his reply wherein he has *interalia* submitted the following-

- i. That NDSCL office which was at N/-14.IRC Village, BBSR-15 was shifted to LIG -806, Phase-II, Dumu Duma Housing Board Colony, Bhubaneswar-19, by the Chief Managing Director of NDSCL Shri Baliyarsingh, since May 2014.
- ii. That Shri Baliyarsingh, Chief Managing Director and chief functionary of the Company and Shri Sanjaya Kumar Mohapatra (SKM & Associates) Company Secretary of the company will be able to explain the details of facts raised by SEBI.
- iii. That on July 31, 2014, CBI has investigated the office & residence of all the Directors including the office of the Statutory Auditor & Company Secretary. Pursuant to the same, CBI had seized & taken all relevant documents of the Company including Audited Annual report. That the Company office is sealed and document has been seized since the date of CBI investigation.
- iv. That wife of Shri Baliyarsingh, Mrs Harapriya Jena who is also one of the Director of the Company was holding 52% shares of the Company. That he is only a 8% shareholder Director of the Company.
- v. That in the month of June 2014, CBI lodged a FIR against NDSCL and the case is pending in the court of Special C.J.M.(CBI) Bhubaneswar.
- vi. That since October 26, 2014 & November 04, 2014 five of Directors named as Shri Baliyarsingh, Shri Kartikeya Parida, Shri Ramachandra Hansdah, Shri Subarna Nayak & Shri Hitesh Bagartti were under Judicial Custody.
- vii. That he was released on bail by the Hon'ble High Court of Odisha, against Bond in the sum of rupees One Crore security & two solvent Sureties.

- viii. That the Company had stopped issuing shares since June 2013. CBI has restricted to operate all the Bank Accounts of the Company after the case was lodged.
 - ix. Furthermore the CMD and four other Directors are in the Judicial Custody.
 - x. That he is handicapped to furnish any information without getting back the documents from CBI and unless all the Directors sit together as he is only an 8% shareholder Director of the company.
 - xi. That he is suffering from Neurology problem & under treatment and is advised not to move alone due to the brain imbalance.
14. On the date of hearing, Shri Sanyasi Pradhan through his Authorized Representative Advocate Shri Som Sankar Sinha appeared for hearing and sought one week time to file his reply in the matter.

Smt. Smita Patra and Smt. Nirupama Sahoo, through their Authorized Representative Advocate Shri Anurag Pati, appeared and submitted that the noticees have resigned from the post of director and were not involved in the day to day affairs of the company. Further AR sought one weeks' time to file reply and the same was acceded to. Rest of the noticees did not appear for hearing.

15. Vide letters dated August 27, 2016, Shri Ramachandra Hansdah, Shri Hitesh Kumar Bagartti and Smt. Subarna Naik expressed their inability to appear for hearing and had interalia submitted that as they are in Judicial Custody since November 4, 2014, thus they are not in a position to compile the required documents for adequate submission and also can not appear personally without the permission of the Court. The aforesaid noticees also requested that the venue of personal hearing be changed from Mumbai to Bhubaneswar and a request should be made to the appropriate authority to take them from Judicial Custody to SEBI office Bhubaneswar for personal hearing.

Further vide letter dated 30/08/2016, Shri Kartikeya Parida through his Advocate Gauri Kumar Rath sought adjournment of personal hearing on 31/08/2016.

Accordingly, one more opportunity of hearing was granted to the noticees seeking

additional opportunity of hearing namely Shri Ramachandra Hansdah, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik and Shri Kartikeya Parida on 20th September, 2016 at the time and venue mentioned therein.

16. Subsequent to the date of hearing, letter of Office of Superintendent, Special Jail, Bhubaneswar (Welfare Services) dated September 03, 2016 was received forwarding the letter submitted by Shri Anjan Kumar Baliyarsingh wherein he has stated that he has no money to appear in Mumbai through Advocate and as a Chairman & Managing Director of Company, he wants to appear in person for detailed, transparent and further explanation and requested for hearing in Bhubaneswar office.

Hearing on September 20, 2016

17. Deepak Kumar Parida (son of noticee Shri Kartikeya Parida) appeared on behalf of the noticee on September 20, 2016 and filed letter dated September 20, 2016 on behalf of Deepak Kumar Parida wherein he requested for granting more time to his father to plead his innocence and schedule hearing in Bhubaneswar local office and has submitted *inter alia* the following-
 - a. That his father has not done the illegality and nothing incriminating has been seized from his possession, and he is in Jail Custody in connection with this matter Vide SPE Case No-45/2012
 - b. That, his bail application is also pending before the Hon'ble High Court of Orissa. He further stated that since his father is in judicial custody and his bail application is pending, he requested for granting more time to his father to plead his innocence and schedule hearing in Bhubaneswar local office for the reasons *inter alia* of financial crisis to appear in Mumbai.
18. Vide letter dated September 19, 2016 received from Office of Superintendent, Special Jail, Bhubaneswar forwarding the common letter of Shri Ramachandra Hansdah, Shri Hitesh Kumar Bagartti and Smt. Subarna Naik, the said noticees submitted that they had received SEBI's letter on September 17, 2016 and the time constrain prevented them from appointing

representative to appear on their behalf. They further stated that they are in judicial custody and cannot move out without complying with proper legal formalities and thus once again requested to fix another date in Bhubaneswar with request to Jharpada Special Jail, Bhubaneswar to allow them to appear the personal hearing.

Hearing on June 27, 2017

19. Subsequently, vide notification dated June 10, 2017 published in newspaper *Times of India* and notification dated June 10, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on June 27, 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.
20. Pursuant to the same, Shri Ramachandra Hansdah, Shri Hitesh Kumar Bagartti, Shri Subarna Naik vide letter dated June 18, 2017 submitted that they are in judicial custody of Special and not in the position to visit Mumbai for personal hearing and thus requested for hearing only in Bhubaneswar after necessary permission of Jail authorities.

Shri Kartikeya Parida vide the petition dated June 21, 2017 (forwarded through the Office of Superintendent of Special Jail, Bhubaneswar) interalia submitted that he, director of NDCSL, came to know from Daily Odiya Newspaper Dharitri that he was required to appear for hearing and since he is in judicial custody of Special Judicial Magistrate (CBI) Bhubaneswar, arrangements should be made for his appearance in Bhubaneswar so that he can appear through Court's Order.

Similarly Shri Anjan Kumar Baliyarsingh vide the petition dated June 21, 2017 (forwarded through the Office of Superintendent of Special Jail, Bhubaneswar) also requested for hearing only in Bhubaneswar on account of his judicial custody. Shri Anjan Kumar Baliyarsingh in his petition has also submitted that he is complying with this letter on behalf of him and his wife Harapriya Jena (Ex- Director). That he is the key person and Chairman cum Managing Director of the Company and used to manage all the day to day affairs of the company. That directors namely Sanyasi Pradhan, Harapriya Jena, Smita Patra, Nirupama Sahoo, Rama

Chandra Hansdah, Subarna Naik, Hitesh Kumar Bagartti had resigned from the company very earlier, who were having no role in this company and had not participated in any day to day affairs and decision making process. He further submitted that their company has already paid 80% of payments to investors and followed all due diligence with RoC. That company is having sufficient property to refund the balance amount. Hence he may be allowed to personally present before the Whole Time Member in Bhubaneswar for detailed explanation regarding company's affairs, communication with RoC, Investors details, place of investment and other queries.

21. Vide letter dated June 27, 2017 Smt. Smita Patra and Smt. Nirupama Sahoo submitted a joint representation through their advocate and had interalia submitted that-

- a) That Smt. Smita Patra and Smt. Nirupama Sahoo were appointed as the Directors of the Company at the time of its incorporation along with six other directors. That Smt. Smita Patra and Smt. Nirupama Sahoo were having 200 shares each.
- b) That the Company issued Non-Convertible Redeemable Preference Shares and Non-Convertible Unsecured Redeemable Debentures during financial year 2011-2012, 2012-13 and 2013-14.
- c) That with regard to the issuance of the shares and debentures by the Company, Smt. Smita Patra and Smt. Nirupama Sahoo were always kept in dark. That they were the sleeping Directors and were appointed as Directors merely for the sake of it and were never being informed about or involved in any functioning of the Company.
- d) Smt. Smita Patra and Smt. Nirupama Sahoo had no option of informing the Authorities about any such violation as they were completely unaware of the affairs of the Company
- e) That Smt. Smita Patra and Smt. Nirupama Sahoo resigned on October 29, 2012. After the said resignation of Smt. Smita Patra and Smt. Nirupama Sahoo from the position of Directors of the Company, they were never associated with any of the affairs of the Company and as such they cannot be held liable for any act of the Company which

has been carried out after their resignation.

- f) That subsequently some other Directors have also resigned from the Company and as of now there are only three directors of the Company namely Sri Shri Baliyarsingh, Sri Kartikeya Panda and Sri Pradeep Kumar Pattnaik.
- g) That with regard to the financial illegality of the Company, the CBI has registered a case against the Company, its present Directors and some of its Ex- Directors who were actively participating in the affairs of the Company. The said case is pending adjudication before the Special Chief Judicial Magistrate, CBI, Bhubaneswar vide SPE No. 45 of 2014. That in, the said case registered by the CBI, Smt. Smita Patra and Smt. Nirupama Sahoo are neither charge sheeted nor even mentioned anywhere as accused. There is not a single whisper about Smt. Smita Patra and Smt. Nirupama Sahoo with regard to any of the affairs of the Company. It is therefore evident that after the detailed investigation by the CBI, the CBI has concluded that the present Entities were not involved in the affairs of the Company and as such, excluded their name in the charge sheet
- h) That from the above mentioned facts, it is clear that Smt. Smita Patra and Smt. Nirupama Sahoo were never a part of the affairs of the Company and as such they cannot be held liable for acts of the Company neither during the period when they were acting as the Directors not after the said period.
- i) That the liability towards the investors against the issued shares and debentures may therefore kindly be transferred to the Company, its present Directors and any other person(s) who in view of SEBI was actively participating in the affairs of the Company and is responsible for issuance of the shares and debentures and such subsequent violations.

22. Shri Sanyasi Pradhan through his authorized representative, Ms. Monika Kumawat, Chartered Accountant appeared on the date of hearing on on June 27, 2017 and interalia submitted –

- a. That the noticee was director from August 12, 2011 to September 06, 2011.

Noticee had subscribed to the Memorandum of Association and Article of Association of NDSCL to the tune of 400 shares only, to accomplish the requirement of incorporation under Companies Act, 1956.

- b. Later on the said shares were sold to Smt. Harapriya Jena. AR requested one week's time to file written submission in the matter. AR was granted one week's time to submit written submission.

23. Subsequent to hearing held on June 27, 2017, vide letter dated July 03, 2017 Sanyasi Pradhan has made written submissions and interalia submitted the following-

- a) That he has submitted all the document personally on September 08, 2016 at the time of his appearance before the Hon'ble court .
- b) That he was a signatory to the memorandum of association of NDCSL which was incorporated on August 12, 2011 and had two subsidiary companies- (i) Nava Diganta Projects Private Limited (Changed to Nava Diganta Projects Limited by deleting the word private) (ii) Nava Diganta Real Estate Private Limited (changed to Nava Diganta Property Limited by deleting the word private).
- c) That due to his other preoccupation, he was not interested to do any business activity with NDCSL and its other subsidiary.
- d) That he has tendered his resignation after one month of incorporation from the company on 06.09.2011 which was accepted by the board on 12.09.2011, entered in the ledger folio no. 3. Necessary form no 32 was also filed before RoC, Cuttack, Orissa on 06.09.2011.
- e) That RoC has issued certificate of commencement on 21/09/2011 after 15 days of his resignation from the directorship. 400 equity shares of NDCSL held by him were transferred to Harapriya Jena on 09/09/2011.
- f) That NDCSL has also submitted its annual return before ROC Cuttack mentioning thereon that his 400 shares have been transferred to Harapriya Jena on 09/09/2011.
- g) In view of the above, he is no more accountable or liable for the activity of the

company after 06/09/2011 which is prior to the issue of the certificate of commencement on 21/09/2011.

24. Vide letter dated October 12, 2017, the Office of Superintendent of Special Jail, Bhubaneswar forwarded petitions dated October 10, 2017 submitted by- Shri Anjan Kumar Baliyarsingh and Shri Kartikeya Parida of its Special Jail. Vide the said petitions Shri Anjan Kumar Baliyarsingh and Shri Kartikeya Parida have *interalia* submitted that they have already made their submissions vide their earlier letters dated June 22, 2017 sent to the Whole Time Member from the jail through Superintendent and have forwarded the said letters once again for perusal and requested SEBI to suggest them next possible steps.

Hearing on May 09, 2018

25. Since almost all noticees requested for a hearing in Bhubaneswar, in the interest of natural justice, last and final opportunity of hearing was granted to all noticees vide hearing notice dated April 06, 2018 to appear for hearing through tele/video conference on May 09, 2018 either in Special Jail, Bhubaneswar for the noticees in police custody of Special Jail Bhubaneswar or in SEBI-Bhubaneswar Local Office for other noticees who wish to avail the final opportunity of hearing.
26. Shri Rama Chandra Hansdah was in judicial custody at Special Jail, Bhubaneswar (Welfare Services) and appeared for the hearing through tele/video conference from Special Jail, Bhubaneswar with due permission of Jail Superintendent and made *interalia* the following oral submissions-
- a. That CMD, Shri Baliyarsingh was the main person who raised money from the market.
 - b. That Shri Baliyarsingh used to come to his house and wanted a MLA like him to join his company. That after resistance, he joined the company as director of NDCSL.
 - c. That he contributed Rs. 4 lakhs to the company and thereafter when the company was floated, Shri Baliyarsingh was working solely with his earlier workers of HDFC Life.

- d. That as MLA, he did not have any time to attend to the affairs of the company and not aware that Shri Baliyarsingh was raising huge funds from general public. That once he gained knowledge of fund raising, he raised objection.
- e. That he expressed his intention to resign on December 2012 but was asked to change the content of the letter and submit a new resignation letter. That his resignation was accepted only on the condition that he gave unsecured loan of Rs. 4 lakh to NDCSL and thus he gave unsecured loan to NDCSL before resigning. The resignation was accepted only on May 20, 2013.
- f. That he has not taken any remuneration from the company and as per his knowledge, Shri Baliyarsingh was drawing a salary of approx. Rs. 80,000/- , Shri Pradeep Kumar Pattnaik was getting salary of Rs. 50,000/- and husbands of Smita Patra and Nirupama Sahoo were getting salary of Rs. 45,000/- each.
- g. Shri Ramachandra Hansdah was given one week's time to submit additional submission, if any.

27. Shri Sanyasi Pradhan appeared for the hearing through tele/video conferencing from SEBI-Bhubaneswar-Local Office and made *interalia* the following oral submissions-

- a. That he joined as a director of the company on August 12, 2011 but due to time needed for his duties as Sarpanch, he decided to resign from the company and resigned in 21 days on September 06, 2011 i.e. even before the issue of the certificate of commencement of the company on September 21, 2011.
- b. That he is not aware of anything happened in the company after his resignation.
- c. That there is no CBI case against him.

28. Shri Subarna Naik appeared for the hearing through tele/video conferencing from SEBI-Bhubaneswar-Local Office and made *interalia* the following oral submissions-

- a. That he became MLA in 2009. That Shri Baliyarsingh along with one Shri Rajeshwara Jena came to him to join NDCSL and when he resisted to join, they assured him that he will only be a name sake director of the company.

- b. That he resigned in November, 2012 which was accepted by the company on April 23, 2013.
- c. That he had not taken any remuneration from the company and instead gave Rs. 2 lakhs to the company.
- d. That he neither attended any meeting nor signed any document. That he was not aware of the affairs of the company.
- e. That, he was arrested by CBI and was put in jail for 2 years and 8 months.

29. Shri Hitesh Kumar Bagartti appeared for the hearing through tele/video conferencing from SEBI-Bhubaneshwar-Local Office and made *interalia* the following oral submissions-

- a. That he was appointed as director of NDCSL in the August 2011.
- b. That in November 2012, when he got to know about money raising activity, he tried to resign.
- c. That he was assured that his resignation will be sent in November 2012, however the said resignation was accepted only on May 2013.
- d. That CMD, Shri Baliyarsingh was the main person who raised money from the market. That he had no idea about the financial activities of the company. He neither has any money trail of the said raised money nor appended any signature for the same.
- e. That when asked about how he knew Mr Baliyarsingh, he submitted that he knew Anjan Kumar Baliyarsingh beforehand as Shri Baliyarsingh was the Branch head of HDFC Life wherein he had deposited certain money. That Shri Anjan Kumar Baliyarsingh along with MLA Subarna Naik and Shri Ramchndra Hansdah convinced him to join as director of NDCSL.
- f. When asked about the properties of the company, he submitted that some properties of the company have been seized by CBI and Shri Baliyarsingh will be the right person knowing the details.

30. Smt. Nirupama Sahoo along with her husband Shri Hemant Kumar Sahoo appeared for the hearing through tele/video conferencing from SEBI-Bhubaneshwar-Local Office and made

interalia the following oral submissions-

- a. That her husband knew Shri Baliyarsingh as he worked with him in HDFC Life.
- b. That she was informally asked to join the company NDCSL as a director and was told that she will be director for name sake and will be later on removed. She was assured that whatever problem happens in the company will be handled by Shri Baliyarsingh. Since her husband knew Shri Baliyarsingh and they trusted him, she became director of NDCSL.
- c. That she only lent her name as a director and was not involved in the affairs of the company and acted on the instructions of her husband.
- d. That her husband was working as a supervisor in the projects of NDCSL and was getting approx. Rs. 30,000/- as a salary from NDCSL.
- e. That Shri Baliyarsingh told her to resign in 2012 and she resigned in October 2012.

31. Smt. Smita Patra along with her husband Raja Kishore Jena appeared for the hearing through tele/video conferencing from SEBI-Bhubaneshwar-Local Office and made *interalia* the following oral submissions-

- a. That her husband was friend of Shri Baliyarsingh an employee of NDCSL drawing salary of Rs. 35,000/-.
- b. That Shri Baliyarsingh asked her to join as a director of NDCSL.
- c. That she was not involved in the affairs of the company and had only lent her name as a director of NDCSL.

32. Shri Pradeep Kumar Pattnaik appeared for the hearing through tele/video conferencing from SEBI-Bhubaneshwar-Local Office and made *interalia* the following oral submissions-

- a. That he was the director of the company since incorporation i.e. on August 12, 2011. On March 2013, 9 directors of the company decided to close the company and close its business. Pursuant to the same, 6 directors of the company resigned.

- b. That in 2013 he also wanted to resign as a director of NDCSL but could not resign as he was told in the Board meeting chaired by Shri Baliyarsingh that since minimum 3 people are required as directors of the company, he cannot resign as a director of NDCSL. In this regard Shri Pradeep Kumar Pattnaik is asked to submit the same on affidavit along with the dates of events.
- c. That none of the company's documents are with NDCSL as the same are seized by CBI.
- d. That he undertook to submit the details about the property of the company.

33. Shri Kartikeya Parida appeared for the hearing through tele/video conferencing from SEBI-Bhubaneshwar-Local Office and made *interalia* the following oral submissions-

- a. That he was made director of NDCSL.
- b. That he had no idea about the affairs of the company and about the money raised by Shri Baliyarsingh.
- c. That in 2013 he wanted to resign as a director of NDCSL but could not resign as he was told in the Board meeting chaired by Shri Baliyarsingh that since minimum 3 people are required as directors of the company, he cannot resign as a director of NDCSL. In this regard Shri Kartikeya Parida is asked to submit the same on affidavit along with the dates of events.

34. Smt. Harapriya Jena along with her authorized representative Shrikarta Kumar Sahoo appeared for the hearing through tele/video conferencing from SEBI-Bhubaneshwar-Local Office and made *interalia* the following oral submissions-

- a. That she only lent her name as director of NDCSL and acted on good faith of her husband Shri Baliyarsingh.
- b. That she joined as director of NDCSL in 2011. That she insisted on resigning and finally resigned in 2013 after birth of their son.
- c. That AR submitted that the company has refunded certain amounts to the investors and is ready to repay the rest to the investors provided the assets of the company are released by CBI.

- d. That when asked about the documents sought in the interim order, it was submitted that the noticee could not submit the documents sought in interim order as all documents are with CBI. The noticee was asked whether she had made any application to CBI seeking the said documents, the noticee submitted that no steps had been taken to retrieve documents including the list of debenture holders.

Smt. Harapriya Jena was given one month's time to retrieve the said documents from CBI through permission of Court and submit additional submissions, if any. The noticee was also given one weeks' time to submit proof of refund to investors as contended and the proof of application to CBI.

35. Shri Anjan Kumar Baliyarsingh appeared for the hearing through tele/video conferencing from SEBI-Bhubaneshwar-Local Office and made interalia the following oral submissions-

- a. That he became director of NDCSL in the year 2011 and was looking after the day to day affairs of the company.
- b. That he admitted that the company raised Rs. 5 crore from more than 1000 allottees.
- c. That the company secretary of the company advised him that it was a private placement.
- d. That every 15 days the company did necessary filing with RoC and was never told that the company was doing wrong.
- e. That there is no criminal complaint against NDCSL.
- f. That the company has refunded approx. 5 crores to the investors and is ready to repay the rest to the investors provided the assets of the company are released by CBI. In this regard, Shri Baliyarsingh is asked to submit the proof of the refund including bank statements/certified documents of CBI proving refund.
- g. That when asked about the property details, he submitted that company has property having market value of 6 to 7 crore from which all the remaining refund liability of the company can be paid back. In this regard, he is also asked to submit

property details of the company including the property sold by the company and the property in the books of the company.

- h. That when asked about the documents sought in the interim order, it was submitted that the noticee could not submit the documents sought in interim order as all documents are with CBI. The noticee was asked whether he has made any application to CBI seeking the said documents, the noticee submitted that no steps have been taken to retrieve documents including the list of debenture holders.

Shri Baliyarsingh was given one month's time to retrieve the said documents from CBI through permission of Court, submit proof of refund and submit additional submissions, if any. Shri Baliyarsingh is also required to submit the proof of application to CBI within one week.

Shri Baliyarsingh was informed at the time of hearing the submission of Shri Pradeep Kumar Pattnaik and Shri Kartikeya Parida that they wanted to resign from the company however they were told by Shri Baliyarsingh that they cannot resign as company required 3 directors. Shri Baliyarsingh denied the said fact and was asked to submit Affidavit pursuant to the same.

36. As stated earlier, pursuant to the hearing, Shri Pradeep Kumar Pattnaik was asked to submit the details about the property of the company. In this regard, Shri Pradeep Kumar Pattnaik vide letter dated May 23, 2018 submitted that all records of the company were maintained at registered office of company and were looked after by Shri Baliyarsingh. He further expressed his inability to produce/ records of the company as they are seized by CBI for which an application has been made by him and he will produce the same once he gets them.

He was further asked to submit the events of his resignation on affidavit. In this regard he has submitted an Affidavit wherein he stated that on August 31, 2013, on account of dissatisfaction with the management of the Company, he tendered his resignation to the Board of Directors with the request to the company for making necessary filing with RoC, Odisha. The MD and Company Secretary of the company had subsequently expressed their

inability in accepting and making necessary filing of his resignation as filing of the then Form 32 was technically not possible as the Board's strength would come below the minimum 3 Directors on account of his resignation. Thus he became scapegoat for the company. He also submitted that the receipt of his resignation was admitted by Shri Baliyarsingh, MD of NDCSL during the personal hearing on May 09, 2018. In this regard, Shri Pradeep Kumar Pattnaik, the true copy of his resignation letter dated August 31, 2013.

37. Shri Kartikeya Parida was asked to submit the events of his resignation on affidavit. In this regard, Shri Parida has interalia along with other events, submitted on affidavit that he decided to quit the company and filed his resignation from the Board of Directors as well as shareholder of the company. That during the pendency of his resignation, General Election 2014 was declared to be held and some of the directors also filed their resignation and looking into the political involvement of those directors, their resignation was accepted and his resignation was not accepted. He being director of the company, never allured any person to make any investment or promised any return
38. As stated earlier, during the personal hearing on May 09, 2018, Smt. Harapriya Jena was given one month's time to retrieve the said documents from CBI through permission of Court and submit additional submissions, if any. The noticee was also given one weeks' time to submit proof of refund to investors as contended and the proof of application to CBI. In this regard vide letter dated June 05, 2018, Smt. Harapriya Jena made written submissions and submitted that she has put signature only on documents/forms for formation of the company and thereafter had not participated in any affairs of the company. There is no money trail, no accounts, no property in her name and CBI after interrogation has given her clean chit in its final charge sheet. Thus she requested her husband to submit all the required documents on her behalf.
39. Further, during the personal hearing on May 09, 2018 Shri Baliyarsingh was asked to submit Affidavit, the reason of continuance of two other directors Shri Pradeep Kumar Pattnaik and Shri Kartikeya Parida despite their intention to resign. In this regard, vide letter dated June 05, 2018, Shri Anjan Kumar Baliyarsingh submitted an affidavit wherein he stated that in

2013, all the six directors of the company has taken decision that 3 directors of the company namely Shri Anjan Kumar Baliyarsingh, Pradeep Kumar Pattnaik and Karitikeya Parida will continue as directors of the company and the resignation of 3 directors namely Ram Chandra Hansdah, Subarna Naik and Hitesh Bagartri will be accepted. The Company Secretary namely Sanjay Kumar Mohapatra directed that minimum three directors will be required in the said company. Shri Baliyarsingh was given time to submit proof of refund by the company to the investors as claimed by him, to retrieve the documents from CBI as sought in the interim order through permission of Court and submit the proof of the said application to CBI. In this regard, Shri Anjan Kumar Baliyarsingh submitted certified copy of his application made to CBI Court seeking documents and certain details of property of the company. However no proof of refund was submitted by him despite given several opportunities.

40. Mrs. Nirupama Sahoo and Mrs. Smita Patra vide letters dated May 19, 2018 made additional submissions wherein they reiterated their earlier submissions. They also submitted that Shri Baliyarsingh had submitted before SEBI by way of petition dated June 21, 2017 and also during personal hearing that Shri Baliyarsingh is taking all responsibilities of the illegal acts of NDCSL and categorically stating therein that Mrs. Nirupama Sahoo and Mrs. Smita Patra were never involved in any affairs of the company since he was the only key person who has managed all the affairs of the company.
41. Shri Sanyasi Pradhan vide letters dated May 06, 2018 and May 21, 2018 made additional submission wherein he reiterated his earlier submissions.
42. Shri Subarna Naik vide letter dated May 16, 2018 made written submissions subsequent to the personal hearing wherein he *interalia* submitted the following -
 - a. That Shri Subarna Naik was elected as Member of Legislative Assembly (MLA) in the year 2009 from Keonjhar constituency.
 - b. That during that period one Raj Kishore Jena, an Insurance Adviser working with HDFC Standard Life sought for repeated admission, visited his Government quarter on several occasions and tried to convince him to invest any life insurance

products. That during the course of time, the said Raj Kishore Jena became very close to him.

- c. That in one of his visit, Shri Jena proposed him to start a Construction company with gains but due to lack of knowledge in that field and due to various busy schedule of his constituency, responsibilities towards the people, he refused to join.
- d. That after few months during July-August, 2011, the said Raj Kishore Jena introduced him to one Shri Anjan Kumar Baliyarsingh who used to work as Marketing Manager in his company. Shri Anjan Kumar Baliyarsingh along with Shri Raj Kishore Jena proposed him to join as one of the Board of Directors and shareholders of a construction company proposed to be started by them. Shri Naik rejected but both Raj Kishore Jena and Shri Anjan Kumar Baliyarsingh assured him that his role in the company will be as a shareholder and he will not have to share any time or energy for their company.
- e. That Shri Anjan Kumar Baliyarsingh's confidence towards the business and some ex-MLA's and Member of Parliament joining the company, convinced him to accepted the offer and thus he joined the company in 2011 wherein he was allotted 8% of shareholder in the company along with four other Directors namely Rama Chandra Hansada, 8% (2) Hitesh Kumar Bagarti, 8%, 3) Shri Kartikeya Parida, 8%, 4) Pradeep Parida, 8%. Anjan Kumar Baliyarsingh's wife was also made as shareholder, Director with 53% share and Raj Kishore Jena and Hemant's wife were also inducted as Director having share of 3.5% each.
- f. That during the period of his directorship, Raj Kishore Jena asked him to sign bunch of documents for allotting the shares. He signed those documents and also handed over Passport photos and photo copy of his PAN, Voter ID, Driving license, Electric bill etc. That Shri Anjan Kumar Baliyarsingh asked him to pay Rs. 4,00,000/- towards share allotment and since he did not have that amount with him, he gave him Two Lakhs Rupees in cash. Both Shri Raj Kishore Jena and Shri Anjan Kumar Baliyarsingh informed him that the shareholder

contributions towards the company shall be in the Bank account. On the contrary, they took his signature on the pretext that the Company Bank account is to be opened in the Bank and he had to gave 8 to 10 signatures on the documents and Company Account opening form.

