National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/56836	Date: May 25, 2023
Circular Ref. No: 128/2023	

To All NSE Members,

Sub: SEBI Interim Order-cum-Show Cause Notice in the matter of Indus Weir Industries Limited

SEBI vide Order No. WTM/ASB/EFD/DRA1/26687/2023-24 dated May 25, 2023 has hereby restrained the following entities from accessing the securities market and has further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions from the date of the SEBI order.

Sr. No.	Name	PAN	CIN/DIN
1	Indus Weir Industries Limited	AACCI4265N	U15410DL2010PLC207057
2	Prince Rana	AQXPR2438L	02694162
3	Anuresh	NA	03115467
4	Anil Kumar Trivedi	NA	03116758
5	Rasheed Quamar	NA	03116801
6	Mazharul Quadri	NA	03128046
7	Parthsarthi Adhikari	AHPPA3304H	03128071
8	Shyam Sunder Seth	NA	03129540
9	Paras Nath Sharma	NA	03142304
10	Ratnesh Kumar Pandey	NA	03612113
11	Balchand Chaurasiya	AEFPC8555B	03129523

The order comes into force with immediate effect.

National Stock Exchange of India

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

https://www.nseindia.com/regulations/member-sebi-debarred-entities

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Amey Angane (Email id: aangane@nse.co.in), Mr. Sandesh Sawant (Email id: ssandesh@nse.co.in)

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI Interim Order-cum-Show Cause Notice in the matter of Indus Weir Industries Limited

SECURITIES AND EXCHANGE BOARD OF INDIA

INTERIM ORDER CUM SHOW CAUSE NOTICE

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Sl. No.	Noticee(s)	PAN	CIN/DIN
1.	**Indus Weir Industries Limited**	**AACCI4265N**	**U15410DL2010PLC207057**
2.	**Prince Rana**	**AQXPR2438L**	**02694162**
3.	**Anuresh**	**NA**	**03115467**
4.	**Anil Kumar Trivedi**	**NA**	**03116758**
5.	**Rasheed Quamar**	**NA**	**03116801**
6.	**Mazharul Quadri**	**NA**	**03128046**
7.	**Parthsarthi Adhikari**	**AHPPA3304H**	**03128071**
8.	**Shyam Sunder Seth**	**NA**	**03129540**
9.	**Paras Nath Sharma**	**NA**	**03142304**
10.	**Ratnesh Kumar Pandey**	**NA**	**03612113**
11.	**Balchand Chaurasiya**	**AEFPC8555B**	**03129523**

In the matter of Indus Weir Industries Limited

Background:

1. Securities And Exchange Board Of India (herinafter referred to as '**SEBI'**), during the year 2013, received various complaints pertaining to the issuance of Redeemable Preference Shares (herinafter referred to as '**RPS'**) by Indus Weir Industries Limited (herinafter referred to as '**IWIL'**/'**Company'**). Based on the complaints, the matter was examined by SEBI wherein it was observed that IWIL had mobilized money amounting to Rs.33.40 Crore through issuance of RPS from 32,454 investors during the Financial Years (FYs) 2010-11, 2011-12, 2012-13 & 2013-14.

About IWIL:

2. From the information obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal', and other material available on record, it was observed that IWIL was incorporated on August 13, 2010 under RoC-Delhi, having its CIN as 'U15410DL2010PLC207057'. Its Registered Office is situated at *44/1, West Guru Angad Nagar, Vikas Marg, Opposite Scope Tower, Laxmi Nagar, Delhi*. The current filing status of the Company is '*Inactive*'. The date of last Balance Sheet filled is 31.03.2015 and last AGM is 30.09.2015. The Company had offices in 55 locations across India. The names of the persons, who were directors of the Company during the period when the RPS were issued, are provided in the Table below.

S. No.	Name of Director	DIN	PAN	Date of Appointment	Date of Cessation
	Present Directors				
1.	Prince Rana	02694162	AQXPR2438L	13.08.2010	
2.	Balchand Chaurasia	03129523	Not available	13.08.2010	
	Past Directors				
3.	Anuresh	03115467	Not available	13.08.2010	10.04.2013
4.	Anil Kumar Trivedi	03116758	Not available	13.08.2010	10.04.2013
5.	Rasheed Quamar	03116801	Not available	13.08.2010	10.04.2013
6.	Mazharul Quadri	03128046	AHPPA3304H	13.08.2010	10.04.2013
7.	Parthsarthi Adhikari	03128071	Not available	13.08.2010	21.04.2018
8.	Shyam Sunder Seth	03129523	Not available	13.08.2010	01.09.2011
9.	Paras Nath Sharma	03142304	Not available	13.08.2010	07.06.2012
10.	Ratnesh Kumar Pandey	03612113	AEFPC8555B	30.09.2011	10.04.2013

3. The details of Company's shareholders, as per MCA Registry, are provided below:

Sr. No.	Name of Shareholder	No. of shares held	% of shareholder
1	Rasheed Quamar	61000	12.18
2	Anil Kumar Trivedi	61000	12.18
3	Parthsarthi Adhikari	51000	10.19
4	Bal Chand Chaurasia	87000	17.38
5	Mazharul Quadri	51000	10.19
6	Prince Rana	87023	17.39
7	Paras Nath Sharma	51000	10.19
8	Shyam Sunder Seth	51000	10.19
Total		**500023**	**99.89**

Examination by SEBI:

4. SEBI vide letter dated August 13, 2013, sought, *inter alia*, the following information and documents, related to issuance of RPS and mobilization of money by the Company:

   i *Copy of letter of offer, prospectus, brochure, application form, advertisement circulated by the Company, including the terms and conditions of RPS issued.*

   ii *Copies of Annual Reports and Annual Returns*

   iii *Documents filed with ROC regarding issuance of RPS*

   iv *Opening and closing of the issue, quantum of funds raised and proposed to be issued.*

   v *No. of allottees and the list of allottees along with their data.*

5. IWIL vide letter dated September 12, 2013 to SEBI furnished various information and documents pertaining to issuance of RPS and submitted *inter alia* that its schemes stood permanently closed w.e.f. from August 10, 2013 and it would repay the money raised from investors within short span of time.

6. Further, IWIL, vide its letter dated January 16, 2014, submitted *inter alia* the following:

   (a) *IWIL was not a listed company, nor did it intend to get its securities listed with any recognized stock exchange in India, and therefore, under the provisions of Section 55 A of Companies Act, 1956, SEBI did not have any role to play in the matter of raising of money by issuance of RPS. The company had not filed any application to any recognized stock exchange under Section 73 (1) of the Companies Act. It was not required to follow provisions of Companies Act or SEBI (ICDR) Regulations, 2009, as it did not have any intention to raise money by public issue.*

   (b) *The Issuance of RPS by the Company was in the nature of private placement.*

   (c) *After the decision of Hon'ble Supreme Court of India in the matter of Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813*

*of 2011) (Judgment dated August 31, 2012) (hereinafter referred to as the "**Sahara Case**"), the Company, based on legal opinion obtained by it, voluntarily decided to close all schemes and return the money collected so far to the public in a short span of time.*

(d) Before the proceedings in the Sahara Case, the law on the subject matter was not crystallized and in view of the ambiguity, it was collecting funds under the impression that it was legally allowed.

(e) IWIL had already started the process of refund and the completion of the process of refund would be intimated to SEBI.

7. Subsequently, vide letters dated July 17, 2014 and July 25, 2014, IWIL furnished details of money mobilized through issuance of RPS and the total number of investors to whom refunds had been made. It further submitted that it would take approximately 9 to 12 months to complete the process of refund.

8. Thereafter, the Company filed a certificate from its statutory auditor, as per which the Company had refunded Rs.11,99,20,313/- to 17,780 investors till October 04, 2014. Thereafter, in order to verify the claims made by IWIL, SEBI appointed auditor, M/s. B. R. Maheswari & Co**.** (herein after referred to as '**the Auditor**') on February 11, 2015, to verify the Company's claims.

9. The Auditor, vide its letter dated April 30, 2015, submitted its Report to SEBI. As per the said Report, IWIL had issued 3,33,98,623 Redeemable Preference Shares of Rs.10 each to 32,454 investors and mobilized Rs.33.39 Crores during April 01, 2010 to March 31, 2014. The Report further stated that IWIL had passed a resolution for closing of all the investment schemes with effect from July 31, 2013 and returning all the money to the public and for paying interest at the rate of 12% on principal amount collected against issue of RPS, in case of premature return of the investment amount. However, IWIL did not repay as per the original offer, except in cases where the redemption period had already elapsed before the Company decided to prepay. The details of original scheme were as under:

PLAN	A	B	C	D	E	F	G
Min. Issue Price (100 Shares)	1000	1000	1000	1000	1000	1000	1000
Redemption Period	1 Yr 6 month	3 Yrs	4 Yrs 6 month	6 Yrs 3 month	8 Yrs	10 Yrs	12 Yrs 6 months
Redemption Premium	300	700	1000	2000	3000	5000	9000
Redemption Amount	1300	1700	2000	3000	4000	6000	10000

10. The Auditor, in its Report further stated that it had verified the repayment to a sample of 500 shareholders, chosen on a random basis. The Auditor certified that as per the Company's submissions, IWIL had refunded principal amount along with interest @ 12%, as decided by the directors of the Company. Accordingly, the Company had refunded the principal amount of Rs. 33,39,86,230 (Rupees Thirty-three Crores Thirty-Nine Lakhs Eighty-Six Thousand Two Hundred Thirty only) and interest of Rs.9,23,71,795 (Rupees Nine Crores Twenty-Three Lakhs Seventy-One Thousand Seven Hundred Ninety-Five only) to 32,454 investors. The auditor also mentioned that it had checked the repayment done by IWIL from the books of account and other records produced for its verification, on random basis. Out of the total number of investors of 32,454 only 3,215 investors had been paid by cheques and demand drafts and the balance 29,239 investors had been paid in cash. The Auditor pointed out that IWIL had not yet filed the information of redemption of redeemable preference shares with ROC.

11. Further, as per the audited balance sheet of the Company for FY ending March 31, 2015, submitted to SEBI vide letter dated February 12, 2016, there were no outstanding liabilities of the Company in respect of RPS.

12. Though the Auditor had confirmed that the Company had already refunded the full amount to its investors, SEBI found that the Company had violated the provisions of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulation, 2013 (**NCRPS Regulations, 2013**) by issuing RPS to more than 49 investors. Considering the same, SEBI initiated adjudication proceeding against IWIL under Section 15I read with Section 15HB of the SEBI Act, 1992 to inquire into and adjudge violation of Regulations 4(2) &

16 of NCRPS Regulations, 2013. Accordingly, an Adjudication Order was passed in the matter on January 15, 2018 imposing a penalty of Rupees One crore on IWIL.

13. Thereafter, IWIL preferred an appeal before the Hon'ble Securities Appellate Tribunal (herein after referred to as '**SAT**') against the abovementioned Adjudication Order. The Hon'ble SAT vide its order dated January 17, 2019, upheld the Adjudication Order dated January 15, 2018, but reduced the penalty from Rupees One Crore to Rs. 50 Lakhs, after having considered *inter alia* the Company's claims that it had *suo motu* stopped mobilization of money from public with effect from July 31, 2012 and that it had refunded money to all the investors.

14. Subsequently, the Company failed to pay the penalty of Rs.50 Lakhs. Consequently, Recovery Proceedings were initiated by SEBI against the Company vide Attachment Proceedings Order no. 6266 of 2020 & 6267 of 2020 under Recovery Certificate No. 3171 of 2020 dated December 31, 2020.

Complaints received against IWIL regarding non-refund of investments:

15. Even though the Company had claimed to have refunded the entire money raised by it to its investors, subsequent to passing of the abovementioned Adjudication Order, SEBI started receiving various complaints from the investors alleging non-refund of their investments in respect of various instruments issued by IWIL, including RPS.

16. In view of the above, SEBI, vide letters dated October 26, 2018 and February 14, 2019, sought clarification from IWIL on the issue of non-refund to its investors of RPS. In response, IWIL, through its advocates, Manu Nayar & Co. (herein after referred to as '**Advocates**'), vide letter dated March 25, 2019, submitted that SEBI itself had appointed an external auditor, B. R. Maheshwari & Co. who had certified that the entire money had been refunded. The Company requested SEBI to provide the details / list of the complaints received by SEBI for verifying the contentions raised by the complainants and submitting its response to SEBI within one month.

17. Vide letters dated July 08, 2019 and November 29, 2019, the list of the complaints received by SEBI against IWIL were forwarded to IWIL advising it to examine the complaints and provide response within 15 days. However, the said letters returned undelivered. Thereafter, vide letter dated January 07, 2020, list of the complaints was forwarded to the Advocates of IWIL. However, no response was received afterwards either from IWIL or its Advocates.

18. Vide letter dated November 16, 2020, clarifications were sought from the Auditor regarding its report submitted to SEBI. The Auditor, vide letter dated November 25, 2020, replied that it had selected the sample of 500 investors of IWIL on random basis from a list of 2079 investors, which was part of the list of total of 32,454 investors, as per the information provided to it vide its appointment letter dated February 11, 2015.

19. Subsequently, a meeting was held by SEBI with the representatives of the Auditor. On the basis of the discussions held, it emerged that the Auditor had only examined refund details of 500 investors on random basis, out of a total of 32,454 investors of IWIL. Further, the auditor had selected the said sample of 500 random investors from a list of 2,079 investors, which was provided by IWIL itself. Thus, it appeared that there were 30,375 investors who were not even considered by the auditor while picking the sample on random basis. Further, the Auditor had no back papers available pertaining to the audit done by it. The Auditor stated that it had not retained copies of any document with itself as records during the audit. It was thus observed that the report submitted by the Auditor was incomplete and incorrect as the samples were not selected from the entire list of 32,454 investors but were selected from a smaller list of 2,079 investors which was provided by IWIL itself.

20. In the meantime, SEBI also received a reference dated September 09, 2020 from Registrar of Companies– NCT of Delhi & Haryana (herein after referred to as '**RoC'**) mentioning that RoC was receiving complaints *inter alia* regarding non-redemption of RPS issued by IWIL. It was further mentioned that though RoC had issued show cause notices to the Company and its Managing Director, the

same returned undelivered. RoC also provided the list of Company's directors and their addresses during the concerned period (2010-2013). RoC also expressed the likelihood of the raised money from the public having been siphoned off by the Directors/Promoters of the company as the same had not been returned back along with the prescribed interest. The RoC stated that it had referred the matter to Enforcement Directorate. Further, the RoC requested SEBI to re-examine the issue.

21. Since the letters issued to IWIL had returned undelivered, letters dated March 17, 2022 and April 28, 2022 were sent on the alternate address of the Company. However, these letters also returned undelivered. In the meantime, letters dated March 15, 2022 and April 28, 2022 were sent to the Company's present and past directors, *inter alia*, advising them to submit their reply to SEBI. The said letters either returned undelivered or were not responded to, except for receipt of replies from Ratnesh Kumar Pandey (Director) and Bal Chand Chaurasia (Director).

22. Ratnesh Kumar Pandey (Director), replied to SEBI vide letter dated March 24, 2022 and submitted *inter alia* that he was not involved with the issuance of RPS by IWIL. He submitted that he was appointed as technical consultant for the purported projects of IWIL on September 23, 2011. However, the Company had used his details and involved his name as a formal director on September 30, 2011 without his knowledge and consent. He objected to the said appointment and asked his name to be removed. However, the Company asked him to resign citing procedural formalities. Accordingly, he submitted his resignation to the Company on April 13, 2012 and sent a reminder letter dated May 17, 2012 to remove his name as a director of the Company. His resignation was acknowledged and accepted by IWIL vide its letter dated October 04, 2012, wherein it was also mentioned that Company would initiate the process to drop his name from MCA portal. However, it was observed from the information provided by RoC that the directorship of Shri Ratnesh Kumar Pandey was terminated w.e.f April 10, 2013 with reason mentioned as '*Deactivated due to non-filing of DIR-3 KYC*'.

23. Balchand Chaurasia (Director) vide letter dated May 09, 2022 provided copies of IWIL's previous communications with SEBI. However, the information provided was incomplete and did not provide the correct status of the refund done to the investors of IWIL.

Petitions filed before the Hon'ble High Court at Patna:

24. In the meantime, one of the investors of IWIL, namely Dilip Ravidas, along with certain other persons, filed a writ petition in the Hon'ble High Court at Patna stating that the Company had not refunded the money to them. In the said matter, the Hon'ble High Court of Patna vide its order dated December 02, 2022, *inter alia* directed the Petitioners to approach authority concerned (SEBI) within 4 weeks from the date of order by filing a representation of their grievance. It further directed the said authority to consider and dispose it of expeditiously by passing a reasoned and speaking order, preferably within a period of four months from the date of filing along with the copy of order. The Hon'ble High Court also directed that while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties.

25. Accordingly, Dilip Ravidas submitted his complaint at Patna Local Office (PLO) of SEBI on January 18, 2023, wherefrom it was noted that Dilip Ravidas had invested around Rs. 70 Lakh for himself and for other investors in various schemes of IWIL. In accordance with the directions of the Hon'ble High Court, the representation of the Petitioners was considered and disposed of vide letter dated May 18, 2023.

26. In the meantime, letters dated March 30, 2023 were issued to the directors of the Company seeking various information regarding issuance of RPS to investors and the refunds made to them. However, no response was received from any of the directors, except Ratnesh Kumar Pandey, who replied vide letter dated April 24, 2023 wherein he iterated his submissions earlier made to SEBI.

***Prima Facie* findings:**

27. Based on the facts brought out in the preceding paragraphs and the examination of information and documents received from RoC and other material available on record, the following are observed:

(a) IWIL had passed 34 board resolution authorising the issuance of 3,99,86,268 RPS to the investors, for a total of Rs. 39,98,62,680/-. Though the board resolution referred to issue and allotment of RPS to the applicants as per the list attached, no such list was available.

(b) In the application form, it was mentioned that RPS were being issued on private placement basis. It was further mentioned that the size of the issue was Rs. 44 Crore and the RPS so issued and allotted were freely transferable by execution of appropriate documents.

(c) As per the Company's own admission, under the *offer and allotment of RPS*, during the period April 01, 2010 to March 31, 2014, the Company issued RPS to a total of 32,454 investors and by making such allotment, an amount of Rs.33,39,86,230 was mobilised by the Company. IWIL had also stated that it had submitted documents pertaining to issuance of RPS with ROC.

(d) As per information furnished by IWIL, the Year wise details of RPS issued by the Company, are provided below:

Year	No. of Investors	Amount Mobilized in Rs.
2010-11	2,846	2,00,66,200
2011-12	9,852	8,98,15,200
2012-13	15,905	17,07,23,330
2013-14	3,851	5,33,81,500
Total	**32,454**	**33,39,86,230**

(e) IWIL in its reply dated September 12, 2013 had admitted to have issued and allotted RPS to public at large and claimed that it stopped the issuance of RPS and other instruments to raise capital w.e.f. August 10, 2013 and initiated the process of redemption. However, the receipt of complaints from investors about non-receipt of refunds shows that the Company's claim that it had refunded money to all the investors of RPS issued by it was false.

(f) Further, from the copies of RPS available on record, it was observed that the 'Investment Date', mentioned on certain RPS Certificates pertained to the years 2014 and 2015. For instance, one of the RPS Certificates mentioned June 29, 2015 as the 'Investment Date'. It thus appears that though the Company had claimed to have stopped mobilization of funds through issuance of RPS with effect from August 10, 2013, the RPS were issued to investors even after the said date. However, the exact number of such RPS or the number of investors to whom the same were issued is not known. The Company has failed to provide any information in this regard.

Regulatory Requirements and Violations:

28. Since the *offer and allotment of RPS* had taken place during prior to April 01, 2014, the provisions of the Companies Act, 1956 were applicable to such offer and allotment of RPS. Section 67 of the Companies Act, 1956, which was applicable at the relevant time, dealt with the conditions or circumstances under which an offer of shares / debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced below:

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

***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)."*

29. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more constituted an offer to the public. In this regard, it is observed that the Company itself has admitted to having issued RPS to 32,454 investors during 2010-11 to 2013-14, as detailed in the Table under Para 27(d) above. The number of investors to whom RPS was issued exceeded 49 during each financial year. IWIL is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and therefore, is not covered under the second proviso to Section 67(3) of the Companies Act, 1956. Therefore, the *offer and allotment of RPS* by IWIL *prima facie* qualified to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

30. Since the issuance of RPS by IWIL was a public issue of securities, such securities were required to be listed on a recognized stock exchange, as mandated under relevant provisions of Section 73 of the Companies Act, 1956, which are reproduced as under:

"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) …

(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);"

31. In the Sahara Case, the Hon'ble Supreme Court of India had examined Section 73 of the Companies Act, 1956, wherein it observed that –

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty-nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not

granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

32. There is nothing on record to suggest that the Company complied with the provisions of Section 73(1) of the Companies Act, 1956, as regards the abovementioned *offer and allotment of RPS*.

33. As per Section 73(2) of the Companies Act, 1956, IWIL had an obligation to refund the amount with interest that was collected from investors under the Preference Shares Issue, within 8 days. However, as seen in the above paragraphs, the investor complaints *prima facie* show that the Company has failed to refund the amount collected from investors within prescribed time, indicating that IWIL has not complied with the provisions of Section 73(2) of the Companies Act, 1956.

33.1. As per Section 73(3) of Companies Act, 1956, *all the moneys received shall be kept in a separate bank account maintained with a Scheduled Bank.* In the instant case, there is no evidence on record to indicate whether or not funds received from the investors under the Preference Shares Issue were kept in separate bank account by IWIL. Therefore, IWIL has not complied with the provisions of Section 73(3) of Companies Act, 1956.

34. Section 56(1) of the Companies Act, 1956 provided that *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 or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified.* It is noted that there is nothing on record to indicate that IWIL had complied with the provisions of Section 56(1) & (3) of the Companies Act, 1956, in respect of the *offer and allotment of RPS*. In view of the same, I find that IWIL is *prima facie* in

breach of the provisions of Sections 56(1) & (3) of the Companies Act, 1956 in respect of the *offer and allotment of RPS*.

35. Further, Section 60 of the Companies Act, 1956 provided for registration of such prospectus with the ROC, before making a public offer or issuing the prospectus. In this regard, as per Section 2(36) of the Companies Act, 1956, *"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 mentioned above, since the RPS were made to more than fifty persons, which qualified it to be a public offer, IWIL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. However, by failing to register a prospectus with ROC, IWIL has *prima facie* not complied with the provisions of Section 60 read with Section 2(36) of the Companies Act, 1956.

36. Further, Regulation 16(1) of the NCRPS Regulations, 2013 (which was notified on June 12, 2013 and was applicable at the relevant time) mandated that an issuer desirous of making an offer of non-convertible redeemable preference shares to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of Section 73 of the Companies Act, 1956. The Company, by failing to make an application for listing under Section 73(1) of the Companies Act, 1956, has violated the provisions of Regulation 16(1) of the NCRPS Regulations, 2013.

37. Further, the facts mentioned above indicate that IWIL wilfully gave false submissions before SEBI, the Hon'ble SAT and the Auditor appointed by SEBI that it has refunded the full amount to investors and stopped collecting money from general public. Therefore, it appears that IWIL, from the beginning, has acted in a fraudulent manner and tried to perpetuate the fraud by submitting false information at various stages, in violation of Regulation 3(a) and 4(2)(f) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (**PFUTP Regulations, 2003**) read with Section 12A(a) of SEBI Act,1992.

38. The abovementioned provisions of securities law are quoted below:

"Regulation 16 (1) of SEBI (NCRPS) Regulations, 2013

An issuer desirous of making an offer of non-convertible redeemable preference shares to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956.

PFUTP Regulations, 2003

3. ***Prohibition of certain dealings in securities***

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

4. ***Prohibition of manipulative, fraudulent and unfair trade practices***

(2) Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following:

(f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals which is not true or which he does not believe to be true prior to or in the course of dealing in securities.

Section 12A(a) of SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder."

39. It is noted that the persons whose names are mentioned in the Table under para 2 above, were directors of the Company during the period when the RPS were offered and allotted to public. Considering the same, they are *prima facie* responsible for the violations found against the Company.

40. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. The facts, as disclosed above, *prima facie* show that IWIL's submissions before the Hon'ble SAT and the Auditors, regarding refund to investors, were false and misleading, with an intention not to refund money to investors. It appears that the Company, at every stage, tried to mislead the authorities and get away with the fraud that it had perpetrated on innocent investors. In light of the same and also considering the failure on the part of IWIL to submit relevant information to SEBI, I find there is no other alternative but to take recourse through an interim action against IWIL and its Directors. Further, in line with the directions given by Hon'ble High Court of Patna, appropriate steps have to be taken in this matter to protect the interest of investors. On the basis of the facts and observations recorded above, I am convinced that it is a fit case for issuing appropriate interim directions.

Directions:

41. I, in exercise of the powers conferred upon me under Sections 11 (1), 11(4) and 11A and 11B read with Section 19 of the SEBI Act, 1992 hereby issue by way of this Interim order cum Show Cause Notice, the following directions, which shall be in force until further orders:

(a) IWIL shall forthwith cease to mobilize any fresh funds from investors through the *offer and allotment of RPS* or any other securities, to the public or invite subscription, in any manner whatsoever, either directly or indirectly, till further directions.

(b) IWIL and its directors namely; Prince Rana (DIN: 02694162, PAN: AQXPR2438L), Anuresh (DIN: 03115467), Anil Kumar Trivedi (DIN: 03116758), Rasheed Quamar (DIN: 03116801), Mazharul Quadri (DIN:

03128046), Parthsarthi Adhikari (DIN: 03128071, PAN: AHPPA3304H), Shyam Sunder Seth (DIN: 03129540), Paras Nath Sharma (DIN: 03142304), Ratnesh Kumar Pandey (DIN: 03612113) and Balchand Chaurasiya (DIN: 03129523, PAN AEFPC8555B) are prohibited from issuing prospectus or any offer document or advertisement for soliciting money from public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;

(c) IWIL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;

(d) IWIL and its abovementioned Directors shall provide to SEBI a full inventory of all their assets and properties, within 30 days from the date of receipt of this Order;

(e) IWIL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned / acquired by them out of funds raised through the Offer and allotment of RPS or any other securities, without prior permission from SEBI;

(f) IWIL and its abovementioned Directors shall not divert any funds, raised from public at large through the *offer and allotment of RPS* or any other securities, which are kept in bank account(s) and/or in the custody of IWIL and its directors.

(g) IWIL and its abovementioned Directors shall provide complete details of all the RPS or any other securities issued by the Company after July 31, 2013, within 30 days of the receipt of this Order.

(h) IWIL and its abovementioned directors shall provide complete details of all the refunds made to the investors, till date, in respect of *offer and allotment of RPS*, which shall include complete list of investors to whom the refund was made, the date of refund, mode of refund etc. The said information shall be provided to SEBI within 30 days of receipt of this Order.

42. The foregoing *prima facie* observations contained in this Order, are made on the basis of the material available on record. IWIL and its directors *namely;* Prince Rana, Anuresh, Anil Kumar Trivedi, Rasheed Quamar, Mazharul Quadri,

Parthsarthi Adhikari, Shyam Sunder Seth, Paras Nath Sharma, Ratnesh Kumar Pandey and Balchand Chaurasiya, are advised to show cause as to why suitable directions / prohibitions under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992, including the following, should not be issued against them:

(a) Directing them jointly and severally to refund money collected through the *offer and allotment of RPS*, along with interest, which is still due to be refunded investors.

(b) Directing them not to issue prospectus or any offer document or issue any advertisement for soliciting money from public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period.

(c) Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

43. The Noticees may, within a period of 21 days from the date of receipt of this Order, file their reply/objections, if any, to this Order and may also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed in that regard.

44. The above directions shall take effect immediately and shall be in force until further orders.

45. A copy of this Order shall be served on the Noticees immediately. A copy of this Order shall also be served on the recognized Stock Exchanges, Depositories and RTAs for ensuring compliance of this Order.

Place: Mumbai **ASHWANI BHATIA**

Date: May 25, 2023 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA