

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Section 12A of the Securities Contracts (Regulation) Act, 1956 in the matter of non-compliance with the requirement of minimum public shareholding by DPSC Limited (now known as India Power Corporation Ltd)-

In respect of the representations filed by Mr. Nanda Gopan Khaitan, Mr. Amit Kiran Deb, Mr. Debi Prasad Patra and Mr. Tantra Narayan Thakur.

1. The Hon'ble Securities Appellate Tribunal ("**SAT**") vide Order dated December 08, 2016 *inter alia* directed the Securities and Exchange Board of India (**SEBI**) to dispose of the representations filed by four of the non-executive independent directors of DPSC Ltd. (formerly known as Dishergarh Power Supply Company Ltd. and now known as India Power Corporation Ltd) (hereinafter referred to as "**DPSC**"), viz. Mr. Nanda Gopan Khaitan (**Khaitan**), Mr. Amit Kiran Deb (**Deb**), Mr. Debi Prasad Patra (**Patra**) and Mr. Tantra Narayan Thakur (**Thakur**) (hereinafter referred collectively as "**Noticees**" and individually by their respective names).

Brief Background of the Case-

- 2.1 DPSC was incorporated on July 02, 1919 under the Indian Companies Act, 1913. DPSC was primarily engaged in the business of generation, distribution and supply of electrical energy and matters incidental thereto. The equity shares of DPSC are listed on the National Stock Exchange (**NSE**), the Calcutta Stock Exchange Limited (**CSE**) and the MCX Stock Exchange Limited (**MCX**). The details of the Board of Directors of DPSC as observed from the Annual Report 2013-2014 are as under:

Serial No.	Members of Board of Directors	Designation
1.	Mr. Hemant Kanoria	<i>Non-executive Chairman</i>
2.	Mr. Sunil Kanoria	<i>Non-Executive Director</i>
3.	Mr. Debi Prasad Patra (Noticee)	<i>Non-Executive Independent Director</i>
4.	Mr. Jyoti Kumar Poddar	<i>Non-Executive Independent Director</i>
5.	Mr. Nanda Gopan Khaitan (Noticee)	<i>Non-Executive Independent Director</i>
6.	Mr. Amit Kiran Deb (Noticee)	<i>Non-Executive Independent Director</i>
7.	Mr. Sunirmal Talukdar	<i>Non-Executive Independent Director</i>
8.	Mr. Tantra Narayan Thakur (Noticee)	<i>Non-Executive Independent Director</i>

2.2 The shareholding of DPSC as on March 31, 2013 (as noted from the Annual Report 2012-2013 of DPSC) are as under:

Category	No. of shares held	% of shareholding
Promoter*	90,56,48,230	93.00
Public**	6,81,41,410	7.00
Total	97,37,89,640	100.00

* India Power Corporation Ltd.

** Institutions (0.12%) and Non-institutions (6.87%)

2.3 Vide Order dated April 17, 2013 the Hon'ble High Court of Kolkata approved a Scheme of Arrangement in the matter of DPSC. As per the said Scheme-

- India Power Corporation Ltd. (**IPCL**), an unlisted sole promoter entity of DPSC, which held 93% of the shareholding in DPSC had transferred 24.69% of equity shares of DPSC to an irrevocable investment trust, *viz.* Power Trust, having independent trustees.
- Thereafter, IPCL amalgamated with DPSC,
- The name of DPSC was changed to India Power Corporation Ltd. under Section 21 of the Companies Act, 1956 and other relevant provisions of the Act.

2.4 Subsequent to the transfer of shares by IPCL to the Power Trust, DPSC had been filing its shareholding pattern with the stock exchanges *inter alia* disclosing the promoter shareholding as 68.31% and public shareholding as 31.69%. DPSC vide letter dated June 03, 2013, addressed to NSE, Calcutta Stock exchange and MCX-Stock Exchange (a copy of which was marked to SEBI) informed that by the said transfer by IPCL of 24.69% equity share capital comprising of 24,04,28,662

equity shares of Re. 1 each to an irrevocable investment trust (Power Trust) resulted in the reduction of the promoter shareholding of DPSC from 93% to 68.31% and the public shareholding has increased from 7% to 31.69%. Accordingly, DPSC asserted that they achieved the MPS requirement on May 30, 2013.

The shareholding pattern of DPSC for the quarter ending on June 2013 post amalgamation (as observed from the NSE website) was as under:

Category	No. of shares held	% of shareholding
Promoter	66,52,19,568	68.31
Public*	30,85,70,072	31.69
Total	97,37,89,640	100.00

**The shareholding of the Power Trust (24.69%) in DPSC is also included in the Public Category*

2.5 Thereafter, on June 04, 2013 SEBI passed an *interim order* (hereinafter referred to as the '**interim order**') against 105 listed companies and their promoters/directors including DPSC and its promoters/directors (including the aforesaid 4 independent directors/Noticees), who did not comply with the Minimum Public Shareholding ('**MPS**') norms as stipulated under Rules 19(2) (b) and 19A of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as '**SCRR**') within the due date i.e., June 03, 2013. In terms of the said rule, listed companies are statutorily mandated to have a minimum of 25% shareholding by the public. The *interim order* was passed without prejudice to the right of SEBI to take any other action, against the non-compliant companies, their promoters and/or directors or issuing such directions in accordance with law. Vide the said *interim Order*, SEBI *inter alia* directed as under:

- a. "freezing of voting rights and corporate benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding in the above mentioned non-compliant companies, till such time these companies comply with the minimum public shareholding requirement.
- b. prohibit the promoters/ promoter group and directors of these non-compliant companies from buying, selling or otherwise dealing in securities of their respective companies, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time these companies comply with the minimum public shareholding requirement.

- c. *restrain the shareholders forming part of the promoter/promoter group in the non-compliant companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement;*
- d. *restrain the directors of non-compliant companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement.”*

2.6 Subsequent to this, DPSC vide letter dated June 05, 2013 stated that they have complied with MPS requirement pursuant to approval of Scheme of Arrangement and Amalgamation by Hon’ble High Court of Kolkata. They also submitted that the promoter shareholding has reduced from 93% to 68.31% pursuant to said scheme. Vide the said letter they requested for an opportunity of personal hearing. Accordingly, an opportunity of hearing was granted to them on August 05, 2013. On the basis of the submissions made by DPSC, it was decided to seek clarification from the Hon’ble H.C. of Kolkata (as the said Scheme was approved by the Hon’ble H.C. of Kolkata).

2.7 In December 2013, SEBI filed an Application (C.A. No. 565 of 2013) before the Hon’ble H.C. of Kolkata seeking modification of the Order dated April 17, 2013 passed by the Court (approving the Scheme) and also seeking amendment of Clause 3.3.3 of the said scheme, which violated the Rule 19(2)(b) and Rule 19A of the SCRR relating to the MPS requirement. Clause 3.3.3 provides:

- *“Trustees of Power Trust will hold the Investment Division of IPCL in an irrevocable trust and shall also manage the Power Trust in an independent manner, and*
- *Trustees will constitute members of public as defined under the SCRR, 1957 in relation to any and all the investments held by Power Trust.”*

2.8 SEBI, in the said Application submitted that the shareholding of the Trust to the extent of 24.69% in IPCL cannot be construed as “Public Shareholding” and same has to be treated as part of “Promoter Shareholding”. DPSC therefore cannot be said to have achieved the MPS requirement.

2.9 Thereafter, the Hon’ble High Court of Kolkata vide interim Order dated February 20, 2015 granted injunction restraining the shares in DPSC from being dealt with in any manner. Vide the said Order Court also observed:

“Since it, prima facie, appears that despite several opportunities being granted to the petitioners to make the scheme and the trust conform to the legal requirements, since the representation on behalf of the Central Government at the relevant time was ineffective, the Court may have been deceived into approving the scheme and the trust, let no further effect be given to the order sanctioning the scheme or the trust.”

2.10 While the matter was sub- judice before the Hon’ble High Court of Kolkata, SEBI received some representations from the aforesaid 4 of the non-executive independent directors (Noticees) of DPSC, viz. Khaitan (representations dated October 17, 2015 and February 16, 2016), Deb (representations dated October 19, 2015 and February 11, 2016), Patra (representations dated October 19, 2015 and February 11, 2016) and Thakur (representations dated October 30, 2015 and February 12, 2016). Vide the respective representations, they *inter alia* submitted as under:

- They have nothing to do with the day to day management of DPSC,
- As non-executive independent directors of DPSC, they participate/used to participate in the meetings of the board of directors of DPSC.
- Khaitan, Deb, Patra and Thakur are acting as independent directors of DPSC since January 29, 2010, February 05, 2010, January 29, 2010 and May 29, 2013 respectively
- Due to the restrictions imposed by SEBI vide interim Order dated June 04, 2013, they have to continuously reject the opportunities of the new directorship for them.
- Therefore, the said directors have requested that the aforesaid SEBI Order be vacated against them.
- They have further requested for personal hearing in this respect.

2.11 In response to this, SEBI vide e-mail dated April 22, 2016 informed the said directors that their request was being examined.

2.12 Thereafter, on September 28, 2016, the aforesaid 4 independent directors filed separate appeals before the Hon’ble SAT *inter alia* seeking the following reliefs:

- *To set aside and/or quash and/or modify the impugned order dated June 4, 2013 passed by the respondent, to the extent the same prevents the independent directors of IPCL which includes the Appellant, from becoming directors of other listed companies,*
- *Appropriate directions be passed to the effect that the impugned Order dated June 04, 2013 passed by the Respondent in relation to the compliance by the listed companies with the requirement of MPS, are not applicable to the independent directors of DPSC.*

2.13 The Hon'ble SAT vide Order dated December 08, 2016, (mentioned in Paragraph No. 1 above), *inter alia* directed SEBI to hear and dispose of the representations filed by the 4 independent directors of DPSC, on merits, in accordance with law as expeditiously as possible.

2.14 In the meanwhile, the Hon'ble H.C. of Kolkata vide Order dated January 27, 2017 disposed of the Application filed by SEBI (C.A. No. 565 of 2013 mentioned in Paragraph No. 2.7 above). Vide the said Order the Court directed as under:

- *The Power Trust holds 40% of the shares in DPSC. 4.32% of the paid up capital in DPSC is held by public. For DPSC to reach 25% minimum public shareholding requirement as stipulated under Rules 19(2) (b) and 19A of the SCRR, a further 20.68% (32,63,16,563 shares) of shares need to be sold to the public. Such shares should be sold in several tranches as long as the entire quantum (32,63,16,563 shares) is sold by April 30, 2017,*
- *The Trust should transfer balance shares (other than the aforesaid 32,63,16,563 shares), held by it in DPSC, in favour of other entities as the trust may, on its own or at the direction of the promoters, deem fit. Such transfer should be completed by March 31, 2017, such that upon sale of the shares (32,63,16,563 shares) to the public, the trust does not own or control any further shares in DPSC.*
- *The trust will cite this Order and make a public offer for sale of the said 32,63,16,563 shares. The interim Order dated February 20, 2015 passed by the Court restraining DPSC from dealing with its shares, is accordingly modified. However, **the interim Order will continue for all other purposes till such time that the trust transfers the balance shares to other entities and the shares meant to be sold to the public are sold.***

3.1 SEBI in compliance with the Hon'ble SAT order dated December 08, 2016, as detailed in Paragraph No. 1 and 2.13 above, granted an opportunity of personal hearing to all the 4 independent directors on February 15, 2017. On the said date the parties appeared before me and made their respective submissions. During the hearing, the Noticees were directed as under-

- *File an undertaking to the effect that DPSC will comply with the MPS requirement before April 30, 2017, as directed by the Hon'ble High Court of Kolkata vide Order dated January 27, 2017 [mentioned in the Paragraph No. 2.14 above].*
- *After complying with the aforesaid MPS requirement by DPSC, a compliance report to that effect shall be filed with SEBI.*

3.2 Thereafter, the parties filed their respective written submissions. The details of the same are as under:

i. Khaitan vide letters dated April 06, 2017 and May 11, 2017 filed his reply, wherein he stated as under:

- *"The undersigned is an independent director since January 29, 2010,*
- *Pursuant to the directions of the Hon'ble High Court at Kolkata [on January 27, 2017], the Power Trust has launched the OFS (as approved by SEBI) on both BSE Limited and National Stock Exchange of India Limited, with BSE Limited being the designated stock exchange,*
- *As, the OFS has been made by Power Trust {having Court approved trustees), therefore, it is for the Trust to complete the OFS in consonance with the directions of the Hon'ble Kolkata High Court. In this context it is reiterated, as also stated in my earlier submissions that the undersigned is an independent director and has no role to play in the affairs of the Power Trust or OFS launched by the Power Trust.*

ii. Deb vide letter dated April 6, 2017 stated as under:

- *The undersigned (holder of DIN 02107792) is an independent director since February 05, 2010 of India Power Corporation Limited (formerly DPSC Limited).*

iii. Patra vide letter April 6, 2017 stated as under:

- *The undersigned (holder of DIN 00067269) is an independent director since January 29, 2010 of India Power Corporation Limited (formerly DPSC Limited,*

iv. Thakur vide letter dated April 6, 2017 stated as under:

- *“The undersigned (holder of DIN 00024322) is an independent director since 27th May 2013 of India Power Corporation Limited (formerly DPSC limited)*
- *I have been informed by the Company Secretary of IPCL (erstwhile DPSC Limited) on 5th April 2017 that pursuant to Hon'ble High Court at Kolkata order dated 27.01.2017, Power Trust will offer for Sale 32, 63, 16, 563 ES of IPCL (formerly known as DPSC Limited) which will open for Sale in BSE & NSE tomorrow (6th April 2017) for Non-Retail Investors from 9.15 am to 3.30 pm and day after for Retail and Roll over Non-Retail Investors, Floor Price being Rs.41/- per share.”*

3.2.1 Common submissions of the four Noticees are as under:-

- *“The Honorable High Court at Kolkata giving effect to the Scheme shall have an overriding effect on the said Interim Order with regard to the shareholding of IPCL (earlier DPSC). The Honorable High Court at Kolkata has duly considered the shareholding of the Power Trust in IPCL (earlier DPSC) to be "public" in nature and has accordingly passed the order sanctioning the said Scheme. I was given to understand that the Order of the Hon'ble H.C. at Kolkata giving effect to the Scheme shall have an overriding effect on the said interim order of SEBI. I understand that the Hon'ble H.C. had duly considered the shareholding of the Power Trust in IPCL (erstwhile DPSC) to be “Public” in nature and had accordingly passed the Order sanctioning the said scheme,*
- *In the instant case, the said Scheme of merger was prepared by Amarchand & Mangaldas & Suresh A. Shroff & Co., which is undoubtedly one of the leading solicitor/ law firms of our country. Further the legality of PART III of the Scheme, which dealt with the transfer of equity shares of IPCL and/or other companies to an Investment Trust (under the name Power Trust) is validly bolstered by the fact that SEBI had in some cases, including a matter of WIPRO approved a similar scheme without hindrances. In case of WIPRO, a Trust has been held to be a public shareholder by SEBI. The undersigned was duly advised that no portion of the Scheme could be held to fall afoul of the laws of the land in view of an already existing precedence. The Scheme therefore had the vetting of the best legal minds in the country and was also approved by the Kolkata High Court without demur of any nature, whatsoever.*
- *I was informed by the Company that SEBI had thereafter, on or about December 12, 2013 filed Company Application No 565 of 2013 in Company Petition No 206 of 2012 connected with Company Application No*

363 of 2012, before the Honorable High Court at Kolkata, where SEBI has not only sought for modification of the order of the Honorable High Court at Kolkata sanctioning the said Scheme, but has also inter alia sought amendment of Clause 3.3.3 of the said Scheme, which states that as the trustees of the Power Trust will hold the investment division of IPCL (the transferor company) in an irrevocable trust (the Power Trust) SEBI has also sought, that a clarification should be made by the said Court to the effect that clause 3.3.3 cannot be used for flouting/ violation of Rule 19(2) b and 19A of the Securities Contract (Regulation) Rules, relating to minimum public shareholding. The disposal of this matter is pending with the Hon'ble High Court, Kolkata.

- The grievance of the undersigned however stems from the direction of SEBI which prohibits/restrains all the directors of the non-compliant companies (and which includes IPCL (formerly DPSC)) from holding any new position as director in any listed company till such time the IPCL (formerly DPSC) complies with the MPS requirement, without looking into the roles and responsibilities of the directors under the necessary corporate actions undertaken by the IPCL (formerly DPSC) and/or as prescribed by the statutes. the undersigned states that there was not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by SEBI, that the offence/s alleged were resultant of the collective actions of all the directors of IPCL (formerly DPSC) and an unreasonable inference was further drawn making all the directors (which includes the undersigned as well) of PCL (formerly DPSC) vicariously liable.
- While neither the Equity Listing Agreement nor the Companies Act of 1956 prescribed the scope of duties of independent directors vis-a-vis the executive directors, especially at the time of sanctioning the Scheme, the undersigned would like to state that independent directors are repositories of vigilance intended to ensure that the promoters and executive directors carry on the activities of the company in conformity with the interests of the shareholders as a whole and not more. Alternatively, independent directors are strategic advisers to the board, critical to maximizing revenue and overall value of the company with research showing that independent directors tend to perform an advisory (rather than a supervisory) role in a company. The undersigned in the present case being independent directors could at the most ensure that "experts" were handling the preparation of the scheme and its implementation and acting in diligence for the benefit of the company, which the undersigned in the deepest respect submits that he did.
- While SEBI may be within their rights to question a scheme or a portion of the same even after sanction by a court, punitive action against independent directors of a company and preventing them from taking up directorships in any other listed companies till IPCL complies with the MPS requirement is quite unjustified, also keeping in mind that the Interim Order is only an interim one and not final.

- *The undersigned submits that being an independent director of IPCL (formerly DPSC Limited), the undersigned had fulfilled all its fiduciary duties to IPCL (formerly DPSC) which are expected of independent directors under the applicable laws of the land enforceable at the time of grant of sanction and earlier.*
- *In this regard please note that the directions [vide order dated January 27, 2017] of the Hon'ble High Court at Kolkata is on the Trust to sell the shares of IPCL held by it and I have been duly informed upon due inquiry that SEBI has approved the draft advertisement for OFS and the Trust has launched the OFS on both BSE Limited and The National Stock Exchange of India Limited, with BSE Limited being the designated stock exchange. ... The undersigned has personally looked up the websites of BSE Limited and the National Stock Exchange of India Limited regarding the launched OFS and extracts from the same are enclosed. However, at the cost of repetition, please note that the undersigned has no role or responsibility so far as the sale of shares of IPCL held by the Trust are concerned. The trust is managed by a set of independent trustees.*
- *During the said relevant period as non-Executive Independent Director of the said Company, the undersigned had nothing to do with the day to day management of the said Company or its affairs or any of its departments nor the undersigned had control over or knowledge of day to day working and management of the affairs of the Company nor was the undersigned in charge of or responsible to the Company for the conduct of its day to-day business in any manner. As a non- Executive Independent Director the undersigned used to participate, whenever possible, in the meetings of the board of directors of the Company. The undersigned humbly reiterates that because of the restrictions imposed by your good offices vide the said Interim Order, the undersigned has to continuously reject the opportunities of new directorships coming from eminent names of corporate India and such continuous rejection of offers of directorships may not go down well with the corporate world of India and can create professional hardships for the undersigned.*
- *SEBI's disregard of the rightful duties and obligations discharged by the undersigned and that too in a lawful manner, has in several ways harmed the reputation of the undersigned, in every manner possible. The undersigned has also failed to understand as to how SEBI without any regard to the filings made by DPSC (now IPCL) and/ or IPCL (formerly DPSC) with the stock exchanges, etc. has assumed the involvement of the undersigned in a grave allegation and more so when nothing was produced to substantiate the contention that the undersigned was instrumental and responsible for the conduct of the business of IPCL (formerly DPSC) at the relevant time. The undersigned would also like to state that IPCL (formerly DPSC) is a professionally managed public limited company and SEBI's Interim Order has raised questions/doubts on the neutrality of the undersigned in discharging*

his duties and obligations as an independent director and in such case, the undersigned requests SEBI to consider the foregoing pleadings and vacate the operation of the said Interim Order vis-a-vis the undersigned.

- *In the circumstances, it is most respectfully and humbly submitted that the charges in the said Order be dropped.I as an independent director, having no role to play in the alleged violation and not having even a single share of the Company, have already suffered immensely, both professionally and reputationally.”*

4.1 I have considered the aforesaid representations filed by the Noticees, their oral and written submissions and other material available on record.

4.2 I note that the *interim* order was issued against DPSC, its promoters/ promoter group and directors as they were non-compliant with the provisions of Rule 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of the SCRA, by not maintaining the minimum level (of 25%) of public shareholding as of June 03, 2013.

5.1 I note that the Noticees are members the Board of Directors of DPSC as non-executive independent directors. The details of their appointment as observed from the Annual Report of DPSC for FY 2010-2011, 2011-2012 and 2012-2013 are as follows:

Serial No.	Name of the Director	Appointment Date
1.	Khaitan	January 29, 2010
2.	Deb	February 05, 2010
3.	Patra	January 29, 2010
4.	Thakur	May 27, 2013

5.2 From the aforementioned Table, it is noted that three of the aforesaid directors, *viz.*, Khaitan, Deb and Patra were admittedly members of the Board of Directors of DPSC since 2010. Thakur joined the Board of DPSC on May 27, 2013.

5.3 It is relevant to note that as per the Annual Reports of DPSC, three of the Noticees, *viz.* Khaitan, Deb and Patra were part of Audit Committee, Remuneration Committee and Shareholders'/Investors' Grievance Committee at different points of time. As per the *Terms of Reference* referred to in the aforesaid Annual Reports of DPSC, the committee members are responsible for ensuring compliance with regulatory guidelines.

5.4 It is relevant to note that as per disclosures made in the Annual Report of DPSC for the year 2015-16, the board periodically reviews compliance reports of all laws applicable to DPSC. Further, status of compliances and steps taken to rectify non-compliances, if any, are placed before the Board of Directors at its meetings. The directors in the Directors' Responsibility Statement disclosed in the Annual Report for the FY 2014-15, 2015-16 have inter alia stated as under:

"the Directors have devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems are adequate and operating effectively."

5.5 As mentioned earlier, the Hon'ble High Court of Kolkata vide Order dated January 27, 2017 directed DPSC to reduce the shareholding by selling 20.68% shareholding held by Power Trust by April 30, 2017 so as to comply with the requirement of minimum public shareholding of 25% as prescribed by the provisions of SCRR and SCRA. The public shareholding of DPSC was only 4.32% and 40% of the shares of DPSC were held by the Trust (Power Trust). As per the directions issued by the Hon'ble High Court, out of the 40% shares in DPSC held by Power Trust, 20.68% of shares (32,63,16,563 shares) have to be sold to the public in order to attain the MPS requirement. Further, during the personal hearing held before me on February 15, 2017, the Noticees were directed to file an undertaking that DPSC will comply with the MPS requirement before April 30, 2017 as directed by the Hon'ble H.C. of Kolkata. They were also directed to file a compliance Report (subsequent to the compliance of MPS requirement by DPSC) on that basis with SEBI.

5.5.1 The Noticees in their replies stated that they had nothing to do with the day to day management of DPSC or its affairs or any of its departments nor did they have any control over or knowledge of day to day working and management of the affairs of DPSC. The Noticees also stated that the directions of the Hon'ble High Court are in relation to the Trust.

In this regard, I note that the Noticees are part of the Board of Directors of DPSC and are still continuing as the non-executive independent directors of DPSC. The Board of Directors of a Company is entitled to exercise all such powers and do all such acts and things, as Company is authorized to exercise and do. The directors, executive or non-executive independent cannot assume their role in a casual manner. The position of a "director" in a public company/listed company comes along with responsibilities and compliances under law, which have to be fulfilled

by such director. The Board of Directors of a Company shall therefore be responsible for all acts carried out by a company and be liable for the violations that are committed by DPSC. The Noticees in the instant matter, who are part of the Board of Directors have not indicated any initiative taken by them to comply with the MPS norms.

5.5.2 It is relevant to mention the order of Hon'ble High Court of Madras in the matter of **Madhavan Nambiar Vs. Registrar of Companies** [2002 108 Comp Cas 1 Mad] wherein it was observed that

".....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.

15. Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (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) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.

16. Section 29 of the Companies Act provides the general power of the board and Therefore it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise."

5.5.3 Under the facts and circumstances mentioned above, I am of the view that the Noticees, being the directors of the Company (DPSC) ought to have ensured that the functioning of the Company (DPSC) was in full compliance with the applicable laws including the provisions of Securities Contracts (Regulation) Rules, 1957.

5.6 I note from the records that DPSC vide e-mail dated May 17, 2017 stated that 6,31,99,293 equity shares of DPSC held by Power Trust were transferred to M/s Aksara Commercial Pvt. Ltd. (one of

the shareholders of erstwhile IPCL). DPSC also informed that the balance 32,63,16,563 equity shares were offered for sale to the public. However, on perusal of the shareholding pattern of DPSC, I note that the present promoter shareholding (including the shareholding of Power Trust) is 92.9%. This clearly indicates that DPSC has not complied with the MPS requirement as mandated by the provisions of SCRR and SCRA till date. The failure on the part of DPSC and its directors including the Noticees herein to comply with the directions of the Hon'ble High Court cannot be condoned.

6. I find that the Noticees, *viz.* Khaitan, Deb, Patra and Thakur are continuing as non-executive independent directors on the Board of DPSC, which failed to comply with the MPS requirement even after specific directions from the Hon'ble High Court of Kolkata to comply with the minimum public shareholding requirement before April 30, 2017.
7. The Noticees vide their replies further contended: "*SEBI had in some cases, including a matter of WIPRO approved a similar scheme without hindrances. In case of WIPRO, a Trust has been held to be a public shareholder by SEBI.*" This matter cited by the Noticees is of no assistance to them as the facts and circumstances in the case of WIPRO are different. Further, as stated earlier, in the instant matter, the Hon'ble High Court has directed the Trust to divest the shares held by them to comply with the minimum public shareholding requirement.
8. In view of the forgoing, at this juncture, I do not find any cogent reasons to modify the directions issued under the *interim Order* dated June 04, 2013 against the Noticees. The representations filed by Mr. Nanda Gopan Khaitan, Mr. Amit Kiran Deb, Mr. Debi Prasad Patra and Mr. Tantra Narayan Thakur are accordingly disposed of.

Date: July 25, 2017

Place: Mumbai

S RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA