

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

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Pailan Park Development Authority Limited (PAN: AADCP2087Q) and its Directors, viz. Shri Sekhar Chandra Koley (PAN: BUOPK8353F; DIN: 06454703), Shri Bipin Kumar Singh (PAN: BOGPS0921F; DIN: 03395216), Shri Chandan Chakraborty (PAN: ARCPK9106E; DIN: 05120821), Shri Avijit Chowdhury (PAN: APEPC8255N; DIN: 05358817), Shri Atul Agarwal (PAN: AZIPA5516C; DIN: 05143420), Shri Vivek Kumar (PAN: ADNPK9149E; DIN: 03524074) and Shri Apurba Kumar Saha (PAN: AUIPS7765C; DIN: 00952457) alongwith its Debenture Trustees, viz. Shri Dilip Kumar Das and Shri Laxmi Narayan Sharma.

1. Securities and Exchange Board of India ("**SEBI**") received a reference vide an e-mail dated January 16, 2013, against the Pailan Group of Companies ("**Pailan Group**") *inter alia* alleging illegal mobilization of funds by one of its group companies, viz. Pailan Park Development Authority Limited ("**PPDAL**").
- 2.1 Thereafter, SEBI vide letters dated December 2, 2013 and February 11, 2014, sought information from the Pailan Group including the Directors of PPDAL at the relevant time *inter alia* in relation to the fund mobilization by PPDAL. However, the Pailan Group failed to furnish complete information and where information was provided, the same was found to be immaterial.
- 2.2.1 In view of non-cooperation by the Pailan Group, SEBI appointed an Investigating Authority ("**IA**") in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**") on July 9, 2014, *inter alia* to examine the matter relating to fund mobilization by PPDAL.
- 2.2.2 Subsequently, on July 11, 2014, an inspection was carried out on the following three office premises of the Pailan Group, viz. –
 - i. Head Office, 127, Kankulia Road, Kolkata;
 - ii. Bengal Pailan Park, Amgachia, off D.H. Road., Joka, Kolkata;
 - iii. Old Office, Express Tower, 1st Floor, 42A, Shakespeare Sarani, Kolkata.

2.2.3 Following the above mentioned inspection, SEBI vide letters dated July 22, 2014, August 11, 2014 and August 22, 2014, sought information from the Pailan Group regarding money mobilized, investor details, agent details, etc. However, the information provided by the Pailan Group was again found to be not relevant and incomplete.

2.2.4 Vide Summons dated October 17, 2014 and November 12, 2014, the IA sought *inter alia* the following information from certain individuals associated with the Pailan Group, viz. Shri Apurba Saha (Chairman of the Pailan Group), Shri Chandan Chakraborty (Director of PPDAL and other Companies of the Pailan Group), Shri Bipin Kumar Singh (Director of PPDAL and other Companies of the Pailan Group), Shri Dipanjan Roy (Chief Financial Officer of the Pailan Group) and Shri Bhagwan Mishra (Finance Controller of the Pailan Educational Institutes), viz. –

- i. Details of all companies/entities under the Pailan Group and nature of their operations;
- ii. Details of group companies/entities which were into money mobilization;
- iii. Key Personnel of the group and particularly of the entities which were into money mobilization (including directors etc.);
- iv. A statement of mobilization and deployment of funds under various scheme(s) duly certified by the Statutory Auditors of the company(s);
- v. Total amount mobilized by the group entities under various scheme(s)(year wise and scheme wise) along with the number of investors under each scheme including redemptions details;
- vi. The *modus operandi* of each scheme in detail;
- vii. Mode of collection and repayment;
- viii. Details of key persons who were managing the money mobilization;
- ix. Details of the key people who devised the scheme(s);
- x. Copies of offer documents, application form, pamphlets, brochures of the scheme(s) launched;
- xi. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to your scheme(s);
- xii. Sample copies of the agreement letter/contract required to be entered into by investor/applicant under your scheme(s);

