WTM/MPB/EFD-1-DRA-IV/ 34/2018

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 Prayag Infotech Hi-Rise Limited

In re: Deemed Public Issue Norms

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN
1.	**Prayag Infotech Hi-Rise Limited**	**AACCP9645H**	**U74999WB2002PLC094328**
2.	**Mr. Basudeb Bagchi**	**AFVPB0383D**	**00743904**
3.	**Mr. Avik Bagchi**	**ANFPA6417P**	**02003461**
4.	**Mrs. Swapna Bagchi**	**AFHPB4216R**	**00743969**
5.	**Mr. Lakshmi Kant**	**AVUPK7049Q**	**03122893**

1. Prayag Infotech Hi-Rise Limited (hereinafter referred to as "**PIHL**"/ "**the Company**") was incorporated on March 05, 2002 as Prayag Network Marketing Private Limited and registered with Registrar of Companies–Kolkata with CIN: U74999WB2002PLC094328. The Company changed its name to Prayag Infotech Hi Rise Limited on July 10, 2007. Its registered office is at P-45. Bhupen Roy Road, Kolkata- 700034.

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a letter from Registrar of Companies–Kolkata against PIHL in respect of issue of Redeemable Preference Shares ("RPS") and conducted an investigation to ascertain

whether PIHL 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 PIHL had made an offer of RPS in the financial years 2007-2008 and 2008-2009 (hereinafter referred to as **"Offer of RPS"**) and raised at least an amount of Rs. 24.95 Crores from 24,237 allottees. The number of allottees and funds mobilized has been collated from the documents submitted by RoC and the Company.

4. As the above said *Offer of RPS* 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 September 30, 2013 (hereinafter referred to as "**interim order**") and issued directions mentioned therein against PIHL and its Directors and promoters, viz. Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant (hereinafter collectively referred to as "**Noticees**").

5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. PIHL had made an *Offer of RPS* during the financial years 2007-2008 and 2008-2009 and raised an amount of Rs. 24.95 Crores as shown below:

Year	**Security issued**	**Amount Raised (in Crores)**	**No of Allottees**
2007-08	RPS	1.95	1,558
2008-09	RPS	3.00	3,462
		20.00	18,254

Total	**24.95**	**24,237**

*^ *No. of allottees and funds mobilized has been collated* from the documents submitted by the Company and RoC.

6. The breakup of the RPS as mentioned in the interim order is as under:

Issue of Preference Shares			
	2007 – 08	**2008-09**	
Date of Notice for increase in Authorized Share Capital	August 22, 2007	October 01, 2008	February 10, 2009
Increase in Authorized Share Capital	5,00,000 to 2,00,00,000	2,00,00,000 to 5,00,00,000	5,00,00,000 to 25,00,00,000
Date of Approval of resolution in the Extra – Ordinary General Meeting	September 03, 2007	November 04, 2008	March 16, 2009
No. of cumulative preference shares offered	19,50,000	30,00,000	2,00,00,000
Date of Passing of resolution for allotment	September 03, 2007	November 04, 2008	March 16, 2009
Date of Allotment as per Form 2 filed with the RoC	September 03, 2007	November 04, 2008	March 16, 2009
No. of allottees (approx.)	1,558	3,462	18,254

7. As per the minutes of the EoGM dated September 03, 2007, the Company had resolved to issue 19,50,000 redeemable preference shares of Rs.10/- each as per the following plans:

Plan	A	B	C
Issue price (Rs.) Minimum 100 preference shares of Rs.10/- each	1000/-	1000/-	1000/-
Redemption period	36 months	66 months	120 months
Redemption amount (Rs.)	500/-	1000/-	3000/-
Total redemption value (Rs.)	1500/-	2000/-	4000/-

Plan D	
Issue price (Rs.) Minimum 5000 preference shares of Rs.10/- each	50,000/-
Redemption period	60 months
Yearly redemption amount	6000/-
Quarterly redemption amount	1500/-

8. As per the minutes of the EoGM dated November 04, 2008, the Company had resolved to issue 30,00,000 redeemable preference shares of Rs.10/- each for Rs.3,00,00,000/-, as per the plans mentioned below :

Plan	BB 002	BB 013	BB 014	BB 009	BB 015
Issue price (Rs.) Minimum 100 preference shares	1000/-	1000/	1000/-	1000/	1000/-
Redemption period	36 months	60 months	84 months	120 months	168 months
Redemption amount (Rs.)	500/-	1000/-	2000/-	3000/-	9000/-
Total redemption value (Rs.)	1500/-	2000/-	3000/-	4000/-	10000/-

Plan	BB 021	BB 016
Issue price (Rs.) Minimum 5000 preference shares each	25,000/-	25,000/-
Redemption period	36 months	60 months
Yearly redemption amount	3000/-	3250/-
Monthly redemption amount	250/-	271/-
Final redemption amount	750/-	1250/-

9. As per the minutes of the EoGM held on March 16, 2009, the Company had resolved to issue 2,00,00,000 redeemable preference shares of Rs.10/- each for Rs.20,00,00,000/-, as per the plans mentioned below:

Plan	BB 017	BB 013	BB 018	BB 019	BB 020
Issue price (Rs.) Minimum 100 preference shares	1000/-	1000/	1000/-	1000/	1000/-
Redemption period	40 months	60 months	88 months	116 months	178 months
Redemption amount (Rs.)	500/-	1000/-	2000/-	3000/-	9000/-
Total redemption value (Rs.)	1500/-	2000/-	3000/-	4000/-	10000/-

Plan	BB 021	BB 016
Issue price (Rs.) Minimum 5000 preference shares each	25,000/-	25,000/-
Redemption period	40 months	60 months
Yearly redemption amount (Rs.)	3000/-	3250/-
Monthly redemption amount	250/-	271/-
Final redemption amount	750/-	1250/-

10. As per the minutes of the EoGM dated **August 26, 2009***, the Company resolved to issue further 2,50,00,000 redeemable preference shares of Rs.10/-, i.e., for value Rs.25,00,00,000/- as per the plans mentioned below:

Plan	**BB 024**	**BB 025**	**BB 026**	**BB 027**	**BB 028**	**BB 029**
Issue price (Rs.) Minimum 100 preference shares of Rs.10/- each	1000/-	1000/	1000/-	1000/	1000/-	1000/
Redemption period	28 months	48 months	72 months	98 months	140 months	192 months
Redemption amount (Rs.)	250/-	500/-	1000/-	2000/-	4000/-	9000/-
Total redemption value (Rs.)	1250/-	1500/-	2000/-	3000/-	5000/-	10000/-

Plan	**BB 030**	**BB 031**
Issue price (Rs.) Minimum 25000 preference shares of Rs.10/- each	25,000/-	25,000/-
Redemption period	36 months	60 months
Monthly redemption amount	229/-	240/-
Quarterly redemption amount	687/-	719/-
Yearly redemption amount	2750/-	2875/-
Final redemption amount	1250/-	2500/-

- It is noted from the interim order that though the Company stated that it issued preference shares in three tranches, the resolution dated August 26, 2009 to issue further 2,50,00,000 redeemable preference shares of Rs.10/-, *prima facie* indicates further issuance of RPS, hence interim order directed further probe by SEBI in its investigation.

11. The above *Offer of RPS* 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) read with section 27(2) of the SEBI Act were not complied with by PIHL in respect of the *Offer of RPS*.

12. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated September 30, 2013 with immediate effect.

(i) *"The Company, namely, Prayag Infotech Hi-Rise Limited is restrained from mobilizing funds through the issue of redeemable preference shares 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) *Prayag Infotech Hi-Rise Limited, its promoters and directors including Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant 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) *Prayag Infotech Hi-Rise Limited, its promoters and directors including Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant shall not dispose any of the properties of the said company or alienate the assets acquired/created through the funds raised from public by issuance of the impugned redeemable preference shares.*

(iv) *Prayag Infotech Hi-Rise Limited, its promoters and directors including Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant shall not divert any funds raised from public at large through the issuance of the impugned redeemable preference shares, kept in its bank accounts and/or in the custody of the company without prior permission of SEBI until further orders.*

(v) Prayag Infotech Hi-Rise Limited and its promoters and directors shall co-operate with SEBI in the investigation and shall furnish documents that are in their possession, which may be required by SEBI in the course of its investigation.

(vi) Prayag Infotech Hi-Rise Limited shall produce proof for its claim that it has refunded Rs.4,16,51,753/- out of the subscription received with respect to its issuance of the redeemable preference shares which would be certified by a Chartered Accountant, who is in the panel of any public authority or public institution, who would examine the veracity of such submissions. This certificate shall be submitted by the Company within a period of 30 days from the date of receipt of this Order".

13. Vide the said interim order, PIHL 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 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.

14. In response, the Company filed its reply vide letter dated December 23, 2013 and availed an opportunity of personal hearing on December 26, 2013. Upon consideration of the submissions of the Company, pending investigations of SEBI, the interim directions issued against the Company and its promoters/directors were confirmed vide order dated February 18, 2014. Vide the said order, the Company and its promoters/directors were also directed to co-operate with SEBI in the investigation and furnish documents that are in their possession, which were required by SEBI in the course of its investigation.

15. Meanwhile, SEBI vide summons dated January 01, 2014 sought information/details with respect to the mobilization of fund by issuance of preference shares. However, the Company and its directors had failed to submit the relevant documents and failed to appear before the investigating authority as directed in the summons. Hence, SEBI

conducted an inspection on July 11, 2014.

16. During the inspection, SEBI found the following new facts:

12.1 The company had issued additional Preference shares during 2009-10, 2010-11 and 2011-12 and mobilized amount of Rs. 106.42 crores in addition to Rs. 24.95. The details of issuance of RPS made by the Company are given in the following table.

Period	**P-Share All Bengal (Rs. In crore)**	**P-Share All Bihar (Rs. In crore)**
2007-08	0.04	-
2008-09	4.05	0.13
2009-10	33.06	5.12
2010-11	66.56	22.41
2011-12		0.0014
Total	**103.71**	**27.6614**

12.2 The Company had mobilized Rs. 131.37 Crores, by way of issuance of preference shares during the years 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12.

12.3 The subscribers to the additional amount of Rs. 106.42 crores, mobilized mainly during 2009-10 and 2010-11, were spread in two different states viz., Bengal and Bihar.

17. Considering the fact that the number of allottees in the allotments made during the financial years 2007-08 and 2008-09 were more than 49 persons and also considering the enormous amount mobilized in the subsequent years upto 2012, it is alleged that such issuances were public issuances of such securities in terms of the proviso to section 67(3) of the Companies Act, 1956 and the Company along with its directors/promoters namely, Mr. Basudeb Bagchi, Mr. Avik Bagchi, Ms. Swapna Bagchi and Mr. Lakshmi Kant have failed to comply with the provisions of Sections 56, 60 read with 2(36) and 73

of the Companies Act, 1956 read with Clauses 2.1.1, 2.1.4, 2.1.5, 2.8, 4.1, 4.11, 4.14, 5.3.1, 5.3.3, 5.3.5, 5.3.6, 5.4, 5.6, 5.6A, 5.7 5.8 5.9 5.10 5.12.1 5.13, 6.0 (6.1 to 6.15, 6.16 to 6.34 including 6.17.13 and 41.6), 8.3 8.8.1, 9, 10.1., 10.5 of SEBI (DIP) Guidelines, 2000 and regulation 4(2), 5, 6, 7, 25, 26, 37, 46, and 57 of SEBI (ICDR) Regulation, 2009.

18. In view of the above, SEBI issued a Show Cause Notice dated January 18, 2017 ("**SCN**") against Prayag Infotech Hi-Rise Limited, Mr. Basudeb Bagchi, Mr. Avik Bagchi, Ms. Swapna Bagchi and Mr. Lakshmi Kant (hereinafter referred to as "**the Noticees**") asking them to show cause as to why the following directions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act, 1992 read with regulation 107 of the ICDR Regulations, 2009 may not be issued against them for the aforesaid alleged violations:

    i. *"The company Prayag Infotech Hi-Rise and its directors/promoters namely, Mr. BasudebBagchi, Mr. AvikBagchi, Ms. Swapna Bagchi and Mr. Lakshmi Kant Limited shall forthwith refund the money collected by the Company through the issuance of RPS, including the money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due to the investors till the date of actual payment.*

    ii. *The Company, namely, Prayag Infotech Hi-Rise Limited be restrained from mobilizing funds through the issue of redeemable preference shares 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 for an appropriate period.*

    iii. *Prayag Infotech Hi-Rise Limited, its promoters and directors including Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant be directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public*

for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period.

iv. Promoters and directors including Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant be restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for an appropriate period".

19. The Noticees were advised to file their written submissions, if any, within 21 days from the date of receipt of the SCN. SEBI further informed the Noticees that in case of failure to reply, it would be construed that they have no reply to submit and the matter will be proceeded against them on the basis of evidence available on record in terms of the provisions of SEBI Act and other applicable laws. The Noticees were also advised to indicate if they would like to avail an opportunity of hearing before SEBI.

20. *Service of SCN***:** The SCN was sent to the Noticees through Speed Post with acknowledgment.

21. *Replies:* The Company vide letter dated February 18, 2017 sought an extension of time upto six weeks to file reply to the SCN. Further, the Company vide letter dated June 27, 2017 sought more time since the promoter/directors of the Company are in judicial custody.

22. Thereafter, vide notification dated June 10, 2017 published in newspaper *Times of India* and notification dated June 10, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on July 13, 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.

23. *Hearing and submissions*: Noticees did not avail the opportunity of hearing scheduled on

July 13, 2017. Subsequently, vide hearing notice dated February 09, 2018, another opportunity of hearing was granted to the Noticees on February 27, 2018. Mr. Biswanath Chatterjee and Mr. Sobhan Pathak, Advocates ("**ARs**") appeared on behalf of Prayag Infotech Hi-Rise Limited, Mr. Basudeb Bagchi, Mr. Avik Bagchi and Mrs. Swapna Bagchi, and sought adjournment on the ground that Mr. Basudeb Bagchi and Mr. Avik Bagchi are in judicial custody and they require time to make the submissions and file reply. The same has been granted as a final opportunity. The ARs were advised to submit the following on or before March 23, 2018:

i. Complete list of allottees over the entire period of issuance alongwith the amounts raised from them; Return of allotment filed with RoC;
ii. If any repayments are claimed by the Noticees, then proof of refund should be through banking channels and supported by adequate documentary evidence;
iii. Documents sought vide SCN dated January 18, 2017.

24. The request for adjournment was acceded to and vide hearing notice dated April 05, 2018 another opportunity of hearing was granted to the Noticees on May 09, 2018. However, the Company vide letter dated May 7, 2018, once again sought an adjournment of the hearing and submission of documents for eight weeks on the following grounds:

- That the main promoters of the Company viz., Mr. Basudeb Bagchi and Mr. Avik Bagchi who are well conversant with the present case and are aware of the documents and records, still in judicial custody for proceedings initiated by Central Bureau of Investigation (CBI) and are presently in Odisha Jail, Bhubaneswar since March 15, 2017 and the bail proceedings are pending before the concerned Court.

25. In view of the above, vide hearing notice dated June 11, 2018, the Noticees were granted a final opportunity of hearing on July 11, 2018 at Odisha Jail, Bhubaneswar through video/teleconference. Vide the said hearing notice, the Noticees were also advised to submit their reply to the SCN along with documentary proof if any. Pursuant to the said

hearing notice, the Noticees vide letter dated July 06, 2018 filed their reply to the SCN and the submissions in brief are as under:

Preliminary Submissions:

i. The Company issued Redeemable Preference Shares ("RPS") by way of private placement in September 2007, November 2008 and March 2009 aggregating to 2,49,50,000 shares for the aggregate face value of Rs. 24,95,00,000/- (Rupees Twenty-Four Crores Ninety-Five Lakhs only) in compliance with the relevant provisions of the Companies Act and made all necessary disclosures to the ROC. The Company has been ensuring the compliance of all statutory filings with the ROC (as applicable to an unlisted public company) as is evident from ROC's letter dated June 17, 2010.

ii. In order to ensure that the Company was not committing violation of any regulatory requirements prescribed by Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI), the Company had approached both the regulators for seeking their guidance. The Company's queries were replied by RBI vide its Letters dated August 13, 2008 and by SEBI vide its letter dated January 27, 2009.

iii. The Noticees state that the Redeemable Preference Shares which were issued had no option of conversion into equity which is evident from the Application Form which specifies "For Private Circulation" the relevant Board Resolution, shareholders resolutions and Share Certificate which specify that the preference shares are redeemable in nature and do not provide any option of conversion into equity shares. Additionally, the Noticees have in compliance to Section 75 (1) of Companies Act filed return of allotment under Section 75 (1) of Companies Act in the prescribed form with ROC providing the details of number of allottees, nominal amount of shares comprised in the allotment; the names, addresses and occupation of the allottees. Therefore, the Noticee No. l has not floated any incorrect scheme or raised any funds from public and has therefore not violated any provisions of law.

iv. Additionally, since the Noticee No.1 was neither a listed Company nor was making public issue, as generally understood, it did not approach SEBI for compliance of DIP

Guidelines, however, in the particular allotments, when the Noticee No.1 approached SEBI for guidance, no query was raised by SEBI with regard to the number of allottees.

v. As stated above, the Noticees have been complying with all the relevant provisions of the Companies Act pertaining to the issue of RPS by way of private placement and the non-compliance of provisions pertaining to deemed public issue had occurred merely due to ignorance of the said provisions. In our respectful submission, this technical default deserves to be viewed leniently as the Noticees have not caused any loss or inconvenience to the investors. The funds raised by issuing RPS have been duly utilised for the bonafide purposes of the Company. By utilizing the said funds, the Company has created substantial assets which are contributing to the growth of the Company's business.

vi. It is denied that the Noticees have committed any breach of SEBI (Disclosure and Investor Protection) Guidelines, 2000 ('DIP Guidelines') as the said guidelines were not applicable to the issue of Non-convertible Redeemable Preference Shares. Any of the provisions of DIP Guidelines alleged to have been violated by the Noticees have no relevance to the issue of non-convertible redeemable preference shares. The DIP Guidelines have since been substituted by the regulations namely SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2009 ('ICDR Regulations'). ICDR Regulations have also not been made applicable to the issue of Non-convertible Redeemable Preference Shares as is evident from SEBI's own concept paper in relation to *'Draft Regulations for Issuance of and Listing of Non-Convertible Redeemable Preference Shares'* …

vii. It is further submitted that SEBI (ICDR) Regulations define 'Specified Securities' as equity shares and convertible securities and does not cover non-convertible preference shares. It is clear from the 3 above that the Company has not violated any provisions of SEBI ICDR Regulations by issuing non-convertible redeemable preference shares.

viii. It is also denied that the Company has violated any provision of SEBI DIP Guidelines. SEBI DIP Guidelines regulated issue of convertible securities but never regulated the

issuance of non-convertible preference shares. The word 'securities' was not defined under SEBI DIP Guidelines. Though SEBI DIP Guidelines had covered public issue of Non-convertible debt instrument, non-convertible preference shares were never covered by SEBI DIP Guidelines. This view has been clearly accepted by SEBI in many several matters where SEBI had not charged the Issuers of Redeemable Preference Shares under SEBI DIP Guidelines or SEBI ICDR Regulations.

ix. As of now, there is no complaint from any investor on account of non-payment of amounts due and payable to them. The investors have made investment for deriving long term benefits after carefully analysing the terms and conditions of the respective plans for issue of RPS and their investment is safe in the hands of the Company as it has been consistently making profits from its operations. The Company is committed to redeeming the RPS on their due dates as also paying the total redemption amount to the investors and hence is willing to provide security for the said repayments by way of depositing title deeds in respect of the Company's immovable properties to the aggregate value equivalent to 1.5 times the amount of total redemption at any relevant time together with power of attorney in favour of SEBI to realise those assets in the event of default.

x. In Writ Petition No. 11835 (W) of 2015, the Ham Sabhi Welfare Society & Ors. V. Union of India and Others (with W.P. No. 22721 (W) of 2016; W.P. 30243 (W) of 2015 and W.P. 18188 (W) of 2016); Hon'ble High Court at Calcutta has seized off the matter of sale of the Company's assets and distribution of the sale proceeds thereof to the subscribers of Redeemable Preference Shares(RPS)/ investors. SEBI is also a party to the said proceeding. Hon'ble High Court vide its Order dated December 23, 2015 had constituted one man Committee of Hon'ble Mr. Justice (Retd.) Shailendra Prasad Talukdar for the purpose the whole term was extended till December 31, 2018 vide the Court's Order dated November 30, 2017. Since SEBI is actively participating in the aforesaid proceedings for the sale of the Company's assets and distribution of the sale proceeds to the investors as per the scheme to be approved by the Hon'ble High Court, there is no need for the current proceedings under Section 11, 11(4); 11B of the SEBI

Act and the same deserves to be dropped forthwith.

Further, the Noticee submitted the following para-wise reply to the SCN:

a. …that the Noticees hereby deny that they have not submitted the relevant documents as sought under the Summons dated January l, 2014; January 17, 2014 and January 27, 2014 and failed to appear before the Investigating Authority. In fact, the Noticees vide their letters dated January 22, 2014 and January 28, 2014 furnished the requisite information/ documents available with them despite the main promoter Mr.Basudeb Bagchi being in jail custody and with limited documents, the Noticees have tried to provide all the requisite documents, data and details as sought by SEBI. Vide Advocates' Letters dated February 22, 2018 and February 27, 2018, the Noticees informed SEBI regarding their inability to attend personal hearings for the genuine reasons recorded in their correspondence.

b. The Company had made further issue of RPS in addition to the aforesaid issuances of RPS of Rs. 24.95 Crores. Other than the RPS of Rs. 24.95 Crores, no other preference shares were allotted. It is submitted that the Company had taken approval of the shareholders at Extraordinary General Meeting (EGM) dated August 26, 2009, for further issue of 2,50,00,000 RPS of Rs.10/- each and E-Form-23 had also been filed with the ROC, no allotment of RPS has been made till now. Hence, the Company had made private placement issue of RPS only at 3 instances and no further RPS was allotted/issued or being allotted/issued. The Schedule 9 of the Notes to the Balance Sheet dated March 31, 2011 clearly specifies that the Share Application was against preference shares of Rs. 102,11,98,400/- as well as the Balance Sheet dated March 31, 2012 in Note 3.5 specifies that the Share Application money was refunded fully. This factual position is evident from the audited accounts for the financial year 2011-12.

c. It is submitted that in compliance with section 75 (1) of the Companies Act, the Company had filed return of allotment with ROC in prescribed Form 2 giving the details, inter alia, about the number of allottees, the nominal amount of shares

comprised in the allotment, the names, addresses and occupations of the allottees as per the statement attached to the relevant Form 2. No objection/concern was raised by the ROC when return of allotment in Form 2 was filed giving therein the details of the number of allottees and their addresses, etc. This information was available in the public domain and SEBI could have very well accessed the same from the ROC Website/office of ROC. It is further stated that the provisions 'of law relating to deemed public issue were not well known to the people in general. This position of law has come into limelight only after the judgment of Hon'ble Supreme Court in the matter of Sahara where the Hon'ble Court has clarified the ambit of the provisions of section 67 (3), section 73, etc. of Companies Act and SEBI's jurisdiction in the matter.

d. The Noticees repeat and reiterate the facts as stated by the Noticees in the Reply dated December 23, 2013 and the documents and records relied upon by the Noticees and deny all that is contrary thereto and/or inconsistent therewith. The certificate is prepared by an independent auditor after verifying Book entries, ROC records, Balance Sheet entries, Cash book, Ledger and Receipt vouchers to verify the refund. Scope of his audit has already been mentioned in the letter dated July 1, 2014. It is reiterated that Company has started repaying the amount since 2009 and it has till date refunded an aggregate sum of Rs. 11,59,61,136/- {Rupees Eleven Crore Fifty-Nine Lakhs Sixty One Thousand One Hundred and Thirty-Six only). Though the first allotment of preference shares was made in September 2007 and the minimum tenure for the same was 3 years, the Company had refunded the amount to certain investors prematurely considering the genuineness of their problems. Refunds were made against surrender of RPS by the investors. Commencing from year 2009 till date an amount of Rs. 11,59,61,136/- {Rupees Eleven Crore Fifty-Nine Lakhs One Thousand One Hundred and Thirty-Six only) has been repaid as per the auditor's certificate dated December 19,2013.

e. Further, as the amount of repayment to majority preference shareholders was below Rs.20,000/- and many preference shareholders were not having any bank accounts,

the company had made cash payments to such preference shareholders. The auditors have verified the authenticity of such payments vide their aforementioned certificate dated December 19, 2013 but such payments were inadvertently not reflected in the annual accounts.

f. It is further submitted that though such repayment has not been reflected as redemption in the books of accounts, the company has made the payments of Rs. 11, 59, 61,136/- to the investors against discharge/surrender of RPS to the Company.

g. With regard to the allegation of non- refunding of Rs. 106.42 Crores, it is submitted that though the Company had taken the shareholders' approval for issuance of 2,50,00,000 RPS of Rs. 10/- each and had filed E- Form 23 with ROC, no allotment of RPS was however made and sum of Rs. 102,11,98,400/- received as application money was refunded in the year 2011-2012. In view of this, the aforesaid sum of Rs. 102,11,98,400/- received towards share application money was shown under "current liabilities" in the balance sheet as on March 31, 2011.

h. The Company had not attempted to conceal any material information from SEBI while taking SEBI's guidance in the matter in December 2008. Before approaching SEBI vide its letters dated December 22, 2008 and December 24, 2008, the Company had already allotted RPS to 1558 allottees on September 03, 2007 and 3462 allottees on November 04, 2008 and for that purpose in compliance with section 75 (1) of the Companies Act, the Company had also filed return of allotment with ROC in prescribed Form 2 giving the details, inter alia, about the number of allottees, the nominal amount of shares comprised in the allotment, the names, addresses and occupations of the allottees as per the statement attached to the relevant Form 2. SEBI was also given letters from ROC taking on record the filing of E-Form 23 as also giving its approval to the Company for going ahead with the issue of RPS. No objection/concern was raised by the ROC when return of allotment in Form 2 was filed giving therein the details of the number of allottees and their addresses, etc. This information was available in the public domain and SEBI could have very well accessed the same from the ROC Website/office of ROC. SEBI in

fact could have also sought information from the Company as to its capital structure and the number of shareholders if the same was not already provided by the Company along with its letters seeking guidance from SEBI. In our respectful submission SEBI should not have given guidance in the matter without ascertaining the information as to the number of allottees if such information was so vital for giving any opinion with regard to private placement of securities. It is submitted that if the Company had received timely guidance from SEBI, the Noticees would not have gone ahead with further issue of private placement. The entire sequence of events in fact clearly demonstrate that the provisions of law relating to deemed public issue were not well known to the people in general. Hence, the Directors of the Company had taken all necessary steps to ensure compliances of applicable law but unfortunately timely guidance was not provided either by SEBI or by RBI. Further Section 27 (2) of SEBI Act providing vicarious liability of the Directors of the Company is applicable in the case of criminal procee4ings which may be initiated against a Company for violation of any provisions of SEBI Act. Section 27 (2) of SEBI Act has no relevance to the administrative or civil proceedings. Hence, the Directors of the Noticee Company cannot be held vicariously liable for the actions of the Company in the current proceedings which are not criminal in nature.

i. The Noticees deny the contentions and allegations as alleged. It is submitted that the issuance of Redeemable Preference Shares (RPS) was in compliance to the provisions required for private placement since the Company was not attempting for listing with stock exchange or for public issue. It is further submitted that there has been no non-compliance of SEBI Act, DIP Guidelines and/or ICDR Regulations as alleged.

26. Subsequently, on July 11, 2018, Ms. Aparna Wagle and Ms. Kanchan Singh, Advocates ("**ARs**") appeared on behalf of all the Noticees and submitted the following:

    i. The Company was a private Limited Company till August 22, 2007. Subsequently,

in September 2007, November 2008 and March 2009 the Company issued about 2,49,50,000 RPS for aggregate face value of Rs. 24,95,00,000/- in compliance with all relevant provisions of Companies Act and made all necessary disclosures to ROC.

ii. No Complaints were received against the Company and all the statutory filings with RoC is also complete till 2009.

iii. Subsequently, they wrote letters to RBI and SEBI with regard to any further compliances were required to be done in furtherance to the issuance of RPS. SEBI replied that unlisted companies are not within the regulatory purview of SEBI. Hence, the Company did not consider the compliance of provisions applicable for deemed public issue. The issuance was only for private placement. The application forms, share certificate etc. clearly mentioned that the issue was a private placement. The Company also filed Return of Allotment also in compliance with Section 75(1) of the Companies Act, 1956.

iv. DIP guidelines are not applicable to the issue of Non-convertible RPS. Since DIP Guidelines have no relevance to non-convertible RPS, ICDR Regulations are also not made applicable to non-convertible RPS. They are only applicable to Non-convertible Debt instruments not on Non-convertible RPS. It became applicable only in June 2013.

v. The Company desire to redeem the RPS at their due dates and refund to the investors and also as security they are ready to deposit the title deeds with SEBI for the same.

vi. They had already refunded Rs.102 Crores so far which is also reflected in their audited balance sheet of 2011-12 of the Company.

vii. The SCN alleges that the Company had further collected Rs.106 Crores from the public. However, the said statement is incorrect. The Company has not collected no further shares were issued or allotted after the issue in 2009.

viii. In a writ petition filed before Hon'ble High Court of Calcutta appointed Hon'ble Justice (Retd.) S. P. Talukdar Committee to look into the repayments to the investors.

The hearing in the matter was concluded and the Noticees were given 10 days to submit

additional written submissions, if any.

27. The Noticees vide letter dated July 23, 2018 reiterated their earlier submissions made vide reply dated July 06, 2018 and requested for dropping the present proceedings in light of the proceedings before the Hon'ble High Court of Calcutta, compliances under the Companies Act with respect to private placement and the Company's commitment to redeem the RPS on their due dates and paying total redemption amount to investors.

28. 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 RPS as stated in the SCN dated January 18, 2017.

(2) If so, whether the said offers 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 RPS as stated in the SCN.

29. I have perused the SCN dated January 18, 2017 for the allegation of *Offer of RPS*. From the submissions of the Company, I note that they have not disputed the issuance of RPS during September 2007, November 2008 and March 2009. In this regard, I have perused the documents/ information obtained from the 'MCA 21 Portal' and submissions made by the Company. As per the same, I find that PIHL has issued and allotted RPS to 24,237 investors during the financial years 2007-2008 and 2008-2009 and raised at least an amount of Rs. 24.95 Crores.

30. Further, I note that the SCN alleges issuance of additional preference shares by PHIL during the financial years 2009-2012 and further mobilization of Rs.106.42 crores. In

this regard, I note that though the Noticees have disputed the said allegation, they have admitted the receipt of share application money of Rs. 102,11,98,400/-. The said amount of Rs. 102,11,98,400/- is also reflected in the Balance Sheet dated March 31,2011 as the application money. This clearly shows that the offer has been made not only in respect of Rs. 25 crores but also for offer of more RPS. Considering the admission of the Company and also taking into account the documents collected during inspection of the Company and investors' complaints received by SEBI in the matter, I find that an additional offer of RPS was made by the Company to at least 1,33,111 allottees in addition to the abovementioned 24,237 allottees totalling to 1,57,348 allottees and funds were collected to the tune of Rs. 106.42 crores in addition to Rs. 24.95 crores totaling to Rs. 131.37 crores. Hence, I am of the view that the contention of the Noticees as to non-allotment of additional RPS and claim of subsequent refund of share application money received does not dilute the fact that offers were made and funds were mobilized.

31. Since the additional mobilization of funds has been collated from the documents collected from the Company during inspection conducted at the premises of the Company and investor complaints enclosing the RPS certificates issued in the year 2010-11 received by SEBI in the matter, I am inclined to conclude that the Company had mobilized Rs.131.37 crores by issuing RPS during the financial years 2007-2008, 2008-2009, 2009-2010,2010-2011 and 2011-2012. Though the Company has not submitted the details of allottees for the period of 2009-2012 with SEBI nor filed with RoC, considering the huge amount of funds mobilized by the Company and the huge number of investor complaints received by SEBI, I am inclined to conclude that the actual number of allottees could be more than 1,57,348 persons.

32. *I therefore conclude that PIHL came out with an offers of RPS as outlined above.*

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

33. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of RPS* made to the public. Therefore the primary question that arises for

consideration is whether the issue of RPS is 'public issue'. At this juncture, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

> *"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
>
> *(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
>
> *(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub- section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-*
>
> *(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or*
>
> *(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...*
>
> ***Provided** that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*

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

34. 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."

35. 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*.

36. I find that PIHL 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 PIHL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

37. In the instant matter, I find that RPS were issued by PIHL to at least 24,237 investors in the financial years 2007-2008, 2008-2009. However, this number is not conclusive as it is based on the documents submitted by the Company to SEBI and also from the MCA records whereas evidence collected during inspection of the Company which is corroborated with the investor complaints received in the matter leads to the conclusion that an additional offer of RPS was made by the Company to at least 1,33,111 allottees in addition to the abovementioned 24,237 allottees totalling to 1,57,348 allottees during the financial years 2007-2008, 2008-2009, 2009-2010,2010-2011 and 2011-2012. I find that PIHL has mobilized at least an amount of Rs. 24.95 Crores over the financial years

2007-2008 and 2008-2009 and which is also not a conclusive value as it is based on the submissions made by the Company and MCA records. However, I find from the evidence collected by SEBI during the inspection of the Company and the investor complaints received by SEBI that the Company had mobilised additional funds amounting to Rs.106.42 crores totalling to Rs.131.37 crores during the financial years 2007-2008, 2008-2009, 2009-2010,2010-2011 and 2011-2012. The above findings lead to a reasonable conclusion that the *Offers of RPS* by PIHL were a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

38. I note that the Noticees vide their reply dated July 06, 2018 and also vide their oral submissions before me during the personal hearing and also vide additional submissions dated July 23, 2018 contended that the issue was by way of private placement and they had complied with the relevant provisions of the Companies Act and made all necessary disclosures to the ROC. I note that the aggregate number of allottees of RPS during the financial years from 2007 to 2009 exceeded more than 49 persons. Further, as per the documents collected from the Company during inspection conducted at the premises of the Company, I note that PIHL had issued RPS to at least 1,33,111 allottees during the financial years 2009-2012. Though the Company named it as a 'private placement', I note that PIHL issued RPS to at least 1,558 allottees during the financial year 2007-2008 itself. Further, it has issued RPS to at least 1,33,111 allottees during 2009-2012. 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".* Also, reliance is placed on the observations made by the Hon'ble Supreme Court of India in *Sahara Case* wherein the Hon'ble Supreme Court observed: "*101. …… Section 81(1A), it may be noted, is only an exception to the said rule, that the further shares may be offered to any persons subject to passing a special*

resolution by the company in their general meeting. Section 81(1A) cannot, in any view, have an overriding effect on the provisions relating to public issue. Even if armed with a special resolution for any further issue of capital to person other than shareholders, it can only be subjected to the provisions of Section 67 of the Company Act, that is if the offer is made to fifty persons or more, then it will have to be treated as public issue and not a private placement. A public issue of securities will not become a preferential allotment on description of label. Proviso to Section 67(3) does not make any distinction between listed and unlisted public companies or between preferential or ordinary allotment."

