

**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 Infocare Infra Limited**

**In re Deemed Public Issue Norms**

**In respect of:**

<b>Sl.No.</b>	<b>Name of the Entity</b>	<b>PAN</b>	<b>DIN</b>
1.	<b>Mr. Arup Kumar Roy</b>	<b>ANJPR9146G</b>	<b>02703502</b>

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), vide an *ex-parte interim* Order dated March 19, 2015 (hereinafter referred to as 'the *interim* order') had observed that the company, **Infocare Infra Limited** (hereinafter referred to as '**IIL**' / '**the Company**') *prima facie* engaged in fund mobilising activity from the public, through the Offer of Redeemable Preference Shares (hereinafter referred to as '**RPS**') and Non-Convertible Debentures ('**NCD**') and had allegedly violated the provisions of Sections 56, 60 2(36), 67, 73 117B and 117C of the Companies Act, 1956 and the relevant provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as '**the ILDS Regulations**').
2. In order to protect the interest of investors and to ensure that only legitimate fund raising activities are carried on by the Company and its directors, SEBI had issued the following directions:

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*Order in respect of Mr. Arup Kumar Roy in the matter of M/s Infocare Infra Limited*

“ ... ..

- 8. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions –*
- i. IIL (PAN: AACCI5072P) shall forthwith cease to mobilize funds from investors through the Offer of Redeemable Preference Shares and Offer of NCDs or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*
  - ii. IIL and its present Directors, viz. Shri Kousik Patra (PAN: AGRPP5715A; DIN: 02271604), Shri Suresh Reddy (PAN: AKDPR6812L; DIN: 03382494) and Shri Abhijit Chakraborty (PAN: AGCPC9762B; DIN: 05283740), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;*
  - iii. The past Directors of IIL, viz. Shri Arup Kumar Roy (PAN: ANJPR9146G; DIN: 02703502) and Shri Alope Singh (PAN: APYPS3977H; DIN: 02299175), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;*
  - iv. IIL and its abovementioned past and present Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*
  - v. IIL shall provide a full inventory of all its assets and properties;*
  - vi. IIL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;*

- vii. *IIL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of Redeemable Preference Shares and Offer of NCDs, without prior permission from SEBI;*
- viii. *IIL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares and Offer of NCDs, which are kept in bank account(s) and/or in the custody of IIL;*
- ix. *IIL and its abovementioned present Directors shall furnish complete and relevant information (as sought by SEBI letter dated August 4, 2014), within 21 days from the date of receipt of this Order.*
- x. *The Debenture Trustee, viz. Shri Pawan Kumar Agarwal (PAN: ADHPA8420C), is prohibited from continuing with its assignment as debenture trustee in respect of the Offer of NCDs of IIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.....”*

**Submission to ex-parte Interim Order**

3. Mr. Arup Kumar Roy vide his letter dated May 12, 2015, replied to the interim order and requested for an opportunity of personal hearing. The submission in brief was as under:
  - (a) That Noticee is BTECH (Electronics and Communication Engineering) graduate from West Bengal University of Technology and was working as a freelancer for IT and Telecom related projects.
  - (b) That Noticee was approached by Mr. Koushik Patra, Managing Director and Mr. Alope Singh, Director to become the director of the Company for undertaking projects of his expertise and development of modern infrastructure and related IT enabled services.
  - (c) That Noticee was allocated 300 shares of the IIL and was inducted as non-executive director on January 18, 2011.

- (d) That Noticee was not regular in the Company and nobody had ever contacted him or took consent or opinion for the business of IIL.
- (e) That in all other sister companies of IIL, Noticee had minimum negligible shares and have resigned from those companies within a month or so of their formation. The activity of fund mobilization by way of RPS and NCD was without taking his consent and no related documents of such business activities were ever shared with him. Noticee had neither participated nor promoted any of such activities during his tenure of director of the company. He had not attended any meetings of the Company.
- (f) That Noticee had not received any notice for attending board meeting from IIL and had no access to the bank accounts or any financial instrument of the Company.
- (g) That there were hardly any requirement of his expertise during his directorship with IIL as no major IT or Telecom projects were taken up by IIL during the period when he was director.
- (h) That Noticee work was only related to IT & ITeS and telecom and he was never contacted for day to day activities of IIL more particularly for raising funds by way of NCD and RPS.
- (i) That Noticee had attended only one meeting of the Company i.e. regarding relieving on resignation which was accepted on February 11, 2012. No salary or any honorarium was paid to him during his tenure as director. Noticee resigned from IIL
- (j) That the Company's intention to raise fund through debenture was done without his knowledge and consent and no related document was ever shared with him.
- (k) That Noticee was not involved in the day to day business of IIL. No decision of the company was informed to him. Noticee was not authorized signatory of any official documents of the Company. Noticee never invested in IIL, the shares were allotted to him as decided by the board of IIL.
- (l) That Noticee shifted to Hyderabad for IT job in the month of January 2011 and currently working in technology services like software, telecom and IT.
- (m) That after Noticee resignation he rarely had any communication with IIL existing members.
- (n) That Noticee did not have any documents or any electronic information regarding debenture business of IIL. The documents pertaining to raising funds by way of NCD and

RPS have to produce by the directors who were in involved in day to day activities of the company or from the present management.

**Hearing pursuant to issuance of ex-parte Interim Order:**

4. In the interest of Natural Justice, SEBI granted an opportunity of personal hearing to the Company and its Directors including Mr. Arup Kumar Roy on September 04, 2015. The scheduled date was communicated vide SEBI letter dated July 28, 2015. The date of hearing was also communicated vide the public notice in the newspapers namely ‘Ananda Bazar Patrika’ and ‘Times of India’ both dated September 03, 2015. The Company and its directors including Mr. Arup Kumar Roy were advised that in case they fail to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded ex-parte on the basis of the material available on record.
5. It is noted that on scheduled date Directors of the Company including Mr. Arup Kumar Roy did not appear for hearing.

**Final Order:**

6. Thereafter, Securities and Exchange Board of India (hereinafter referred to as “SEBI”) passed final order dated March 01, 2016, *inter alia*, in respect of Mr. Arup Kumar Roy (hereinafter referred to as “Noticee”) in the matter of Infocare Infra Limited (hereinafter referred to as “IIL”/ “the Company”). The said Order, *inter alia*, made the following findings qua the Noticee:

“ .....

**26. Liability of Directors:** *The interim order was issued against the directors of the Company namely Mr. Kousik Patra, Mr. Suresh Reddy, Mr. Abhijit Chakraborty, Mr. Arup Kumar Roy and Mr. Alope Singh.*

**a.** *The details of their appointment and resignations are as under:*

<i>Name</i>	<i>Date of Appointment</i>	<i>Date of Cession</i>
<i>Mr. Kousik Patra</i>	<i>18/01/2011</i>	<i>Continuing as director</i>
<i>Mr. Suresh Reddy</i>	<i>01/02/2012</i>	<i>Continuing as director</i>
<i>Mr. Abhijit Chakraborty</i>	<i>04/06/2013</i>	<i>Continuing as director</i>
<b><i>Mr. Arup Kumar Roy</i></b>	<b><i>18/01/2011</i></b>	<b><i>11/02/2012</i></b>
<i>Mr. Alope Singh</i>	<i>18/01/2011</i>	<i>10/06/2013</i>

- b.** *I note that the Company had offered and issued RPSs on June 11, 2011. Further, it had also offered and issued NCDs during the financial years 2011-12 and 2012-13. Section 56 of the Companies Act, 1956 imposes the liability for the compliance, on the company, every director, and persons responsible for the issuance of the prospectus. The liability of the Company to repay under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act, is continuing and the same continues till all the repayments are made to the investors/ public. Therefore, the directors who were present during the period when the Company had made the offer and allotted RPS and NCD shall be liable for violation of Sections 56, 60 and 73 of the Companies Act, 1956 including the default in making refunds as mandated therein. As the liability to make repayments under Section 73(2) of the Companies Act read with Section 27 of the SEBI Act is a continuing liability, the persons who joined the Company's Board pursuant to the offer and allotment of RPS and NCD shall also be liable if the Company and the concerned directors have failed to make refunds, as mandated under the discussed provisions of law.*
- c.** *From the table above, it is noted that Mr. Kousik Patra, Mr. Suresh Reddy, **Mr. Arup Kumar Roy** and Mr. Alope Singh were the directors of the Company at the time of impugned issues and allotment of RPSs and NCDs and were responsible for the affairs of the Company at the relevant point of time. Mr. Kousik Patra and Mr. Suresh Reddy continue to be the directors of the Company. Mr. Arup Kumar*

*Roy and Mr. Alope Singh had resigned from the Company on February 11, 2012 and June 10, 2013 respectively.*

***Mr. Arup Kumar Roy** vide his letter dated May 12, 2015, has submitted that he was allotted 300 shares of the Company and was inducted as non-executive director on January 18, 2011. It has also been submitted by him that he had neither received any notice for attending board meeting from the Company nor any salary/ honorarium during his tenure of directorship. He further submitted that presently he is working in technology services company at Hyderabad.*

*I note that 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. I also place reliance on the order of Hon'ble High Court of Madras in the matter of Madhavan Nambiar Vs. Registrar of Companies [2002 108 Comp Cas 1 Mad] wherein it was observed that "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."*

*In view of the same, it can be concluded that Mr. Kousik Patra, Mr. Suresh Reddy, **Mr. Arup Kumar Roy** and Mr. Alope Singh are responsible for the violations committed by the Company and liable, jointly and severally, for making refunds along with interest to the investors as mandated under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act.*

*....."*

7. In the light of the above, vide the Order dated March 01, 2016, the following directions were issued against Mr. Arup Kumar Roy and other entities:

“ .....

a. *The Company, Infocare Infra Limited [PAN: AACCI5072P], Mr. Kousik Patra [PAN: AGRPP5715A], Mr. Suresh Reddy [PAN: AKDPR6812L], Mr. Abhijit Chakraborty [PAN: AGCPC9762B], Mr. Arup Kumar Roy [PAN: ANJPR9146G] and Mr. Alope Singh [PAN: APYPS3977H] jointly and severally, shall forthwith refund the money collected by the Company through the issuance of Redeemable Preference Shares and Non-Convertible Debentures (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956 and ), to the investors including the money collected from investors, till date, pending allotment of RPS and NCD, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.*

.....

g. *In case of failure of the Company, Infocare Infra Limited, its directors including Mr. Kousik Patra, Mr. Suresh Reddy, Mr. Abhijit Chakraborty, **Mr. Arup Kumar Roy** and Mr. Alope Singh in complying with the aforesaid directions, SEBI, on expiry of three months from the date of this Order,-*

i. *shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.*

ii. *may initiate appropriate action against the Company, its promoters/ directors and the persons/ officers who are in default, including adjudication proceedings against them, in accordance with law.*

iii. *would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/*

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Order in respect of Mr. Arup Kumar Roy in the matter of M/s Infocare Infra Limited



*persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and*

iv. *would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.*

.....

i. *The directors of the Company namely Mr. Kousik Patra, Mr. Suresh Reddy, Mr. Abhijit Chakraborty, **Mr. Arup Kumar Roy** and Mr. Alope Singh are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, with immediate effect. They are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, with immediate effect. This restraint shall continue to be in force for a further period of four (4) years on completion of the repayments, as directed above*

.....”

**Hon’ble Securities Appellate Tribunal Appeal:**

8. Aggrieved from SEBI’s order dated March 01, 2016, Noticee filed an appeal before Hon’ble Securities Appellate Tribunal (hereinafter referred to as “SAT”). Hon’ble SAT vide order dated December 19, 2017 *inter alia* stated as under:

“.....

*It is not in dispute that the impugned order is an ex-parte order qua the appellant. Case of the appellant is that no notice of hearing was served on the appellant. From the document annexed to the affidavit in reply filed by SEBI it is seen that the appellant had furnished his new address to SEBI. There is nothing on record to suggest that notice of hearing was sent to the appellant at his new address. In these circumstances, impugned order dated March 01, 2016 is quashed and set aside qua the appellant and the matter is restored to the file of WTM of SEBI for passing fresh order on merits and*

*in accordance with law....”*

**Hearing and Submissions:**

9. Pursuant to Hon’ble SAT order, in the interest of Natural Justice, vide notice of hearing dated February 01, 2018, Noticee was granted an opportunity of hearing on March 21, 2018 through video / tele conferencing from Hyderabad Local Office of SEBI. The said notice of hearing dated February 01, 2018 was delivered to the Noticee through speed post acknowledgment due (SPAD) (proof of delivery is available on record). It is noted that Mr. Ch. Srinivasa Raju, Authorized Representative (hereinafter referred to as “**AR**”) of the Noticee, vide email dated March 20, 2018 had requested to adjourn the hearing by four weeks. Accordingly, in the interest of Natural Justice, vide notice of hearing dated June 26, 2018, Noticee was granted another opportunity of hearing on August 07, 2018 through video / tele conferencing from Hyderabad Local Office of SEBI. The said notice of hearing dated June 26, 2018 was delivered to the Noticee through SPAD (proof of delivery is available on record). Further, it is once again noted that the AR of the Noticee vide email dated August 07, 2018 had once again requested for adjournment of hearing due to some urgent matter of AR was listed before Hon’ble High Court of Andhra Pradesh and Telangana. Therefore, in the interest of Natural Justice, vide notice of hearing dated October 03, 2018, Noticee was granted another opportunity of hearing on October 24, 2018 through video / tele conferencing from Hyderabad Local Office of SEBI.
10. On October 24, 2018, the AR of the Noticee appeared for hearing through video / tele conferencing from Hyderabad Local Office of SEBI and *inter alia* stated as under:

“ .....

- (a) *AR reiterated the submissions made by the Noticee vide letter dated May 12, 2015.*
- (b) *AR accepted that Noticee was director in IIL from January 18, 2011 to February 11, 2012.*
- (c) *AR stated that in year 2011, for the purpose of Job search, Noticee had moved from Kolkata to Hyderabad.*

- (d) *AR stated that Noticee was not involved in the day to day business of IIL and has never received any consideration from the company.*
- (e) *AR stated that funds collected through issuance of Redeemable preference shares (RPS) and Non-Convertible Debentures (NCD) by IIL were during the period when Noticee was not director of IIL i.e. collection of funds by the company was done subsequent to his resignation. AR stated that Noticee have no evidence to support this argument.*
- (f) *AR stated that Noticee was not allowed to participate in the company's affairs. He had never attended any board meeting except a meeting to discuss about his resignation. He had never received any board meeting agenda and he has never signed any board meeting.*
- (g) *AR stated that in October 2011, a board resolution was passed for collection of funds through RPS and NCD and Noticee name was mentioned in the said resolution, however, Noticee was not in the country when said board resolution was passed. AR further stated that Noticee has not signed the said board resolution and his signature in the said board resolution was forged.*

*AR/Noticee is advised to submit proof of his not been in the country at the time when board resolution in October 2011 was passed by IIL.*

*AR/Noticee claimed that his signature was forged in board resolution passed by IIL in October 2011. Therefore, Noticee is advised to submit the signature verification report from government recognized/approved forensic laboratory/ institution.*

*AR/ Noticee is granted 1 month time from the date of hearing to submit aforesaid documentary evidence and additional written submissions in the matter and 3 month time from the date of hearing to submit signature verification report. If AR/ Noticee fail to submit the same within the said time limit, then the matter would be proceeded further on the basis of documents available on record.*

*.....”*

11. I note that till date Noticee has neither submitted additional written submissions nor documentary evidence/proof of his not been in the country at the time when board resolution in October 2011 was passed by IIL nor the signature verification report from government recognized/approved forensic laboratory/ institution of his claim that his signature was forged

in board resolution passed by IIL in October 2011.

**Consideration and Findings**

12. I have considered the allegations and materials available on record such as Ex-parte Interim Order dated March 19, 2015, Final Order dated March 01, 2016, the submissions of the Noticee, Hon'ble SAT order dated December 17, 2017, documents downloaded from MCA21 Portal, etc. On perusal of the same, the findings are as under:

13. Following observations are noted from the interim order dated March 19, 2015 and final order dated March 01, 2016 which remain uncontested till date:

- (a) IIL was incorporated on January 18, 2011, with the ROC, Kolkata with CIN No. as U45400WB2011PLC157549. Its Registered Office is at Kamdhenu Park, 75C Park Street, 11th Floor, Room No. 4, Kolkata – 700016, West Bengal, India.
- (b) SEBI received a complaint on July 2, 2014 (forwarded by the Reserve Bank of India vide letter dated June 25, 2014), alleging mobilization of funds by IIL. SEBI also received a letter dated July 22, 2014, from the Criminal Investigation Department, Government of West Bengal, stating that IIL *"has collected huge money from good number of investors."*
- (c) IIL had made an *Offer of RPS* during the financial year 2011-2012 and raised an amount of Rs. 9.41 lakhs from 95 allottees.
- (d) Form 2 (Form for Return of Allotment – filed by IIL with the ROC in accordance with the provisions of the Companies Act, 1956) for the Financial Year 2011–12, reveals IIL had issued RPS to investors on June 11, 2011, details of which are provided below:-

<b>Year</b>	<b>Type of Security</b>	<b>Total Amount (Rs. in Lakhs)</b>	<b>No. of allottees</b>
2011–12	RPS	9.41	95

(e) From the Annual Return (filed by IIL with the ROC in accordance with the provisions of the Companies Act, 1956) for the Financial Year 2011–12 (covering the period till May 22, 2012), it is observed that IIL also issued NCD, details of which are provided below: -

Year	Type of Security	Amount Raised (Rs. in Lakhs)	Number of Allottees
2011 – 12	NCD	55.36	Financial Year–wise details not available
2012 – 13		42.99	
<b>TOTAL</b>		<b>98.35</b>	<b>90</b>

(f) The present Directors in IIL are Shri Kousik Patra, Shri Suresh Reddy and Shri Abhijit Chakraborty.

(g) Shri Arup Kumar Roy and Shri Alope Singh, who were earlier Directors of IIL, have since resigned.

14. I note that Hon'ble SAT vide order dated December 19, 2017 had set aside the order dated March 01, 2016 qua the appellant.

15. I note that the final order dated March 01, 2016 has already held that IIL has issued and allotted RPS to 95 investors during the financial year 2011-2012 and raised an amount of Rs. 9.41 lakhs and IIL has also issued and allotted NCD to 90 investors during the financial year 2011-2012 and 2012-13 and raised an amount of Rs. 98.35 lakhs. I also note that the number of allottees and funds mobilized had been collated from Form 2 and Balance Sheets filed by the Company with Ministry of Corporate Affairs (MCA). It was therefore concluded that IIL came out with an offer of RPS and offer of NCD as outlined above.

16. Further, the final order dated March 01, 2016 has held that IIL engaged in fund mobilizing activity from the public, through the offer of RPS and offer of NCD and had contravened the provisions of sections 56, 2(36) read with 60, 73, 117B and 117C of the Companies Act, 1956 read with Companies Act, 2013 and Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 16, 17, 19 and 26 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”). The Noticee has not denied the allegations of deemed public issue (offer of RPS and offer of NCD) as mentioned in the interim order. Further, the Noticee has not submitted any case or further evidence challenging the findings of the deemed public issue (offer of RPS and offer of NCD) mentioned in the final order. Therefore, I reiterate the findings mentioned in the Final Order dated March 01, 2016 in respect of the determination of deemed public issue (offer of RPS and offer of NCD). Considering that the final order dated March 01, 2016 has already held that IIL engaged in fund mobilizing by making a public offer of RPS and offer of NCD in violation of deemed public issue norms and issued directions against the Company and its directors, and in view of Hon’ble SAT order and Noticee submission, the limited issue that merits consideration in the instant order/matter is whether the Noticee is also liable for the offer of RPS and Offer of NCD made by IIL to public in violation of deemed public issue norms and the extent of his liability, if any.

***ISSUE - Whether the Noticee is liable for the offer of RPS and offer of NCD made by IIL to public in violation of deemed public issue norms and the extent of his liability, if any***

17. I note that vide Final Order dated March 01, 2016, the liability of the Noticee to make repayments to the investors was determined. The said Order recorded a finding that the Noticee was director of the Company from January 18, 2011 to February 11, 2012 and the same was accepted by the Noticee vide his submission dated May 12, 2015. However, I note that the said findings have been rendered in the final order dated March 01, 2016 without

granting an opportunity of being heard to the Noticee. Aggrieved by this, the Noticee filed an appeal before Hon'ble SAT. Vide order dated December 19, 2017, Hon'ble SAT noted the fact that no notice of hearing was served on the Noticee and in view of this the final order dated March 01, 2016 was quashed and set aside qua the appeal and the matter was restored back to SEBI for passing of fresh order on merits and in accordance with law.

18. In view of the Hon'ble SAT observation and in the interest of Natural Justice, Noticee was granted an opportunity of hearing and appeared on October 24, 2018. During the course of hearing dated October 24, 2018, Noticee accepted that he was the director in IIL from January 18, 2011 to February 11 2012. Further, from the MCA portal, I note that the Noticee was the director in IIL from January 18, 2011 to February 11 2012. Thus, I am of the view that tenure of the directorship of the Noticee and his appointment as director in IIL is not in dispute.

19. I note that IIL has issued and allotted RPS to 95 investors during the financial year 2011-2012 and raised an amount of Rs. 9.41 lakhs. As per Form 2 date of allotment of RPS was June 11, 2011. I also note that IIL has issued and allotted NCD to 90 investors during the financial year 2011-2012 and 2012-13 and raised an amount of Rs. 98.35 lakhs. As per the IIL board meeting dated November 18, 2011, the date of issuance of NCD was to be on December 19, 2011. It is noted that in accordance with Form 23AC, IIL had filed its Balance Sheet along with Notes on Account for the Financial Year (FY) ending March 31, 2012 with MCA. Point no. 4 of Notes on Account for the Financial Year (FY) ending March 31, 2012 mentioned that IIL had other long term liabilities of Rs. 55.36 lakhs in terms of debentures payable. Thus, during the FY 2011-12 IIL raised an amount of Rs. 55.36 Lakhs through the allotment of NCD. Further, I note that subsequent to the Annual General Meeting (AGM) held on May 22, 2012 IIL had filed Annual Return (Form 20B) with MCA. Alongwith Annual Return, IIL had filed the list of details of debenture holders as on May 22, 2012, as per the said list I note that as on May 22, 2012 IIL raised an amount of Rs. 98.35 Lakhs through the allotment of NCD to 90 debenture holders. Thus, from the Notes on Account for the Financial Year (FY) ending March

31, 2012 and list of details of debenture holders as on May 22, 2012, I find that during the FY 2011-12, IIL raised an amount of Rs. 55.36 Lakhs through the allotment of NCD and during FY 2012-13 till May 22, 2012 raised an amount of Rs. 44.99 Lakhs (Rs. 98.35 lakhs – Rs. 55.36) through the allotment of NCD. Thus, on the basis on documents available on record and the fact that Noticee had not disputed the issuance of offer of RPS and offer of NCD, which is in violation of aforesaid provisions of law, I am of the view that IIL had allotted RPS on June 11, 2011 and NCD in FY 2011-12 and FY 2012-13 till May 22, 2012 as detailed above.

20. 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, Noticee is liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

21. 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%.



22. During the course of hearing, Noticee contended he was not involved in the day to day business of IIL and has never received any consideration from the company; Noticee was not allowed to participate in the company's affairs and he never attended any board meeting except a meeting to discuss about his resignation. I am of the view that 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. I also 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....”*

23. Further, it is pertinent to mention the Hon'ble SAT vide Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, has considered the contentions similar to that of Noticee regarding 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. Thus, in view of the above, I do not find any merit in the said contentions of the Noticee.

24. Further, I note that Noticee in its reply dated May 12, 2015 stated that he was approached by Mr. Koushik Patra, Managing Director to become the director of the Company. I note that Noticee had not submitted any documentary evidence which state that IIL had a managing director.

25. In this regard, I note that Hon'ble SAT vide order dated February 14, 2019 in the matter of Pritha Bag Vs. SEBI stated that “.....Unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) cannot be invoked against the appellant. In the instant case, the appellant has annexed documents to indicate that the company had a managing director, namely, Mr. Indranath Daw and, therefore, as per the provisions of Section 5 the managing director would be an officer in default. We also find that there is no finding given by the WTM that the appellant was the managing director or whole time director or was a person charged by the Board with the responsibility of compliance with the provisions of the Companies Act and, consequently, could not be made responsible for refunding the amount under Section 73(2).

*Reliance on the judgment of this Court by the respondent in the case of Manoj Agarwal vs. SEBI in Appeal No. 66 of 2016 decided on July 14, 2017 is not applicable and is distinguishable. The Tribunal in the case of Manoj Agarwal found that there was no material to show that any of the officers set out in clauses (a) to (c) of Section 5 or any specified director of the said company was entrusted to discharge the application contained in Section 73 of the Companies Act. In the instant case, there is sufficient material on record to show that there was a managing director and in the absence of any finding that the appellant was entrusted to discharge the application contained in Section 73 of the Companies Act, the direction to refund the amount alongwith interest from the appellant is wholly illegal....”*

26. From the document available from MCA portal i.e. Form 20B (filing of annual return of the Company for the financial year 2011-12), Form 23AC (filling of balance sheet for financial year 2011-12), Form 32 (appointment of director) it is noted that Mr. Aloke Singh, Mr. Kousik

Patra, Mr. Suresh Reddy and Mr. Arup Kumar Kumar Roy all are designated as 'Director'. I also note that Form 25C (return of appointment of managing director) is not available in MCA portal. Further, from the documents available on record I do not find any evidence in respect of appointment of managing director by IIL in the financial year 2011-12 nor Noticee had submitted any documentary evidence to prove that IIL had a managing director in the financial year 2011-12. Thus, I am of the view that there is no evidence to support that IIL had appointed anyone as managing director in the financial years 2011-12. Further, there is no material available on record which show that any of the officers specified in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of the IIL entrusted to discharge the application contained in Section 73 of the Companies Act, 1956.

27. Thus, in view of the above it is pertinent to note the observation of Hon'ble SAT vide Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, that “....Section 5 of the Companies Act, 1956 defines the expression 'officer who is in default' to mean the officers named therein. Section 5(g) provides that where any company does not have any of the officers specified in clauses (a) to (c) of Section 5, then any director who may be specified by the Board in that behalf or where no director is so specified then all the directors would be “officer who is in default”. 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 or any specified director of BREDL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. In such a case, as per Section 5(g) of the Companies Act, 1956 BREDL and all the directors of BREDL are liable....

*Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956. Admittedly, the appellant was a director of BREDL when*

*amounts were collected by BREDL in contravention of the public issue norms and there is nothing on record to suggest that any particular officer/director was authorised to comply with the public issue norms. In such a case, all directors of BREDL including the appellant would be “officer in default” under Section 73(2) read with Section 5 of the Companies Act, 1956....”*

28. Thus in view of Hon,ble SAT order in the matter of Manoj Kumar Agarwal and Pritha Bag and considering the facts and circumstances of case, I note that in the present matter, there is no material avialbale on record which show that any of the officers specified in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of the IIL entrusted to discharge the application contained in Section 73 of the Companies Act, 1956. Therefore, in the absence of such, as per Section 5(g) of the Companies Act, 1956, I am of the view that all the directors of IIL including the Noticee are “officer in default” under Section 73(2) read with Section 5 of the Companies Act, 1956 and 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.

29. During the course of hearing, Noticee contended that in October 2011, a board resolution was passed for collection of funds through RPS and NCD and Noticee name was mentioned in the said resolution, however, Noticee was not in the country when said board resolution was passed. Noticee further contended that he has not signed the said board resolution and his signature in the said board resolution was forged. During the hearing, the Noticee was advised to submit proof/documentary evidence of his not being in the country at the time when board resolution in October 2011 was passed by IIL within a period of 1 month from the date of hearing i.e. by November 24, 2018. Further, Noticee was also advised to submit a signature verification report from government recognized/approved forensic laboratory/ institution within a period of 3 months from the date of hearing i.e. by January 24, 2019.

30. From the documents available on record, I note that board meeting for issuance of NCD was held in the month of November 2011 i.e. November 18, 2011 rather than in the month of October 2011 as claimed by the Noticee. Further, I note that till date Noticee had neither submitted additional written submissions nor documentary evidence/proof of his not being in the country at the time when board resolution in October 2011 was passed by IIL nor a signature verification report from government recognized/approved forensic laboratory/institution of his claim that his signature was forged in the claimed board resolution passed by IIL in October 2011. I am of the view that sufficient time was granted to the Noticee to defend his case and to submit any documentary evidence / proof of his claim, which Noticee had failed to do. Thus, in view of non-submission of documentary evidence by the Noticee, I am constrained to rely upon the MCA records, therefore, I do not find any merit in the submission of the Noticee that he has not attended the board meeting dated November 18, 2011 and his signature in the said board meeting minutes was forged.

The extent of significance of attending such meeting was discussed in the order of Hon'ble SAT dated July 14, 2017 in the appeal Manoj Agawal vs. SEBI. In that case only a particular director has signed the special resolution for issuance of redeemable preference shares. It was also argued in that case the appellant therein has no knowledge about of issuance of preference shares. Therefore, it was argued that the appellant was not responsible person for issuance of redeemable preference shares in that case. However, the Hon'ble SAT held in the following lines. “...Argument that the appellant was not a person responsible for issuance of redeemable preference shares and therefore for failure on part of BREDL and its directors to comply Section 73(2) of the Companies Act, 1956 the appellant could not be made liable is without any merit..”. “.....Therefore, fact that the appellant was not responsible for issuance of redeemable preference shares does not absolve the obligation of all the directors of BREDL including the appellant to refund the amount collected from the investors with interest as set out in the impugned order.....”

In any event if the Noticee had submitted the evidence showing that his signature in board meeting minutes was forged or he had not attended the board meeting, the same would have

no bearing on the basis of liability of director which arises from whether the Noticee is an officer in default. The finding that Noticee was an officer in default has been already rendered in previous paragraphs, considering Noticee's own admission that he was director in IIL from January 18, 2011 to February 11, 2012 and there is no material/evidence to support that IIL had a managing director in the financial years 2011-12, I am of the view that all directors of the company including Noticee have an obligation to refund the amount collected from the investors with interest and the obligation of the Noticee to refund the amount with interest jointly and severally with other directors of the company is limited to the extent of amount collected during his tenure as director of the company.

31. During the course of hearing, Noticee further contended that funds collected through issuance of RPS and NCD by IIL were during the period when Noticee was not director of IIL i.e. collection of funds by the company was done subsequent to his resignation. Noticee further stated that he has no evidence to support this argument. From Form 2 filed by IIL with MCA, I note that date of allotment of RPS was June 11, 2011 and it has been held that during the FY 2011-12 IIL raised an amount of Rs. 55.36 Lakhs through the allotment of NCD. Further, from Noticee's own admission, I note that Noticee was the director in IIL from January 18, 2011 to February 11 2012. Thus, I am of the view that collection of funds through issuance of RPS and NCD by IIL was during the period when the Noticee was director in IIL. Hence, I do not find any merit in the said contention of the Noticee.

32. Thus on the basis on aforesaid facts and circumstances and on the basis of documents available on record, I am of the view that Noticee was an officer in default during the period of issuance/allotment of RPS and NCD was made by IIL.

33. In view of the above the Noticee cannot 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, the Noticee was also responsible for all the deeds/acts of the Company during the period of his directorship and was obligateded to refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. Further, in view of the decision of Hon'ble SAT 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 IIL and other directors are limited to the extent of amount collected during his/her tenure as director of IIL.

34. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayment as directed under section 73(2) of the Companies Act, 1956, is to direct the Noticee to refund the monies collected, with interest to such investors. Also, in order to safeguard the interest of the investors and to further ensure orderly development of securities market, the Noticee becomes liable to be debarred for an appropriate period of time.
35. 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) Mr. Arup Kumar Roy alongwith IIL and other directors mentioned in order dated March 01, 2016 shall jointly and severally, forthwith refund the money collected by the Company during the tenure of directorship of Mr. Arup Kumar Roy, through the issuance of RPS and NCDs 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) 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. Arup Kumar Roy is prevented from selling his assets, properties and holding of mutual funds/shares/securities held by him in demat or 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.

- (d) Mr. Arup Kumar Roy in his 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.
- (e) After completing the aforesaid repayments, Noticee 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.
- (f) In case of failure of Mr. Arup Kumar Roy 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 Mr. Arup Kumar as specified in paragraph 35(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- (g) Mr. Arup Kumar Roy is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is 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 Director is also restrained from associating himself with any listed public company or 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.



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

37. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.

38. 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.

-Sd-

**DATE: MARCH 28, 2019**

**PLACE: MUMBAI**

**MADHABI PURI BUCH**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**