

WTM/AB/SEBI/ 10 /2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA

EXPARTE–AD-INTERIM ORDER CUM SHOW CAUSE NOTICE

UNDER SECTIONS 11(1), 11(4), 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Serial No	Name of the Noticee	PAN
1.	Kalyani and Kalyani Developers (India) Limited	AACCK8267C
2.	Baman Charana Das	AJMPD9925C
3.	Bipin Chandra Das	ACHPD4632J
4.	Kalyani Das	AUHPD9009R
5.	Sujata Das	ACHPD4631M
6.	Madhusudan Acharya	Not available
7.	Jagannath Satapathy	Not available
8.	Sanjaya Kumar Satapathy	AUGPS8376P
9.	Santosh Kumar Panda	ASMPP9586C

In the matter of:

Kalyani and Kalyani Developers (India) Ltd.

-
1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a complaint on May 18, 2018 against Kalyani and Kalyani Developers (India) Ltd. (hereinafter referred to as “**KKDIL**” or “**the company**”) from a six complainants stating that KKDIL had mobilized funds through certain schemes. The

complainants had attached the copies certificates of redeemable preference share (hereinafter referred to as “**RPS**”) and equity share issued by KKDIL along-with their complaint. Therefore, an examination was initiated by SEBI against the company to ascertain if KKDIL has issued RPS and equity shares, to the public in violation of the public Issue requirements.

2. From the information obtained from Ministry of Corporate Affairs website (MCA 21 portal) and Registrar of Companies, Cuttack (hereinafter referred to as “**RoC**”) and other material available on record, the following were observed:

2.1. The details of the company are as follows:

- i) Date of Incorporation : February 23, 1998
- ii) Type of the company : Public and Unlisted
- iii) CIN : U70101OR1998PLC005206
- iv) PAN : AACCK8267C
- v) Registered Office Address : Gandhi Nagar, 2nd Lane Extension, Near Mahamayee Women’s College, Berhampur, Ganjam, Odisha, Pin - 760001
- vi) Correspondence Address: same as above.
- vii) Details of present and past directors/ promoters are as follows :

Name of Director	Designation	DIN/DPIN	PAN	Date of appointment	Date of cessation
Bipin Chandra Das	Promoter and Past Director	01859168	ACHPD4632J	23.02.1998	31.03.2013
Kalyani Das	Promoter and Director	03225606	AUHPD9009R	23.02.1998	31.03.2013
Sujata Das	Promoter and Director	01903032	ACHPD4631M	23.02.1998	Continuing
Madhusudan Acharya	Past Director	01859084	Not Available	30.12.2005	07.07.2011
Jagannath Satapathy	Past Director	01859058	Not Available	30.12.2005	31.03.2008
Sanjaya Kumar Satapathy	Past Director	01859120	AUGPS8376P	30.12.2005	31.03.2008
Baman Charana Das	Managing Director	02116492	AJMPD9925C	31.03.2008	Continuing

Santosh Kumar Panda	Director	06659695	ASMPP9586C	31.03.2013	Continuing
---------------------	----------	----------	------------	------------	------------

viii) Date of filing of last Annual Accounts and Annual Report: Annual Accounts - 31.03.2013.

ix) Return of allotment (Form 2) - Total capital of the company (Break-up of issues and authorized capital) was as follows:

a. Issued capital: Taking into consideration the Company Master Data, Form 2 and Annual Return filed by the company with RoC the following was observed:

I. Equity Share Capital: Rs. 3,49,78,900/- as per latest available Annual Return and Rs. 3,06,33,900/- as per available Form 2.

II. Preference Share Capital: Rs. 2,30,84,400/- as per latest available Annual Return and Rs. 2,91,45,200/- as per available Form 2.

2.2. The details of allotment of equity shares (as per Form 2/List of allottees) by KKDIL is as follows:

Year	Date of allotment	No. of allottees	Face Value (Rs)	No of Share Allotted	Total Amount (Rs)
2007-08	31/03/2008	19	100	10,000	10,00,000/-
2008-09	31/03/2009	98	100	26,550	26,55,000/-
2009-10	31/03/2010	434	100	55,000	55,00,000/-
2010-11	31/03/2011	494	100	56,870	56,87,000/-
2011-12	30/06/2011	125	100	12,675	12,67,500/-
	30/03/2012	473	100	49,061	49,06,100/-
2012-13	30/06/2012	232	100	24,292	24,29,200/-
	28/09/2012	347	100	50,575	50,57,500/-
	30/03/2013	95	100	21,316	21,31,600/-
Total		2,317*		3,06,339	3,06,33,900/-*

**As per Annual Return filed by the company for the year ended 31.03.2013, it is observed that the paid up equity share capital is Rs. 3,49,78,900/- and the number of equity shareholders is 3,738. Since, the paid up equity share capital and the number of equity shareholders from Annual Return is higher than Form -2, the higher amount i.e. equity share capital of Rs. 3,49,78,900/- and the number of equity shareholders of 3,738 are taken.*

2.3. The details of allotment of Cumulative Redeemable Preference Shares (hereinafter referred to as “**CRPS**”) (as per Form 2/List of allottees) by KKDIL is as follows:

Year	Date of allotment	No. of allottees	Face Value (Rs)	No of Share Allotted	Total Amount (Rs)
2006-07	30/11/2006	39	100	6,180	6,18,000/-
	31/03/2007	23	100	3,905	3,90,500/-
2007-08	31/05/2007	17	100	1,560	1,56,000/-
	31/03/2008	101	100	12,185	12,18,500/-
2008-09	31/12/2008	193	100	20,856	20,85,600/-
	31/03/2009	98	100	16,405	16,40,500/-
2009-10	31/08/2009	102	100	11,487	11,48,700/-
	31/03/2010	130	100	14,613	14,61,300/-
2010-11	31/03/2011	188	100	28,874	28,87,400/-
2011-12	30/06/2011	75	100	8,214	8,21,400/-
	30/03/2012	216	100	25,229	25,22,900/-
2012-13	30/06/2012	39	100	8,250	8,25,000/-
	28/09/2012	56	100	8,042	8,04,200/-
	31/10/2012	32	100	9,420	9,42,000/-
	30/11/2012	49	100	13,585	13,58,500/-
	30/03/2013	333	100	1,02,647	1,02,64,700/-
Total		1,691		2,91,452	2,91,45,200/-

2.4. Combined Financial year-wise details of the number of persons to whom equity Shares were issued by KKDIL is as follows:

Financial Year	No. of allottees	Amount (Rs.)
2007-08	19	10,00,000/-
2008-09	98	26,55,000/-
2009-10	434	55,00,000/-
2010-11	494	56,87,000/-
2011-12	598	61,73,600/-
2012-13	674	96,18,300/-
Total	2,317*	3,06,33,900/-*

2.5. Combined financial year-wise details of the number of persons to whom CRPS were issued by KKDIL is as follows:

Financial Year	No. of allottees	Amount (Rs.)
2006-07	62	10,08,500/-
2007-08	118	13,74,500/-
2008-09	291	37,26,100/-
2009-10	232	26,10,000/-
2010-11	188	28,87,400/-
2011-12	291	33,44,300/-
2012-13	509	1,41,94,400/-
Total	1,691	2,91,45,200/-

2.6. Details of the Board meetings held by the company as per RoC record with respect to the issue of equity shares is as follows:

Date of Board meeting	Date of passing resolution	Amount proposed to raise (Rs.)	Type of issue
31.03.2008	31.03.2008	10,00,000/-	Equity Shares
30.03.2012	30.03.2012	49,06,100/-	Equity Shares
30.06.2012	30.06.2012	24,29,200/-	Equity Shares
28.09.2012	28.09.2012	50,57,500/-	Equity Shares
30.03.2013	30.03.2013	21,31,600/-	Equity Shares

2.7. Details of the Board meetings held by the company with respect to the issue of CRPS, as per RoC record, are as follows:

Date of Board meeting	Date of passing resolution	Amount proposed to raise (Rs.)	Type of issue
31.03.2008	31.03.2008	12,18,500/-	CRPS
30.03.2012	30.03.2012	25,22,900/-	CRPS
30.06.2012	30.06.2012	8,25,000/-	CRPS
28.09.2012	28.09.2012	8,04,200/-	CRPS
31.10.2012	31.10.2012	9,42,000/-	CRPS
30.11.2012	30.11.2012	13,58,500/-	CRPS
30.03.2013	30.03.2013	1,02,64,700/-	CRPS

3. From the above, it was noted by SEBI that the company had issued equity shares to more than 49 persons in F.Y. 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 and issued CRPS to more than 49 persons in F.Y. 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13.

4. In this regard, information was sought by SEBI from the company and its directors in respect of issuance of equity shares and CRPS by the company. The details of correspondences exchanged with company and its directors are as follows:

Name of Entity/ Director	Designation	Letter Date	Letter Status (Returned/ Delivered)	Reply received (if any)
Kalyani and Kalyani Developers (India) Limited	Company	June 20, 2018	Undelivered with the comment "Left"	NA
Baman Charana Das	Managing Director	June 20, 2018	Undelivered with the comment "Left"	NA
Sujata Das	Director	June 20, 2018	Undelivered with the comment "Left"	NA
Santosh Kumar Panda	Director	June 20, 2018	Delivered	Yes on July 03, 2018
Bipin Chandra Das	Past Director	June 20, 2018	Undelivered with the comment "Left"	NA
Kalyani Das	Past Director	June 20, 2018	Undelivered with the comment "Left"	NA
Madhusudan Acharya	Past Director	October 3, 2019	Undelivered with the comment "Addressee Left and other addressee refused to receive"	NA
Sanjaya Kumar Satapathy	Past Director	October 3, 2019	Delivered	No reply received
Jagannath Satapathy	Past Director	October 3, 2019	Undelivered with the comment "insufficient address"	NA

5. Since the letters sent to the company and its directors were either returned undelivered or no replies were received from the company/ directors, except one, a physical verification was conducted by SEBI on June 16, 2019 at the registered office address of the company available on record. The company was not found at its registered address. On local enquiries, no information could be gathered about the company. Vide communication dated May 30, 2018, information was sought from RoC regarding *inter alia* whether prospectus had been filed and necessary statutory declaration had been filed by the company in consonance with Schedule 2 of the Companies Act, 1956. RoC vide its letter dated June 28, 2018 *inter alia* informed that the prospectus had not been filed by the company/ available with the office.
6. In view of the aforesaid, examination by SEBI found that the Noticees have *prima facie* violated provisions of Sections 56, 60, 62, 67 and 73 of the Companies Act,

1956, provisions of SEBI (Disclosure and Investor Protection) Guidelines, 2000 (since rescinded) (hereinafter referred to as “**DIP Guidelines**”) and provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations, 2009**”), by making the public issue of equity shares and CRPS of KKDIL.

7. Before proceeding further with the matter, it would be expedient to refer to the relevant provisions of the laws which Noticees have *prima facie* been found to be in violation of. The relevant extract of such provisions of Companies Act, 1956 is reproduced below:

Relevant extract of provisions of Companies Act, 1956:

“56. Matters to be stated and reports to be set out in Prospectus

(1) Every prospectus issued - (a) by or on behalf of a company, or (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule. (2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed which complies with the requirements of this section:

Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:

Provided further that this sub-section shall not apply if it is shown that the form of application was issued either –

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to fifty thousand rupees.

(4) A director or other person responsible for the prospectus shall not incur any liability by reason of any noncompliance with, or contravention of, any of the requirements of this section, if –

(a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Schedule II, unless it is proved that he had knowledge of the matters not disclosed.

.....

60. Registration of Prospectus

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto –

(a) any consent to the issue of the prospectus required by section 58 from any person as an expert; and

(b) in the case of a prospectus issued generally, also –

(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) Every prospectus to which sub-section (1) applies shall, on the face of it, -

(a) state that a copy has been delivered for registration as required by this section; and

(b) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.

(3) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and subsections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.

(4) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration; and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.

(5) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to fifty thousand rupees. sign the prospectus depending on the circumstances of each case.

62. Civil liability for mis-statements in prospectus

(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say,

(a) every person who is a director of the company at the time of the issue of the prospectus ;

(b) every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time ;

(c) every person who is a promoter of the company.

.....

67. Construction of reference to offering shares or debentures to the public, etc.

(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 the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).

.....

73. Allotment of shares and debentures to be dealt in on stock exchange.

73(1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures

offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:

Provided that where an appeal against the decision of any recognised stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, 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, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2); and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees.

.....”

8. The relevant provisions of DIP Guidelines and ICDR Regulations, 2009, as attracted in the matter, are as follows:

Relevant provisions of DIP Guidelines:

Clause of DIP Guidelines	Dealing With
--------------------------	--------------

<i>Clause 2.1.1</i>	<i>Filing of offer document</i>
<i>Clause 2.1.4</i>	<i>Application for listing</i>
<i>Clause 2.1.5</i>	<i>Issue of securities in dematerialized form</i>
<i>Clause 2.8</i>	<i>Means of finance</i>
<i>Clause 4.1</i>	<i>Promoters contribution in a public issue by unlisted companies</i>
<i>Clause 4 and Clause 4.11</i>	<i>Lock-in of minimum specified promoters' contribution in public issues</i>
<i>Clause 4.14</i>	<i>Lock-in of pre-issue share capital of an unlisted company</i>
<i>Clause 5.3.1</i>	<i>Memorandum of understanding</i>
<i>Clause 5.3.3</i>	<i>Due diligence certificate</i>
<i>Clause 5.3.5</i>	<i>Undertaking</i>
<i>Clause 5.3.6</i>	<i>List of promoters group and other details</i>
<i>Clause 5.4</i>	<i>Appointment of intermediaries</i>
<i>Clause 5.6</i>	<i>Offer document to be made public</i>
<i>Clause 5.6A</i>	<i>Pre-issue Advertisement</i>
<i>Clause 5.7</i>	<i>Dispatch of issue material</i>
<i>Clause 5.8</i>	<i>No complaints certificate</i>
<i>Clause 5.9</i>	<i>Mandatory collection centres</i>
<i>Clause 5.9.1</i>	<i>Minimum number of collection centres</i>
<i>Clause 5.10</i>	<i>Authorised collection agents</i>
<i>Clause 5.12.1</i>	<i>Appointment of Compliance Officer</i>
<i>Clause 5.13</i>	<i>Abridged prospectus</i>
<i>Clause 6.0</i>	<i>Contents of offer documents</i>
<i>Clause 6.1 to Clause 6.15</i>	<i>Contents of Prospectus</i>
<i>Clause 6.16 to Clause 6.34 and Clause 6.17.13</i>	<i>Contents of abridged prospectus</i>
<i>Clause 8.3</i>	<i>Rule 19(2)(b) of SC(R) Rules, 1957</i>
<i>Clause 8.8.1</i>	<i>Opening & closing date of subscription of securities</i>
<i>Clause 9</i>	<i>Guidelines on advertisements by issuer company</i>

Relevant provisions of ICDR Regulations, 2009:

<i>Regulation of ICDR Regulations, 2009</i>	<i>Dealing With</i>
<i>Regulation 4(2)(d)</i>	<i>General conditions</i>
<i>Regulation 5</i>	<i>Appointment of merchant banker and other intermediaries</i>
<i>Regulation 6</i>	<i>Filing of offer document.</i>
<i>Regulation 7</i>	<i>In-principle approval from recognised stock exchanges</i>
<i>Regulation 25</i>	<i>Reference Date</i>
<i>Regulation 26</i>	<i>Conditions for Initial Public Offer</i>
<i>Regulation 36</i>	<i>Lock-in of specified securities held by promoters.</i>
<i>Regulation 37</i>	<i>Lock-in of specified securities held by persons other than promoters.</i>

<i>Regulation 46</i>	<i>Period of subscription</i>
<i>Regulation 47</i>	<i>Pre-issue advertisement for public issue</i>
<i>Regulation 57</i>	<i>Manner of disclosures in the offer document</i>

9. I note that Section 67(3) of the Companies Act, 1956 provides for situations when an offer or invitation is not considered as offer or invitation made to public even though it has been made to a section of 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 is not considered as public offer. Under such circumstances, in ordinary parlance, such offer or invitation is considered as private placement of shares or debentures. The scheme of Section 67(3) envisages the raising of funds by a company, privately, from informed and sophisticated investors or relatives/friends of promoters, who are capable of taking informed decisions on the basis of Letter of Offer or Information Memorandum issued by the company. The overarching intent of Section 67(3) is not to burden such private placements with regulatory supervision and compliances, since, the number of investors involved is restricted to 49 known/ pre-identified persons and the public at large is not involved. However, first proviso to Section 67(3) restricts this private placement only to 49 persons and once, the offerree or invitees exceeds 49 persons, then such a private placement is also deemed as public issue. In such case, the regulatory supervision becomes more stringent and hence, the requirement in respect of contents of prospectus, filling of draft prospectus with SEBI, registration of prospectus with RoC, mandatory listing of securities on stock exchange etc. come into picture. In this regard, it would be appropriate to refer to the judgment of Hon'ble Supreme Court of India in *Sahara Real Estate Corporation and Others Vs. SEBI (2013) 1 SCC1*, wherein while examining the scope of Section 67 of the Companies Act, 1956, it was observed as follows:

“85. 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.

....

86. 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.

....

90. I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

10. Once an offer or invitation is a public offer, then the provisions relating to public issue such as prospectus, listing etc. including Section 73 of the Companies Act, 1956 come into play and the company making such offer or invitation to public is required to make application for listing of shares or debentures offered to the public, to one or more recognized stock exchanges. Section 73 further provides that where the permission has not been applied or, such permission, having been applied for, has not been granted, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, become jointly and severally liable to repay that money with interest. A company making a public issue of shares or debentures is also required to comply with provisions of SEBI Act, 1992 and the regulations/guidelines made thereunder, in this regard.

11. I note that as per Annual Return filed by KKDIL with RoC for the year ended 31.03.2013, it had issued equity shares to 3,738 persons cumulatively amounting to Rs. 3,49,78,900/- during F.Y. 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. Also from the Form 2/ list of allottees, I note that KKDIL issued equity shares to more than forty-nine persons during F.Y. 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13, the details of which are as under:

Financial Year	No. of allottees	Amount (Rs.)
2008-09	98	26,55,000/-
2009-10	434	55,00,000/-
2010-11	494	56,87,000/-
2011-12	598	61,73,600/-
2012-13	674	96,18,300/-
Total	2,298	2,96,33,900/-

12. I also note that KKDIL issued CRPS to a total 1,691 persons amounting to Rs. 2,91,45,200/- cumulatively during F.Y. 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. I also note that, KKDIL made offer of CRPS to more than forty-nine persons during F.Y. 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 as detailed below:

Financial Year	No. of allottees	Amount (Rs.)
2006-07	62	10,08,500/-
2007-08	118	13,74,500/-
2008-09	291	37,26,100/-
2009-10	232	26,10,000/-
2010-11	188	28,87,400/-
2011-12	291	33,44,300/-
2012-13	509	1,41,94,400/-
Total	1,691	2,91,45,200/-

13. As can be noted from the aforesaid tables, KKDIL issued equity shares from financial year 2008-09 to 2012-13 and CRPS from financial year 2006-07 to 2012-13, to more than 49 persons, in each of the respective financial years. Thus, as per Form 2 filed with RoC, KKDIL has issued equity shares to 2298 investors for an amount of Rs. 2,96,33,900/- whereas as per last filed Annual Report of KKDIL for the financial year 2012-13, KKDIL has issued equity shares to 3,738 persons, cumulatively, for an amount of Rs. 3,49,78,900/- during financial years 2007-08 to 2012-13. Also, KKDIL has issued CRPS to 1691 investors an amount of Rs. 2,91,45,200/-. I find that the two figures given in Form 2 filed with RoC and in Annual Report of KKDIL do not exactly match. However, violations of making public issue without following the norms public issue such as prospectus, listing, etc. *prima facie* stands violated. Therefore, such issues of equity shares and CRPS by KKDIL to more than 49 persons would *prima facie* qualify as a public issue, as contemplated under proviso to Section 67(3) of the Companies Act, 1956. In such a scenario, in terms of Section 73 of the Companies Act, 1956, KKDIL was required to make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange. I note that in the present case there is no evidence on record to indicate that KKDIL had made any application to recognised

stock exchange(s) for listing of its equity shares or CRPS on such stock exchange and therefore, based on the material available on record, I find that KKDIL has not *prima facie* complied with the provisions of Section 73(1) of Companies Act, 1956.

14. Since, Section 73(1) of the Companies Act, 1956 was not complied with in this case, therefore, the amounts collected through these issues had to be forthwith repaid under Section 73 (2) of the Companies Act, 1956 and if such refund was not made within eight days the company and every director of the company who is an officer in default was liable to repay the amount raised with interest. Since, there is no evidence on record to indicate that the amounts collected from the investors have been forthwith repaid in terms of Section 73 (2) of the Companies Act, 1956, therefore, I find that the company and every director who is an officer in default has *prima facie* violated the provisions of Section 73 (2) of the Companies Act, 1956.

15. I also note that there is no evidence on record to indicate that funds received from the investors by issuing equity shares and CRPS have been kept in separate bank account. Hence, I find that KKDIL and its every officer who is in default have *prima facie* not complied with the provisions of Section 73 (3) of the Companies Act, 1956.

16. In addition to the above requirements, I note that if a company issues shares/debenture to public, it has to *inter alia* follow other compulsory requirements pertaining to public issues viz: filing of draft offer document with SEBI, issuance of Prospectus with required disclosures, registering of final Prospectus with RoC and listing of securities issued through the prospectus on a recognized stock exchange, etc. In terms of Section 56 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. Section 56(3) further provides that no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed. The liability for compliance of this section is on the company as well as the directors. I note that in this matter the material available on record does not provide any evidence regarding Prospectus with requisite disclosure in terms of Section 56 of the Companies Act, 1956, DIP Guidelines, 2000 and ICDR Regulations, 2009 was filed in the draft form

with SEBI and final prospectus with RoC with respect to public issues of equity shares or CRPS made by KKDIL. Therefore, I find that KKDIL and its directors have *prima facie* not complied with Section 56 of the Companies Act, 1956 and relevant provisions of DIP Guidelines and ICDR Regulations, 2009.

17. Further, in terms of Section 60(1), a prospectus is required to be signed by every director of the company concerned. Section 60(5) of the Companies Act, 1956 makes the company, and every person who is knowingly a party to the issue of the prospectus liable if there is a failure to file the Prospectus before RoC and the required disclosures are not made in the Prospectus. I note that the material available on record does not provide any evidence of KKDIL having filed a prospectus with the RoC with respect to its issue of equity shares and CRPS, as detailed above. Therefore, I find that KKDIL and its directors have *prima facie* violated Section 60 (1) and 60 (5) of the Companies Act, 1956.
18. KKDIL has made public issue of equity shares in financial years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. Therefore, a public issue of equity shares by KKDIL ought to have been made in compliance with the relevant provisions of DIP Guidelines (since rescinded) and ICDR Regulations, 2009 (notified on August 26, 2009), as mentioned para 8 above. Based on the material available on record, I find that the issues of equity shares by KKDIL were *prima facie* made without complying with the relevant provisions of DIP Guidelines and ICDR Regulations, 2009, as mentioned in para 8 and such issues of equity shares to public are *prima facie* in violation of such provisions of DIP Guidelines and ICDR Regulations, 2009, also.
19. KKDIL has made a public issue of CRPS during financial years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. The earliest date of allotment of CRPS available as per records is November 30, 2006. As the Company had started issuing CRPS to public in the year 2006, KKDIL was mandated to comply with the relevant clauses of the DIP Guidelines as mentioned in para 8 above. Based on the material available on record, I find that the issues of CRPS to public by KKDIL, were *prima facie* made without complying with the relevant provisions of DIP Guidelines as mentioned in para 8 above and such issues of CRPS to public are *prima facie* in violation of such provisions of DIP Guidelines, also.

20. The importance of role of the directors of a company, in case of inviting of subscription to its shares or debentures by a company through issue of prospectus, is can be understood from Section 62 of the Companies Act, 1956 which provides that where a prospectus invites persons to subscribe for shares in or debentures of a company, the persons who were director of the company at the time of issue of prospectus shall be liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus, for any loss or damage he may have sustained by reason of any untrue statement included therein. Regarding the liability of the directors in case of KKDIL i.e. Noticee no. 2 to 9, for the issues of equity shares and CRPS to the public by KKDIL in violation of the provisions of law, as discussed above, I note that Shri Baman Charana Das has been the Managing Director (hereinafter referred to as “MD”) of the company since March 31, 2008. He was the MD during the period of mobilization of funds through issue of equity shares and CRPS. Hence, he would be “Officer in default” under Section 73(2) read with Section 5 of Companies Act, 1956. It has also been observed that Shri Jagannath Satapathy and Shri Sanjaya Satapathy had resigned from the directorship of the company with effect from March 31, 2008 and did not hold directorship in the company at the time of public issue of equity shares. These two directors were holding directorship in KKDIL at the time of allotment of CRPS therefore, they are *prima facie* liable for violation of Section 56, Section 60(1) and 60(5) of the Companies Act, 1956, relevant provisions of DIP Guidelines (since rescinded) regarding public issue of CRPS by KKDIL. I also note that Shri Madhusudan Acharya resigned from the Directorship w.e.f. July 07, 2011 but since he was a director of the company at the time of allotment of equity shares and CRPS, therefore, he is *prima facie* liable for violations of Section 56, Section 60(1) and 60(5) of the Companies Act, 1956, relevant provisions of DIP Guidelines (since rescinded) and relevant provisions of ICDR Regulations, 2009, regarding public issue of equity shares and CRPS by KKDIL. I note that Shri Baman Charana Das, Shri Bipin Chandra Das, Smt. Kalyani Das and Smt. Sujata Das continued to hold their positions as directors throughout the period of default by the company. Therefore, they are *prima facie* liable for violation of Section 56, Section 60(1) and 60(5) of the Companies Act, 1956, relevant provisions of DIP Guidelines (since rescinded) and relevant provisions of ICDR Regulations, 2009, regarding public

issue of equity shares and CRPS by KKDIL. I note that Shri Santosh Kumar Panda has been charged as a current director of the company. I note that he was appointed as director in the company on March 31, 2013 i.e. after the last issue of CRPS and equity shares, as per information available on record. Shri Panda in his letter dated July 03, 2019 has informed that he has resigned from the company from December 01, 2013 and in support of his contention he has also submitted a copy of resignation letter dated December 05, 2013 addressed by him to the company. However, I note that he is shown as director of KKDIL from March 31, 2013 and till date, in the records of RoC. Thus, as a director of KKDIL, during his tenure, it was the duty of Shri Panda to ensure that the company refunds the monies collected from the investor through issue of CRPS and equity shares.

21. Section 55A of the Companies Act, 1956, confers the jurisdiction on SEBI to administer provisions specified therein, inter alia in relation to public issue of securities. Section 11 (1) of the SEBI Act, 1992 empowers SEBI to take such measures, as it deems fit, inter alia, to protect the interests of investors in securities. Section 11(4) of the SEBI Act, 1992 lists measures that SEBI may take, by an order in writing, either pending or on completion of investigation or inquiry, in the interest of investors in the securities market. Section 11A of the SEBI Act, 1992 empowers SEBI to *inter alia* prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities, by general or special orders. Section 11B of SEBI Act, 1992 empowers SEBI to issue such directions as may be appropriate, in the interest of investors in securities and the securities market, inter alia, to any company in respect of issue of capital, transfer of securities etc.

22. I note that the company and its directors are not co-operating with SEBI, except for Shri Santosh Kumar Panda. I note that the company has issued equity shares to 3,738 persons cumulatively amounting to Rs. 3,49,78,900/- during financial years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 and I also note that Rs. 2,91,45,200/- has been mobilized by the company from 1,691 allottees during 2006-13 through CRPS issue. Moreover, I observe that the company has last filed its annual accounts in 2013 and have not filed any Annual Reports or annual accounts thereafter and it is not available at its registered address. Moreover, the

liability of the company to repay under Section 73(2) of the Companies Act, 1956, is a continuing one and the same continues till all the repayments are made to the investors/public. Since, KKDIL made public issues of equity shares and CRPS without following the issue and listing norms, the same is detrimental to the interest of investors. In view of the same, the present matter is a fit case for issuance of immediate ex-parte directions under Section 11B and 11(4) of the SEBI Act, 1992.

Directions:

23. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:

- i) KKDIL i.e. Noticee no. 1, shall cease to mobilize fresh funds from investors through the offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly;
- ii) KKDIL and its directors i.e. Noticee no. 2 to 9, shall not buy, sell or otherwise deal in the securities (including units of mutual funds), either directly or indirectly, or associate themselves with securities market, any listed company or company intending to raise money from the public in any manner whatsoever;
- iii) KKDIL and its directors shall not dispose of, alienate or encumber any of its/their assets or divert any funds raised from public either through the offer and allotment of preference shares;
- iv) KKDIL and its directors shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of equity shares and CRPS;

24. The above-mentioned directions contained in para 23 comes into force with immediate effect and shall remain in force till passing of any further order by SEBI or coming into force of the direction given in para 25 below.

25. The *prima facie* observations contained in this order are made on the basis of the material available on record, information obtained from RoC, MCA 21 Portal and

complaints received. KKDIL and its abovementioned directors are also called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, namely:

- i) KKDIL and Shri Baman Charana Das (Noticee no.2), to jointly and severally refund money collected through the offer and allotment of equity shares and CRPS, including the application money collected from investors, pending allotment of securities, if any, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment) within a period of 180 days from the date of this order, supported by a certificate of a independent Chartered Accountant. It is clarified that the restraint imposed on the sale of assets at para 23 (iii) and sale of securities at para 23 (ii), shall not operate if the sale of assets is made for the sole purpose of making refund to the investors by depositing the proceeds of sale in an Escrow Account with a nationalized bank. It is further clarified that the present directors of KKDIL shall ensure and facilitate the compliance of this direction by KKDIL;
- ii) KKDIL and its directors i.e. Noticee no. 2 to 9, be refrained/prohibited from accessing the securities market by issue of prospectus/offer document/advertisement or advertisement soliciting money from the public and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, from the date of this decision being effective, till the expiry of a period of three years from the date of effecting the refund as directed in para 25 (i) above; and
- iii) Noticee no. 2 to 9 above shall also be 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 direction becoming effective till the expiry of a period of three years from the date of completion of refunds to investors as directed at para 25(i).

26. KKDIL, its above named directors, may, within 30 days from the date of this interim order -cum-show cause notice, file their respective replies. KKDIL and its above named directors are also directed to furnish an inventory of their assets in their reply. In the event the aforementioned persons intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same, within 90 days. In the event of the aforementioned persons failing to file replies or requesting for an opportunity of personal hearing, within the said 90 days, the *prima facie* findings regarding the violations at paragraphs 9 to 22 of this order shall become final and absolute, without any further orders. Consequentially, KKDIL, its abovementioned directors, shall automatically be bound by the directions contained in paragraph 25 above till the expiry of a period of three years from the date of repayment.

27. In case of failure to comply with the aforesaid directions within a period of one hundred eighty (180) days from the date of receipt of this order, appropriate enforcement actions as deemed fit, in terms of the SEBI Act, 1992, shall be initiated including reference to the State Government/ Local Police.

28. Copy of this order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this order may also be forwarded to MCA/ RoC, Cuttack for their information and necessary action with respect to the directions imposed on company and directors.

-Sd-

Date: September 15, 2020

ANANTA BARUA

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA