

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Nixcil Pharmaceuticals Specialities Limited (now known as Heivero Pharmaceuticals Limited) (CIN:U24231UP1992PLC014636); (PAN:AABCN6977H) and its Directors

1. Securities and Exchange Board of India ("**SEBI**") received a complaint dated March 01, 2013 against Nixcil Pharmaceuticals Specialities Limited ("NPSL") alleging non-receipt of principal and interest amount invested in a monthly income scheme of NPSL. Subsequently another complaint dated May 16, 2013 was also received stating that NPSL has issued *Redeemable Cumulative Preference Shares* in 2006 and copies of acknowledgement slips, preference share certificate and encashment warrants were enclosed.
 - 2.1 As a matter of preliminary inquiry, vide letter dated May 14, 2013 SEBI advised NPSL to furnish *inter alia* information about its scheme(s) and plan (s). The letter sent to the registered office address of NPSL was returned undelivered by the postal authorities with the remarks that the company had left the premises.
 - 2.2 Thereafter, vide letter dated November 22, 2013 SEBI advised NPSL to furnish *inter alia* the following information in respect of issuance of preference shares, viz. –
 - i. Certified copy of the Memorandum and Articles of Association of the company;
 - ii. Audited Balance Sheet and Profit & Loss Account of the company for the last 10 years;
 - iii. Names, addresses and occupation of all the promoters/directors of the company;
 - iv. Statement of mobilization of funds through issue of preference shares duly certified by the Statutory Auditors of the company;
 - v. Names and details of the Key Managerial Personnel of the company;
 - vi. Copies of Annual Report and Annual Return filed with RoC since incorporation;
 - vii. Copies of Tax Returns filed with the Income Tax authorities since incorporation;
 - viii. Other information in respect of every series of preferences shares issued by the company, viz. –

- a. Details regarding filing of Prospectus/Red Herring Prospectus with Registrar of Companies ("RoC");
- b. Date of opening and closing of the subscription list;
- c. The details of opening and closing of the issue, quantum of funds raised and proposed to be raised;
- d. List of agents with addresses who have been appointed by the company;
- e. Details regarding the number of application forms circulated inviting subscription;
- f. Details regarding the number of applications received and number of allottees;
- g. The number of allottees and the list of allottees along with their names, addresses, number of preference shares issued, folio number, certificate number, distinctive number and amount collected from each allottee since incorporation till date;
- h. Details regarding subscription amount raised;
- i. Date of allotment of the preference shares;
- j. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for issue and allotment of preference shares;
- k. Date of dispatch of preference shares certificates etc.;
- l. Copies of application forms, RHP, pamphlets, advertisements and other promotional material circulated for issuance of preference shares;
- m. Terms and conditions of the issue of preference shares;
- ix. Other information in connection with the matter.

2.3 In response, NPSL vide letter dated December 08, 2013 *inter alia* submitted the following information/documents:

- a. Copy of Memorandum and Articles of Association
- b. Audited Balance Sheet and Profit & Loss a/c for last 10 years i.e. FY 2002-03 to FY 2011-12.
- c. Details of promoters/directors
- d. Details of Key Managerial Personnel
- e. Copies of Annual Returns filed with ROC for last 8 years (2004 to 2011).
- f. Copies of Income Tax Return for last 10 years (AY 2003-04 to AY 2012-13)

2.4 On perusal of the information submitted by NPSL, it was observed that as per the audited financial statements submitted, NPSL has issued preference shares bearing coupon rates ranging from 10% to 12.75% during the financial years 2005-06 to 2011-12.

As NPSL did not submit any information about issuance of preference shares, SEBI vide letter dated May 08, 2014 *inter alia* advised NPSL to submit the following information:

- A. Statement of mobilization of funds through issuance of preference shares duly certified by the Statutory Auditors of the company.
- B. Information for each and every series of preference shares issued by the company i.e.
 - a. Details regarding filing of prospectus/Red Herring Prospectus with ROC.
 - b. Date of opening and closing of the subscription list.
 - c. Details of opening/closing of the issue, quantum of the funds raised and proposed to be raised.
 - d. List of agents with addresses who have been appointed by the company.
 - e. Details regarding the number of application forms circulated inviting subscription.
 - f. Details regarding no of applications received and number of allottees
 - g. Details of the allottees.
 - h. Details regarding subscription amount raised
 - i. Date of allotment of the preference shares.
 - j. Copy of the minutes of the Board/General Meeting in which the resolution has been passed for issue and allotment of preference shares.
 - k. Date of dispatch of preference share certificates.
 - l. Copy of application forms, RHP, pamphlets, advertisements & other promotional material circulated for issuance of preference shares.
 - m. Terms and conditions of the issue of preference shares.

Apart from the above, NPSL was specifically asked to provide information with regard to the preference share application money pending allotment in the year 2004-05 and Redeemable Cumulative Preference Shares (Rs.1000 each) bearing coupon rates ranging from 10% to 12.75% issued during the financial years 2005-06 to 2011-12.

- 2.5 SEBI, vide letters dated July 08, 2014, also advised five Directors of NPSL i.e. Shri Kishan Pal Singh, Shri Chhotelal Shukla, Shri Vishwa Bandhu Vashistha, Shri Deena Nath Maurya and Shri Mukesh Kumar Khare to provide the aforesaid information.

- 2.6 SEBI vide letter dated August 07, 2014 once again asked NPSL for the information earlier sought vide letter dated May 08, 2014. SEBI also advised NPSL *inter alia* to submit copies of Annual Return for FY 2011-12 and 2012-13, Balance Sheet along with P&L account for FY 2011-12 and 2012-13, etc. It is noted from the information available at the website of India Post, the aforesaid SEBI letters were delivered to NPSL and also to the Directors. However, despite receiving these letters, no information has been received by SEBI till date from NPSL and its Directors.
- 2.7 SEBI also received various complaints against NPSL alleging nonpayment of redemption amount with regard to Redeemable Preference Shares and Redeemable Non Convertible Debentures. The complainants have enclosed copies of the Certificates of Preference Shares and Debentures issued by NPSL.
- 2.8 In the meanwhile, relevant information of NPSL was accessed from the website of the Ministry of Corporate Affairs i.e. 'MCA21 Portal'. It was observed that NPSL had filed an undated letter along with the annual return 2010-11 wherein it was stated that "*The list of preference shareholders to be attached exceeds in size hence the list will be submitted in the form of CD through registered post*". However, it was informed by RoC, Kanpur that NPSL never submitted the said information.
- 2.9 As no response was received from NPSL and its directors, despite receiving several letters from SEBI and the amount mobilised indicated in the audited financial statements since 2005-06 *prima facie* shows that *Redeemable Cumulative Preference Shares* were issued by NPSL to more than 50 or more persons, investigation was initiated by SEBI. NPSL, its Directors and various auditors who audited the financial statements of NPSL during 2005-06 to 2011-12 were issued summons dated November 10, 2014 to submit *inter alia* balance sheet, profit and loss account and annual return for financial year 2012-13 and 2013-14, details with respect to *Redeemable Non Convertible Debentures* issued by NPSL and the information/documents already sought by SEBI.
- 2.10 In response to the aforesaid summons, the auditors have provided information about NPSL and number of preference share holders for the period 2007-08 to 2011-12. However, no information was received from NPSL and its Directors despite receipt of summons.

- 2.11 Thereafter, SEBI issued summons dated December 15, 2014 to NPSL and its six Directors for personal appearance before SEBI on December 22, 2014. No response has been received from NPSL or its Directors, except one Director, Shri Vishwa Bandhu Vashishtha, who vide letter dated November 20, 2014 sought time of 15-20 days to appear in SEBI office but neither submitted any reply nor appeared in person before SEBI.
- 2.12 It is pertinent to mention here that the findings of the investigation indicate that NPSL has issued *Redeemable Cumulative Preference Shares* to fifty or more persons, in violation of the provisions of Companies Act, 1956. Further, on the basis of the figures indicated in the Annual Return of NPSL for the financial year 2012-13 (wherein only equity share capital has been indicated and preference share capital is NIL), the investigation also presumes that NPSL may have in the financial year 2012-13 converted its preference capital into equity capital. The matter with regard to issuance and allotment of equity shares by NPSL is being examined separately by SEBI.
- 2.13 On December 24, 2014 SEBI official conducted a site visit to the registered address of NPSL and the factory premises were found to be locked. Shri Chhotelal Shukla, Director, was the only person present for receiving the letters. SEBI official was informed that all letters received by him are sent to Shri Munshi Tiwari, whose address is same as the address of Shri Prithi Paul Singh Sethi, a former Director of NPSL.
3. I have perused the material available on record i.e. the complaints received by SEBI and documents contained therein, correspondence exchanged between SEBI and NPSL, auditors of NPSL along with the documents contained therein and information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA21 Portal*'. On an examination of the same, it is observed that –
- a. NPSL was incorporated on August 11, 1992 with CIN as U24231UP1992PLC014636 and having its registered office at F-7 to 18, Sector 21, Industrial Area, Jagdispur, Sultanpur - 227817, Uttar Pradesh.
 - b. The present directors of NPSL with effect from 29.01.2015 are Shri Arvind Tiwari (DIN- 01629407; PAN- ADXPT8691C), Shri Pashupati Nath Dixit (DIN- 01664553; PAN- AJPPD9322G), Shri Rajesh Kumar Sharma (DIN-01731816; PAN-

BFXPS2910E) and Shri Ramendra Prasad Sharma (DIN-02518373; PAN-AOBPS4499A).

- c. The Directors of NPSL during the period 2005-06 to 2011-12 are as follows:

No.	Name of the Director	DIN	PAN
1.	Prithi Paul Singh Sethi	00076689	AOAPS8866A
2.	Arun Kumar Madan	00076741	Not available
3.	Amit Mishra	00317047	AIEPM2608Q
4.	Manzoor Alam	Not available	Not available
5.	Gurbhej Singh Hora	00312542	Not available
6.	Bankey Bihari Mishra	0232918	Not available
7.	Vishwa Bandhu Vashishta	02707338	ABFPV9924N
8.	Kishan Pal Singh	02350363	AVVPS8411M
9.	Sanjay Kumar Upadhyay	02455875	AAXPU2236P
10.	Dilip Kumar Mishra	02699649	Not available
11.	Deena Nath Maurya	02824654	BJJPM1012K
12.	Deepak Awasthi	0269978	AHBPA7975L
13.	Chhotelal Shukla	02706032	CLJPS2300B
14.	Shiva Nand Mishra	02706697	AJHPM9388B
15.	Manoj Kumar Joshi	02722133	AGJPJ7853P

- d. Shri Mukesh Kumar Khare (DIN-06400147; PAN- BBVPK0966N) was Director from 03.04.2013 to 12.02.2015.
- e. SEBI issued summons to six Directors of NPSL during November-December 2014, viz. Shri Kishan Pal Singh (DIN 02350363; PAN- AVVPS8411M), Shri Deena Nath Maurya (DIN-02824654; PAN- BJJPM1012K), Shri Vishwa Bandhu Vashishta (DIN-02707338; PAN- ABFPV9924N), Shri Chhotelal Shukla (DIN-02706032; PAN- CLJPS2300B), Shri Mukesh Kumar Khare (DIN-06400147; PAN- BBVPK0966N) and Shri Prithi Paul Singh Sethi (DIN- 00076689; PAN- AOAPS8866A). Five of the aforesaid Directors resigned with effect from 12.02.2015. Shri Prithi Paul Singh Sethi (DIN- 00076689; PAN- AOAPS8866A) ceased to be Director on 29.03.2012.
- f. From the audited financial statements of NPSL, it is observed as under:

- i. The Preference Share Application Money Pending Allotment as at March 31, 2005 was ₹.4.57 Crores.
- ii. The year-wise amount of *Redeemable Cumulative Preference Shares* outstanding since 2005-06 is as under:

Series	2004-05 (₹)	2005-06 (₹)	2006-07 (₹)	2007-08 (₹)	2008-09 (₹)	2009-10 (₹)	2010-11 (₹)	2011-12 (₹)
Pref. share appln.money	45701000	Nil	Nil	Nil	Nil	Nil	Nil	Nil
10%	Nil	201993000	373931000	399282000	395231000	354166000	345570000	351961000
11%	Nil	120804000	231321000	388892000	386670000	372247000	364580000	371322000
11.75%	Nil	105328000	198377000	372760000	372760000	361662000	361662000	368350000
12.75%	Nil	87945000	146292000	180643000	180643000	176491000	176491000	179757000

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

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

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

Year/Series	2007-08	2008-09	2009-10	2010-11	2011-12
10%	3668	53542	49662	48817	49179
11%	14183	32468	30538	29932	30331
11.75%	24623	49707	48754	48754	49143
12.75%	6041	23504	22781	22781	22974
Total	48515	159221	151735	150284	151627

As per the details above, it is observed that NPSL issued and allotted *Redeemable Cumulative Preference Shares ("Offer of RCPS")* during the period 2005-06 to 2011-12. The Preference Share Capital of NPSL was ₹127.14 Crores as on March 31, 2012 and the number of preference share holders 151627.

4.1 In the context of the abovementioned details, the issue for determination in the instant matter is whether the mobilization of funds by NPSL through the *Offer of RCPS*, is in accordance with the provisions of the SEBI Act, 1992 ("SEBI Act") and the Companies Act, 1956.

4.2 I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, whether listed or unlisted, when they issue and transfer securities, at the relevant point of time flows from the provisions of Section 55A of the Companies Act. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in ***Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)*** (hereinafter referred to as the "***Sahara Case***"), had observed that:

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

4.3 In this regard –

i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced as under:

"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 invitation 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 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)."*

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in 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. ..."

- iii. For ascertaining whether the *Offer of RCPS* are public issues or issues on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.
- a) In the facts of the instant case, it is observed from the audited financial statements and from the details submitted by the Auditors that NPSL issued *Redeemable Cumulative Preference Shares* to 151627 investors and mobilized funds amounting to Rs.127.14 Crores during the financial years 2005-06 to 2011-12. NPSL has not filed the information of its preference share holders with RoC and has also failed to submit the relevant information sought by SEBI in this regard. Non-compliance and non-cooperation by NPSL in submitting information to SEBI, non-filing of information with RoC and complaints received against NPSL, indicate that NPSL is attempting to conceal information about the *Offer of RCPS* in order to avoid compliance with company law and securities law. In view of the above stated facts, in particular the quantum of funds mobilized and the number of preference share holders, the *Offer of RCPS* by NPSL *prima facie* qualifies as a public issue of securities in terms of Section 67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the *Sahara Case*.

It is also to be mentioned that the data of issue and allotment of *Redeemable Non-Convertible Debentures* has not been provided by NPSL despite repeated reminders.

- b) In addition, NPSL is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act and therefore, is not covered under the *second proviso* to Section 67(3).
- c) In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act read with Section 67 of the said Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

4.4 I note that –

- i. From the abovementioned para, it will follow that since the *Offer of RCPS* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard, reference is made to Section 73 of the Companies Act, 1956, of which sub-sections (1), (2) and (3) are relevant for the instant case, which is reproduced as under:

"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 recognised 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) Where a prospectus, whether issued generally or not, states that an application under subsection (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(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.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1 [until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2)]; and if default is made in complying with this sub- section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees.”

- ii. In the *Sabara 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.

...

*... Section 73(2) says that every company and every director of the company who is an officer in default, shall 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. The scope of the above mentioned provisions came up for consideration before this Court in *Raymond Synthetics Ltd. & Ors. V. Union of India* (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view*

that since Saharas had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."

- iii. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, since the *Offer of RCPS* is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956 and also compliance with provisions of Sections 73(2) and 73(3) of that Act.
 - iv. In the facts of the instant case, it *prima facie* appears that NPSL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of RCPS*.
- 4.5 Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the RoC, before making a public offer or issuing the prospectus to the public. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, since the *Offer of RCPS* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, NPSL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. In the instant case, there is no evidence on record to indicate that the aforesaid requirement had been complied with, by NPSL. In view of the same, I find that NPSL has *prima facie* not complied with the provisions of Section 60 of the Companies Act, 1956.
- 4.6 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 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 or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that

NPSL has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

- 4.7 Upon a consideration of the aforementioned paragraphs, I am of the view that NPSL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of RCPS* and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73).
5. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956, the administrative authority on the subjects relating to public issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 over companies who issue *Redeemable Cumulative Preference Shares* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Act. Steps therefore, have to be taken in the instant matter to ensure that only legitimate fund raising activities are carried on by NPSL and no investors are defrauded. This is especially so as NPSL has failed to reply to the letters/summons issued by SEBI. In light of the facts in the instant matter, I find that there is no other alternative but to take recourse to an interim action against NPSL and its Directors, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of RCPS*.
6. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions –
- i. NPSL shall forthwith cease to mobilize any fresh funds from investors through the *Offer of RCPS* or through any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly, till further directions;
 - ii. Nixcil Pharmaceuticals Specialities Limited (now known as Heivero Pharmaceuticals Limited) (CIN:U24231UP1992PLC014636); (PAN:AABCN6977H) and its following Directors are prohibited from issuing prospectus or any offer document

or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders:

No.	Name of the Director	DIN	PAN
1.	Prithi Paul Singh Sethi	00076689	AOAPS8866A
2.	Arun Kumar Madan	00076741	Not available
3.	Amit Mishra	00317047	AIEPM2608Q
4.	Manzoor Alam	Not available	Not available
5.	Gurbhej Singh Hora	00312542	Not available
6.	Bankey Bihari Mishra	0232918	Not available
7.	Vishwa Bandhu Vashishta	02707338	ABFPV9924N
8.	Kishan Pal Singh	02350363	AVVPS8411M
9.	Sanjay Kumar Upadhyay	02455875	AAXPU2236P
10.	Dilip Kumar Mishra	02699649	Not available
11.	Deena Nath Maurya	02824654	BJJPM1012K
12.	Deepak Awasthi	0269978	AHBPA7975L
13.	Chhotelal Shukla	02706032	CLJPS2300B
14.	Shiva Nand Mishra	02706697	AJHPM9388B
15.	Manoj Kumar Joshi	02722133	AGJPJ7853P
16.	Mukesh Kumar Khare	06400147	BBVPK0966N
17.	Arvind Tiwari	01629407	ADXPT8691C
18.	Pashupati Nath Dixit	01664553	AJPPD9322G
19.	Shri Rajesh Kumar Sharma	01731816	BFXPS2910E
20.	Ramendra Prasad Sharma	02518373	AOBPS4499A

- iii. NPSL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions.
- iv. NPSL shall provide a full inventory of all its assets and properties;
- v. The Directors of NPSL shall provide a full inventory of all their assets and properties;
- vi. NPSL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of RCPS*, without prior permission from SEBI;
- vii. NPSL and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of RCPS*, which are kept in bank account(s) and/or in the custody of NPSL;

- viii. NPSL and its abovementioned Directors shall, within 21 days from the date of receipt of this Order, provide SEBI with all relevant and necessary information as sought by SEBI.
 - ix. NPSL shall provide to SEBI all information regarding repayments made to the holders of *Redeemable Cumulative Preference Shares* including names of the preference share holders, addresses, amount mobilized, number of *Redeemable Cumulative Preference Shares* issued, promised maturity amount with date of maturity, amount refunded and date thereof. NPSL's Preference Share Capital is indicated as Nil in the Annual Return for the financial year 2012-13. NPSL shall provide full details of how the Preference Share Capital which was approximately ₹127.14 Crores as on March 31, 2012 became Nil as on March 31, 2013.
 - x. NPSL shall also provide to SEBI all information regarding *Redeemable Non-Convertible Debentures* including *Redeemable Non-Convertible Debentures* issued, names of the debenture holders, addresses, amount mobilized, promised maturity amount with date of maturity, amount refunded and date thereof;
7. The above directions shall take effect immediately and shall be in force until further orders.
8. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. the complaints received by SEBI and documents contained therein, correspondence exchanged between SEBI and NPSL, auditors of NPSL along with the documents contained therein and information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA21 Portal*'. In this context, NPSL and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:
- i. Directing them jointly and severally to refund money collected through the *Offer of Redeemable Cumulative Preference Shares* along with interest, if any, promised to investors therein;
 - ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;

- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
- 9. NPSL and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their replies, if any, to this Order and may also indicate whether they wish to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
- 10. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against NPSL and its abovementioned Directors, in accordance with law.

Place: Mumbai
Date: April 24, 2015

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA