

SECURITIES AND EXCHANGE BOARD OF INDIA

INTERIM ORDER CUM SHOW CAUSE NOTICE

UNDER SECTIONS 11(1), 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF BISHAL DISTILLERS LIMITED –

	NOTICEES	DIN/CIN	PAN
DIRECTORS –			
1.	PRABIR CHOWDHURY	05194455	AIPPC9212K
2.	AJOY PAUL	06707622	AMPPP5677D
3.	LITAN SAHA	06826108	CCQPS8194F

TO BE READ WITH THE SEBI ORDER NO. WTM/PS/36/IMD/ERO-RLO/MAY/2016 DATED MAY 16, 2016.

BACKGROUND –

- Securities and Exchange Board of India (“SEBI”) received a complaint on September 8, 2014, against Bishal Distillers Limited (“**Bishal Distillers/Company**”). Vide the aforesaid complaint, the complainant therein *inter alia* alleged illegal mobilization of funds by Bishal Distillers.
- SEBI had examined the records available on *MCA21 Portal* and noted that Bishal Distillers had issued and allotted *Redeemable Preference Shares*. Details regarding the aforesaid as available on *MCA21 Portal* and other relevant material on record are reproduced as under –

A. ALLOTMENT DETAILS OF REDEEMABLE PREFERENCE SHARES –

TABLE I – DETAILS OF REDEEMABLE PREFERENCE SHARES ISSUED		
FINANCIAL YEAR	NO. OF ALLOTTEES	VALUE OF ALLOTMENT (₹)
2011-12	238	4,00,00,000

- Since the aforementioned issue of securities by Bishal Distillers during the Financial Year 2011-12 (issue and allotment of *Redeemable Preference Shares*) qualified as an offer made to the public in terms of Section 67(3) of the Companies Act, 1956 (“**Companies Act**”),

Bishal Distillers and its Directors were found to have violated the following provisions of law –

A. *Section 56, Section 60 read with Section 2(36) and Section 73 of the Companies Act;*

4. Accordingly, SEBI vide an Order dated May 16, 2016 (“**Final Order**”), *inter alia* directed Bishal Distillers and its Directors –
 - a. *To jointly and severally refund the money collected by the Company through the issuance of Redeemable Preference Shares (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act and SEBI regulations), to the investors including the money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act) to the investors till the date of actual payment.*
 - b. *Not to, directly or indirectly, access the capital 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 years** from the date of completion of refunds to investors as directed above.*
5. It is observed that prior to the Final Order, SEBI had issued an *Ex Parte Interim Order* on May 6, 2015 (“**Interim Order**”), against Bishal Distillers and its Directors.
6. During the course of the quasi-judicial proceedings conducted prior to the passing of the Final Order, it was brought to the Notice of the then Whole Time Member (“**WTM**”) that certain entities who were/are Director(s) of Bishal Distillers were in fact responsible for the offer and allotment of *Redeemable Preference Shares*. The list of such entities as extracted from the Final Order is shown below –

TABLE II				
	NAME OF THE PERSON	CAPACITY	DATE OF APPT.	DATE OF CESSATION
1.	PRABIR CHOWDHURY	DIRECTOR	26.12.2012	10.10.2013
2.	AJOY PAUL	DIRECTOR	18.02.2014	26.03.2014
3.	LITAN SAHA [#]	DIRECTOR	27.04.2015	—
[#] LITAN SAHA IS AT PRESENT A DIRECTOR IN BISHAL DISTILLERS HAVING BEEN APPOINTED ON APRIL 27, 2015.				

7. Accordingly, SEBI was directed by the WTM in the Final Order to examine the role of the aforementioned entities (who were not covered by the Interim Order) and initiate appropriate action against them, in accordance with law.
8. In this context, SEBI vide letters dated December 28, 2017, had sought *inter alia* the following information from the abovementioned entities at Table II –
 - i. Copy of Audited Balance Sheet and Annual Returns of the company for the last 3 years.
 - ii. Other Information in respect of issue of Shares/Debentures:
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of prospectus/Information Memorandum filed with RoC for issuance of Shares/Debentures.
 - b. Date of opening and closing of the subscription list for the said Shares/Debentures.
 - c. Details regarding the number of application forms circulated inviting subscription for Shares/Debentures and number of applications received.
 - d. Details of allottees such as date of allotment, names of allottees, etc.
 - iii. Copies of the minutes of Board/committee meeting in which the resolution has been passed for raising such additional capital and also for allotment of Shares/Debentures.
 - iv. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of Shares/Debentures.
 - v. Terms and conditions of the issue of Shares/Debentures.
 - vi. Whether the company has applied for listing of its securities with any of the Stock Exchanges.
 - vii. Copies of Form 2 and Form 10 filed with the RoC.
 - viii. Details of debenture trustee viz. name, address, board resolution authorizing their appointment, etc.

9. Details concerning the service of the above–mentioned letters dated December 28, 2017 including subsequent reminders, issued by SEBI and replies received thereto, etc. are provided as under –

TABLE III		
	NAME	LETTER STATUS (RETURNED/ DELIVERED)
1.	PRABIR CHOWDHURY	RETURNED UNDELIVERED WITH THE COMMENT “ADDRESSEE MOVED.”
2.	AJOY PAUL	DELIVERED. HOWEVER, NO REPLY RECEIVED. REMINDER LETTER DATED JANUARY 11, 2018 ISSUED. HOWEVER, NO REPLY RECEIVED.
3.	LITAN SAHA	RETURNED UNDELIVERED WITH THE COMMENT “LEFT”. REMINDER LETTER DATED JANUARY 29, 2018 ISSUED TO HIS ALTERNATE ADDRESS. HOWEVER, IT WAS RETURNED UNDELIVERED WITH THE COMMENT “LEFT WITHOUT ADDRESS”.

10. I note that the persons at serial nos. 1–2 of Table II were the Directors of Bishal Distillers post the fund–mobilization by the Company and have since resigned. The person at serial no. 3 of Table II is at present, a Director of Bishal Distillers. Upon a consideration of paragraph 3 of this Order, I find that the aforementioned entities are responsible for the *offer and allotment of Redeemable Preference Shares* made by Bishal Distillers in violation of the Public Issue requirements. In the light of the aforesaid, I find this to be a fit case to pass interim directions against the aforesaid Directors of Bishal Distillers.

DIRECTIONS –

11. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act hereby issue, with immediate effect, the following directions –
- The Directors of Bishal Distillers, viz. Prabir Chowdhury, Ajoy Paul and Litan Saha, shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;
 - The abovenamed Directors of Bishal Distillers shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of Redeemable Preference Shares* sought vide letters dated December 28, 2017.

12. The findings at paragraphs 3 and 10 of this Order are made on the basis of the information obtained from *MCA21 Portal* and other relevant material on record by SEBI, which form the basis of the Final Order dated May 16, 2016. The Directors of Bishal Distillers, viz. Prabir Chowdhury, Ajoy Paul and Litan Saha (collectively referred to as “**Noticees**”) are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following direction, viz. –
- i. To be restrained/prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of **four** years from the date of the Company and its Directors effecting the refund as directed in the Final Order dated May 16, 2016.
13. The Noticees may, within 21 days from the date of receipt of this *Interim Order–cum–Show Cause Notice*, file their respective replies. In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. In the event of the respective Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the findings at paragraph 10 of this Order shall become final and absolute against the respective Noticees automatically, without any further orders. Consequently, the Noticees shall automatically be bound by the directions contained in paragraphs 11 and 12, as applicable.
14. The Noticees shall comply with the aforesaid directions within a period of 90 days from the date this Order becoming final, failing which SEBI may initiate appropriate enforcement action under SEBI Act including Recovery proceedings, Adjudication or Prosecution in addition to making a suitable reference to State Government/Local Police.
15. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.

16. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on the abovenamed Directors of Bishal Distillers.

Place: Mumbai
Date: October 10, 2018

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA