BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OFINDIA
ADJUDICATION ORDER NO. EAD-7/BJD/BKM/2018-19/1472-1475

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

1. **Vibgyor Allied Infrastructure Limited (PAN: AACCV5843R)**
2. **Rabindra Nath Dey (PAN: ADEPD0040N)**
3. **Raja Bhadra (PAN: AGVPB3263D)**
4. **Rana Bhadra (PAN:AIDPB1831B)**

In the matter of Vibgyor Allied Infrastructure Limited

BACKGROUND

1. On receipt of several complaints alleging that Vibgyor Allied Infrastructure Limited (hereinafter referred to as VAIL/Company) was soliciting subscriptions from public for secured and unsecured optionally fully convertible debentures (hereinafter referred to as 'OFCDs') in violation of the statutory requirements, Securities and Exchange Board of India (hereinafter referred to as 'SEBI) had conducted an examination whether VAIL and its directors Rabindra Nath Dey, Raja Bhadra and Rana Bhadra (hereinafter referred to as Noticees/Noticee 1-4) had complied with the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made thereunder.

2. It was observed that VAIL had issued OFCDs having varying tenure, varying redemption value and conversion period to the tune of 6, 17,600 OFCDs in number, and the subscription amount raised was Rs 61.76 crore from 49,562 investors. From the annual returns submitted by VAIL, it was observed that the applications for the

amount ranging between Rs 1000 and Rs 3,000 were made by investors in various categories which constituted 15,985 out of 50402 applications (i.e. around 32%). Out of 50,402 applications, total 40,333 (i.e. around 80%) applications were for amounts in the range of Rs 1000 to Rs 10,000 (made in various categories of the OFCDs). It was further observed that most of the addresses of the investors were incomplete and ambiguous. In more than 41, 000 entries, only the names of the village and post office were mentioned without any details regarding the house number or street name. It was observed that the Noticees had solicited the funds through OFCDs without complying with requirements relating to public issue and listing of securities contained in clauses 2.1.1., 2.1.4., 2.1.5, 2.2, 2.5, 2.8, 4.11, 4.14, 5.3.1, 5.6.2, 6.0 to 6.15, 8.8.1, 10.0 to 10.2, 10.4, 10.6 and 10.9 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("DIP Guidelines") read with Regulations 4(2), 5(1), 5(7), 6, 7, 20(1), 25, 26, 36, 37, 46 and 57 and Regulation 111 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as ICDR Regulations).

3. Consequently SEBI vide order dated February 20, 2014, inter alia, directed to refund the money collected, pursuant to the Red Herring Prospectus(“RHPs”) dated June 09, 2009 and May 27, 2009. However, the Noticees failed to comply with the order.

APPOINTMENT OF ADJUDICATING OFFICER

4. Based on the findings of the examination, SEBI has initiated Adjudication Proceedings and Ms. Anita Kenkare, General Manager was appointed as the Adjudicating Officer vide order dated December 26, 2016 under section 15 I of SEBI Act, 1992 to inquire into and adjudge the alleged non- compliance of order dated February 20, 2014 passed by SEBI. Consequent to the inter department transfer, I was appointed as the Adjudicating Officer vide order dated May 17, 2017 to inquire into and adjudge the alleged non-compliance by VAIL.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD-7/BJD/BKM/22454/1-4/2018 dated August 09, 2018 was issued to the Noticees under Rule 4 of SEBI Adjudication Rules 1995 to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15 HB of the SEBI Act.

6. The SCN was sent to the last known address of the Noticees, as available on record. The same returned undelivered. Thereafter, the SCN was sent to the Noticees for service by way of affixture in terms of Rule 7(c) of the Adjudication Rules. The SCN could be delivered to Noticee 2 & 4. The SCN has been served on Noticee 1 & 2 by affixture. The copy of SCN was also uploaded on SEBI website. In the interest of natural justice the Noticees were given opportunity of personal hearing on September 26, 2018. Noticee 1 & 2 vide email dated September 20, 2018 and vide email dated September 24, 2018 Noticee 3 confirmed that they shall avail the opportunity of personal hearing on September 26, 2018. However, Noticee 4 has failed to respond on the SCN.

7. Noticee 1-3 have attended the hearing on September 26, 2018. Vide email dated October 19, 2018 the Authorized Representative of Noticee 1-3 have filed the written submission and also requested for one more personal hearing. Since hearing was already conducted and the detail reply already has been submitted in the matter, the request of further hearing was not acceded to.

8. In reply to the SCN, Noticee 1-3, vide letter dated September 20, 2018 submitted that in terms of the order dated February 20, 2014 passed by the whole time member, SEBI and order dated January 20, 2016 passed by SAT if any adverse steps taken against the company and its directors, ex-directors, the entire process of refund will be frustrated. Significant parts of submission of the Noticees are reproduced as under:

"Noticees are willing to pay and /or refund the deposits/subscriptions to the depositors/subscribers and its creditors and all dues and other liabilities by selling the assets of Vibgyor Group of Companies through the process which is going on before the Hon'ble High Court at Calcutta and before the Hon'ble One Man Committee as such as such you are requested not to take any adverse steps pursuant to the order dated February 20, 2014 vide No. WTM/RKA/CFD/8/2014 and the order dated January 20, 2016 passed by the Securities Appellate Tribunal in Appeal No. 108 of 2014, 109 of 2014, 110 of 2014 and 11 of 2014 or pass any adverse order in this regard as you are also representing in the aforesaid proceedings and well aware of the restraining order of Hon'ble High Court as well as executive order of the State of West Bengal for not to accept any presentation of deed for registration in respect of our company. We are co-operating with the Hon'ble One Man committee to meet the grievances of the depositors/subscribers by selling the assets disclosed by us in the aforesaid affidavits through the Hon'ble One Man Committee and which is the object of the order dated February 20, 2014 passed by the whole time member, SEBI and order dated January 20, 2016 passed by the Securitties Appellate Tribunal.

Till date the Hon'ble One Man Committee headed by Retd. Justice Sailendra Prasad Talukdar was able to get the valuation of some of the property out of total 61 properties given to the Hon'ble High Court as well as the Hon'ble One Man Committee to put those properties worth of 73 Crores in auction in order to accumulation of fund to disburse among the investors/depositors and other creditors which you are well aware.

We stating the aforesaid facts filed an appeal being A no. 219 of 2018 (Rabindranath Dey Vs SEBI) before the Securities Appellate Tribunal (SAT) challenging inter alia order dated January 20, 2016 passed by the SAT. The said appeal was taken up for hearing on July 10, 2018 and at the time of hearing on behalf of you submitted and relied on an order dated March 09, 2018 passed by Whole Time Member, SEBI vide Memo No. WTM/GM/IMD/98/2017-18. In the said order in paragraph no. 25 it was observed by the Learned Whole Time Member that "I also note that there have several writ petitions filed against the Vibgyor Group of Companies before the High Court Calcutta, inter alia, alleging money mobilization. Vide order dated February 15, 2017 the Hon'ble High Court directed that the writ petitions pertaining to the Vibgyor Group of companies be placed before the Justice Sailendra Prasad Talukdar Committee. In reply to the said writ petition *filed against the Vibgyor Group of Companies, the Director of VAIL- Rabindranath Dey i.e. notice no. 2 had filed an affidavit admitting that the total liability of Vibgyor Group of Companies is worth Rs 318 Crores of which liability of Vibgyor Allied Industries Ltd. is Rs 100 Crores. However, it is not clear whether the said liability pertains to only SRDs. Since the matter relating to repayment on investors of Vibgyor Group of companies has been has been seized of by the committee appointed by the Hon'ble High Court at Calcutta, the directions at paragraph 21 and 22 of this order shall be subject to directions of Hon'ble High Court of Calcutta" and considering the aforesaid order dated March 09, 2018 the Hon'ble Tribunal was pleased to observe that " In view of the statement made by the Calcutta High Court, one man committee has been constituted for supervising refunds being made to the investors, no useful purpose would be served by directing SEBI to consider the representation made by the appellant.*

We make it clear that the fact that One Man Committee is supervising the refunds made to the investors, would not come in the way of SEBI in implementing its order".

9. I have carefully gone through the submissions made by Noticees and note that Hon'ble High Court at Calcutta in the month of February 2017 constituted one man committee whose mandate is to supervise valuations and sale / auction of assets of Noticees and subsequent supervision of refunds to investors of Vibgyor Group of companies. I further note from the submission of Noticees that while taking note of the one man committee constituted for supervising refunds to be made to investors, SAT had also made it clear that the fact that "One Man Committee supervising the refunds made to the investors, would not come in the way of SEBI in implementing its order". SAT in its Order dated January 20, 2016 while disposing off the appeal Noticees against SEBI Order dated February 20, 2014, categorically directed Noticees to submit details of refunds purportedly paid by investors to SEBI for verification and also observed that in case the claim made by Noticees were incorrect, SEBI Order could be implemented. I also note that submission and documents available on record that there is no explicit directions to SEBI either by Hon'ble High Court at Calcutta or One man committee or SAT, not to proceed further in the matter without the leave of court or stayed continuation of instant

proceedings. However, I take note that the restraining order of Hon'ble High Court as well as executive order of the State of West Bengal was not to accept any presentation of deed for registration in respect of our company. The purpose of such an restraint is to ensure that Noticees do not sell any assets to escape the liability to refunds investors.

10. I note that the purpose of instant proceeding before me is limited to adjudicating on the charge of non-compliance of directions to refund the money along with interest, received through illegal issuance of OFCDs to investors within 3 months from the date of SEBI Order dated February 20, 2014. I also take note that SEBI had passed another Order on March 09, 2018 which relates to money raised through Secured Redeemable Debentures ("SRDs") since 2006-07.

11. Taking into account above, I am of the view that there is no bar to proceed further in the instant proceedings and outcome of current proceedings will also not impact the proceedings before One man Committee whose mandate is supervise assets and sell them for distribution to investors. I also note that investors who invested in various schemes of Noticees and not limited to investors of OFCDs. The proceedings before me relates to failure of Noticees to comply with SEBI directions as passed in order dated February 20, 2014. Therefore, I am proceedings further in the matter as per the procedure laid down in Adjudication Rules.

12. Keeping the aforesaid in mind, I am of the opinion that the SCN and the Hearing Notice have been duly served upon the Noticees in accordance with the provisions of Adjudication Rules relating to service of notice. However, Noticee 4 failed to file his reply to SCN and also failed to avail the opportunity of hearing granted to it. I am also of the view that the principles of natural justice have been complied with. Therefore, it is necessary to conclude the matter without any further delay. I consider it appropriate to proceed further on the basis of their submission and material available on record, in the interest of justice as against Noticee 1-3 in the

matter. I proceed further against Noticee 4 ex-parte on the basis of material available on record.

CONSIDERATION OF ISSUES

13. On careful perusal of the material available on record, I note that the issues that arise for consideration in the present case are:

a) *Whether the Noticees failed to comply with order* dated February 20, 2014 passed by SEBI?

b) *Does the violation, if any, attract monetary penalty under Sections 15 HB of SEBI Act?*

c) *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

14. Before proceeding further, I would like to refer that Noticee 4 did not file any reply to SCN although same was served on them at the last known address in accordance with the Adjudication Rules.

15. As stated above, sufficient opportunities to submit reply and appear in personal hearing have been given to the Noticee 4, none of which were availed by the Noticee 04. Therefore, I find it pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed, "… the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them". I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that, "...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..." Thus, I am of the view

that the allegations levelled in the SCN and the evidences enclosed therewith are not in dispute in absence of any reply from the Noticee 4.

FINDINGS:

16. It is noted from the information provided by VAIL that vide resolutions passed at the EGMs held on May 22, 2009 and June 8, 2009, consent of the members of VAIL was obtained for issuance of OFCDs, and that the RHPs of VAIL were filed with the RoC, West Bengal on May 28, 2009 (for issuance of Unsecured OFCDs) and on June 11, 2009 (for issuance of Secured OFCDs). I find from the CD on October 20, 2010 submitted to SEBI that the issue of OFCDs opened from July 04, 2009 and kept open till March 31, 2010. Along with the Red Herring Prospectus(RHP) dated June 09, 2009, the directors of the company had filed an affidavit with the RoC stating that the Company shall not make public issue upto the expiry of one year from the date of the closure of the private placement of OFCDs and that the company shall not make public issue of such shares/securities without compliance of SEBI Act, Rules and Regulations thereof and shall always comply with the SEBI Act, Rules and Regulations thereof at every stage as and when is applicable to it.

17. From the RHP dated May 27, 2009 (unsecured OFCDs) and June 06, 2009 (Secured Debentures) filed by the company for issuances of OFCDs observed are as under:

Name of OFCD	**SD-2**	**SD-3**	**SD-5**
Tenure	36 Months	66Months	174 Months
Face Value	Rs. 1000/-	Rs. 1000/-	Rs. 1000/-
Redemption Value	Rs 1500/-	Rs 2000/-	Rs 10,000/-
Conversion	On Completion of 36 Months	On Completion of 66 Months	On Completion of 174 Months
Application for Conversion	On Completion of 34 Months	On Completion of 64 Months	On Completion of 172 Months
Minimum Application Size	Rs. 1000/-	Rs. 1000/-	Rs. 1000/-
Nominee System	Double Nominee	Double Nominee	Double Nominee
Transfer	Yes	Yes	Yes

18. The detail of amount solicited by the Noticees under OFCDs are as under:

DEBENTURE	TENURE	FACE VALUE	NO. OF DEBENTURE HOLDERS	NO. OF DEBENTURES BONDS	TOTAL VALUE OF DEBENTURES ALLOTTED ON VARIOUS DATES(Rs.)	GRAND TOTAL(Rs.)
OFCD SERIES						
DEBENTURE -1	18 MONTHS	1,000.00	1966	37354	37,354,000.00	
DEBENTURE -3	36 MONTHS	1,000.00	1416	23323	23,323,000.00	
DEBENTURE -D	66 MONTHS	1,000.00	7072	80801	80,801,000.00	
DEBENTURE -T	90 MONTHS	1,000.00	8762	97759	97,759,000.00	
DEBENTURE -FT	126 MONTHS	1,000.00	2239	20287	20,287,000.00	
DEBENTURE -TT	174 MONTHS	1,000.00	11301	65068	65,068,000.00	
DEBENTURE -MIS	36 MONTHS	1,000.00	1757	160497	160,497,000.00	485,089,000.00
OFCDs SERIES						
SD-2	36 MONTHS	1,000.00	1058	13874	13,874,000.00	
SD-3	66 MONTHS	1,000.00	6295	71517	71,517,000.00	
SD-5	174 MONTHS	1,000.00	7696	47120	47,120,000.00	132,511,000.00
		TOTAL:	49562	617600	617,600,000.00	617,600,000.00

19. I note from the above that VAIL had issued OFCDs having varying tenure, varying redemption value and conversion period to the tune of 6, 17,600 OFCDs in number, and the subscription amount raised was Rs 61.76 crore from 49,562 investors. I note from the annual returns filed by VAIL that the applications for the amount ranging between Rs 1000 and Rs 3,000 were made by investors in various categories which constituted 15,985 out of 50402 applications (i.e. around 32%). Out of 50402 applications, total 40,333 (i.e. around 80%) applications were for amounts in the range of Rs 1000 to Rs 10,000 (made in various categories of the OFCDs). Noticees solicited the funds through OFCDs without complying with requirements relating to public issue and listing of securities contained in DIP Guidelines read with ICDR Regulations.

20. Consequently, Vide order dated Feb 20, 2014, SEBI passed an order under sections 11, 11(4), 11A and 11B read with section 19 of the SEBI Act and regulation 107 of ICDR Regulations issuing the following directions:

a) Vibgyor Allied Infrastructure Limited (earlier known as Vibgyor Properties Limited) and its promoter and ex-director, Mr. Raja Bhadra, ex-director Mr. Rana Bhadra and director, Mr. Rabindra Nath Dey, shall within three months from the date of this order, jointly and severally refund the money collected pursuant to the Red Herring Prospectuses dated June 09, 2009 and May 27, 2009, to the subscribers of Optionally Fully Convertible Debentures with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund or the redemption value promised in the RHPs and accrued till the date of refund, whichever is higher.

b) Such refund shall be made only in cash through a Demand Draft or Pay Order.

c) Vibgyor Allied Infrastructure Limited shall issue a public notice, in all editions of two National Dailies (one English and one Hindi) 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 coming into effect.

d) Within seven days of completion of refund as directed hereinabove, Vibgyor Allied Infrastructure Limited 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. For the purpose of this order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India (ICAI).

e) Vibgyor Allied Infrastructure Limited, Mr. Raja Bhadra, Mr. Rana Bhadra and Mr. Rabindra Nath Dey are directed not to, directly or indirectly, access the capital market by issuing prospectus, any offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner till the expiry of three years from the date of completion of refund as directed hereinabove.

f) Mr. Raja Bhadra, Mr. Rana Bhadra and Mr. Rabindra Nath Dey are further restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, till the expiry of three years from the date of completion of refund as directed hereinabove.

21. VAIL challenged the aforesaid order Feb 20, 2014 in Securities Appellate Tribunal (SAT). The Hon'ble SAT, vide order dated January 20, 2016 while dealing with the request of the captioned company, passed the following directions:

i. Appellants are directed to furnish to SEBI within two weeks from today all requisite documents / particulars so as to enable SEBI to verify the claim made by the appellants.

i Within two weeks from the date of receiving such documents / particulars, SEBI shall verify the same and pass appropriate order thereon granting extension of time to pay the balance amount to the subscribers for such period as it deems fit. If SEBI finds that the statements made by the appellants that they have paid substantial amount to the subscribers is incorrect, then SEBI is at liberty to pass such order as it deems fit and proper so as to seek implementation of the order impugned in the present appeal as expeditiously as possible.

22. It was observed from Noticees' reply dated February 03, 2016 that there were few contradictory submissions submitted by the Noticees regarding refund during the 11B proceedings and post SAT order.

23. Subsequently, SEBI vide letter dated August 08, 2016 advised the Noticees to furnish the following information to SEBI within 14 days of receipt of this letter, to enable SEBI to take further action as per the order of Hon'ble SAT dated January 20, 2016:

a. Statement showing investor-wise details of refund made in the following format (Both soft copy and duly authenticated hard copy):

Sl	**Name of the Investor**	**Date of investment**	**Amount invested (Rs.)**	**Date of Refund**	**No. of days for which interest due**	**Interest paid (Rs.)**	**Subscription amount refunded (Rs.)**	**Balance due (Rs.)**
1								
2								
	Total		61.76 crore					

b. Certificate from two independent peer-reviewed Chartered Accountants on the panel of a public authority or public institution, duly certifying that refunds as well as the interest as mentioned in the above mentioned format has been paid and the payment thereon is in accordance with the directions contained in Para 51(a) and (b) of the SEBI order dated February 20, 2014;

c. The Chartered Accountants shall, inter-alia, state in the said certificates that the certification has been done on the basis of examination of various documentary evidences in the matter including, but not limited to, bank statements of the company, to arrive at a reasonable opinion on the certification provided;

d. VAIL shall also submit documentary evidence to show compliance with the direction contained in Para 51(c) of the SEBI order dated February 20, 2014.

e. VAIL shall also explain the multiple entries pertaining to 'stop payment charges' and 'dishonor charges' appearing in the bank statements submitted vide letter dated February 03, 2016.

24. It is noted that the letter dated August 08, 2016 as mentioned above was returned undelivered out of which one of the Noticees named Rana Bhadra had refused to accept the letter. Further, for other two Noticees neither the acknowledgement had come nor the original letter was returned.

25. I note that VAIL has issued OFCDs to public in non-compliance of the provisions of the Companies Act 1956, SEBI Act and DIP Guidelines (since rescinded) and ICDR Regulations SEBI initiated investigation in the matter on September 28, 2010. VAIL, vide its letter dated October 20, 2010 submitted that there were 49,562 applications and the subscription amount received was Rs 61, 76, 00,000/-.Vide letter dated October 10, 2013, the Noticees filed written memorandum of their oral submissions wherein they, inter alia, submitted that VAIL has completed the refund to OFCD investors by August 2013, and also attached a copy of a certificate of a Chartered Accountant to that effect. However, SEBI received complaints from subscribers/investors complaining about non-receipt of amounts due on OFCDs of VAIL. Therefore, SEBI was unable to accept the claim of VAIL that it had already refunded all monies to the subscribers along with interest @ 15% as directed by the Central Government vide order dated May 31, 2012.

26. SEBI vide order dated February 20, 2014 directed the Noticees to stop from raising the fund and refund to the investors within three months from the date of this order, jointly and severally to refund the money collected pursuant to the Red Herring Prospectuses dated June 09, 2009 and May 27, 2009, to the subscribers of Optionally Fully Convertible Debentures with interest at the rate of 15% per annum

from the date of receipt of money till the date of such refund or the redemption value promised in the RHPs and accrued till the date of refund, whichever is higher. Vide order dated January 20, 2016, SAT directed Noticees to furnish to SEBI within two weeks from today all requisite documents / particulars so as to enable SEBI to verify the claim of repayment made by the Noticees. Within two weeks from the date of receiving such documents /particulars, SEBI shall verify the same and pass appropriate order thereon granting extension of time to pay the balance amount to the subscribers for such period as it deems fit. It was also directed that if the statements made by the appellants that they have paid substantial amount to the subscribers is incorrect, then SEBI is at liberty to pass such order as it deems fit and proper so as to seek implementation of the order impugned in the present appeal as expeditiously as possible.

27. I note that there were several complaints filed by complainants and senior citizen S K Mukherjee on June 12, 2014 and July 17, 2014 against the Noticees. Others investors also have filed several complaints. The details of some of the complaints, for instance, are as under:

Sr No.	Inventors	Nature of Funds	Date of Allotment	No of OFCD	For Period	Date of Maturity & Amount Payable
1	S K Mukherjee	OFCD DEB No. OBDN9349	30/09/2010	30	36 Months	45,000/-
2	S K Mukherjee	OFCD-DEB No. OBDN9347	30/09/2010	30	36 Months	45,000/-
3	Purabi Mukherjee	OFCD-DEB No. OBDN9347	03/11/2010	30	36 Months	45,000/-
4	Shibprasad Halder	OFCD-DEB No. 1BAR112717	23/05/2012	50	60 Months	150,000/-

5	Rakesh Singh	OFCD-DEB No. 1BDN105344	19/04/2012	20	168 Months	20,00,000/-

28. I note that the OFCDs issuances were initiated in the year 2009 and substantial funds were solicited by the Noticees through OFCDs without complying with requirements relating to public issue and listing of securities contained in clauses 2.1.1., 2.1.4., 2.1.5, 2.2, 2.5, 2.8, 4.11, 4.14, 5.3.1, 5.6.2, 6.0 to 6.15, 8.8.1, 10.0 to 10.2, 10.4, 10.6 and 10.9 of the DIP Guidelines read with Regulations 4(2), 5(1), 5(7), 6, 7, 20(1), 25, 26, 36, 37, 46 and 57 and Regulation 111 of the ICDR Regulations. Therefore, SEBI passed an order on February 20, 2014 to prohibit Noticees from accessing and dealing in securities and to repay to the investors within three months from the date of the order, i.e. May 20, 2014. However, I note that Noticees failed to comply with the said order, as large number of complaints from various investors had been received subsequent to the order.

29. I note from the material on record that the complainants namely, Mr. Idd Mohammad vide letters dated January 21, 2015 and January 25, 2015, Mr. R. Mukherjee vide letter dated May 01, 2015, Mr. Deb Kumar Kundu vide letter dated May 04, 2015 Ajoy Kumar Patra vide letter dated May 06, 2015, Mr Satrajit Das vide letter dated May 02, 2015, Mr Arun Chandra Roy vide letter dated May 06, 2015, Mr. Shyamal Gupta vide letter dated May 14, 2015, Mr. Ranjana Mukherjee vide letter dated March 21, 2016, Mr. Amiya Kumar Das vide letter dated May 15, 2015, Mr A. Sinha (Advocate) vide letter dated September 02, 2015 for investors Mr. Uttam Gupta, Mr. Bipul Sarkar, Mr. Sujit Sarkar,Mr. Ajay Das, Mr.Majibur Das, Mr. Dilip Debsharma, Mr. Dilip Debsharma, Ms. Radha Karmakar, Mr. Santosh Prasad, Sintu Paul, Mr. Majedar Rahman, Mr. Nirmal Sarkar, Mr. Gobinda Kr Mondal, Mr. Sukamal Sarkar, Mr. Prakash Mondal, Mr. Khageswar Thakur, Mr. Yusuf Rahman, Mr. Amedur Rahman, Mr. Bubai Chakraborty, Mr. Biswajit Kr Shil, Mr Sushanta Majumder, Mr. Khairul Alam,Mr. Lakshman Ch Sarkar, Mr.Anisor Rahman, Mr. Tubal Das, Mr. Manirul Islam, Mr. Manab Ch Das, Mr. Nirupada Sarkar, Mr. Yakubuddin Ahamed, Mr. Ujjal Debnath, Mr. Sanat Sarkar, Mr. Mainul Hoque, Ms.

Sukomal Sarkar, Mr. Kartick Bisnu, Mr. Rafiqul Alam and Mr. Jayanta Ghosh submitted that Noticees had not refunded to them. Further the investors requested SEBI to investigate and take necessary steps in this regard and arrange to pay the deposited amount to them.

30. In view of the above, SEBI, vide letter dated April 24, 2015, sought confirmation regarding the repayment to the investors from such complainants, namely, Mr. Sisir Kumar Mukherjee, Mr. Jagabandhu Ghosh/Ms. Shanti Ghosh, Mr. Deb Kumar Kundu, Mr. Shyamal Gupta, Mr. Idd Mohammad, Mr. Nirmalya Haldar, Mr. Prasanna Kumar Prusty, Ms. Ranjana Mukherjee, Mr. Uttam Gupta, Mr. Satrajit Das, Mr. Alo Barai/Mr. Amit Singha, Mr. Ajoy Kumar Patra, Mr. Sankar Narayan Chakraborti, Mr. Rakesh Singh,Mr. Arun Chandra Roy, Mr. Bharat Prasad Sharma. They confirmed vide their replies that they had not received any refund from the Noticees as per SEBI order dated February 20, 2014.

31. From the above, I note that Noticees failed to comply with the directions issued by SEBI for repayment to the investors. The letters sent by SEBI pursuant to order passed by SAT seeking the details of information in a specific format regarding the claimed repayment were returned undelivered out of which one of the Noticees named Rana Bhadra had refused to accept the letter. Further, for other two Noticees neither the acknowledgement had come nor the original letter had returned. The leisure approach of the Noticees shows that they have never intended to comply with the direction of the statutory authorities. Since Noticees were appellant in the appeal filed before SAT and all the directions issued by SAT vide order dated January 2016 were already in notice of the Noticees. However, they have deliberately tried to ignore the letters issued to the Noticees. In the instant proceedings also the Noticees failed to demonstrate any material development in repayment to investors and hence they finally failed to repay to the investors. It is, therefore, concluded that the charge of the non-compliance of the directions issued vide order dated February 20, 2014 as against the Noticees stands established.

32. The aforesaid non-compliance by the Noticees makes them liable for penalty under Section 15 HB of the SEBI Act which reads as under:

Penalty for contravention where no separate penalty has been provided.

15HB of SEBI Act 1992.

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees

33. The Hon‟ble Supreme Court of India in the matter of Chairman, SEBI v. Shriram Mutual Fund {[2006] 5 SCC 361} held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

34. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of SEBI Act which reads as under:

*"15J **- Factors to be taken into account by the adjudicating officer**: While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b) the amount of loss caused to an investor or group of investors as a result of the default;

c) the repetitive nature of the default."

***Explanation**: For removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under Sections 15A to 15E, Clauses (b) and (c) of Section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

35. I note that exact quantification of disproportionate gains or unfair advantage accrued to the Noticees is not possible in this case. Similarly, from the material

available on record, it is not possible to ascertain the exact monetary loss caused to the investors as a result of violation by the Noticees. However, I note that Noticees had solicited subscriptions gullible investors who appear to belong to remote place in West Bengal through different schemes, including OFCDs, during the period from 2009 onwards. I am of the view that any attempt by any person or entity to solicit subscriptions from public, without complying with regulatory requirements, especially from gullible investors from remote places where financial literacy is minimal, warrants strict action. I note that the Noticees repeatedly solicited subscriptions from public for year 2009 onwards illegally apart from OFCDs and they have not repaid to the investors who have invested in OFCDs as per SEBI order dated February 20, 2014.

36. I find that Noticees had claimed to have repaid to investors. However, they failed to provide the details of payment as sought in the specific format as prescribed by SEBI. On verification with the investors as available from the material on record, I note that Noticees have not paid to the investors and thus the claim of repayment to investors by the Noticees proved to be false and incorrect. Apart from above, I also note that the Noticees further raised funds through SRDs since 2006-07 and a number of investor complaints against the Noticees relating to refunds (including OFCDs) are unresolved. As per the affidavit filed before the Hon'ble High Court at Calcutta by Noticee 2, the total liability of Vibgyor Group of Companies is worth Rs 318 Crores of which liability of VAIL is Rs 100 Crores. The difference in the quantum of liability what was submitted earlier to SEBI and as submitted before the High Court at Calcutta suggests that the number of investors involved could be more than reported.

37. I note that SEBI order to refund to investors was passed on February 20, 2014, SAT direction to comply with SEBI direction was issued on January 20, 2016. Pursuant to the Hon'ble High Court at Calcutta order dated February 15, 2017, the Vibgyor group of companies has been placed under scrutiny to supervise assets and sell their assets for distribution to investors. Therefore, there was never any restraint on the Noticees to refund to investors. However, Noticees not only failed to repay to

the investors but continuously endeavours to solicit more funds despite of a large number of unresolved investor complaints against them. Noticees have grossly failed to comply with SEBI order dated February 20, 2014. In view of above, I consider it as a fit case for imposition of maximum penalty provided under Section 15HB of SEBI Act.

ORDER

38. In light of all the above stated facts and circumstances of the case, in exercise of the powers conferred upon me under Section 15 I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs 1,00,00,000/- (Rupees One Crore only) under section 15HB of the SEBI Act, 1992 on the Noticees viz Vibgyor Allied Infrastructure Limited, Rabindra Nath Dey, Raja Bhadra and Rana Bhadra to be paid jointly and severally. I am of the view that the said penalty is commensurate with the violations committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors for the aforesaid failure committed by the Noticees.

39. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

40. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, DRA-III Enforcement Department, SEBI, Mumbai as per the following format.

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	Penalty

41. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: October 31, 2018 **B J DILIP**

Place: Mumbai **ADJUDICATING OFFICER**