

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 (1) of the Securities and Exchange Board of India Act, 1992

In the matter of Idol India Projects Limited

In re Deemed Public Issue Norms

In respect of:

Name of the Entity	PAN	DIN
Mr. Shribas Chandra Das	AFTPD2362Q	03089046

Background

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) passed final order dated December 21, 2017 inter alia, in respect of Mr. Shribas Chandra Das (hereinafter referred to as “Noticee”) in the matter of Idol India Projects Limited (hereinafter referred to as “IIPL”/ “Company”). The said Order, inter alia, made the following findings qua the Noticee:

“36. From the material available on record and the details of the appointment and resignation of the directors of IIPL as reproduced in paragraph 33 of this Order, it is noted that Shri Shribas Chandra Das, Shri Pintu Sarkar and Shri Bappaditya Majumder 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 IIPL 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 IIPL, 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. IIPL has submitted that the company never issued RPS, public in nature and also denied noncompliance of provisions of Section 73 of the Companies Act, 1956. However it has not submitted any material to substantiate the same. Further, the reply of the noticees have already been dealt in pre-para 26 of this Order. 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 coextensively 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 IIPL and its Directors, viz., Shri Shribas Chandra Das, Shri Pintu Sarkar and Shri Bappaditya Majumder 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.

37. I note that during the financial years 2010-2011 and 2011-2012 IIPL through Offer of RPS, had collected an amount of Rs. 39.87 lakhs from various allottees. I note that Shri Pintu Sarkar has been director of IIPL since financial years 2010-2011, 2011-2012 till present date. I note that Shri Bappaditya Majumder has been director of IIPL since financial years 2010-2011, 2011-2012 till present date. I note that Shri Shribas Chandra Das was director of IIPL during financial years 2010-2011, 2011-2012. 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 IIPL and other directors are limited to the extent of amount collected during his/her tenure as director of IIPL."

2. In light of the above, vide final order dated December 21, 2017, the following directions were issued against the Noticee and other entities:

"43.

a. IIPL, Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS 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.

.....

d. Shri Shribas Chandra Das is directed to provide a full inventory of all his assets and properties and details of all his bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.

.....

h. IIPL, Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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.

i. IIPL and on its behalf the present director who joined subsequent to the issues (Shri Ajay Kumar) and Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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.

j. After completing the aforesaid repayments, IIPL and on its behalf the present director who joined subsequent to the issues (Shri Ajay Kumar) and Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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")

k. In case of failure of IIPL, Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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 43(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

l. IIPL, Shri Shribas Chandra Das, Shri Pintu Sarkar, Shri Bappaditya Majumder 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.

.....

n. The above directions shall come into force with immediate effect."

3. The Noticee challenged the final order dated December 21, 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") on the grounds that having given specific notice to the Noticee for personal hearing and again having personally intimated to the Noticee that the hearing fixed is postponed, SEBI fixed the next date of personal hearing by way of newspaper advertisements and did not communicate the same by sending specific hearing notice to the Noticee. Hon'ble SAT vide its Order dated March 26, 2018, restored the matter qua the Noticee back to the WTM for passing fresh order on merits and in accordance with the law. Hon'ble SAT further observed as follows:

"5. In these circumstances, we quash and set aside the impugned order qua the appellant and restore the matter back to the WTM of SEBI for passing fresh order on merits and in accordance with law.

6. However, it is made clear that directions contained in para 43(d) and (h) of the impugned order dated December 21, 2017 shall continue to be in force till fresh order is passed by SEBI. Appellant is directed to furnish list of his assets to SEBI within one week from today."

4. Pursuant to the Order of Hon'ble SAT, vide Hearing Notice dated June 08, 2018 the Noticee was notified by SEBI to avail the opportunity of personal hearing on June 26, 2018 at the time and the venue mentioned therein. However, the hearing was rescheduled to June 28, 2018 and the same was communicated to the Noticee vide letter dated June 20, 2018.

Hearing and Submissions

5. On the day of the scheduled hearing, Mr. Prashant Agarwal appeared as the authorized representative (hereinafter referred to as "AR") of the Noticee and *inter alia* made the following oral submissions:

- a. That the Noticee joined as director of IIPL on December 29, 2010.*
- b. That he tendered his resignation to Shri Bappaditya Majumder on June 19, 2011.*
- c. That though he tendered his resignation on June 19, 2011, his signature was forged and fraudulently his resignation was shown as on June 19, 2012.*
- d. That the resignation letter uploaded along with Form 32 did not bear his signature.*
- e. That he is in the process of filing suit before Civil Court seeking declaration of signature expert on the forged signature.*

In this regard, the Noticee was given 2 weeks' time to submit the documentary proof of tendering his resignation to IIPL on June 19, 2011 along with additional submissions, if any.

6. Subsequently, Noticee vide letter dated June 12, 2018 *inter alia* made the following submissions:
- 6.1. *He had joined the Company as the director in the year 2010 upon request of two of the promoters and director thereof namely Mr. Pintu Sarkar (since deceased) and Bappaditya Mazumdar. However, the Noticee could not continue the relation with the said Company for long and he therefore not only ultimately resigned from the said post of Director on June 19, 2011 but also severed all connections with the Company.*
 - 6.2. *Although the Noticee had tendered his resignation on June 19, 2011, yet the person at the helm of the said company while allowing the Noticee to exit the company did not bring the resignation to the knowledge of the Registrar of Companies by filling Form 32 in respect thereof. Noticee thereafter received copy of Interim Order dated October 09, 2015 which was served upon him by speed post at his home/residential address.*
 - 6.3. *At the time when the Noticee received the said Interim Order, he was down with a problem with his spinal cord and was totally bed ridden due to it. As such he could not contact his advocate so as to take steps and file his reply. It took eight months for the Noticee to regain his mobility and then he contacted his advocate in the beginning of August 2016.*
 - 6.4. *As per the advice of the advocate Noticee searched the website of the Registrar of Companies and found that Mr. Bappaditya Mazumdar had uploaded Form 32 in connection with Noticee's resignation from the Company which showed June 19, 2012 as the date of Noticee's resignation from the said Company and the said attachment that posed to be the letter of resignation issued by the Noticee doesn't contain his signature and hence it is clear that the said letter of resignation is nothing but a document forged to appear as such letter.*
 - 6.5. *The Noticee's signature has been forged on the document dated June 19, 2012. Despite the Noticee having resigned on June 19, 2011, Form 32 has been uploaded on the official website with the forged letter of resignation dated June 19, 2012. These acts of Mr. Bappaditya Majumder in connivance and collusion with Mr. Pintu Sarkar (since deceased) and Mr. Ajay Kumar amounts to fraud being practiced upon the Noticee.*
 - 6.6. *The Noticee only looked after the administrative side of the said company until his resignation i.e. June 19, 2011 and never engaged in the business of the company and never took part in the financial activity of the company. The Noticee on becoming aware that Mr. Bappaditya Majumder*

with Mr. Pintu Sarkar (since deceased) and Mr. Ajay Kumar had been engaging in the business of collecting funds from the market under the veil of issuance of Shares and Debentures, without valid permissions of the SEBI as well as Ministry of Corporate Affairs, immediately tendered resignation and severed all relations with the said Company.

6.7. The Noticee submitted the following documents viz., Company Master Data showing that he is not the Authorised Signatory of the Company, Form 18 showing that the Company changed/shifted its registered office after the resignation of the Noticee, Form 23AC showing that the Noticee is not the director of the Company during the period April 01, 2011 to March 31, 2012 as per the Balance Sheet prepared on September 06, 2012 to show that the current directors of IIPL i.e., Mr. Bappaditya Majumder with Mr. Pintu Sarkar (since deceased) and Mr. Ajay Kumar practiced fraud with him.

6.8. Mr. Bappaditya Majumder with Mr. Pintu Sarkar (since deceased) are the kingpins of all financial and management operations of IIPL and Mr. Bappaditya Majumder in collusion with Mr. Ajay Kumar forged his signature.

7. Despite sending multiple reminders to the Noticee vide letter dated September 14, 2018 and emails dated July 03, 2018 and October 15, 2018 for the submission of Certificate of Signature Verification as mentioned in the personal hearing dated June 28, 2018, there was no such submission made by the Noticee.

8. Subsequently, vide letter dated August 20, 2019, the Noticee was granted an opportunity of hearing on September 19, 2019 at the time and the venue mentioned therein. On the day of the scheduled hearing, the AR of the Noticee appeared and *inter alia* made the following oral submissions:

8.1. That the Noticee cannot be held responsible for the violations of the provisions of the Companies Act for the year 2011-12 as he was not associated with IIPL during this period. That for the year 2010-11, the number of allottees are only 14 and there is no mischief on part of the Noticee as the number is than 49.

8.2. That the Noticee was appointed as Director in December 2010 and has tendered his resignation vide letter dated June 19, 2011, addressed to the Director of the Company with request to accept the resignation with effect from June 19, 2011. That the resignation letter was uploaded to the

website of Ministry of Corporate Affairs with the date June 19, 2012, with forged signature of the Noticee.

- 8.3. The AR submitted that they do not have the record/ acknowledgement to show that the resignation letter was delivered to the Director of the Company or of having delivered the resignation letter.
- 8.4. The AR informed that a suit has been filed in the appropriate forum for determination of forgery and the status/details of the same will be submitted at a later date.
- 8.5. That the Director, Mr. Bappaditya Mazumdar, has full control of the Company and the Noticee has made the Company and its Directors as Respondents in its plea before the Hon'ble SAT. That they have not appeared before the Hon'ble SAT and have not challenged the appeal of the Noticee. The AR further submitted that the Noticee was never involved in any financial transaction of the Company and that these facts are within the knowledge of the Directors of the Company. The AR submitted that as there is no denial by the Directors of the averments made by the Noticee, in view of the doctrine of non-traverse, these averments are to be taken as admitted.
- 8.6. The AR made reference to Section 5 of the Companies Act, 1956, regarding the definition of "Officer who is in Default" and to Section 2(26) regarding definition of "Managing Director". The AR submitted that at the material point in time, the Noticee was not a Director in the Company. Further, the AR submitted that Bappaditya Mazumdar has been the Director of the Company since the start and is at the helm of all the business of the Company. Further, all uploads and downloads from the website of the Ministry of Corporate Affairs, such as, Form 18, Form 23A, Form 32, etc., have been done by Bappaditya Mazumdar. The AR also supported these submissions by referring to the judgment of the Hon'ble SAT in the matter of Pritha Bag versus SEBI, dated February 14, 2019.
- 8.7. All the facts of the matter be considered in totality and the operative part of the order dated December 21, 2017, in so far as it relates to the Noticee, be set aside on the above grounds.

The AR was advised to submit any evidence to show that the allotment for the year 2011-12 was done after the supposed resignation of the Noticee. The AR was also advised to produce any other document to show that Bappaditya Mazumdar has exercised his substantive powers over the business of the Company and is having significant management control.

9. The Noticee was granted time upto October 18, 2019, to file written submissions/replies, if any. However, no written submissions were made by the Noticee.

Considerations and Findings

10. I have considered the allegations and materials available on record including Order dated December 21, 2017 and the oral and written submissions of the Noticee. On perusal of the same, the following issues arise for consideration.

- 1) *Whether the Company came out with the offer of Redeemable Preference Shares in the financial years 2010-2011 and 2011-2012 (hereinafter referred to as “Offer of RPS”) as stated in the interim order dated October 09, 2015?*
- 2) *If answer to the Issue No. 1 is in affirmative, whether the Offer of RPS is in violation of Section 56, Section 60 and Section 73 of Companies Act, 1956?*
- 3) *If the findings on Issue No. 2 is in affirmative, whether the Noticee is liable for the violations committed?*
- 4) *If the finding on Issue No. 3 is in affirmative, whether any directions under Sections 11, 11(4), 11A and 11B of SEBI Act should be issued against the Noticee for the alleged violations of the relevant provisions of the Companies Act, 1956 in respect of the Offer of RPS by IIPL?*

Issue No. 1 – Whether the Company came out with the Offer of RPS as stated in the interim order dated October 09, 2015?

11. I have perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the information obtained from the *MCA21 Portal* and return of allotment filed by IIPL with Registrar of Companies (RoC) that IIPL has issued and allotted Redeemable Preference Shares (RPS) to 386 investors during the financial years 2010-2011, 2011-2012 and raised an amount of Rs. 39.87 lakhs. I also note that the Noticee has not disputed the same.

12. I therefore conclude that IIPL came out with an Offer of RPS as outlined above. The same conclusion was also arrived at in the Order dated December 21, 2017.

Issue No. 2 – If answer to the Issue No. 1 is in affirmative, whether the Offer of RPS is in violation of Section 56, Section 60 and Section 73 of Companies Act, 1956?

13. 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).”

14. 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.”

15. 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*.
16. In the instant matter, I find that RPS were issued by IIPL to 386 investors in the financial years 2010-2011, 2011-2012 and IIPL has raised an amount of Rs. 39.87 lakhs. The above findings lead to a reasonable conclusion that the *Offer of RPS* by IIPL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

17. I find that there is no case that IIPL is 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 IIPL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
18. IIPL has issued RPS to 50 or more persons and it is noted that in the financial year 2010-2011 and 2011-2012, RPS has been issued to 386 allottees. 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 Sahara 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 issuances by IIPL, 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 has 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”*.
19. Therefore, in view of the material available on record, I find that the *Offer of RPS* by IIPL 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 IIPL was mandated to comply with the ‘public issue’ norms as prescribed under the Companies Act, 1956.
20. 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. I have found that the present issue is a public issue and thus the provision of Section 73, Section 56 of the Companies Act, 1956 read with Section 55A of the Companies Act, 1956 are applicable to IIPL.

21. I also find that no records have been submitted to indicate that IIPL has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that IIPL has contravened the said provisions. Neither there is material on record nor the Noticee has provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that IIPL 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.
22. 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, IIPL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that there is no record to indicate that IIPL has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that IIPL has not complied with the provisions of section 60 of the Companies Act, 1956.
23. 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. There is no material on record to show that IIPL 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 IIPL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

24. 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...”

25. In view of the above findings, I am of the view that IIPL was 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 is in affirmative, whether the Noticee is liable for the violations committed?

26. The liability of the Noticee for the violations committed depends on the whether he has been an officer in default and the tenure of his directorship in IIPL. As per the MCA records, the date of appointment of the Noticee as the Director of IIPL is December 29, 2010 and the date of cessation is on June 19, 2012. However, the Noticee has raised contentions with respect to his date of cessation mentioned in the MCA records. In view of the same, it would be appropriate to deal with the submissions/objections of the Noticee:

- 26.1. The Noticee submitted that he was appointed as Director in December 2010 and has tendered his resignation vide letter dated June 19, 2011, addressed to the Director of the Company with request to accept the resignation with effect from June 19, 2011. In this

regard, I note that the Noticee has not submitted any record/acknowledgement to show that the resignation letter was delivered to the Director of the Company on the said date or even sent to the company. Further, the Noticee has also not submitted any evidence to show that the Offer of RPS for the year 2011-12 was done after the supposed resignation of the Noticee.

- 26.2. However, on perusal of 'Form 2' filed before MCA, I find that even if his case of resignation on June 19, 2011 was accepted, as per 'Form 2', 126 number of allottees have been issued RPS and an amount of Rs. 19.02 lakhs has been collected till the date of his claimed resignation i.e., June 19, 2011. In view of the same, Noticee's submission that he cannot be held responsible for the violations committed for the year 2011-12 as he was not associated with IIPL during this period and that the number of allottees for the year 2010-11 were only 14 does not hold good.
- 26.3. The Noticee submitted that though he tendered his resignation on June 19, 2011, the resignation letter was fraudulently uploaded to the website of Ministry of Corporate Affairs (MCA) with the date June 19, 2012, with forged signature of the Noticee. The Noticee was informed to submit the status of any suit/case, if filed by the Noticee before the appropriate forum. It is noted from the submissions made by the Noticee that a suit has been filed in the appropriate forum in this matter. However, the Noticee has not submitted any proof of filing of suit or the status of the petition/suit subsequent to making his submission. With no submission of proof of filing of suit or status of the petition by the Noticee, the very fact of filing a suit by the Noticee as stated by him, does not stand established.
- 26.4. The Noticee submitted that he only looked after the administrative side of the Company and was never involved in any financial transaction of the Company. Further, it was submitted by the Noticee that Mr. Bappaditya Mazumdar has full control of the Company and all uploads and downloads from the website of the MCA have been done by Mr. Bappaditya Mazumdar. In this regard, the Noticee has no proof/document to show that Mr. Bappaditya Mazumdar has been designated as the Managing Director of the Company or has exercised his substantive powers over the business of the Company

and is having significant management control. Further, there is no material available on record to show that Mr. Bappaditya Mazumdar or any other director was designated as the Managing Director of the Company. It is also pertinent to note that mere uploading/downloading documents to/from the MCA website cannot be deemed to be exercise of substantive powers by Mr. Bappaditya Mazumdar. Hence, Noticee's reference to Section 5 and Section 2(26) of the Companies Act, 1956 along with the judgement of Hon'ble SAT in the matter of Pritha Bag versus SEBI, dated February 14, 2019 to contend that he is not the officer in default is untenable.

26.5. The Noticee also submitted that the Director, Mr. Bappaditya Mazumdar, has full control of the Company and the Noticee has made the Company and its Directors as Respondents in its plea before the Hon'ble SAT. It was further contended that they have not appeared before the Hon'ble SAT and have not challenged the appeal of the Noticee. Therefore, it is submitted that as there is no denial by the Directors of the averments made by the Noticee before Hon'ble SAT, in view of the doctrine of non-traverse, these averments are to be taken as admitted. It may be noted that in Appeal No.68 of 2018, the Hon'ble SAT in its order dated March 26, 2018 has not rendered any finding on the basis of the "non-traverse" in respect of the pleading that Mr. Bappaditya Mazumdar, has full control of the Company. The decision of the Hon'ble SAT is only on the basis that fixing the next date for personal hearing by way of an advertisement in the newspapers while the first date of hearing was personally intimated, is not justifiable. It is noted that other directors including Mr. Bappaditya Mazumdar is not Noticee in the present proceedings before SEBI. Therefore, the principle of non-traverse is not applicable to the pleading of the Noticee against Mr. Bappaditya Mazumdar as he is not a party in the present proceedings before SEBI though he was a party to the proceedings before SAT. Even in the case of finding given on the basis of "non-traverse" the deciding forum in its discretion seek evidence for proof the fact pleaded. No proof has been placed by the Noticee that Mr. Bappaditya Mazumdar was in full control of the Company. There is also no material available on record to substantiate Bappaditya Mazumdar was in full control of the Company

26.6. The Noticee has submitted Company Master Data to show that he is not the Authroised Signatory of the Company. It is to be noted that the data pertains to the period when Mr. Ajay Kumar was the Director of the Company i.e., after June 19, 2012. Further, the Noticee has also submitted Form 23AC claiming that the Noticee is not the director of the Company during the period April 01, 2011 to March 31, 2012 as per the Balance Sheet prepared on September 06, 2012. In this regard, it is pertinent to note that Form 23AC pertains to filing balance sheet and other documents with the Registrar as per section 220 of the Companies Act, 1956 which states as follows:

“220. THREE COPIES OF BALANCE SHEET, ETC., TO BE FILED WITH REGISTRAR

(1) After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act, -

(a) [a copy] of the balance sheet and the profit and loss account, signed by the managing director, manager or secretary of the company, or if there be none of these, by a director of the company, together with [a copy] of all documents which are required by this Act to be annexed or attached to such balance sheet or profit and loss account:

Provided that in the case of a private company, [copy] of the balance sheet and [copy] of the profit and loss account shall be filed with the Registrar separately:”

From the above, it becomes clear that there is no such requirement that the balance sheet should be signed by all the directors of the Company. Further, point 3(c) of Form 23AC states that “*Details of director(s), Managing Director, manager, secretary of the company who have signed the balance sheet*” which means the details of the directors present in Form 23AC are only of those directors who have signed the balance sheet at that relevant point in time. Moreover, the date of Board of directors’ meeting in which the balance sheet was approved was on September 06, 2012 which is after the cessation of the Noticees’ directorship i.e., June 19, 2012 as per MCA records. Therefore, from the above facts, the

Noticee's claim that he is not the director of the Company during the period April 01, 2011 to March 31, 2012, is not supported by Form 23AC.

26.7. On the basis of the document of appointment letter of the Noticee and his claim of resignation (June 19, 2011), I find that in any case, he was a director of IIPL from December 29, 2010 till June 19, 2011.

27. Having dealt with the submissions made by the Noticee, I note that 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 recognized 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. In the eventuality of appellant producing the documents to the satisfaction of SEBI that he was fraudulently inducted as one of the directors of the company, SEBI will pass appropriate orders as per law."

28. Therefore, I am of the considered view that the Noticee may be granted 365 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 365 days from the date of this order. Till that time the directions against Mr. Shribas Chandra Das passed in this order shall not take effect. Pending such determination, I am compelled to accept the MCA records in respect of his resignation. In view of the decision of Hon'ble SAT, subject to the production of the competent authority's judgment with respect to his allegation of forgery, I find that he in fact resigned as the director of IIPL with effect from June 19, 2012. This finding on the resignation of the Noticee will come into effect on the expiry of 365 days of this order, if the order of the Competent Authority is not produced by the Noticee within such 365 days, or, if produced within such period, and the same is not in favour of the Noticee, whichever is

earlier. This finding on the resignation mentioned in this paragraph will not take effect if within said 365 days, the order of Competent Authority is produced and the same in his favour.

29. 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, the Noticee is held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
30. 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%.
31. From the material available, there is no record of appointment of any Managing Director of IIPL. 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 IIPL 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 the Noticee along with the directors as mentioned in para 36 of the final order dated December 21, 2017, as officer in default, is liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the Noticee along with the directors as mentioned in para 36 of the final order

dated December 21, 2017 is coextensively 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. Therefore, I find that the Noticee along with the directors as mentioned in para 36 of the final order dated December 21, 2017 is 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.

32. I note that during the financial years 2010-2011 and 2011-2012 IIPL through Offer of RPS, had collected an amount of Rs. 39.87 lakhs from various allottees out of which Rs. 19.02 lakhs was collected till the date of June 19, 2011. From the MCA records, I note that Noticee was director of IIPL during financial years 2010-2011, 2011-2012. 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 Noticee to refund the amount with interest jointly and severally with IIPL and other directors mentioned in para 36 of the final order dated December 21, 2017 are limited to the extent of amount collected during the tenure of Noticee i.e., till June 19, 2012 as director of IIPL. However, even if his resignation date is accepted as June 19, 2011 as claimed by him, he is liable as an officer in default for repayment of Rs. 19.02 lakhs with interest jointly and severally with IIPL and other directors as mentioned in para 36 of the final order dated December 21, 2017.

Issue No. 4 – If the finding on Issue No. 3 is in affirmative, whether any directions under Sections 11, 11(4), 11A and 11B of SEBI Act should be issued against the Noticee for the alleged violations of the relevant provisions of the Companies Act, 1956 in respect of the Offer of RPS by IIPL?

33. 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 the Noticee to refund the monies collected, with interest to such investors. Further, in view of the violations of the Noticee, 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 Noticee.

34. I also note that vide the interim order dated October 09, 2015, IIPL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of IIPL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 14 days of the receipt of the order. However, I find that no such inventory has been provided by the Noticee after the interim order even after the direction of the Hon'ble SAT vide its order dated March 26, 2018.

35. 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 nonpayment 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"

36. 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 in respect of the Noticee.

- a. Subject to para 43(b) of the final order dated December 21, 2017, Shri Shribas Chandra Das along with the directors as mentioned in para 43(a) of the final order dated December 21, 2017 shall, jointly and severally forthwith refund the money collected by the Company, during the period starting from December 29, 2010 to

June 19, 2011 through the issuance of RPS including the application money collected from investors during the said period 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. Subject to para 43(b) of the final order dated December 21, 2017, Shri Shribas Chandra Das along with the directors as mentioned in para 43(a) of the final order dated December 21, 2017 shall, jointly and severally forthwith refund the money collected by the Company, during period starting from June 19, 2011 to June 19, 2012 through the issuance of RPS including the application money collected from investors during the said period, 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.
- c. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.
- d. Shri Shribas Chandra Das is directed to provide a full inventory of all his assets and properties and details of all his bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- e. Shri Shribas Chandra Das is prevented from selling his assets, properties and holdings of mutual funds/shares/securities held by him in demat or 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.
- f. Shri Shribas Chandra Das in his personal capacity to 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.

- g. Shri Shribas Chandra Das in his personal capacity shall file a report of such completion with SEBI, within a period of three months of this Order coming into effect, 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").
- h. In case of failure of Shri Shribas Chandra Das to, jointly and severally along with the directors mentioned in para 43(k) of the final order dated December 21, 2017, comply with the aforesaid applicable directions, SEBI, on the expiry of three months' period from the date of this Order coming into effect, may recover such amounts, from the Noticee as specified in paragraph 36(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- i. In case of failure of Shri Shribas Chandra Das to, jointly and severally along with the directors mentioned in para 43(k) of the final order dated December 21, 2017, comply with the aforesaid applicable directions, SEBI, on the expiry of three months' period from the date of this Order coming into effect, may recover such amounts, from the Noticee as specified in paragraph 36(b) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- j. Shri Shribas Chandra Das is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is 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 coming into effect, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The Noticee is also restrained from associating himself 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 coming into effect till the expiry of 4 (four) years from the date of completion of refunds to investors.

- k. The directions in para 36(a), 36(c), 36(d), 36(e), 36(f), 36(g), 36(h), and 36(j) shall come into force with immediate effect whereas the directions in para 36(b) and 36(i) shall come into effect on the expiry of three hundred and sixty fifth (365th) day of this order, if the order of the Competent Authority as referred in para 28, to be submitted by the Noticee is not received by SEBI within such 365 days, or, if produced within such period, the same is not in favor of the Noticee whichever is earlier. The directions in 36(b) and 36(i) shall not take effect, if the order of the Competent Authority is produced before SEBI within such period and the same is in favor of the Noticee.

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

38. 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 Noticee.

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

-Sd-

DATE: January 29, 2020

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA