

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

FINAL ORDER

**Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India
Act, 1992**

**In the matter of Win Realcon Limited
In re: Deemed Public Issue Norms**

In respect of:

Sl. No	Name of the Entity	PAN	CIN/DIN
1	Win Realcon Limited	AABCW0653M	U45400WB2011PLC159851
2	Shri Rajib Debnath	AMYPD5063C	03422294
3	Shri Joy Bhowmick	AJSPB1308F	03606641
4	Shri Raju Dey	AKJPD8355N	03606643
5	Shri Sanjib Podder	AVJPP9442R	03422007
6	Shri Amit Debnath	AUOPD1957D	03422346
7	Shri Shekh Nur Mohammad	PAN: Not Available: Address: Old Kolkata Road, Mondal para, Titagarh, North 24, Parganas, Kolkata- 700119	03422147
8	Shri Swapan Dutta	ANOPD6613K	03421963
9	Smt Rita Das	ARNPD1804H	03422045
10	Shri Partha Pratim Roy	AKXPR8291H	03522417
11	Shri Ranabir Das	AMJPD0122F	03606638
12	Shri Nirmal Mukherjee	AKEPM1906F	03606635
13	Shri Supriyo Sarkar	AYCPS5612G	03606630
14	Shri Sujay Pathak	AIAPP0435G	03540400
15	Shri Mahitosh Ganguly	AKDPG9372N	03606625
16	Smt Pampa Gain Tarafdar	ALVPT8299E	Not Applicable
17	Smt Juthika Banerjee	AXAPB2104R	Not Applicable
18	Shri Samit Debnath	AVPPD1087N	Not Applicable

1. Win Realcon Limited (hereinafter referred to as “**WRL**”/ “**the Company**”) is a Public company incorporated on February 25, 2011 and registered with Registrar of Companies—Kolkata with CIN: U45400WB2011PLC159851. Its registered office is at 96/1 S. N. Banerjee Road, Barrackpore, Kolkata - 700120.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a Complaint against WRL in respect of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether WRL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder.
3. On enquiry by SEBI, it was observed that WRL had made an offer of RPS in the financial years 2011-2012 and 2012-2013 (hereinafter referred to as “**Offer of RPS**”) and raised at least an amount of Rs. 117.76 Lakh to at least 708 allottees. The number of allottees and funds mobilized has been collated from the documents collected from the documents/information obtained from the MCA 21 Portal.
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, SEBI passed an interim order dated February 18, 2016 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against WRL and its Directors and promoters, viz. Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey, Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee Shri Supriyo Sarkar , Shri Sujay Pathak, Shri Mahitosh Ganguly, Smt Pampa Gain Tarafdar, Smt Juthika Banerjee, Shri and Samit Debnath (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. WRL had made an *Offer of RPS* during the financial years 2011-2012 and 2012-2013 raised an amount of Rs. 117.76 Lakh as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2011-2012	RPS	45.17	297
2012-2013		72.59	411
Total		117.76	708

6. The above *Offer of RPS* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by WRL in respect of the *Offer of RPS*.
7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated February 18, 2016 with immediate effect.
- “WRL (PAN: AABCW0653M) shall not mobilize any fresh funds from investors through the *Offer of Redeemable Preference Shares* 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;
 - WRL and its past and present Directors and Promoters, viz. Shri Rajib Debnath (PAN: AMYPD5063C; DIN: 03422294), Shri Joy Bhowmick (PAN: AJSPB1308F; DIN: 03422294), Shri Raju Dey (PAN: AKJPD8355N; DIN: 03606643), Shri Sanjib Podder (PAN: AVJPP9442R; DIN: 03422007), Shri Amit Debnath (PAN: AUOPD1957D; DIN: 03422346), Shri Shekh Nur Mohammad (DIN: 03422147), Shri Swapan Dutta (PAN: ANOPD6613K; ; DIN: 03421963), Smt Rita Das (PAN: ARNPD1804H; DIN: 03422045), Shri Partha Pratim Roy (PAN: AKXPR8291H; DIN: 03522417), Shri Ranabir Das (PAN: AMJPD0122F; DIN: 03606638), Shri Nirmal Mukherjee (PAN: AKEPM1906F; DIN: 03606635), Shri Supriyo Sarkar (PAN: AYCPS5612G; DIN: 03606630), Shri Sujay Pathak (PAN: AIAPP0435G; DIN: 03540400), Shri Mahitosh

Ganguly (PAN: AKDPG9372N; DIN: 03606625), Smt Pampa Gain Tarafdar (PAN: ALVPT8299E; DIN: 03606630), Smt Juthika Banerjee (PAN: AXAPB2104R; DIN:), Shri Samit Debnath (PAN: AVPPD1087N; DIN:), Shri Samit Debnath (PAN: ; DIN:), (PAN: ; DIN:), 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. WRL and its abovementioned past and present Directors and Promoters, 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;*
- iv. WRL shall provide a full inventory of all its assets and properties;*
- v. WRL's abovementioned past and present Directors and Promoters, shall provide a full inventory of all their assets and properties;*
- vi. WRL and its abovementioned present Directors and Promoters, shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company, without prior permission from SEBI;*
- vii. WRL and its abovementioned present Directors and Promoters, shall not divert any funds raised from public at large through the Offer of RPS, which are kept in bank account(s) and/or in the custody of WRL;*
- viii. WRL and its abovementioned past and present Directors and Promoters, shall furnish complete and relevant information (as sought by SEBI letter dated December 10, 2015), within 14 days from the date of receipt of this Order.”*

8. The interim order also directed the WRL and its Directors/promoters to show cause as to

why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act should not be passed against them:

- i. Directing them jointly and severally to refund money collected through the *Offer of RPS* along with interest, if any, promised to investors therein;
- ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

9. Vide the said interim order, WRL, its abovementioned Directors/promoters 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.
10. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated February 22, 2016 which were not delivered. Subsequently, vide notification dated November 09, 2016 published in newspaper *The Times of India*, and notification dated November 08, 2016 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI, that interim order dated February 18, 2016 was issued against them and they were given a final opportunity to submit their reply in the matter.
11. In response to the interim order, Shri Supriyo Sarkar, Smt. Pampa Gain Tarafdar, Shri Sanjib Podder and Shri Sujay Pathak filed their replies vide letters dated March 8, 2016, March 14, 2016, March 14, 2016 and March 15, 2016 respectively.
12. Vide notification dated June 10, 2017 published in newspaper *The 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 July 26, 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.

13. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on July 26, 2017. Vide letter dated August 17, 2017, SEBI informed the Noticees to submit additional documentary evidence in support of their submissions, if any. Smt. Pampa Gain Tarafdar vide letters dated March 14, 2016 and October 9, 2017 has *inter alia* submitted as under:

- i. She had no knowledge as to her Directorship in the Company.
- ii. She has further stated that her husband, Shri Sanjit Gain, was a car driver appointed by the Company and that he did not have a PAN card of his own. She has submitted that Shri Partha Pratim Roy had asked her husband to hand over a copy of the PAN Card in her name for the purpose of records. She also submitted that her husband was asked by Shri Partha Pratim Roy to include her name as a nominee in the Service book of the Company for the eventuality of any accident of her husband.
- iii. She has submitted that this copy of the PAN card and her signature which was also affixed on the same paper as the copy of the PAN card has been used for the purpose of appointing her as a Director of the Company without her knowledge.
- iv. Further, vide her letter dated October 9, 2017 she has stated that she was not aware of personal hearing scheduled on July 26, 2017 in the matter.

Shri Sujay Pathak, vide reply dated March 15, 2016 has submitted *inter alia* that:

- i. He was not a director of the Company but was a daily wage worker in the Company and had no nexus with the day to day business of the Company.
- ii. He further states that his PAN card and signature has been misutilized for the

- purpose of appointing him as a Director of the Company without his knowledge.
- iii. He submits that after coming to know of the Company's mala fide intention, he submitted his resignation letter which was duly received by the Company.

In addition, vide letter dated September 14, 2017, Shri Sujay Pathak made *inter alia* the following submissions:

- i. He was not aware of any intimation for personal hearing on July 26, 2017 in the matter.
- ii. Resignation letter dated October 1, 2011 was duly accepted by the Company on October 2, 2011. Copy of the letter is provided. However, the Company did not file the requisite Form 32 with the RoC in due time and the Director was not able to file Dir-11 with RoC giving notice of his resignation with the RoC.
- iii. He tendered his resignation when he came to know that the Company was collecting money from public as deposit with *mala fide* intention.
- iv. He never received any salary during the 4 months that he was associated with the Company.

Shri Sanjib Podder, vide reply dated March 14, 2016 has *inter alia* submitted as under:

- i. He had no knowledge of his directorship in the Company and had no nexus with the day to day business of the Company.
- ii. He has submitted that he provided his car for the use of the Company at the office situated at Utsav nagar, Natun Rasta, P.O. and P.S. Gholia, Kolkata – 700111 and received a payment every month. He submitted that he was never taken to the registered office of the Company.
- iii. He further submits that he handed over a copy of his PAN card and signed on some documents purportedly to be used for the purpose of using his car by the Company.
- iv. He further submits that Shri Partha Pratim Roy took his SBI Account number for the purpose of depositing his monthly payment with respect to providing the car

to the Company. But later he realized that his bank account was used for depositing and withdrawing money for the Company's own use. Upon his knowledge he submitted his resignation letter in June 2011, which was duly received by the Company.

Vide reply dated September 13, 2017, Shri Sanjib Podder has replied *inter alia* that:

- i. He was not aware of any personal hearing on July 26, 2017 in the matter.
- ii. He handed over his Driving License, Bank Account number, PAN Card, EPIC, etc. and signed certain documents at the behest of Shri Partha Pratim Roy.
- iii. He later came to know that certain amount of money was credited to his bank account, which he refunded under receipt signed by Shri Partha Pratim Roy, under the Company seal. Copy of the said acknowledgment is enclosed.
- iv. He resigned from the Company in June, 2011, and a copy of the resignation letter is enclosed.

Shri Supriyo Sarkar, vide reply dated March 8, 2016 has submitted that

- i. He was appointed as a Director in December, 2011 and he resigned on March 31, 2012 after suspecting that the Company was not engaged in any lawful business. Copy of the resignation letter is provided.
- ii. He further submitted that he had no role in issuing prospectus or any offer document or any advertisement soliciting money from public for issue of securities.

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

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

violation committed?

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

15. I have perused the interim order dated February 18, 2016 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.
16. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the records that WRL has issued and allotted RPS to 708 investors during the financial years 2011-2012 and 2012-2013 and raised at least an amount of Rs. 117.76 Lakh. I also note that the number of allottees and funds mobilized has been collated from the documents collected from the documents / information obtained from the MCA 21 Portal. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than Rs. 117.76 Lakh
17. I therefore conclude that WRL came out with an offer of RPS as outlined above.

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

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

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

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

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

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

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

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

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

19. 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.”

20. 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*.

21. In the instant matter, I find that RPS were issued by WRL to 708 investors in the financial years 2011-2012 and 2012-2013. I find that WRL has mobilized an amount of Rs. 117.76 Lakh over the financial years 2011-2012 and 2012-2013. The above findings lead to a reasonable conclusion that the *Offer of RPS* by WRL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
22. I find that WRL has not claimed to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that WRL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
23. Neither WRL nor its directors have contended that the *Offer of RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956. In any case, WRL issued RPS to at least 708 investors during the financial years 2011 to 2013.
24. 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".

25. Therefore, in view of the material available on record, I find that the *Offer of RPS* by WRL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS* are deemed to be public issues and WRL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
26. Further, since the offer of RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.
27. The allegations of non-compliance of the above provisions were not denied by WRL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that WRL has contravened the said provisions. WRL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that WRL 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.

28. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RPS was a deemed public issue of securities, WRL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that WRL 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 WRL has not complied with the provisions of section 60 of the Companies Act, 1956.
29. 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 WRL 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, WRL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
30. 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."

31. 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..."

32. In view of the above findings, I am of the view that WRL engaged in fund mobilizing activity from the public, through the offer of RPS and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956.

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

the violation committed?

33. Before dealing with the above issue, I would like to deal with the submissions and contentions made by the directors of WRL viz., Shri Sujay Pathak, Shri Sanjib Podder, and Shri Supriyo Sarkar in this matter.

Shri Sujay Pathak:

33.1 Shri Sujay Pathak has submitted that his PAN and signature had been misutilized for the purpose of appointing him as a Director of the Company without his knowledge. He has submitted that after coming to know of the Company's mala fide intention, he tendered his resignation letter on October 1, 2011 which was duly received by the Company on October 2, 2011 under the signature of Shri Partha Pratim Roy. He has also submitted that the Company delayed in filing the resignation, and at the relevant time, Directors could not file Dir-11 notifying the RoC of his resignation from the Company. In this regard, I have perused the resignation letter submitted by the Noticee. I note from the copy of the resignation letter that he has resigned on October 01, 2011. The said resignation letter was accepted by one of the directors of the Company viz., Shri Partha Pratim Roy and also bears the seal of the Company as a proof of receipt. In view of the same, I am inclined to accept the date of resignation of Shri Sujay Pathak with effect from October 01, 2011. However, I note that as per the records, he was nonetheless a director during the period of 2011-2012 wherein WRL raised funds through issuance of RPS, hence I find that Shri Sujay Pathak would be liable for the same.

Shri Sanjib Podder:

33.2 Shri Sanjib Podder has stated that he provided his car for the use of the Company at the office situated at Utsav nagar, Natun Rasta, P.O. and P.S. Gholi, Kolkata – 700111 and received payment every month and that he was not aware of his Directorship in the Company. He submitted that he was never taken to the registered office of the Company. He further submits that he handed over a copy of his PAN card, ESIC, Driving License and signed on certain documents purportedly to be used for the

purpose of giving his car for hire to the Company. I note that he has submitted that he was engaged in providing car for hire to the Company and has provided the Bank Passbook showing credit of Rs. 25,000/- vide a cheque bearing no. 388738, as part of the payment from the Company. He further submits that Shri Partha Pratim Roy took his SBI Account number for the purpose of depositing his monthly payment with respect to providing the car to the Company. But later he realized that his bank account was used for depositing and withdrawing money for the Company's own use. I note from his submissions that he has allowed his bank account to be used by the Company. He stated that he gave the money thus received, to the Company against a written receipt. From the said receipt made out by the Company to Shri Sanjib Podder, I find that the Noticee has refunded the money to the Company on the same day as the receipt, or within a few days of receipt, in his account. From the above, I find that the Noticee had knowledge and apparently extended his cooperation in fund transfer to the Company through his account. Also, I find that the submissions made by Shri Sanjib Podder are inconsistent, as he had earlier stated in his reply dated March 14, 2017, that funds were withdrawn from his account, whereas in his reply dated September 13, 2017, he has submitted that he himself had refunded the money back to the Company. Therefore, I find no merit in the submission made by the Noticee that his Bank Account misused by the Company without his knowledge. I also note that he has not explained the nature of documents that he signed at the behest of Shri Partha Pratim Roy, or the circumstances under which he came to know of his directorship. As per the submissions, Shri Sanjib Podder had tendered his resignation from the Company in June, 2011 and a copy of the resignation letter has been provided. I note that the said copy of the letter is undated. In view of the same, I find that adequate evidence has not been provided to substantiate the contention that Shri Sanjib Podder had resigned from his Directorship in June, 2011. Therefore, I am inclined to rely on the MCA records and find that Shri Sanjib Podder was a Director of WRL from February 25, 2011 to August 29, 2011.

Shri Supriyo Sarkar:

33.3 Shri Supriyo Sarkar has admitted that he was appointed as a Director in December, 2011 and he has submitted that he resigned on March 31, 2012 after suspecting that the Company was not engaged in any lawful business. Copy of the resignation letter has been provided. However, I find from the records that Shri Supriyo Sarkar is reflected as a Director of WRL from August 29, 2011 to November 30, 2012. Further, on perusal of the copy of the resignation letter, I find that the signature of the Director, Shri Ranabir Das, under whose signature the resignation letter was stated to have been accepted by the Company is neither matching nor similar to the signature of Shri Ranabir Das observed in the documents obtained from MCA 21 portal such as Board Resolutions, Form 2, etc., in light of the same, I do not find any credibility in the resignation letter submitted by Shri Supriyo Sarkar. Therefore, I am inclined to rely on the MCA records and find that he was a director of the Company from August 29, 2011 till November 30, 2012 as shown in MCA records.

33.4 In addition to the above submissions, I note that Shri Sujay Pathak, Shri Sanjib Podder and Shri Supriyo Sarkar raised a common contention that they had no nexus with the day to day business of the Company or that they had no role in issuing prospectus or any offer document or any advertisement soliciting money from public for issue of securities. I find no merit in the submissions of Shri Sujay Pathak, Shri Sanjib Podder and Shri Supriyo Pathak. In this regard I would also like to refer to the decision of Hon'ble SAT in Manoj Agarwal vs. SEBI wherein it was observed that lending name to be a director of the company and not being involved in the day today affairs of the company would not absolve any director from his obligation to refund the amount to the investors.

34. From the documents available on record, I find that the present Directors in WRL are Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey. I also note that, Shri Sanjib Podder,

Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, who were earlier Directors in WRL, 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 Rajib Debnath	February 25, 2011	Continuing
Shri Joy Bhowmick	August 29, 2011	Continuing
Shri Raju Dey	August 29, 2011	Continuing
Shri Sanjib Podder	February 25, 2011	August 29, 2011
Shri Amit Debnath	February 25, 2011	August 29, 2011
Shri Shekh Nur Mohammad	February 25, 2011	November 30, 2012
Shri Swapan Dutta	February 25, 2011	August 29, 2011
Smt Rita Das	February 25, 2011	August 29, 2011
Shri Partha Pratim Roy	May 09, 2011	November 30, 2012
Shri Ranabir Das	August 29, 2011	February 15, 2013
Shri Nirmal Mukherjee	August 29, 2011	November 30, 2012
Shri Supriyo Sarkar	August 29, 2011	November 30, 2012
Shri Sujay Pathak	June 01, 2011	October 01, 2011
Shri Mahitosh Ganguly	November 30, 2012	January 10, 2013

35. I find that Shri Rajib Debnath, Shri Joy Bhowmick, Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Smt Pampa Gain Tarafdar, Smt Juthika Banerjee, Shri Samit Debnath are

promoters of WRL.

36. 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, WRL and its past and present directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
37. 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%.
38. From the material available on record and the details of the appointment and resignation of the directors of WRL as reproduced in paragraph 34 of this Order, it is noted that Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey were directors at the time of the issuance of RPS. Since these persons were acting as directors during the period of issuance of RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c)

of Section 5 of Companies Act, 1956 or any specified director of WRL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the past and present directors of WRL, 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.

39. 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 WRL and its Directors, viz. , Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey 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.
40. I note that during the financial years 2011-2012 and 2012-2013 WRL through Offer of RPS, had collected an amount of Rs. 117.76 Lakh from various allottees. I note that Shri Rajib Debnath has been director of WRL since financial years 2011-2012, 2012-2013 till present date. I note that Shri Joy Bhowmick has been director of WRL since financial years 2011-2012, 2012-2013 till present date. I note that Shri Raju Dey has been director of WRL since financial years 2011-2012, 2012-2013 till present date. I note that Shri Sanjib Podder, Shri Amit Debnath, Shri Swapan Dutta and Smt Rita Das were directors of WRL during financial years 2011-2012. I note that Shri Shekh Nur Mohammad, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee and Shri Supriyo Sarkar were directors of WRL during financial years 2011-2012 and 2012-2013. I note that Shri

Sujay Pathak was a director of WRL during the financial year 2011-2012. I note that Shri Mahitosh Ganguly was director of WRL during financial years 2012-2013. 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 WRL and other directors are limited to the extent of amount collected during his/her tenure as director of WRL.

41. I find that Shri Rajib Debnath, Shri Joy Bhowmick, Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Smt Pampa Gain Tarafdar, Smt Juthika Banerjee, Shri Samit Debnath are promoters of WRL and therefore, are liable as promoters for the *Offer of RPS* against the norms of deemed public issue. The said Noticees, except Smt Pampa Gain Tarafdar, have not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue and public interest requires that the persons who had such knowledge/connivance/consent be made accountable to the investors. Therefore, the said Noticees, except Smt Pampa Gain Tarafdar, are liable to be debarred for an appropriate period of time. I note that Smt Pampa Gain Tarafdar has submitted that she was the wife of the driver, Shri Sanjit Gain, who was employed with the Company and had merely submitted a copy of her PAN along with her signature for the records of the Company in relation to the employment of her husband. I have perused the signature of the Noticee on the copy of the documents of incorporation of the Company and compared the same with the signature on the replies dated March 14, 2016 and October 9, 2017, as well as the signature on the copy of the PAN card provided by the Noticee. I have noted a significantly perceptible difference in the signature on the copy of incorporation documents from the signatures on the copy of the PAN card as well as on the replies of the Noticee, whereas the latter signatures are similar. In light of the above, I am of the view that the preponderance of probability that the signature of Smt. Pampa Gain Tarafdar may have been misused by WRL is in favour of the Noticee. Therefore, I am inclined to give the benefit of the doubt to the Noticee and revoke the directions of the interim order

vis-à-vis, Smt. Pampa Gain Tarafder.

42. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct WRL and its Directors, viz. , Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors and promoters, to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.
43. I also note that, vide the interim order dated February 18, 2016, WRL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors/promoters of WRL 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 has been provided either by WRL or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 10 of this Order.
44. In view of the discussion above, appropriate action in accordance with law needs to be initiated against WRL and its Directors and promoters , viz. Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey, Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, Smt Juthika Banerjee and Shri Samit Debnath.

45. 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. WRL, Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey shall jointly and severally, forthwith refund the money collected by the Company (WRL for the moneys collected till date and directors for the moneys collected during their respective period of directorship) through the issuance of RPS 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. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.
 - c. Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly 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.
 - d. WRL and Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey 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.
 - e. WRL, Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey 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.

- f. WRL, Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey 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.
- g. WRL, Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, Shri Rajib Debnath, Shri Joy Bhowmick and Shri Raju Dey 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.
- h. After completing the aforesaid repayments, WRL, Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey in their personal capacity 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.

- i. In case of failure of WRL, Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey 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 45 (a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- j. WRL, Shri Sanjib Podder, Shri Amit Debnath, Shri Shekh Nur Mohammad, Shri Swapan Dutta, Smt Rita Das, Shri Partha Pratim Roy, Shri Ranabir Das, Shri Nirmal Mukherjee, Shri Supriyo Sarkar, Shri Sujay Pathak, Shri Mahitosh Ganguly, Shri Rajib Debnath, Shri Joy Bhowmick, Shri Raju Dey 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.
- k. Smt Juthika Banerjee and Shri Samit Debnath 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 for a period of **4 (four) years** from the date of this Order. The above said

persons 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 for a period of **4 (four) years** from the date of this order.

1. Directions in the interim order with respect to Smt. Pampa Gain Tarafdar in the matter stand revoked and no further directions are passed regarding the same.

The above directions shall come into force with immediate effect.

46. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

47. 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.

48. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: October 30, 2018

PLACE: Mumbai

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