

**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 Moonlight Associates Limited**

**In respect of:**

S.No.	Name of the Entity	PAN	CIN/DIN
1.	<b>Moonlight Associates Limited</b>	<b>AACCD2359Q</b>	<b>U85110AS2004PLC007336</b>
2.	<b>Mr. Nityananda Nath</b>	<b>AEUPN2924A</b>	<b>01675030</b>
3.	<b>Mr. Abu Sadeque Ishtiaque Ahmed Choudhury</b>	<b>AETPC8946C</b>	<b>01760406</b>
4.	<b>Ms. Ferdousi Begum Choudhury</b>	<b>AJJPC2251P</b>	<b>02287710</b>
5.	<b>Mr. Samsul Islam</b>	<b>AAKPI6206L</b>	<b>01674995</b>
6.	<b>Mr. Nizam Uddin Ahmed</b>	<b>AQQPA5590F</b>	<b>NIL</b>
7.	<b>Mr. Kanai Lal Nath</b>	<b>AHPPN2616K</b>	<b>NIL</b>
8.	<b>Mr. Abdul Jalil Choudhury</b>	<b>Not Available</b>	<b>NIL</b>
9.	<b>Mr. Md. Abdul Muktadir</b>	<b>PAN Not Available- S/o Abdul Jalil, Vill&amp;P.O. Kurikhala, Dist-Karimganj, Assam-788712</b>	

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1. Moonlight Associates Limited (hereinafter referred to as “**Moonlight**”/ “**the Company**”) is a Public company incorporated on February 19, 2004 as Daffodil Associates Limited and registered with Registrar of Companies–Shillong with CIN:
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*Order in the matter of M/s Moonlight Associates Limited*

U85110AS2004PLC007336. Subsequently, the name of the Company was changed to Moonlight Associates Limited. Its registered office is at 66, J. S. Complex, G. S. Road, Ulubari, Guwahati, Assam - 781007.

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint against Moonlight in respect of issue of Equity Shares and undertook an enquiry to ascertain whether Moonlight 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 SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as “**DIP Guidelines**”) read with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations**”).
3. On enquiry by SEBI, it was observed that Moonlight had made an offer of Equity Shares in the financial years 2007-2008 and 2009-2010 (hereinafter referred to as “**Offer of Equity Shares**”) and raised an amount of Rs. 2.50 Crores from 695 allottees. The number of allottees and funds mobilized has been collated from the documents filed by the Company with RoC.
4. As the above said *Offer of Equity Shares* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956, SEBI passed an interim order dated December 15, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against Moonlight and its Directors and promoters, viz. Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury, Ms. Ferdousi Begum Choudhury, Mr. Samsul Islam, Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath, Mr. Abdul Jalil Choudhury and Mr. Md. Abdul Muktedir (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. Moonlight had made an *Offer of Equity Shares* during the

financial years 2007-2008 and 2009-2010 and raised an amount of Rs.2.50 Crores as shown below:

Year of Issue	Security Issued	Amount raised (Rs.)	Number of allottees
2007-2008	Equity Shares	2,00,00,000.00	580
2009-2010		50,00,000.00	115
Total		2,50,00,000.00^	695*

\*<sup>^</sup> No. of allottees and funds mobilized has been collated from the documents submitted by the Company with the RoC.

6. The above *Offer of Equity Shares* 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 requirements under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by Moonlight in respect of the *Offer of Equity Shares*.
7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated December 15, 2015 with immediate effect.
  - i. “The Company namely Moonlight Associates Limited [PAN: AACCD2359Q] and its promoters/ directors (present and past) including Mr. Nityananda Nath [PAN: AEUPN2924A], Mr. Abu Sadeque Ishtiaque Ahmed Choudhury [PAN: AETPC8946C], Ms. Ferdousi Begum Choudhury [PAN: AJJPC2251P], Mr. Samsul Islam [PAN: AAKPI6206L], Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath, Mr. Abdul Jalil Choudhury and Mr. Md. Abdul Muktedir are restrained from mobilizing funds through the issue of equity shares or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.
  - ii. Moonlight Associates Limited and its promoters/ directors including the above named persons 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. Moonlight Associates Limited and its promoters/ directors including the above named persons shall not dispose off any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.*