- g. That Shri Baliyarsingh informed him that he will work as Chairman-cum-Managing Director of the company along with two full time Directors who will look after the day to day activities of the company. They are Raj Kishore Jena and Hemanta Kumar Sahoo.
- h. That Shri Anjan Kumar Baliyarsingh further informed him that the Bank accounts will be jointly operated by Shri Naik and Shri Kartikeya Parida in order to check misuse of the funds.
- i. That Raj Kishore Jena along with the Accountant Mirdha also sought for his signature on 20 to 30 blank cheque which were already signed by Shri Kartikeya Parida and that he was assured that the said cheque will never be mis-utilized. Later, Shri Anjan Kumar Baliyarsingh convinced him that he had to sign on few Blank cheques of his personal accounts. Shri Anjan Kumar Baliyarsingh assured him that the cheque books will be kept with him and the same will be used appropriately after due authorization from Board members but surprisingly Shri Anjan Kumar Baliyarsingh never convened any Board meeting or organized any type of meeting and as such misutilised the cheques.
- j. That from Raj kishore Jena and the Company Accountant Mirdha, he came to know that Shri Anjan Kumar Baliyarsingh had collected public deposits promising good return on invested money and also to provide a cheaper homestead land and building in prime location which was totally against the commitment, hence he alongwith Shri Hitesh Kumar Bagarti visited the office of Shri Anjan Kumar Baliyarsingh seeking reason for deviation from the agreed terms and conditions. However, when he did not get any satisfactory explanation from Shri Anjan Kumar Baliyarsingh, he handed over his resignation to him which was deliberately delayed by Shri Baliyarsingh.

- k. That Shri Anjan Kumar Baliyarsingh was the sole authority and digital signatory holder of the Company and was looking after all affairs of the company. Shri Baliyarsingh demanded Rs. 20,00,000/- for his withdrawal from the affairs of the company. Since, he was holding a public post, he paid him Rs. 5,00,000/- through Raj Kishore Jena and subsequently paid Rs. 12,00,000/- with a promise that Shri Baliyarsingh will return the said amount to him after acceptance of his resignation but till date Shri Baliyarsingh never returned his money. His resignation was finally accepted on April 23, 2013 and he was removed from the Directorship and he handed over his allotted share to the nominated members.
 - l. That as far as his role and responsibilities are concerned, he was unaware of any of the situation prevailing in the company and that he never received a single penny from the company nor he had ever signed in any of the minutes or Board resolutions. Surprisingly, he was arrested by CBI on November 04, 2014 and remained in judicial custody till August 09, 2017 where he was granted Bail by the Hon'ble High Court of Orissa and presently facing trial in the said case.
 - m. It will not be out of place to mention here that all agents of the company were engaged by the Chairman-cum-Managing Director, Shri Anjan Kumar Baliyarsingh only. Similarly all the office staff, Branch Head were also very close to Shri Anjan Kumar Baliyarsingh.
 - n. That during CBI enquiry, number of agents have been cited as prosecution witnesses who were linked with the company through their wife and other relatives.
43. Hitesh Kumar Bagartti vide letter dated May 17, 2018 and Shri Subarna Naik vide letter dated May 22, 2018 made similar additional submissions and submitted, *inter alia*, the following-
- a) That they do not have copies of the Memorandum of Association and Articles of Association with them, and however, same will be submitted to SEBI after obtaining a certified copy from ROC.

- b) As regards copies of Audited Annual Accounts of the Company for the last three years, preparation as well as audit of the financial statements is pending for the last three financial years.
- c) Shri Anjan Kumar Baliyarsingh is the Key Managerial Person of the Company as on date.
- d) As regards copies of prospectus, the Company has not gone for any public issue and whatever allotments have been made, were made through private placement only.
- e) Details regarding the public issue sought for such as number of applications received number of Allottees, subscription amount, dispatch of share certificates, application form, advertisement etc. have not been made.
- f) As regards terms of issue, they are not aware of anything regarding this. Shri Anjan Kumar Baliyarsingh only was handling the matter and he can only be answerable to this.
- g) All the documents of the Company available on the MCA website are final and no other copies are available with them. However, they are trying to collect some documents seized by Central Bureau of Investigation (“CBI”) copies of which will be submitted to SEBI after its receipt.

Hitesh Kumar Bagartti also submitted a letter dated February 02, 2014 submitted to RoC, Orissa wherein he as a MLA, Khariar has filed a complaint regarding the affairs of NDCSL wherein he has submitted that since he has invested an amount of Rs. 3 lakh in equity shares in NDCSL, he was lured by CMD, Shri Baliyarsingh and Rajkishore Jena to become director of NDCSL at the time of incorporation so as to protect his financial interest. He also stated in that letter that he has never attended any meeting during his tenure and was not party to any decision made by the company.

44. Vide letter dated May 16, 2018 received in SEBI on June 14, 2018, Shri Rama Chandra Hansdah made additional written submissions and *inter alia*, submitted the following-

- a) That, prior to formation of these companies Shri Baliyarsingh was a senior sales executive in the HDFC Life Company. During that time Shri Ramchandra Hansdah was a M.L.A. of Odisha Legislative Assembly. Shri Baliyarsingh approached Shri Ramchandra Hansdah through one of his junior official named Shri Raj Kishore Jena, persuading him to make

a deposit policy in their HDFC Life Company. In this way they were able to convince him me for Contributing in a policy of HDFC Life in 2010.

- b) That, thereafter Shri Baliyarsingh frequently visited his M.L.A. quarters at Bhubaneswar with some plea. Once Shri Baliyarsingh disclosed to him that he wanted to float a company that would do its business mostly in construction works of tender jobs and real estate and that he wanted to make some honest and renowned persons like Shri Ramchandra Hansdah as promoter directors of the said company.
- c) Though initially he showed some reluctance to join his proposed company, he was assured that Shri Baliyarsingh will be keeping major share of the company and would be personally managing the affairs of the company after observing due diligence to the company rules, Shri Ramchandra Hansdah could be simply a sleeping director paying 8% of equity share. Thus, on good faith Shri Ramchandra Hansdah agreed to become a promoter/director of NDCSL paying Rs. 4 lakh as 8% of his equity share.
- d) That, thereafter when the company was formed he become the CMD of the company. He solely managed the company and decisions were taken with aid and advice of the company secretary Shri Sanjay Kumar Mahapatra. In the day to day affairs of the company he was assisted by two husbands of the lady directors i.e; Shri Rai Kishore Jena (husband of Smita Patra) and Shri Hemanta Sahoo (husband of Nirupama Sahoo) and another director Shri Pradeep Pattanaik. Reportedly the CMD, Shri Baliyarsingh, Shri Pradeep Pattanaik, Shri Rajkishore Jena and Shri Hemanta Sahoo were taking monthly remuneration of Rs.80,000/-, Rs. 50,000/-, Rs. 45,000/- and Rs. 45,000/- respectively.
- e) That, CMD Shri Baliyarsingh made them believe that the company would do its business with money collected through a few permissible number of RPSs and privately placed unsecured debentures collected only from directors either in their own names or the names of their family members. At the same time, directors might be asked to lend unsecured loan to the company when required. In this way the CMD had once convinced them to buy an unsecured debenture bond of Rs. 3 lakh and give loan of Rs. 4 lakhs. So far he has been refunded only Rs. 1 lakh of the loan and neither the rest Rs. 3 lakh of the said loan nor matured value of the debenture bond has been returned to him yet.

- f) That, when the CMD was delaying to refund his loan amount even during his financial crisis, he went to the office once or twice in the month of December 2012. There he came to know that Shri Baliyarsingh was indiscriminately collecting deposit from general public through appointing some persons from his erstwhile company of HDFC life as agents who were apportioning huge commission among themselves for this work. Shri Baliyarsingh was even sitting over the statutory audit report where some objections were raised regarding flouting of company rules, and regulations.
- g) Subsequently, Shri Ramchandra Hansdah shared his apprehension with two other M.L.A.s i.e., Shri Subarna Naik and Shri Hitesh Kumar Bagarttii who were also made promoter-directors of the company with identical equity share of 8%. When all three of them called upon Shri Baliyarsingh to account for the company activity, he prevaricated and informed them that no violation had been committed. However not convinced with his explanation, they all expressed their desire to resign from the company.
- h) That, their apprehensions were confirmed in the AGM held on March 2013 to ratify the statutory audit report. In that AGM. There was a hot argument exchanged between the company secretary Shri Sanjay Kumar Mohapatra and statutory auditor B.N. Mishra regarding legality of some objections raised in the report. Upon this they pressed their resignation to be accepted forthwith and even threatened the CMD to resort to legal action if he continued taking deposit from the public. Ultimately he agreed both to accept their resignation and stop collection from public which he was doing monopolistically but with a condition that they gave some unsecured loan to the company. Thereafter, only when they gave him some loan, their resignations were accepted in the month of April/ May 2013.
- i) That, though he was neither involved in collection of money nor had any knowledge regarding it, CBI for reasons best known to it had arrested him and he has been languishing in the jail since November 2014. When in the jail he had interacted with CMD Shri Baliyarsingh who informed him that the company had a liability of around Rs. 2 crore to be refunded to the investors. He further informed that the company has a crusher and a hot mix plant at Kaipadar mouza wider Khurda Tehsil (Khurda District) sprawling on

a land of Ac. 5.525 decimil with khata No. 1247/101 and plot No. 2683/6, 2684/7, 2676/1, 2678/2, 2682/5, 2682/4, 2679/3 and plot No. 1251, Khata No. 367/60 at Sakhigopal Tehsil (Purl District), Narendrapur mouza measuring Ac. 4.80 purportedly kept for a rice mill plant with the assets of the Company available, the CMD showed confidence to refund all the depositors their due.

CONSIDERATION OF ISSUES

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

- (1) Whether the company came out with the Offer of RPS and NCDs as stated in the interim order.*
- (2) If so, whether the said issues of NCD and RPS are in violation of Section 56, Section 60 read with section 2(36), Section 73 of the Companies Act, 1956 and whether the Offer of NCDs is in violation of Section 117B and Section 117C of Companies Act, 1956, and relevant provisions of the Debt Securities Regulations mentioned in the interim order?*
- (3) If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?*

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

46. I have perused the interim order dated May 07, 2015 for the allegation of *Offer of RPS and NCDs*. The company and its directors did not dispute the said issuance.

47. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted from the data collated from Form 2 (Form for Return of Allotment – filed by NDCSL with the ROC in accordance with the provisions of the Companies Act, 1956) for the Financial Years 2011–12; 2012–13 and 2013–14 that NDCSL has issued and allotted RPS to 874 investors during the financial years 2011-2012, 2012-2013, 2013-2014 and raised an amount of Rs. 2.24 Crores. It is also noted from the data

collated from Form 20B (Form for filing Annual Return – filed by NDCSL with the ROC in accordance with the provisions of the Companies Act, 1956 that NDCSL had made an offer of NCDs in the financial years 2011-2012 and raised an amount of Rs. 2.77 crores.

48. *I therefore conclude that NDCSL came out with an offer of RPS and 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.

49. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of RPS and NCDs* made to the public. Therefore the primary question that arises for consideration is whether the issue of RPS and 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)."*

50. 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.”

51. 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*.
52. Shri Hitesh Kumar Bagartti submitted that the Company has not gone for any public issue and whatever allotments have been made, were made through private placement only. Further Shri Baliyarsingh submitted that the company secretary of the company advised him that it was a private placement. However apart from a mere claim, they have not submitted any evidence to prove their claim that the allotments were private placement. I also note that none of the other directors have contended that the *Offer of RPS and NCD* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956. In the instant matter, I find that RPS were issued by NDCSL to at least 874 investors in the financial years 2011-2012 , 2012-2013 , 2013-2014 and an amount of Rs. 2.24 Crores has been raised.
53. It is observed from the MCA21 Portal and the data collated from Form 20B (Form for filing Annual Return – filed by NDCSL with the ROC in accordance with the provisions of the Companies Act, 1956 that under the Offer of NCDs, during the Financial Year 2011–12, NDCSL issued NCDs amounting to a total of ₹2.77 Crores. It is also noted that the Auditor's Report attached to the Balance Sheet for the Financial Year 2011–12, stated that: "Company has issued non-convertible unsecured Debentures and also Redeemable

Preference shares to general public at large." Further the RPS have been issued to more than fifty persons. I find that NDCSL has not claimed itself 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 NDCSL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

54. 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".
55. Therefore, in view of the material available on record and the above findings lead to a reasonable conclusion that the Offer of RPS of NDCSL was a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956 and Offer of NCD by NDCSL was a "public issue" within the meaning of section 67(1) of the Companies Act, 1956.
56. Hence, the *Offer of RPS and NCD* are deemed to be public issues and public issue respectively and NDCSL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

57. Further, since the offer of RPS and NCD 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. Shri Baliyarsingh, Chief Managing Director of NDCSL has submitted that the company/directors have paid more than 80% of dues till their arrests and were in the process to refund balance amount which is also reflected in CBI charge sheet. In this regard it is noted that none of the noticees have submitted any material to substantiate the aforesaid claim of payment of 80% of dues to the investors.
58. I also find that no records have been submitted to indicate that the Company has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that NDCSL has contravened the said provisions. NDCSL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that NDCSL 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.
59. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RPS and NCD was a public issue of securities, NDCSL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that NDCSL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RPS. I,

therefore, find that NDCSL has not complied with the provisions of section 60 of the Companies Act, 1956.

60. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Neither NDCSL nor its directors produced any record to show that it has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, NDCSL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
61. Under section 117B of the Companies Act, 1956 no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. I find from the Auditor's Report attached to the Balance Sheet for the Financial Year 2011–12, that Company has not created any Debenture Trust at the time of issue of Debentures in violation of Section 117B of Companies Act, 1956. Therefore, I hold that the company has violated section 117B of the Companies Act, 1956.
62. 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.
63. 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 NDCSL 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.

64. 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"

65. 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..."

66. In view of the above findings, I am of the view that NDCSL engaged in fund mobilizing activity from the public, through the offer of RPS and NCDs and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117B & 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.

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

67. I note that with regard to acting as director of the company and discharging the duties of the directors, the noticees *inter-alia* made the following submissions-

- a. Shri Anjan Kumar Baliyarsingh submitted that he is the key person and Chairman cum Managing Director of the Company and used to manage all the day to day affairs of the company. He further submitted that directors namely Sanyasi Pradhan, Harapriya Jena, Smita Patra, Nirupama Sahoo, Rama Chandra Hansdah, Subarna Naik, Hitesh Kumar Bagartti had resigned from the company very early, had no role in this company and had not participated in any day to day affairs/ decision making process.
- b. Pradeep Kumar Pattnaik submitted that he was not involved in the affairs of the company and Shri Baliyarsingh, Chief Managing Director was the chief functionary of the Company and.
- c. Shri Kartikeya Parida submitted that he had absolutely no knowledge about the activities and day to day business of the company and was just a sleeping director of the company.
- d. Shri Rama Chandra Hansdah submitted that as MLA he did not have any time to attend to the affairs of the company. and Shri Baliyarsingh was the main person who raised money from the market and solely managed the affairs of the company and he was not aware that Shri Baliyarsingh was raising huge funds from general public. He was told before his appointment that he could simply be a sleeping director having 8% of equity shares and resigned after obtaining knowledge of the dubious activities carried out in the company.
- e. Smt. Smita Patra and Smt. Nirupama Sahoo have submitted that they have never taken part in any of the affairs of the Company even during the period when they were holding the position of Directors. They were merely sleeping Directors and were appointed as Directors only for the sake of it and were never being informed about or involved in any functioning of the Company. In this regard I note that during the personal hearing, respective husbands of both Smt. Smita Patra and Smt. Nirupama Sahoo admitted that they were project supervisor/employee of NDCSL, drawing monetary gratification /salary from NDCSL and knew Shri Baliyarsingh beforehand as a friend/colleagues. It is also admitted by Smt. Smita

Patra and Smt. Nirupama Sahoo that they knowingly lent their names as directors of NDCSL.

- f. Shri Subarna Naik submitted that on persuasion of Raj Kishore Jena and Shri Baliyarsingh, he joined as director of NDCSL in 2011. He was informed by Shri Baliyarsingh that the Bank accounts will be jointly operated by Shri Naik and Shri Kartikeya Parida in order to check misuse of the funds. He submitted that he signed 20-30 blank cheque on good faith which were misutilised and further gave Rs. 17 lakhs for resigning from the directorship of the company. He submitted that as far as his role and responsibilities are concerned, he was unaware of any of the situation prevailing in the company and that he never received a single penny from the company nor he had ever signed any of the minutes or Board resolutions. He submitted that he neither attended any meeting nor signed any document. He also submitted that he was not aware of the affairs of the company.
- g. Shri Hitesh Kumar Bagartti submitted that he had no idea about the financial activities of the company. He neither has any money trail of the said raised money nor appended any signature for the same. He further submitted that CMD, Shri Baliyarsingh was the main person who raised money from the market.
- h. Smt. Haripriya Jena has submitted that she only lent her name as director of NDCSL and acted on good faith of her husband Shri Baliyarsingh.

I have considered the submissions of all the above noticees. At this juncture I would like to rely on Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI wherein Hon'ble SAT has observed that-

"Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956."

Thus in view of SAT decision of **Manoj Agarwal vs. SEBI**, the contention of all the above directors that they were not aware of the affairs of the company and were appointed as

Directors merely for the sake of it and were never informed about or involved in any functioning of the Company is not acceptable. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or the consequences for any violation or default thereof must be faced. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. No director should be allowed to take a defence that he/she had merely lent his/her name as a director, however was not aware about the affairs of the company and did not discharge any role as a director of the company. In view of the same, I don't accept the said contention of the aforesaid noticees.

68. With regard to the submission of the noticees on the appointment, resignation and tenure of directorship of the directors, I note that Smt. Harapriya Jena submitted that she joined as director of NDCSL in 2011 and finally resigned in 2013. Shri Rama Chandra Hansdah admitted that he was appointed as director of NDCSL and submitted that his resignation which was accepted on May 20, 2013. Shri Hitesh Kumar Bagartti admitted that he was appointed as director of NDCSL in August 2011 and submitted that his resignation was accepted on May 2013. Shri Subarna Naik admitted that he was appointed as director of NDCSL and his resignation was accepted on April 23, 2013. Smt. Smita Patra and Smt. Nirupama Sahoo admitted that they were appointed as the Directors of the Company at the time of its incorporation and submitted that they resigned on October 29, 2012. I note that all the above directors admitted they were appointed as directors and thereafter resigned and the tenure of directorship is more or less in line with MCA records. In view of the same, I am inclined to go as per MCA records.
69. Further, I note that Pradeep Kumar Pattnaik has admitted that he was appointed as directors of the company and had submitted an Affidavit that on account of dissatisfaction with the management of the Company, on August 31, 2013, he tendered his resignation with the request to the company for making necessary filing with RoC, Odisha, however the MD and Company Secretary of the company had subsequently expressed their inability in accepting and doing necessary filing of his resignation since it was technically not possible as the Board's

strength would come below the minimum 3 Directors on account of his resignation. In this regard Shri Pradeep Kumar Pattnaik submitted true copy of resignation letter dated August 31, 2013. On perusal of the same, I note that there is nothing in the said resignation letter to show that the resignation letter was indeed forwarded to Board of Directors of NDCSL as it does not bear any stamp of its receipt by NDCSL. I also note that even subsequent to his claimed resignation on August 31, 2013, Shri Pradeep Kumar Pattnaik in his reply dated August 20, 2016 has submitted that he is 8% shareholder director of NDCSL.

I also note that Shri Kartikeya Parida submitted on affidavit that he joined as director and after few months of looking into the business activity of NDCSL, he decided to quit and filed his resignation from the Board of Directors. Shri Kartikeya Parida submitted in the said affidavit that during the pendency of his resignation, other directors of the company also filed their resignation and in view the political involvement of those directors, their resignation was accepted and his resignation was not accepted. I note from the affidavit that Shri Kartikeya Parida claimed that he resigned but did not even mention the date of his resignation. Further, I note that even subsequent to his claimed resignation in 2013, Shri Kartikeya Parida vide letter dated June 21, 2017 has submitted his reply wherein he has mentioned himself as Director of NDCSL.

I also note that vide letter dated June 05, 2018, Shri Anjan Kumar Baliyarsingh also submitted an affidavit wherein he stated that in 2013, all the directors of the company has taken decision that 3 directors of the company namely Shri Anjan Kumar Baliyarsingh, Pradeep Kumar Pattnaik and Karitikeya Parida will continue as directors of the company. The Company Secretary namely Sanjay Kumar Mohapatra directed that minimum three directors will be required in the said company.

In view of the contradictory sequence of events mentioned on affidavit by Shri Pradeep Kumar Pattnaik and Shri Karitikeya Parida on one side and Shri Anjan Kumar Baliyarsingh on the other, and also in view of the lack of sufficient documentary support provided by any of the three to substantiate their affidavit, I am unable to place reliance on their affidavit. Further, I note that, Shri Pradeep Kumar Pattnaik and Shri Karitikeya Parida have referred themselves as directors of NDCSL in their previous replies submitted even subsequent to the

claimed resignation which also indicates that they were still continuing as directors of NDCSL. Thus, with regard to the tenure of directorship of Shri Pradeep Kumar Pattnaik, Shri Karitkeya Parida and Shri Anjan Kumar Baliyarsingh, I am inclined to go as per MCA records.

70. I note that Shri Sanyasi Pradhan has submitted that he was a signatory to the Memorandum of Association of NDCSL which was incorporated on August 12, 2011. That he has tendered his resignation 21 days after the incorporation from the company on September 06, 2011 which was accepted by the board on September 12, 2011. He further submitted that RoC has issued certificate of commencement of business on September 21, 2011 i.e. 15 days after his resignation from the directorship. 400 equity shares of NDCSL held by him were transferred to Harapriya Jena on September 09, 2011. Thus he is no more accountable or liable for the activity of the company after September 06, 2011 which is prior to the issue of the certificate of commencement on September 21, 2011. In the present case NDCSL was incorporated on August 12, 2011 and Shri Sanyasi Pradhan was appointed on the day of the incorporation of NDCSL on August 12, 2011, however since certificate of commencement of business was issued to the Company only September 21, 2011 i.e. 15 days after the resignation of Shri Sanyasi Pradhan from the directorship and there is no evidence on record to the effect that money was collected or any resolution was passed prior to the commencement of business, I am inclined to give the benefit of doubt to Shri. Sanyasi Pradhan.
71. As per MCA records, I find that the present Directors in NDCSL are Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh. I also note that Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, who were earlier Directors in NDCSL, 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
Shri Sanyasi Pradhan	August 12, 2011	September 06, 2011*
Smt. Harapriya Jena	August 12, 2011	April 15, 2013
Shri Kartikeya Parida	August 12, 2011	Continuing
Smt. Smita Patra	August 12, 2011	October 29, 2012
Shri Pradeep Kumar Pattnaik	August 12, 2011	Continuing
Shri Ramachandra Hansdah	August 12, 2011	May 20, 2013
Smt. Nirupama Sahoo	August 12, 2011	October 29, 2012
Shri Hitesh Kumar Bagartti	August 12, 2011	May 20, 2013
Smt. Subarna Naik	August 12, 2011	April 23, 2013
Shri Anjan Kumar Baliyarsingh	September 16, 2011	Continuing

* Shri Sanyasi Pradhan resigned prior to the issue of the certificate of commencement on September 21, 2011

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

73. 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%.

74. In this case, Shri Anjan Kumar Baliyarsingh is shown to have signed as the Managing Director for the documents filed before RoC during the tenure of his Directorship in the Company. For instance Form 20B for filing Annual Return for the years 2011-2012 were filed by Shri Anjan Kumar Baliyarsingh with such designation. Further Shri Baliyarsingh claims that he is the key person and Chairman cum Managing Director of the Company and used to manage all the day to day affairs of the company. He further submitted that directors namely Harapriya Jena, Smita Patra, Nirupama Sahoo, Rama Chandra Hansdah, Subarna Naik, Hitesh Kumar Bagartti had resigned from the company very earlier, who were having no role in this company and had not participated in any day to day affairs and decision making process. However, neither there is any material available on record to indicate that the day to day affairs of the company was only carried on by Shri Baliyarsingh, nor substantial powers of management was entrusted to Shri Baliyarsingh as stipulated under section 2(26) of the Companies Act, 1956, except the claim of Shri Baliyarsingh. From the material available on record and the details of the appointment and resignation of the directors of NDCSL as reproduced in paragraph 71 of this Order, it is noted that Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh 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. Therefore, as per Section 5(g) of the Companies Act, 1956 all the past and present directors of NDCSL, 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. 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 NDCSL and its Directors, viz. Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh 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.

75. I note that during the financial years 2011-2012, 2012-2013, 2013-2014 NDCSL through Offer of RPS had collected an amount of Rs. 2.24 Crores from various allottees and during the financial years 2011-2012 NDCSL through Offer of NCDs had collected an amount of Rs. 2.77 crores. I note that Smt. Harapriya Jena was director of NDCSL during financial years 2011-2012, 2012-2013, 2013-2014. I note that Shri Kartikeya Parida has been director of NDCSL since financial years 2011-2012, 2012-2013, 2013-2014 till present date. I note that Smt. Smita Patra was director of NDCSL during financial years 2011-2012, 2012-2013. I note that Shri Pradeep Kumar Pattnaik has been director of NDCSL since financial years 2011-2012, 2012-2013, 2013-2014 till present date. I note that Shri Ramachandra Hansdah was director of NDCSL during financial years 2011-2012, 2012-2013, 2013-2014. I note that Smt. Nirupama Sahoo was director of NDCSL during financial years 2011-2012, 2012-2013. I note that Shri Hitesh Kumar Bagartti was director of NDCSL during financial years 2011-2012, 2012-2013, 2013-2014. I note that Smt. Subarna Naik was director of NDCSL during financial years 2011-2012, 2012-2013, 2013-2014. I note that Shri Anjan Kumar Baliyarsingh has been director of NDCSL since financial years 2011-2012, 2012-2013, 2013-2014 till present date. 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 NDCSL and other directors are limited to the extent of amount collected during his/her tenure as director of NDCSL.

76. As far as the liability under sections 117B and 117C of the Companies Act, 1956, is concerned, the liability is on the company to comply with the said provisions. Therefore, NDCSL is liable for the violation of sections 117B and 117C of the SEBI Act.
77. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 63 of this order, the liability is on the Company to comply with the requirements therein.
78. 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 NDCSL and its Directors, viz. Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors, to safeguard the interest of the investors who had subscribed to such RPS and 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. However, I note that Shri Anjan Kumar Baliyarsingh claims to be the key person of the Company which is also evident from the Order of the Special Chief Judicial Magistrate, CBI in the matter SPE No. 45 (A)/2014, wherein Shri Anjan Kumar Baliyarsingh, Managing Director, represented convict company NDCSL and the Special Chief Judicial Magistrate, CBI vide Order dated May 12, 2017 directed NDCSL to repay Rs. 8.50 crores (Rupees Eight Crore fifty lakhs). In view of this, though all the Noticees are jointly and severally liable for the refund, if there is a failure to refund, it would be appropriate that the recovery may be considered against the assets of NDCSL and Shri Anjan Kumar Baliyarsingh, at first, if there are sufficient assets available and thereafter against the

other Noticees. Appropriate directions in this regard is issued in this order. I am also of the view that the recovery proceedings may be continued taking into consideration any compensation amount which may have been paid to the unpaid investors by NDCSL from the aforesaid amount of Rs.8.50 Crores. Appropriate directions in this regard are issued in this Order.

79. I also note that, vide the interim order dated May 07, 2015, NDCSL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of NDCSL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory were provided either by NDCSL or the other Noticees at that time despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 10 of this Order. Further during the personal hearing and additional submission thereafter, Shri Anjan Kumar Baliyarsingh has submitted certain list of property of NDCSL, however no up to date inventory of assets and properties have been provided by any of the directors with regard to their own assets. Further it is submitted that offices, the bank accounts, showing proof of refund to investors, and all documents such as memorandum, articles of associations, vouchers, offer details, resolutions copy, subscription detail etc., were seized and kept with CBI. In this regard, I note that Shri Anjan Kumar Baliyarsingh has submitted a certified copy of his application made to CBI Court seeking documents. However no proof of refund was submitted by him despite given several opportunities. He submitted that he will submit the details on investor dues and earlier payments made to them once received from Court. The documents, if any, retrieved by Shri Anjan Kumar Baliyarsingh on account of his application made to CBI Court may be considered by Recovery Officer in accordance with directions under paragraph 81(b) of this order.

80. In view of the discussion above, appropriate action in accordance with law needs to be initiated against NDCSL and its Directors viz. Smt. Harapriya Jena, Shri Kartikeya Parida, Smt. Smita Patra, Shri Pradeep Kumar Pattnaik, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, Shri Anjan Kumar Baliyarsingh.

Bagartti.

81. 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) NDCSL, Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh shall forthwith refund the money collected by the Company (NDCSL for moneys collected till date and directors for the moneys collected during their respective period of directorship) through the issuance of RPS and NCDs including the application money collected from investors, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
- (b) If the Company, NDCSL had repaid/redeemed the amount collected through RPS and NCDs to its investors as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions from paragraphs 81(c) to 81 (j), shall be applicable for the amounts due to be returned to the investors. However, such prior repayments/redemption should have been made by the Company as per the requirement laid down in paragraph 81(c) below, and the same shall be certified by Chartered Accountants, as directed in paragraph 81 (j) below.
- (c) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.
- (d) Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.

- (e) NDCSL and Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
- (f) NDCSL and Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- (g) NDCSL, Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, , Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh 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.
- (h) NDCSL and its present directors in their official capacity (Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh) and Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh 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.

- (i) After completing the aforesaid repayments, NDCSL, Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, , Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh 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.
- (j) In case of failure of NDCSL, Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from the company and the directors liable to refund as specified in paragraph 81(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 NDCSL and Shri Anjan Kumar Baliyarsingh at first if sufficient assets are available, and thereafter against the other Noticees for the reasons stated in paragraph 78 of this order.
- (k) NDCSL, Smt. Harapriya Jena, Smt. Smita Patra, Shri Ramachandra Hansdah, Smt. Nirupama Sahoo, Shri Hitesh Kumar Bagartti, Smt. Subarna Naik, Shri Kartikeya Parida, Shri Pradeep Kumar Pattnaik, Shri Anjan Kumar Baliyarsingh 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.

(l) The above directions shall come into force with immediate effect.

82. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
83. 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.
84. A copy of this Order shall also be forwarded to Local Police/ State Government for information.

DATE: July 23, 2018

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA