BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/SR/SM/AO/7-16/2018-19]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against

S. N.	Name of the Entity	CIN / DIN / PAN	Order No.
1	Real Vision International Limited	CIN : U70101OR2010 PLC012138	EAD/SR/SM/AO/7/2018-19
2	Sudhir Kumar Behera	DIN:02052368 PAN: AHTPB4511B	EAD/SR/SM/AO/8/2018-19
3	Ashok Pattnaik	DIN:02669340 PAN:AFVPP6295E	EAD/SR/SM/AO/9/2018-19
4	Sidhartha Kumar Barik	DIN:03101857 PAN:APSPB9232Q	EAD/SR/SM/AO/10/2018-19
5	Bidesi Behera	DIN: 03355781 PAN: AQJPB1669H	EAD/SR/SM/AO/11/2018-19
6	Devi Prasad Mohanty	DIN: 03549440 PAN: APNPM2950D	EAD/SR/SM/AO/12/2018-19
7	Rashmi Ranjan Mohanty	DIN: 05102958 PAN: AJGPM6875J	EAD/SR/SM/AO/13/2018-19
8	Prasanna Kumar Nayak	PAN: AIFPN1886Q	EAD/SR/SM/AO/14/2018-19
9	Sukanta Biswal	PAN: AJKPB5669B	EAD/SR/SM/AO/15/2018-19
10	Pabitra Kumar Rath	PAN: AGKPR5219G	EAD/SR/SM/AO/16/2018-19

In the matter of Real Vision International Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) initiated adjudication proceedings under section 15HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) against (1) Real Vision International Limited (hereinafter referred to as **Company/RVIL**), (2) Sudhir Kumar Behera, (3) Ashok Pattnaik, (4) Sidhartha Kumar Barik, (5) Bidesi Behera, (6) Devi Prasad Mohanty, (7) Rashmi Ranjan Mohanty, (8) Prasanna Kumar Nayak, (9) Sukanta Biswal, (10) Pabitra Kumar Rath (hereinafter referred to as **the Noticee No. 1 to 10** respectively or by their respective names and collectively referred to as **the**

Noticees). The Noticees were alleged to have failed to comply with the directions issued under sections 11(1), 11(4), 11A and 11B of the SEBI Act, 1992 by the Whole Time Member (**WTM**) of SEBI, vide an order dated December 10, 2015 in the matter of Real Vision International Limited (hereinafter also referred to as **WTM order**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri Nagendraa Parakh was appointed as the Adjudicating Officer, under section 15-I of the SEBI Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules**, **1995**), to inquire into and adjudge under section 15HB of the SEBI Act, 1992 the alleged failure on the part of the Noticees to comply with the directions issued by WTM of SEBI vide Order dated December 10, 2015. Subsequently, the matter was transferred to me and I was appointed as the Adjudicating Officer vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common Show Cause Notice dated February 22, 2017 (hereinafter referred to as 'SCN') was issued to the Noticees under rule 4(1) of Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them under section 15HB of the SEBI Act, 1992 for their alleged failure to comply with the directions issued by the WTM of SEBI vide order dated December 10, 2015. SEBI vide an ex-parte interim order dated March 20, 2015 had observed that the company was prima facie engaged in fund mobilizing activity from the public, by making an offer and issuing Redeemable Preference Shares (RPS) and had allegedly violated the provisions of sections 56, 60 and 73 of the Companies Act, 1956. Thereafter, WTM, SEBI vide final order dated December 10, 2015 issued directions to the Noticees which reads as follows:

    a) *The Company, namely, Real Vision International Limited and its Directors/ Promoters, Shri Sudhir Kumar Behera, Shri Ashok Pattnaik, Shri Sidhartha Kumar Barik, Shri Bidesi Behera, Shri Devi Prasad Mohanty, Shri Rashmi Ranjan Mohanty, Shri Prasanna Kumar Nayak, Shri Sukanta Biswal and Shri Pabitra Kumar Rath, shall forthwith refund the money collected by the Company through the issuance of RPS, including the money collected from investors, till date, pending allotment, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of*

Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.

b) *The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order.*

c) *Real Vision International Limited and its present management is permitted to sell the assets of the Company only for the sole purpose of making the repayments including interest, as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank.*

d) *The Company, namely, Real Vision International Limited and its Directors/ Promoters, Shri Sudhir Kumar Behera, Shri Ashok Pattnaik, Shri Sidhartha Kumar Barik, Shri Bidesi Behera, Shri Devi Prasad Mohanty, Shri Rashmi Ranjan Mohanty, Shri Prasanna Kumar Nayak, Shri Sukanta Biswal and Shri Pabitra Kumar Rath, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Oriya) 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.*

e) *After completing the aforesaid repayments, Real Vision International Limited and its Directors/Promoters, Shri Sudhir Kumar Behera, Shri Ashok Pattnaik, Shri Sidhartha Kumar Barik, Shri Bidesi Behera, Shri Devi Prasad Mohanty, Shri Rashmi Ranjan Mohanty, Shri Prasanna Kumar Nayak, Shri Sukanta Biswal and Shri Pabitra Kumar Rath, shall file a report of such completion of repayment with SEBI, within a period of three months from the date of this order, certified by 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").*

f) *Real Vision International Limited and its Directors/Promoters, Shri Sudhir Kumar Behera, Shri Ashok Pattnaik, Shri Sidhartha Kumar Barik, Shri Bidesi Behera, Shri Devi Prasad Mohanty, Shri Rashmi Ranjan Mohanty, Shri Prasanna Kumar Nayak, Shri Sukanta Biswal and Shri Pabitra Kumar Rath, are 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.*

g) *In case of failure of Real Vision International Limited and its Directors/Promoters, Shri Sudhir Kumar Behera, Shri Ashok Pattnaik, Shri Sidhartha Kumar Barik, Shri Bidesi Behera, Shri Devi Prasad Mohanty, Shri Rashmi Ranjan Mohanty, Shri Prasanna Kumar Nayak, Shri Sukanta Biswal and Shri Pabitra Kumar Rath, to comply with the aforesaid directions, SEBI, on the expiry of the three months period from the date of this order,-*

    i. *shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.*

ii. *may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.*
iii. *would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and*
iv. *would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.*

h) *Real Vision International Limited and its Directors/Promoters, Shri Sudhir Kumar Behera, Shri Ashok Pattnaik, Shri Sidhartha Kumar Barik, Shri Bidesi Behera, Shri Devi Prasad Mohanty, Shri Rashmi Ranjan Mohanty, Shri Prasanna Kumar Nayak, Shri Sukanta Biswal and Shri Pabitra Kumar Rath, are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 years from the date of completion of refunds to investors.*

i) *The above directions shall come into force with immediate effect.*

It was alleged in the SCN that, the Noticees failed to comply with the aforesaid directions issued by WTM, SEBI vide the order dated December 10, 2015.

4. The said SCNs were sent to the Noticees through speed post acknowledgement due (SPAD) initially and then upon my appointment as AO, attempts were made to serve the unserved SCNs through other manners in terms of the Adjudication Rules, 1995. Delivery status as per records available are given in the following table:

No. and Name of the Noticee	Address at which delivery attempted	Status of delivery of the SCN for which proof of delivery is on record
1. Real Vision International Limited	Plot No. – N-6/432, 2nd Floor. In front of Allahabad Bank, IRC Village, Nayapalli, Bhubaneswar-751015	SCN sent through SPAD undelivered, having remarks by postal department “left”. SCN served to the Noticee by Newspaper publication.

No. and Name of the Noticee	Address at which delivery attempted	Status of delivery of the SCN for which proof of delivery is on record
2. Sudhir Kumar Behera	At – Doulatabad, G.P. – Choudwar Municipality, P.S. – Choudwar, Cuttack-754025	SCN sent through SPAD undelivered, having remarks by postal department "addressee door locked, hence return to the sender". SCN served to the Noticee by affixture.
3. Ashok Pattnaik	Plot No. 432, Prachi Vihar, Palasuni, Rasulghar, Bhubaneshwar-751010	SCN sent through SPAD undelivered, having remarks by postal department "addressee door locked, hence return to the sender". SCN served to the Noticee by affixture.
4. Sidhartha Kumar Barik	At. Gobindpur, P.O. Kesharipur, Via-Soro,Balasore-756045	SCN delivered by SPAD.
5. Bidesi Behera	At.Girisola, P.O. Kirapalli, Ps. Bhanjanagar, Ganjam-761119	Delivery status of SCN sent by SPAD is not in record. SCN served to the Noticee by hand delivery, when the SEBI staff went for affixture to the said address of Noticee.
6. Devi Prasad Mohanty	Hakim Pada, Angul N.A. C., Angul - 759143	SCN sent through SPAD undelivered, having remarks by postal department "left without instruction so, returned to sender". SCN served to the Noticee by hand delivery, when the SEBI staff went for affixture to the said address of Noticee.
7. Rashmi Ranjan Mohanty	Nuahata, Banarpal, Angul - 759128	SCN sent through SPAD undelivered, having remarks by postal department "left". SCN served to the Noticee by Newspaper publication.
8. Prasanna Kumar Nayak	Patpur, Via- Bahugram, Ps. Salipur, Cuttack-752091	SCN delivered by SPAD.
9. Sukanta Biswal	At. Chakeisiani, P.O. Rasulgarh, Ps. Mancheswar, Bhubaneswar, Khurda - 751010	SCN sent through SPAD undelivered, having remarks by postal department "left" SCN served to the Noticee by Newspaper publication.
10. Pabitra Kumar Rath	Paik Baghna Bereni-2 P.O. Khamar sahi, Via Satapatna, Ps Daspalla, Nayagarh-752091	Delivery status of SCN sent by SPAD is not in record. SCN served to the Noticee by hand delivery, when the SEBI staff went for affixture to the said address of Noticee.

5. After my appointment, I granted an opportunity of hearing to all the Noticees and separate hearing notices were served to the Noticees enclosing the SCN and also advising the Noticees to submit reply to the SCN. The said hearing notices were attempted to be served by SPAD or affixture and in some cases by publication in Newspapers to ensure serving of notices as per the provisions of rule 4(3) of Adjudication Rules, 1995. The details of date of hearing notices, hearing dates and

status of serving of the hearing notices for which proof of delivery is available on record is hereunder:

No. and Name of the Noticee	Date of hearing notice	Hearing date (whether attended hearing– Y/N)	Status of delivery of the hearing notice for which proof of delivery is on record
1. Real Vision International Limited	December 14, 2017 and February 16, 2018	January 23, 2018 and February 28, 2018 (N)	Attempt to serve notice by affixture failed. Notice served by News Paper Publication on February 16, 2018 granting an opportunity of hearing scheduled for February 28, 2018.
2. Sudhir Kumar Behera	December 14, 2017	January 23, 2018 (N)	Notice was served by affixture made on January 07, 2018
3. Ashok Pattnaik	December 13, 2017	January 23, 2018 (N)	Notice was served by affixture made on January 06, 2018.
4. Sidhartha Kumar Barik	November 21, 2017	December 14, 2017 (Y)	Notice served by SPAD.
5. Bidesi Behera	December 14, 2017	January 23, 2018(N)	Notice served by hand delivery, when the SEBI staff went for affixture to the said address of Noticee. Hand delivery accepted by Akshya Behera (brother of Bidesi Behera), on January 01, 2018 on behalf of the Noticee.
6. Devi Prasad Mohanty	December 14, 2017	January 23, 2018 and February 28, 2018 (N)	Notice served by hand delivery, when the SEBI staff went for affixture to the said address of Noticee. Hand delivery by SEBI accepted by Runjuna Mohanty (sister of Devi Prasad Mohanty), (date not indicated by receiver) on behalf of the Noticee.
7. Rashmi Ranjan Mohanty	December 14, 2017	January 23, 2018 (N)	Attempt to serve notice by affixture at the last known address of the Noticee failed. Notice served by Newspaper Publication on February 16, 2018 advising to submit reply to the SCN and granted hearing on February 28, 2018.
8. Prasanna Kumar Nayak	November 21, 2017	December 14, 2017 (N)	Notice served by SPAD.
9. Sukanta Biswal	December 14, 2017	January 23, 2018 and February 28, 2018 (N)	Attempt to serve notice by affixture at the last known address of the Noticee failed. Notice served by Newspaper Publication on February 16, 2018 granted hearing on February 28, 2018.

No. and Name of the Noticee	Date of hearing notice	Hearing date (whether attended hearing– Y/N)	Status of delivery of the hearing notice for which proof of delivery is on record
10. Pabitra Kumar Rath	December 14, 2017	January 23, 2018 (N)	Notice served by hand delivery, when the SEBI staff went for affixture to the said address of Noticee. Hand delivery accepted by Muralidhar Rath (father of Pabitra Kumar Rath) on behalf of the Noticee, (date not indicated by receiver).

6. Also, the said SCNs have been uploaded on SEBI website under the head "Home>>Enforcement>>Unserved Summons/Notices."

7. As most of the SCNs sent by SPAD were undelivered, it was attempted to serve the SCN through affixture and Newspaper publication in compliance of rule 4(3) of Adjudication Rules, 1995. I note that the SCN and hearing notices have been duly served upon the Noticees as mentioned in point no. 4 and 5 above and proof of delivery is on record. However, all the Noticees except two namely Sudhir Kumar Behera (Noticee 2) and Siddharth Kumar Barik (Noticee 4) failed to submit any reply to the SCN. I note that, time was granted to the Noticees to file reply towards the SCN after serving of SCNs. However, no reply received from Noticee 1, Noticee 3 and Noticee 5 to Noticee 10.

8. Noticee 2 vide letter dated January 15, 2018 and Noticee 4 vide letters dated December 07, 2017, January 25, 2018, and March 23, 2018 submitted their reply to the SCN. The submissions made by them are summarized below:

<u>Noticee 2 (Sudhir Kumar Behera):</u>

i. Sudhir Kumar Behera submitted that the impugned orders have not been communicated and the petitioner company is not aware of passing such orders.

ii. He has mentioned in his reply that there is no material to show on which basis the enquiry with regard to allotment of RPS has been conducted by SEBI. During adjudication proceedings SEBI has not produced an investor or exhibited any allegation documents but only on suspicion and surmises the earlier orders have been passed. Moreover there is no independent allegation against the petitioner company w.r.t to transfer and transmission of securities as there are ample materials on record to show the present petitioner company has never transfer *securities without proper instrument of transfer hence section 56 of Companies Act is not applicable… WTM has not examined any investor to know about the veracity of allegation against the company but passed a biased order without any basis which is liable to be set aside hence question of noncompliance of direction made by WTM against the company does not arise at all.*

iii. *During adjudication proceeding neither a single piece of paper exhibited nor produced any advertisement w.r.t publication of authorized, subscribed and paid-up capital as at no point of time the company made any publication for the authorized, subscribed and paid-up capital, so question of violation of section 60 of company act by the company does not arise at all. WTM has not seen any advertisement or publication but on self-assertion passed such impugned order which is not legally acceptable. WTM should have sought for advertisement/publication before passing any order w.r.t violation section 60 of the Companies Act. Rather asserted RPS was a deemed public issue but such word of deemed public issue does not find place in the section 67 (3) of Company Act. Section 67 of Company Act speaks with regard to "Restriction on purchase by company or giving of loans by it for purchase of its share". But that is not the allegation made by SEBI against the petitioner company. Moreover Section 67 (3) of Company Act speaks nothing in sub section (2) shall apply to the banking company or for the benefit of employees any scheme by the employer or giving loans to employee. But none of the above allegation against the petitioner company but the Whole Time Member averred deemed public issue resultant to Section 60, Section 56 (3), Sections 73 (1), (2) and (3) of Companies Act which were not complied with by the petitioner company. But only those sections came into force when section 67 of Company Act violates but the petitioner company does not violates as fact of record.*

iv. *The petitioner company has never accepted deposits from public. For which the petitioner company did not violates Section 73 of Company Act. Moreover Section 73 (4) of Company Act provides depositor concerned may apply to Company Law Board hence the SEBI has got no jurisdiction to invoke section 73 of the Company Act. Hence, the impugned order is liable to be set aside for which non-compliance of impugned order by petitioner company is no way affected as the company petitioner has not been attracted to above sections of the Company Act.*

v. *That the petitioner company has never mobilise the funds so question of direction with regard to 2.3.a cease to mobilise does not attract. The petitioner company undertakes not to issue prospectus and not to access securities market. The petitioner company has not to dispose of any of the properties or alienate or encumber any of the assets owned/ acquired by the petitioner company from 2015 till date.*

vi. *He submitted that the State Government has already seized bank account of the petitioner company since long so question of divert of fund from bank account does not arise at all. Also, the State Government formed Justice M M Das Commission of enquiry for the identification of depositors with regard to collection of the money* *from the company and commission already taken cognizance of the fact of the petitioner company. As per direction the petitioner company already started repayment. That the law is well settled in view of section 300 Cr.p.c speaks on the same facts for any other offences a person shall not be tried again in view of decision reported in 2011 (2) SCC 703 in case of Kolla Veera Ragahav Rao V. Gorantla Venkateswara Rao is relevant. Hence for the interest of justice of fair play further proceeding of this case shall be stayed and call for report from Justice M M Das Commission of Enquiry, Cantonment Road, Cuttack-753001, Odisha. That Article 20(2) of Constitution of India, which speaks no person shall be prosecuted and punished for the same offence more than once, as it is based upon the principle of double jeopardy. In view of above, the proceeding against the company petitioner may kindly be dropped.*

Noticee 4 (Sidhartha Kumar Barik)

i. *There was an IGR registered partnership farm, named as Real Vision Construction headed by Sudhir Kumar Behera, before the forming the Real Vision International Ltd.(RVIL), a ROC regd. Company. This firm (Real Vision Construction) had the purpose of doing the construction of various Companies. Later on, this Real Vision Construction made an agreement to do the work of transportation of FLY ASH of Bhusan Energy Ltd, Dhenkanal, Odisha. The partners motivated him to join in the large format of Real Vision Construction that was Real Vision International ltd, a ROC registered company as they needed more capital for this business. They asked him to give Rs. 5.5 lakhs to that business. He gave the same amount, which were taken from his relatives. Then he agreed to join as a director in RVIL, only to do the Various Construction Works, transportation, but not to accept any public money. He was requested to serve for the Company as a subscriber to the memorandum by subscribing a minimum share of 1%, required for forming the Companies Act, 1956. He was asked by the Board to work as a supervisor to see the work of transportation of FLY ASH in Bhusan Energy Ltd. and also in Real Vision Intelligency agency, a man Power agency, working in Sambalpur District, Odisha. For discharging this duty, he got a monthly emolument from the Company.*

ii. *As the site work was for away from registered office and he worked as a supervisor there, it was quite delayed to know that the RVIL had already accepted public money through RPS. He was astonished to know from other Directors and Shareholders, that there were no resolutions or special resolutions of Board of Directors or Shareholders for issuing RPS through Private Placements. But Mr. Sudhir Kumar Behera made some extra- minutes of private placement to issue the shares showing that these were passed by majority of Board of Directors and Shareholders. There was no evidence in this regard either in ROC or anywhere else. In an illegal manner Mr. Sudhir Kumar Behera got approve from ROC. It was without his knowledge, Consent and Signatures.*

iii. *He opposed this business of RVIL and tried to close it. As Mr. Sudhir Kumar Behera, holding 94% Share, it was too difficult to check this illegal business. Still he with other Promoters and Directors, had taken a step and removed Mr. Sudhir Kumar Behera from the Company on dated 13/10/2011. The only motive was to close this illegal business. The Board of Directors had written two applications to the State Bank of lndia, Evening Branch, Nayapalli, Bhubaneswar and ICICI Bank, Nayapalli, Bhubaneswar to stop the transactions. No single paisa was withdrawn by us from these two Banks. Evidences were there in those two Banks. But on same date, that was dt.13/10/2011, Mr. Sudhir Kumar Behera reappointed as Managing Director by ROC. It was astonishing facts that ROC did not call him or did not take any views regarding these matters from him. Neither ROC issued any notice to him, nor to the Board of Directors in this regard. In the resolutions dated 13/10/2011, by the Board of Directors to remove Mr. Sudhir Kumar Behera from Company, it was clearly stated that Mr. Sudhir Kumar Behera did not perform his duty legally. But ROC did not consider this matter. Truly, Mr. Sudhir Kumar Behera was encouraged by ROC to accept public money. Opposing this act, I resigned from the company as a director and also transferred my share as a promoter. This act of ROC, encouraged the other Directors to form new separate Companies and they also issued RPS through Private Placement for their respective Companies. That's way the other Board of Directors did not respond the notice of Hon'able SEBI and did not pray for justice. But this was my first and last Company.*

iv. *As he was not success in my Vision to stop this illegal practice by the Company, he had called various meetings of the investors like in Suryansu Hotel in Bhubaneswar, meeting in Bhadrak, Soro, Markona etc. not to deposit money in the company. In spite of all efforts, I was not success to motivate the public, who were known to him. For getting return the initial contribution of capital (which was collected from his relatives on personal risk) of Rs. 5 .5 Lakhs, he was asked not to create bad image of the company. It was given him on monthly basis (including all the emoluments given by the company) even after my resignation. Then the Board of Directors issued NOC of no dues and liability towards the company from either side. Copy of NOC submitted by the Noticee.*

v. *Before getting Complains from the investors to Hon'able SEBI, he had written two letters to ROC, in this regard that was on November 2012 and also in the month of May 2013. When SEBI issued Notices to all directors for presenting their stand and Personal Hearing, I alone appeared for Personal Hearing before Hon'able SEBI, at Bhubaneswar Local office, IDCOL House, Ashok Nagar, Unit-II, Bhubaneswar-751009 on June26, 2015.*

vi. *He referred a case law, merely joining as a director, cannot be called as "officers in default". In the decision of the Supreme Court of India in N. K. Wahi v. Sekhar Singh and Others {2007) 2 CU 10 {SC}, the vicarious liability of company directors and held that if any offence is committed by a company, then every person who is a* *director of the company is not liable, but only such person would be held liable if at the time when the offence is committed, he was in-charge of and was responsible to the company for the conduct of the day-to-day business of the company, as well as the company. Merely being a director of the company by itself would not make him liable…..*

vii. *There is no financial involvement or involve any money transition in this company nor any dues towards the company from our side.*

9. I am of the view that as per Adjudication Rules, 1995, SCNs have been duly served to the Noticees and sufficient time has been provided to the Noticees out of which eight (8) Noticees i.e. RVIL, Ashok Pattnaik, Bidesi Behera, Devi Prasad Mohanty, Rashmi Ranjan Mohanty, Prasanna Kumar Nayak, Sukanta Biswal, Pabitra Kumar Rath have failed to submit any reply to the SCN. Also, opportunity of personnel hearing was granted to all the Noticees in the said matter. However, all the Noticees except Noticee no. 4 have failed to avail the opportunity of personal hearing granted to them. Hence, after taking into account, the allegations levelled in the SCN, reply submitted by the two Noticees and other evidences / materials available on record, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES

10. The issues that arise for consideration in the present case are:
    - **(a) Whether the Noticees have failed to comply with the directions issued by the WTM, SEBI vide order dated December 10, 2015?**
    - **(b) If yes, does the failure on the part of the Noticees attract any monetary penalty under section 15HB of the SEBI Act, 1992?**
    - **(c) If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 read with rule 5(2) of the Adjudication Rules, 1995?**

EVIDENCES AND FINDINGS

11. On perusal of the materials available on record and giving regard to the facts and circumstances of the case, I record my findings as under:

Issue (a) Whether the Noticees have failed to comply with the directions issued by the WTM, SEBI vide order dated December 10, 2015?

a. From the material available on record, it is noted that WTM of SEBI passed an order under sections 11, 11(4), 11A and 11B of the SEBI Act, 1992 against the Noticees on December 10, 2015 and the Noticees were directed to refund the money collected by the Company through RPS to the investors and after completion of repayments, Noticees were required to file a report of completion of repayment with SEBI within a period of three months from the date of the said WTM Order. As per the SCN, it is alleged that the Noticees failed to comply with the directions issued vide WTM order dated December 10, 2015.

b. I note that no reply has been received from Noticee 1, Noticee 3, Noticee 5, Noticee 6, Noticee 7, Noticee 8, Noticee 9, and Noticee 10. Further, Noticee 1, Noticee 2, Noticee 3, Noticee 5, Noticee 6, Noticee 7, Noticee 8, Noticee 9, and Noticee 10 did not avail of opportunity of hearings granted to them. As regards, no reply received to the SCN issued, I refer to the judgment of Hon'ble Securities Appellate Tribunal (SAT) dated December 08, 2006 in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed that, *"… 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..."*

   In view of the above, I find that the allegations levelled in the SCN and the evidences enclosed therewith are not in dispute in absence of any reply from Noticee 1, Noticee 3, Noticee 5, Noticee 6, Noticee 7, Noticee 8, Noticee 9, and Noticee 10 and by not submitting any reply to SCN, the Noticees have admitted the charges levelled against them in the said SCN.

c. Sudhir Kumar Behera (Noticee 2), Managing Director of the Company vide letter dated January 15, 2018 informed that, the Company was not aware of the WTM orders and the WTM orders have not been communicated. In this regard, it is noted from the records available that WTM order was served to Noticee 2 through Newspaper Publication since the said order could not be delivered to the Noticee at his last known address. Also, the said SCN has been uploaded at SEBI website in the head of "Home>>Enforcement>>Unserved Summons/Notices." Noticee 2 made submissions regarding the WTM Order and 11B proceedings and also mentioned that during the adjudication proceedings investors were not called, or documents were not produced etc. and also that company has not violated various sections of the Companies Act, 1956 as mentioned in the WTM Order, further that State Government seized the bank accounts etc. As regard, all these submissions made by Noticee 2, I do not find any merit to address any of these submissions, because in the present adjudication proceedings relevant issue for consideration is whether the Noticee 2 has complied with WTM order or not. I also note that WTM order dated December 10, 2015 has not been challenged by Noticee 2. I note from the reply of the Noticee 2 and from material available on record that there is no evidence which shows that Noticee 2 has complied with the directions of WTM Order and thereby violation of Noticee 2 is established for the non-compliance of directions issued by WTM order dated December 10, 2015 in the matter of RVIL.

d. Further, Sidharth Kumar Barik (Noticee 4) vide letters dated December 07, 2017, January 25, 2018 and March 23, 2018 submitted his reply to the SCN. Noticee 4 made many submissions including that Noticee 4 wrote to RoC against the activities of the Company/Noticee 2, Noticee 4 holding investor meets against activities of Company/Noticee 2, Noticee 4 was overseeing operations elsewhere, Noticee 4 has given money to the Company and not withdrawn any money from the bank accounts of the Company etc. As regards, these submissions of the Noticee 4, I notice from the WTM Order that similar submissions were made by Noticee 4 during 11 B proceedings as well. As regard, all these submissions, I do not find any merit to address any of these submissions, because in the present adjudication proceedings relevant issue for consideration is whether the Noticee 4 has complied with WTM order or not. I note that WTM order dated December 10, 2015 has not been challenged by Noticee 4. I note from the reply of the Noticee 4 and from material available on record that there is no evidence which shows that

Noticee 4 has complied with the directions of WTM Order and thereby violation of Noticee 4 is established for the non-compliance of WTM order dated December 10, 2015 in the matter of RVIL.

e. At this juncture, I would like to rely on decision of the Hon'ble SAT Order in the matter of ***Ritedeal Trading Co. Pvt. Ltd v SEBI (Appeal No. 158 of 2007 and Order dated October 26, 2007)*** wherein it observed that *"We are also of the view that if market players are allowed to flout with impunity the orders of the regulator it would be difficult for the latter to carry out its statutory duties".* In totality of the above, I find the Noticees have violated the directions of SEBI WTM Order dated July 29, 2009.

f. In view of the above, I am of the opinion that, the Noticees i.e. Noticee 1 to Noticee 10 have failed to comply with the directions of SEBI issued vide WTM Order dated December 10, 2015 under the provisions of sections 11, 11(4), 11A and 11B of the SEBI Act, 1992 in the matter of RVIL.

Issue (b) If yes, does the failure on the part of the Noticees attract any monetary penalty under Section 15HB of the SEBI Act, 1992?

a. In respect of imposition of monetary penalty, I cannot ignore the historical case of Hon'ble Supreme Court of India in the matter of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was 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".*

b. It is relevant to mention here that said case of Shri Ram Mutual Fund (supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to Income Tax Act. It was held by the Hon'ble Supreme Court that penalty under the provision for breach of civil obligation is mandatory and the mens rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives.

c. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, submissions of the Noticees and analysing the aforesaid case laws, I am of the view that the said failure on the part of the Noticees to comply with the directions issued by WTM of SEBI vide order dated December 10, 2015 attracts the imposition of monetary penalty under Section 15HB of the SEBI Act, 1992 which is reproduced below:

Penalties and Adjudication
Penalty for contravention where no separate penalty has been provided.
15HB. 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.

Issue (c) - If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?

While determining the quantum of penalty under section 15J of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act read with Rule 5 (2) of the Adjudication Rules, which reads as under:-

SEBI Act, 1992

15J "Factors to be taken into account by the adjudicating officer-
While adjudging quantum of penalty under section 23 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."

12. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors due to such failure on the part of the Noticees to comply with the directions issued by WTM of SEBI vide order dated December 10, 2015. There are no documents available on record, showing that the failure is repetitive. However, it would

be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014 *"…penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*

13. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticees are liable for monetary penalty for their failure to comply with the directions discussed above and issued by WTM of SEBI vide order dated December 10, 2015.

ORDER

14. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and Rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) on the Noticees under section 15HB of the SEBI Act.,1992 for violation of non-compliance of WTM order dated December 10, 2015. The Noticees are jointly and severally liable to pay the penalty. I am of the view that the said penalty is commensurate with the defaults committed by the Noticees.

15. 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

16. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be

made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID: tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

17. In terms of the Rule 6 of the Adjudication Rules, 1995, a copy of each of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Date: May 28, 2018 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**