*iv. Moonlight Associates Limited and its promoters/ directors including the above named persons shall not divert any funds raised from public at large through the issuance of the impugned equity shares, kept in its bank accounts and/ or in the custody of the Company without prior permission of SEBI until further orders.*

*v. Moonlight Associates Limited and its promoters/ directors including the above named persons are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.*

*vi. Moonlight Associates Limited and its promoters/ directors including the above named persons shall co-operate with SEBI and shall furnish all the documents that they have been or shall be required to furnish.*

*vii. Moonlight Associates Limited and its promoters/ directors including the above named persons are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.”*

8. The interim order also directed the Moonlight and its Directors/promoters to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act read with Section 73(2) of the Companies Act, 1956 and the DIP Guidelines including the following should not be passed against them:

- i. “Directing them jointly and severally to refund the money collected through the issue of equity shares that are impugned in this Order, along with interest at 15% per annum from the date when the refunds became due to the investors till the date of repayment;
  - 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. Directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;
  - iv. Directing them and other companies in which their directors hold substantial or controlling interest, to not access the capital market for an appropriate period.”
- 9. Vide the said interim order, Moonlight, its abovementioned Directors/promoters 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 that 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.
- 10. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated December 15, 2015. The copy of the interim order was served to the Company, Ms. Ferdousi Begum Choudhury and Mr. Samsul Islam through Affixture. Subsequently, vide notification dated December 31, 2016 published in newspaper *The Assam Tribune*, and notification dated December 31, 2016 published in newspaper *Asomiya Pratidin*, the Noticees were notified by SEBI, that interim order dated December 15, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.
- 11. Replies: Mr. Abu Sadeque Ishtiaque Ahmed Choudhry vide latter dated December 26,

2015 stated that he has resigned from the company due to ill health but his name has not been removed from the RoC website. He also stated that the company is a public company and not a listed company. The company has made private placement 2-3 times in the past but has never made any public offer since its inception. The various provisions and sections of SEBI Act, 1992 are not applicable in this matter as the company has neither issued any public offer nor is it listed in any stock exchange.

11.1.Mr. Md. Abdul Muktadir and Mr. Nizam Uddin Ahmed vide letters dated January 27, 2016 stated that they do not know how the name of the company changed from Daffodils Associates Limited to Moonlight Associates Limited. They also stated that they were never directors/partners of the company and joined the company as employees and agents as requested by director Mr. Abu Sadeque Ishtiaque Ahmed Choudhry, who is their relative.

11.2.No reply to the interim order has been received from the Company and other Noticees.

12. Vide hearing notice dated October 04, 2017 the Noticees were granted an opportunity of being heard before me on October 26, 2017. The hearing notice sent through Speed Post with acknowledgment were delivered to the Noticees viz., Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury, Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath and Mr. Md. Abdul Muktadir. The hearing notice was served upon the Company through Affixture. The hearing notice to Mr. Abu Sadeque Ishtiaque Ahmed Choudhury was also served through e-mail. Subsequently, vide notification dated October 13, 2017 published in newspaper *The Assam Tribune*, notification dated October 13, 2017 published in newspaper *Asomiya Pratidin*, notification dated October 13, 2017 published in newspaper 'Purbanchal Prahari', Guwahati Edition and notification dated October 13, 2017 published in newspaper 'Sentinal', Guwahati Edition, the remaining Noticees viz., Ms. Ferdousi Begum Choudhury, Mr. Samsul Islam and Mr. Abdul Jalil Choudhury were notified by SEBI that they will be given an opportunity of being heard on October 26, 2017 at the time and the venue mentioned therein.

13. Pursuant to the hearing notice, Mr. Nityananda Nath vide letter dated September 04, 2017 submitted that Mr. Abu Sadeque Ishtiaque Ahmed Choudhury took him to Guwahati and made him sign various papers and informed him that he has become a member of the company. He further stated that he is a poor person earning his livelihood as a tailor, so it will not be possible for him to attend the hearing without financial help.
14. Hearing and submissions: No one appeared on behalf of the Noticees viz., Mr. Nityananda Nath, Ms. Ferdousi Begum Choudhury, Mr. Samsul Islam, Mr. Abdul Jalil Choudhury, Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath and Mr. Md. Abdul Muktaadir for the hearing held on October 26, 2017.
- 14.1 Mr. Jitendra Patnaik, Company Secretary was authorized by Moonlight and its Director Mr. Abu Sadeque Ishtiaque Ahmed Choudhury appeared for personal hearing and made the following oral submissions-
- a. "That the company was incorporated in 2004 in Shillong.
  - b. That the company has filed all its return with ROC till 31/03/2014 and filed the Income Tax Return till 31/03/2017.
  - c. That the company never raised money from public.
  - d. That all the shareholders of the Company are otherwise related to each other and it was a private placement. ARs were asked to provide documentary support for the said claim.
  - e. That the distress selling of assets of the company to repay investors will be detrimental to the investors and the investors/allottees do not seek such repayment. ARs were asked to provide Affidavit from all investors/allottees (along with their Share Certificate and Proof of ID) stating that they do not seek refund and will never claim the same in future.
  - f. ARs were also asked to provide property documents and Bank Account Details and Statement of the Company.
  - g. Mr. Abu Sadeque Ishtiaque Ahmed Choudhury submitted that he rendered his resignation from the company, however the same was not accepted by the

company and thus he is still director of the company.

- h. That Mr. Nityanand Nath, Ms. Ferdousi Begum Choudhary and Mr. Abu Sadeque Ishtiaque Ahmed Choudhury are the continuing Directors of the company whereas Mr. Samsul Islam resigned from the company in 2010. Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath, Late Mr. Abdul Jalil Choudhary and Mr. Abdul Muktedir were Subscribers to Memorandum of Association (“**MoA**”) and were promoters of the company. ARs also submitted that Mr. Abdul Jalil Choudhary expired in 2010. ARs were asked to provide Death Certificate of Late Mr. Abdul Jalil Choudhary and signed copy of MoA.
- i. ARs also submitted that the company's assets cannot be disposed of on account of directions of SEBI as well as CBI and ARs requested that the company may be allowed to sell of its assets to repay the investors. In this regard ARs also sought time from SEBI to file petition/ application to CBI seeking permission for selling the assets of the company to repay the investors.
- j. The ARs were given 7 days' time to produce Death Certificate of Late Mr. Abdul Jalil Choudhary and signed copy of MoA. Further ARs were given 2 weeks' time to produce the aforesaid Affidavit and property documents and Bank Account Details/Statement of the Company.
- k. Further with reference to the time sought for approaching CBI to sell off property for the purpose of repayment to investors, ARs are advised to write letter to SEBI providing the timeline for completing all formalities including approaching CBI and the proposed scheme of repayment, if any, within 2 weeks from the hearing for necessary consideration of SEBI.

14.2 Pursuant to the hearing, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury vide e-mail dated October 31, 2017 submitted that some of the promoters of the Company due to phobia stated before SEBI that they are not subscribers of the Company. As per the MoA downloaded from the website of MCA Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath, Late Mr. Abdul Jalil Choudhary and Mr. Abdul Muktedir were subscribers to the MoA. The Noticee also enclosed the following documents:



- i. Death Certificate of late Mr. Abdul Jalil Choudhany;
- ii. Unitech Demand Notice;
- iii. MoA of the Company;

14.3 Subsequently, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury vide e-mail dated December 08, 2017 submitted that most of the documents of the Company were confiscated by CBI during search and investigation so the Noticee is unable to furnish all the documents sought by SEBI. The Noticee also enclosed two documents viz., Unitech Commercial property agreement with the Company and Unitech letter for handing over of possession of the property to the Company.

15. 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 Equity Shares as stated in the interim order.*
- (2) If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.*
- (3) If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

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

16. I have perused the interim order dated December 15, 2015 for the allegation of *Offer of Equity Shares*. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records including submissions of the Company and its Directors. It is noted from the 'Return of Allotment' filed by the Company with the RoC, Moonlight has issued and allotted Equity Shares to 695 investors during the financial years 2007-2008 and 2009-2010 and raised an amount of Rs. 2.50 Crores. I

also note that the number of allottees and funds mobilized has been collated from the documents filed by the Company to the RoC. The said fact has not been disputed by the company and its Directors.

17. *I therefore conclude that Moonlight came out with an offer of Equity Shares as outlined above.*

**ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.**

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

19. 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."*

20. 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*.
21. In the instant matter, I find that *Equity Shares* were issued by Moonlight to 695 investors in the financial years 2007-2008 and 2009-2010. I find that Moonlight has mobilized an amount of Rs. 2.50 Crores over the financial years 2007-2008 and 2009-2010. Though the Company and its director Mr. Abu Sadeque Ishtiaque Ahmed Choudhury contended that the *Offer of Equity Shares* was private placement and all the shareholders are related

to each other, I note that Moonlight issued Equity Shares to 695 allottees including 580 persons in FY 2007-2008 itself. It is pertinent to mention that as per the first proviso to Section 67(3) (inserted by the Companies (Amendment) Act, 2000 w.e.f. 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". In this regard, reliance is placed on the observations made by the Hon'ble Supreme Court of India in Sahara Case (*Supra*). Since, Moonlight has allotted Equity Shares to more than 49 persons, I find that the Offer of Equity Shares by Moonlight was indeed a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

22. 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. I also note that during the hearing the ARs of the Company submitted that all the shareholders of the Company are related to each other and the issue was a private placement. ARs were asked to provide documentary support for the said claim. However, the Company failed to furnish any documentary proof till date. Hence, I am not inclined to accept the said contention. 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”.

23. I find that Moonlight 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 Moonlight is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
24. Therefore, in view of the material available on record, I find that the *Offer of Equity Shares* by Moonlight falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of Equity Shares* are deemed to be public issues and Moonlight was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
25. Further, since the offer of *Equity Shares* 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.
26. I find that no records have been submitted by the Noticees to indicate that they have made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that Moonlight has contravened the said provisions. Moonlight has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that Moonlight 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.

27. 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 *Equity Shares* was a deemed public issue of securities, Moonlight was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that Moonlight has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of *Equity Shares*. I, therefore, find that Moonlight has not complied with the provisions of section 60 of the Companies Act, 1956.
28. 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 Moonlight 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, Moonlight has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
29. The Company was also required to comply with the following provisions of the DIP Guidelines read with regulation 111 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“the ICDR Regulations”) in respect of the offer and allotments made during FY 2007–08:

*a. Clause 2.1.1. – (Filing of offer document);*

- b. Clause 2.1.4 – (Application for listing);*
- c. Clause 2.1.5 – (Issue of securities in dematerialized form),*
- d. Clause 2.8 – (Means of finance),*
- e. Clause 4.1 – (Promoters contribution in a public issue by unlisted companies),*
- f. Clause 4.11 – (Lock-in of minimum specified promoters contribution in public issues),*
- g. Clause 4.14 – (Lock-In of pre-issue share capital of an unlisted company)*
- h. Clause 5.3.1 – (Memorandum of understanding),*
- i. Clause 5.3.3 – (Due Diligence Certificate)*
- j. Clause 5.3.5 – (Undertaking),*
- k. Clause 5.3.6 – (List Of Promoters Group And Other Details),*
- l. Clause 5.4 – (Appointment of intermediaries),*
- m. Clause 5.6 – (Offer document to be made public),*
- n. Clause 5.6A – (Pre-issue Advertisement),*
- o. Clause 5.7 – (Despatch of issue material),*
- p. Clause 5.8 – (No complaints certificate),*
- q. Clause 5.9 – [Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)],*
- r. Clause 5.10 – (Authorised Collection Agents),*
- s. Clause 5.12.1 – (Appointment of compliance officer),*
- t. Clause 5.13 – (Abridged prospectus),*
- u. Clause 6.0 – (Contents of offer documents),*
- v. Clause 8.3 – (Rule 19(2)(b) of SC(R) Rules, 1957),*
- w. Clause 8.8.1 – (Opening & closing date of subscription of securities),*
- x. Clause 9 – (Guidelines on advertisements by Issuer Company),*
- y. Clause 10.1 – (Requirement of credit rating),*
- z. Clause 10.5 – (Redemption).*

