

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 Prayas Projects India Limited

In re Deemed Public Issue Norms

In respect of:

| S.No. | Name of the Entity | PAN | CIN/DIN |
|-------|--------------------------------------|-------------------|------------------------------|
| 1. | Prayas Projects India Limited | AAFCP0276P | U70109WB2009PLC133033 |
| 2. | Shri Kaizar Biswas | AHPPB4561M | 02484864 |
| 3. | Shri Mohammed Jiaur Rahaman | AHVPR6412M | 02485004 |
| 4. | Shri Ajijur Rahaman | AKLPR6157J | 02526348 |
| 5. | Shri Abu Sama Molla | AKKPM4156H | 06854875 |
| 6. | Shri Ashraful Hoque | AFCPH9599G | 06854858 |
| 7. | Shri Sariful Islam | ACSPI6819F | 07795146 |

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1. Prayas Projects India Limited (hereinafter referred to as “**PPIL**”/ “**the Company**”) is a Public company incorporated on February 23, 2009 and registered with Registrar of Companies–Kolkata with CIN: U70109WB2009PLC133033. Its registered office is at 17, Chinar Park, Teghoria, Kolkata, West Bengal, India, 700157.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a copy of Show Cause Notice issued by Sub-Divisional Magistrate, West Tripura, against
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Order in the matter of M/s Prayas Projects India Limited

PPIL in respect of non-payment of maturities of the schemes/policies/plans and shares/debentures/bonds issued by the Company. In this regard, SEBI undertook an enquiry to ascertain whether PPIL 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 read with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations**”).

3. SEBI observed that PPIL had engaged in fund mobilisation activity from public through its offer and issue of Secured Redeemable Non-Convertible Debentures. SEBI vide Order dated December 29, 2015 passed *inter alia* directions for refund and debarment against PPIL, its directors and Debenture Trustee for the violation of the provisions of the Companies Act, 1956, SEBI Act read with SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
4. Further, SEBI’s enquiry also revealed that PPIL had made an *Offer of Equity Shares* in the financial year 2012-2013 (hereinafter referred to as “**Offer of Equity Shares**”) and raised at least an amount of Rs. 30.00 Lakh from at least 70 allottees. The number of allottees and funds mobilized has been collated from the documents filed by the Company with the RoC.
5. As the above said *Offer of Equity Shares* was allegedly in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956, SEBI issued a Show Cause Notice dated November 29, 2017 (hereinafter referred to as “**SCN**”) and issued directions mentioned therein against PPIL and its Directors viz., Shri Kaizar Biswas, Shri Mohammed Jiaur Rahaman, Shri Ajijur Rahaman, Shri Abu Sama Molla, Shri Ashraful Hoque and Shri Sariful Islam (hereinafter collectively referred to as “**Noticees**”).
6. *Allegations in the SCN*: In the said SCN, the following allegations were recorded. PPIL had made an *Offer of Equity Shares* during the financial year 2012-2013 and raised an

amount of Rs. 30.00 Lakh as shown below:

| Year of Issue | Security Issued | Amount raised (Rs.) (in lakh) | Number of allottees |
|---------------|-----------------|----------------------------------|---------------------|
| 2012-2013 | Equity Shares | 30,00,000.00 | 70 |
| | | | |
| Total | | 3,000,000.00^ | 70* |

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

7. The above *Offer of Equity Shares* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by PPIL in respect of the *Offer of Equity Shares*.
8. In view of the abovementioned alleged violations, the Noticees were directed to show cause as to why appropriate directions including but not limited to directions to refund the money mobilized through equity shares along with interest as well as directions to prohibit the Noticees from accessing the capital market should not be passed against them.
9. Vide the said SCN, the Noticees were given the opportunity to file their replies, within 21 days from the date of receipt of the said SCN. SEBI informed the Noticees that in case of failure to reply, it would be presumed that they had no explanation to offer and the matter would be proceeded on the basis of material available on record. The SCN further stated that the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing before SEBI.
10. **Service of SCN:** The SCN was sent to the Noticees through Speed Post with acknowledgment and SEBI received acknowledgements from Shri Ajijur Rahaman and Shri Sariful Islam. Further, the SCN issued to PPIL and its director Shri Kaizar Biswas

were also delivered and Shri Kaizar Biswas replied vide letter dated January 09, 2018 in his capacity as a director for and on behalf of the Company. For the remaining Noticees viz., Shri Mohammed Jiaur Rahaman, Shri Abu Sama Molla and Shri Ashraful Hoque SEBI, vide notifications each dated November 06, 2018 published in newspapers viz., ‘*The Statesman*’, ‘*Bartaman*’ and ‘*The Sanmarg*’, it was notified that SCN dated November 29, 2017 was issued against them and they were given 21 days to submit their reply in the matter.

11. **Replies:** Vide letter dated January 09, 2018, Shri Kaizar Biswas in the capacity of director of the Company *inter alia*, made the following submissions on behalf of the Company:

- i. “...*That the Company issued Equity Shares to its friends and relatives and fully closely held. No public issue was made. Directors will soon purchase the shares of some of the friends and relatives by the financial year 2017-2018 and it will be below the fifty shareholder.*
- ii. *That the Company have much consciousness about the due of its investors and there is no bar on the Company to redeem the amount to its investors and the Company wants to exonerate itself from such unwanted act.*”

12. Thereafter, vide hearing notice dated January 18, 2019, the Noticees were given an opportunity of hearing on February 20, 2019. The said notices sent vide Speed Post were acknowledged by Shri Abu Sama Molla, Shri Ashraful Hoque and Shri Sariful Islam. For the remaining Noticees viz., PPIL, Shri Kaizar Biswas, Shri Mohammed Jiaur Rahaman and Shri Ajijur Rahaman, SEBI vide publications in the newspapers viz., ‘*The Statesman*’, ‘*Sanmarg*’ and ‘*Anand Bazar Patrika*’, notified that they will be given an opportunity of being heard on February 20, 2019 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.

13. *Hearing and submissions*: Shri Habibur Rahaman and Shri Hasibul Islam, Advocates, Authorized Representatives (“ARs”) appeared on behalf of the Company and all directors and made *inter alia* the following submissions:

- a) That the Company issued equity shares to its friends and relatives fully closely held.
- b) No public issue was made.
- c) They have reduced the number of shareholders to 45 as on date.
- d) They have inadvertently committed the violations and tendered apology for the same.

11.1 In this regard, the ARs were directed to submit the following:

- i. What was the price of shares at which the shares were allotted to the 70 people
- ii. Agreement entered into by which the transfer/buy back was happened containing the details as to at what price the shares were tendered and how many shares were tendered, etc.
- iii. List of shareholders before the transfer of shares;
- iv. List of shareholders after transfer;
- v. List of shareholders before the issuance
- vi. List of shareholders after the issuance and their relationship with the directors.
- vii. Form 2 filed with RoC by the Company since incorporation.

11.2 The ARs were granted time upto March 20, 2019 to file the additional written submissions along with the abovementioned details. No reply/additional submissions have been received by SEBI till date.

14. I have considered the allegations and materials available on record such as SCN and replies and oral submissions made during the personal hearing and the MCA records. 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 Equity Shares as stated in the SCN.*

(2) *If so, whether the said issue is 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 Equity Shares as stated in the SCN.*

15. I have perused the SCN dated November 29, 2017 for the allegation of *Offer of Equity Shares*. I note that neither the company nor the directors disputed the offer of Equity Shares.

16. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the information submitted by the Company that PPIL has issued and allotted Equity Shares to 70 investors during the financial year 2012-2013 and raised an amount of Rs. 30.00 Lakh.

17. *I therefore conclude that PPIL came out with an offer of Equity Shares as outlined above.*

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

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

19. 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.”

20. 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*.

21. In the instant matter, I find that Equity Shares were issued by PPIL to 70 investors in the financial year 2012-2013 and it mobilised an amount of Rs. 30.00 Lakh during the said period. The said fact is also admitted by the Company and the same is based on the submissions and filings of the Company before the RoC. The above findings lead to a reasonable conclusion that the *Offer of Equity Shares* by PPIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
22. I note that PPIL and its directors have contended that the *Offer of Equity Shares* was not a public issue and shares were issued to friends and relatives. In this regard, I note that the Company had issued *Equity Shares* to 70 allottees during the financial year 2012-2013. I note that the aggregate number of allottees of *Equity Shares* exceeded more than 49 persons. It is pertinent to mention that as per the first proviso to Section 67(3) (inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000), “*any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation*”. Since, PPIL allotted *Equity Shares* to more than forty nine allottees, I find that the *Offer of Equity Shares* by PPIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

23. Even otherwise, 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, despite being given an opportunity to submit the details of shareholders/investors, the Noticees 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. In any case the issue cannot be considered as private placement since the aggregate number of allottees exceeded more than 49 persons in the instant matter.
24. 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*".
25. Further, I find that PPIL 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 PPIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
26. Therefore, in view of the material available on record, I find that the *Offer of Equity Shares* by PPIL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of Equity Shares* are deemed to be public issues and PPIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
27. Further, since the offer of *Equity Shares* 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.

28. I note the submissions of the Company during the personal hearing that that now they have reduced the number of shareholders to 45. In this regard, I note that despite being given an opportunity to submit proof to substantiate their claim, the Noticees failed to do so. In any case, the non-compliance of the above provisions were not denied by PPIL or its directors and subsequent reduction of number of shareholders has no bearing on the violation of deemed public issue norms which was triggered during the financial year 2012-2013.
29. I also find that no records have been submitted to indicate that PPIL has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that PPIL has contravened the said provisions. PPIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that PPIL 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.
30. 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 *Equity Shares* was a deemed public issue of securities, PPIL was required to

register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that PPIL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of *Equity Shares*. I, therefore, find that PPIL has not complied with the provisions of section 60 of the Companies Act, 1956.

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

32. The company was also required to comply with the following provisions of ICDR Regulations:

- *“Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2),*
- *Appointment of merchant banker and other intermediaries (Regulation 5),*
- *Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),*
- *Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),*
- *Satisfy the conditions of initial public offer (Regulation 25 and 26),*
- *Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)*
- *Keeping the public issue open for the specified period (Regulation 46),*

- *Pre issue advertisement for public issue (Regulation 47)*
- *Manner of disclosures in the offer documents (Regulation 57).*

33. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara Case*, had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

34. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase "intend to get listed" in the context of deemed public issue the Hon'ble Supreme Court in *Sahara Case* observed-

“...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...”

“...Listing of securities depends not upon one’s volition, but on statutory mandate...”

“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”

35. In view of the above findings, I am of the view that PPIL engaged in fund mobilizing activity from the public, through the offer of Equity Shares 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, 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?*

36. From the documents available on record, I find that the present Directors in PPIL are Shri Kaizar Biswas, Shri Mohammed Jiaur Rahaman, Shri Abu Sama Molla and Shri Sariful Islam. I also note that, Shri Ajijur Rahaman and Shri Ashraful Hoque, who were earlier Directors in PPIL, have since resigned. The details of the appointment and resignation of the directors are as following:

| Name of the directors | Date of appointment | Date of cessation |
|------------------------------|----------------------------|--------------------------|
|------------------------------|----------------------------|--------------------------|

| | | |
|--------------------------------|-------------------|---------------|
| Shri Kaizar Biswas | February 23, 2009 | Continuing |
| Shri Mohammed Jiaur Rahaman | February 23, 2009 | Continuing |
| Shri Ajijur Rahaman | February 23, 2009 | July 19, 2014 |
| Shri Abu Sama Molla | August 01, 2014 | Continuing |
| Shri Ashraful Hoque | August 01, 2014 | July 01, 2015 |
| Shri Sariful Islam | March 21, 2017 | Continuing |

Note: the period of issuance was 2012-2013.

37. 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, PPIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
38. 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%.
39. From the material available on record and the details of the appointment and resignation

of the directors of PPIL as reproduced in paragraph 36 of this Order, it is noted that, Shri Ajijur Rahaman, Shri Kaizar Biswas, Shri Mohammed Jiaur Rahaman were directors at the time of the issuance of Equity Shares. I note that none of the Noticees contended or brought on record any document to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of PPIL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Further on perusal of the MCA documents available on record, no documents indicating the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of PPIL, were found with respect to the same. Therefore, I find that Shri Ajijur Rahaman, Shri Kaizar Biswas, Shri Mohammed Jiaur Rahaman are officers in default as per Section 5(g) of Companies Act, 1956. In view of this, directors of PPIL, namely, Shri Ajijur Rahaman, Shri Kaizar Biswas, Shri Mohammed Jiaur Rahaman as officers in default, are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. None of the Noticees disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act. Therefore, I find that PPIL and its Directors, viz., Shri Ajijur Rahaman, Shri Kaizar Biswas and Shri Mohammed Jiaur Rahaman are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

40. I note that during the financial year 2012-2013, PPIL through Offer of Equity Shares, had collected an amount of Rs. 30.00 Lakh from various allottees. I note that Shri Kaizar Biswas has been director of PPIL since inception till present date. I note that Shri

Mohammed Jiaur Rahaman has been director of PPIL since inception till present date. I note that Shri Ajijur Rahaman was a director of PPIL since inception and continued during financial year 2012-2013 and resigned on July 19, 2014. I note that Shri Abu Sama Molla has been director of PPIL during financial year 2014-2015 till present date. I note that Shri Ashraful Hoque was director of PPIL during financial year 2014-2015 and 2015-2016. I note that Shri Sariful Islam has been director of PPIL since financial year 2017-2018 till present date. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with PPIL and other directors are limited to the extent of amount collected during his/her tenure as director of PPIL.

41. In this regard, I note that, Shri Abu Sama Molla, Shri Ashraful Hoque (August 01, 2014) and Shri Sariful Islam (March 21, 2017) were appointed as a directors of PPIL only after the period of issuance of Equity Shares. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the, Shri Abu Sama Molla, Shri Ashraful Hoque and Shri Sariful Islam are not liable for refund of money as they were not directors during the relevant time of fund mobilization. However, I note that the company has continuing liability to refund the money collected from the public through issuance of Equity Shares pursuant to its failure to comply with public issue norms for said issuance. Further, the fact that Shri Abu Sama Molla and Shri Sariful Islam are present and continuing directors of the Company, I find that Shri Abu Sama Molla and Shri Sariful Islam are indeed responsible to ensure that PPIL makes refund of money to the investors as prescribed in law. I also note that Shri Ashraful Hoque was responsible to ensure refund by the Company while he was acting as director. 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. "

42. 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 noticees 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. In view of this, I find that Shri Abu Sama Molla, Shri Ashraful Hoque and Shri Sariful Islam were also be responsible for all the deeds/acts of the Company during the period of their directorship and were obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Abu Sama Molla, Shri Ashraful Hoque and Shri Sariful Islam are liable to be debarred for an appropriate period of time.

43. 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 PPIL and its Directors, viz., Shri Ajijur Rahaman, Shri Kaizar Biswas and Shri Mohammed Jiaur Rahaman to refund the monies collected, with interest to such investors. Also, in order to safeguard the interests of investors, to prevent further harm to prospective investors and to ensure orderly development of securities market, all the Noticees becomes liable to be debarred for an

appropriate period of time.

44. In view of the discussion above, appropriate action in accordance with law needs to be initiated against PPIL and its Directors, viz., Shri Kaizar Biswas, Shri Mohammed Jiaur Rahaman, Shri Ajijur Rahaman, Shri Abu Sama Molla, Shri Ashraful Hoque and Shri Sariful Islam.
45. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:
- a. PPIL, Shri Ajijur Rahaman, Shri Kaizar Biswas and Shri Mohammed Jiaur Rahaman shall jointly and severally, forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of Equity Shares including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
 - b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.
 - c. Shri Ajijur Rahaman is directed to provide a full inventory of all his assets and properties and details of all his bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
 - d. PPIL, Shri Kaizar Biswas and Shri Mohammed Jiaur Rahaman are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
 - e. PPIL, Shri Abu Sama Molla, Shri Sariful Islam, Shri Kaizar Biswas and Shri Mohammed Jiaur Rahaman are permitted to sell the assets of the Company for the

sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

- f. Shri Ajijur Rahaman, Shri Kaizar Biswas, Shri Mohammed Jiaur Rahaman are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- g. PPIL and Shri Abu Sama Molla and Shri Sariful Islam (both on behalf of the Company) and Shri Ajijur Rahaman, Shri Kaizar Biswas and Shri Mohammed Jiaur Rahaman in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- h. After completing the aforesaid repayments, PPIL and Shri Abu Sama Molla and Shri Sariful Islam (on behalf of the Company) and Shri Ajijur Rahaman, Shri Kaizar Biswas, Shri Mohammed Jiaur Rahaman in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.

- i. In case of failure of PPIL, Shri Ajijur Rahaman, Shri Kaizar Biswas and Shri Mohammed Jiaur Rahaman to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may recover such amounts, from the company and the directors liable to refund as specified in paragraph 45(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- j. PPIL, Shri Ajijur Rahaman, Shri Kaizar Biswas and Shri Mohammed Jiaur Rahaman are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of **4 (four)** years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of **4 (four)** years from the date of completion of refunds to investors.
- k. Shri Ashraful Hoque, Shri Abu Sama Molla and Shri Sariful Islam are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of **4 (four)** years from the date of this Order. The above said persons are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of **4 (four)** years from the date of this order.
- l. 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

Notices shall remain frozen.

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

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

47. 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.

48. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: April 24, 2019

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA