

WTM/AB/EFD-1/DRA-IV/13/2020-21

**SECURITIES AND EXCHANGE BOARD OF INDIA  
FINAL ORDER**

**UNDER SECTIONS 11, 11(4) AND SECTION 11B OF THE SECURITIES AND  
EXCHANGE BOARD OF INDIA ACT, 1992**

**In respect of:**

<b>Noticee no.</b>	<b>Name of the Noticees</b>	<b>PAN/DIN</b>
1.	BSP Infrastructure & Construction Limited (BICL)	AAECB0693B
2.	Biplab Bose	AGNPB6167G
3.	Pradip Samaddar	AOYPS5605P
4.	Gopal Chandra Ghosh	ANRPG9975A
5.	Bidhan Ojha	AAHPO9249A
6.	Parimal Ghosh	AXIPG7875L
7.	Komaju Krishna Achary	AJDPA6333N
8.	Chitta Ranjan Das	ANTPD8408K
9.	Surendra Kumar Panigrahi	ALCPP3550B
10.	Ratikanta Mishra	AMTPM4654P
11.	Saiful Islam Khan	BCVPK6318M
12.	Sushanta Nandy	AGKPN7436P
13.	Amol Sardar	DIN 08138731
14.	Siddheshwar Mondal	DIN 08138731
15.	Tarun Kumar Saha	DIN 08138759
16.	Swapna Samaddar	ATIPS3261N
17.	Rekha Bose	AHRPB1485G
18.	Kajal Das	AGBPD0997J
19.	Asit Bose	AEAPB6961K

**– In the matter of BSP Infrastructure & Construction Limited.**

*The aforesaid entities are hereinafter referred to individually by their respective names/Noticee numbers and collectively as “the Noticees”*

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1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) passed an interim order cum show cause notice dated September 12, 2018 (hereinafter referred to as “**Interim Order**”) against the Noticees.
2. The brief facts leading to passing of the aforesaid Interim Order, as narrated in the Interim Order are as under:
  - (i) SEBI had received a reference dated September 09, 2017 from the Financial Markets Division (Primary Markets Division), Department of Economic Affairs, Ministry of Finance, Government of India, forwarding inter alia a complaint against BSP Infrastructure and Construction Limited (hereinafter referred to as “**BICL**” or “**company**”) whereby the complainant had inter alia requested for investigation into fund mobilization from public by BICL and to take necessary measures for refund of money invested by the complainant in the company. In response to the same, SEBI in letter dated November 08, 2017 sought various documents from the complainant. The complainant through letter dated November 15, 2017 provided the documents to SEBI, including copies of ‘Secured Redeemable Debentures’ issued by the company to 48 persons during FYs 2010-11 to 2013-14.
  - (ii) SEBI through letters dated January 19, 2018 sought various details and information from BICL and its then present and past directors, namely Biplab Bose (Noticee no. 2), Pradip Samaddar (Noticee no. 3), Gopal Chandra Ghosh (Noticee no. 4), Bidhan Ojha (Noticee no. 5), Parimal Ghosh (Noticee no. 6), Komaju Krishna Achary (Noticee no. 7), Chitta Ranjan Das (Noticee no. 8), Surendra Kumar Panigrahi (Noticee no. 9),

Ratikanta Mishra (Noticee no. 10), Saiful Islam Khan (Noticee no. 11) and Sushanta Nandy (Noticee no. 12).

- (iii) The company in its letter dated February 12, 2018 *inter alia* submitted that it had issued 'Secured Redeemable Debentures' in compliance with all the relevant provisions of law. It also furnished certain information and documents pertaining to the company. Thereafter, SEBI issued letter dated February 13, 2018 to Pradip Samaddar (Noticee no. 3), a director of the company, seeking certain information and comments pertaining to debentures issued by it. Further, a letter dated March 15, 2018 was issued to the company seeking information as sought for in SEBI letter dated January 19, 2018. Thereafter, the company in its letter dated March 21, 2018 *inter alia* submitted the following:
- (a) The company in its Annual Return dated September 29, 2016 has stated that the outstanding amount in respect of the Debentures as at the end of the year was Rs.4,09,42,321/-. These debentures had a nominal value of Re.1/- per unit. The number of debenture holders as on September 29, 2016 was 9,402 from whom the company had received a total amount of Rs.11,41,75,300/-. The number of debenture holders was erroneously recorded as 1 in the Annual Return dated September 29, 2016.
  - (b) The company was in the process of compiling the data regarding each of the debenture holders for Rs.11,41,75,300/- and would provide the same to SEBI shortly.
  - (c) The figure of 47 debenture holders for FYs 2010-11 to 2013-14 quoted by SEBI was not correct.
- (iv) In the abovementioned letter, the company also submitted copies of the MoA & AoA, Application Form for debentures, Minutes of the Board Meeting and Form-10 filed by the company with Registrar of Companies (hereinafter referred to as "**RoC**"). Upon noticing mismatch between the nominal value of debentures reported by the company in its letter dated

May 21, 2018 and that reported in documents filed with the RoC, a letter dated April 03, 2018 was issued to the company seeking clarification. The company in its letter dated May 15, 2018 submitted that the nominal value of the debentures was Rs.100/- which was incorrectly mentioned as Re.1/- in the said letter and that the debenture certificate itself mentions a face value of Rs.100/-. It further submitted that it was in the process of compiling data regarding 9,402 debenture holders in the prescribed format. It further provided a list of 651 debenture holders and undertook to submit the details of remaining debenture holders shortly.

- (v) In the meantime, SEBI also sent letters dated February 14, 2018 to Shri Kanak Lall Seal (auditor of the company for FYs ended March 31, 2013 and March 31, 2015), Gora & Co. (auditor of the company for FY ended March 31, 2016), Santanu Bhattacharyya & Co. (auditor of the company for FY ended March 31, 2012) and C.K. De & Associates (auditor of the company for FY ended March 31, 2014) seeking information about debentures issued by the company. Kanak Lall Seal in his letter dated February 19, 2018 *inter alia* submitted that he had never been an auditor of the company and his name had been misused. C.K. De & Associates in its letter and email dated March 05, 2018 *inter alia* submitted that it was not the current auditor of the company. It further requested for additional 15 days to provide the information. However, no further response was received from it subsequently. Letter sent to Santanu Bhattacharyya & Co. could not be served as it was not found at its given address. Further, no response was received from Gora & Co.
- (vi) Further, letters dated December 14, 2017, March 27, 2018, April 27, 2018, June 14, 2018 and June 20, 2018 were issued to RoC, Kolkata requesting for various documents pertaining to the company, including documents pertaining to issuance of debentures by the company. However, no response was received from there. Information regarding BICL was also obtained from the Ministry of Corporate Affairs' website i.e. MCA 21 Portal. On examination of the information and documents obtained from MCA 21

Portal and other material available on record, including submissions made by the company, the following information was revealed regarding BICL–

- (a) **Date of Incorporation:** 30.03.2010.
- (b) **Type of Company:** Public Limited Company
- (c) **Corporate Identity Number (CIN):** U45400WB2010PLC144665
- (d) **PAN:** AAECB0693B
- (e) **Registered Office Address:** C/o- Bidhan Ojha, West Kamarthuba, Habra, Parganas North, 743263, West Bengal, India.
- (f) **Filing of Last Annual Accounts and Annual Returns till –** 31.03.2017.
- (g) **Total Issued Capital of the Company(As on March 31, 2017):**
  - i. Equity Capital : 9,50,000 (9,500 Shares @ Rs. 10/- each)
  - ii. Preference Capital : NIL
- (h) **Details of Debentures as per list of debenture holders attached with Annual Return dated 28.09.2017:**

**Details of Secured Redeemable Debentures Issued**

<b>Financial Year</b>	<b>No. of debentures issued (of Rs.100 each)</b>	<b>Amount of debentures (in Rs.)</b>	<b>No. of debenture holders</b>
2010-11	Not Available	Not Available	1126
2011-12	Not Available	Not Available	2772
2012-13	Not Available	Not Available	5500
2013-14	Not Available	Not Available	04
<b>Total</b>			<b>9402</b>

- (vii) As per the company's Annual Return dated September 28, 2017 and the list of debenture holders attached thereto, filed with RoC, the total number of debenture holders of the company, as on March 31, 2017, stood at

9,402. The said Annual Return and the Balance Sheet of the company for financial year 2016-17 show that the company had a liability of Rs.3,79,42,321/- towards the said debentures, as on March 31, 2017. The financial year-wise break-up of the debenture holders, as provided in the above Table, shows that the said debentures were issued during the financial years 2010-11 to 2013-14. However, there were various contradictions in the information contained in the filings made by the company with RoC and those submitted by the company in its letter dated March 21, 2018, which are as follows:

- (a) While the company's Annual Return dated September 28, 2017 and its balance sheet for FY 2016-17 show that the company had an outstanding of Rs.4,09,42,321/- towards 9,682 debenture holders as on March 31, 2016 and an outstanding of Rs.3,79,42,321/- towards 9,402 debenture holders as on March 31, 2017, the company in its letter dated March 21, 2018 has submitted that it has received a total amount of Rs.11,41,75,300/- from 9,402 debenture holders, as on September 29, 2016.
- (b) While the Annual Returns of the company for various years (i.e. 2011-12, 2013-14, 2014-15 & 2015-16) show that the debentures issued by the company were 'Non-convertible Debentures', the Annual Return dated September 28, 2017 shows the debentures to be 'Fully Convertible Debentures'.
- (viii) From the above, it was noted that the exact number of persons to whom the company had issued debentures or the exact amount mobilized by the company through issuance of debentures was not clear. Nevertheless, from the information provided in the above Table, it was alleged that BICL has issued Secured Redeemable Debentures to more than 49 persons in F.Y. 2010-11, 2011-12 and 2012-13.

- (ix) The company in its letter dated August 30, 2018 had submitted that it has made repayment of principal amount to some customers on one time settlement basis and is in the process of completing the repayment of principal amount (OTS Basis) to all the debenture holders, as per their records. The company had also submitted a list containing names of 1,095 debenture holders against each of which distinct amounts are mentioned as 'Paid' and remarks are mentioned as 'Paid Through NEFT BDBL Bank'. The total amount shown to have been paid is 2,80,04,393/-. However, no other details were provided in the list and in the absence any further details credence could not be given to such claims of the company.
  - (x) Upon examination it was found that Noticees no. 2 to 12 had been directors of the company during the period of money mobilization through offer and allotment of Secured Redeemable Debentures and hence were alleged to be responsible for contravention of the of the abovementioned Public Issue requirements and are also liable for refund of money to the investors. The Noticees no. 13 to 15 had become directors of the company post the money mobilization and the Noticees no. 16 to 19 were the promoters of BICL, and hence, were alleged to be liable for the alleged contraventions by BICL.
  - (xi) Further, from an examination of the Debenture Trust Deed dated June 29, 2011 attached with the Form-10 dated 21/10/2011 filed by the company with RoC, it was revealed that the company had set up a Debenture Trust, namely BSP Debenture Trust, in respect of debentures for a sum of Rs.5 Crores proposed to be issued by the company, and that Shri Sushanta Nandy (Noticee no. 12), who was also a director of the company, was the Debenture Trustee for the said Debenture Trust. It was alleged that Shri Sushanta Nandy (Noticee no. 12) has acted as a debenture trustee without having any certificate of registration from SEBI.
3. In the Interim Order dated September 12, 2018, the following directions were issued to the Noticees:

- i. BICL and its above named directors / promoters and debenture trustee (i.e. Noticee nos. 1 to 19), viz. Biplab Bose, Pradip Samaddar, Gopal Chandra Ghosh, Bidhan Ojha, Parimal Ghosh, Komaju Krishna Achary, Chitta Ranjan Das, Surendra Kumar Panigrahi, Ratikanta Mishra, Saiful Islam Khan, Sushanta Nandy, Amol Sardar, Siddheshwar Mondal, Tarun Kumar Saha, Swapna Samaddar, Rekha Bose, Kajal Das and Asit Bose, shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;*
  - ii. BICL and its directors, viz. Biplab Bose, Pradip Samaddar, Gopal Chandra Ghosh, Bidhan Ojha, Parimal Ghosh, Komaju Krishna Achary, Chitta Ranjan Das, Surendra Kumar Panigrahi, Ratikanta Mishra, Saiful Islam Khan and Sushanta Nandy (i.e. Noticee nos. 1 to 12), shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through the offer and allotment of Secured Redeemable Debentures;*
  - iii. BICL and the above named directors / promoters, viz. Biplab Bose, Pradip Samaddar, Gopal Chandra Ghosh, Bidhan Ojha, Parimal Ghosh, Komaju Krishna Achary, Chitta Ranjan Das, Surendra Kumar Panigrahi, Ratikanta Mishra, Saiful Islam Khan, Sushanta Nandy, Amol Sardar, Siddheshwar Mondal, Tarun Kumar Saha, Swapna Samaddar, Rekha Bose, Kajal Das and Asit Bose (i.e. Noticee nos. 1 to 19), shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of Secured Redeemable Debentures sought vide letters dated January 19, 2018.*
  - iv. Sushanta Nandy (Noticee no. 12), the trustee of BSP Debenture Trust, shall not henceforth act as Debenture Trustee in respect of debentures of BICL and shall not take up any new assignment or involve himself in any new issue of securities in a similar capacity.*
4. In the Interim Order, the aforesaid entities were also advised to show cause as to why suitable directions under Sections 11, 11(4) and 11B of the SEBI Act, 1992



and the relevant SEBI Rules/Regulations should not be issued against them, including the following directions, namely:

- i. BICL and its directors, viz. Biplab Bose, Pradip Samaddar, Gopal Chandra Ghosh, Bidhan Ojha, Parimal Ghosh, Komaju Krishna Achary, Chitta Ranjan Das, Surendra Kumar Panigrahi, Ratikanta Mishra, Saiful Islam Khan and Sushanta Nandy (i.e. the Noticee nos. 1 to 12), to jointly and severally refund the money collected through the offer and allotment of Secured Redeemable Debentures, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment), supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and*
  - ii. BICL and its above named directors / promoters and debenture trustee, viz. Biplab Bose, Pradip Samaddar, Gopal Chandra Ghosh, Bidhan Ojha, Parimal Ghosh, Komaju Krishna Achary, Chitta Ranjan Das, Surendra Kumar Panigrahi, Ratikanta Mishra, Saiful Islam Khan, Sushanta Nandy, Amol Sardar, Siddheshwar Mondal, Tarun Kumar Saha, Swapna Samaddar, Rekha Bose, Kajal Das and Asit Bose (i.e. the Noticee nos. 1 to 19), to be restrained / prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.*
5. Further, it was directed that the Noticees may, within 21 days from the date of receipt of the interim order, file their respective replies. BICL and its directors (i.e. Noticee nos. 1 to 12) were directed to furnish an inventory of their assets in their reply. That in the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of the interim Order. That in the event the Noticees fail to file their replies or request for an opportunity of personal

hearing within the said 90 days, the preliminary findings at paras 14, 16, 17, 18, 20 & 23 of the Interim Order shall become final and absolute against the respective Noticees automatically, without any further orders and consequently, the respective Noticees shall automatically be bound by the directions contained in paras 24 and 25 of the interim order, as applicable.

6. The details of the delivery of the Interim Order and the reply/requests received therein for personal hearing is as under:

<b>Sl.No.</b>	<b>Name of the Noticee</b>	<b>Delivery of Interim Order details</b>	<b>Reply/Requests Received Details</b>
1.	BSP Infrastructure & Construction Limited (BICL)	Hand delivered on Oct 24, 2018	Reply dated October 29, 2018 received seeking personal hearing
2.	Biplab Bose	Undelivered through post	Reply dated October 03, 2018 and October 29, 2018 received seeking for personal hearing.
3.	Pradip Samaddar	Hand delivered on October 24, 2018	Reply dated October 29, 2018 received seeking for personal hearing
4.	Gopal Chandra Ghosh	Delivered through post	Reply October 03, 2018 and October 29, 2018 received seeking personal hearing
5.	Bidhan Ojha	Hand delivered on October 24, 2018	Reply dated October 29, 2018 received seeking for personal hearing
6.	Parimal Ghosh	Hand delivered on October 27, 2018	Reply dated October 29, 2018 received seeking for personal hearing
7.	Komaju Krishna Achary	Undelivered through post and could not be affixed	Reply dated October 29, 2018 received seeking for personal hearing
8.	Chitta Ranjan Das	Service of Notice completed through newspaper publication dated Feb 08, 2019	No reply or request for personal hearing received
9.	Surendra Kumar Panigrahi	Delivered through post	No reply or request for

			personal hearing received
10.	Ratikanta Mishra	Undelivered through post and could not be affixed	Reply dated November 30, 2018
11.	Saiful Islam Khan	Service of Notice completed through newspaper publication dated Feb 08, 2019	No reply or request for personal hearing received
12.	Sushanta Nandy	Hand delivered on October 06, 2018	No reply or request for personal hearing received
13.	Amol Sardar	Service of Notice completed through newspaper publication dated Feb 08, 2019	No reply or request for personal hearing received
14.	Siddheshwar Mondal	Delivered through Speed post AD	No reply or request for personal hearing received
15.	Tarun Kumar Saha	Delivered through Speed Post AD	No reply or request for personal hearing received
16.	Swapna Samaddar	Service of Notice completed through newspaper publication dated Feb 08, 2019	No reply or request for personal hearing received
17.	Rekha Bose	Undelivered through post	Reply dated October 03, 2018 received
18.	Kajal Das	Undelivered through post	Reply dated October 03, 2018 received
19.	Asit Bose	Undelivered through post	Reply dated October 03, 2018 received

7. I note that Amol Sardar (Noticee no. 13) and Swapna Samaddar (Noticee no. 16) have not filed any reply to the Interim Order cum show cause notice dated September 12, 2018. Further, no request for availing an opportunity of personal hearing was made by the said Noticees. Accordingly, the preliminary findings and the directions contemplated in the interim order dated September 12, 2018 as reproduced in para 4 and 5 above, has become final against Amol Sardar and Swapna Samaddar.

**Replies, Inspection, Hearing and Written submissions:**

8. Pursuant to the service of the Interim Order dated September 12, 2018, requests were received from 11 Noticees i.e. Noticees no. 1, 2, 3, 4, 5, 6, 7, 10, 17, 18 and 19 vide their respective letters dated October 03, 2018, October 29, 2018 and November 30, 2018 (details given in the table above) seeking to avail an opportunity of personal hearing. Further, since the SCN could not be delivered by post to Noticees no. 8, 11, 14 and 18, the SCN was served through newspaper publication on February 08, 2019 to the said Noticees. Accordingly, the Noticees no. 1, 2, 3, 4, 5, 6, 7, 10, 17, 18 and 19 were granted an opportunity for personal hearing that was fixed for October 23, 2019. The Notice dated September 13, 2019 for personal hearing was delivered to all the aforesaid 11 noticees other than Noticee no. 4, whose address could not be located. On October 23, 2019, none of the 11 Noticees appeared for the personal hearing. Noticee no. 1 in his email dated September 25, 2019 had sought for waiving of the hearing scheduled for October 23, 2019 in view of filing an Appeal No. 365 of 2019 against the Interim Order dated September 12, 2018 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**"). Noticee no. 10 in his letters dated September 23 and 25 of 2019, sought adjournment for the hearing scheduled on October 23, 2019 due to the unavailability of his advocates.
9. Accordingly, following the principles of natural justice another opportunity of personal hearing was granted to the 11 Noticees on November 25, 2019. The Notice dated November 14, 2019 for personal hearing was delivered to all the aforesaid 11 noticees other than Noticee no. 4 and 7. On November 25, 2019, Shri Mitul Chakrabarty, advocate representing Noticees no. 1, 2, 3, 4, 5, 6, 10, 17, 18 and 19 appeared and made submissions and sought time for filing written submissions. Further, the advocate filed a letter dated November 26, 2019 on behalf of Noticees no. 1, 2, 3, 4, 5, 6, 7 and 10 *inter alia* seeking another opportunity of personal hearing in view of the appeal filed by its clients before the Hon'ble SAT impugning the Interim Order. Accordingly, another opportunity of personal hearing was granted to the Noticees on February 11, 2020. On February 11, 2020, Shri Mitul Chakrabarty, advocate representing Noticees no.

1, 2, 3, 4, 5, 6, 7, 10, 17, 18 and 19 appeared and made submissions. Thereafter, Shri Mitul Chakrabarty, advocate filed a reply dated February 12, 2020 on behalf of Noticees no. 1, 2, 3, 4, 5, 6, 7, 10, 18 and 19.

10. Further, I note that Noticees no. 8, 9, 11, 12, 14 and 15 have not filed any reply to the interim order cum show cause notice dated September 12, 2018 before me. Further, no request for availing an opportunity of personal hearing was made by the said Noticees. However, I note that Noticees no. 8, 9, 11, 12, 14 and 15 had along with Noticees no. 1, 2, 3, 4, 5, 6 and 7, filed an Appeal No. 365 of 2019 against the Interim Order before the Hon'ble SAT. Therefore, the present proceedings against these Noticees are being proceeded with as if they have sought for hearing/filed reply in terms of para 26 of the Interim Order.

11. I note that the aforesaid appeal before the Hon'ble SAT against the Interim Order dated September 12, 2018 was dismissed by the Hon'ble SAT in its order dated March 05, 2020, wherein, it was *inter alia* observed that:

*"2. However, the learned counsel for the appellants Shri Avik Sarkar stated that the appellants are willing to comply with the interim directions passed by the WTM of SEBI. In this regard, the learned counsel has placed a letter written by an Advocate Shri Mitul Chakrabarty dated February 12, 2020 written to the Assistant General Manager, SEBI which letter is taken on record. In this letter the Advocate on instruction from his clients namely the directors and shareholders stated that the appellants are willing to sell out the alleged secured properties for liquidating their liabilities.*

*3. In view of the aforesaid, the appeal is dismissed with no order as to costs."*

12. After dismissal of the Appeal no. 365 of 2019 of the Noticees by the Hon'ble SAT vide its Order dated March 05, 2020, no response regarding actions taken in accordance with the submissions made before the Hon'ble SAT was received from the Noticees. Sometime thereafter, lockdown was imposed due to Covid-19 pandemic. In view of the submissions made on behalf of the Noticees before Hon'ble SAT and in the absence any response from the Noticees, SEBI sent a letter dated June 20, 2020 along with a copy of the Hon'ble SAT Order dated March 05, 2020, advising the Noticees to comply with the same and file their

reply by June 22, 2020. However, no reply has been received from the Noticees till date pursuant to the SEBI letter dated June 20, 2020.

**Submissions of the Noticees:**

13. The brief of various submissions made by the Noticees, are as under:

- (i) **Noticee no. 1, 2, 3, 4, 5, 6 and 7 (BSP Infrastructure & Construction Limited, Biplab Bose, Pradip Samaddar, Gopal Chandra Ghosh, Bidhan Ojha, Parimal Ghosh and Komaju Krishna Achary)** in a joint letter dated October 29, 2018 and also along with **Noticees no. 8, 9, 11, 12, 14 and 15 (Chitta Ranjan Das, Surendra Kumar Panigrahi, Saiful Islam Khan, Sushanta Nandy, Siddeshwar Mondal and Tarun Kumar Saha)** in the Memorandum of Appeal (hereinafter referred to as the “**Appeal Memo**”) filed in Appeal No. 365 of 2019 before the Hon’ble SAT, have *inter alia*, submitted the following:
- i. *The persons under reference have been alleged to be in violation of Sections 67 and 73 of the Companies Act, 1956 and SEBI (Issue and Listing of Debt Securities) Regulations, 2008. We would like to state in this regard that necessary compliances have been made by the company for issuing such debentures. A debenture trust had been created by a deed dated 29<sup>th</sup> June 2011 between BSP Infrastructure and Construction Limited in favour of the trustees therein.*
  - ii. *The company has regularly made sincere efforts to make repayment to the debenture holders and have substantially repaid the same. A total of more than Rs. 3.2 crores vide bulk NEFT by using cheques numbers as 000102, 000106, 000107, 000108, 000110, 000111, 000112, 000113 and 0000114 and others cheques and also paid by cash to the debenture holders through Bandhan Bank account number 10160003774471 of Kankurgachi Branch.*
  - iii. *In this regard you would also like to state that the annual return of 2017 would reflect that the debentures issued thereon were convertible*

*debentures where as such debentures issued were non convertible. The above had been done due to oversight and was not intentional.*

- iv. *My clients would like to state that the prospectus issued by the company has been registered with the ROC. It is further stated that Shri Sushanta Nandy has the necessary certificate of registration from SEBI and is not in violation of any regulations thereof.*

**(ii) Noticee no. 1, 2, 3, 4, 5, 6, 7, 10, 18 and 19 (BSP Infrastructure & Construction Limited, Biplab Bose, Pradip Samaddar, Gopal Chandra Ghosh, Bidhan Ojha, Parimal Ghosh, Komaju Krishna Achary, Ratikanta Mishra, Kajal Das and Asit Bose)** in a joint letter dated February 12, 2020, the advocate has submitted the following:

- i. *That I have received instructions from my clients above named and its directors and shareholders that they are willing to sale out the alleged secured property for liquidating their liabilities.*
- ii. *Under the above premises I am requesting you to obtain necessary permission from the Hon'ble Court for sale of the secured properties of SEBI.*
- iii. *In this connection I am sending you herewith the valuation report of the alleged mortgage and you are requested to sale out the same.*

**(iii) Noticee no. 2 and 4 (Biplab Bose and Gopal Chandra Bose)** in their respective letters dated October 03, 2018 have filed similar replies and have *inter alia*, submitted the following:

- i. *I was appointed as a director on 30<sup>th</sup> March, 2010, however under certain circumstances I resigned from the said office on and from 5<sup>th</sup> of August 2010. To my utter astonishment it has come to my notice that your good office was pleased to pass the interim order and have been asked to reply within 21 days from the date of received of the said notice but in reality I have not received any notice and pursuant to a knowledge from a very reliable source I checked it up from your website that your good office*

*was pleased to pass the above referred interim order cum show cause notice.*

- ii. It is my humble submission that since my date of cessation as a director of the said company I am no more concerned in any manner whatsoever, but if your good office requires any kind of assistance from any corner I will render my assistance and full co-operation to the procedure adopted and prescribed under the law.*

**(iv) Noticee no. 6 (Parimal Ghosh)** in letter dated November 25, 2019 *inter alia* submitted the following:

- i. I, Primal Ghosh, resident of Bizpur, North 24 Paraganas and West Bengal was appointed as director of BICL on 01/06/2010. I was a ground level staff of Rage Multi Services Limited (RMSL) before my appointment as director of BICL. RMSL was involved in insurance business and I was part of RMSL as a mere staff.*
- ii. I was leading team of people who collect insurance on behalf of RMSL. Due to better performance of my team and me, I was asked by Pradip Samaddar, the main promoter of RMSL and BICL to become director of BICL. I would like to mention that the shareholders of BICL are close relatives of Pradip Samaddar.*
- iii. As far as my knowledge, as a director of BICL was never been allowed to hold share of BICL. I did not even seek to hold shares of BICL and RMSL. I agreed to become part of management team of BICL. During my tenor as director for little over 3 years till 16/06/2013, I did not take any part in the Board meeting of BICL, as BICL had no culture of holding Board Meeting. It was a one man show.*
- iv. During my tenure as the director, I never received a single penny from the company as remuneration or as the sitting fees or otherwise. I was just a puppet like other directors of BICL in the hand of Pradip Samaddar. We discharged our responsibilities as a director of the board. During my tenure as director no board meeting of BICL was held. All of the decisions were taken by Mr. Samaddar singlehandedly without consulting anybody.*



- v. *I asked Mr. Samaddar before my appointment as director of BICL about BICL and its role and objective but nothing has been communicated to me by Mr. Samaddar. He has always been a reluctant man to disclose any information but like to whip us in relation to so many different matters related to BICL or not. I placed my resignation from the post of directorship of BICL at numerous occasions before 16/06/2013 but was not accepted. I can even show an evidence of the same, where I submitted my resignation, he received the same but did not accept it nor he called up any board meeting to hold discussion about it.*
  - vi. *I am aware that BICL has one piece of land at Ashoknagar – Habra area in North 24 Paraganas. I request officers of SEBI to liquidate that land and pay off all the debts of BICL, if any.*
- (v) **Noticee no. 10 (Ratikanta Mishra)** in letter dated November 30, 2018 *inter alia* submitted the following:
- i. *He was working in the company titled as “Rage Multi Services Limited” as an agent since the year 2008. The main objects of the above company are to act as Management, Tax, Insurance, Technical, Consultant, Advisor, which facilitate the corporate firm, individual and organisation. He was given a code no. vide 05-10010670 as Marketing Executive on 26.02.2008 and authorised him to discharge his duty as a marketing executive.*
  - ii. *That he is in no way responsible so far as the profit, loss, risk, administration of the company is concerned as the undersigned was discharging his duty as an agent and has collected money from his family members/relatives near and dears and a total amount of Rs. 9,16,790/- (Rupees Nine Lakh Sixteen Thousand Seven Hundred Ninety Only) is being deposited in the company BICL, under private placement policy, hence the undersigned is neither a Director nor any kind of promoter of the company.*
  - iii. *That the undersigned wants to bring the issue for the kind consideration of your good office with regard to the circumstances which compelled the undersigned to become a Director of the Company. The BICL was mainly functioning in Odisha and West Bengal and the collection of money were*

also mobilized from these two states and the undersigned being a native of Odisha, for the interest of the depositors of Odisha, agreed with the proposal given by the Managing Director (Pradip Samaddar) of the company BICL, to be a Director of the company for a special purpose for a particular period of time.

- iv. It is to be noted here that BICL wanted to purchase a landed property from one North Odisha Fisheries and Farming Co. Ltd located under the Mouza Kharasahapur in the Tehasil of Soro, Balasore, Odisham and for that purpose the undersigned was made a director of the company on 14/02/2013 as the undersigned being a native of Odisha. It is to be further noted here that the company has sold the above mentioned property to another party in the mean time. The undersigned after alienation of the property, resigned from the post of Director from BICL on 16/06/2013, and his resignation has been duly accepted by the Chairman and other Board of Directors of the Company and the same has been intimated to the ROC for information. The undersigned has played no role other than the above mentioned duty mentioned in this para during his tenure as a Director in BICL, and for that purpose the undersigned has not received a single pie from the company in any manner as salary, remuneration, commission, incentives etc. The undersigned is annexing the Bank Statement/transaction details during the period of his alleged directorship in BICL from 14/02/2013 to 16.06.2013, to substantiate his claim.
- v. That, it is for the information of your good office that some of the agents of the company namely Nrusingha Parida, Panchanana Sahoo, Brundaban Parida, Loknath Pradhan have also collected money from their relatives and the same has been deposited in the company, and these agents have also received their commissions/incentives/shares from the deposits. When the company failed to provide the matured amount to the depositors as alleged by the above mentioned agents, they have lodged an F.I.R. before Mancheswar Police Station, Bhubaneswar, Dist – Khurda. State – Odisha, against the Managing Director of BICL, namely Pradip Samaddar, and other Directors, where the name of the undersigned has been wrongly mentioned in the F.I.R. due to the reason mentioned in the aforementioned

*para. However, the undersigned after being aware of the incident that his name has been wilfully/intentionally found place in the F.I.R. lodged by some of the agents of the company, then the undersigned move before the Hon'ble High Court of Orissa, by filling an A.BLAPL vide – no. 12319/2017 for anticipatory bail, then the Hon'ble High Court of Orrisa granted anticipatory bail to the undersigned on 15/05/2018, as the prosecution could not provide any information with regard to the petitioner/undersigned's involvement in cheating the depositors, before the Hon'ble high Court of Orissa, during the period of hearing of the case.*

- vi. That the undersigned humbly submits here that he is not a director of the company and no way involved in any kind of monetary business of the company so far as the allegations are concerned. The undersigned/Noticee last time discharged his duty as a RAGE CLUB MEMBER after being promoted from Marketing Executive stage 9. The undersigned has also deposited a total amount of Rs. 19,81,472/- (Rupees Nineteen lakh Eighty one thousand four hundred and seventy two only) in the above company and its associate companies in the name of self and in the name of his family members and relatives, hence the undersigned has been falsely entangled in this case. The undersigned himself is a depositor and a agent of the company like the other depositors and agents of the company, but his name has been found place in the list/board of directors for a special purpose and for a particular period of time. The undersigned noticee is no way held responsible for the alleged violation of various rules and laws under SEBI Act as well as Companies Act, 1956. Hence, your good office is requested not to take any coercive action against the undersigned in any manner in terms of the report/findings made by SEBI. The undersigned is personally ready and willing to visit your good office at Mumbai or at any other place to assist SEBI in all possible ways for the purpose of investigation/enquiry with regard to the alleged violations of various rules and laws of SEBI and Companies Act by the BICL, if your good office allows the undersigned to visit.*

(vi) **Noticee no. 17, 18 and 19 (Rekha Bose, Kajal Das and Asit Bose)** in their respective letters dated October 03, 2018 have filed similar replies and have *inter alia*, submitted the following:

- i. I was appointed as a Promoter on and from 19/03/2010 but it was not in connection with this company. To my utter astonishment it has come to my notice that your good office was pleased to pass the interim order and have been asked to reply within 21 days from the date of received of the said notice but in reality I have not received any notice and pursuant to a knowledge from a very reliable source I checked it up from your website that your good office was pleased to pass the above referred interim order cum show cause notice.*
- ii. A promoter of a company is a mere symbolisation of primary steps taken for the purpose of registration and it is also further to note that I was not involved with the day to day affairs of the company not I was financially benefitted from any corner in connection with the said company.*
- iii. It is my humble submission that if your good office requires any kind of assistance from any corner I will render my assistance and full co-operation to the procedure adopted and prescribed under the law.*

#### **Consideration of submissions and findings:**

14. I have perused the Interim Order cum show cause notice dated September 12, 2018, along with its annexures, the replies filed by the Noticees, the Appeal Memo and submissions made during the course of personal hearing and written submissions filed thereafter. The issue for consideration in these proceedings is whether BICL has mobilized funds through the public issue of Secured Redeemable Debentures without complying with the provisions of the SEBI Act, 1992, the Companies Act, 1956 and the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as "**ILDS Regulations**") or not and the liability of the Noticees no. 2 to 19 for such violations as being the director/promoter of the company. Further, whether Noticee no. 12, by acting as

a debenture trustee of BSP Debenture Trust, has violated the provisions of the SEBI Act and the DB Regulations or not.

15. Before considering the above issue and dealing with the various contentions raised by the Noticees, the relevant provisions of law which are necessary to advert to are extracted hereunder:

**Relevant extract of provisions of Companies Act, 1956:**

***“Construction of reference to offering shares or debentures to the public, etc.***

**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).

***“Allotment of shares and debentures to be dealt in on stock exchange.***

**73.** (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognized stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) ...

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, 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, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

....”

**Relevant provisions of the ILDS Regulations, 2008:**

- (i) Regulation 4(2)(a) – Application for listing of debt securities
- (ii) Regulation 4(2)(b) – In-principle approval for listing of debt securities
- (iii) Regulation 4(2)(c) – Credit rating has been obtained
- (iv) Regulation 4(2)(d) – Dematerialization of debt securities
- (v) Regulation 4(4) – Appointment of Debenture Trustee
- (vi) Regulation 5(2)(b) – Disclosure requirements in the Offer Document
- (vii) Regulation 6 – Filing of draft Offer Document
- (viii) Regulation 7 – Mode of disclosure of Offer Document
- (ix) Regulation 8 – Advertisements for Public Issues
- (x) Regulation 9 – Abridged Prospectus and application forms
- (xi) Regulation 12 – Minimum subscription
- (xii) Regulation 14 – Prohibition of mis-statements in the Offer Document
- (xiii) Regulation 15 – Trust Deed
- (xiv) Regulation 16(1) – Debenture Redemption Reserve
- (xv) Regulation 17 – Creation of security
- (xvi) Regulation 19 – Mandatory Listing
- (xvii) Regulation 26 – Obligations of the Issuer, etc.

16.I note that it has been alleged in the Interim Order that as per the company’s Annual Return dated September 28, 2017 and the list of debenture holders

attached thereto, filed with RoC, the total number of debenture holders of the company, as on March 31, 2017, stood at 9,402. Further, as per the Annual Return and the Balance Sheet of the company for financial year 2016-17, it shows that the company had a liability of Rs. 3,79,42,321/- towards the said debentures, as on March 31, 2017. However, that the company in its letter dated March 21, 2018 to SEBI had submitted that it had received a total amount of Rs. 11,41,75,300/- from 9402 debenture holders, as on September 29, 2016. As per the Interim Order, the debentures were issued during the financial years 2010-11 to 2013-14, as follows:

<b>Financial Year</b>	<b>No. of debentures issued (of Rs.100 each)</b>	<b>Amount of debentures (in Rs.)</b>	<b>No. of debenture holders</b>
2010-11	Not Available	Not Available	1126
2011-12	Not Available	Not Available	2772
2012-13	Not Available	Not Available	5500
2013-14	Not Available	Not Available	04
<b>Total</b>			<b>9402</b>

17. Accordingly, it has been alleged in the Interim Order that BICL has issued Secured Redeemable Debentures to more than 49 persons in F.Y. 2010-11, 2011-12 and 2012-13, without complying with the provisions of the SEBI Act, 1992, the Companies Act, 1956 and the ILDS Regulations.

18. I note that the Noticees in their replies to the Interim Order have not disputed the said allegations that it had received a total amount of Rs. 11,41,75,300/- from 9402 debenture holders, as on September 29, 2016. Further, the Noticees have also not disputed the allegations that it had issued the secured redeemable debentures to more than 49 persons in the financial years 2010-11, 2011-12 and 2012-13. However, I note that the Noticees in their joint reply dated October 29,

2018 and the Appeal Memo, submitted that with regard to the alleged violation of Sections 67 and 73 of the Companies Act, 1956 and the ILDS Regulations in the Interim Order, necessary compliances have been made by the company for issuing such debentures and that a debenture trust had been created by a deed dated June 29, 2011 between the company in favour of the trustees therein.

19. In this regard, I note that BICL had issued the Secured Redeemable Debentures through a letter which was titled as "*Private placement of Secured Redeemable Debentures of Rs. 500 lacs issued by Company*". I note that a private placement is made in terms of Section 67(3) of the Companies Act, 1956. However, under the proviso to Section 67(3)(b), if such shares or debentures are issued to more than 49 persons, then the same cannot be treated as a private placement. I note that BICL has issued the Secured Redeemable Debentures to more than 49 persons in the financial years 2010-11, 2011-12 and 2012-13. I note that the Hon'ble Supreme Court of India, while examining the scope of Section 67 of the Companies Act, 1956 in the case of ***Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011) (Judgment dated August 31, 2012)*** (hereinafter referred to as the "**Sahara Case**") observed that:

*"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, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ... I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."*

20. Further, the issue by the company was to more than 49 persons and hence, in terms of the proviso to Section 67(3), the provisions of Section 67(3) became inapplicable to such issue and the issue is to be treated as made to public in terms of Section 67(1) or (2). Accordingly, in terms of Section 73(1), the company was required to make an application for listing of such shares or debentures on one or more recognised stock exchanges. In the Sahara Case, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that –

*"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."*

21. From the above, I note that there is an obligation on every company intending to offer shares or debentures to the public, i.e. to more than 49 persons, to issue prospectus containing the required disclosures under Section 56 of the Companies Act, 1956, registering the prospectus with the RoC under Section 60

of the Companies Act, 1956 and apply on a recognised stock exchange for listing of its securities under Section 73 of the Companies Act, 1956. However, I note that the company while accepting that it has issued debentures to more than 49 persons, has not produced any proof that it applied for listing the securities on a recognised stock exchange as mandated under Section 73(1) of the Companies Act, 1956. I find that there is no evidence on record that the company had applied for listing before any recognised stock exchange in compliance of Section 73(1) of the Companies Act, 1956.

22. I note that the Noticees in their letter dated October 29, 2018 and the Appeal Memo have submitted that the company has registered the prospectus with the RoC and that Shri Sushanta Nandy (Noticee no. 12) who has acted as Debenture Trustee to the impugned issue has the necessary certificate of registration from SEBI and is not in violation the SEBI (Debenture Trustee) Regulations, 1993 (hereinafter referred to as “**DB Regulations**”). In this regard, I note that under 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 of Schedule II 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 and contain disclosures as specified. Furthermore, Section 2(36) of the Companies Act, 1956 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.

23. Further, I note that as per Regulation 6 of the ILDS Regulations, a draft offer document has to be filed with the designated stock exchange through the lead merchant banker before making a public issue of debt securities. A copy of the draft and final offer document must also be forwarded to SEBI while filing the

same with the designated stock exchange. Further, the lead manager shall, prior to filing of the offer document with the RoC, furnish to the Board a due diligence certificate as per Schedule II of the ILDS Regulations.

24. In this regard, I note that the Noticees have not submitted any specific documents as the prospectus in their joint reply dated October 29, 2018. However, in the Appeal Memo, the Noticees have submitted certain documents as Exhibit “E”, which they have referred to as the “Copy of the prospectus of the petitioner company by ROC”. The said Exhibit “E” contains copies of the following documents:

- (i) Form 10 – Particulars for registration of charges for debentures
- (ii) Registered Debenture Trust Deed
- (iii) Registered Deed of Mortgage
- (iv) Company Letter titled as “*Private placement of Secured Redeemable Debentures of Rs. 500 lacs issued by Company*” to its proposed applicants.
- (v) Debenture Application Form with Terms and Conditions
- (vi) Extracts of the Meeting of the Board of Directors of the Company held at its Registered Office on June 29, 2011 at 2:00 PM

25. I note that the Company letter issued by BICL to its proposed applicants titled as “*Private placement of Secured Redeemable Debentures of Rs. 500 lacs issued by Company*” is with regard to a private placement. I also note that along with the Registered Debenture Trust Deed submitted by the Noticees, a stamped Affidavit by BICL has been included, which *inter alia* states that:

*“We, the Director of “BSP Infrastructure & Construction Limited” having registered office at Parial Market, 3<sup>rd</sup> Floor, Near No. 1 Rail Gate, Habra, North 24 Parganas, Pin 743263, West Bengal, do hereby confirm that our company will not allotted more than 49 debenture holder for the proposed issue.”*

26. From the aforesaid documents, I find that BICL has itself represented its issue of Secured Redeemable Debentures as a private placement where the allotment of debentures would be to less than 50 persons, whereas it has actually issued

debentures to the public, i.e. to more than 49 persons during the financial years 2010-11, 2011-12 and 2012-13. Be that as it may, this document shows that BICL was itself portraying the issuance of its Secured Redeemable Debentures as private placement. Thus, the filing of such a document is not required under Section 56 and 60 of the Companies Act, 1956. However, in terms of Section 2(36) of the Companies Act, 1956, this document qualifies as a prospectus, thus attracting all the obligations pertaining to a prospectus as given under Section 56, 60, 62 and 63 of the Companies Act, 1956. I find that the document does not contain the disclosures as specified in Section 56 of the Companies Act, 1956 read with Schedule II thereof and Regulation 5(2)(b) of the ILDS Regulations.

27. I note that Section 56 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. Further, 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 Section. As mentioned above, since the debentures were made to fifty persons or more, the issue of debentures by BICL in the financial years 2010-11, 2011-12 and 2012-13 has to be construed as a public offer. Having made a public offer, BICL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. However, based on the material available on record, I find that the company has not filed a prospectus with the RoC as claimed by it and has failed to comply with the provisions of Section 56 and 60 of Companies Act, 1956.

28. Further, it has been alleged in the Interim Order that BICL has not complied with the following provisions of the ILDS Regulations, in respect of the issuance of abovementioned Secured Redeemable Debentures:

- i. Regulation 4(2)(a) – Application for listing of debt securities*
- ii. Regulation 4(2)(b) – In-principle approval for listing of debt securities*
- iii. Regulation 4(2)(c) – Credit rating has been obtained*
- iv. Regulation 4(2)(d) – Dematerialization of debt securities*

- v. Regulation 4(4) – Appointment of Debenture Trustee*
- vi. Regulation 5(2)(b) – Disclosure requirements in the Offer Document*
- vii. Regulation 6 – Filing of draft Offer Document*
- viii. Regulation 7 – Mode of disclosure of Offer Document*
- ix. Regulation 8 – Advertisements for Public Issues*
- x. Regulation 9 – Abridged Prospectus and application forms*
- xi. Regulation 12 – Minimum subscription*
- xii. Regulation 14 – Prohibition of mis-statements in the Offer Document*
- xiii. Regulation 15 – Trust Deed*
- xiv. Regulation 16(1) – Debenture Redemption Reserve*
- xv. Regulation 17 – Creation of security*
- xvi. Regulation 19 – Mandatory Listing*
- xvii. Regulation 26 – Obligations of the Issuer, etc.*

29. I note that the Noticees in their joint reply dated October 29, 2018 and Appeal Memo, have submitted that with regard to the alleged violation of the ILDS Regulations in the Interim Order, necessary compliances have been made by the company for issuing such debentures. However, I find that there are no documents or evidence before me to prove that the company has complied with any of the various provisions of the ILDS Regulations in respect of the issuance of the Secured Redeemable Debentures, as alleged in the Interim Order. I find that the Noticees have merely claimed to have made necessary compliance of the provisions of the ILDS Regulations for issuance of the debentures, however, they have failed to provide any documents or evidence to prove and substantiate the same. Hence, I find the submissions of the Noticees that necessary compliances have been made by the company for issuing such debentures as erroneous and untenable.

30. I note that as per Section 73(2) of the Companies Act, 1956, the obligation to refund the amount with interest that was collected from investors under the Offer of Secured Redeemable Debentures, is mandatory on BICL. I note that BICL has collected a total of Rs. 11,41,75,300/- from 9402 debenture holders, as on September 29, 2016. In this regard, the Noticees in their letter dated October 29,

2018 and the Appeal Memo, have submitted that they have made repayments of a total of more than Rs. 3.2 crores vide bulk NEFT by using cheques numbers as 000102, 000106, 000107, 000108, 000110, 000111, 000112, 000113 and 0000114 and others cheques and also paid by cash to the debenture holders through Bandhan Bank account number 10160003774471 of Kankurgachi Branch. However, I note that no bank statements/documents or evidence of such payment of Rs 3.2 crores through the said Bank or by cash has been submitted by the Noticees along with their reply. In any case, the amount collected by the Company was Rs. 11.41 crores (approximately), therefore, the alleged refund of Rs. 3.2 crores does not extinguish the liability of BICL under Section 73(2) of the Companies Act, 1956. Hence, I find that there is no evidence to indicate that BICL has repaid any amount along with interest to the investors within 8 days as mandated under Section 73(2) of the Companies Act, 1956.

31. Further, with regard to the submissions of Noticees that Shri Sushanta Nandy (Noticee no.12) has the necessary certificate of registration from SEBI, I find that the said Noticees have not provided a copy of the said certificate of registration issued by SEBI to Shri Sushanta Nandy to substantiate their claims. I also find that no such certificate of registration has been granted by SEBI to Shri Sushanta Nandy (Noticee no. 12) to act as a Debenture Trustee. Further, from the provisions of Regulation 7 of the DB Regulations, I note that Shri Sushanta Nandy (Noticee no.12) is not even eligible to apply for a certificate of registration as a Debenture Trustee. Hence, I find the above submission of the Noticees as erroneous and untenable.

32. In view of the above, I find that the BICL has mobilized funds through the offer and allotment of Secured Redeemable Debentures to 1126 persons in F.Y. 2010-11, to 2772 persons in F.Y. 2011-12 and to 5500 persons in F.Y. 2012-13, without complying with the provisions of the Companies Act, 1956 and the ILDS Regulations. Thus, I find that BICL (Noticee no. 1) has violated Section 56, 60, 67 and 73 of the Companies Act, 1956 and Regulations 4(2)(a), 4(2)(b), 4(2)(c),

4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 16(1), 17, 19 and 26 of the ILDS Regulations, as alleged in the Interim Order.

33. With regard to the allegations against Noticee no. 12 for acting as an unregistered Debenture Trustee, I note that Noticee no. 12 has not filed any reply to the Interim Order to deny or contest that he has acted as an unregistered debenture trustee of BSP Debenture Trust in violation of Section 12(1) of the SEBI Act, 1992 and Regulation 7 of the DB Regulations as alleged in the Interim Order. I note that Section 12(1) of the SEBI Act, 1992 states that:

*“12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:  
.....”*

Further, Regulation 7 of the DB Regulations states that:

***“Eligibility for being debenture trustee.***

*7. No person shall be entitled to act as a debenture trustee unless he is either—  
(a) a scheduled bank carrying on commercial activity; or  
(b) a public financial institution within the meaning of section 4A of the Companies Act, 1956; or  
(c) an insurance company; or  
(d) body corporate.”*

34. From the above, I note that no Debenture Trustee shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under the SEBI Act. In this regard, I find that no such certificate of registration has been granted by SEBI to Shri Sushanta Nandy (Noticee no. 12) to act as a Debenture Trustee. Further, from the abovementioned provisions of Regulation 7 of the DB Regulations, I note that he is not even eligible to apply for a certificate of registration as a Debenture Trustee. Accordingly, I also find that Noticee no. 12

(Shri Sushanta Nandy) has violated Section 12(1) of the SEBI Act, 1992 and Regulation 7 of the DB Regulations for acting as an unregistered debenture trustee in the offer and allotment of Secured Redeemable Debentures to more than 49 persons by BICL in F.Y. 2010-11, 2011-12 and 2012-13.

35. Since the alleged violations of the Companies Act, 1956 and the ILDS Regulations have been established against the company BICL for the issue and allotment of Secured Redeemable Debentures to more than 49 persons in F.Y. 2010-11, 2011-12 and 2012-13, I shall now proceed to examine the alleged violations and liability of the other Noticees, who are the directors and promoters of BICL. In this regard, I note that under Section 73(2) of the Companies Act, 1956, where permission for listing of the share or debenture on one or more recognised stock exchanges has not been granted under Section 73(1), the company is mandated to repay without interest all moneys received from applicants in pursuance of the prospectus, and if any such money is not repaid within a period of 8 days after the company becomes liable to repay it, then the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate as may be prescribed. In this regard, I note that BICL has collected a total of Rs. 11,41,75,300/- from 9402 debenture holders, as on September 29, 2016 and the Noticees in their joint letter dated October 29, 2018 and the Appeal Memo, have submitted that they have made repayments of a total of more than Rs. 3.2 crores, which I also note has not been substantiated with any proof or evidence of such payment. Nonetheless, it is an established fact that the Company has failed to repay the applicants within eight days after the company becomes liable to repay it and therefore, the company and every director of the company who is an officer in default shall be jointly and severally liable to repay the money and interest at such rate as may be prescribed. I note that "Officer in default" has been defined under Section 5 of the Companies Act, 1956 as below:

***"5. MEANING OF "OFFICER WHO IS IN DEFAULT"***

*For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by*



*way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:*

- (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: **Provided** that the person so charged has given his consent in this behalf to the Board;*
- (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:*

***Provided** that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form."*

36. From the above, an "Officer in default" would mean the following officers, namely, the managing director or managing directors, whole time director or whole time directors, the manager, the secretary or any person in accordance with whose directions or instructions the Board of Directors of the company accustomed to act and would also include any person charged by the Board of responsibility of compliance with the provisions of the Act. Section 5(g) of the Companies Act, 1956 further stipulates that where the company does not have any of these officers specified in clauses (a) to (c) in which case all the directors would be deemed to be an officer in default.

37. In this regard, I note that the letter/document of BICL titled as "*Private placement of Secured Redeemable Debentures of Rs. 500 lacs issued by Company*" is signed by Noticee no 3 (Pradip Samaddar) as the Managing Director of BICL. I also note that the Certificate of Debentures issued by BICL to the Debenture Holders have been signed by Noticee no. 3 as the Managing Director of BICL. Further, from the Terms and Conditions in the application form for the said Secured Redeemable Debentures, under the relevant para for 'Management and Purpose of the Issue', I note that it is stated as under:

- “a) Management: The Company is managed and controlled by Mr. Pradip Samaddar, the Managing Director of the Company.*
- b) Purpose of the Issue: The funds raised through this placement will be invested for expansion of asset building of existing projects and up coming projects like Rice Mills, Solvent Plant, Tea Processing, Tea Gardens, Export of Seed, Food Processing, Fertilizers, Multipurpose Cold Storage and Cold Chain, Floriculture etc. and other agro-based industries mentioned in the Memorandum of Association of the Company throughout India under the leadership of Mr. Pradip Samaddar, the Managing Director.”*

38. From the above documents, I find that Noticee no. 3 (Pradip Samaddar) was the Managing Director of BICL and it is established that Noticee no. 3 was managing and controlling BICL and was responsible for the day to day affairs of the company as the Managing Director of BICL. I note that there is nothing on record to suggest that the other directors were whole time directors or a person in accordance with whose directions or instructions the Board of Directors of the company are accustomed to act or a person charged by the Board of responsibility of compliance with the provisions of the Companies Act, as given in Section 5 of the Companies Act, 1956 and hence, only the Managing Director is responsible as the Officer in Default of the company. I note that the Hon'ble SAT in its order dated August 09, 2019 in the matter of **Sayanti Sen vs. SEBI (Appeal No. 163 of 2018)** had observed that:

*“13. As per Section 5 of the Companies Act it becomes clear that a managing director, whole time director, manager, secretary and any person who has been authorized by the board or by any director are now officers in default. Section 5(g) of the Companies Act makes it apparently clear that if there is a managing director appointed in a company, he would be an officer in default. Further, in the absence of any managing director, if the board has specified any particular director or manager or any other person as an officer in default in which case only that specified director or manager etc. as the case may be would be an officer in default.”*

*(Emphasis added)*

39. Therefore, I find that Noticee no. 3, as the Managing Director of BICL (Noticee no. 1) is the “Officer in Default” of BICL under Section 73(2) of the Companies Act, 1956, and as the “Officer in Default”, the Noticee no. 3 (Pradip Samaddar) is

jointly and severally liable with the company to repay the money and interest at such rate as may be prescribed.

40. With regard to the role and liability of the other Noticees who are not Officers in Default of the company, but were directors and promoters of BICL during the period when the Secured Redeemable Debentures were issued to more than 49 persons, I note that Noticees no 2 and 4 in their respective letters dated October 03, 2018 have submitted that they were appointed as directors on March 30, 2010 and resigned on August 05, 2010 and since the date of their cessation as directors of the company, they are no more concerned in any manner whatsoever with the company. However, I note that Noticee no. 2 and 4 were also Promoters of BICL and that BICL had issued Secured Redeemable Debentures to 1126 person during the financial year 2010-11, i.e. during their tenure as promoter and director in BICL. I note that the Noticees no. 2 and 4 in their replies have not made any submissions denying their involvement in the issue of Secured Redeemable Debentures to more than 49 persons during their tenure in the company as Promoter and Director in the financial year 2010-11. I note that the Noticees have not made any submissions with regard to their non-participation or involvement in the Board Meetings or resolutions taken by the company with regard to the said public issue of debentures. They have only submitted that they are no more concerned in any manner with the company. Further, I note that the Noticees no. 2 and 4 are also appellants to the Appeal no. 365 of 2019 against the Interim Order before the Hon'ble SAT, wherein, it has been observed in the Order of the Hon'ble SAT dated March 05, 2020 that the appellants are willing to comply with the interim directions passed in the Interim Order of SEBI dated September 12, 2018. Since the issue of Secured Redeemable Debentures by BICL was made to the public, a prospectus containing the disclosures as specified under Section 56 of the Companies Act, 1956 had to be registered with the RoC under Section 60 of the Companies Act, 1956. The letter which was circulated to the investors for offering Secured Redeemable Debentures to public was a prospectus within the meaning of Section 2(36) of the Companies Act, 1956, thus attracting all obligations pertaining to prospectus including signing of prospectus by the promoters/directors. However, I find that the prospectus did not

comply with the provisions of Section 56, was not registered with the RoC under Section 60 of the Companies Act, 1956 and was not signed by the promoter/director of BICL. Further, none of the provisions of the ILDS Regulations were complied with for the issue of the Secured Redeemable Debentures to the public by BICL. In view of the above, I find that the Noticee 2 and 4, as Promoters and Directors of BICL, are liable for the alleged violations of Section 56 and 60 of the Companies Act, 1956, and are also liable for failing to comply with the provisions of ILDS Regulations,

41. I note that Noticee no. 6 in his reply dated November 25, 2019, has submitted that during his tenure as director for little over 3 years till June 16, 2013, he did not take part in the Board Meeting of BICL, as BICL had no culture of holding Board Meeting as it was a one man show. Further, Noticee no. 6 submitted that during his tenure as director, he never received any money from the company as remuneration or as sitting fees or otherwise and was just a puppet like other directors of BICL in the hands of Shri Pradip Samaddar (Noticee no. 3). In this regard, I note that Noticee no. 6 was a director of BICL from June 01, 2010 to June 16, 2013 and that during his tenure as a director, BICL had issued Secured Redeemable Debentures to 1126 persons in F.Y. 2010-11, to 2772 persons in F.Y. 2011-12 and to 5500 persons in F.Y. 2012-13. Further, I note that Noticee no. 6 is a signatory as a Witness to the Debenture Trust Deed and also to the Deed of Mortgage, as provided by the Noticees along with their replies. Hence, I find that Noticee no. 6 was clearly involved in the issue of debentures by BICL to more than 49 persons in the financial year 2011-12 as he had signed the Debenture Trust Deed and Deed of Mortgage in this regard. Further, I note that the Noticees no. 6 is also an appellant to the Appeal no. 365 of 2019 against the Interim Order before the Hon'ble SAT, wherein, it has been observed in the Order of the Hon'ble SAT dated March 05, 2020 that the appellants are willing to comply with the interim directions passed in the Interim Order of SEBI dated September 12, 2018. Since the issue of Secured Redeemable Debentures by BICL was made to the public, a prospectus containing the disclosures as specified under Section 56 of the Companies Act, 1956 had to be registered with the RoC under Section 60 of the Companies Act, 1956. The letter which was

circulated to the investors for offering Secured Redeemable Debentures to public was a prospectus within the meaning of Section 2(36) of the Companies Act, 1956, thus attracting all obligations pertaining to prospectus including signing of prospectus by promoters/directors. However, I find that the prospectus did not comply with the provisions of Section 56, was not registered with the RoC under Section 60 of the Companies Act, 1956 and was not signed by the promoter/director of BICL. Further, none of the provisions of the ILDS Regulations were complied with for the issue of the Secured Redeemable Debentures to the public by BICL. In view of the above, I find that Noticee no. 6 as a director of the company who was also directly involved in the issue of debentures, is liable for the alleged violation of Section 56 and Section 60 of the Companies Act, 1956 and also provisions of the ILDS Regulations for the issue of debentures to the public by BICL.

42. I note that Noticee no. 10 in his letter dated November 30, 2018 has submitted that he was made a director of the company on February 14, 2013 and resigned on June 16, 2013 and is not involved in any kind of monetary business of the company so far as the allegations are concerned and has not received any money from the company in any manner as salary, remuneration, commission, incentives etc. He has submitted that BICL wanted to purchase a land property from one North Odisha Fisheries and Farming Co. Ltd located under the Mouza Kharasahapur in the Tehasil of Soro, Balasore, Odisham and for that purpose he was made a director of the company on February 14, 2013, as he was a native of Odisha. Since the said property could not be purchased, he resigned from the post of Director from BICL on June 16, 2013. However, I find that the above reasons for the Noticee's appointment as a director, has not been substantiated or corroborated with any record or documents to prove or establish the same and therefore, cannot be verified and accepted. In this regard, I note that BICL had issued Secured Redeemable Debentures to 5500 persons during the financial years 2012-13 and the Noticee was a director of BICL during such period. Since the debentures were also issued to the public during the F.Y. 2010-11 and 2011-12 i.e. even prior to his appointment as a director in the Company, the Noticee should have been aware and mindful of the liabilities of the Company when he

was appointed as a director of the Company. I also note from his resignation letter dated June 16, 2013 that he has resigned due to personal problems as he is not in a position to devote his time to the affairs of the company and not because of the liabilities of the company or for the aforesaid reasons stated by him in his reply. Further, I note that the Noticee no. 10 is also an appellant to the Appeal no. 365 of 2019 against the Interim Order before the Hon'ble SAT, wherein, it has been observed in the Order of the Hon'ble SAT dated March 05, 2020 that the appellants are willing to comply with the interim directions passed in the Interim Order of SEBI dated September 12, 2018. Since the issue of Secured Redeemable Debentures by BICL was made to the public, a prospectus containing the disclosures as specified under Section 56 of the Companies Act, 1956 had to be registered with the RoC under Section 60 of the Companies Act, 1956. The letter which was circulated to the investors for offering Secured Redeemable Debentures to public was a prospectus within the meaning of Section 2(36) of the Companies Act, 1956, thus attracting all obligations pertaining to prospectus including signing of prospectus by promoters/directors. However, I find that the prospectus did not comply with the provisions of Section 56, was not registered with the RoC under Section 60 of the Companies Act, 1956 and was not signed by the promoter/director of BICL. Further, none of the provisions of the ILDS Regulations were complied with for the issue of the Secured Redeemable Debentures to the public by BICL. In view of the above, I find that Noticee no. 10 as a director of BICL is also liable for the alleged violation of Section 56 and 60 of the Companies Act, 1956 and also provisions of the ILDS Regulations for the issue of debentures to the public by BICL.

43. Further, I note that Noticees no. 17, 18 and 19, in their respective letters dated October 03, 2018, have submitted that they were appointed as Promoters on and from March 19, 2010. They have submitted that a promoter of a company is a mere symbolisation of primary steps taken for the purpose of registration and they were not involved with the day to day affairs of the company and also have not financially benefitted from any corner in connection with the said company. In this regard, I note that Noticees no. 17, 18 and 19 as promoters of BICL have not denied their involvement in the issue of Secured Redeemable Debentures to

1126 persons in F.Y. 2010-11, to 2772 persons in F.Y. 2011-12 and to 5500 persons in F.Y. 2012-13 by BICL. Since the issue of Secured Redeemable Debentures by BICL was made to the public, a prospectus containing the disclosures as specified under Section 56 of the Companies Act, 1956 had to be registered with the RoC under Section 60 of the Companies Act, 1956. The letter which was circulated to the investors for offering Secured Redeemable Debentures to public was a prospectus within the meaning of Section 2(36) of the Companies Act, 1956, thus attracting all obligations pertaining to prospectus including signing of prospectus by promoters/directors. However, I find that the prospectus did not comply with the provisions of Section 56, was not registered with the RoC under Section 60 of the Companies Act, 1956 and was not signed by the promoter/director of BICL. Further, none of the provisions of the ILDS Regulations were complied with for the issue of the Secured Redeemable Debentures to the public by BICL. Hence, I find that as promoters of BICL, Noticees no. 17, 18 and 19 are liable for the alleged violations of Section 56 and 60 of the Companies Act, 1956 and the provisions of ILDS Regulations, which has been established against the company.

44. I note that Noticees no. 5, 7, 8, 9, 11 and 12 have not made any submissions with the regard to their liability as directors of BICL for the violations of the Companies Act, 1956 and the ILDS Regulations, as alleged in the Interim Order. Further, I note that they are neither whole time directors nor persons in accordance with whose directions or instructions the Board of Directors of the company are accustomed to act or a person charged by the Board of responsibility of compliance with the provisions of the Companies Act, as given in Section 5 of the Companies Act, 1956. However, I find that Noticees no. 5, 7, 8, 9, 11 and 12 served as directors during the period when the Secured Redeemable Debentures were issued to the public by BICL. Since the issue of Secured Redeemable Debentures by BICL was made to the public, a prospectus containing the disclosures as specified under Section 56 of the Companies Act, 1956 had to be registered with the RoC under Section 60 of the Companies Act, 1956. The letter which was circulated to the investors for offering Secured Redeemable Debentures to public was a prospectus within the meaning of Section 2(36) of the

Companies Act, 1956, thus attracting all obligations pertaining to prospectus including signing of prospectus by promoters/directors. However, I find that the prospectus did not comply with the provisions of Section 56, was not registered with the RoC under Section 60 of the Companies Act, 1956 and was not signed by the promoter/director of BICL. Further, none of the provisions of the ILDS Regulations were complied with for the issue of the Secured Redeemable Debentures to the public by BICL. Hence, as directors of BICL, I find that Noticees no. 5, 7, 8, 9, 11 and 12 are liable for the alleged violation of Section 56 and 60 of the Companies Act, 1956 and also for complying with the provisions of the ILDS Regulations, for the issue of debentures to the public, which has been established against the company.

45. I note that Noticees no. 14 and 15 have not made any submissions with regard to their liability as directors of BICL for the violations of the Companies Act, 1956 and the ILDS Regulations, as alleged in the Interim Order. However, I note that BICL had issued Secured Redeemable Debentures to the public during the F.Y. 2010-11, 2011-12 and 2012-13 and Noticees no. 14 and 15 have been appointed as directors of BICL only on May 21, 2018, which is post the issue of the Secured Redeemable Debentures which were last issued in 2013. Hence, I find that Noticees no. 14 and 15 were not directors of BICL during the relevant period when the company had issued Secured Redeemable Debentures to the public in violation of the provisions of the Companies Act, 1956 and the ILDS Regulations.

46. In view of the above findings, I find that:

- (i) As discussed in paras 18 to 32 above, BICL (Noticee no. 1) has violated Section 56, 60, 67 and 73 of the Companies Act, 1956 and Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 16(1), 17, 19 and 26 of the ILDS Regulations, as alleged in the Interim Order.
- (ii) As discussed in paras 38 and 39 above, Noticee no. 3 (Pradip Samaddar) is liable for the violation of Section 56, 60, 67 and 73 of the Companies Act, 1956 and Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9,



12, 14, 15, 16(1), 17, 19 and 26 of the ILDS Regulations, as alleged in the Interim Order.

(iii) As discussed in paras 40 to 44 above, I find that Noticees no. 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, 18 and 19 as the directors and promoters of the company are liable for filing the abridged prospectus containing the required disclosures and registering of the prospectus with the RoC and also complying with the provisions of the ILDS Regulations for the issue of debentures to the public by BICL. Thus, I find that the said Noticees no. 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, 18 and 19 are liable for the violation of Section 56 and 60 of the Companies Act, 1956 and Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 16(1), 17, 19 and 26 of the ILDS Regulations, as alleged in the Interim Order.

47. I note that the Noticees 1, 2, 3, 4, 5, 6, 7, 10, 18 and 19 in their letter dated February 12, 2020, have submitted that they are willing to sell the alleged secured properties for liquidating their liabilities. Further, I note that in the Misc. Application No. 452 of 2019 and Appeal No. 365 of 2019 before the Securities Appellate Tribunal filed by Noticees no. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 15, the Hon'ble SAT in its order dated March 05, 2020, while disposing of the appeal filed by the said Noticees, observed as under:

*"2. However, the learned counsel for the appellants Shri Avik Sarkar stated that the appellants are willing to comply with the interim directions passed by the WTM of SEBI. In this regard, the learned counsel has placed a letter written by an Advocate Shri Mitul Chakrabarty dated February 12, 2020 written to the Assistant General Manager, SEBI which letter is taken on record. In this letter the Advocate on instruction from his clients namely the directors and shareholders stated that the appellants are willing to sell out the alleged secured properties for liquidating their liabilities."*

48. Therefore, I note that the Noticees 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 17, 18 and 19 have submitted before the Hon'ble SAT that they are willing to comply with the interim directions of the Interim Order dated September 12, 2018 and also their willingness to sell out the secured properties for liquidating their

liabilities. In view of the findings in the aforesaid paras that BICL (Noticee no. 1) and Shri Pradip Samaddar (Noticee no. 3) are liable for the violations of the Companies Act, 1956 and the ILDS Regulations as alleged in the Interim Order, I find that BICL (Noticee no. 1) and Shri Pradip Samaddar (Noticee no. 3) are jointly and severally liable to refund the money collected through the offer and allotment of Secured Redeemable Debentures and directions for refund against them are called for in the present matter. Further, having regard to the nature of violations and conduct of the company (Noticee no. 1) and its directors/promoters (Noticees no. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, 18 and 19), I find that issue of regulatory directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, against the said Noticees are called for in the present matter.

**DIRECTIONS:**

49. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4) and Section 11B read with of Section 19 of the SEBI Act, 1992, hereby issue the following directions:

- (i) BICL (Noticee no. 1) and Pradip Samaddar (Noticee no. 3), shall jointly and severally refund the money collected through the offer and allotment of Secured Redeemable Debentures, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment), within a period of 90 days from the date of receipt of this Order;
- (ii) BICL (Noticee no. 1) is permitted to sell its assets which have been frozen by the Interim Order, 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.

- (iii) The repayments to the 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.
- (iv) BICL (Noticee no. 1) and Pradip Samaddar (Noticee no. 3) 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.
- (v) BICL (Noticee no. 1) 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.
- (vi) After completing the aforesaid repayments, BICL (Noticee no. 1) shall file a report of such completion with SEBI, within a period of three months from the date of receipt of this order, certified by two independent Chartered Accountants who are in the panel of any public authority or public institution.
- (vii) In case of failure of BICL (Noticee no. 1) and Pradip Samaddar (Noticee no. 3) to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of receipt of this Order by the Noticees, may recover such amounts, from the company and the directors liable to refund as specified in paragraph 49(i) of this Order, in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws.

- (viii) BICL (Noticee no. 1) and Pradip Samaddar (Noticee no. 3) 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 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 date of this order or till the completion of refund to investors as directed above, whichever is earlier. The above said persons are also restrained from associating 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 date of this order or till the completion of refund to investors as directed above, whichever is earlier.
- (ix) Sushanta Nandy (Noticee no. 12) is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of 3 (three) years from date of this order. The Noticee no. 12 is also restrained from associating 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 3 (three) years from date of this order.
- (x) Biplap Bose (Noticee no. 2), Gopal Chandra Ghosh (Noticee no. 4), Bidhan Ojha (Noticee no. 5), Parimal Ghosh (Noticee no. 6), Komaju Krishna Achary (Noticee no. 7), Chitta Ranjan Das (Noticee no. 8), Surendra Kumar Panigrahi (Noticee no. 9), Ratikanta Mishra (Noticee no. 10), Saiful Islam Khan (Noticee no. 11), Rekha Bose (Noticee no. 17), Kajal Das (Noticee no. 18) and Asit Bose (Noticee no. 19) 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 prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of 2 (two) years from date of this order. The above said persons are also restrained from associating 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 2 (two) years from date of this order.

- (xi) In view of the findings in para 45 above, the allegations in the Interim Order against Siddheshwar Mondal (Noticee no. 14) and Tarun Kumar Saha (Noticee no. 15) stands disposed of. However, Noticees no. 14 and 15, as the present directors of BICL (Noticee no. 1), shall ensure that the aforesaid directions for refund to investors against the company are complied with.
- (xii) Regarding Amol Sardar and Swapna Sammadar (Noticees no. 13 and 16 to the Interim Order) against whom direction given in para 25 of the Interim Order were to come into effect due to non-filing of reply or not making of request for personal hearing, I hereby,-
  - (a) Revoke the directions of refund and debarment against Noticee no. 13, as Noticee no. 13 was not a director of BICL (Noticee no.1) during the period when the Secured Redeemable Debentures were issued to the public and direct that Noticee no. 13, being the present director of BICL since March 24, 2018, shall ensure that the aforesaid directions of refund against the company (Noticee no.1) are complied with.
  - (b) Revoke the directions of refund against Noticee no. 16, in view of the findings recorded in paras 38 and 39 above. However, the directions of debarment, as contemplated in para 25 of the Interim Order, shall operate against Noticee no. 16 as it stood confirmed in

terms of said para 25 of the Interim Order due to non-filing of reply or not making of request for personal hearing.

(xii) This Order shall come into force with immediate effect.

(xiii) A copy of this order shall also be sent to all the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

**Place: Mumbai**

**Date: October 27, 2020**

**Sd/**

**ANANTA BARUA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**