

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 Nixcil Pharmaceuticals Specialities Limtied (Now Known as "M/s Heivero Pharmaceuticals Limited")

In re Deemed Public Issue Norms

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN
1.	Nixcil Pharmaceuticals Specialities Limtied (Now Known as "M/s Heivero Pharmaceuticals Limited")	AABCN6977H	U24231UP1992PLC014636
2.	Shri Prithi Paul Singh Sethi	AOAPS8866A	00076689
3.	Shri Arun Kumar Madan	Not available	00076741
4.	Shri Manzoor Alam	AHEPA2257Q	Not available
5.	Shri Amit Mishra	AIEPM2608Q	00317047
6.	Shri Gurbhej Singh Hora	ATUPS5689Q	00312542
7.	Shri Bankey Bihari Mishra	AHTPM6041P	0232918
8.	Shri Vishwa Bandhu Vashishta	ABFPV9924N	02707338
9.	Shri Sanjay Kumar Upadhyay	AAXPU2236P	02455875
10.	Shri Kishan Pal Singh	AVVPS8411M	02350363
11.	Shri Dilip Kumar Mishra	ALCPM2699C	02699649
12.	Shri Deepak Awasthi	AHBPA7975L	0269978
13.	Shri Deena Nath Maurya	BJJPM1012K	02824654

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14.	Shri Manoj Kumar Joshi	AGJPJ7853P	02722133
15.	Shri Chhotelal Shukla	CLJPS2300B	02706032
16.	Shri Shiva Nand Mishra	AJHPM9388B	02706697
17.	Shri Mukesh Kumar Khare	BBVPK0966N	06400147
18.	Shri Arvind Tiwari	ADXPT8691C	01629407
19.	Shri Rajesh Kumar Sharma	BFXPS2910E	01731816
20.	Shri Ramendra Prasad Sharma	AOBPS4499A	02518373
21.	Shri Pashupati Nath Dixit	AJPPD9322G	01664553

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1. Nixcil Pharmaceuticals Specialities Limtied (Now Known as "M/s Heivero Pharmaceuticals Limited") (hereinafter referred to as "**NPSL**"/ "**the Company**") is a Public company incorporated on August 11, 1992 and registered with Registrar of Companies–Uttar Pradesh with CIN: U24231UP1992PLC014636. Its registered office is at F-7 to 18, Sector 21, Industrial Area, Jagdispur, Sultanpur - 227817, Uttar Pradesh.
 2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a letters / complaints dated March 01, 2013 and May 16, 2013 against NPSL in respect of issue of Redeemable Cumulative Preference Shares ("**RCPS**") and undertook an enquiry to ascertain whether NPSL 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.
 3. On enquiry by SEBI, it was observed that NPSL had made an offer of RCPS during the financial years 2005-06 to 2011-12 (hereinafter referred to as "**Offer of RCPS**") and raised at least an amount of Rs. 127.14 Crores from at least 1,51,627 allottees. The number of allottees and funds mobilized has been collated from the audited financial statement of NPSL and information submitted by the auditors to SEBI.
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4. As the above said *Offer of RCPS* 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 April 24, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against NPSL and its Directors viz. Shri Prithi Paul Singh Sethi, Shri Arun Kumar Madan, Shri Manzoor Alam, Shri Amit Mishra, Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Vishwa Bandhu Vashishta, Shri Sanjay Kumar Upadhyay, Shri Kishan Pal Singh, Shri Dilip Kumar Mishra, Shri Deepak Awasthi, Shri Deena Nath Maurya, Shri Manoj Kumar Joshi, Shri Chhotelal Shukla, Shri Shiva Nand Mishra, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Rajesh Kumar Sharma, Shri Ramendra Prasad Sharma and Shri Pashupati Nath Dixit. (hereinafter collectively referred to as “**Noticees**”)
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. NPSL had made an *Offer of RCPS* to 1,51,627 investors and mobilized funds amounting to Rs. 127.14 Crores during the financial years 2005-06 to 2011-12 as shown below:

5.1. The Preference Share Application Money Pending Allotment as at March 31, 2005 was ₹ 4.57 Crores.

5.2. The year-wise amount of *Redeemable Cumulative Preference Shares* outstanding since 2005-06 is as under:

Series	2004-05 (₹)	2005-06 (₹)	2006-07 (₹)	2007-08 (₹)	2008-09 (₹)	2009-10 (₹)	2010-11 (₹)	2011-12 (₹)
Pref. share appln.money	4,57,01,000	Nil	Nil	Nil	Nil	Nil	Nil	Nil
10%	Nil	20,19,93,000	37,39,31,000	39,92,82,000	39,52,31,000	35,41,66,000	34,55,70,000	35,19,61,000
11%	Nil	12,08,04,000	23,13,21,000	38,88,92,000	38,66,70,000	37,22,47,000	36,45,80,000	37,13,22,000
11.75%	Nil	10,53,28,000	19,83,77,000	37,27,60,000	37,27,60,000	36,16,62,000	36,16,62,000	36,83,50,000
12.75%	Nil	8,79,45,000	14,62,92,000	18,06,43,000	18,06,43,000	17,64,91,000	17,64,91,000	17,97,57,000

5.3. As on March 31,2012, NPSL had mobilized ₹127,13,90,000 (₹127.14 Crore approx) through issue of *Redeemable Cumulative Preference Shares* as follows:

Series	Till 2011-12 (₹)
Preference share application money	Nil
10%	35,19,61,000
11%	37,13,22,000
11.75%	36,83,50,000
12.75%	17,97,57,000
Total	127,13,90,000

5.4. As per the information provided by the auditors, the number of preference shareholders during the period 2007-08 to 2011-12 is as follows:

Year/Series	2007-08	2008-09	2009-10	2010-11	2011-12
10%	3,668	53,542	49,662	48,817	49,179
11%	14,183	32,468	30,538	29,932	30,331
11.75%	24,623	49,707	48,754	48,754	49,143
12.75%	6,041	23,504	22,781	22,781	22,974
Total	48,515	1,59,221	1,51,735	1,50,284	1,51,627

5.5. As per the details above, it is observed that NPSL issued and allotted *Redeemable Cumulative Preference Shares* (“*Offer of RCPS*”) during the period 2005-06 to 2011-12. The Preference Share Capital of NPSL was ₹127.14 Crores as on March 31, 2012 and the number of preference share-holders 1,51,627.

6. The above *Offer of RCPS* 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) of Companies Act, 1956 were not complied with by NPSL in respect of the *Offer of RCPS*.
7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated April 24, 2015 with immediate effect.

- i. “NPSL shall forthwith cease to mobilize fresh funds from investors through the Offer of RCPS or through any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly, till further directions;
- ii. Nixcil Pharmaceuticals Specialities Limited (now known as Heivero Pharmaceuticals Limited) (CIN: U24231UP1992PLC014636); (PAN: AABCN6977H) and its following Directors 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;

S.No.	Name of the Entity	DIN	PAN
1.	Prithi Paul Singh Sethi	00076689	AOAPS8866A
2.	Arun Kumar Madan	00076741	Not available
3.	Amit Mishra	00317047	AIEMP2608Q
4.	Manzoor Alam	Not available	Not available
5.	Gurbhej Singh Hora	00312542	Not available
6.	Bankey Bihari Mishra	0232918	Not available
7.	Vishwa Bandhu Vashishta	02707338	ABFPV9924N
8.	Kishan Pal Singh	02350363	AVVPS8411M
9.	Sanjay Kumar Upadhyay	02455875	AAXPU2236P
10.	Dilip Kumar Mishra	02699649	Not available
11.	Deena Nath Maurya	02824654	BJJPM1012K
12.	Deepak Awasthi	0269978	AHBPA7975L
13.	Chhotelal Shukla	02706032	CLJPS2300B
14.	Shiva Nand Mishra	02706697	AJHPM9388B
15.	Manoj Kumar Joshi	02722133	AGJPJ7853P
16.	Mukesh Kumar Khare	06400147	BBVPK0966N
17.	Arvind Tiwari	01629407	ADXPT8691C
18.	Pashupati Nath Dixit	01664553	AJPPD9322G
19.	Rajesh Kumar Sharma	01731816	BFXPS2910E
20.	Ramendra Prasad Sharma	02518373	AOBPS4499A

- iii. NPSL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the

- securities market, either directly or indirectly, till further directions;*
- iv. NPSL shall provide a full inventory of all its assets and properties;*
 - v. The Directors of NPSL shall provide a full inventory of all their assets and properties;*
 - vi. NPSL and its abovementioned 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 RCPS, without prior permission from SEBI;*
 - vii. NPSL and its abovementioned Directors shall not divert any funds raised from public at large through the Offer of RCPS, which are kept in bank account(s) and/or in the custody of NPSL;*
 - viii. NPSL and its abovementioned Directors shall, within 21 days from the date of receipt of this Order, provide SEBI with all relevant and necessary information as sought by SEBI.*
 - ix. NPSL shall provide to SEBI all information regarding repayments made to the holders of Redeemable Cumulative Preference Shares including names of the preference share holders, addresses, amount mobilized, number of Redeemable Cumulative Preference Shares issued, promised maturity amount with date of maturity, amount refunded and date thereof. NPSL's Preference Share Capital is indicated as Nil in the Annual Return for the financial year 2012-13. NPSL shall provide full details of how the Preference Share Capital which was approximately ₹127.14 Crores as on March 31, 2012 became Nil as on March 31, 2013.*
 - x. NPSL shall also provide to SEBI all information regarding Redeemable Non-Convertible Debentures including Redeemable Non-Convertible Debentures issued, names of the debenture holders, addresses, amount mobilized, promised maturity amount with date of maturity, amount refunded and date thereof;”*
8. The interim order also directed the NPSL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:

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

9. Vide the said interim order, NPSL and its abovementioned Directors 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.

10. **Service of Interim Order:** The details / status of service of interim order dated April 24, 2015 to all the Noticees are as under:

Interim Order dated April 24, 2015 - Delivery Status				
Sr. No.	Name of the Director	Sent through Letter dated	Delivery Status	Proof of Delivery
1	Nixcil Pharmaceuticals Specialities Limtied	May 06, 2015	Delivered	Yes
2	Shri Prithi Paul Singh Sethi	May 06, 2015	Delivered	Yes
3	Shri Arun Kumar Madan	May 06, 2015	Delivered	Yes
4	Shri Manzoor Alam	May 11, 2015	Delivered	Replied vide letter dated August 22, 2016
5	Shri Amit Mishra	May 06, 2015	Delivered	Yes

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6	Shri Gurbhej Singh Hora	May 11, 2015	Delivered	Acknowledged vide letter dated June 25, 2015
7	Shri Bankey Bihari Mishra	May 11, 2015	Delivered	Acknowledged vide letter dated June 01, 2015
8	Shri Vishwa Bandhu Vashishta	May 06, 2015	Delivered	Yes
9	Shri Sanjay Kumar Upadhyay	May 06, 2015	Delivered	Newspaper Publication
10	Shri Kishan Pal Singh	May 06, 2015	Delivered	Yes
11	Shri Dilip Kumar Mishra	May 11, 2015	Delivered	Acknowledged vide letter dated June 04, 2015
12	Shri Deepak Awasthi	May 06, 2015	Delivered	Acknowledged vide letter dated May 22, 2015
13	Shri Deena Nath Maurya	May 06, 2015	Delivered	Yes
14	Shri Manoj Kumar Joshi	May 06, 2015	Delivered	Replied vide letter dated July 20, 2017
15	Shri Chhotelal Shukla	May 06, 2015	Delivered	Acknowledged vide letter dated May 20, 2015
16	Shri Shiva Nand Mishra	May 06, 2015	Delivered	Yes
17	Shri Mukesh Kumar Khare	May 06, 2015	Delivered	Yes
18	Shri Arvind Tiwari	May 06, 2015	Delivered	Replied vide letter dated April 25, 2016 and August 29, 2016
19	Shri Rajesh Kumar Sharma	May 06, 2015	Delivered	Yes
20	Shri Ramendra Prasad Sharma	May 06, 2015	Delivered	Yes
21	Shri Pashupati Nath Dixit	May 06, 2015	Delivered	Yes

11. **Submissions:**

11.1. **Shri Prithi Paul Singh Sethi** vide letter dated May 20, 2015 submitted his reply, which are as under:-

11.1.1. That he had ceased to be a Director of the company on March 29, 2012 and had no connectivity with the company since then nor did he hold any shares of the company and nor played any active role in the decision making process or in the business making process of the company.

11.1.2. That he had requested 30 days' time to file detailed reply in the matter

11.2. **Shri Manzoor Alam** vide letter dated August 22, 2016 submitted his reply, which are as under:

11.2.1. That he had resigned from the organization in the year 2007 as an employee due to medical problem. He had an open heart operation in the year 2003 and still suffering from 'Angina CAD', his treatment is under process at Delhi & Lucknow. Presently, due to an accident he is suffering from Orthopedic Problem and is under treatment and unable to move. He had submitted his medical prescription and discharge papers.

11.2.2. That he is not in touch with the management after his resignation till date.

11.3. **Shri Gurbhej Singh Hora** vide letter dated June 25, 2015 and vide affidavit dated September 03, 2016 submitted his reply, which are as under:-

11.3.1. That he was working as Transport Manager from June 01, 2004 to February 2012 in the group company M/s Vamshi Chemical Limited (hereinafter referred to as "**Vamshi**") having its manufacturing activities at Jahangirabad Road, Barabanki, U.P.

11.3.2. That Dr. Prithi Paul Singh Sethi, owner of Vamshi had ordered him to become dummy director in its subsidiary company, NPSL from September 24, 2007 to May 30, 2009.

- 11.3.3. That he was neither associated with day to day activities of NPSL nor involved in any kind of financial activities of NPSL.
- 11.3.4. That he had never attended any board meeting and had never signed any financial statement or instrument during his tenure of Directorship in NPSL.
- 11.3.5. That he had neither approached anyone to invest in NPSL nor attended any public meeting to motivate for investment.
- 11.3.6. That he was not aware that NPSL was making funds by way of issuing preference shares.
- 11.3.7. That he had never taken any amount from NPSL in any mode, his salary was disbursed from the account of Vamshi during that period.
- 11.3.8. That he has submitted copy of TDS certificate Form 16 issued by Vamshi for the period FY 2004-05 to FY 2007-08, FY 2009-10 and FY 2010-11.

11.4. **Shri Bankey Bihari Mishra** vide letter dated June 01, 2015, letter dated nil submitted during the course of hearing held on September 01, 2016 and vide affidavit dated September 05, 2016 submitted his reply, which are as under:-

- 11.4.1. That he was working as Office Executive from May 01, 2006 to November 2012 in the company M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”) manufacturing activities at Jahangirabad Road, Barabanki, U.P.
- 11.4.2. That Dr. Prithi Paul Singh Sethi, owner of Vamshi had ordered him to become dummy director in its subsidiary company, NPSL from August 12, 2008 to May 30, 2009.
- 11.4.3. That he had never attended any board meeting and had never signed any financial statement or instrument during his tenure of Directorship in NPSL.
- 11.4.4. That he had neither approached anyone to invest in NPSL nor attended any public meeting to motivate for investment.
- 11.4.5. That he was not associated with day to day activities of NPSL and he was not aware that NPSL was making funds by way of issuing preference shares.

- 11.4.6. That he was used as a director in NPSL to fulfill the quorum.
- 11.4.7. That balance sheets for the year 2007-08 were signed by Mr. Prithi Paul Singh Sethi and Mr. Arun Madan and balance sheet for the year 2008-09 were signed by Mr. Amit Mishra and Mr. Prithi Paul Singh Sethi.
- 11.4.8. That he had never taken any amount from NPSL in any mode, of Rs. 12,500 per month his salary was disbursed from the account of Vamshi during that period.
- 11.4.9. That he has submitted copy of TDS certificate Form 16 issued by Vamshi for the period FY 2008-09, FY 2009-10 and FY 2011-12.

11.5. **Shri Vishwa Bandhu Vashishta** vide letter dated August 23, 2016 submitted his reply (in hindi), which are as under:

- 11.5.1. That the name of the poor people as a director and managing director in companies where filed with ROC in a wrong way and all this has happened because of computer. On the basis of events happened with him, Digital India and computer are beneficial for Rich people and are dangerous for poor people.
- 11.5.2. That he was neither connected to NPSL nor was ever being director in NPSL.
- 11.5.3. That in 2005 he has started working in M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”), Barabanki, with a salary of Rs. 5,000 /- per month. The Managing Director and chairperson was Vamshi was Dr. Prithi Paul Singh Sethi.
- 11.5.4. That in July 2012 he left the company Vamshi and in June 2014 upon attaining the age to 60 years, one Mr. S. N. Mishra from Vamshi has called him and assured him that he will get some fund and in return of it he has signed on some documents. In August 2014, an amount of Rs. 54,371/- and Rs. 16,092/- towards some fund was credited in his Axis bank account, thereafter he closed the bank account. That at the time of getting an employment with Vamshi he

has signed some documents, stamp paper and blank cheques, because if there is any Scam because of him, they will recover money from him.

11.5.5. Thereafter, he started receiving letters from ROC Kanpur and Delhi, of which he has replied but nothing happened. After that police issued warrant against him due to which his reputation has being tarnished. Further, due to non-availability of money he was not able to file any case.

11.5.6. That he has submitted copy of TDS certificate Form 16 issued by Vamshi for the period FY 2005-06 to FY 2012-13 and copy of bank pass book.

11.6. **Shri Deena Nath Maurya** vide letter dated September 01, 2016 submitted his reply (in hindi), which are as under:

11.6.1. That on October 14, 2003 he joined M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”), Barabanki as a Lab Technician. In May 2012 he resigned from Vamshi. He is a poor person.

11.6.2. That when he start receiving notices, then he came to know that he was appointed as Director.

11.6.3. That his documents were kept by the Company and they have forged his signature.

11.6.4. That when he complained about the same to the CMD, then CMD threaten him that he will destroy him and stopped him from coming to the office of SEBI to attend the hearing.

11.6.5. He has submitted the copy of his appointment letter dated September 30, 2003, salary slip for the month of June 2006 issued by Vamshi.

11.7. **Shri Kishan Pal Singh** vide letter dated July 12, 2017 submitted his reply (in hindi), which are as under:

11.7.1. That he is graduate / post graduate in Zoology from Kanpur University. While doing his masters from Lucknow University in 2007, he got Job in M/s

Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”), Barabanki as a Transport Manager with a salary of Rs. 12,500 /- per month and look after the work of Maharashtra region i.e. Tajola MIDC.

11.7.2. That he was happy with his progress as well as with the progress of Vamshi. His salary was increased from Rs. 12,500 /- per month in 2007 to Rs. 35000 /- per month in 2013-14.

11.7.3. That he was neither associated with NPSL nor involved in any financial activities of NPSL. That he had never received any money from NPSL.

11.7.4. That when he came to know that his name is associated with NPSL then he resigned from Company but the owner of the company keep bluffing him and never allowed him to resign.

11.7.5. That he has submitted copy of TDS certificate Form 16 issued by Vamshi for the period FY 2006-07 to FY 2011-12 and copy of salary slip issued by Vamshi.

11.8. **Shri Dilip Kumar Mishra** vide letters dated June 04, 2015 and September 01, 2016 submitted his reply (in hindi), which are as under:

11.8.1. That before receipt of SEBI Notice he was unaware that he was additional director in NPSL from July 03, 2009 to September 25, 2009. He submitted that he is not associated in any manner with NPSL.

11.8.2. That the information sought by SEBI vide its notices are not available with him.

11.8.3. That during the relevant time he was working with M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”), Lucknow as a Senior Associate i.e. from January 16, 2008 to April 30, 2011. The Director of Vamshi is Mr. Prithi Paul Singh Sethi.

11.8.4. That apart from Vamshi, he was neither associated with any other company nor had any knowledge about the same.

11.8.5. He has submitted the copy of his appointment letter dated January 16, 2008 and TDS certificate Form 16 for FY 2009-10 and FY 2010-11 issued by Vamshi. He also submitted the copy of Form 32 of appointment of additional director, consent letter and resignation letter.

11.9. **Shri Deepak Awasthi** vide letters dated May 22, 2015, August 20, 2016 (in hindi), September 27, 2016 (in hindi) and vide affidavit dated October 14, 2016 submitted his reply, which are as under:

11.9.1. That on May 01, 2008 he was appointed in M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”), Lucknow on the post of Senior Executive (Admin) with a salary of Rs. 13,500 per month. He had resigned from Vamshi on September 22, 2010 due to his transfer to Mumbai office.

11.9.2. That first time he came to know from SEBI interim order that he was director in NPSL. He is surprised that he has been appointed as director in NPSL.

11.9.3. That he had neither received any letter or communication that he had appointed as director in NPSL nor received any document about the affairs of NPSL. He submitted that he has no ability, knowledge, experience or status to be a director of the company.

11.9.4. That he deny to be the director of NPSL or any other company and he has never been related / associated with any affairs or activities of NPSL or any other company. If he has been shown as the director of any company than it is wrong and a forgery has been done with him.

11.9.5. That he is unemployed and earning through home tuitions. He is suffering from Slip Disc and is under treatment and had difficulty while moving.

11.9.6. He has submitted the copy of his appointment letter dated April 26, 2008 and TDS certificate Form 16 for FY 2009-10 issued by Vamshi. He also submitted copy of resignation letter dated September 26, 2010 from the service of Vamshi.

11.10. **Shri Chhote Lal Shukla** vide letter dated May 20, 2015 and September 01, 2016 (in hindi) submitted his reply, which are as under:

11.10.1. That he was working as Supervisor in the group company M/s Jaig Polymers Limited, Jagdishpur.

11.10.2. That he was only a dummy director in NPSL and he was not involved in any financial or administrative activities of NPSL.

11.10.3. That he belong to a poor family and despite his request to remove him from the post of director, he was not removed.

11.10.4. That he was used as a signing director in NPSL which he had done to safeguard his career.

11.10.5. He has submitted the copy of his appointment letter dated December 29, 1988 and TDS certificate Form 16 for FY 2010-11 issued by Jaig Polymers Limited.

11.11. **Shri Shiva Nand Mishra** vide letter dated September 01, 2016 submitted his reply, which are as under:

11.11.1. That he was working as Senior Executive Commercial in the group company M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”) having its manufacturing activities at Jahangirabad Road, Barabanki, U.P.

11.11.2. That he was only a dummy director in NPSL from 30.03.2012 to 03.04.2013 as the owner Dr. Prithi Paul Singh Sethi had ordered him to become director in NPSL.

11.11.3. That he had never attended any board meeting and had never signed any financial statement or instrument during his tenure of Directorship in NPSL.

11.11.4. That he had neither approached anyone to invest in NPSL nor attended any public meeting to motivate for investment.

11.11.5. That he was neither associated with day to day activities of NPSL.

- 11.11.6. That he was not aware that NPSL was making funds by way of issuing preference shares.
- 11.11.7. That he was only aware of the Industrial activities and was working for the unit situated at Barabanki.
- 11.11.8. That he was used as a director in NPSL to fulfill the quorum.
- 11.11.9. That he has submitted copy of his appointment letter dated December 08, 2003, copy of TDS certificate Form 16 for the period FY 2008-09 to FY 2010-11 and FY 2012-13 issued by Vamshi.
- 11.12. **Shri Manoj Kumar Joshi** vide letter dated July 20, 2017 submitted his reply (in hindi), which are as under:
- 11.12.1. That he was working as Executive in company M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”), Parel, Mumbai.
- 11.12.2. In NSPL he was shown as director from March 20, 2012 to March 30, 2012, of which he had no knowledge about it.
- 11.12.3. In group companies, he has never signed any document to become the director in any of their group companies. He has no knowledge about how he became the director, how digital signature and DIN was created.
- 11.12.4. That he was working with Vamshi from 2008 till 2013. His all original documents were with Vamshi which has been misused. He believed that his signature was forged. He has neither signed any document to become the director of NPSL nor associated/involved in any manner with NPSL.
- 11.12.5. That he had neither attended any board meeting nor signed any cheques nor involved in any financial or marketing work.
- 11.12.6. That the owner of all group companies is Dr. Prithi Paul Singh Sethi, who run all companies.
- 11.12.7. That he has submitted copy of TDS certificate Form 16 issued by Vamshi for the period FY 2008-09 to FY 2012-13.

11.13. **Shri Arvind Tiwari** vide letters dated April 25, 2016 and August 26, 2016 submitted his reply, which are as under:

11.13.1. That the fraud has been done against him by inducting him as director without his consent in various companies i.e. Ecodermal Cosmetics & toiletries Limited, Geoshine Mines 2 Metals Limited, Nixcil Pharmaceutical Specialties Limited, Jaig Polymers Limited, Milani Techno Engineering Limited and Q & B Retail Limited i.e. these Companies have filed requisite FORM for his appointment as a 'Additional Director' using his forged signatures.

11.13.2. That he was not a part of the company when money was collected from investors by way of issuance and allotment of preference shares, however, he was inducted as a Director with malafide intentions at the time of redemption of shares.

11.13.3. That he came to know about the fraud against him only after the receipt of notices from SEBI and ROC. Thereafter, he filed necessary documents with ROC for his disassociation with the Companies.

11.13.4. That when preference shares were issued by NPSL in FY 2007-08, he was not the director in the NPSL. With malafide intentions, he was inducted as an additional director in NPSL on January 29, 2015 i.e. at the time of redemption.

11.13.5. That he has submitted copy of Resignation letter/ letter of disassociation, FORM 32.

12. In the interest of Natural Justice, vide notice of hearing dated August 04, 2016 all the Noticees were given an opportunity of hearing on September 01, 2016. Vide notification dated August 23, 2016 published in newspaper *Times of India* the Noticees were notified that SEBI issued interim order-cum-show cause notice dated April 24, 2015 against NPSL and its directors and the copy of said interim order is available on SEBI website. Vide said

notification the Noticees were also notified by SEBI that they will be given the final opportunity of being heard on September 01, 2016 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record. The status of service of hearing notice dated August 04, 2016 to all the Noticees are as under:

Hearing Notice dated August 04, 2016 - Delivery Status			
Sr. No.	Name of the Director	Delivery Status	Proof of Delivery
1	Nixcil Pharmaceuticals Specialities Limtied	Delivered	Newspaper Publication
2	Shri Prithi Paul Singh Sethi	Delivered	Acknowledged vide letter dated August 30, 2016
3	Shri Arun Kumar Madan	Delivered	Newspaper Publication
4	Shri Manzoor Alam	Delivered	Acknowledged vide email and letter dated August 22, 2016
5	Shri Amit Mishra	Delivered	Acknowledged vide letter dated August 30, 2016
6	Shri Gurbhej Singh Hora	Delivered	Acknowledged vide letter dated August 17, 2016
7	Shri Bankey Bihari Mishra	Delivered	Acknowledged vide letter dated August 17, 2016
8	Shri Vishwa Bandhu Vashishta	Delivered	Newspaper Publication
9	Shri Sanjay Kumar Upadhyay	Delivered	Newspaper Publication
10	Shri Kishan Pal Singh	Delivered	Acknowledged vide letter dated August 30, 2016
11	Shri Dilip Kumar Mishra	Delivered	Acknowledged vide letter dated August 17, 2016
12	Shri Deepak Awasthi	Delivered	Acknowledged vide letter dated August 20, 2016

13	Shri Deena Nath Maurya	Delivered	Acknowledged vide letter dated August 20, 2016
14	Shri Manoj Kumar Joshi	Delivered	Acknowledged vide letter dated August 30, 2016
15	Shri Chhotelal Shukla	Delivered	Acknowledged vide letter dated August 19, 2016
16	Shri Shiva Nand Mishra	Delivered	Newspaper Publication
17	Shri Mukesh Kumar Khare	Delivered	Acknowledged vide letter dated August 30, 2016
18	Shri Arvind Tiwari	Delivered	Acknowledged vide letter dated August 26, 2016
19	Shri Rajesh Kumar Sharma	Delivered	Acknowledged vide letter dated August 30, 2016
20	Shri Ramendra Prasad Sharma	Delivered	Acknowledged vide letter dated August 30, 2016
21	Shri Pashupati Nath Dixit	Delivered	Acknowledged vide letter dated August 30, 2016

- 12.1. On September 01, 2016, Shri Bankey Bihari Mishra appeared and submitted undated letter and also submitted the documents in support of his contention that he was working as Executive Officer in one of a group company named, Vamshi Chemicals Limited. He also stated that as per the order of the owner of Vamshi Chemicals Limited (Shri Prithi Paul Singh Sethi), he became dummy director of NPSL from August 12, 2008 to May 30, 2009.
- 12.2. On September 01, 2016, Shri Gurbhej Sigh Hora appeared and submitted the copy of his earlier reply dated June 25, 2015 and the documents in support of his contention that he was working as Transport Manager in one of a group company named, Vamshi Chemicals Limited. He also stated that he was a dummy director in NPSL from August 12, 2008 to May 30, 2009.
- 12.3. On September 01, 2016, Shri Chhotelal Shukla appeared and submitted a letter dated September 01, 2016 and documents in support of his contention that he was

working as Supervisor in Jaig Polymers Limited. He also stated that he was not aware how and when he became director in NPSL.

- 12.4. On September 01, 2016, Shri Shiva Nand Mishra appeared and submitted a letter dated September 01, 2016 and documents in support of his contention that he was working as Sr. Executive Commercial in one of a group company named, Vamshi Chemicals Limited. He also stated that as per the order of the owner of Vamshi Chemicals Limited (Shri Prithi Paul Singh Sethi), he became dummy director of NPSL from March 30, 2012 to April 03, 2013.
- 12.5. On September 01, 2016, Shri Deena Nath Maurya appeared and submitted a letter dated September 01, 2016 and documents in support of his contention that he was working as Lab Technician in one of a group company named, Vamshi Chemicals Limited. He also stated that he resigned from Vamshi Chemicals Limited in May 2012. He further stated that he was not aware how he became the director of NPSL.
- 12.6. On September 01, 2016, Shri Dilip Kumar Mishra appeared and submitted a letter dated September 01, 2016. He stated that from January 16, 2008 to April 30, 2011 he was working as Senior Associate in one of a group company named, Vamshi Chemicals Limited. He also stated that he was not aware how his name is featuring as director of NPSL. Shri Prithi Paul Singh Sethi, who appears as one of the Noticees in the present proceedings was the Managing Director of Vamshi Chemicals Limited.
- 12.7. On September 01, 2016, Shri Vishwa Bandhu Vashishta appeared and made his submissions in line of reply available on record.
- 12.8. On September 01, 2016, Shri Ram Alok Singh, Advocate, Authorized Representative (AR) appeared on behalf Shri Prithi Paul Sing Sethi, Shri Amit Mishra, Shri Kishan Pal Singh, Shri Manoj Kumar Joshi, Shri Ramendra Kumar Sharma, Shri Rajesh Kumar Sharma, Shri Pashupati Nath Dixit and Shri Mukesh Khare and requested for adjournment of hearing. The request of AR was acceded and hearing in the matter was adjourned to September 28, 2016.

- 12.9. On September 01, 2016, NPSL, Shri Arun Kumar Madan, Shri Sanjay Kumar Upadhyay and Shri Arvind Tiwari neither appeared for hearing nor requested for adjournment.
- 12.10. Shri Manzoor Alam, vide email and letter dated August 22, 2016 requested for another opportunity of hearing. Accordingly, final opportunity of hearing was granted on September 28, 2016.
- 12.11. Shri Deepak Awasthi, vide letter dated August 22, 2016 requested for another opportunity of hearing. Accordingly, final opportunity of hearing was granted on September 28, 2016.
13. Vide notice of hearing dated September 20, 2016, Shri Manzoor Alam and Shri Deepak Awasthi were informed that final opportunity of hearing was granted to them on September 28, 2016. Further, vide notice of hearing dated October 05, 2016, Shri Manzoor Alam and Shri Deepak Awasthi was informed that final opportunity of hearing was granted to them on October 18, 2016.
- 13.1. On October 18, 2016, Shri Deepak Awasthi appeared and submitted his reply dated October 14, 2016 and made his submission in line of reply available on record.
14. Vide notification dated June 10, 2017 published in newspaper *Times of India* and notification dated June 10, 2017 published in newspaper *Dainik Jagran*, all the Noticees were notified by SEBI that they will be given the final opportunity of being heard on August 24, 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.
- 14.1. Shri Bankey Bihari Mishra vide letter dated August 19, 2017, stated that Shri Dilip Kumar Mishra will attend the hearing scheduled on August 24, 2017 and submitted

the consent letter for appointment of director in NPSL and resignation letter from the post of director in NPSL obtained from ROC and further stated that the signature in both letters were forged.

- 14.2. Shri Gurbhej Singh Hora vide letter dated August 19, 2017, stated that Shri Dilip Kumar Mishra will attend the hearing scheduled on August 24, 2017 and submitted the consent letter for appointment of director in NPSL and resignation letter from the post of director in NPSL obtained from ROC and further stated that the signature in both letters were forged.
- 14.3. Shri Chotelal Shukla vide letter dated August 21, 2017 had stated that due to the severe illness to his father (age 98 years), he was unable to attend the hearing scheduled on August 24, 2017 and has submitted the copy of his earlier reply dated July 05, 2017.
- 14.4. Shri Deena Nath Maurya vide email dated August 23, 2017 stated that due to some problem he will not be able to appear for hearing on August 24, 2017 and will submit his documents through speed post.
- 14.5. On August 24, 2017, Shri Dilip Kumar Mishra, Shri Deepak Awasthi, Shri Manoj Kumar Joshi appeared for self. Shri Dilip Kumar Mishra appeared on behalf Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra and Shri Shiva Nand Mishra.
- 14.6. During the course of hearing held on August 24, 2017, Shri Deepak Awasthi vide letter dated nil, Shri Manoj Kumar Joshi vide letter dated nil and Shri Dilip Kumar Mishra vide letter dated August 24, 2017 submitted their reply / additional written submissions in the matter.
- 14.7. During the course of hearing held on August 24, 2017, Shri Dilip Kumar Mishra on behalf of Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra and Shri Shiva Nand Mishra submitted their reply/additional written submissions dated August 24, 2017 in the matter.
- 14.8. On August 24, 2017, NPSL, Shri Prithi Paul Singh Sethi, Shri Arun Kumar Madan, Shri Amit Mishra, Shri Manzoor Alam, Shri Vishwa Bandhu Vashishta, Shri

Kishan Pal Singh, Shri Sanjay Kumar Upadhyay, Shri Chhotelal Shukla, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Pashupati Nath Dixit, Shri Rajesh Kumar Sharma and Shri Ramendra Prasad Sharma had neither appeared for hearing nor sought for any adjournment.

- 14.9. Shri Dilip Kumar Mishra vide email dated August 24, 2017 submitted the copy of First Information Report (FIR) dated August 22, 2017 filed against Shri Prithi Paul Singh Sethi, Director of NPSL, Shri Atul Chaudhary and Shri Dilip Kumar Dixit, Company Secretary.

15. **Additional Written Submissions:**

- 15.1. **Shri Chhotelal Shukla** vide letter dated July 05, 2017 submitted his additional written submission (in hindi), which are as under:

- 15.1.1. That he had joined the group company M/s Jaig Polymers Limited (hereinafter referred to as “JPL”), Jagdishpur on December 29, 1988 and was working as Supervisor.
- 15.1.2. On February 01, 1997, JPL was purchased by Dr. Prithi Paul Singh Sethi and he along with 5 other employee continue working with Dr. Prithi Paul Singh Sethi.
- 15.1.3. That he is a poor person and sole earner of his family.
- 15.1.4. JPL vide letter dated June 16, 2007 had advised him to submit and send his all documents for deduction of provident fund.
- 15.1.5. That due to lack of knowledge, understanding and education he was made to sign on some documents and was made director. He was advised by officials of JPL not open any letter received by him from any government organization. Upon receipt of the same he was required to send it to the head office of JPL.

15.1.6. That only after the receipt of SEBI interim order, he came to know that his name was misused. Thereafter he came to know that he has been allotted with DIN no. 02706032 and he was made director in 26 other companies.

15.2. **Shri Dilip Kumar Mishra** vide letters dated July 24, 2017 and August 24, 2017 submitted his additional written submission (in hindi), which are as under:

15.2.1. That in the year 1994 he had completed his graduation in B.A. Thereafter he remain jobless till 2008. In the year 2008, after giving interview to Dr. Prithi Paul Singh Sethi, owner of Vamshi, he was selected for the post of Senior Associate with a salary of Rs. 16,500 per month and started working in Vamshi, Lucknow with effect from January 16, 2008. Due to some personal reason and also getting to know that some wrong was happening in Vamshi, he resigned from Vamshi on April 30, 2011 (at the time of resignation his salary was Rs. 23,500/- per month).

15.2.2. That after the receipt of SEBI Notice he came to know that he was additional director in NPSL. Thereafter, he download FROM 32 from MCA website and came to know that he was director in NPSL from July 03, 2009 to September 25, 2009.

15.2.3. That the documents and signature submitted by him at the time of joining Vamshi were misused by Shri Prithi Paul Sing Sethi.

15.2.4. That his appointment as director in NPSL was through forged consent letter and his resignation was also through forged resignation letter.

15.2.5. Later on from MCA website he came to know that he was also directors in various companies namely, Nixcil Pharmaceutical Specialties Limited, Togo Retail Marketing Limited, Jaig Polymers Limited, Greentech Research Chem Private Limited, Petron Sugar and Distilleries Limited, Petron International (India) Limited, Sigma Info Developers Limited and E Fire Flame Food and Beverages Private Limited.

- 15.2.6. That Shri Prithi Paul Sing Sethi by way of forgery had made him directors of aforementioned companies and by way of these Companies Shri Prithi Paul Sing Sethi had done the fraud and collected crores of rupees from people.
- 15.2.7. That his signature in the balance sheet of aforementioned companies was also forged by Shri Prithi Paul Singh Sethi.
- 15.2.8. That the aforesaid bogus companies registration was done by Shri Prithi Paul Sing Sethi along with Shri Atul Choudhary and Shri Dilip Dixit Company Secretary.
- 15.2.9. That his other friends who were working in Vamshi were also made directors in aforesaid companies by Shri Prithi Paul Sing Sethi through forgery.
- 15.2.10. That Shri Prithi Paul Sing Sethi had threaten to kill him if he did not give his statement/deposition as per the statement of Shri Prithi Paul Sing Sethi.

15.3. **Shri Gurbhej Singh Hora** through Mr. Dilip Kumar Mishra during the course of hearing dated August 24, 2017, vide letter dated August 24, 2017 submitted his additional written submission dated August 24, 2017 which are as under:

- 15.3.1. That he was working as Transport Manager from July 2004 to February 2012 in the group company M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”) having its manufacturing activities at Jahangirabad Road, Barabanki, U.P. and looking after transportation related work.
- 15.3.2. That Dr. Prithi Paul Singh Sethi, owner of Vamshi and all the heavy vehicle were is in the name of Dr. Prithi Paul Singh Sethi.
- 15.3.3. That in respect of all financial transaction of Vamshi, Dr. Prithi Paul Singh Sethi is the authorized signatory.
- 15.3.4. That Dr. Prithi Paul Singh Sethi had pressurized him to sign in lot of documents and made him to become dummy director in its subsidiary company, NPSL from September 24, 2007 to May 30, 2009. That the owner of NPSL is also Dr. Prithi Paul Singh Sethi.

- 15.3.5. That he was neither associated with day to day activities of NPSL nor involved in any kind of financial activities of NPSL.
- 15.3.6. That he had never attended any board meeting and when he came to know that Dr. Prithi Paul Singh Sethi had made him dummy director in many companies without his knowledge then in January 2012 he had resigned from Vamshi.
- 15.4. **Shri Deepak Awasthi** during the course of hearing dated August 24, 2017, vide letter dated nil submit the affidavit dated August 17, 2017 which is identical to the earlier affidavit dated October 14, 2016 and same have been reproduced above.
- 15.5. **Shri Bankey Bihari Mishra** through Mr. Dilip Kumar Mishra during the course of hearing dated August 24, 2017, vide letter dated nil submit the copy of earlier affidavit dated September 05, 2016 and same have been reproduced above.
- 15.6. **Shri Shiva Nand Mishra** through Mr. Dilip Kumar Mishra during the course of hearing dated August 24, 2017, vide letter dated August 21, 2017 submitted his written submission dated August 21, 2017 which is identical to the earlier reply dated September 01, 2016 and same have been reproduced above.
- 15.7. **Shri Manoj Kumar Joshi** during the course of hearing dated August 24, 2017, vide letter dated nil submit his written submission which is identical to the earlier reply dated July 20, 2017 and same have been reproduced above.

Consideration of Issues and Findings

16. 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 RCPS as stated in the interim order.
- (2) If so, whether the said offer was 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 RCPS as stated in the interim order.

17. I have perused the interim order dated April 24, 2015 for the allegation of *Offer of RCPS*. I note that neither the company nor the directors filed any reply disputing the same.

18. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. Following is noted from the record (i.e. audited financial statement of NPSL and information provided by the auditors) with respect to the issuance of RCPS by NPSL:

18.1. The Preference Share Application Money Pending Allotment as at March 31, 2005 was ₹ 4.57 Crores.

18.2. The year-wise amount of *Redeemable Cumulative Preference Shares* outstanding since 2005-06 is as under:

Series	2004-05 (₹)	2005-06 (₹)	2006-07 (₹)	2007-08 (₹)	2008-09 (₹)	2009-10 (₹)	2010-11 (₹)	2011-12 (₹)
Pref. share appln.money	4,57,01,000	Nil	Nil	Nil	Nil	Nil	Nil	Nil
10%	Nil	20,19,93,000	37,39,31,000	39,92,82,000	39,52,31,000	35,41,66,000	34,55,70,000	35,19,61,000
11%	Nil	12,08,04,000	23,13,21,000	38,88,92,000	38,66,70,000	37,22,47,000	36,45,80,000	37,13,22,000
11.75%	Nil	10,53,28,000	19,83,77,000	37,27,60,000	37,27,60,000	36,16,62,000	36,16,62,000	36,83,50,000
12.75%	Nil	8,79,45,000	14,62,92,000	18,06,43,000	18,06,43,000	17,64,91,000	17,64,91,000	17,97,57,000

18.3. As on March 31,2012, NPSL had mobilized ₹127,13,90,000 (₹127.14 Crore approx) through issue of *Redeemable Cumulative Preference Shares* as follows:

Series	Till 2011-12 (₹)
Preference share application money	Nil
10%	35,19,61,000
11%	37,13,22,000
11.75%	36,83,50,000
12.75%	17,97,57,000
Total	127,13,90,000

18.4. As per the information provided by the auditors, the number of preference shareholders during the period 2007-08 to 2011-12 is as follows:

Year/Series	2007-08	2008-09	2009-10	2010-11	2011-12
10%	3,668	53,542	49,662	48,817	49,179
11%	14,183	32,468	30,538	29,932	30,331
11.75%	24,623	49,707	48,754	48,754	49,143
12.75%	6,041	23,504	22,781	22,781	22,974
Total	48,515	1,59,221	1,51,735	1,50,284	1,51,627

19. With respect to the period of issuance and allotment of RCPS, Interim order alleged that NPSL had issued and allotted RCPS during the period 2005-06 to 2011-12. However, from paragraph 18 above, with respect to the amount collection by NPSL through *offer of RCPS*, it appears that amount outstanding by NPSL through the issuance and allotment of various series of RCPS had increased in financial year (FY) 2005-06, 2006-07 and 2007-08, and thereafter it appears that redemption of RCPS had happened i.e. decrease in amount outstanding in the financial year 2008-09, 2009-10 and 2010-11, and thereby further increase in amount outstanding in financial year 2011-12. Further, with regard to the number of preference shareholders, it appears that number of preference shareholders had increased from FY 2007-08 to 2008-09 and thereafter decreased in FY 2009-10 and FY 2010-11 and further increased in FY 2011-12. Further, it appears that there was pending preference share application money as on March 31, 2005. Thus, taking into the consideration of amount outstanding and number of preference shareholders, I am of the view that NPSL had issued and allotted RCPS in the FYs 2004-05, 2005-06, 2006-07,

2007-08, 2008-09 and 2011-12. Further, I also note that as on March 31, 2012 NPSL had an outstanding amount of ₹127.14 Crores through the issuance of RCPS from 1,51,627 investors.

20. I therefore conclude that NPSL came out with an offer of RCPS as outlined above.

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

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

22. 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.”

23. 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*.

24. In the instant matter, from the audited financial statements of NPSL and information received from auditors, I find that as on March 31, 2012, NPSL through the issuance of RCPS to 1,51,627 investors had an outstanding amount of ₹127.14 Crores. The above findings lead to a reasonable conclusion that the *Offer of RCPS* by NPSL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
25. I find that NPSL 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 NPSL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
26. Neither NPSL nor its directors have contended that the *Offer of RCPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
27. 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*”.

28. Therefore, in view of the material available on record, I find that the *Offer of RCPS* by NPSL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RCPS* are deemed to be public issues and NPSL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
29. Further, since the offer of RCPS 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.
30. The allegations of non-compliance of the above provisions were not denied by NPSL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that NPSL has contravened the said provisions. NPSL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that NPSL 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.

31. 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 RCPS was a deemed public issue of securities, NPSL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that NPSL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RCPS. I, therefore, find that NPSL has not complied with the provisions of section 60 of the Companies Act, 1956.

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

33. 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"

34. 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...”

35. In view of the above findings, I am of the view that NPSL engaged in fund mobilizing activity from the public, through the offer of RCPS 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,

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

36. With respect to the appointment, resignation and tenure of the directors in NPSL, following submissions are made by the Noticees:

- 36.1. Shri Gurbhej Singh Hora submitted that he was a dummy Director in NPSL from September 24, 2007 to May 30, 2009 and his signature in both consent letter and resignation letter were forged. However, it is noted from FORM 32 that he was director in NPSL from August 12, 2008 to May 30, 2009.
- 36.2. Shri Bankey Bihari Mishra submitted that he was a dummy Director in NPSL from August 12, 2008 to May 30, 2009 and his signature in both consent letter as well as in resignation letter were forged.
- 36.3. Shri Dilip Kumar Mishra submitted that he was unaware that he was an Additional Director in NPSL from July 03, 2009 to September 25, 2009 and his signature in both consent letter as well as in resignation letter were forged.

- 36.4. Shri Deena Nath Maurya submitted that he was unaware that he was appointed as Director in NPSL and his signature was forged.
- 36.5. Shri Deepak Awasthi submitted that he was unaware that he was appointed as Director in NPSL and had never received any letter/communication that he had been appointed as director in NPSL. He denied to the director of NPSL and if he has been shown as the director of any company than it is wrong and a forgery has been done with him.
- 36.6. Shri Manoj Kumar Joshi submitted that he was shown as director in NPSL from March 20, 2012 to March 30, 2012, of which he had no knowledge about it and he has not signed any document to become the Director of NPSL and his signature was forged.
- 36.7. Shri Arvind Tiwari submitted that his appointment as an Additional Director in NPSL was through his forged signature.
- 36.8. Shri Vishwa Bandhu Vashistha submitted that he was neither connected to NSPL nor being the director in NPSL and his appointment as Director and Managing Director in NPSL was in a wrong way.
- 36.9. Shri Kishan Pal Singh submitted that he was not associated with NPSL and when he came to know that his name was associated with NPSL then he resigned from Company but the owner of the company keep bluffing him and never allowed him to resign.
- 36.10. Shri Manzoor Alam submitted that he had resigned as an employee from organization in the year July 2007.
- 36.11. Shri Prithi Paul Singh Sethi submitted that he ceased to the Director in NPSL from March 29, 2012.
- 36.12. Shri Chhotelal Shukla submitted that he was only a dummy director in NPSL.

- 36.13. Shri Shiva Nand Mishra submitted that he was only a dummy Director in NPSL from March 30, 2012 to April 03, 2013.
- 36.14. Shri Arun Kumar Madan, Shri Amit Mishra, Shri Sanjay Kumar Upadhyay, Shri Mukesh Kumar Khare, Shri Rajesh Kumar Sharma, Shri Ramendra Prased Sharma and Shri Pashupati Nath Dixit have not submitted any reply in the matter. Hence they have not disputed their appointment, resignation and tenure of their being the director in NPSL.
37. I note that tenure of the directorship of Shri Prithi Paul Singh Sethi, Shri Chhotelal Shukla, Shri Shiva Nand Mishra, Shri Arun Kumar Madan, Shri Amit Mishra, Shri Sanjay Kumar Upadhyay, Shri Mukesh Kumar Khare, Shri Rajesh Kumar Sharma, Shri Ramendra Prased Sharma and Shri Pashupati Nath Dixit in NPSL is not in dispute.
38. I note that Shri Kishan Pal Singh has stated that he was not associated with NPSL and when he came to know that his name was associated with NPSL then he resigned from NPSL but the owner of the NPSL keep bluffing him and never allowed him to resign. From the documents obtained from MCA portal I note that Shri Kishan Pal Singh was appointed as Managing Director in NPSL from September 13, 2009 to February 12, 2015.
39. I note that Shri Manzoor Alam stated that he had resigned as an employee from organization in the year 2007. However, I note that he had not disputed his association with NPSL as well as his appointment as director in NPSL. Further, from the documents obtained from MCA portal i.e. from FORM 32, I note that he was appointed as Director in NPSL from April 10, 2006. Further, FORM 32 in respect of the cessation of Shri Manzoor Alam as director of NPSL is not available on MCA portal. However, from an Explanatory Statement dated September 05, 2006 pursuant to the section 173(2) of the Companies Act 1956 filed by NPSL with ROC/MCA, it is noted that “*Sh. Manzoor Alam*

Retire from the directorship and Sh. Amit Mishra was appointed as an Additional Director of the Company as per section 260 of the Companies Act, 1956 by the Board of Directors in their Meeting held on 15/07/2006 and he shall hold office till the forthcoming Annual General Meeting and is eligible for re-appointment.....”. Thus, from the said Explanatory Statement it is noted that Shri Manzoor Alam retire from directorship of NPSL on July 15, 2006.

40. From the submission of the Noticees, I note that Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Dilip Kumar Mishra, Shri Deena Nath Maurya, Shri Deepak Awasthi, Shri Manoj Kumar Joshi, Shri Arvind Tiwari and Shri Vishwa Bandhu Vashistha have alleged forgery and Shri Kishan Pal Singh stated that he was not associated with NPSL. I have considered the submissions of the said Noticees and I also note that SEBI has sought documents for verification of the claims of the Noticees. In cases wherein persons allege forgery and not associated with Company, the burden of proof lies upon the person who alleges the same, in the instant case the obligation to prove the same lies upon the said Noticees. The said principle has also been recognized by various courts in a catena of cases. In this regard, I note the following observations of the Hon’ble Securities Appellate Tribunal in the matter of *Kalidas Dutta vs. SEBI* (decided on January 23, 2018 “*we are of the considered opinion that this appeal can be disposed of with a direction to the appellant to obtain appropriate documents/orders from the competent authority to the effect that he was fraudulently appointed as director of the company in question on 10th February, 2015. For this purpose, the appellant is granted time up to one year to do the needful and submit the same to SEBI*”).

41. Therefore, I am of the considered view that Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Dilip Kumar Mishra, Shri Deena Nath Maurya, Shri Deepak Awasthi, Shri Manoj Kumar Joshi, Shri Arvind Tiwari, Shri Vishwa Bandhu Vashistha and Shri Kishan

Pal Singh may be granted 365 days' time to obtain appropriate order from the competent authority with respect to their allegation of forgery. The said order, if any, shall reach SEBI within 365 days from the date of this order. Till that time the directions against Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Dilip Kumar Mishra, Shri Deena Nath Maurya, Shri Deepak Awasthi, Shri Manoj Kumar Joshi, Shri Arvind Tiwari Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh passed in this order shall not take effect and directions passed vide interim order dated April 24, 2015 shall continue to be in force. Pending such determination, I am compelled to accept the MCA records and their tenure of directorship in NPSL as mentioned below.

42. From the documents available on record, I note that Shri Prithi Paul Singh Sethi, Shri Arun Kumar Madan, Shri Amit Mishra, Shri Manzoor Alam, Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Vishwa Bandhu Vashishta, Shri Sanjay Kumar Upadhyay, Shri Kishan Pal Singh, Shri Dilip Kumar Mishra, Shri Deepak Awasthi, Shri Deena Nath Maurya, Shri Manoj Kumar Joshi, Shri Chhotelal Shukla, Shri Shiva Nand Mishra, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Rajesh Kumar Sharma, Shri Ramendra Prasad Sharma, Shri Pashupati Nath Dixit, who were earlier Directors in NPSL, have since resigned. The details of the appointment and resignation of the directors are as following:

Sr. No.	Name of the directors	Date of appointment	Date of cessation
1	Shri Prithi Paul Singh Sethi	August 11, 1992	March 29, 2012
2	Shri Arun Kumar Madan	December 03, 2004	September 25, 2009
3	Shri Manzoor Alam	April 10, 2006	July 15, 2006
4	Shri Amit Mishra	July 15, 2006	March 30, 2012
5	Shri Gurbhej Singh Hora	August 12, 2008	May 30, 2009
6	Shri Bankey Bihari Mishra	August 12, 2008	May 30, 2009
7	Shri Vishwa Bandhu Vashishta	August 12, 2008 - MD	March 12, 2009 - MD
		March 13, 2009	February 12, 2015
8	Shri Sanjay Kumar Upadhyay	March 13, 2009	April 29, 2011

9	Shri Kishan Pal Singh	March 13, 2009 - MD	February 12, 2015 - MD
10	Shri Dilip Kumar Mishra	July 03, 2009	September 25, 2009
11	Shri Deepak Awasthi	September 25, 2009	October 21, 2009
12	Shri Deena Nath Maurya	October 21, 2009	February 12, 2015
13	Shri Manoj Kumar Joshi	March 20, 2012	March 30, 2012
14	Shri Chhotelal Shukla	March 30, 2012	February 12, 2015
15	Shri Shiva Nand Mishra	March 30, 2012	April 03, 2013
16	Shri Mukesh Kumar Khare	April 03, 2013	February 12, 2015
17	Shri Arvind Tiwari	January 29, 2015	April 13, 2016
18	Shri Rajesh Kumar Sharma	January 29, 2015	May 30, 2016
19	Shri Ramendra Prasad Sharma	January 29, 2015	May 30, 2016
20	Shri Pashupati Nath Dixit	January 29, 2015	May 30, 2016
		September 02, 2018	Continuing.

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

44. 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%.

45. As per Section 5 of Companies Act, 1956, “*officer who is in default*” means (a) the managing director/s; (b) the whole-time director/s; (c) the manager; (d) the secretary; (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act; (f) any person charged by the Board with the responsibility of complying with that provision; (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors.

46. In this regard, I note that Hon’ble Securities Appellate Tribunal (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....”

47. Section 2(26) of the companies Act 1956, defines Managing Director (MD) which read as under:

“Managing director” means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called.

Provided that the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management:

Provided further that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors;

48. The aforesaid definition of Managing Director includes a director who occupies the position of managing director even without being designated as such, provided that he has been entrusted with substantial power of management, which would not otherwise be exercisable by him. Such director would be termed as “Deemed Managing Director”.

49. In *Commissioner of Income Tax v. Sarabhai Sons Limited* (1983 143 ITR 473 Guj) Hon'ble High Court of Gujarat held that "*...This resolution clearly shows that Mr. Gautam Sarabhai who was appointed as chairman of the board of directors was entrusted with the management of the assessee-company's business. In other words, Mr. Gautam Sarabhai rendered his services to the assessee-company in managing its business. This, in our opinion, is sufficient to establish that Mr. Gautam Sarabhai was the managing director of the assessee-company...*" In other words in the said case, the Chairman of the board had exercised the powers of management and rendered his services to the Company in managing its business, although he was not appointed as managing directors was deemed to be a managing director.

50. Thus, from the above, I am of the view that whether a director is to be regarded as a managing director of the company would depend on the nature and extent of the duties entrusted to him and that the designation under which the appointment is made would not make any difference in this regard. Thus, if a director is entrusted with managerial functions, he would be in the position of a Managing Director notwithstanding the fact that he may be designated as a director of the company.

51. In view of aforesaid Hon'ble SAT order and from the documents available on records, it is noted that there are no documentary evidence available to show that NPSL has made any appointment of Managing Director / Whole Time Director in the FY 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08. However, in the present case, I find that most of the Noticees submits that Shri Prithi Paul Singh Sethi was the owner of the group of companies which includes NPSL and Vamshi (in which most of them claimed to be the employees). I also find the Shri Prithi Paul Singh Sethi was the director in NPSL from August 11, 1992 to March 29, 2012 i.e. he was the director in NPSL since its incorporation.

52. I note that as per Section 217 of the Companies Act, 1956, Board's report shall be signed by its chairman if he is authorized in that behalf by the Board; and where he is not so authorized, shall be signed by such number of directors as are required to sign the balance sheet and the profit and loss account of the company by virtue of sub- sections (1) and (2) of section 215. By virtue of Section 215(1)(ii) of the Companies Act, 1956, in case of the company other than the banking company, balance sheet and profit and loss account shall be signed by its, manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.
53. Further as per section 193 of the Companies Act, 1956, Chairman of the Meeting of the Board shall sign the Minutes of the Board Meeting and incase of the minutes of the proceedings of the general meeting, the same shall be sign by the Chairman of the said meeting.
54. Perusal of the above provisions shows that as far as Balance sheet, profit and loss account and Board's Report (Directors Report), if not signed by Chairman will be signed by minimum two directors in situations mentioned those provisions and where there is a Managing director, one of the signatory is required to be the Managing Director.
55. On perusal of the Balance sheet of NPSL (from 2004-05 to 2010-11), profit and loss account of NPSL (2006-07 and 2007-08) and Board's Report of NPSL (Directors Report) (from 2004-05 to 2009-10), for the respective years shows that in all cases Shri Prithi Paul Singh, consistently was one of the signatories of the respective documents. By signing such documents consistently for prolonged periods, though he was not formally appointed as the Managing director, he has performed the role of Managing director by standing consistently as signatory to such documents. Further as per the legal requirement

mentioned in section 193 of the Companies Act, 1956, Shri Prithi Paul Singh has discharged the role of Chairman of the Board. As per Article 76(1) of the Table A of the First Schedule of the Companies Act, 1956 the Board may elect a chairman of its meetings and determine the period for which he is to hold office. As per Article 50 of the Table A of the First Schedule of the Companies Act, 1956 states that the chairman of the Board shall preside as chairman at every general meeting of the company. The decision of the Chairman on any subject is final and binding on the successors at later stages as held in *Naryana Chettiar vs. Kaleshwarar Mills Ltd*, (1951) 21 Com Cases 351. The material on record indicate that Shri Prithi Paul Singh is an executive director of the Company. By presiding over such Board Meetings and the General Meetings, it further corroborates the fact that some of the substantial powers of management has been entrusted upon him.

56. Further, from the Annual Return of Financial Year 2009-10, I note that Shri Prithi Paul Singh Sethi was holding 63.24% of the shareholding in NPSL. Such a percentage is sufficient enough to control the Board of NPSL. By virtue of such shareholding, he also becomes one of the persons “in accordance with whose directions or instructions the Board of directors of a company is accustomed to act”. Perusal of the Section 5(e) of the Companies Act, 1956 shows that “any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act” falls within the definition of “officer in default”. By virtue of Section 307(10) (a) of the Companies Act, 1956, such persons becomes the “director” of the Company and the name of the such directors needs to be shown in the Register of directors as per Section 307 of the Companies Act, 1956.

57. Further, I find that in addition to it, I also note that Shri Prithi Paul Singh Sethi was authorized signatory to bank accounts of NPSL.

58. Thus, I am of the view that these are not the administrative act to perform whereas these are the managerial act which have substantial power of management, thereby managing the business of NPSL. Hence, Shri Prithi Paul Singh Sethi was managing the business activities of NPSL, thereby acting as Deemed Managing Director of NPSL from FYs 2004-05 till his resignation i.e. March 29, 2012.
59. Further, upon perusal of documents obtained from MCA portal and available on record i.e. copy of extract of minutes of NPSL board meeting held on August 12, 2008 of appointment of Shri Vishwa Bandhu Vashistha as Managing Director of the Company, copy of consent letter dated August 12, 2008 of Shri Vishwa Bandhu Vashistha to act as a Managing Director of the Company, FORM 32 regarding appointment of Managing Director in NPSL, copy of extract of minutes of NPSL board meeting held on March 12, 2009 of acceptance of resignation of Shri Vishwa Bandhu Vashistha as Managing Director of the Company, copy of resignation letter dated March 12, 2009 of Shri Vishwa Bandhu Vashistha from resigning from the post of Managing Director of the Company and FORM 32 regarding change in designation, I find that Shri Vishwa Bandhu Vashistha was appointed as Managing Director of NPSL from August 12, 2008 to March 12, 2009.
60. Further, from copy of extract of minutes of NPSL board meeting held on March 13, 2009 of appointment of Shri Kishan Pal Singh as Managing Director of the Company, copy of consent letter of Shri Kishan Pal Singh to act as a Managing Director of the Company, FORM 32 regarding appointment of Managing Director in NPSL, I find that Shri Kishan Pal Singh was appointed as Managing Director of NPSL from March 13, 2009 from a period of 5 years. From the copy of extract of minutes of NPSL board meeting held on February 12, 2015 of acceptance of resignation of Shri Kishan Pal Singh as Director of the Company, copy of resignation letter of Shri Kishan Pal Singh from resigning from the post of Director of the Company and FORM DIR-12 regarding cessation of director, I note

that Shri Kishan Pal Singh resigned as Director of NPSL with effect from February 12, 2015. I also note that there is no documentary evidence available on record which suggest there was change in designation of Shri Kishan Pal Singh from Managing Director to Director, hence in the absence of documentary evidence, I conclude that Shri Kishan Pal Singh has resigned from the post of Managing Director of NPSL with effect from February 12, 2015. Thus, I find that Shri Kishan Pal Singh was appointed as Managing Director from March 13, 2009 to February 12, 2015.

61. Thus, from abovementioned paragraphs, I conclude that following are the Managing Director / Deemed Managing Director of NPSL:

Sr. No.	Name of Managing Director / Deemed Managing Director	Period
1	Shri Prithi Paul Singh Sethi	FY 2004-05 till March 29, 2012
2	Shri Vishwa Bandhu Vashishta	12/08/2008 to 12/03/2009
3	Shri Kishan Pal Singh	13/03/2009 to 12/02/2015

62. At paragraph 19 above I held that NPSL had issued and allotted RCPS in the FYs 2004-05, 2005-06, 2006-07, 2007-08, 2008-09 and 2011-12 and as on March 31, 2012 NPSL had outstanding amount of ₹127.14 Crores through the issuance of RCPS from 1,51,627 investors. Therefore, at the time of issuance and allotment of RCPS, Shri Prithi Paul Singh Sethi was the Deemed Managing Director of NPSL during FYs 2004-05, 2005-06, 2006-07, 2007-08, 2008-09 and 2011-12 till March 29, 2012; Shri Vishwa Bandhu Vashishta was the Managing Director of NPSL from August 12, 2008 to March 12, 2009 in FY 2008-09 and Shri Kishan Pal Singh was the Managing Director of NPSL from March 13, 2009 to March 31, 2009 in FY 2008-09 and during FY 2011-12. Therefore, in the present case, in accordance with Section 5(a) of Companies Act, 1956, Shri Prithi Paul Singh Sethi,

Shri Vishwa Bandhu Vashistha and Shri Kishan Pal Singh being the Deemed Managing Director / Managing Director of NPSL during the period of allotment of RCPS are officers in default. Shri Prithi Paul Singh Sethi for the reasons mentioned in paragraph 56 above of this order is also an officer in default under clause (e) of Section 5 of the Companies Act, 1956. Therefore, they being directors who are officer in default are liable to make refund 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, Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashistha and Shri Kishan Pal Singh 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 NPSL and Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashistha and Shri Kishan Pal Singh, 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.

63. Further, 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 NPSL and other directors are limited to the extent of amount collected during his/her tenure as director of NPSL. Hence, in the present case, Shri Prithi Paul Singh Sethi alongwith NPSL is liable to refund the amount collected alongwith interest by NPSL through offer of RCPS during FYs 2004-05, 2005-06, 2006-07, 2007-08, 2008-09 and 2011-12 till March 29, 2012. Shri Vishwa Bandhu Vashistha alongwith NPSL is liable to refund the amount collected alongwith interest by NPSL through offer of RCPS during the FY 2008-09 i.e. from August 12, 2008 to March 12, 2009. Shri Kishan Pal Singh along with NPSL is liable to

refund the amount collected alongwith interest by NPSL through offer of RCPS during FYs 2008-09 i.e. from March 13, 2009 to March 31, 2009 and during the FY 2011-12.

64. Further, the entry in Annual Return for the financial year 2012-13 for the period ending on March 31, 2013 showing “Nil” RCPS cannot be considered as an evidence of repayment as no proof of payment was submitted by the Noticees.
65. From the material available on record and the details of the appointment and resignation of the directors of NPSL as reproduced in paragraph 42 above, it is noted that Shri Dilip Kumar Mishra, Shri Deepak Awasthi, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Rajesh Kumar Sharma, Shri Ramendra Prased Sharma and Shri Pashupati Nath Dixit were appointed as director in NPSL subsequent to the issuance and allotment of RCPS i.e. they were not the directors in NPSL during the period of issuance and allotment of RCPS.
66. Further, I note that during the period of fund mobilization, Shri Arun Kumar Madan, Shri Manzoor Alam, Shri Amit Mishra, Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Sanjay Kumar Upadhyay, Shri Deena Nath Maurya, Shri Manoj Kumar Joshi, Shri Chhotelal Shukla and Shri Shiva Nand Mishra were directors in NPSL and Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh were the Deemed Managing Director / Managing Director of NPSL. Therefore, following the reasoning as provided by Hon’ble SAT in the matter of *Prita Bag vs. SEBI*, I am of the view that Shri Arun Kumar Madan, Shri Manzoor Alam, Shri Amit Mishra, Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Sanjay Kumar Upadhyay, Shri Deena Nath Maurya, Shri Manoj Kumar Joshi, Shri Chhotelal Shukla and Shri Shiva Nand Mishra are not liable for refund of money as there is a sufficient documentary evidence available on record which indicate that NPSL had a Managing Director / Deemed Managing Director namely, Shri

Vishwa Bandhu Vashishta, Shri Kishan Pal Singh and Shri Prithi Paul Singh Sethi, (who are an officer in default as per Section 5(a) and 5(e) of Companies Act, 1956) during the relevant time of fund mobilization.

67. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

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

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

68. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The director cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company.. Accordingly, Shri Arun Kumar Madan, Shri Manzoor Alam, Shri Amit Mishra, Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Sanjay Kumar Upadhyay, Shri Deena Nath Maurya, Shri Manoj Kumar Joshi, Shri Chhotelal Shukla, Shri Shiva Nand

Mishra, Shri Dilip Kumar Mishra, Shri Deepak Awasthi, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Rajesh Kumar Sharma, Shri Ramendra Prasad Sharma and Shri Pashupati Nath Dixit was also be responsible for all the deeds/acts of the Company during the period of their directorship.

69. NPSL has the continuing obligation to repay the amounts collected in violation of deemed public issue. Such liability can be ensured only by the directors. It is be noted in light of the continued non-compliance of refund liability by NPSL, Shri Dilip Kumar Mishra, Shri Deepak Awasthi, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Rajesh Kumar Sharma, Shri Ramendra Prased Sharma and Shri Pashupati Nath Dixit who joined NPSL subsequent to the issuance and allotment of RCPS are obligated to ensure compliance of the refund. Further, Shri Arun Kumar Madan, Shri Manzoor Alam, Shri Amit Mishra, Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Sanjay Kumar Upadhyay, Shri Deena Nath Maurya, Shri Manoj Kumar Joshi, Shri Chhotelal Shukla and Shri Shiva Nand Mishra who were the directors of NPSL during the period of issuance and allotment of RCPS but not liable for refund are also obligated to ensure compliance of the refund.

70. Therefore in view of NPSL's continued violation of its refund obligation, Shri Arun Kumar Madan, Shri Manzoor Alam, Shri Amit Mishra, Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Sanjay Kumar Upadhyay, Shri Deena Nath Maurya, Shri Manoj Kumar Joshi, Shri Chhotelal Shukla, Shri Shiva Nand Mishra, Shri Dilip Kumar Mishra, Shri Deepak Awasthi, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Rajesh Kumar Sharma, Shri Ramendra Prasad Sharma and Shri Pashupati Nath Dixit as directors of NPSL, during their tenure of directorship, were responsible to ensure that NPSL makes refund to the allottees with interest. Thus, they have failed to ensure the timely refund to the investors by NPSL as mandated under law during their respective

tenure of directorship. Therefore, they are liable to be debarred from securities market for appropriate period of time.

71. 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 NPSL and its Directors, viz. Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh to refund the monies collected, with interest to such investors. Also, in order to safeguard the interests of investors, to prevent further harm to investors and to ensure orderly development of securities market, all the Noticees becomes liable to be debarred for an appropriate period of time.

72. I also note that, vide the interim order dated April 24, 2015, following direction were also issued:

72.1. NPSL was directed to provide a full inventory of all the assets and properties belonging to the Company.

72.2. The Directors of NPSL were also directed to provide an inventory of assets and properties belonging to them.

72.3. NPSL was directed to provide all information regarding repayments made to the holders of *Redeemable Cumulative Preference Shares* including names of the preference shareholders, addresses, amount mobilized, number of *Redeemable Cumulative Preference Shares* issued, promised maturity amount with date of maturity, amount refunded and date thereof.

72.4. NPSL's Preference Share Capital was indicated as Nil in the Annual Return for the financial year 2012-13. Therefore, NPSL was directed to provide full details of how the Preference Share Capital which was approximately Rs. 127.14 Crores

as on March 31, 2012 became Nil as on March 31, 2013.

72.5. NPSL was also directed to provide all information regarding *Redeemable Non-Convertible Debentures* including *Redeemable Non-Convertible Debentures* issued, names of the debenture holders, addresses, amount mobilized, promised maturity amount with date of maturity, amount refunded and date thereof.

73. The above information were required to be filed within 21 days of the receipt of the order. However, I find that no such information has been provided either by NPSL or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 12 of this Order.

74. In view of the discussion above, appropriate action in accordance with law needs to be initiated against NPSL and its Directors viz. Shri Prithi Paul Singh Sethi, Shri Arun Kumar Madan, Shri Manzoor Alam, Shri Amit Mishra, Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Vishwa Bandhu Vashishta, Shri Sanjay Kumar Upadhyay, Shri Kishan Pal Singh, Shri Dilip Kumar Mishra, Shri Deepak Awasthi, Shri Deena Nath Maurya, Shri Manoj Kumar Joshi, Shri Chhotelal Shukla, Shri Shiva Nand Mishra, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Rajesh Kumar Sharma, Shri Ramendra Prasad Sharma and Shri Pashupati Nath Dixit.

ORDER

75. 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:

Order in the matter of M/s Nixcil Pharmaceuticals Specialities Limtied (Now Known as "M/s Heivero Pharmaceuticals Limited")

- 75.1. NPSL alongwith Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh shall forthwith refund, to the investors, the money collected by the Company, during their respective tenure of Deemed Managing Director / Managing Director of NPSL through the issuance of RCPS (including the application money collected from investors during their respective period tenure of Deemed Managing Director / Managing Director, till date, pending allotment of securities, if any), with an interest of 15% per annum, from the eighth day of collection of funds, till the date of actual payment.
- 75.2. 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 clearly identified beneficiaries.
- 75.3. Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh 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.
- 75.4. NPSL and its present Directors (on behalf of the Company) who joined subsequent to the issues, 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.
- 75.5. NPSL and its present Directors (on behalf of the Company) who joined subsequent to the issues, are permitted to sell the assets, properties and holding of mutual funds/shares/securities held in demat and physical form, by 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.

- 75.6. Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashishta, and Shri Kishan Pal Singh 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.
- 75.7. NPSL, its present Directors (on behalf of the Company) who joined subsequent to the issues, Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh 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.
- 75.8. After completing the aforesaid repayments, NPSL, its present Directors (on behalf of the Company) who joined subsequent to the issues, Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh 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.
- 75.9. In case of failure of NPSL, Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh 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 75.1 of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

75.10. NPSL, Shri Prithi Paul Singh Sethi, Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh 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.

75.11. Shri Arun Kumar Madan, Shri Manzoor Alam, Shri Amit Mishra, Shri Sanjay Kumar Upadhyay, Shri Chhotelal Shukla, Shri Shiva Nand Mishra, Shri Mukesh Kumar Khare, Shri Rajesh Kumar Sharma, Shri Ramendra Prasad Sharma and Shri Pashupati Nath Dixit are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years from the date of this Order. The above said persons are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years from the date of this order.

75.12. Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Dilip Kumar Mishra,

Shri Deena Nath Maurya, Shri Deepak Awasthi, Shri Manoj Kumar Joshi and Shri Arvind Tiwari are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years which shall come into effect on the expiry of three hundred and sixty fifth (365) day of this order. The above said persons are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years which shall come into effect on the expiry of three hundred and sixty fifth (365) day of this order.

- 75.13. If the order of the Competent Authority in respect of forgery, is not produced by Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Dilip Kumar Mishra, Shri Deena Nath Maurya, Shri Deepak Awasthi, Shri Manoj Kumar Joshi and Shri Arvind Tiwari, within such 365 days, or, if produced within such period, the same is not in favour of Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Dilip Kumar Mishra, Shri Deena Nath Maurya, Shri Deepak Awasthi, Shri Manoj Kumar Joshi and Shri Arvind Tiwari, then the direction as per paragraph 75.12 shall take effect on the receipt of such order by SEBI or on the expiry of 365 days, whichever is earlier. Till that time the directions passed against these entities vide the interim order dated April 24, 2015 shall be in force. The direction at paragraph 75.12 shall not take effect, if the order of the Competent Authority is produced within such period and the same is in favour of Shri Gurbhej Singh Hora, Shri Bankey Bihari Mishra, Shri Dilip Kumar Mishra, Shri Deena Nath Maurya, Shri Deepak Awasthi, Shri Manoj Kumar Joshi and Shri Arvind Tiwari. Till that time the directions passed against these entities vide the interim order dated April 24, 2015 shall be in force.

75.14. If the order of the Competent Authority is not produced by Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh, within such 365 days, or, if produced within such period, the same is not in favour of Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh, then the direction as per paragraphs 75.1 to 75.3 and 75.6 to 75.10 shall take effect on the receipt of such order by SEBI or on the expiry of 365 days, whichever is earlier. Till that time the directions passed against these entities vide the interim order dated April 24, 2015 shall be in force. If the order of the Competent Authority is produced within such period and the same is in favour of Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh then, the direction in respect of Shri Vishwa Bandhu Vashishta and Shri Kishan Pal Singh at paragraphs 75.1 to 75.3 and 75.6 to 75.10 shall not take effect. Till that time the directions passed against these entities vide the interim order dated April 24, 2015 shall be in force.

75.15. NPSL shall provide to SEBI all information regarding repayments made to the holders of *Redeemable Cumulative Preference Shares* including names of the preference shareholders, addresses, amount mobilized, number of *Redeemable Cumulative Preference Shares* issued, promised maturity amount with date of maturity, amount refunded and date thereof. NPSL's Preference Share Capital was indicated as Nil in the Annual Return for the financial year 2012-13. NPSL shall provide full details of how the Preference Share Capital which was approximately Rs. 127.14 Crores as on March 31, 2012 became Nil as on March 31, 2013.

75.16. NPSL shall also provide to SEBI all information regarding *Redeemable Non-Convertible Debentures* including *Redeemable Non-Convertible Debentures* issued, names of the debenture holders, addresses, amount mobilized, promised maturity amount with date of maturity, amount refunded and date thereof.

75.17. Needless to say, in view of prohibition on sale of securities, it is clarified that

during the period of restraint, the existing holding, including units of mutual funds, of the Noticees shall remain frozen.

75.18. The above directions shall come into force with immediate effect unless otherwise specified in the sub paragraphs of 75 of this order.

76. Hon'ble Calcutta High Court has passed order dated August 04, 2016 in W.P. 15669(W) of 2015 – Khokan Ghosh & Anr. Vs. Union of India & Ors. in respect of Group Companies of Basil International Limited and its directors. Vide said order the Group of Companies of Basil International Limited and its Directors are restrained from dealing with their properties in any manner. Therefore, the effect and implementation of the aforesaid directions stated in paragraph 75 excluding paragraph 75.3, 75.4, 75.10 to 75.17 shall be subject to the directions passed by the Hon'ble High Court in its Order dated August 04, 2016 or any further orders passed therein.

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

78. 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.

DATE: May 29, 2019

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Order in the matter of M/s Nixcil Pharmaceuticals Specialities Limited (Now Known as "M/s Heivero Pharmaceuticals Limited")