

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Vaastav ALR International Limited

In re: Deemed Public Issue Norms

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN
1.	Vaastav ALR International Limited	Not available	U74999WB2011PLC163811
2.	Shri Dibyendu Sekhar Maity	AQWPM6717G	02885567
3.	Shri Shilajit Ghosh	ADOPG8643G	06457927
4.	Shri Dilip Jana	AVEPJ1234C	06457934
5.	Shri Bappaditya Mukherjee	AYAPM0995J	03526862
6.	Shri Atish Samanta Ray	BMPPS2929L	03545193
7.	Shri Netai Pramanik	BAFPP4523B	03545134
8.	Shri Anup Kumar Maiti	BBMPM9254J	03545126
9.	Debenture Trustee, viz. Vaastav Debenture Trust – address – 150, H.L. Sarkar Road Bansdroni, Kolkata – 700070, West Bengal (Represented by its Trustee, viz. Shri Chinmoy Ghatak) – address – Shripal Apartment, Ground Floor, 107, N.S.C Bose Road, 1st Floor, Netaji Nagar, Kolkata – 700040, West Bengal.		

1. Vaastav ALR International Limited (hereinafter referred to as “**VAIL**”/ “**the Company**”) is a Public company incorporated on June 15, 2011 and registered with Registrar of Companies–Kolkata with CIN: U74999WB2011PLC163811. Its registered office is at 117, PWD Road, UB Colony, P.S. - Baranagar, Kolkata, West Bengal - 700108.

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a complaint against VAIL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether VAIL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).
3. On enquiry by SEBI, it was observed that VAIL had made an offer of NCDs in the financial years 2011-2012, 2012-2013 and 2013-2014 (hereinafter referred to as “**Offer of NCDs**”) and raised at least an amount of Rs. 60.72 Lakhs from at least 268 allottees. The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures. It was also observed that VAIL created a charge for an amount of Rs. 100 Crores on July 09, 2011 and appointed *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)* as Debenture Trustee for the Offer of NCDs by that company.
4. As the above said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an interim order dated October 09, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against VAIL and its Directors, viz., Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh, Shri Dilip Jana, Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti and its Debenture Trustee, *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)*. (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. VAIL had made an *Offer of NCDs* during the financial years 2011-2012, 2012-2013 and 2013-2014 and raised at least an amount of Rs. 60.72 Lakhs as

shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2011-2012	NCDs	6.21	20
2012-2013		39.13	178
2013-2014		15.38	70
Total		60.72^	268*

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

6. Further, VAIL created a charge for an amount of Rs. 100 Crores on July 09, 2011 and appointed *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)* as Debenture Trustee for the Offer of NCDs by the company. *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)* was not registered as debenture trustee for the offer of NCDs by that company.
7. The above *Offer of NCDs* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) and sections 117B and 117C of the Companies Act, 1956 read with section 27(2) of the SEBI Act and the relevant provisions of the ILDS Regulations were not complied with by VAIL in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)* has *prima facie* violated section 12(1) of the SEBI Act and regulation 7 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "**Debenture Trustees Regulations**").
8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated October 09, 2015 with immediate effect.

- i. “VAIL shall not mobilize any fresh funds from investors through the Offer of NCDs or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
- ii. VAIL and its present Directors, viz. Shri Dibyendu Sekhar Maity (PAN: AQWPM6717G; DIN: 02885567), Shri Shilajit Ghosh (PAN: ADOPG8643G; DIN: 06457927), Shri Dilip Jana (PAN: AVEPJ1234C; DIN: 06457934) are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
- iii. The past directors of VAIL, viz. Shri Bappaditya Mukherjee (PAN: AYAPM0995J; DIN: 03526862), Shri Atish Samanta Ray (DIN: 03545193), Shri Netai Pramanik (PAN: BAFPP4523B; DIN: 03545134) and Shri Anup Kumar Maiti (PAN: BBMPM9254J; DIN: 03545126) are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
- iv. VAIL and its abovementioned past and present 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;
- v. VAIL shall provide a full inventory of all its assets and properties;
- vi. VAIL's abovementioned past and present Directors, shall provide a full inventory of all their assets and properties;
- vii. VAIL and its abovementioned present Directors shall not dispose of any of the

properties or alienate or encumber any of the assets owned/acquired by that company through the offer of NCDs, without prior permission from SEBI;

viii. VAIL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of NCDs*, which are kept in bank account(s) and/or in the custody of VAIL;

ix. VAIL and its abovementioned Directors shall furnish complete and relevant information in respect of the *Offer of NCDs (as sought vide letters dated April 1, 2014, May 6, 2014, June 17, 2014, July 25, 2014 and August 13, 2014)*, within 14 days from the date of receipt of this Order.

x. The Debenture Trustee, viz. *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)*, is prohibited from continuing with its assignment as debenture trustee in respect of the Offer of NCDs of VAIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this Order till further directions.”

9. The interim order also directed the VAIL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act should not be passed against them:

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

from buying, selling or otherwise dealing in securities for an appropriate period.

10. Similarly, the Debenture Trustee, viz. *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)* were advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining it from accessing the securities market and further restraining it from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
11. Vide the said interim order, VAIL, its abovementioned Directors along with its Debenture Trustee were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
12. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated October 10, 2015. The same was delivered to Shri Chinmoy Ghatak, Shri Anup Kumar Maity while letters to Vaastav Debenture Trust, VAIL was returned undelivered. The letter to Shri Atish Samata Ray was returned undelivered with the remark (deceased) and the letters to Shri Dibyendu Sekhar Maity and Shri Dilip Jana were returned undelivered with the remark (refused).
13. *Replies:* Shri Sougata Sarkar (from DKS Associates) vide letter dated December 29, 2015 made submissions for Shri Netai Pramanik. His submissions in brief are as under:
 - a) He was employed as a Development Officer in the ALF Food Processing Ltd. since November 1, 2010 to March 21, 2012, since then he has no relation with the Company and his employment was in the form of a commission agent.
 - b) Perhaps his employer may be a holding or a subsidiary of the VAIL and on June 15, 2011, he had purchased some shares of Vaastav International Ltd. (VIL) with the

understanding that an employee can purchase shares of the company in which he/she has been working and or employed.

- c) But in one subsequent occasion, Mr. Dibyendu Sekhar Maity, the Chairman cum Managing Director (CMD) of VIL informed that by purchasing the shares, he had become director of VIL.
- d) He declined to continue being a director of the Company and rendered his resignation on 13.10.2011 to the company and ROC had accepted his resignation later and a receipt copy of his resignation letter is annexed hereto.
- e) It reveals from relevant documents that he had been holding a position of a director of VAIL since June 15, 2011 and subsequently name of the company changed to Vaastav ALR International Ltd.
- f) On several occasions, he requested the CMD of the company to forward his resignation to ROC for their approval but in vain. At last he put down his paper as an employee also on 21.3.2013.
- g) On realizing that he had been trapped fraudulently in a scam of financial fraud without having any knowledge, he had taken following steps to get rid of the situation:
 - On 17.6.2012, he had brought the above fact to the following authorities like ROC, The Additional Director of SFIO, Joint Secretary & Chief Vigilance Officer, Minister of States for Corporate Affairs, Chairman cum Managing Director of VAIL and Officer in charge of the local Police Station. Copies of letters are annexed hereto.
 - The local police have registered the matter as General Diary Compliant.
 - On 12.9.2012, he had received an endorsement from SFIO, which was sent to Secretary of MCA. He presumed that instant action has been taken by the department on the basis of his complaint dated 17.6.2012.
- h) He was fully unaware and in dark and never gave any consent or signed any documents in the entire process of formation of VAIL. The total process was done fraudulently and he was never related to or holding a position of the said companies in any point of

time during his employment. However, as soon as he got information of his directorship in the said companies, he raised objection and put down his paper immediately and at last ROC has officially accepted his resignation from the directorship of the said companies, but unfortunately he is not aware from which date the ROC has approved his resignation though he rendered his resignation from October 13, 2011.

- i) The NCDs (20 in number) issued in financial year 2011-12 was not known to him at all because he was under employment of ALF Food Processing Ltd. and the entire process was done fraudulently by VAIL through its then directors.
 - j) He was not physically, directly or indirectly involved in the said matter as alleged and he was not an Executive Director, Managing Director or even a whole time director.
 - k) He was neither entrusted with any financial and administrative functions nor participated in any of the decision making process of the Company in any point of time during his employment period.
 - l) He is no longer associated with the Company and requested for discharging him from all such accusations.
 - m) Since October 13, 2011 he is no longer a director and from 21.3.2012 an employee of VAIL group of companies or holding any position of the same.
14. Shri Sougata Sarkar (from DKS Associates) vide letter dated December 29, 2015 made submissions for Shri Bappaditya Mukherjee. His submissions in brief are as under:
- a) He was employed as a Development Officer in the ALF Food Processing Ltd. since November 1, 2010 to March 21, 2012, since then he has no relation with the Company and his employment was in the form of a commission agent.
 - b) Perhaps his employer may be a holding or a subsidiary of the VAIL and on June 15, 2011, he had purchased some shares of Vaastav International Ltd. (VIL) with the understanding that an employee can purchase shares of the company in which he/she has been working and or employed.

- c) But in one subsequent occasion, Mr. Dibyendu Sekhar Maity, the Chairman cum Managing Director (CMD) of VIL informed that by purchasing the shares, he had become director of VIL.
- d) He declined to continue being a director of the Company and rendered his resignation on 13.10.2011 to the company and ROC had accepted his resignation later and a receipt copy of his resignation letter is annexed hereto.
- e) It reveals from relevant documents that he had been holding a position of a director of VAIL since June 15, 2011 and subsequently name of the company changed to Vaastav ALR International Ltd.
- f) On several occasions, he requested the CMD of the company to forward his resignation to ROC for their approval but in vain. At last he put down his paper as an employee also on 21.3.2013.
- g) On realizing that he had been trapped fraudulently in a scam of financial fraud without having any knowledge, he had taken following steps to get rid of the situation:
- On 17.6.2012, he had brought the above fact to the following authorities like ROC, The Additional Director of SFIO, Joint Secretary & Chief Vigilance Officer, Minister of States for Corporate Affairs, Chairman cum Managing Director of VAIL and Officer in charge of the local Police Station. Copies of letters are annexed hereto.
 - The local police have registered the matter as General Diary Compliant.
 - On 12.9.2012, he had received an endorsement from SFIO, which was sent to Secretary of MCA. He presumed that instant action has been taken by the department on the basis of his complaint dated 17.6.2012.
- h) He was fully unaware and in dark and never gave any consent or signed any documents in the entire process of formation of VAIL. The total process was done fraudulently and he was never related to or holding a position of the said companies in any point of time during his employment. However, as soon as he got information of his directorship in the said companies, he raised objection and put down his paper

immediately and at last ROC has officially accepted his resignation from the directorship of the said companies, but unfortunately he is not aware from which date the ROC has approved his resignation though he rendered his resignation from October 13, 2011.

- i) The NCDs (20 in number) issued in financial year 2011-12 was not known to him at all because he was under employment of ALF Food Processing Ltd. and the entire process was done fraudulently by VAIL through its then directors.
 - j) He was not physically, directly or indirectly involved in the said matter as alleged and he was not an Executive Director, Managing Director or even a whole time director.
 - k) He was neither entrusted with any financial and administrative functions nor participated in any of the decision making process of the Company in any point of time during his employment period.
 - l) He is no longer associated with the Company and requested for discharging him from all such accusations.
 - m) Since October 13, 2011 he is no longer a director and from 21.3.2012 an employee of VAIL group of companies or holding any position of the same.
15. Shri Sougata Sarkar (from DKS Associates) vide letter dated April 23, 2016 made submissions for Shri Anup Kumar Maity. His submissions in brief are as under:
- a) He was employed as a Group member of Administration & Operational Manager in the ALF Food Processing Ltd. since January, 2011 to 12th October 2011, since then he has no relation with the Company.
 - b) Perhaps his employer may be a holding or a subsidiary of the VAIL.
 - c) It reveals from relevant documents that he had been holding a position of a director of VAIL since June 15, 2011 to October 12, 2011.
 - d) He was fully unaware and in dark and never gave any consent or signed any documents in the entire process of formation of VAIL. The total process was done fraudulently and he was never related to or holding a position of the said VAIL in any point of time during his employment. However, as soon as he got information of his directorship in

the VAIL, he raised objection and put down his paper in mid-july 2011 and at last ROC has officially accepted his resignation from the directorship of VAIL from 13th October, 2011.

- e) The NCDs (20 in number) issued in financial year 2011-12 was not known to him at all because he was under employment of ALF Food Processing Ltd. since January, 2011 to 12th October, 2011 and the entire process was done fraudulently by VAIL through its then directors.
 - f) He was not physically, directly or indirectly involved in the said matter as alleged and he was not an Executive Director, Managing Director or even a whole time director.
 - g) He was neither entrusted with any financial and administrative functions nor participated in any of the decision making process of the Company in any point of time during his employment period.
 - h) He is no longer associated with the Company except from 15th June, 2011 to 12th October, 2011 although he had put down his paper in the month mid-July, 2011 and the ROC officially accepted later on. He requested for discharging him from all such accusations.
 - i) Since October 13, 2011 he is no longer an employee of VAIL group of companies or holding any position of the same.
16. Subsequently, an opportunity of hearing was granted to the Noticees on October 13, 2016, which was later adjourned.
17. In response to the hearing notice, Shri Chinmoy Ghatak vide letter dated September 7, 2016 submitted that he was 85 years old and in the ill state of health, hence unable to move out of Kolkata and not associated with the Company in capacity and unable to furnish any related information.
18. Shri Shilajit Ghosh vide letter dated September 8, 2016 submitted that he has already expressed his current situation in his reply on April 5, 2014. He was an ex-employee and is in a helpless situation because all the directors and ex-directors have changed their address and mobile numbers, hence he is not in a position to collect the relevant documents

and papers. He further submitted that since 2013, he is jobless and in a very poor financial condition and as such unable to undertake travel to Mumbai, hence will be highly obliged if he can be called at Kolkata office for any clarification. The submissions made by Shri Shilajit Ghosh vide his earlier letters dated July 2, 2014 and July 30, 2014 are stated in brief as under:

- a) He joined VAIL, mother company of ALR Food Processing Ltd., etc. as an employee dated October 1, 2011 as the post of Manager and in the month of October 2012, Amitava Chakraborty resigned from directorship and another Director Rajkumar Saha started non-cooperation with the Managing Director namely Mr. Dibyendu Sekhar Maity and the entire Management body and Mr. Dibyendu Sekhar requested him to join as a Director of the Company to fulfil the need of minimum number of directors, therefore, as per his instruction he was appointed as a director since 20.12.2012.
- b) Since 20.12.2012, he continued his duty as Office Manager as before and as a director, he had no signing authority to withdraw cash from bank, not attended any Board meeting till date, not signed any Board resolution and had not enjoyed any other benefit than salary of Rs. 12, 500 per month.
- c) The registered office of VAIL was closed from December 2012, after the incident of SARADA, all branch offices faced tremendous financial crisis due to agitation in different places in West Bengal, they could not handle the pressure of maturity refund, could not pay office expenses, they needed to speak with the said Managing Director on mobile but got no response and they were facing hopeless situation and mentally agonized.
- d) Due to unavailability of Mr. Dibyendu and other directors, he is unable to furnish the documents and he personally informed the matter to his C.A. but due to unavailability of proper information from Accounts Department, he is helpless.
- e) Mr. Rajkumar Saha and Mr. Amitava Chakraborty (directors of ALR Food Processing Ltd.) during the financial year 2010-11 and 2011-12) can enlighten facts regarding the matter.

- f) He enclosed copy of his offer letter for appointment of Manager in VAIL dated 1.10.2011 and affidavit filed in Serampore Court dated January 18, 2014 which contained similar submissions as stated above.

19. *Hearing and submissions:* Thereafter, vide notification dated October 15, 2017 and corrigendum dated October 17, 2017 published in newspaper *Times of India, Kolkata* and notification dated October 15, 2017 and corrigendum dated October 17, 2017 published in newspaper *Ananda Bazar Patrika*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on November 15, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record. The notification also referred to the Interim Order cum Show Cause Notice dated October 9, 2015 issued against the Noticees, advising them to file replies.

20. Noticees did not avail the opportunity of hearing held on November 15, 2017. In the interest if principles of Natural Justice, another opportunity of hearing was granted to all the Noticees on April 10, 2018. In response, Shri Netai Pramanik, Shri Anup Kumar Maity and Shri Bappaditya Mukherjee sought adjournment of hearing for two months due to illness, urgent serious commitments and illness of wife, respectively. None of the remaining entities filed any reply nor attended the hearing. Considering the requests of the Noticees, vide hearing notice dated June 26, 2018, an opportunity of hearing was granted to them on July 17, 2018. It is also noted that vide the said hearing notice, SEBI advised the Noticees to furnish documentary evidence if any in support of their contention of resignation etc.

21. On July 17, 2018, Shri Bappaditya Mukherjee, Shri Netai Pramanik and Shri Anup Kumar Maiti along with Counsel, Shri Koustav Majumdar appeared for the hearing and made the following submissions:

21.1 Shri Bappaditya Mukherjee and Shri Netai Pramanik submitted that they were factory

workers and got to know that they were made directors of the Company and wanted to leave the Company and stated the same to CMD but no action was taken. They also stated that they had signed on blank documents and gave their IDs. Shri Bappaditya submitted copies of his driving license, job card, PAN, bank passbook and declaration copy. Shri Netai Pramanik also filed PAN copy.

21.2 Shri Anup Kumar Maity submitted that he joined ALR Food Processing and came to know later that he was made director of VAIL. He submitted that he had no knowledge about the Company and informed that he didn't want to be director but wasn't heard and that that he had given self-attested documents and since he didn't have knowledge about Company law, asked for advice and was advised to leave. He also submitted that he again requested to leave the Company and later, an agreement was executed with CMD and he emailed resignation on October 15, 2011. Further, he submitted that he had signed on blank papers forcefully and later, he filed a general diary complaint with Police. Shri Anup Kumar submitted copies of PAN, appointment letter, Adhar card, voter card and copy of his resignation vide email.

21.3 Receipt of two General Diary complaints filed at Bagnan P.S. were also submitted.

21.4 The Noticees were advised to furnish documentary proof with respect to their contention of their resignation.

The said documents were not submitted by the Noticees till date.

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

- (1) Whether the company came out with the Offer of NCDs as stated in the interim order.*
- (2) If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.*
- (3) Whether appointment of Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak), as the Debenture Trustee by VAIL is in violation of Section*

117B of the Companies Act, 1956 and whether Vaastav Debenture Trust and Shri Chinmoy Ghatak violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations.

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

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

23. I have perused the interim order dated October 09, 2015 for the allegation of *Offer of NCDs*. I note that neither the company nor the directors have disputed the same.

24. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted, from the investors' complaints received by SEBI in the matter that VAIL has issued and allotted NCDs to at least 268 investors during the financial years 2011-2012, 2012-2013, 2013-2014 and raised at least an amount of Rs. 60.72 Lakhs. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 268 allottees and Rs. 60.72 Lakhs respectively.

25. *I therefore conclude that VAIL came out with an offer of NCDs as outlined above.*

ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.

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

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

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

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

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

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

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

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

27. 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.”

28. 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*.

29. In the instant matter, I find that NCDs were issued by VAIL to at least 268 investors in the financial years 2011-2012, 2012-2013, 2013-2014. However, this number is not conclusive as it is based on the documents received by SEBI and the actual number of investors could be more than 268. I find that VAIL has mobilized at least an amount of Rs. 60.72 Lakhs over the financial years 2011-2012, 2012-2013, 2013-2014 which is not a conclusive value as it is based on the complaints received by SEBI. Further, I find that VAIL has created a charge of Rs. 100 Crores on July 9, 2011. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by VAIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
30. Neither VAIL nor its directors have contended that the *Offer of NCDs* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
31. I find that VAIL has not claimed it to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that VAIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
32. Even in cases where the allotments are considered separately, reference may be made to

Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that "In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".

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

account of such failure. Therefore, I find that VAIL has contravened the said provisions. VAIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that VAIL 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.

36. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of NCDs was a deemed public issue of securities, VAIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that VAIL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of NCDs. I, therefore, find that VAIL has not complied with the provisions of section 60 of the Companies Act, 1956.
37. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Neither VAIL nor its directors produced any record to show that it has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, VAIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

38. As regards the allegation of section 117C of the Companies Act, 1956, it may be seen that the said provision mandates the company to create a debenture redemption reserve for the redemption of such debentures, to which every year, adequate amounts should be credited out of its profits, until such debentures are redeemed. None of the Noticees denied this allegation. There is no material on record to show that such debenture reserve was created. Therefore, I hold that the company has violated section 117C of the Companies Act, 1956.
39. ILDS Regulations are applicable to the public issue and listing of debt securities. Regulation 2(e) of the ILDS Regulations defines debt securities to mean non-convertible debt securities which create or acknowledge indebtedness, and include debentures. In view of the finding that VAIL has made a public issue of debt securities, the ILDS Regulations is also applicable to the instant offer of NCDs. Therefore, I find that the Company has violated the following provisions of the aforesaid ILDS Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.
- i. Regulation 4(2)(a) – Application for listing of debt securities
 - ii. Regulation 4(2)(b) – In-principle approval for listing of debt securities
 - iii. Regulation 4(2)(c) – Credit rating has been obtained
 - iv. Regulation 4(2)(d) – Dematerialization of debt securities
 - v. Regulation 4(4) – Appointment of Debenture Trustees
 - vi. Regulation 5(2)(b) – Disclosure requirements in the Offer Document
 - vii. Regulation 6 – Filing of draft Offer Document
 - viii. Regulation 7 – Mode of disclosure of Offer Document
 - ix. Regulation 8 – Advertisements for Public Issues
 - x. Regulation 9 – Abridged Prospectus and application forms
 - xi. Regulation 12 – Minimum subscription
 - xii. Regulation 14 – Prohibition of mis-statements in the Offer Document
 - xiii. Regulation 15 – Trust Deed
 - xiv. Regulation 17 – Creation of security
 - xv. Regulation 19 – Mandatory Listing
 - xvi. Regulation 26 – Obligations of the Issuer, etc.

40. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara Case*, had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

41. 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...”

42. In view of the above findings, I am of the view that VAIL engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act, 1956, and above mentioned provisions pertaining to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.

ISSUE No. 3-Whether appointment of Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak) as the Debenture Trustee by VAIL is in violation of Section 117B of the Companies Act, 1956 and whether Vaastav Debenture Trust and Shri Chinmoy Ghatak have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

43. I have perused the Form 10 as filed with RoC and I find that VAIL had created a charge of Rs. 100 Crores for the Offer of NCDs by the Company on July 9, 2011. I further find that VAIL had appointed *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)* as the debenture trustee.
44. Herein, I note Shri Chinmoy Ghatak’s submissions vide letter dated September 7, 2016 that he was 85 years old and in the ill state of health, hence unable to move out of Kolkata and not associated with the Company in capacity and unable to furnish any related information. I note that vide hearing Notice dated June 25, 2018, an opportunity of hearing was granted to Shri Chinmoy Ghatak with an option to attend the hearing the same through teleconference by videophone at the nearest local office or regional office of SEBI. However, Shri Chinmoy Ghatak failed to avail the said opportunity. In view of the same I am proceeding with the documents available on record. From the perusal of Form

10 available on record, I note that VAIL had created a charge of Rs. 100 Crores for the Offer of NCDs by the Company on July 9, 2011 and Shri Chinmoy Ghatak was shown as the Debenture Trustee therein for the issuance of NCDs during the relevant period.

45. Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993, states that only *a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body corporate alone are eligible to get a certificate of registration as Debenture Trustee.*
46. *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)* are not eligible to obtain a certificate of registration since it does not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. None of the Noticees claimed that *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that *Vaastav Debenture Trust* and *Shri Chinmoy Ghatak* have dealt in the impugned Offer of NCDs as debenture trustees, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992.
47. Under section 117B of the Companies Act, 1956 no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. I find that VAIL has appointed *Vaastav Debenture Trust (represented by its trustee, viz. Shri Chinmoy Ghatak)* who do not have a certificate of registration. Therefore, the appointment of the same is in violation of section 117B of the Companies Act, 1956. Further, since VAIL has not issued a prospectus with the relevant information and therefore, the requirement of

stating the consent of the debenture trustee to be so appointed on the face of the prospectus has not been complied with.

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

48. Before dealing with the above issue, I would like deal with the contentions and submissions of the Noticees viz., Shri Shilajit Ghosh, Shri Netai Pramanik, Shri Bappaditya Mukherjee and Shri Anup Kumar Maity.

48.1 Shri Shilajit Ghosh vide letter dated September 8, 2016 submitted that he was an ex-employee and is in a helpless situation because all the directors and ex-directors have changed their address and mobile numbers, hence he is not in a position to collect the relevant documents and papers. I have also considered the submissions of Shri Shilajit Ghosh made vide letters dated July 2, 2014 and July 30, 2014 that he was an ex-employee of ALR Food Processing Ltd and copy of his offer letter for appointment of Manager in VAIL dated 1.10.2011 was also perused. I also note his submissions that Mr. Dibyendu Sekhar Maity, Managing Director of the Company requested him to join as a Director of the Company to fulfil the need of minimum number of directors, therefore, as per his instruction he was appointed as a director since December 20, 2012 and since December 20, 2012, he continued his duty as Office Manager as before and as a director, he had no signing authority to withdraw cash from bank, not attended any Board meeting till date, not signed any Board resolution and had not enjoyed any other benefit than salary of Rs. 12, 500 per month. In this regard, I note Hon'ble Securities Appellate Tribunal (SAT) order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, wherein Hon'ble SAT has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific

provisions of the Companies Act. I find that as per MCA records, Shri Shilajit Ghosh was director of the Company from December 21, 2012 and is still continuing as the director of the Company and the NCDs had been allotted by the Company during the FY 2011-2012, 2012-2013 and 2013-2014. Therefore, I find that he was a director during the issue of the NCDs and liable for making refund of the amount collected by the Company during his period of directorship.

48.2 Shri Sougata Sarkar from DKS Associates vide separate but identical letters each dated December 29, 2015 made submissions on behalf of Shri Netai Pramanik and Shri Bappaditya Mukherjee. I note that their primary contention is that they were employed as Development Officers in ALF Food Processing Limited since November 1, 2010 to March 21, 2012 and they purchased some shares of the Company and Mr. Dibyendu Sekhar Maity, claimed by them as the Chairman cum Managing Director (CMD) of VIL informed them that they became directors of the Company VAIL. The said Noticees also contented that they were never related to or holding any position in VAIL at any point of time during their employment and declined to continue as directors of VAIL and tendered their resignation on October 13, 2011.

- i. As regards the aspect of resignation, Shri Netai Pramanik and Shri Bappaditya Mukherjee contended that they resigned on October 13, 2011. I note that though they submitted that they have enclosed receipt copy of their resignation letters and copies of complaints made to ROC, etc. regarding the fraud, I do not find the said enclosures to the submissions. In the absence of documentary evidence in support of his submissions, despite giving sufficient opportunity to submit the documentary evidence including personal hearing, therefore, I am unable to accept his submissions that he has resigned from the directorship of the Company on October 13, 2011. Further, in this regard, I have perused the minutes of a meeting dated October 13, 2011 (submitted by Shri Bappaditya Mukherjee during the hearing) held between Mr. Dibyendu Sekhar Maity, and directors viz., Shri Netai Pramanik, Shri Bappaditya Mukherjee, Shri Anup Kumar Maity and Shri Atish Samanta Ray. On perusal

of the contents of the minutes I find that all the four directors mentioned above desired to resign in future from the Company, however, Mr. Dibyendu Sekhar Maity agreed to relieve only two directors viz., Shri Anup Kumar Maity and Shri Atish Samanta Ray in order to keep the minimum number of directors required for the Company. I note that all the directors agreed to the same. There is no evidence of actual resignation by any of these directors. However, later vide letter dated October 13, 2011 Shri Anup Kumar Maity and Shri Atish Samanta Ray have resigned from the Company. But no resignation letter similar to Shri Anup Kumar Maity and Shri Atish Samanta Ray that has been produced by the Shri Netai Pramanik and Shri Bappaditya Mukherjee. Therefore, I am unable to accept that Shri Netai Pramanik and Shri Bappaditya Mukherjee have resigned from the directorship of the Company on October 13, 2011.

- ii. On further perusal, I find from MCA records viz., Form 32 of Shri Netai Pramanik and Shri Bappaditya Mukherjee, they have filed their resignation letters each dated March 21, 2012 and an additional letters each dated September 03, 2013 addressed to Mr. Dibyendu Sekhar Maity with respect to their resignation. I also note that these documents were uploaded by Mr. Dibyendu Sekhar Maity. Though the Form 32 of Shri Netai Pramanik and Shri Bappaditya Mukherjee mentioned the effective date of resignation as September 7, 2013, by Mr. Dibyendu Sekhar Maity who has given the details in the Form 32, the perusal of the uploaded copy of resignation letter attached to the Form 32 shows that the resignation was dated March 21, 2012. I also note, from the perusal of the contents of copy of letter dated September 03, 2013 uploaded in the MCA portal along with the said Form 32 as additional attachment, that though the resignation was tendered on March 21, 2012 at the Saltlake office of the Company, Mr. Dibyendu Sekhar Maity did not accept the same. Though the said letters dated September 7, 2013 were signed by Shri Netai Pramanik and Shri Bappaditya Mukherjee, the fact that it was uploaded

by Mr. Dibyendu Sekhar Maity on MCA portal implies that he endorses the contents of the letter which in effect endorse the fact that the resignation letters dated March 21, 2012 referred to in the letter dated September 3, 2013 were handed over to Mr. Dibyendu Sekhar Maity though he did not accept them. It may be noted that receipt of the letter of resignation would have a different legal ramification in view of the law laid down by Hon'ble High court of Delhi in *.S. Gambhir Vs. Millennium Health Institute & Diagnostics Pvt. Ltd. (Delhi HC) [2014] 120 CLA 372 (Del.* As per the law laid down by the Hon'ble High court of Delhi “ *A resignation by a director implies a relinquishment of his office. This is a unilateral Act which unless the Articles of Association otherwise provide, is not contingent on the acceptance by the company.*”

- iii. I further note that the said letters of resignation dated March 21, 2012, do not mention any effective date of resignation. Therefore, in view of the case law referred to above, I find that the resignation letter when received by the Company in view of absence of any effective date of resignation in the letters of resignation dated March 21, 2012 should be considered as resignation taking effect from the date of receipt of resignation letters which in this case is March 21, 2012. In view of the same, I am inclined to accept the fact that Shri Netai Pramanik and Shri Bappaditya Mukherjee had resigned from the Company on March 21, 2012.
- iv. I note that there is no proof to hold that Shri Netai Pramanik and Shri Bappaditya Mukherjee as directors of the Company resigned w.e.f., September 7, 2013 as mentioned in the ROC documents which were uploaded by Mr. Dibyendu Sekhar Maity. I note that the Company had allotted NCDs during the FY 2011-2012. Since Shri Netai Pramanik and Shri Bappaditya Mukherjee were directors during the issue of the NCDs, I find them liable for making refund of the amount collected by the Company during their period of directorship.
- v. I note that Shri Netai Pramanik and Shri Bappaditya Mukherjee also

contended that they were not aware about the issuance of NCDs (20 in number) in the financial year 2011-12 and the entire process was done fraudulently by VAIL through its then directors and they were not physically, directly or indirectly involved in the said matter as alleged and they were not Executive Directors, Managing Director or even whole time directors. In this regard, I have perused the minutes of a meeting dated October 13, 2011 (submitted by Shri Bappaditya Mukherjee) held between Mr. Dibyendu Sekhar Maity, and directors viz., Shri Netai Pramanik, Shri Bappaditya Mukherjee, Shri Anup Kumar Maity and Shri Atish Samanta Ray wherein Mr. Dibyendu Sekhar Maity had stated that the Company had issued NCDs. Further, I note from the minutes stating that Mr. Dibyendu Sekhar Maity's Digital Signature Certificate (DSC) had expired and Shri Bappaditya Mukherjee consented to use his DSC for filing Form 32 of Shri Anup Kumar Maity and Shri Atish Samanta Ray. I also note from the MCA records that Form 32 of Shri Anup Kumar Maity and Shri Atish Samanta Ray was filed by Shri Bappaditya Mukherjee possibly because of expiry of DSC. Considering these facts, I am not inclined to accept the contention of the Noticees that they were unaware of issuance of NCDs and they were fraudulently made directors of the Company. Nonetheless they were directors of VAIL during the period of issuance of NCDs (FY 2011-2012). Hence, I find that they cannot wriggle out from liability to refund the investors of the Company. Further, as regards their submission that they were neither entrusted with any financial and administrative functions nor participated in any of the decision making process of the Company in any point of time during their employment period, I note Hon'ble Securities Appellate Tribunal (SAT) order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, wherein Hon'ble SAT has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount

to investors in view of specific provisions of the Companies Act.

48.3 Shri Anup Kumar Maity vide letter dated April 23, 2016 submitted, inter-alia, he was employed as a Group member of Administration & Operational Manager in the ALF Food Processing Ltd. since January, 2011 to 12th October 2011, since then he has no relation with the Company. I note that his primary contention is that he was fully unaware and in dark and never gave any consent or signed any documents in the entire process of formation of VAIL and the total process was done fraudulently and he was never related to or holding a position of the said VAIL in any point of time during his employment, however, as soon as he got information of his directorship in the VAIL, he raised objection and put down his paper in mid-july 2011 and at last ROC has officially accepted his resignation from the directorship of VAIL from 13th October, 2011 and that he is no longer associated with the Company except from 15th June, 2011 to 12th October, 2011 although he had put down his paper in the month mid-July, 2011 and the ROC officially accepted later on and since October 13, 2011 he is no longer an employee of VAIL group of companies or holding any position of the same. However, I do not find any documentary evidence provided by Shri Anup Kumar Maity in support of his submissions that he resigned from the directorship of the Company in mid-July, 2011, despite giving sufficient opportunity to submit the documentary evidence including personal hearing, and in the absence of documentary evidence in support of his submissions, I am unable to accept his submissions that he has resigned from the directorship of the Company in mid-July 2011. I find that as per MCA records, Shri Anup Kumar Maity was director of the Company from June 15, 2011 to October 13, 2011 and the NCDs had been allotted by the Company during the FY 2011-2012, 2012-2013 and 2013-2014, therefore, he was a director during the issue of the NCDs and liable for making refund of the amount collected by the Company during his period of directorship.

Further, as regards his submission that he was unaware about the fact of issuance of NCDS and all process was done fraudulently and without his consent is nullified by the fact that he was a party to the meeting held with Mr. Dibyendu Sekhar

Maity on October 13, 2011 and the details of the minutes of the said meeting have already been mentioned above at paragraph 48.2(v) hence the same are not repeated herein for the sake of brevity. Hence, I do not find any merit in the said contention.

Further, as regards the submission that he was neither entrusted with any financial and administrative functions nor participated in any of the decision making process of the Company in any point of time during his employment period, I note Hon'ble Securities Appellate Tribunal (SAT) order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, wherein Hon'ble SAT has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act.

49. From the MCA records, I find that the present Directors in VAIL are Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh, Shri Dilip Jana. I also note that, Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti, who were earlier Directors in VAIL, have since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Dibyendu Sekhar Maity	June 15, 2011	Continuing
Shri Shilajit Ghosh	December 21, 2012	Continuing
Shri Dilip Jana	December 21, 2012	Continuing
Shri Anup Kumar Maiti	June 15, 2011	October 13, 2011
Shri Atish Samanta Ray	June 15, 2011	October 13, 2011
Shri Bappaditya Mukherjee	June 15, 2011	March 21, 2012
Shri Netai Pramanik	June 15, 2011	March 21, 2012

50. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, VAIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
51. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.
52. From the material available on record and the details of the appointment and resignation of the directors of VAIL as reproduced in paragraph 49 of this Order, it is noted that, Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh and Shri Dilip Jana were directors at the time of the issuance of NCDs. Since these persons were acting as directors during the period of issuance of NCDs, 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 VAIL 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 VAIL, 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. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act. Therefore, I find that VAIL and its Directors, viz., Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh, Shri Dilip Jana 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.

53. I note that during the financial years 2011-2012, 2012-2013, 2013-2014, VAIL through Offer of NCDs, had collected at least an amount of Rs. 60.72 Lakhs from various allottees. I note that Shri Dibyendu Sekhar Maity has been director of VAIL since financial years 2011-2012, 2012-2013, 2013-2014 till present date. I note that Shri Shilajit Ghosh has been director of VAIL since financial years, 2012-2013, 2013-2014 till present date. I note that Shri Dilip Jana has been director of VAIL since financial years, 2012-2013, 2013-2014 till present date. I note that Shri Bappaditya Mukherjee was director of VAIL during financial year 2011-2012. I note that Shri Atish Samanta Ray was director of VAIL during financial year 2011-2012. I note that Shri Netai Pramanik was director of VAIL during financial year 2011-2012. I note that Shri Anup Kumar Maiti was director of VAIL during financial year 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 VAIL and other directors are limited to the extent of amount collected during his/her tenure as director of VAIL.

54. In so far as the liability of Shri Atish Samanta Ray is concerned, there is no conclusive material on the fact of his death, though the letter of forwarding the interim order addressed to him came back undelivered with the endoresement “deceased”. Even assuming that Shri Atish Samanta Ray was deceased, the issue for consideration here is that whether the present proceedings will continue against Shri Atish Samanta Ray. In this regard, I place reliance on the following observations of Hon'ble Supreme Court in the matter of *Melepurath Sankunni Ezhuthassan Vs Thekittil Gopalankutty Nair*, (1986 AIR 411):

“.....So far as this country is concerned, which causes of action survive and which abate is laid down in section 306 of the Indian Succession Act, 1925, which provides as follows :

306. Demands and rights of action of or against deceased survive to and against executor or administrator. -

All demands whatsoever and all rights to prosecute or defend any action or special processing existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.....

.....Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.”

The observations of the Hon'ble Supreme Court in the matter of *Smt. Yallawwa Vs. Smt. Shantavva* on October 08, 1996, (MANU/SC/0016/1997) is also noteworthy: *“.....Save and except the personal cause of action which*

dies with the deceased on the principal of 'actio personal is moritur cum persona,' i.e. a personal cause of action dies with the person, all the rest of causes of action which have impact on proprietary rights and socio legal status of the parties cannot be said to have died with such a person.....”

I also note that the Hon’ble Supreme Court in the matter Prabhakara Adiga Vs. Gowri and others (Civil Appeal Nos. 3007-3008 of 2017, decided on February 20, 2017) has reiterated their stand taken in an earlier judgment in the matter of *Girijanandini Devi v. Bijendra Narain Choudhary* (AIR 1967 SC 1124) and observed that “*Normally personal action dies with person but this principle has application to limited kinds of causes of actions. In Girijanandini Devi v. Bijendra Narain Choudhary AIR 1967 SC 1124, this Court while considering the question whether the decree for account can be passed against the estates, also considered the maxim “actio personalis moritur cum persona” and observed that the postulation that personal action dies with the person, has a limited application. It operates in a limited class of actions, such as actions for damages, assault or other personal injuries not causing the death of the party and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. Death of the person liable to render the account for property received by him does not therefore affect the liability of his estate”.*

Since the consequences of aforesaid violations have resulted in the liability to repay the investors forthwith and the same becomes the part of the estate of the deceased. Hence, I am of the view that the cause of action to make refund survives the death of Shri Atish Samanta. However, it is noted, assuming that Shri Atish Samanta is not alive, the legal representatives of Shri Atish Samanta have not been brought on record. Therefore, the directions against Shri Atish Samanta is made contingent on SEBI taking steps to ascertain whether Shri Atish Samanta is not alive and serving this order as a show cause notice to the legal representatives of the Shri Atish Samanta, in case Shri Atish Samanta is not alive.

55. As far as the liability under sections 117B and 117C of the Companies Act, 1956, is concerned, the liability is on the company to comply with the said provisions. Therefore, VAIL is liable for the violation of sections 117B and 117C of the SEBI Act. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the Trustee who act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that both Vaastav Debenture Trust and *Shri Chinmoy Ghatak* are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
56. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 39 of this order, the liability is on the Company to comply with the requirements therein.
57. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct VAIL and its Directors, viz., Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh and Shri Dilip Jana to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors, to safeguard the interest of the investors who had subscribed to such NCDs issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.
58. I also note that, vide the interim order dated October 09, 2015, VAIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of VAIL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided either by VAIL or the other Noticees.

59. In view of the discussion above, appropriate action in accordance with law needs to be initiated against VAIL and its Directors and debenture trustee, viz., Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh, Shri Dilip Jana, Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti and Vaastav Debenture Trust (*represented by its trustee, viz. Shri Chinmoy Ghatak*)
60. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:
- (a) VAIL, Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh, Shri Dilip Jana shall jointly and severally, forthwith refund the money collected by the Company (VAIL for moneys collected till date and directors for the moneys collected during their respective period of directorship) through the issuance of NCDs including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
 - (b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.
 - (c) Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik and Shri Anup Kumar Maiti are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
 - (d) VAIL, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh and Shri Dilip Jana are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.

- (e) VAIL, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh and Shri Dilip Jana are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- (f) VAIL, Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh and Shri Dilip Jana are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- (g) VAIL, Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh and Shri Dilip Jana in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- (h) After completing the aforesaid repayments, VAIL, Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh and Shri Dilip Jana shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been

categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.

- (i) In case of failure of VAIL, Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh and Shri Dilip Jana 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 60(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - (j) VAIL, Shri Bappaditya Mukherjee, Shri Atish Samanta Ray, Shri Netai Pramanik, Shri Anup Kumar Maiti, Shri Dibyendu Sekhar Maity, Shri Shilajit Ghosh and Shri Dilip Jana are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.
 - (k) Vaastav Debenture Trust and Shri Chinmoy Ghatak are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.
61. The above directions shall come into force with immediate effect. In so far as the liability of Shri Atish Samanta Ray is concerned, there is no conclusive material on the fact of his death, though the letter of forwarding the interim order addressed to him came back

undelivered with the endoresement “deceased”. Therefore, the directions against Shri Atish Samanta is made contingent on SEBI taking steps to ascertain the fact of whether Shri Atish Samanta is alive and serving this order to the legal representatives of the Shri Atish Samanta, in case Shri Atish Samanta is not alive.If Shri Atish Samanta is not alive, the findings and conequential directions in this order would stand as show cause notice to the legal representatives of Shri Atish Samanta

62. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.
63. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.
64. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: September 12, 2018

PLACE: Mumbai

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