30. As per Regulation 111(1) of the ICDR Regulations, the DIP Guidelines "*shall stand rescinded*". However, Regulation 111(2) of the ICDR Regulations, provides that:

*"(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—*



*(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

*(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations."*

31. The company was also required to comply with the following provisions of ICDR Regulations for the issuances during 2009-2010:

- *"Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)(d)),*
- *Appointment of merchant banker and other intermediaries (Regulation 5),*
- *Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),*
- *Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),*
- *Satisfy the conditions of initial public offer (Regulation 25 and 26),*
- *Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)*
- *Keeping the public issue open for the specified period (Regulation 46),*
- *Pre issue advertisement for public issue (Regulation 47)*
- *Manner of disclosures in the offer documents (Regulation 57)*
- *Refrain from offering any incentive to any person making application for allotment of specified securities (Regulation 59).*
- *Issuer to appoint compliance officer who would be responsible for monitoring the compliance of securities laws and for redressal of investors' grievances. (Regulation 63)".*

32. 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"*

33. 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...”*

34. In view of the above findings, I am of the view that Moonlight was engaged in fund mobilizing activity from the public, through the offer of *Equity Shares* and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956 and above mentioned provisions pertaining to the SEBI DIP Guidelines and SEBI ICDR Regulations.

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

35. Before dealing with the above issue, it would be appropriate to deal with the submissions of the Noticees. Mr. Abu Sadeque Ishtiaque Ahmed Choudhury, Director of the Company submitted that he has resigned from the company due to ill health but his name has not been removed from the RoC website hence, he is continuing as director of the Company. Though Mr. Abu Sadeque Ishtiaque Ahmed Choudhury claimed that he has resigned from the Company, I note that he has not provided any proof of his resignation to substantiate his claim. I also note that as per the Memorandum of Association of the Company, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury is also a promoter of the Company. From the MCA records, I note that Mr. Abu Sadeque Ishtiaque Ahmed Choudhury is a Director of the company from the date of inception till present date. Being the Director of the Company during the issuance of Equity Shares, I find that Mr. Abu Sadeque Ishtiaque Ahmed Choudhury is liable for the same.

35.1 Mr. Nityananda Nath submitted that Mr. Abu Sadeque Ishtiaque Ahmed Choudhury took him to Guwahati and made him sign various papers and informed him that he has become a member of the company and he is not aware of any affairs of the Company. Though Mr. Nityananda Nath claims that he is not aware of any affairs of the Company, I note that Mr. Nityananda Nath is one of the signatory to the Statement of Accounts and Report for the year 2012-2013. Further, I also note from the reply of Mr. Nityananda Nath that Mr. Abu Sadeque Ishtiaque Ahmed Choudhury mentioned that that he is a member of the Company and also promised him large amount of money in

return. Considering the said facts, I am not inclined to accept the contentions of Mr. Nityananda Nath. Further, I note that he was nonetheless a director of the Company during the period of issuance of Equity Shares. Hence, I find that he cannot wriggle out of his responsibility as director and plead ignorance of the affairs of the company. In this regard, it is pertinent to mention the 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 the contentions similar to that of Mr. Nityananda Nath that 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.

35.2 Mr. Md. Abdul Muktadir and Mr. Nizam Uddin Ahmed stated that they were never directors/partners of the company and joined the company as employees and agents as requested by director Mr. Abu Sadeque Ishtiaque Ahmed Choudhry, who is their relative. In this regard, I note that the said Noticees failed to furnish any documentary evidence to prove that they were employees/agents of the Company or that they were not promoters of the Company. In the absence of any such evidence to substantiate their claim, I am not inclined to accept their contention. Further, I note from the interim order that Mr. Md. Abdul Muktadir and Mr. Nizam Uddin Ahmed were mentioned as promoters of the Company. During the personal hearing, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury submitted that Mr. Md. Abdul Muktadir and Mr. Nizam Uddin Ahmed were Subscribers to MoA and were promoters of the company. In this regard, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury was advised to submit the signed copy of MoA of the Company. The same was submitted by Mr. Abu Sadeque Ishtiaque Ahmed Choudhury vide e-mail dated October 31, 2017. From the signed copy of the MoA submitted by Mr. Abu Sadeque Ishtiaque Ahmed Choudhury (downloaded from MCA website), I note that Mr. Md. Abdul Muktadir and Mr. Nizam Uddin Ahmed are not directors but were subscribers to the MoA of the Company.

35.3 It is noted from the submissions of Mr. Abu Sadeque Ishtiaque Ahmed Choudhury that Mr. Abdul Jalil Choudhury expired on March 17, 2010. From the MCA records, I note

that Mr. Abdul Jalil Choudhury was only a subscriber to the MoA of the Company and hence I am of the view that he is not liable to refund the money collected by the Company.

36. From the documents available on record, I find that the present Directors in Moonlight are Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury and Ms. Ferdousi Begum Choudhury. I also note that, Mr. Samsul Islam, who was earlier Director in Moonlight, has since resigned. The details of the appointment and resignation of the directors are as following:

<b>Name of the directors</b>	<b>Date of appointment</b>	<b>Date of cessation</b>
Mr. Nityananda Nath	February 26, 2004	Continuing
Mr. Abu Sadeque Ishtiaque Ahmed Choudhury	February 26, 2004	Continuing
Ms. Ferdousi Begum Choudhury	August 02, 2010	Continuing
Mr. Samsul Islam	February 26, 2004	August 06, 2010

37. I find that Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury, Mr. Samsul Islam, Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath, Mr. Abdul Jalil Choudhury and Mr. Md. Abdul Muktedir are/were promoters of Moonlight.
38. 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, Moonlight and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
39. 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%.

40. From the material available on record and the details of the appointment and resignation of the directors of Moonlight as reproduced in paragraph 36 of this Order, it is noted that Mr. Samsul Islam, Mr. Nityananda Nath and Mr. Abu Sadeque Ishtiaque Ahmed Choudhury were directors at the time of the issuance of *Equity Shares*. Since these persons were acting as directors during the period of issuance of *Equity Shares*, 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 Moonlight 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 Moonlight, 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. None of the Noticees disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI

Act. Therefore, I find that Moonlight and its Directors, viz., Mr. Samsul Islam, Mr. Nityananda Nath and Mr. Abu Sadeque Ishtiaque Ahmed Choudhury 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.

41. I note that during the financial years 2007-2008 and 2009-2010, Moonlight through Offer of *Equity Shares*, had collected an amount of Rs.2.50 Crores from various allottees. I note that Mr. Nityananda Nath has been director of Moonlight since financial years 2007-2008, 2008-2009, 2009-2010 till present date. I note that Mr. Abu Sadeque Ishtiaque Ahmed Choudhury has been director of Moonlight since financial years 2007-2008, 2008-2009, 2009-2010 till present date. I note that Mr. Samsul Islam was director of Moonlight during financial years 2007-2008, 2008-2009, and 2009-2010. 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 Moonlight and other directors are limited to the extent of amount collected during his tenure as director of Moonlight.
42. In this regard, I note that, Ms. Ferdousi Begum Choudhury was appointed as a director of Moonlight only on August 02, 2010 i.e. after the period of issuance of *Equity Shares*. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the, Ms. Ferdousi Begum Choudhury is not liable for refund of money as she was not a director during the relevant time of fund mobilization. Further, Ms. Ferdousi Begum Choudhury had the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

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

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

43. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The noticee cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Ms. Ferdousi Begum Choudhury was also be responsible for all the deeds/acts of the Company during the period of her directorship and was obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Ms. Ferdousi Begum Choudhury is liable to be debarred for an appropriate period of time.
44. I find that Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury, Mr. Samsul Islam are also promoters of the Company. Further, Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath, Mr. Abdul Jalil Choudhury and Mr. Md. Abdul Muktedir are/were promoters of Moonlight and therefore, are liable as promoters for the *Offer of Equity Shares* against the norms of deemed public issue. It is noted from the submissions of Mr. Abu Sadeque Ishtiaque Ahmed Choudhury that Mr. Abdul Jalil Choudhury expired on March 17, 2010. I have perused the copy of the Death Certificate issued by the Office of the Kanishail Sarifnagar Gaon Panchayat and considering the same I am inclined to hold that the proceedings against Mr. Abdul Jalil Choudhury stands abated. The other Noticees have not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue and public interest requires that the persons who had such knowledge/connivance/consent be made accountable to the



investors. Therefore, they are liable to be debarred for an appropriate period of time.

45. 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 Moonlight and its Directors, viz., Mr. Samsul Islam, Mr. Nityananda Nath and Mr. Abu Sadeque Ishtiaque Ahmed Choudhury to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors and promoters, to safeguard the interest of the investors who had subscribed to such *Equity Shares* 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.
46. I also note that, vide the interim order dated December 15, 2015, Moonlight was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors/promoters of Moonlight 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. It is noted that the Company has furnished certain property details pursuant to the hearing in the matter. However, I find that no such inventory has been provided by the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 10 of this Order.
47. I also note that during the hearing Moonlight submitted that if SEBI directs them to sell the property and refund the money to the investors it will be detrimental to the investors as distress selling of assets of the company will not fetch good market price. The investors of the Company would not prefer such repayment. In respect of this contention, ARs were asked to provide Affidavit from all investors/allottees (along with their Share Certificate and Proof of ID) stating that they do not seek refund and will never claim the same in future. However, I note that the company failed to furnish the same till date. Further, Moonlight has also submitted that the company's assets cannot be disposed of

on account of directions of SEBI as well as CBI and ARs requested that the company may be allowed to sell off its assets to repay the investors. In this regard ARs also sought time from SEBI to file petition/ application to CBI seeking permission for selling the assets of the company to repay the investors. I note that ARs were advised to write letter to SEBI providing the timeline for completing all formalities including approaching CBI and the proposed scheme of repayment, if any, within 2 weeks from the hearing for necessary consideration of SEBI. However, the Company has failed to do so despite granting time for two weeks. In view of the same, I am of the view that the Company and the Directors are not serious/committed to the refund of dues to the investors and their above submissions do not appear to be credible.

48. In view of the discussion above, appropriate action in accordance with law needs to be initiated against Moonlight and its Directors and promoters, viz. Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury, Ms. Ferdousi Begum Choudhury, Mr. Samsul Islam, Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath, and Mr. Md. Abdul Muktadir.
49. 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. Moonlight, Mr. Samsul Islam, Mr. Nityananda Nath and Mr. Abu Sadeque Ishtiaque Ahmed Choudhury shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of *Equity Shares* including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
  - b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-

Transferable”.

- c. Mr. Samsul Islam is directed to provide a full inventory of all his assets and properties and details of all his bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- d. Moonlight and Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury 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. Moonlight, Ms. Ferdousi Begum Choudhury, Mr. Nityananda Nath and Mr. Abu Sadeque Ishtiaque Ahmed Choudhury 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. Mr. Samsul Islam, Mr. Nityananda Nath and Mr. Abu Sadeque Ishtiaque Ahmed Choudhury 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. Moonlight and, on its behalf the present director who joined subsequent to the issues (Ms. Ferdousi Begum Choudhury), and Mr. Samsul Islam, Mr. Nityananda Nath and Mr. Abu Sadeque Ishtiaque Ahmed Choudhury 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, Moonlight and on its behalf the present director who joined subsequent to the issues (Ms. Ferdousi Begum Choudhury) and Mr. Samsul Islam, Mr. Nityananda Nath and Mr. Abu Sadeque Ishtiaque Ahmed Choudhury in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.
- i. In case of failure of Moonlight, Mr. Samsul Islam, Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury 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 49(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- j. Moonlight, Mr. Samsul Islam, Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury 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. Ms. Ferdousi Begum Choudhury, Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath and Mr. Md. Abdul Muktaadir 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 for a period of 4 (four) years from the date of this Order. The above said persons 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 for a period of 4 (four) years from the date of this order.
- l. The directions issued against Mr. Abdul Jalil Choudhury is hereby revoked.
- m. The above directions shall come into force with immediate effect.
50. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
51. 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.
52. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

**DATE: February 15, 2018**

**PLACE: Mumbai**

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