- xiii. Options available with the investor if he does not want to hold his investment till maturity;
 - xiv. Number of agents and role of agents, percentage of commission paid (scheme wise/entity wise), top ranking agents and amount of commission paid, modus operandi of enrolling agents;
 - xv. Complaints and defaults in respect of money mobilized.
- 2.2.5 The IA also recorded the statements of the abovementioned persons excluding Shri Bipin Kumar Singh.
- 2.2.6 The Pailan Group replied vide letters dated October 27, 2014, November 17, 2014, November 21, 2014, December 3, 2014 and December 9, 2014, wherein it submitted information regarding fund mobilization by four of its Group Companies, viz. PPDAL, Pailan Gems and Jewellery India Limited, Pailan Agro India Limited and Pailan Park Diamond Aabhushan–LLP.
- 2.3 SEBI also received several complaints alleging fund mobilization by PPDAL through the issue of *Redeemable Preference Shares* and *Non – Convertible Debentures*.
3. The material available on record i.e. correspondence exchanged between SEBI and the Pailan Group alongwith the documents contained therein; abovementioned reference and complaints received against PPDAL; information obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*, have been perused. On an examination of the same, it is observed that –
- i. PPDAL was incorporated on December 18, 2003, with the ROC, Kolkata with CIN as U45201WB2003PLC097469. Its Registered Office is at 1/27 Baishnab Ghata, P.O. –Panchasayar, Patuli Township, Block–Q, Kolkata–700094, West Bengal, India.
 - ii. The present Directors in PAIL are Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal and Shri Vivek Kumar.
 - iii. Shri Apurba Kumar Saha, who was earlier a Director in PPDAL, has since resigned.

- iv. From the material available on record, it is observed that PPDAL issued *Redeemable Preference Shares* ("***Offer of Redeemable Preference Shares***") to investors during the Financial Years 2010–11, 2011–12 and 2012–13, details of which are provided below

Type of Security	Year	No. of persons to whom preference shares were allotted	Total Amount (₹ in Lakhs)
Redeemable Preference Shares	2010–11	Details not available	Year – Wise details not provided by PPDAL.
	2011–12	26	
	2012–13	5	
Total		*31	^13.26
*No. of allottees taken from the documents submitted with the complaints received by SEBI, however, actual no. of allottees could be much more than the above indicated figures. ^ Amount indicated has been obtained from the Balance Sheet for the year ended 2012-13 downloaded from the MCA21 Portal.			

- v. From the material available on record, it is observed that PPDAL issued *Non – Convertible Debentures* ("***Offer of NCDs***") to investors during the Financial Years 2011–12 and 2012–13, details of which are provided below –

Type of Security	Year	No. of persons to whom debentures were allotted	Total Amount (₹ in Crores)
Non – Convertible Debentures	2011–12	33	Year – Wise details not provided by PPDAL.
	2012–13	42	
Total		*75	^15
* No. of allottees taken from the documents submitted with the complaints received by SEBI, however, actual no. of allottees could be much more than the above indicated figures. ^ Amount indicated has been obtained from Form 10 downloaded from the MCA21 Portal.			

- vi. PPDAL created a charge of ₹ 5 Crores on April 7, 2011 and appointed *Shri Dilip Kumar Das*, as Debenture Trustee for the *Offer of NCDs* by that company. Subsequently, on September 26, 2011, PPDAL created a fresh charge of ₹ 10 Crores and appointed *Shri Laxmi Narayan Sharma*, as Debenture Trustee for the *Offer of NCDs* by that company.

4.1 In the context of the abovementioned details, the issue for determination in the instant matter is –

- a. Whether the mobilization of funds by PPDAL through the *Offer of Redeemable Preference Shares*, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**") and the Companies Act, 1956?
- b. Whether the mobilization of funds by PPDAL through the *Offer of NCDs*, is in accordance with the provisions of the SEBI Act read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("**Debt Securities Regulations**"); 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, 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:

"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. 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)."*

- 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. In the instant matter, for ascertaining whether the *Offer of Redeemable Preference Shares and Offer of NCDs* are public issues or issues on private placement basis in accordance with Section 67 of the Companies Act, 1956, a conclusive finding in respect of the number of investors to whom *Redeemable Preference Shares and NCDs* were issued by PPDAL under the said *Offers* is of utmost importance. However, such a finding has not been made possible due to the non-cooperative attitude of the Pailan Group. SEBI has continuously made efforts to obtain information from the Pailan Group in relation to the *Offer of Redeemable Preference Shares and Offer of NCDs* (as detailed in paragraphs 2.1–2.2.6). However, no information has been provided by either the Pailan Group or its Chairman, Directors, etc. in respect of those *Offers*. It may be noted that the number of allottees under the *Offer of Redeemable Preference Shares and Offer of NCDs*, have only been taken from the documents submitted with the complaints received by SEBI, against PPDAL, while the amounts mobilized therein have been obtained from the *MCA21 Portal*. It is most likely that the actual number of allottees and amount mobilized by PPDAL under such *Offers* could be much more than the figures indicated in the Table at paragraphs 3(iv)–(v) of page 4. The aforesaid when viewed against the features of the *Offer of Redeemable Preference Shares and Offer of NCDs* such as amounts raised, charge created in respect of *NCDs*, etc. can lead to only one conclusion i.e. that the Pailan Group by its non-cooperation, has tried to deliberately conceal the true nature of PPDAL's fund mobilizing activities. I, therefore, feel it is an eminently reasonable conclusion to draw from the aforementioned facts that the *Offer of Redeemable Preference Shares and Offer of NCDs* would have been subscribed much beyond the threshold for a private placement. In light of the same, I find that the *Offer of Redeemable Preference Shares and Offer of NCDs* were nothing but public issues of securities. In these circumstances, regulatory intervention for protection of investors' interests is doubtless necessitated.

- iv. It is observed that PPDAL is not stated to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that PPDAL is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.
- v. In view of the above, the *Offer of Redeemable Preference Shares and Offer of NCDs* by PPDAL, would *prima facie* qualify as public issues under the *first proviso* to Section 67(3) of the Companies Act, 1956. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, Section 67 of that 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, it will follow that since the *Offer of Redeemable Preference Shares and Offer of NCDs* are public issues 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 Sections 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 sub-section (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 five 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. Vs. 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 Redeemable Preference Shares and Offer of NCDs* are *prima facie* public issues 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 the provisions of Sections 73(2) and 73(3) of that Act.
- iv. In the facts of the instant case, it *prima facie* appears that PPDAL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of Redeemable Preference Shares and Offer of NCDs*.

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. 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 Redeemable Preference Shares and Offer of NCDs* were made to fifty persons or more, it has to be construed as public offers. Having made public offers, PPDAL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. I find that there is no evidence on record to indicate whether or not PPDAL has complied with the provisions of Section 60 of Companies Act, 1956. In view of the same, I find that PPDAL has *prima facie* not complied with the provisions of Section 60 of 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 PPDAL 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 Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. Further, under Section 117C of the Companies Act, 1956, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. Based on the material available on record, I find that PPDAL has not complied with the provisions of Sections 117B–117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
- 4.8 Reference may also be made to the Debt Securities Regulations, which were framed by SEBI in exercise of its powers under Section 30 of the SEBI Act and are applicable to the public issue and listing of debt securities. It may be relevant to note that under the aforesaid Regulations, 'debt securities' have been defined as '*non-convertible debt securities which create or acknowledge indebtedness, and include debenture...*' In this context, I find that PPDAL, through the *Offer of NCDs*, which is a public issue of debt securities, has *prima facie* violated the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.
- 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.*

4.9 Upon a consideration of the aforementioned paragraphs, I am of the view that PPDAL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of Redeemable Preference Shares and Offer of NCDs* 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, Sections 117B–117C) read with the Debt Securities Regulations.

5.1 From the material available on record, it is observed that PPDAL created a charge of ₹ 5 Crores on April 7, 2011 and appointed *Shri Dilip Kumar Das*, as Debenture Trustee for the *Offer of NCDs* by that company. Subsequently, on September 26, 2011, PPDAL created a fresh charge of ₹ 10 Crores and appointed *Shri Laxmi Narayan Sharma*, as Debenture Trustee for the *Offer of NCDs* by that company.

5.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... 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*".

5.3 In addition, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("**Debenture Trustees Regulations**"), provides that: "*no person should act as a debenture trustee unless he is either –*

- i. a scheduled bank carrying on commercial activity; or*

- ii. *a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
- iii. *an insurance company; or*
- iv. *body corporate."*

- 5.4 Based on the material available on record, I find that *Shri Dilip Kumar Das* and *Shri Laxmi Narayan Sharma*, have acted as an unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustees Regulations.
6. Shri Apurba Kumar Saha, who was earlier a Director in PAIL, has since resigned.
7. 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, 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 (as mentioned in paragraphs 4.1–4.9 above). Steps therefore, have to be taken in the instant matter to ensure that only legitimate fund raising activities are carried on by PPDAL and no investors are defrauded. In light of the facts in the instant matter, I find that there is no other alternative but to take recourse through an interim action against PPDAL and its Directors, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of Redeemable Preference Shares and Offer of NCDs*.
8. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions –
- i. PPDAL (PAN: AADCP2087Q) shall forthwith cease to mobilize fresh funds from investors through the *Offer of Redeemable Preference Shares and Offer of NCDs* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - ii. PPDAL and its present Directors, viz. Shri Sekhar Chandra Koley (PAN: BUOPK8353F; DIN: 06454703), Shri Bipin Kumar Singh (PAN: BOGPS0921F;

DIN: 03395216), Shri Chandan Chakraborty (PAN: ARCPC9106E; DIN: 05120821), Shri Avijit Chowdhury (PAN: APEPC8255N; DIN: 05358817), Shri Atul Agarwal (PAN: AZIPA5516C; DIN: 05143420) and Shri Vivek Kumar (PAN: ADNPK9149E; DIN: 03524074), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;

- iii. The past Director of PPDAL, viz. Shri Apurba Kumar Saha (PAN: AUIPS7765C; DIN: 00952457), is 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;
- iv. PPDAL and its abovementioned past and present 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;
- v. PPDAL shall provide a full inventory of all its assets and properties;
- vi. PPDAL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;
- vii. PPDAL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of Redeemable Preference Shares and Offer of NCDs*, without prior permission from SEBI;
- viii. PPDAL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of Redeemable Preference Shares and Offer of NCDs*, which are kept in bank account(s) and/or in the custody of PPDAL;
- ix. The Debenture Trustees, viz. *Shri Dilip Kumar Das* and *Shri Laxmi Narayan Sharma*, are prohibited from continuing with their assignment as debenture trustees in respect of the *Offer of NCDs* of PPDAL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.

9. The above directions shall take effect immediately and shall be in force until further orders.

10.1 The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondence exchanged between SEBI and the Pailan Group alongwith the documents contained therein; abovementioned reference and complaints

received against PPDAL; information obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*. In this context, PPDAL 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 Preference Shares and Offer of NCDs* alongwith 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.

10.2 PPDAL 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 desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

10.3 Similarly, the Debenture Trustees, viz. *Shri Dilip Kumar Das* and *Shri Laxmi Narayan Sharma*, 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 restraining them from accessing the securities market and further restraining them from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.

10.4 The Debenture Trustees, viz. *Shri Dilip Kumar Das* and *Shri Laxmi Narayan Sharma*, 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 desire to avail of an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

11. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against PPDAL and its abovementioned Directors; its Debenture Trustees, viz. *Shri Dilip Kumar Das* and *Shri Laxmi Narayan Sharma*, in accordance with law.

Place: Mumbai
Date: July 27, 2015

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