

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 Norms

In the matter of Bhabiswajyoti Infrastructure India Limited

In respect of:

Sl. No	Name of the entities	PAN	DIN
1	Bhabiswajyoti Infrastructure India Limited	AAFCB0288F	NA
2	Mr. Pradipta Chakraborty	AJOPC7527K	03092487
3	Mr. Srikumar Chakraborty	AKGPC1755Q	06597492
4	Mr. Gopal Sharma	BAPPS0138H	06475853
5	Mr. Prashant Sharma	ARWPS6298R	79474030
6	Ms.Soma Sharma	BCVPS0290L	79474719
7	Mr. Arindam Mukherjee	AKAPM7973N	79474032
8	Mr. Mahindra Nath Chowdhury	AIXPC9631Q	06446998
9	Mr. Mahesh Shaw	DZHPS9150J	05261332
10	Bhabiswajyoti Debenture Trust (Represented by its Trustee, viz. Mr. Sanjoy Chaudhuri	91, Deodar Rahman Road, Ground Floor, Kolkata (W.B.) -700033	

1. Bhabiswajyoti Infrastructure India Limited (hereinafter referred to as “**BIIL**”/ “**the Company**”) is a Public company incorporated on May 01, 2012 and registered with Registrar of Companies–Gwalior with CIN: U45200MP2012PLC028320. Its registered office is at Bardadeeh Chowk, Mukhtiyar Gang, Rama Krishna Aasram, Satna, Madhya Pradesh, India - 485001.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received complaint and reference against BIIL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether BIIL 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 BIIL had made an offer of NCDs in the financial years 2012-2013, 2013-2014 (hereinafter referred to as “**Offer of NCDs**”) and raised at least an amount of Rs. 7,55,500 from at least 53 allottees. The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures. It was also observed that BIIL created a charge for an amount of Rs. 100 crores on May 07, 2012 and appointed *Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri)* as Debenture Trustee for the Offer of NCDs by that company.
4. As the above 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 June 17, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against BIIL and its Directors viz. Mr. Pradipta Chakraborty, Mr. Srikumar Chakraborty, Mr. Gopal Sharma, Mr. Prashant

Sharma, Ms. Soma Sharma, Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury, Mr. Mahesh Shaw and its Debenture Trustee *Bhabiswajyoti Debenture Trust* (represented by its trustees, viz. Mr. Sanjoy Chaudhuri). (hereinafter collectively referred to as “**Noticees**”).

5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. BIIL had made an *Offer of NCDs* during the financial years 2012-2013, 2013-2014 and raised at least an amount of Rs. 7,55,500 as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2012-2013	NCDs	734,500.00	50
2013-2014		21,000.00	3
Total		755,500.00^	53*

[^]*^ No. of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. However, actual number of allottees and amount mobilized could be more than the above indicated figures.

6. Further, BIIL created a charge for an amount of Rs. 100 crores on May 07, 2012 and appointed *Bhabiswajyoti Debenture Trust* (represented by its trustee, viz. Mr. Sanjoy Chaudhuri) as Debenture Trustee for the Offer of NCDs by the company. *Bhabiswajyoti Debenture Trust* (represented by its trustee, viz. Mr. Sanjoy Chaudhuri) was not registered with SEBI as debenture trustee for the offer of NCDs by that company.
7. The above *Offer of NCDs* 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) and sections 117B and 117C of the Companies Act, 1956 and the relevant provisions of the ILDS Regulations were not complied with by BIIL in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Bhabiswajyoti Debenture Trust* (represented by its trustee, viz. Mr. Sanjoy Chaudhuri) has *prima facie* violated section 12(1) of the SEBI Act and regulation 7 of the Securities and Exchange Board of

India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as " **Debenture Trustees Regulations** ").

8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated June 17, 2015 with immediate effect.
- i. "BIIL shall forthwith cease to mobilize any fresh funds from investors through the Offer of NCRDs 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. BIIL and its present/past Directors and, viz. Mr. Pradipta Chakraborty (PAN: AJOPC7527K; DIN: 03092487), Mr. Srikumar Chakraborty (PAN: AKGPC1755Q; DIN: 06597492), Mr. Gopal Sharma (PAN: BAPPS0138H; DIN: 06475853), Mr. Prashant Sharma (PAN: ARWPS6298R; DIN: 79474030), Ms. Soma Sharma (PAN: BCVPS0290L; DIN: 79474719), Mr. Arindam Mukherjee (PAN: AKAPM7973N; DIN: 79474032), Mr. Mahindra Nath Chowdhury (PAN: AIXPC9631Q; DIN: 06446998) and Mr. Mahesh Shaw (PAN: DZHPS9150J; DIN: 05261332) 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. BIIL and its abovementioned 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;
 - iv. BIIL shall provide a full inventory of all its assets and properties;
 - v. BIIL's abovementioned Directors shall provide a full inventory of all their assets and properties;

- vi. BIIL and its abovementioned 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 NCRDs, without prior permission from SEBI;
 - vii. BIIL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of NCRDs*, which are kept in bank account(s) and/or in the custody of BIIL;
 - viii. BIIL shall furnish complete information sought by SEBI vide letters dated March 14, 2014, July 18, 2014 and August 19, 2014 including the balance sheets of the company for FY 2012-13 to 2014-15 within 21 days from the date of receipt of this Order.
 - ix. The Debenture Trustee, viz. Bhabiswajyoti Debenture Trust and its trustee, viz. Mr. Sanjoy Chaudhuri are prohibited from continuing with its present assignment as debenture trustee in respect of the Offer of NCRDs of BIIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this Order till further directions.”
9. The interim order also directed BIIL and its abovementioned past and present Directors 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 should not be passed against them:
- i. Directing them jointly and severally to refund money collected through the *Offer of NCRDs* 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.
10. Vide the said interim order, BIIL, its abovementioned Directors along with its Debenture Trustee 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.
11. *Service of interim order:* The copy of the said interim order was delivered to the Noticees vide letter dated June 18, 2015 and email.
12. Vide notification dated June 10, 2017 published in newspaper *Times of India* and notification dated June 10, 2017 published in newspaper *Ananda Bazar Patrika*, the Noticees were notified by SEBI to avail the opportunity of hearing on August 10, 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 August 10, 2017. Mr. Srikumar Chakraborty replied vide letters dated August 29, 2016, August 19, 2015, February 12, 2014 and November 7, 2013. His letter dated August 29, 2016 was addressed to SEBI while his other aforesaid letters are addressed to ROC. His submissions in brief are as under:
- a) There is no indication that his previous replies dated November 7, 2013, February 12, 2014 and August 19, 2015 addressed to concerned Authorities have been considered. No reply to the aforesaid letters and contentions raised therein have been received till date and therefore, it is deemed that bona fide contentions raised by him and grounds urged by him demonstrating the illegality in the action regarding him stand accepted.

- b) He was never an employee or an officer as per the meaning of Companies Act. His private services had been hired by the Company for marketing of its finance/investment schemes and he was never party to the formulation, implementation of such schemes and merely acted as marketing agent on commission basis. He was never in the pay-roll of the said Company.
- c) He was not involved in the management of the Company in any manner.
- d) In the letters to ROC, he submitted that none of the provisions of Companies Act apply to a person who has third party contract with a company like him and he was never an ‘officer in default’ of the Company.

14. Mr. Pradipta Chakraborty sent letter/complaint dated September 27, 2016 addressed to Officer-in-charge, Shakespeare Sarani Police Station against the Company and its directors with a copy of the letter addressed to SEBI. His submissions in brief are as under:

- a) During his mother’s treatment in 2011, he met Ms. Asthomita Kar who interacted with him and recommended good doctors and told him that she and her husband were attached to the Bhabiswajyoti group which sells NCDs for very good return. She insisted with him to invest in her Company and when he showed his inability to invest, she insisted again as she needed investment for promotion and due to her good behavior, he subsequently gave her photocopy of his Voter I card, PAN card and self signed cheque of Rs. 2000 and as per her direction deposited forms of Bhabiswajyoti in her company.
- b) He later called up Ms. Asthomita Kar and asked if she deposited the cheque and she told him that her company. i.e. Bhabiswajyoti would not accept such a small investment and assured that she will return his cheque and documents, however did not return the documents.
- c) In 2016, he received SEBI letter and called up Ms. Asthomita Kar who tried to

convince him to ignore the matter. However, he discussed the matter with others and was shocked to know that his name and details were fraudulently used as a director in BIIL.

- d) Mr. Chinmoy Ghatak is a C.A. conspired with the directors of the Company and others to fraudulently represent him by impersonating him before ROC without his knowledge and consent and submitted false documents before ROC by manufacturing fake documents and forging his signature. Therefore, the aforesaid persons have committed offences punishable under IPC and are liable to be prosecuted.
- e) He requested to take note of the said offences and treat this letter as FIR and cause investigation into the matter.
- f) He undertook to give his specimen handwriting to verify the same with forged documents. He also enclosed copy of consent letter.

15. No other Noticee except Mr. Srikumar Chakraborty and Mr. Pradipta Chakraborty has replied to the Interim Order/Show Cause Notice. I note that, SEBI vide letter dated August 02, 2018 sought documents to substantiate the claims of aforesaid Noticees.
16. In response to the same, Mr. Srikumar Chakraborty vide letter dated September 27, 2018 submitted that he was never a director nor an employee of BIIL at any time. Mr. Srikumar Chakraborty also stated that being a complete stranger to the management of the Company and he has no obligation to provide any document or clarification on issues relating to that Company. The Noticee has also enclosed similar reply made to RoC Gwalior, M.P. with respect to their Notice for violations mentioned therein.
17. 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 NCDs as stated in the interim order.

- (2) *If so, whether the said offer is 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.*
- (3) *Whether appointment of Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri) as the Debenture Trustee by BIIL is in violation of Section 117B of the Companies Act, 1956 and whether Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri) violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations*
- (4) *If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violations committed?*

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

18. I have perused the interim order dated June 17, 2015 for the allegation of *Offer of NCDs*. I note that neither the company nor the directors have disputed the same.
19. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted, from the investors' complaints received by SEBI in the matter that BIIL has issued and allotted NCDs to at least 53 investors during the financial years 2012-2013 and 2013-2014 and raised at least an amount of Rs. 7,55,500/. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 53 allottees and Rs. 7,55,500 respectively.
20. *I therefore conclude that BIIL came out with an offer of 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.*

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

22. 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.”

23. 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*.

24. In the instant matter, I find that NCDs were issued by BIIL to at least 53 investors in the financial years 2012-2013 and 2013-2014. However, this number is not conclusive as it is based on the documents received by SEBI along with complaints and the actual number of investors could be more than 53. I find that BIIL has mobilized at least an amount of Rs. 7,55,500/- over the financial years 2012-2013 and 2013-2014 which is also not a conclusive value as it is based on the complaints received by SEBI. Further, I find that BIIL has created a charge of Rs. 100 crores on May 07, 2012. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by BIIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

25. Neither BIIL nor its directors have contended that the *Offer of NCDs* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
26. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement.
27. 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".
28. I also find that BIIL has not claimed it 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 BIIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
29. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by BIIL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of NCDs* are deemed to be public issues and BIIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
30. Further, since the offer of NCDs 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.

31. The allegations of non-compliance of the above provisions were not denied by BIIL 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 BIIL has contravened the said provisions. BIIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that BIIL 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.
32. 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 NCDs was a deemed public issue of securities, BIIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that BIIL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of NCDs. I, therefore, find that BIIL has not complied with the provisions of section 60 of the Companies Act, 1956.
33. 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 BIIL 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, BIIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

34. 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.
35. 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 BIIL 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.
36. 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"

37. 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...”

38. In view of the above findings, I am of the view that BIIL engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 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-Whether appointment of Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri) as the Debenture Trustee by BIIL is in violation of Section 117B of the Companies Act, 1956 and whether Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri) have violated Section 12(1) of SEBI Act

and regulation 7 of the Debenture Trustees Regulations?

39. I have perused Form 10 as filed with RoC dated May 18, 2012. I find that BIIL had created a charge of Rs. 100 crores for the Offer of NCDs by the Company on May 7, 2012. I further find that BIIL had appointed *Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri)* as the debenture trustee.
40. Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993, states that *only a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body corporate alone are eligible to get a certificate of registration as Debenture Trustee.*
41. *Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri)* is not eligible to obtain a certificate of registration since it does not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. None of the Noticees claimed that *Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri)* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that *Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri)* has dealt in the impugned Offer of NCDs, which is determined to be a *public issue*, as debenture trustee, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992.
42. 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 that BIIL has appointed *Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri)* who do not have a certificate of registration. Therefore, the appointment of the same is in violation of section 117B of the Companies Act, 1956. Further, since BIIL has not issued a prospectus with the relevant information and therefore, the requirement of stating the consent of the debenture trustee to be so appointed on the face of the prospectus has not been complied with.

ISSUE No. 4- If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?

43. I note from the MCA records, the following details of the appointment and resignation of the directors:

Name of the directors	Date of appointment	Date of cessation
Mr. Pradipta Chakraborty	May 30, 2013	Continuing
Mr. Srikumar Chakraborty	June 01, 2013	Continuing
Mr. Gopal Sharma	February 16, 2013	Continuing
Mr. Prashant Sharma	May 01, 2012	February 16, 2013
Ms.Soma Sharma	May 01, 2012	February 25, 2013
Mr. Arindam Mukherjee	May 01, 2012	May 30, 2013
Mr. Mahindra Nath Chowdhury	February 25, 2013	June 01, 2013
Mr. Mahesh Shaw	<i>DIN deactivated due to non filing of KYC</i>	

44. I note that the Mr. Mahesh Shaw was mentioned as one of the past directors of the Company in the interim order. However, I note from the MCA portal that his DIN has

been deactivated due to non-filing of KYC documents. There is no material to indicate that Mr. Mahesh Shaw was a director of this Company. However, I also note that he was one of the promoters of the Company as per the Memorandum of Association filed with MCA. Further, Mr. Mahesh Shaw has 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, I am of the view that Mr. Mahesh Shaw is also liable to be debarred for an appropriate period of time.

45. Mr. Srikumar Chakraborty vide his reply *inter-alia*, stated that there is no indication that his previous replies have been considered and no reply to the aforesaid letters and contentions raised therein have been received till date and therefore, it is deemed that bona fide contentions raised by him and grounds urged by him demonstrating the illegality in the action regarding him stand accepted. Further, he stated that he was never an employee or an officer as per the meaning of Companies Act and his private services had been hired by the Company for marketing of its finance/investment schemes and that he was never party to the formulation, implementation of such schemes and merely acted as marketing agent on commission basis. He also stated that he was never in the pay-roll of the said Company and not involved in the management of the Company in any manner.

I have considered the aforesaid submissions of the Noticee. I note that Noticee contended that SEBI has not responded to his contentions and hence the same stand accepted. Such presumption cannot be accepted as the replies/contentions of the Noticee is being dealt vide the instant order. In case of replies filed before the date of interim order in the matter, such interim order is passed pursuant to all materials on record at the time of passing of interim order. Further, I note that apart from mere statement/ denial that he is not a director or employee of the Company and writing letters to RoC, he has not offered even any explanation of circumstances under which his name is appearing as director in the MCA records. Neither did he submit any records to support that his

private services had been hired by the Company for marketing of its finance/investment schemes nor produced documents showing that he had taken any steps to resign from the Company. In view the same, I am compelled to accept the MCA records that he has joined as a director of the Company on June 1, 2013 and is still continuing as a director.

46. Mr. Pradipta Chakraborty vide his copy of the Complaint addressed to Officer-in-charge, Shakespeare Sarani Police Station, (Copy submitted to SEBI), *inter-alia*, mentioned that during his mother's treatment in 2011, he met Ms. Asthomita Kar who was attached to the Bhabiswajyoti group and insisted with him to invest in her Company and due to her good behavior, he subsequently gave her photocopy of his Voter I card, PAN card and self-signed cheque of Rs. 2000 and as per her direction deposited forms of Bhabiswajyoti in her company. He further states that he later called up Ms. Asthomita Kar and asked if she deposited the cheque and she told him that her company. *i.e.* Bhabiswajyoti would not accept such a small investment and assured that she will return his cheque and documents, however did not return the documents. He further stated that in 2016, he received SEBI letter and called up Ms. Asthomita Kar who tried to convince him to ignore the matter, however, he discussed the matter with others and was shocked to know that his name and details were fraudulently used a director in BIIL. He also submitted that Mr. Chinmoy Ghatak, a C.A. conspired with the directors of the Company and others to fraudulently represent him by impersonating him before ROC without his knowledge and consent and submitted false documents before ROC by manufacturing fake documents and forging his signature, therefore, the aforesaid persons have committed offences punishable under IPC and are liable to be prosecuted. He also requested to take note of the said offences and treat this letter as FIR and cause investigation into the matter and undertook to give his specimen handwriting to verify the same with forged documents and also enclosed copy of director consent letter.

47. I have considered the aforesaid submissions of the Noticee and I also note that SEBI has

sought documents for verification of the claims of the Noticees. In cases wherein persons allege forgery, the burden of proof lies upon the person who alleges the same, in the instant case the obligation to prove the same lies upon the Noticee. The said principle has also been recognised by various courts in catena of cases. In this regard, I note the following observations of the Hon'ble Securities Appellate Tribunal in the matter of *Kalidas Dutta vs. SEBI* (decided on January 23, 2018 "*we are of the considered opinion that this appeal can be disposed of with a direction to the appellant to obtain appropriate documents/orders from the competent authority to the effect that he was fraudulently appointed as director of the company in question on 10th February, 2015. For this purpose, the appellant is granted time up to one year to do the needful and submit the same to SEBI*").

48. Therefore, I am of the considered view that the Noticee may be granted 360 days' time to obtain appropriate order from the competent authority with respect to his allegation of forgery. The said order, if any, shall reach SEBI within 360 days from the date of this order. Till that time the directions against Mr. Pradipta Chakraborty passed in this order shall not take effect. Pending such determination, I am compelled to accept the MCA records that he has joined as a director of the Company on May 30, 2013 and is still continuing as a director.

49. Further, Mr. Gopal Sharma, Mr. Prashant Sharma, Ms. Soma Sharma, Mr. Arindam Mukherjee and Mr. Mahindra Nath Chowdhury have not contested their directorship in the Company. Therefore, I find in line with MCA records which is mentioned at paragraph 43 above that the present Directors in BIIL are Mr. Pradipta Chakraborty (subject to paragraph 48), Mr. Srikumar Chakraborty and Mr. Gopal Sharma. I also find that Mr. Prashant Sharma, Ms. Soma Sharma, Mr. Arindam Mukherjee and Mr. Mahindra Nath Chowdhury who were earlier Directors in BIIL, have since resigned.

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

51. 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%.
52. From the material available on record such as MCA records regarding the details of the appointment and resignation of the directors of BIIL I note that Mr. Prashant Sharma, Ms. Soma Sharma, Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Gopal Sharma were mentioned as executive directors of the Company during the period of issuance of NCDs. It may be noted that the term executive director is nowhere defined under the Companies Act, 1956. However, in the commercial parlance term executive director on who is acting as ‘whole time director’. This position is recognized in the extant Company law provisions wherein an executive director is defined under Rule 2(k) of the Companies (Specification of definitions details) Rules, 2014. As per the same, “Executive Director” means a whole time director as defined in section 2 (94) of the Companies Act 2013 which defines whole-time director as a director in the whole-time

employment of the company. Therefore, as per above two definitions it is clear that a Whole time director and executive director are synonymous. I note from the MCA portal that Mr. Pradipta Chakraborty has joined BIIL as a non-executive director on May 30, 2013 and Mr. Srikumar Chakraborty joined as non executive director on June 01, 2013. I note that the 'Whole Time Director' is one of the officers set out in clauses (b) of Section 5 of Companies Act, 1956 as officer in default. Therefore, I find that as per Section 5(b) of the Companies Act, 1956 Mr. Prashant Sharma, Ms.Soma Sharma, Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Gopal Sharma, being the Whole Time Directors' are officers in default, and therefore, 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. None of the Noticees disputed this legal liability by way of any written or oral submissions. 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 BIIL and its Whole Time Directors, viz., Mr. Prashant Sharma, Ms.Soma Sharma, Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Gopal Sharma 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. Being non-whole time directors, Mr. Pradipta Chakraborty and Mr. Srikumar Chakraborty are not liable as officers in default for making refund.

53. I note that during the financial years 2012-2013, 2013-2014, BIIL through Offer of NCDs, had collected at least an amount of Rs. 7,55,500 from various allottees. I note that Mr. Gopal Sharma has been director of BIIL since financial years 2012-2013, 2013-2014 till present date. I note that Mr. Prashant Sharma was director of BIIL during

financial years 2012-2013. I note that Ms.Soma Sharma was director of BIIL during financial years 2012-2013. I note that Mr. Arindam Mukherjee was director of BIIL during financial years 2012-2013, 2013-2014. I note that Mr. Mahindra Nath Chowdhury was director of BIIL during financial years 2012-2013, 2013-2014. 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 these directors to refund the amount with interest jointly and severally with BIIL is limited to the extent of amount collected during his tenure as director of BIIL.

54. 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, BIIL is liable for the violation of sections 117B and 117C of the SEBI Act. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the Trustee who act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that both Bhabiswajyoti Debenture Trust (*represented by its trustee, viz. Mr. Sanjoy Chaudhuri*) is liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
55. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 35 of this order, the liability is on the Company to comply with the requirements therein.
56. 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 BIIL and its Directors, viz., Mr. Prashant Sharma, Ms. Soma Sharma, Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Gopal Sharma to refund the monies collected, with interest to such investors. Also, in order to safeguard the interests of investors, to prevent further harm to investors and to ensure orderly development of securities market, all the Noticees

becomes liable to be debarred for an appropriate period of time.

57. In addition to the refund liability mentioned above, I also note that Mr. Gopal Sharma is a director of the Company since inception and continuing as director till date. I also note that Mr. Prashant Sharma, Ms. Soma Sharma, Mr. Arindam Mukherjee and Mr. Mahindra Nath Chowdhury resigned from the Company. I am of the view that Mr. Prashant Sharma, Ms. Soma Sharma, Mr. Arindam Mukherjee and Mr. Mahindra Nath Chowdhury were also responsible for all the deeds/acts of the Company during the period of their directorship, even though Mr. Prashant Sharma, Ms. Soma Sharma, Mr. Arindam Mukherjee and Mr. Mahindra Nath Chowdhury have since resigned, and they were obligated not to cause BIIL to violate deemed public issue norms. In view of the failure to discharge the said responsibility, the aforesaid directors are also liable to be issued appropriate directions and to be debarred for an appropriate period of time.

58. Similarly, in addition to the refund liability for the violations committed as mentioned above, I am also of the view that the Company is also liable to be debarred for an appropriate period of time.

59. I note that Mr. Pradipta Chakraborty and Mr. Srikumar Chakraborty, despite their claims had not taken any steps to resign from the Company till date apart from mere complaint. Considering the fact that they are still shown as continuing directors of the Company in the MCA records, I find that these Noticees are indeed responsible for the violations of the Company. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

" 13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance

or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956. "

60. 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/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The noticee cannot therefore wriggle out from liability. A director who is part of a Company's Board shall be responsible and liable for all acts carried out by a company. Accordingly, Mr. Pradipta Chakraborty and Mr. Srikumar Chakraborty being directors at the time of issuance, were also be responsible for all the deeds/acts of the Company during the period of his directorship and are liable to be debarred on this ground. In addition to this, both these directors being present directors are obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, both of them are liable to be debarred for an appropriate period of time for failure to ensure refund.
61. I also note that, vide the interim order dated June 17, 2015, BIIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of BIIL 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 up to date inventory has not been provided either by BIIL or the other Noticees despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 12 of this Order.
62. In view of the discussion above, appropriate action in accordance with law needs to be initiated against BIIL and its Directors and debenture trustee, viz. Mr. Srikumar

Chakraborty, Mr. Gopal Sharma, Mr. Prashant Sharma, Ms. Soma Sharma, Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury, Mr. Mahesh Shaw and Bhabiswajyoti Debenture Trust (*represented by its trustees, viz. Mr. Sanjoy Chaudhuri*).

63. 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) BIIL, Mr. Prashant Sharma , Ms.Soma Sharma , Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Gopal Sharma shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
- (b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.
- (c) Mr. Prashant Sharma , Ms.Soma Sharma, Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury, Mr. Gopal Sharma 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) BIIL, Mr. Srikumar Chakraborty and Mr. Gopal Sharma (on behalf of the Company) 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.
- (e) BIIL, Mr. Srikumar Chakraborty and Mr. Gopal Sharma (on behalf of the Company) 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) BIIL, Mr. Prashant Sharma, Ms.Soma Sharma, Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Gopal Sharma 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) BIIL and Mr. Prashant Sharma, Ms.Soma Sharma , Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Gopal Sharma in their personal capacity and Mr. Srikumar Chakraborty on behalf of the Company, 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, BIIL, Mr. Prashant Sharma, Ms.Soma Sharma , Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Gopal Sharma and Mr. Srikumar Chakraborty on behalf of the Company, 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")

- (i) In case of failure of BIIL, Mr. Prashant Sharma, Ms.Soma Sharma , Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Gopal Sharma 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 in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- (j) BIIL, Mr. Prashant Sharma, Ms.Soma Sharma, Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Gopal Sharma, 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) Bhabiswajyoti Debenture Trust (*represented by its trustees, viz. Mr. Sanjoy Chaudhuri*), Mr. Mahesh Shaw and Mr. Srikumar Chakraborty are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.
- (l) Mr. Pradipta Chakraborty is restrained from accessing the securities market and is further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years which shall come into effect on the expiry of three hundred and sixtieth (360) day of this order, if the order of the Competent Authority is not produced by Mr. Pradipta Chakraborty within such 360 days, or, if

produced within such period, the same is not in favour of Mr. Pradipta Chakraborty. This direction shall not take effect, if the order of the Competent Authority is produced within such period and the same is in favour of Mr. Pradipta Chakraborty.

(m) Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the Noticees shall remain frozen.

(n) The directions except at paragraph 63(l) shall come into force with immediate effect.

64. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.

65. 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.

DATE: April 10, 2019

PLACE: Mumbai

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