

**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 Q & B Retail Limited (Earlier Known as “M/s Basil Express Limited”)**

**In re Deemed Public Issue Norms**

**In respect of:**

<b>Sr. No.</b>	<b>Name of the Entity</b>	<b>DIN / CIN</b>	<b>PAN</b>
1	Q & B Retail Limited (Earlier Known as "Basil Express Limited")	U64120DL1997PLC089923	AACCB2213R
2	Shri Rajesh Kumar Sharma	01731816	BFXPS2910E
3	Shri Kishan Pal Singh	02350363	AVVPS8411M
4	Shri Chhotelal Shukla	02706032	CLJPS2300B
5	Shri Vishwa Bandhu Vashishta	02707338	ABFPV9924N
6	Shri Deena Nath Maurya	02824654	BJJPM1012K
7	Shri Mukesh Kumar Khare	06400147	BBVPK0966N
8	Shri Arvind Tiwari	01629407	ADXPT8691C
9	Shri Pashupati Nath Dixit	01664553	AJPPD9322G
10	Shri Ramendra Prasad Sharma	02518373	AOBPS4499A

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1. Q & B Retail Limited (Earlier Known as “M/s Basil Express Limited”) (hereinafter referred to as “**QBRL**”/ “**the Company**”) is a Public company incorporated on September 29, 1997 and registered with Registrar of Companies – New Delhi with CIN: U64120DL1997PLC089923. Its registered office is at 487/488, No - 1, First Floor, Mangal
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*Order in the matter of M/s Q & B Retail Limited (Earlier Known as “M/s Basil Express Limited”)*

Bazar Road, Near Sidh Baba Mandir, Peera Garhi, New Delhi – 110087.

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a reference dated July 12, 2012 from Serious Fraud Investigation Office (hereinafter referred to as ‘**SFIO**’) against QBRL in respect of issue of Redeemable Preference Shares (“**RPS**”) and undertook an enquiry to ascertain whether QBRL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as “**DIP Guidelines**”) read with SEBI (Issue of Capital and Disclosure requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations**”).
3. On enquiry by SEBI, it was observed that QBRL had made an offer of RPS during the financial years 2005-06, 2006-07 and 2007-08 (hereinafter referred to as “**Offer of RPS**”) and raised at least an amount of Rs. 10.12 Crores from at least 7,545 allottees. The number of allottees and funds mobilized has been collated from documents obtained from MCA 21 portal i.e. Annual Returns for Financial Year (FY) ending March 31, 2006 to March 31, 2013.
4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated February 10, 2016 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against QBRL and its Directors viz. Shri Rajesh Kumar Sharma, Shri Kishan Pal Singh, Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Pashupati Nath Dixit and Shri Ramendra Prasad Sharma (hereinafter collectively referred to as “**Noticees**”).

5. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings were recorded. QBRL had made an *Offer of RPS* to 7,545 investors and mobilized funds amounting to atleast Rs. 10.12 Crores during the financial years 2005-06, 2006-07 and 2007-08. The details are as shown below:

5.1. On perusal of the Annual Returns filed by the company with RoC for the FY ending March 31, 2006 to March 31, 2013 (obtained from MCA 21 portal), it was observed as under:

<i>As on date</i>	<i>Number of Preference shares outstanding</i>	<i>Paid up value per share</i>	<i>Total paid up preference share capital outstanding (in Rs.)</i>	<i>Number of preference shareholders as per annual return</i>
31/03/2006	1,01,240	1,000	10,12,40,000	Not Indicated
31/03/2007	1,01,240	1,000	10,12,40,000	Not Indicated
31/03/2008	1,01,240	1,000	10,12,40,000	7,545*
31/03/2009	25,566	1,000	2,55,66,000	1,891*
31/03/2010	13,488	1,000	1,34,88,000	Not Indicated
31/03/2011	13,488	1,000	1,34,88,000	Not Indicated
31/03/2012	13,488	1,000	1,34,88,000	Not Indicated
31/03/2013	0	0	0	0

\*List of Preference shareholders was attached with the Annual Returns

5.2. As per the above details, it is observed that as on March 31, 2008, the company had collected an amount of Rs. 10.12 Crores from 7,545 investors by way of issue of preference shares. The number of preference shareholders has not been indicated by the company except for the FY ending on March 31, 2008 and March 31, 2009. As on March 31, 2009, the amount mobilized and the number of investors are shown to have reduced to Rs. 2.56 Crores and 1,891 investors respectively. Subsequently, during the FY ending as on March 31, 2010, March 31, 2011 and March 31, 2012, the amount mobilized is shown to have further reduced to Rs. 1.35 Crores. Finally, as on March 31, 2013, the amount collected is shown to have

come to 'nil'.

6. The above *Offer of RPS* and pursuant allotment was deemed a 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 QBRL in respect of the *Offer of RPS*.
7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated February 10, 2016 with immediate effect.
  - i. *“QBRL (Q&B Retail Ltd.) (PAN: AACCB2213R) shall not mobilize any fresh funds from investors through the Offer of Redeemable Preference Shares or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*
  - ii. *QBRL and its Directors, viz., Arvind Tiwari (DIN: 01629407, PAN ADXPT8691C), Pashupati Nath Dixit (DIN:01664553, PAN:AJPPD9322G ), Rajesh Kumar Sharma (DIN: 01731816; PAN: BFXPS2910E), Ramendra Prasad Sharma (DIN: 02518373; PAN: AOBPS4499A), Kishan Pal Singh (DIN: 02350363; PAN: AVVPS8411M), Chhotelal Shukla (DIN: 02706032, PAN:CLJPS2300B), Vishwa Bandhu Vasishtha (DIN: 02707338; PAN: ADFPV9924N), Deena Nath Maurya (DIN:02824654; PAN:BJJPM1012K) and Mukesh Kumar Khare (DIN: 06400147; PAN:BBVPK0966N) are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;*
  - iii. *QBRL 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. *QBRL shall provide a full inventory of all its assets and properties;*
- v. *The abovementioned Directors of QBRL shall provide a full inventory of all their assets and properties;*
- vi. *QBRL 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 Redeemable Preference Shares, without prior permission from SEBI;*
- vii. *QBRL and its abovementioned Directors shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares, which are kept in bank account(s) and/or in the custody of QBRL;*
- viii. *QBRL and its abovementioned Directors shall furnish complete information / documents in respect of the Offer of Redeemable Preference Shares (as sought by SEBI letters dated November 22, 2013 and January 08, 2014), within 14 days from the date of receipt of this Order, including,*
  - *Details of the repayment, if any made to the investors, as on date, duly certified by an independent auditors,*
  - *Names, addresses and contact numbers of the investors who have been repaid,*
  - *Mode of repayment,*
  - *Documents to prove redemption of preference shares, made by QBRL/Basil Express.”*

8. The interim order also directed the QBRL 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 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, QBRL 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:** A copy of the said interim order dated February 10, 2016 was sent to all the Noticees vide separate letters dated February 12, 2016. Subsequently, vide notification dated March 18, 2016 published in newspaper *Times of India*, Delhi Edition and notification dated March 18, 2016 published in newspaper *Dainik Jagran*, Delhi Edition, QBRL was notified by SEBI, that interim order dated February 10, 2016 was issued against it and was advised to collect the copy of interim order from SEBI, Northern Regional Office, New Delhi. Further, vide notification dated March 18, 2016 published in newspaper *Times of India*, Lucknow Edition and notification dated March 18, 2016 published in newspaper *Dainik Jagran*, Lucknow Edition, Shri Arvind Tiwari and Shri Deena Nath Maurya were notified by SEBI, that interim order dated February 10, 2016 was issued against them and was advised to collect the copy of interim order from SEBI, Lucknow Local Office.
11. Further, vide notification dated October 15, 2017 published in newspaper *Times of India*, notification dated October 15, 2017 published in newspaper *Navbharat Times* and notification dated October 15, 2017 published in newspaper *Danik Jagran*, all the Noticees

were notified by SEBI, that interim order dated February 10, 2016 was issued against them and they were given a final opportunity to submit their reply in the matter.

12. **Submissions:**

12.1. **Shri Vishwa Bandhu Vashista** vide letter dated March 06, 2016 (in hindi) submitted his reply in the matter, which are as under:

12.1.1. That interim order had shown him Director of QBRL.

12.1.2. That he works in M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”) from year 2004 to 2012. After 2012 he had never worked in any company. He had never associated with QBRL. He is never being a director of any company. He is a poor person and cannot afford any travel expenses or lawyer expenses.

12.1.3. That only good thing is that the owner of the group companies Dr. P. P. S. Sethi is also involved in these proceedings against this company and group companies due to which Dr. P. P. S. Sethi bear all expenses related these proceedings.

12.1.4. That due to his employment, the copy of his all documents and photos are with Dr. P.P.S. Sethi. Dr. P.P.S. Sethi, in order to save himself and his close friends from ROC and SEBI, he has trapped the innocent and poor people.

12.2. **Shri Arvind Tiwari** vide letter dated April 25, 2016 submitted his reply, which are as under:

12.2.1. 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.

12.2.2. 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.

12.2.3. 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.

12.2.4. That he has submitted copy of Resignation letter/ letter of disassociation and FORM No. DIR - 11.

13. **Hearing:** Vide notification dated October 15, 2017 published in newspaper *Times of India*, notification dated October 15, 2017 published in newspaper *Navbharat Times* and notification dated October 15, 2017 published in newspaper *Danik Jagran*, all the Noticees were notified by SEBI, that they will be given the final opportunity of being heard on November 09, 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. On November 09, 2017, Shri Vishwa Bandhu Vashistha, Shri Deena Nath Maurya and Shri Chhote Lal Shukla appeared for themselves and Shri Anand Prakash P. Khanduri, Advocate appeared on behalf of Shri Arvind Tiwari. No one appeared for Q&B Retail Limited, Shri Pashupati Nath Dixit, Shri Rajesh Kumar Sharma, Shri Ramendra Prasad Sharma, Shri Kishan Pal Singh and Shri Mikesh Kumar Khare. The details / submission of hearing held on November 09, 2017 are as under:



“ .....

*Shri Anand Prakash P. Khanduri, Advocate appeared on behalf of Shri Arvind Tiwari and sought an adjournment as documents from the Shri Arvind Tiwari were not received.*

*Considering the request, the hearing in respect of Shri Arvind Tiwari has been adjourned and Shri Arvind Tiwari has been advised to submit the following on or before the next hearing date:*

- 1) Proof of Police Complaint as to forged documents/signature of his appointment as a Director in the Company;*
- 2) Proof of Resignation*
- 3) Specimen signature*
- 4) KYC Documents*
- 5) Details of his employment in Q&B Retail Ltd such as Appointment letter as a marketing person, Salary and corresponding Income Tax Returns.*

*Shri Vishwa Bandhu Vashistha appeared in person and submitted his written submissions dated 9/11/2017. Further, Shri Vishwa Bandhu Vashistha made the following oral submissions:*

- 1) I was an employee of Vamshi Group of companies for a salary of Rs.15,000/- and was in charge of the purchase of raw materials in the company. Since cash dealings were involved the company took signed blank cheques. Since the company defaulted in payment of salary, he had resigned in 2012.*
- 2) Further, for the retirement benefits Shri Preethi Paul Singh also made him sign on various blank papers.*
- 3) I have not consented to become Director in any Company. I have not signed any document, debenture certificate or cheques for and on behalf of Q&B Retail Ltd.*
- 4) My signatures were forged for making me a Director.*

*In support of the claim of forgery, signatures Shri Vishwa Bandhu Vashistha submitted specimen signatures and KYC Documents.*

*Shri Deena Nath Maurya appeared in person and submitted his written submissions dated 9/11/2017. Further, Shri Deena Nath Maurya made the following oral submissions:*

- 1) I was an employee of Vamshi Exports in 2003 in its Lab and thereafter in the purchase section. My Salary was Rs. 4000/-. I used to receive salary through*

*cheque signed by one Mr. Bhattacharya and my account was opened in Axis Bank. They have never taken any signature of me in any documents. However, they took blank cheques as a security.*

- 2) Since, the company defaulted in payment of salary, in 2012 I had resigned and joined a Broker firm as a Broker. Pursuant to SEBI Order in 2014, all my accounts are frozen.*
- 3) I have not signed any documents. My signatures were forged in documents of the company. I have never heard of the name of this company i.e. Q&B Retail Limited. In support of the claim of forgery, signatures Shri Deena Nath Maurya submitted specimen signatures and KYC Documents.*

*Shri Chhote Lal Shukla appeared in person and submitted his written submissions dated 9/11/2017. Further, Shri Chhote Lal Shukla made the following oral submissions:*

- 1) I was an employee of Vamshi Group of Companies as a Site Supervisor. My Salary was around Rs.9000/-. Shri Preethi Paul Singh has taken my documents for the purpose of PF. He has taken signatures on blank papers also. I have very poor financials and no means to live.*
- 2) I have not signed any documents. My signatures were forged in documents of the company.*

*In support of the claim of forgery, signatures Shri Chhote Lal Shukla submitted specimen signatures and KYC Documents.*

*.....”*

15. In the interest of Natural Justice, Shri Arvind Tiwari vide notice of hearing dated November 29, 2017 was granted an opportunity of hearing on January 09, 2018 at SEBI Head Office, Mumbai. On January 09, 2018, Shri Arvind Tiwari alongwith Shri Anand Prakash P. Khanduri, Advocate, Authorised Representative appeared for the hearing and made the following submissions:

*“ .....*

- 1) He was fraudulently made a director in the company without his consent by Mr. P. P. Sethi one of the Directors of the Company.*

- 2) *He was not aware of the fact of his directorship in the company till he saw the SEBI Order in the newspaper.*
- 3) *His signature were forged in the consent letter filed with RoC. He has filed his resignation letter with the company and necessary form has been filed with RoC. He has also filed FIR against the company.*
- 4) *He was working as an insurance advisor in Birla Sun life through Key Trade Insurance Consultancy Limited. Mr. P.P Sethi was a director of Key Trade Insurance Consultancy Limited. He left the job and later joined Star Health and Allied Insurance Co. Limited.*

*The AR also sought two weeks' time to submit the compilation of documents in support of his submissions. Considering the same, time has been granted upto January 23, 2018 to submit the documents.*

*.....”*

#### **16. Additional Written Submissions:**

**16.1. Shri Vishwa Bandhu Vashishta** vide letter dated November 09, 2017 submitted his written submissions (in hindi), which are as under:

- 16.1.1. That he was working in in M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”), from May 2005 to June 2012. The owner of Vamshi was Dr. Prithi Paul Singh Sethi.
- 16.1.2. That he has never heard the name of QBRL. But because of continuous proceedings in the matter, he understand that Dr. Prithi Paul Singh Sethi had opened many company and raised money through issuance of share certificate, debenture etc. Further, directors for office purpose, for the purpose of raising and collection of money, for banking purpose and those who all are involved in SEBI proceedings are different. Because of this he was total unaware of what was happening with him.
- 16.1.3. That he has never signed any cheques, share certificate and debenture certificate. He had never gave permission to raise any money.
- 16.1.4. All the activities of raising money was carried out by Dr. Prithi Paul Singh Sethi. The directors for raising money are different and these directors have signed the share and debenture certificate and all these activities were taking place in West Bengal, Assam and Odisha.

- 16.1.5. That in the year 2014 after attaining the age of 60 years, he received retirement benefits from Vamshi and thereafter all his relations with Vamshi had stopped. In the year 2015 suddenly the problems started and after informing the same to Dr. Prithi Paul Singh Sethi, he assure that everything will be fine.
- 16.1.6. That SEBI had not initiated any proceeding against Dr. Prithi Paul Singh Sethi and he free and selling all properties of Company.
- 16.1.7. That he is a poor person and should not be harassed. Further, CBI had once arrested Dr. Prithi Paul Singh Sethi, from whom all the information should be collected.
- 16.1.8. That Dr. Prithi Paul Singh Sethi is a big cheater. Further, SEBI has not initiated proceeding against the directors who were involved in money / fund raising activities. The name of person involved in fund raising activities are:
- 16.1.8.1. Dr. Prithi Paul Singh Sethi (Director / CEO)
  - 16.1.8.2. Mr. A.K. Madan (Director)
  - 16.1.8.3. Mr. S.N. Karmakar (Director)
  - 16.1.8.4. Mr. M.K. Basu (Director)
  - 16.1.8.5. Susanto Chatterjee (Director)
  - 16.1.8.6. Mr. S.P. Bhattacharya (General Manager)
- 16.1.9. That his name does not appear in the list of directors obtained from internet. The list of directors obtained from internet are as under:
- 16.1.9.1. Mr. Arvind Tiwari, DIN – 01629407
  - 16.1.9.2. Mr. Pasupati Nath Dixit, DIN – 0664553
  - 16.1.9.3. Mr. Rajesh Kumar Sharma, DIN – 01731816
  - 16.1.9.4. Mr. Ramendra Kumar Sharma, DIN – 02518373
- 16.1.10. That he is innocent poor person and be exonerated from the charges and actual culprit should be caught and punished.
- 16.1.11. That he has submitted some 4 documents of Basil Express Limited of year 1999 which has signature of Dr. Prithi Paul Singh Sethi.
- 16.1.12. 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.
- 16.2. **Shri Chhote lal Shukla** vide letter dated November 09, 2017 submitted his written submissions (in hindi), which are as under:
- 16.2.1. That he was working as Supervisor in the group company M/s Jaig Polymers Limited, Jagdishpur since December 29, 1988.

- 16.2.2. That in February 1997, Dr. Prithi Paul Singh Sethi had bought M/s Jaig Polymers Limited and six officers started working with him.
- 16.2.3. That he received a letter dated June 16, 2007 from the director of M/s Jaig Polymers Limited stating that provident fund will be deducted, for which he has to send all his document to M/s Jaig Polymers Limited office.
- 16.2.4. That due to less knowledge / education, he was totally unaware about the director and he was made to sign on some documents. He was directed not to open any letter received from any government organization and send it to the head office of the company.
- 16.2.5. That through SEBI interim order dated April 24, 2015, he came to know that his name was used for wrong purpose.
- 16.2.6. That subsequently he came to know that he was made director in more than 26 companies.
- 16.3. **Shri Deena Nath Maurya** vide letter dated November 09, 2017 submitted his written submissions (in hindi), which are as under:
- 16.3.1. That on October 14, 2003 he joined M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”), Barabanki as a Laboratory Technician with a salary of Rs. 3,500 /- per month. He joining letter was signed and sent by Dr. Prithi Paul Singh Sethi. Later on July 10, 2005 he was transferred to Moradabad office of Vamshi. On February 14, 2012 he joined M/s Ragnandan Industries Limited because he was not receiving salary from Vamshi on time.
- 16.3.2. That in the year 2014 his account in MCX/NSE was freezed by SEBI. After enquiring, he came to know that Dr. Prithi Paul Singh Sethi has made him director in various companies and due to which his account was freezed.
- 16.3.3. That when he was working with Vamshi, he has submitted his educational documents, PAN Card and his signature on blank paper to Shri Atul Chaudhary, legal advisor of Vamshi.
- 16.3.4. That he didn't know about QBRL, has never worked in QBRL and also has never signed on any paper of QBRL. His name as director in QBRL was added in wrong way by Dr. Prithi Paul Singh Sethi and Shri Atul Chaudhary. He is also not aware in how many company his name was added.
- 16.3.5. That before SEBI he has also presented his case in a similar line in the matter of Nixil Pharmaceuticals Limited and Togo Retail Marketing Limited.
- 16.3.6. That he has submitted copy of ITR – V for the period FY 2013-14 to FY 2015-16 and other documents.

16.4. **Shri Arvind Tiwari** vide letter dated November 06, 2017 submitted his written submissions, which are as under:

- 16.4.1. That the fraud has been done against him.
- 16.4.2. That he was appointed as an additional director on QBRL without his consent. QBRL has filed the requisite FORM BIR-12 with an appointment letter having his signature being forged. QBRL has never sent him any communication regarding the same.
- 16.4.3. That on inspection of QBRL on MCA21 portal, he found that QBRL had authorized the issue of 1,02,500 preference shares on March 24, 2006 out of which 13,488 preference shares being allotted is showing in other forms, however, for allotment of these preference shares, the requisite form had not been filed by QBRL. On the said date he was not a part of QBRL and was not the director in the company. With all malafide intention he was induced as director only at the time of redemption.
- 16.4.4. He has submitted the copy of statement of his bank account and other documents.

#### **Consideration of Issues and Findings**

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

- (1) Whether the company came out with the Offer of RPS as stated in the 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 RPS as stated in the interim order.*

18. I have perused the interim order dated February 10, 2016 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.

19. I have also perused the documents/ information obtained from the ‘MCA 21 Portal’ and other documents available on records. Following is noted from the record [i.e. Annual Returns filed by QBRL with Registrar of Companies (RoC) for FY ending March 31, 2006 to March 31, 2013] with respect to the issuance of *RPS* by QBRL:

<i>As on date</i>	<i>Number of Preference shares outstanding</i>	<i>Paid up value per share</i>	<i>Total paid up preference share capital outstanding (in Rs.)</i>	<i>Number of preference shareholders as per annual return</i>
31/03/2006	1,01,240	1,000	10,12,40,000	Not Indicated
31/03/2007	1,01,240	1,000	10,12,40,000	Not Indicated
31/03/2008	1,01,240	1,000	10,12,40,000	7,545*
31/03/2009	25,566	1,000	2,55,66,000	1,891*
31/03/2010	13,488	1,000	1,34,88,000	Not Indicated
31/03/2011	13,488	1,000	1,34,88,000	Not Indicated
31/03/2012	13,488	1,000	1,34,88,000	Not Indicated
31/03/2013	0	0	0	0

\*List of Preference shareholders was attached with the Annual Returns

20. With respect to the period of issuance and allotment of *RPS*, Interim order alleged that QBRL had issued and allotted *RPS* during the Financial Year (FY) 2005-06, 2006-07 and 2007-08. From paragraph 19 above, I note that with respect to the amount collected by QBRL through *offer of RPS*, it appears that nominal amount outstanding on account of the issuance and allotment of *RPS* had remained constant from FY 2005-06 to 2007-08 and thereafter it appears that redemption (no proof for the same was submitted by any of the Noticees) of *RPS* had happened i.e. decrease in amount outstanding in the financial year 2008-09 and 2009-10, and thereafter remained constant till FY 2011-12 and then became

nil in FY 2012-13. Further, I note that Annual Return of FY 2005-06 and 2006-07 does not indicate the number of preference shareholders / allottees / investors to whom the 1,01,240 RPS was allotted, however, Annual Return of FY 2007-08 indicate that the 1,01,240 RPS outstanding as on March 31, 2008 was allotted to 7,545 shareholder / allottees / investors. I note that the number of RPS outstanding as on March 31, 2006, March 31, 2007 and March 31, 2008 remains same and number of preference shareholders / allottees / investors was disclosed by QBRL only in the FY 2007-08 i.e. as on March 31, 2008. Thus, I am of the view that QBRL had issued and allotted 1,01,240 RPS in the FY 2005-06 to 7,545 shareholder / allottees / investors. Hence, the period of issuance and allotment of RPS was FY 2005-06.

21. It is also noted that interim order dated February 10, 2016 alleged that during FY 2012-13 QBRL claimed through its annual return, that RPS and amount outstanding as on March 31, 2013 was nil. However, from the balance sheet of QBRL for FY 2012-13, it is noted that during the FY 2012-13, QBRL claimed to have redeemed 13,488 preference shares, even though, no proof of evidence was submitted by QBRL and its directors in that regard.

22. I therefore conclude that QBRL came out with an offer of RPS as outlined above.

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

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



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

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

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

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

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

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

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

24. 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.”*

25. 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*.

26. In the instant matter, I find that QBRL made an issuance of RPS to 7,545 investors and as on March 31, 2006 had a nominal outstanding amount of ₹ 10.12 Crores. The above findings lead to a reasonable conclusion that the *Offer of RPS* by QBRL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956. However, the claimed entry in Annual Return of QBRL for the financial year 2012-13 for the period ending on March 31, 2013 showing “Nil” RPS cannot be considered as an evidence of repayment / redemption as no proof of payment was submitted by QBRL or any of the Noticees to SEBI.

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

28. Neither QBRL nor its directors have contended that the *Offer of RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
29. 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*".
30. Therefore, in view of the material available on record, I find that the *Offer of RPS* by QBRL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS* are deemed to be public issues and QBRL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
31. Further, since the offer of RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the

Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

32. The allegations of non-compliance of the above provisions were not denied by QBRL 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 QBRL has contravened the said provisions. QBRL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that QBRL 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.

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

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

35. I note that the offer and allotment of Equity Shares and the offer and allotment of Redeemable Preference Shares during the Financial Year 2005–06 were made while the SEBI (Disclosure and Investment Protection) Guidelines, 2000 (“DIP Guidelines”) were in force. Clause 1.4 of the DIP Guidelines makes the provisions contained therein applicable to all ‘public issues’ by listed or unlisted companies. ‘Public issue’ is defined in Clause 1.2(xxiii) to mean “an invitation by a company to public to subscribe to the securities offered through a prospectus.” This definition read with the provisions of the Companies Act cited earlier in this Order, makes it clear that DIP Guidelines would apply to a public offer of Redeemable Preference Shares as well. The applicability of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 which came into force on August 26, 2009 and which repealed the DIP Guidelines is limited to equity shares and convertible securities. Therefore, allotments of redeemable preference shares till August 26, 2009, would be subject to the provisions of DIP Guidelines. Therefore, I hold that the Company was also required to comply with the following provisions of the DIP Guidelines read with regulation 111 of the ICDR Regulations in respect of the offer and allotments made during FY 2005–06:

- a. Clause 2.1.1. – (Filing of offer document);*
- b. Clause 2.1.4 – (Application for listing);*
- c. Clause 2.1.5 – (Issue of securities in dematerialized form),*
- d. Clause 2.8 – (Means of finance),*
- e. Clause 4.1 – (Promoters contribution in a public issue by unlisted companies),*
- f. Clause 4.11 – (Lock-in of minimum specified promoters contribution in public issues),*
- g. Clause 4.14 – (Lock-In of pre-issue share capital of an unlisted company)*
- h. Clause 5.3.1 – (Memorandum of understanding),*
- i. Clause 5.3.3 – (Due Diligence Certificate)*
- j. Clause 5.3.5 – (Undertaking),*
- k. Clause 5.3.6 – (List Of Promoters Group And Other Details),*
- l. Clause 5.4 – (Appointment of intermediaries),*
- m. Clause 5.6 – (Offer document to be made public),*
- n. Clause 5.6A – (Pre-issue Advertisement),*
- o. Clause 5.7 – (Despatch of issue material),*
- p. Clause 5.8 – (No complaints certificate),*
- q. Clause 5.9 – [Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)],*
- r. Clause 5.10 – (Authorised Collection Agents),*
- s. Clause 5.12.1 – (Appointment of compliance officer),*
- t. Clause 5.13 – (Abridged prospectus),*
- u. Clause 6.0 – (Contents of offer documents),*
- v. Clause 8.3 – (Rule 19(2)(b) of SC(R) Rules, 1957),*
- w. Clause 8.8.1 – (Opening & closing date of subscription of securities),*
- x. Clause 9 – (Guidelines on advertisements by Issuer Company),*
- y. Clause 10.1 – (Requirement of credit rating),*
- z. Clause 10.5 – (Redemption).*

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

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

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

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

37. 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"*



38. 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...”*

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

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

40. With respect to the appointment, resignation and tenure of the directors in QBRL,

following submissions are made by the Noticees:

- 40.1. Shri Vishwa Bandhu Vashista submitted that he had never associated with QBRL. He was never been the director of any Company and have never given consent to become Director in any Company. His signature was forged for making him a Director.
  - 40.2. Shri Arvind Tiwari submitted 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 mala fide intentions at the time of redemption of shares and his appointment as an Additional Director in QBRL was through his forged signature and without his consent.
  - 40.3. Shri Chhotelal Shukla submitted that Shri Prithi Paul Singh Sethi has taken his documents for the purpose of Provident Fund and has taken his signatures on blank papers. He further submitted that he had not signed on any documents of QBRL and his signatures was forged in documents of QBRL.
  - 40.4. Shri Deena Nath Maurya submitted that he has never heard about QBRL, has never worked in QBRL and also has never signed on any paper of QBRL. He further submitted that his name as director in QBRL was added in wrong way by Dr. Prithi Paul Singh Sethi and Shri Atul Chaudhary. His signatures was forged in documents of the company.
  - 40.5. Shri Rajesh Kumar Sharma, Shri Kishan Pal Singh, Shri Mukesh Kumar Khare, Shri Pashupati Nath Dixit and Shri Ramendra Prasad Sharma have not submitted any reply in the matter. Hence they have not disputed their appointment, resignation and tenure of their being the director in QBRL.
41. I note that Shri Rajesh Kumar Sharma, Shri Kishan Pal Singh, Shri Mukesh Kumar Khare, Shri Pashupati Nath Dixit and Shri Ramendra Prasad Sharma in QBRL have not disputed their tenure of directorship in the company as found in the Interim Order.

42. From the submission of the Noticees, it appears that Shri Vishwa Bandhu Vashishta, Shri Arvind Tiwari, Shri Chhotelal Shukla and Shri Deena Nath Maurya have alleged forgery. 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, 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*".

43. Therefore, I am of the considered view that Shri Vishwa Bandhu Vashishta, Shri Arvind Tiwari, Shri Chhotelal Shukla and Shri Deena Nath Maurya may be granted 365 days' time to obtain appropriate order from the competent authority with respect to their allegation of forgery, for submission before SEBI by the said entities. The said order, if any, shall reach SEBI within 365 days from the date of this order. Till that time the directions against Shri Vishwa Bandhu Vashishta, Shri Arvind Tiwari, Shri Chhotelal Shukla and Shri Deena Nath Maurya passed in this order shall not take effect and directions passed vide interim order dated February 10, 2016 shall continue to be in force. Pending such determination, I am compelled to accept the MCA records and their tenure of directorship in QBRL as mentioned below.

44. The details of the appointment and resignation of the directors are as follows:

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*Order in the matter of M/s Q & B Retail Limited (Earlier Known as "M/s Basil Express Limited")*

<b>Sr. No.</b>	<b>Name of the Director</b>	<b>Date of Appointment</b>	<b>Date of Resignation</b>
1	Shri Rajesh Kumar Sharma	July 25, 2006	February 02, 2015
2	Shri Kishan Pal Singh	September 02, 2008	February 12, 2015
3	Shri Chhotelal Shukla	August 03, 2009	February 12, 2015
4	Shri Vishwa Bandhu Vashishta	March 01, 2012	February 12, 2015
5	Shri Deena Nath Maurya	March 01, 2012	February 12, 2015
6	Shri Mukesh Kumar Khare	April 22, 2013	February 12, 2015
7	Shri Arvind Tiwari	January 29, 2015	April 13, 2016
8	Shri Pashupati Nath Dixit	January 29, 2015	Continuing
9	Shri Ramendra Prasad Sharma	January 29, 2015	February 03, 2015

45. From the documents available on record, I note that Shri Rajesh Kumar Sharma, Shri Kishan Pal Singh, Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya, Shri Mukesh Kumar Khare, Shri Arvind Tiwari and Shri Ramendra Prasad Sharma who were earlier Directors in QBRL, have since resigned. Shri Pashupati Nath Dixit is continuing to be directors in QBRL.

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

47. 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%. Therefore I hold that QBRL is liable to refund the money along with interest at prescribed rate.

48. 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.

49. 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....”*

50. Further, it is pertinent to note the observation of Hon’ble SAT vide Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, that:

*“..... In view of the fact that out of the amount of Rs.99.06 lakh, amount of Rs.59.06 lakh was collected by BREDL after the appellant ceased to be a Director of BREDL, counsel for SEBI fairly stated on instruction that the obligation of the appellant to refund the amount with interest jointly and severally with BREDL and other Directors set out in the impugned order may be limited to Rs.40 lakh only, because, that was the amount collected by BREDL during the period when the appellant was a Director of BREDL.....*

*....Section 5 of the Companies Act, 1956 defines the expression ‘officer who is in default’ to mean the officers named therein. Section 5(g) provides that where any company does not have any of the officers specified in clauses (a) to (c) of Section 5, then any director who may be specified by the Board in that behalf or where no director is so specified then all the directors would be “officer who is in default”. In the present case, no material is*

*brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 or any specified director of BREDL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. In such a case, as per Section 5(g) of the Companies Act, 1956 BREDL and all the directors of BREDL are liable....*

*Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956. Admittedly, the appellant was a director of BREDL when amounts were collected by BREDL in contravention of the public issue norms and there is nothing on record to suggest that any particular officer/director was authorised to comply with the public issue norms. In such a case, all directors of BREDL including the appellant would be “officer in default” under Section 73(2) read with Section 5 of the Companies Act, 1956....”*

51. In view of Hon’ble SAT Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the officer in default to refund the amount with interest jointly and severally with the Company and other officer in default are limited to the extent of amount collected during his/her tenure as officer in default of the Company.

52. At paragraph 20 above I held that QBRL had issued and allotted RPS in the FY 2005-06, and as on March 31, 2006 QBRL had nominal outstanding amount of ₹10.12 Crores through the issuance of RPS from at least 7,545 investors. From the material available on record and the details of the appointment and resignation of the directors of GRAPL as reproduced in paragraph 44 of this Order, it is noted that Shri Rajesh Kumar Sharma, Shri

Kishan Pal Singh, Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Pashupati Nath Dixit and Shri Ramendra Prasad Sharma were appointed as director in QBRL subsequent to the issuance and allotment of RPS i.e. they were not the directors in QBRL during the period of issuance and allotment of RPS. Hence, in view of Hon'ble SAT order in the matter of *Manoj Agarwal vs. SEBI*, all the Noticees i.e. Shri Rajesh Kumar Sharma, Shri Kishan Pal Singh, Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Pashupati Nath Dixit and Shri Ramendra Prasad Sharma are not liable for refund.

53. It is noted that the interim order has proceeded on the basis that the issuance period of RPS was FY 2005-2006, 2006-2007 and 2007-2008 and accordingly the interim order cum show cause notice observed why the directors mentioned therein cannot be directed to refund the amount collected by the Company. However, for reasons described above, I held that issuance of RPS by QBRL was only in FY 2005-2006. Accordingly only those officers in default in FY 2005-2006 would become liable for refund. Since the Noticees in the present proceedings are not officer in default, SEBI shall re-investigate and determine liability of those officer/s in default during period of issuance and allotment of RPS i.e. in FY 2005-06 and initiate fresh proceedings against the officers in default.

54. Further, the claimed entry in Annual Return of QBRL for the financial year 2012-13 for the period ending on March 31, 2013 showing "Nil" RPS cannot be considered as an evidence of repayment / redemption as no proof of payment was submitted by any of the Noticees.

55. 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.”*

56. Hon’ble Supreme Court of India vide order dated April 26, 2013 in the matter of *N Narayanan Vs. Adjudicating Officer, Sebi* observed that:

*“.....*

*33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence.....”*

57. 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 Rajesh Kumar Sharma, Shri Kishan Pal Singh, Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya, Shri Mukesh Kumar Khare,

Shri Arvind Tiwari, Shri Pashupati Nath Dixit and Shri Ramendra Prasad Sharma was also be responsible for all the deeds/acts of the Company during the period of their directorship.

58. It is noted that the liability to repay is a statutory liability under section 73(2) of the Companies Act, which mandates the repayment to be made forthwith. The present order only enforces the pre-existing liability of the company and other officers in default to repay along with interest. It is an additional liability of every director on behalf of the company to ensure that the Company complies with the obligation under section 73(2) of Companies Act, 1956 forthwith. One may argue that the liability of the Company is crystalized only by virtue of an Order by SEBI, therefore, till then there was no liability on the Company and therefore, on the directors. If such argument is accepted, all the legal obligations and compliance requirements pose the risk of being not discharged or postponed on the pretext of non-crystallization. Also, it would make the compliance of regulatory/statutory requirement imposed on the Companies bereft of clarity and incentivize delay in compliance of statutory obligation by the Companies until such non-compliance is enforced through proceedings such as this. If the Board of Directors of a Company cannot be considered to be liable to ensure the legal obligations cast upon a Company, there would be no human instrumentality for discharge of such legal obligations on behalf of the company. Considering the fact that QBRL has not complied with its obligation to repay the amounts collected in violation of deemed public issue and such liability is continuing, I find that the same can only be ensured by its directors.

59. It is noted that in light of the continued non-compliance of refund liability by QBRL, Shri Rajesh Kumar Sharma, Shri Kishan Pal Singh, Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Pashupati Nath Dixit and Shri Ramendra Prasad Sharma who joined QBRL subsequent to the issuance and allotment of RPS were obligated to ensure compliance of the refund during their respective tenure.

60. Therefore in view of QBRL's continued violation of its refund obligation, Shri Rajesh Kumar Sharma, Shri Kishan Pal Singh, Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Pashupati Nath Dixit and Shri Ramendra Prasad Sharma as directors of QBRL, during their tenure of directorship, were responsible to ensure that QBRL makes refund to the allottees with interest. They have failed to ensure the timely refund to the investors by QBRL 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.
61. 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 QBRL 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.
62. I also note that, vide the interim order dated February 10, 2016, following direction were also issued:
- 62.1. QBRL was directed to provide a full inventory of all the assets and properties belonging to the Company.
  - 62.2. The Directors of QBRL were also directed to provide an inventory of assets and properties belonging to them.
  - 62.3. QBRL was directed to provide to SEBI:
    - 62.3.1. Details of the repayment, if any made to the investors, as on date, duly certified by an independent auditors,
    - 62.3.2. Names, addresses and contact numbers of the investors who have been repaid,

62.3.3. Mode of payments,

62.3.4. Documents to prove redemption of preference shares, made by QBRL / Basil Express.

63. The above information were required to be filed within 14 days of the receipt of the order. However, I find that no such information has been provided either by QBRL or the other Noticees.

64. In view of the discussion above, appropriate action in accordance with law needs to be initiated against QBRL and its Directors viz. Shri Rajesh Kumar Sharma, Shri Kishan Pal Singh, Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya, Shri Mukesh Kumar Khare, Shri Arvind Tiwari, Shri Pashupati Nath Dixit and Shri Ramendra Prasad Sharma.

### **ORDER**

65. 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:

65.1. QBRL shall forthwith refund, to the investors, the money collected by the Company, through the issuance of RPS (including the application money collected from investors, 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.

65.2. 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.

- 65.3. QBRL and its present Directors (on behalf of the Company) 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.
- 65.4. QBRL and its present Directors (on behalf of the Company) 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.
- 65.5. QBRL, its present Directors (on behalf of the Company), 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.
- 65.6. After completing the aforesaid repayments, QBRL, its present Directors (on behalf of the Company), 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.
- 65.7. In case of failure of QBRL 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 in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

- 65.8. QBRL is 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.
- 65.9. Shri Rajesh Kumar Sharma, Shri Kishan Pal Singh, Shri Mukesh Kumar Khare, Shri Pashupati Nath Dixit and Shri Ramendra Prasad Sharma are 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.
- 65.10. Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya and Shri Arvind Tiwari are 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, subject to paragraph 65.11, on the expiry of three hundred and sixty fifth (365) day of this order.
- 65.11. If the order of the Competent Authority in respect of forgery, is not produced by

Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya and Shri Arvind Tiwari, within such 365 days, or, if produced within such period, the same is not in favour of Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya and Shri Arvind Tiwari, then the direction as per paragraph 65.10 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 February 10, 2016 shall be in force. The direction at paragraph 65.10 shall not take effect, if the order of the Competent Authority is produced within such period and the same is in favour of Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashishta, Shri Deena Nath Maurya and Shri Arvind Tiwari. Till that time the directions passed against these entities vide the interim order dated February 10, 2016 shall be in force.

65.12. 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.

65.13. The above directions shall come into force with immediate effect unless otherwise specified in the sub paragraphs of paragraph 65 of this order.

66. 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 65 excluding paragraph 65.3, 65.8 to 65.12 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.

67. SEBI shall re-investigate and determine the liability of those officer/s in default during

period of issuance and allotment of RPS i.e. in FY 2005-06 and initiate fresh proceedings against the officer in default.

68. Copy of this order shall be sent to all the Noticees

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

70. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action.

-Sd-

**DATE: JUNE 27, 2019**

**PLACE: MUMBAI**

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