

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 (1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in respect of:

1. KKDIL Nidhi Limited,
2. Mr. Baman Charana Das,
3. Ms. Sujata Das,
4. Mr. Bipin Chandra Das,
5. Mr. Santosh Kumar Panda,
6. Ms. Kalyani Das,
7. Mr. Lingaraj Panigrahy,
8. Mr. Hara Prasad Das and
9. Mr. Kailash Chandra Bishoi.

In the matter of issuance of equity shares by KKDIL Nidhi Limited.

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”), conducted a preliminary examination into the issuance of equity shares by KKDIL Nidhi Limited (hereinafter referred to as “the company” or “KKDIL”) with a view to ascertain the possible violations of the public issue norms stipulated under the Companies Act, 1956 and other applicable laws pertaining to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “the ICDR Regulations”).
2. Pursuant to the examination, SEBI passed an *interim* order dated March 20, 2015 (hereinafter referred to as “*interim order*”) against the KKDIL and its promoters and directors including Mr. Baman Charana Das, Ms. Sujata Das, Mr. Bipin Chandra Das, Mr. Santosh Kumar Panda, Ms. Kalyani Das, Mr. Lingaraj Panigrahy, Mr. Hara Prasad Das and Mr. Kailash Chandra Bishoi (hereinafter collectively referred to as “the noticees”), in view of the following:

“10. As the Company had made an offer of equity shares and has allotted such securities to more than 50 persons on three instances, i.e., on March 31, 2012, March 30, 2013 and June 30, 2013, it is alleged that the Company had made a 'public offer' of equity shares in terms of the first proviso to section 67(3) of the Companies Act, 1956.”

3. In view of the alleged contraventions and for the reasons stated in the *interim order*, the following directions were issued therein:

- “(a) *The Company, namely, KKDIL Nidhi Limited and its promoters and directors including Mr. Baman Charana Das [PAN: AJMPD9925C], Ms. Sujata Das [PAN: not available], Mr. Bipin Chandra Das [PAN: ACHPD4632J], Mr. Santosh Kumar Panda [PAN: ASMPP9586C], Mrs. Kalyani Das [PAN: not available], Mr. Lingaraj Panigrahy [PAN: AGJPP1247K] Mr. Hara Prasad Das [PAN: AJOPD4124F] and Mr. Kailash Chandra Bisnoi (PAN : ATKPB3979L) are restrained from mobilizing funds through the issue of equity shares or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.*
- (b) *KKDIL Nidhi Limited and its promoters and directors including Mr. Baman Charana Das, Ms. Sujata Das, Mr. Bipin Chandra Das, Mr. Santosh Kumar Panda, Mrs. Kalyani Das, Mr. Lingaraj Panigrahy, Mr. Hara Prasad Das and Mr. Kailash Chandra Bisnoi are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, or in any manner whatsoever, either directly or indirectly, till further orders.*
- (c) *KKDIL Nidhi Limited and its promoters and directors including Mr. Baman Charana Das, Ms. Sujata Das, Mr. Bipin Chandra Das, Mr. Santosh Kumar Panda, Mrs. Kalyani Das, Mr. Lingaraj Panigrahy, Mr. Hara Prasad Das and Mr. Kailash Chandra Bisnoi shall not dispose of any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.*
- (d) *KKDIL Nidhi Limited and its promoters and directors including Mr. Baman Charana Das, Ms. Sujata Das, Mr. Bipin Chandra Das, Mr. Santosh Kumar Panda, Mrs. Kalyani Das, Mr. Lingaraj Panigrahy, Mr. Hara Prasad Das and Mr. Kailash Chandra Bisnoi shall not divert any funds raised from public at large through the issuance of the impugned equity shares, kept in its bank accounts and/ or in the custody of the company without prior permission of SEBI until further orders.*
- (e) *KKDIL Nidhi Limited and its promoters and directors including Mr. Baman Charana Das, Ms. Sujata Das, Mr. Bipin Chandra Das, Mr. Santosh Kumar Panda, Mrs. Kalyani Das, Mr. Lingaraj Panigrahy, Mr. Hara Prasad Das and Mr. Kailash Chandra Bisnoi are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.*
- (f) *KKDIL Nidhi Limited and its promoters and directors including Mr. Baman Charana Das, Ms. Sujata Das, Mr. Bipin Chandra Das, Mr. Santosh Kumar Panda, Mrs. Kalyani Das, Mr. Lingaraj Panigrahy, Mr. Hara Prasad Das and Mr. Kailash Chandra Bisnoi are also directed to*

provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form”.

4. The *interim order* advised the noticees to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act read with ICDR Regulations including the following, should not be taken/ imposed against them:
 - (a) directing them jointly and severally to refund the money collected through the issue of equity shares that are impugned in this Order, along with interest of 15% from the date when the repayments became due till the date of payment to the investors ;
 - (b) directing them to 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;
 - (c) restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;
 - (d) directing them and other companies in which their directors hold substantial or controlling interest, to not to access the capital market for an appropriate period.
5. The noticees were advised to file their reply within 21 days of receipt of the *interim order* and to seek a personal hearing, if they desired. The *interim order* was forwarded to the noticees vide SEBI letters dated March 20, 2015.
6. Mr. Kailash Chandra Bishoi, vide letter dated March 28, 2015, *inter alia* submitted the following:
 - (a) Mr. Baman Charan Das (Managing Director of the company) is his childhood friend and he called him to join the company. As he was unemployed, he joined the company as a promoter. He did not pay any amount towards equity share capital of the company and no equity share certificate was issued.
 - (b) Mr. Baman Charan Das was the managing director of the company and prepared the business plans and programs. He was ignorant of the business plans.
 - (c) He came to know that the business plans of the company were illegal and not as per law. Certain persons had raised objections to the business plans so he submitted resignation from the company on March 15, 2012 and did not involve in the business of the company since then.

- (d) He had requested Mr. Baman Charan Das to delete his name from the promoter list and he agreed to the same. He was not connected to the business of the company from March 15, 2012. There were no collections from the public during his period. Therefore, he is not responsible for the collection of public money through equity shares in contravention of the rules and regulations. He is no way concerned to the company from March 15, 2012 so he has no connection with the issue of prospectus for mobilizing funds through equity shares/ securities from the public in any manner either directly or indirectly.
 - (e) He does not know about the assets and bank account of the company.
 - (f) He has no landed property, house/ building, demat account, shares/ securities and bank deposits anywhere in India. He is not a defaulter and was not involved in collecting public money through shares / securities of the company in any manner either directly or indirectly.
7. Mr. Santhosh Kumar Panda, vide letter dated March 29, 2015, *inter alia* submitted the following:
- (a) He was an employee of the company KKDIL (Kalyani & Kalyani Developers India Limited) and Mr. Baman Charan Das was the General Manager of the company.
 - (b) When “KKDIL Nidhi Limited” was incorporated Mr. Baman Charan Das included his name as promoter. Though he refused, he could not do more as he was only an employee. He had not paid any amount towards the equity share capital of the company and no equity share certificate was issued to him. He was never involved in the business of the company and collection of public money.
 - (c) In the month of September 2013, the Managing Director told him to bring his PAN card and other papers to promote him to a higher post. The Managing Director took his signature in certain papers. After a long period, the Managing Director informed about his promotion from promoter to director of the company. He came to know that post of a director bears risk and responsibilities, so he resigned from the job and also from directorship w.e.f. December 01, 2013. He submitted his resignation and also sent an e-mail to the Managing Director and Company Secretary of the company.
 - (d) He was no way connected to the business of the company in any manner. Therefore, he is not responsible for the collection of public money through equity shares in contravention of the rules and regulations. He is not an officer in default.
 - (e) He was no way connected with the issue of prospectus for mobilizing funds through equity shares/ securities from the public in any manner either directly or indirectly. He does not know the assets and bank account of the company. Mr. Baman Charan Das being the

Managing Director of the company was dealing with all these things and operating the bank account. He has no landed property, house/ building, demat account, shares/ securities and bank deposits anywhere in India.

- (f) He was not involved in collecting public money through shares/ securities of the company in any manner either directly or indirectly.

8. Mr. Lingaraj Panigrahy, vide letter dated March 30, 2015, had *inter alia* submitted as under:

- (a) The company was incorporated on October 17, 2011. According to the records, his name appears as one of the promoters of the company. However, he has resigned as a promoter on March 13, 2012 and tendered the resignation letter.
- (b) He did not sign the Memorandum of Association or the Article of Association of the company which were filed with the RoC at the time of incorporation. He did not pay any amount towards equity share capital and no share certificate was issued to him.
- (c) Mr. Baman Charan Das being a friend asked him to include his name in a new company as seven members are required for formation of a company. As he was unemployed, he agreed to the proposal. The business plans and strategies were prepared by Mr. Baman Charan Das as he is the experienced business man. He (Mr. Lingaraj Panigrahy) had no role on such business plans.
- (d) After going through the business plans, he felt that these plans were not proper and not in accordance with the provisions of Department of Company Affairs and R.B.I. Anticipating risk and responsibility, he resigned from the position of 'promoter' of the company on March 13, 2012. He had handed over the resignation letter to Mr. Baman Charan Das and also sent a copy of the same to RoC for information.
- (e) As the resignation letter was not acknowledged by Mr. Baman Charan Das, he had sent it to Mr. Baman Charan Das again on April 05, 2012 and also to RoC on August 18, 2012.
- (f) He was in no way connected to the business of the company. The business of the company started w.e.f. March 01, 2012 and resigned w.e.f. March 13, 2012. There were no collection of funds from the public during his period. He had never dealt with business transactions and not responsible for the collection of public money through equity shares in contravention of the rules and regulations. Hence, he is not an 'officer in default'.
- (g) He is no way linked to the company from March 13, 2012 and he was never involved in issuing of prospectus for mobilizing funds through equity shares/ securities from the public, in any manner, either directly or indirectly.

- (h) He is unaware of the assets of the company and he has no authority over the assets of the company.
 - (i) He is not aware of the bank transactions/ account number and name of the bank of the company. Mr. Baman Charan Das is the authorized person to deal with bank transactions of the company.
 - (j) He has no landed property, house/building, demat account, shares/ securities and bank deposits in Berhampur or anywhere in India.
9. The noticees were afforded an opportunity of personal hearing on August 19, 2015. The same was communicated to them vide SEBI letters dated July 22, 2015. SEBI also made a public notice in '*Times of India*, Bhubaneshwar' and '*The Samaja*' on August 08, 2015 regarding the proceedings and personal hearing fixed on August 19, 2015 in the matter. Mr. Santosh Kumar Panda, vide letter dated July 29, 2015, while referring to his earlier submissions submitted that Mr. Hara Prasad Das was exclusively dealing with all business transactions of KKDIL and requested for a personal hearing in Bhubaneshwar. Similar requests were made by Mr. Lingaraj Panigrahy vide his letter dated July 30, 2015 and by Mr. Kailash Chandra Bishoi vide letter dated July 31, 2015. Mr. Baman Charan Das, vide letter received on August 17, 2015 also requested for a personal hearing in Bhubaneshwar on the ground of his illness. The requests were not acceded to and another opportunity of personal hearing was afforded on October 29, 2015 to the noticees. Mr. Lingaraj Panigrahy, vide letter dated October 07, 2015 while reiterating his earlier submissions again requested for a personal hearing in Bhubaneshwar on the ground of his financial crisis. Mr. Kailash Chandra Bishoi, vide letter dated October 08, 2015, made additional submissions as summarized below:
- (a) The company named 'Kalyani & Kalyani Developers India Limited' was operating at the beginning. Mr. Bipin Chandra Das was the Managing Director and Mr. Baman Charan Das and his wife Ms. Sujata Das were directors. After starting another new company 'KKDIL Nidhi Limited', they became group companies.
 - (b) In KKDIL group, Mr. Bipin Chandra Das is the Chairman cum Managing Director and Mr. Baman Charan Das is the Managing Director of 'KKDIL Nidhi Limited' and Ms. Sujata Das remained a Director. Mr. Baman Charan Das and Ms. Sujata Das were dealing with the finance matter and operating the bank accounts jointly. They were purchasing and disposing of the properties according to their will and pleasure. They were not allowing any other persons in finance and property matters of the company.

- (c) He resigned from the company on March 15, 2012 and Mr. Lingaraj Panigrahy resigned on March 13, 2012. On receipt of the resignation letters, the R.O.C should have directed the company to stop functioning further as a public limited company. The Management also should have converted the company into private limited company. However, without taking any steps, the company went on collecting public money illegally. Mr. Lingaraj Panigrahy also sent a notice to Mr. Bipin Chandra Das by registered post with AD to stay the functioning of the company.
- (d) The company 'Kalyani & Kalyani Developers India Limited' had collected public money for providing housing plots. However, Mr. Baman Charan Das and Ms. Sujata Das neither provided housing plots nor returned the money to the investors. Mr. Baman Charan Das avoided the investors on various pleas. The investors had scolded the employees of the c and the situation became worse. He had then requested Mr. Baman Charan Das and Ms. Sujata Das either to provide housing plots or clear the amount with interest. However, they did not listen. The employees also requested the same but in vain. In order to help the Investors, the noticee informed the matter to the local police. He along with investors and former employees staged a 'Dharana' on 28-06-2012 in front of the KKDIL group office. The employees of the company also participated in this 'Dharana' to pressurize the management to refund public money with interest.

The noticees namely Mr. Santosh Kumar Panda, vide letter dated October 09, 2015, reiterated his earlier submissions and those made by Mr. Kailash Chandra Bishoi above.

10. The hearing scheduled on October 29, 2015 was cancelled. Mr. Baman Charan Das had vide letter dated October 29, 2015 requested for another opportunity preferably in the month of January 2016. The noticees were afforded an opportunity of personal hearing on December 15, 2015 and communicated the same vide SEBI notices dated November 12, 2015. However, noticees Mr. Santosh Kumar Panda, Mr. Kailash Chandra Bishoi and Mr. Lingaraj Panigrahy vide separate letters dated December 02, 2015 again made a request for a hearing in Bhubaneswar.
11. In the meantime, the company vide letter dated December 15, 2015, filed the following submissions:
- (a) The Company was incorporated on October 17, 2011 in the name and style as 'KKDIL Nidhi Limited' with the sole objective of carrying on the business of a 'Nidhi Company'. For clarity of the above the main object of the company are mentioned here under:

- i. Nidhi Company is formed with the exclusive object of cultivating the habit of thrift, saving and functioning for the mutual benefit of the members by receiving deposits only from individuals those have voluntarily enrolled as members and by lending only to its members and which functions as per the notification and guide lines as prescribed by the Ministry of Corporate Affairs under section 620A of the Companies Act, 1956.
 - ii. The company had never exceeded its jurisdiction beyond the prescribed guidelines meant for Nidhi Company.
 - iii. To do all kinds of financial activities, borrowing, receiving deposits, lending for the mutual benefits of its Members only.
- (b) The Registrar of Companies, Orissa, after verifying the objects of the company, had registered, the company as a public limited company by issuing the 'Certificate of Incorporation'. Thereafter, a 'Certificate of commencement of business' was also obtained.
- (c) The Company then applied to the Central Government in Form 63 vide SRN B89147532 dated November 15, 2013 for registering it as a 'Nidhi Company' as per the decision of the Board of the Directors. However, the Central Government rejected the same without signifying any reason putting the Company into an embracing situation.
- (d) The provisions relating to restriction of offer of number of shares to fifty or more persons is not applicable for the company as a Nidhi Company is regarded as NBFC vide RBI's Notification No. 164/CGM (CSM)-2003 dated January 08, 2003. Hence the principles laid down under the 'Sahara case' are not applicable. Similarly in the above context the company is not required to comply with the public issue norms.
- (e) The Company has collected ₹35,53,200 from its 10,289 members.
- (f) As far as the assets of the company are concerned, it was stated that the company has already utilized all its existing funds by way of loans to its members and same is under the process of recovery. The company has never diverted its funds in any manner. As certain cases were sub-judice in the Court of law, the question of alienation or disposal of assets does not arise.
- (g) As regards inventory of assets and properties of promoters/ directors, the detail particulars are not available with the Company. Some promoters and directors have already left the company without complying with the criteria as laid down in the Companies Act, 1956. However, the Company is taking further necessary steps for collecting the details for compliance.
- (h) During May 2013, there were two cases instituted against the company its management and staff vide GR case no NOW-G.R- 435/13,P.S-II/O/13 &KAS G.R-437/13, P.S-72/13, which is under sub-judice before the SDJM, Nawarangapur, Odisha, in which the Investigating Officer of Kasagumuda P.S had seized all the documents and material of the company.

Thereafter, the staff left the company and the members were not interested to continue their business with the company. In the aforesaid case, the Investigating Officer has also seized the bank account of the company. The company has already refunded most of the fund to its members according to the norms and conditions and is in process of refunding the remaining funds.

- (i) The company undertook to comply with all the directions issued by SEBI and to provide further information/ clarification, if any, as may be required.

12. SEBI had afforded opportunity of personal hearings on February 04, 2016 and also on August 03, 2016. However, the noticees, Mr. Kailash Chandra Bishoi, Mr. Lingaraj Panigrahy, Mr. Santosh Kumar Panda, Mr. Baman Chandra Das, Ms. Sujata Das, Mr. Bipin Chandra Das and Ms. Kalyani Das stated that they would not be able to attend the hearing and again requested for a hearing in Bhubaneshwar. As the concerned noticees were afforded sufficient opportunities, the proceedings of personal hearing was concluded.

13. I have considered the *interim order*, submissions made by the concerned noticees and the material available on record. The company is alleged to have made a public offer of equity shares without complying with the public issue norms mandated under the Companies Act, 1956 and the ICDR Regulations. The *interim order* has observed the following:

“On perusal of information submitted by the Company, documents from the MCA as well as that of the audited accounts of the company, it is noticed that the Company has issued equity shares as per details given below:

<i>S. No.</i>	<i>Date of Allotment of Equity Shares</i>	<i>No. of Equity Shares Allotted</i>	<i>No. of Allotees</i>	<i>Value of such Allotment (₹)</i>
<i>1</i>	<i>October 17, 2011</i>	<i>50,000</i>	<i>7*</i>	<i>5,00,000</i>
<i>2</i>	<i>March 31, 2012</i>	<i>50,000</i>	<i>510#</i>	<i>5,00,000</i>
<i>3</i>	<i>March 30, 2013</i>	<i>1,49,190</i>	<i>158</i>	<i>14,91,900</i>
<i>4</i>	<i>June 30, 2013</i>	<i>1,06,130</i>	<i>9618</i>	<i>10,61,300</i>
<i>Total</i>		<i>3,55,320</i>	<i>10,289</i>	<i>35,53,200</i>

** Allotted to the promoters/ directors at the time of incorporation.*

includes further allotment to existing 4 directors.

From the above, it is seen that KKDIL had issued equity shares in four tranches and a total of Rs.35, 53,200 has been mobilized from 10,289 investors during the relevant period. I note that the number of allottees in the issuances of equity share is substantial.”

14. The above said allotments of equity shares were made during the financial years 2011-12, 2012-13 and 2013-14. The company has also admitted in its reply that it had collected ₹35.53 lakhs from its 10,289 members. Considering the number of persons to whom the securities was offered and issued, it can be definitely held that the company made a public issue of equity shares in terms of the first *proviso* to section 67(3) of the Companies Act, 1956. In terms of the aforesaid provision, an issue of securities becomes a 'public issue' if the offer to subscribe to shares or debentures is made to 50 persons or more. The company has argued that it is a 'Nidhi' company and therefore the said provision does not apply. However, it needs to be noted that the company has itself stated that its application for registration as a Nidhi company was rejected by the Central Government. Therefore, the submissions of the company are without any merit.
15. As the issuance of equity shares by the company was done through a '*public issue*', it ought to have complied with the provisions of sections 56(1), 56(3), 60 read with section 2(36) and 73 of the Companies Act, 1956 read with regulations 4(2)(d), 5, 6, 7, 25, 26, 36, 37, 47, 57 and 59 of the ICDR Regulations. In the present case, there is no record to show that the company had complied with requirements of the above provisions of law in respect of its offer and issuance of equity shares. The company is therefore held guilty of contravening the aforesaid provisions of the Companies Act, 1956 and the ICDR Regulations and becomes liable for the consequences of such non-compliances.
16. The *interim order* has issued directions in respect of the promoters and directors namely Mr. Baman Charana Das, Ms. Sujata Das, Mr. Bipin Chandra Das, Mr. Santosh Kumar Panda, Ms. Kalyani Das, Mr. Lingaraj Panigrahy, Mr. Hara Prasad Das and Mr. Kailash Chandra Bishoi. As per the *interim order*, the details of the directors of the company is as below:

Table A

S.No.	Name of the person	Date of appointment	Date of Cessation
1	Baman Charana Das	17/10/2011	Continuing as director
2	Sujata Das	17/10/2011	Continuing as director
3	Bipin Chandra Das	17/10/2011	31/03/2013
4	Santosh Kumar Panda [#]	31/03/2013	Continuing as director
5	Hara Prasad Das*	31/03/2013	Continuing as director

[#] Mr. Santosh Kumar Panda has stated that he resigned *w.e.f.* December 01, 2013. However, there is no record available in MCA-21 portal evidencing the same.

** Though the Company has stated that Mr. Hara Prasad Das had resigned on December 31, 2013, however, there is no record available in the MCA-21 portal evidencing his cessation as a director. Accordingly, he is considered to continue in the company as its director.*

17. It is held above that the company made public issue of equity shares during the financial years 2011-12, 2012-13 and 2013-14. From the details in the above table, it can be seen that Mr. Baman Charan Das, Ms. Sujata Das and Mr. Bipin Chandra Das were the directors in the company during the period when the equity shares were allotted without complying with the public issue norms. Mr. Santosh Kumar Panda and Mr. Hara Prasad Das became directors on March 31, 2013. All the above persons are the promoters of the company and also officers in default under section 5 of the Companies Act, 1956.
18. In terms of section 291 of the Companies Act, 1956, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors being responsible for the conduct of the business of a company will be liable for any non-compliance of law and such liability shall be upon the individual directors also. Section 56(1) and 56(3) read with section 56(4) imposes the liability for the non-compliance of the said provisions, on the company, every director, and other persons responsible for the issuance of the prospectus. The liability for non-compliance of section 60 of the Companies Act is on the Company, and every person who is a party to the non-compliance of issuing the prospectus as per the said section. Further, the directors of a company shall be liable for action in case of contravention of the ICDR Regulations.
19. The liability of the company and directors to repay under section 73(2) of the Companies Act, 1956 would remain until the whole of the subscription amount along with interest is refunded to the allottees/investors. Therefore, the directors (*irrespective of whether they continue or resign*) who were present during the period when the company made the offer and allotted equity shares shall be liable for violation of sections 56, 60 and 73 of the Companies Act, 1956 and the ICDR Regulations. Further, the persons who join the company's Board as directors pursuant to the offer and allotment of securities shall also be liable if the company/concerned directors fail to make refunds as mandated under sections 73(2) of the Companies Act, 1956. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs Registrar of Companies* (2002 108 Comp Cas 1 Mad):

“13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956.”

20. Considering the above observations, I do not find merit in the submissions of Mr. Santosh Kumar Panda. Further, there is no record available in MCA-21 portal/ Registrar of Companies to substantiate the claim that he had resigned on December 01, 2013. Having considered the same, I hereby find Mr. Baman Charan Das, Ms. Sujata Das, Mr. Bipin Chandra Das, Mr. Santosh Kumar Panda and Mr. Hara Prasad Das liable for the contravention of sections 56, 60 and 73 of the Companies Act, 1956 and ICDR Regulations including default in making refunds of the subscription money to the allottees/ investors under section 73(2) of the Companies Act, 1956.
21. In view of the foregoing observations, the company and the aforesaid persons are liable for the consequences including making refund of the subscription money to the allottees along with interest at 15% p.a. as mandated under section 73(2) of the Companies Act, 1956 read with rule 3(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.
22. Ms. Kalyani Das, Mr. Lingaraj Panigrahy and Mr. Kailash Chandra Bishoi are the other promoters. These persons have also been alleged to be ‘officers in default’ with respect to the contraventions committed by the company and also for failure for making repayments as stipulated under section 73(2) of the Companies Act, 1956. Ms. Kalyani Das has not filed any reply to the charges levelled against her. She had been allotted 10000 shares for ₹1,00,000/-. Mr. Kailash Chandra Bishoi and Mr. Lingaraj Panigrahy submitted that they became promoters on the request of Mr. Baman Charan Das. They did not pay towards equity capital and were not allotted share certificates. They also stated that they resigned on March 15, 2012 and March 13, 2012 respectively as they came to know that the business plans were illegal. From the Memorandum of Association/ Articles of Association of the company, it is noted that these two persons are the initial subscribers having been allotted 3000 shares each for ₹30,000/-. Further, the signature of Mr. Lingaraj Panigrahy on the Memorandum of Association/ Articles of Association are similar, in view of the same he cannot say that he had

not signed on these documents. Considering the submission, I note that the said noticees have not produced any document to show that they were not connected with the company. Further, being the original subscriber to the Memorandum of Association/ promoter of the company, now they cannot deny connection with the company. Also there is no document on record to show that they were not instructing the Board of directors of KKDIL. In view of the same, it is difficult to grant any relief to him, at this stage. Further, the public interest requires that the persons who had knowledge/ consent/ connivance in the act/ omission which constitutes violation of the provisions of the public issue or who neglected in preventing such issue be made accountable to the investors.

23. In view of the foregoing, I, in exercise of the powers conferred under sections 11(1), 11(4), 11A and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992, hereby issue the following directions:
- (i) KKDIL Nidhi Limited [PAN: AAECK6428M] and its promoters/ directors including Mr. Baman Charana Das [PAN: AJMPD9925C], Ms. Sujata Das [PAN: ACHPD4631M], Mr. Bipin Chandra Das [PAN: ACHPD4632J], Mr. Santosh Kumar Panda [PAN: ASMPP9586C] and Mr. Hara Prasad Das [PAN: AJOPD4124F] shall within a period of three months from the date of this order, jointly and severally refund the money collected through the issue of equity shares to the subscribers/ allottees with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund.
 - (ii) Such refund shall be made only in cash through a Demand Draft or Pay Order.
 - (iii) KKDIL Nidhi Limited and its directors shall within fifteen days from the date of this Order submit to SEBI complete details of their assets (along with proofs thereof) certified by a peer reviewed Chartered Accountant.
 - (iv) KKDIL Nidhi Limited and its directors are permitted to sell assets of the company and deposit the sale 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 allottees of equity shares till the full refund/ repayment as directed above is made.
 - (v) KKDIL Nidhi Limited and its directors shall issue a public notice, in all editions of one English national daily and one vernacular daily with wide circulation, detailing the

modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this order.

- (vi) Within seven days of completion of refund/ repayment as directed hereinabove, KKDIL Nidhi Limited and its directors shall file a certificate of such completion with SEBI from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. Such certificate shall be issued by the Chartered Accountants after verifying the relevant documents including bank accounts of the noticees and satisfying themselves that the refund has actually been made.
 - (vii) For the purpose of this order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India.
 - (viii) KKDIL Nidhi Limited, Mr. Baman Charana Das, Ms. Sujata Das, Mr. Bipin Chandra Das, Mr. Santosh Kumar Panda, Ms. Kalyani Das [PAN: AUHPD9009R], Mr. Lingaraj Panigrahy [PAN: AGJPP1247K], Mr. Hara Prasad Das and Mr. Kailash Chandra Bishoi [PAN: ATKPB3979L] are restrained from, directly or indirectly, accessing the capital market by issuing prospectus, any offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in whatsoever manner for a period of four years or till the date of refund of money to the allottees, whichever is later.
 - (ix) Mr. Baman Charana Das, Ms. Sujata Das, Mr. Bipin Chandra Das, Mr. Santosh Kumar Panda, Ms. Kalyani Das, Mr. Lingaraj Panigrahy, Mr. Hara Prasad Das and Mr. Kailash Chandra Bishoi are also restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, for a period of four years or till the date of refund of money to the allottees, whichever is later.
 - (x) For the purposes of sub-paragraphs (viii) and (ix) above, the period of restraint shall be counted from the date of the *interim order*.
24. The *interim order* dated March 20, 2015 is disposed off accordingly. The above directions are without prejudice to the right of SEBI to take any other appropriate action for the violations found in this case or to initiate any action in case of failure to comply with the above directions,

in accordance with the provisions of applicable laws including the proceedings under the provisions of section 28A of the SEBI Act.

25. This Order shall come into force with immediate effect. A copy of the Order shall be served on the noticees to ensure compliance with the above directions. A copy of this Order shall also be forwarded to the recognized stock exchanges and depositories for information and necessary action.
26. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action.

Date : October 28th, 2016

Place : Mumbai

**RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**