Since, PIHL has allotted RPS to more than forty nine allottees, I find that the *Offer of RPS* by PIHL was a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

The Noticees further contended that the provisions of law relating to deemed public issue were not well known to the people in general and this position of law has come into limelight only after the judgment of Hon'ble Supreme Court in the matter of Sahara where the Hon'ble Court has clarified the ambit of the provisions of section 67 (3), section 73, etc. of Companies Act and SEBI's jurisdiction in the matter. I do not agree to this contention since the legislative intent and purport of the provisions of section 67(3) and 73 always remained the same. The said position was reaffirmed by the Hon'ble Supreme Court in the Sahara case.

39. 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".

40. Further, I also note that the Noticees contended that they sought guidance from RBI and SEBI and SEBI intimated that unlisted companies are not under the regulatory purview of SEBI hence they proceeded with the private placement. In this regard, I have perused the letters dated December 22, 2008 and December 24, 2008 forwarded by the Company to SEBI, to which SEBI had replied vide the aforesaid letter dated January 27, 2009. In its aforementioned letters to SEBI, the Company had *inter alia* stated that it is not a listed company and that it has issued "Redeemable Preferential Share as a private placement under the Companies Act, 1956; whose permission certificate has been obtained from RoC, Kolkata". The letters state that the permission certificate was enclosed therein. The Company had requested SEBI to issue a no-objection or a letter stating that no approval is necessarily required from SEBI. I have also perused the 'permission certificate' enclosed by the Company. The same is a letter dated November 06, 2007 issued by the Office of the Registrar of Companies, West Bengal, to the Company, wherein the following were its contents :

"Sirs,

With reference to your letter No. Nil dated 06//1/2007 addressed to this office in respect *of e-filing of Form No.23 dated 03/10/2007 vide SRN No. A-23500259 I am to say that it has been duly passed/approved and taken on record by this office on 04/11/2007 and you have no bar to act accordingly as per your Resolution passed i.e. in respect of issuing Redeemable Preferential Shares for* ***private placement****."*

41. From the above, it can be inferred that SEBI had issued the letter dated January 27, 2009 stating that "unlisted companies are not under the regulatory purview of SEBI" only on the basis of the representation of the Company that it is an unlisted company and that it is issuing redeemable preference shares on private placement. The fact that the issue of redeemable preference shares were issued to more than 49 persons was not disclosed by the Company to SEBI at that point in time. This fact has come to light only now in the inquiry conducted by SEBI in the matter. It appears to me that the Company has mischievously concealed the number of investors to whom it was issuing the redeemable preference shares when it approached SEBI for a no-objection letter for its issue. Therefore, the submissions of the Company made in this regard do not have any merit.

42. Therefore, in view of the material available on record, I find that the *Offer of RPS* by PIHL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS* are deemed to be public issues and PIHL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

43. Further, since the offer of RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

44. I also find that no records have been submitted to indicate that PIHL has made any application seeking listing permission from stock exchange.

45. PIHL vide its reply dated July 06, 2018 claimed that they had started repaying the amount since 2009 and it has till date refunded an aggregate sum of Rs. 11, 59, 61,136/- {Rupees Eleven Crore Fifty-Nine Lakhs Sixty One Thousand One Hundred and Thirty-Six only). An Auditor's certificate dated December 19, 2013 was also provided by the Company. On perusal of the copy of the chartered accountant certificate dated December

19,2013, I find that the certificate does not mention the documents verified by the Chartered accountant for his certification that Rs. 11,59,61,136 has been repaid by the Company till November 30,2013. The certificate does not mention whether the said payments have been made through banking channels. Neither has it certified that bank records had been verified by the Chartered accountant. The Certificate also does not state the original documents verified by the Chartered Accountant on the identity of the RPS holders or the receipt of the certificate of RPS. In view of the deficiencies, I find that the said Chartered Accountant Certificate cannot be accepted as proof of payment of Rs. 11,59,61,136 to 6,853 allottees. This also raises doubt as to the genuineness of the payments, if any made by the Company. I note from the records that SEBI sought details of documents verified from the Auditor and in response, the Chartered Accountant stated that they had relied upon the Cash Book, Ledger and Receipt vouchers to verify the refund claimed to be made by the company. The Company stated that the certificate is prepared by an independent auditor after verifying Book entries, ROC records, Balance Sheet entries, Cash book, Ledger and Receipt vouchers to verify the refund. The ARs were advised to provide proof of refund made through banking channels and supported by adequate documentary evidence. However, no such proof was given by the Company. I have noted that the Company claimed to have repaid majority of preference shareholders in cash since the claim amount was below Rs.20,000/- and many preference shareholders were not having any bank accounts. Admittedly, such payments were not even reflected in the annual accounts of the Company. Even if for the sake of argument, it was reflected in the annual accounts, no adequate proof of repayment by means of verifiable banking channels, was submitted by the Company. Hence, I am not inclined to accept the said claim of refund to the investors. Also, I note that with regard to the allegation of non- refunding of Rs. 106.42 Crores, the Company has stated that though the Company had taken the shareholders' approval for issuance of 2,50,00,000 RPS of Rs. 10/- each, no allotment of RPS was however made and sum of Rs. 102,11,98,400/- received as application money was refunded in the year 2011-2012. In this regard, I note that PIHL has not submitted any proof of repayment to SEBI till date. The fact that such

a claimed refund is mentioned in the balance sheet for the year ending March 31, 2012 is not sufficient proof to establish the claim of refund. Even assuming that PIHL has made refunds to certain investors, despite giving an opportunity to provide the same, no documentary evidence has been submitted by PIHL to prove that the repayment was either made forthwith in accordance with the provisions of Section 73(2) of the Companies Act, 1956 or thereafter. Therefore, I find that PIHL has contravened the said provisions.

46. PIHL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that PIHL 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.

47. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RPS was a deemed public issue of securities, PIHL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that PIHL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that PIHL has not complied with the provisions of section 60 of the Companies Act, 1956.

48. 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 PIHL 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, PIHL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

49. The allegations of non-compliance of the above provisions were not denied by PIHL or its directors. I note that vide their reply dated July 06, 2018 the Noticees have admitted that the non-compliance of provisions pertaining to the deemed public issue had occurred due to ignorance of the said provisions. I do not find any merit in the said contention as it is well settled position that ignorance of law cannot be an excuse. Further, the Company also claimed that due to this technical breech no loss or inconvenience was caused to the investors. I do not agree to the said contention since SEBI received a large number of investor complaints against the Company alleging non-repayment of their investments upon maturity. The fact that the repayment was not done by the Company shows the investors inconvenience. In any event, since PIHL came out with offers of RPS which were deemed to be public issues and PIHL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956, I find that PIHL has contravened the said provisions.

50. The Company was also required to comply with the following provisions of the DIP Guidelines in respect of the offer and allotments made during FY 2007–09:

Clause 2.1.1. – (Filing of offer document);

a. *Clause 2.1.4 – (Application for listing);*
b. *Clause 2.1.5 – (Issue of securities in dematerialized form),*
c. *Clause 2.8 – (Means of finance),*
d. *Clause 4.1 – (Promoters contribution in a public issue by unlisted companies),*
e. *Clause 4.11 – (Lock-in of minimum specified promoters contribution in public issues),*
f. *Clause 4.14 – (Lock-In of pre-issue share capital of an unlisted company)*
g. *Clause 5.3.1 – (Memorandum of understanding),*
h. *Clause 5.3.3 – (Due Diligence Certificate)*

i. *Clause 5.3.5 – (Undertaking),*
j. *Clause 5.3.6 – (List Of Promoters Group And Other Details),*
k. *Clause 5.4 – (Appointment of intermediaries),*
l. *Clause 5.6 – (Offer document to be made public),*
m. *Clause 5.6A – (Pre-issue Advertisement),*
n. *Clause 5.7 – (Despatch of issue material),*
o. *Clause 5.8 – (No complaints certificate),*
p. *Clause 5.9 – [Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)],*
q. *Clause 5.10 – (Authorised Collection Agents),*
r. *Clause 5.12.1 – (Appointment of compliance officer),*
s. *Clause 5.13 – (Abridged prospectus),*
t. *Clause 6.0 – (Contents of offer documents),*
u. *Clause 8.3 – (Rule 19(2)(b) of SC(R) Rules, 1957),*
v. *Clause 8.8.1 – (Opening & closing date of subscription of securities),*
w. *Clause 9 – (Guidelines on advertisements by Issuer Company),*
x. *Clause 10.1 – (Requirement of credit rating),*
y. *Clause 10.5 – (Redemption).*

51. I note that the Noticees have denied the fact that they committed any breach of DIP Guidelines and claimed that the said guidelines were not applicable to the issue of Non-convertible Redeemable Preference Shares. It is also contended that the alleged provisions of DIP Guidelines have no relevance to the issue of non-convertible redeemable preference shares. It is also stated that DIP Guidelines regulated issue of convertible securities but never regulated the issuance of non-convertible preference shares and the word 'securities' was not defined under DIP Guidelines. It is also stated that though DIP Guidelines had covered public issue of Non-convertible debt instrument, non-convertible preference shares were never covered by SEBI DIP Guidelines. It was further contended that this view has been clearly accepted by SEBI in several matters where SEBI had not charged the Issuers of Redeemable Preference Shares under SEBI DIP Guidelines or SEBI ICDR Regulations. It is further submitted

that SEBI (ICDR) Regulations define 'Specified Securities' as equity shares and convertible securities and does not cover non-convertible preference shares. It was contended that it is clear from the above that the Company has not violated any provisions of SEBI ICDR Regulations by issuing non-convertible redeemable preference shares.

In this regard, my findings are as under:

51.1 As regards the applicability of DIP Guidelines, I note that *"these Guidelines shall be applicable to all public issues by listed and unlisted companies, all offers for sale and rights issues by listed companies whose equity share capital is listed, except in case of rights issues where the aggregate value of securities offered does not exceed Rs.50 lacs."* A bare reading of the same makes it clear that DIP guidelines are applicable to all public issues by listed and unlisted companies. I have already held that the issuance of RPS made by PIHL was a 'deemed public issue'. Hence, I do not find any ambiguity in the applicability of the DIP guidelines to the instant matter.

51.2 I also note that the said stand was also made clear to the Noticees vide confirmatory Order dated February 18, 2014, and I do concur with the said view and the same is reproduced hereunder:

"The definitions as provided in clause 1.2.1 of the DIP Guidelines -

xvii) "Issuer Company" means a company which has filed offer documents with the Board for making issue of securities in terms of these guidelines.

xxiii) "Public Issue" means an invitation by a company to public to subscribe to the securities offered through a prospectus;

1.4 Applicability of the Guidelines

i) These Guidelines shall be applicable to all public issues by listed and unlisted companies, all offers for sale and rights issues by listed companies whose equity share capital is listed, except in case of rights issues where the aggregate value of securities offered does not exceed Rs.50 lacs." As per the definition in clause 1.2.1

of the DIP Guidelines "Public Issue" means an invitation by a company to public to subscribe to the securities offered through a prospectus;

The term 'securities' means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "the SCRA"). As per section 2(h) of the SCRA, "securities" includes "shares". In terms of section 2(46) of the Companies Act, a share means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied. According to section 86 of the Companies Act, the share capital of a company limited by shares shall be of two kinds only – (i) equity share capital and (ii) preference share capital. Therefore, it can be seen that the share capital of a company limited by shares, comprises of equity shares and preference shares issued, if any. Therefore, shares defined under section 2(46) of the Companies Act and Section 2(h) of the SCRA would include preference shares.

On a combined reading of the above provisions, it would be clear that the DIP Guidelines regulated public issues of non-convertible preference shares also. Further, there is no reservation expressed in the DIP Guidelines that it does not regulate the public issues of such securities. Therefore, the Company and its officers/directors who were in charge of the affairs of the Company, were under a statutory obligation to have complied with the relevant provisions of the Companies Act, SEBI Act and the Guidelines with respect to the Company's issuances of redeemable preference shares during such period. To sum up, the DIP guidelines regulated the public issues of all kinds of securities and the argument of the Company that DIP Guidelines has no applicability with respect to the public issuances of RPS by the Company, has no merit".

52. As per Regulation 115 (1) of the ICDR Regulations, the DIP Guidelines *"shall stand rescinded"*. However, Regulation 115 (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."

53. 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"

54. 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…"

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

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

56. Before dealing with the above issue, I would like deal with the contention of the Noticees that the Directors of the Company had taken all necessary steps to ensure compliances of applicable law for the private placement. No objection was raised by RoC with respect to the number of allottess nor did SEBI seek any details of number of allottees in the private placement before giving the guidance in the matter.

In this regard, I have already given the finding that the issuance of RPS made by the Company is deemed public issue even if the Noticees named it as a private placement.

Further, the material available before SEBI while seeking guidance was only a statement of the Company that it is not a listed company and that it has issued "Redeemable Preferential Share as a private placement under the Companies Act, 1956; whose permission certificate has been obtained from RoC, Kolkata. I note that reply of SEBI was only on the basis of representation of the Company that it is an unlisted company and they are issuing RPS on private placement. I note that though the issuance of RPS was named as 'private placement' by the Noticees, I have already found that the same was not a 'private placement' hence, the SEBI letter becomes irrelevant in this case. In view of the same, I do not find any merit in their contention.

I note that the Noticees viz., Mr. Avik Bagchi and Mrs. Swapna Bagchi, Mr. Basudeb Bagchi and Mr. Lakshmi Kant were directors of the Company during the period of issuance of RPS. Hence, I find that they cannot wriggle out from liability to refund the investors of the Company.

57. From the documents available on record, I find that the present Directors in PIHL are Mr. Basudeb Bagchi and Mr. Lakshmi Kant. I also note that, Mr. Avik Bagchi and Mrs. Swapna Bagchi, who were earlier Directors in PIHL, 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**
Mr. Basudeb Bagchi	March 05, 2002	Continuing
Mr. Avik Bagchi	January 25, 2008	March 02, 2012
Mrs. Swapna Bagchi	March 05, 2002	March 02, 2012
Mr. Lakshmi Kant	July 21, 2010	Continuing

58. I find that Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi, Mr. Lakshmi Kant are/were also promoters of PIHL.

59. 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, PIHL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

60. 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%.

61. From the material available on record and the details of the appointment and resignation of the directors of PIHL as reproduced in paragraph 57 of this Order, it is noted that Mr. Avik Bagchi, Mrs. Swapna Bagchi, Mr. Basudeb Bagchi and Mr. Lakshmi Kant were directors at the time of the issuance of RPS. Since these persons were acting as directors during the period of issuance of RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of PIHL 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 PIHL, 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. Therefore, I find that PIHL and its Directors, viz., Mr. Avik Bagchi, Mrs. Swapna Bagchi, Mr. Basudeb Bagchi and Mr. Lakshmi Kant 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.

62. I note that during the financial years 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012, PIHL through Offer of RPS, had collected at least an amount of Rs. 131.37 Crores from various allottees. I note that Mr. Basudeb Bagchi has been director of PIHL since financial years 2007-2008, 2008-2009 till present date. I note that Mr. Avik Bagchi was director of PIHL during financial years 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012. I note that Mrs. Swapna Bagchi was director of PIHL during financial years 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012. I note that Mr. Lakshmi Kant has been director of PIHL since financial years 2010-2011 till present date. 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 PIHL and other directors are limited to the extent of amount collected during his/her tenure as director of PIHL.

63. I find that Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant are also promoters of PIHL and therefore, are liable as promoters for the *Offer of RPS* against the norms of deemed public issue. The said 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, the said Noticees are liable to be debarred for an appropriate period of time.

64. 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 PIHL and its Directors/promoters, viz., Mr. Avik Bagchi, Mrs. Swapna Bagchi, Mr. Basudeb Bagchi and Mr. Lakshmi Kant to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors/promoters, to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.

65. I also note that, vide the interim order dated September 30, 2013, Confirmatory Order dated February 18, 2014 and Summons dated January 01, 2014 and January 17, 2014 and January 27, 2014, SEBI directed the Company and its Director Mr.Basudeb Bagchi to provide documents and details of all the assets etc. SCN also mentioned that the same were not furnished by the Noticees till date. However, the Noticees denied the same and contended that vide their letters dated January 22, 2014 and January 28, 2014 furnished the requisite information/ documents available with them despite the main promoter Mr.Basudeb Bagchi being in jail custody and with limited documents, the Noticees have tried to provide all the requisite documents, data and details as sought by SEBI. In this regard, I note that SEBI had initiated separate adjudication proceedings against the Company and vide order dated March 27, 2018, a penalty of Rs. 1,00,00,000/- was levied upon the Noticees jointly and severally. Though the said proceedings have no bearing on the instant matter, I find that despite giving opportunity to submit details of assets and documentary proof of payment, the Noticees have failed to do so till date.

66. In view of the discussion above, appropriate action in accordance with law needs to be initiated against PIHL and its Directors/promoters, viz., Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant.

67. 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. PIHL, Mr. Avik Bagchi, Mrs. Swapna Bagchi, Mr. Basudeb Bagchi and Mr. Lakshmi Kant shall jointly and severally, forthwith refund the money collected by the Company (PIHL for moneys collected till date and directors for the moneys collected during their respective period of directorship) through the issuance of RPS including the application money collected from investors, 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. If the Company, PIHL had repaid/redeemed the amount collected through RPS to its investors as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions from paragraphs 67 (c) to 67 (j), shall be applicable for the amounts due to be returned to the investors. However, such prior repayments/redemption should have been made by the Company as per the requirement laid down in paragraph 67 (c) below, and the same shall be certified by Chartered Accountants, as directed in paragraph 67 (i) below.

c. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable" or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.

d. Mr. Avik Bagchi and Mrs. Swapna Bagchi 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.

e. PIHL, Mr. Basudeb Bagchi and Mr. Lakshmi Kant 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.

f. PIHL, Mr. Lakshmi Kant and Mr. Basudeb Bagchi 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.

g. Mr. Avik Bagchi, Mrs. Swapna Bagchi, Mr. Basudeb Bagchi and Mr. Lakshmi Kant 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.

h. PIHL and Mr. Avik Bagchi, Mrs. Swapna Bagchi, Mr. Basudeb Bagchi and Mr. Lakshmi Kant 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.

i. After completing the aforesaid repayments, PIHL, Mr. Avik Bagchi, Mrs. Swapna Bagchi, Mr. Basudeb Bagchi and Mr. Lakshmi Kant 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.

j. In case of failure of PIHL, Mr. Avik Bagchi, Mrs. Swapna Bagchi, Mr. Basudeb Bagchi and Mr. Lakshmi Kant 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 67(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

k. PIHL, Mr. Avik Bagchi, Mrs. Swapna Bagchi, Mr. Basudeb Bagchi and Mr. Lakshmi Kant 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.

l. The above directions shall come into force with immediate effect.

68. It is pertinent to mention here that the Hon'ble High Court of Calcutta in the Writ Petition No. 11835 (W) of 2015, the Ham Sabhi Welfare Society & Ors. V. Union of India and Others (with W.P. No. 22721 (W) of 2016; W.P. 30243 (W) of 2015 and W.P. 18188 (W) of 2016) vide Order dated December 23, 2015 had constituted a one man

Committee of Hon'ble Mr. Justice (Retd.) Shailendra Prasad Talukdar for sale of Company's assets and distribution of the sale proceeds thereof to the subscribers of RPS/ investors. Therefore, the effect and implementation of the aforesaid directions stated in paragraph 67 excluding 67 (d), (e) and (k) shall be subject to the directions passed till date or any further orders of the Hon'ble High Court or any orders/decisions of the Hon'ble Justice (Retd) S. P. Talukdar Commission appointed in this regard.

69. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
70. 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.
71. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: August 30, 2018 **MADHABI PURI BUCH**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA