

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: KAMLESH C. VARSHNEY, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of
India Act, 1992

In respect of:

Sl. No.	Noticee(s)	PAN	CIN/DIN
1	Indus Weir Industries Limited	AACCI4265N	U15410DL2010PLC207057
2	Prince Rana	AQXPR2438L	02694162
3	Anuresh	NA	03115467
4	Anil Kumar Trivedi	NA	03116758
5	Rasheed Quamar	NA	03116801
6	Mazharul Quadri	NA	03128046
7	Parthsarathi Adhikar	AHPPA3304H	03128071
8	Shyam Sunder Seth	NA	03129540
9	Paras Nath Sharma	NA	03142304
10	Ratnesh Kumar Pandey	NA	03612113
11	Balchand Chaurasiya	AEFPC8555B	03129523

(The entities mentioned above are individually known by their respective names or Noticee No. and collectively referred to as "Noticees")

In the matter of Indus Weir Industries Ltd.

TABLE OF CONTENTS

	Particulars	Paragraph Nos.	Page Nos.
A	Background	1-5	2-7

B	Service of Interim Order cum Show Cause Notice	6-7	7-8
C	Hearing and Submissions	8-11	8-9
D	Consideration of Issues and Findings	12-35	9-25
E	Findings with respect to submissions of <i>Noticee</i> No.10, Mr. Ratnesh Kumar Pandey and Conclusion	36-38	25-29
F	Conclusion	39-40	29-30
G	Directions	41	31-34

A. Background :

1. Indus Weir Industries Ltd. (hereinafter referred to as “**IWIL**”/ “**the Company**”) was incorporated on August 13, 2010 under RoC-Delhi, having its CIN as ‘U15410DL2010PLC207057’. Its Registered Office is situated at 44/1, West Guru Angad Nagar, Vikas Marg, Opposite Scope Tower, Laxmi Nagar, Delhi.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), during the year 2013, received complaints pertaining to the issuance of Non-Convertible Redeemable Preference Shares (hereinafter referred to as “**RPS**”) by IWIL. Based on the complaints, the matter was examined by the SEBI wherein it was observed that IWIL had mobilized money amounting to INR 33.39 Crore (approx.) through issuance of RPS from 32,454 investors during the Financial Years(FYs) 2010-11, 2011-12, 2012-13 & 2013-14 (hereinafter referred to as “**relevant period/ examination period**”).
3. SEBI commenced examination of information and documents received from RoC and other material available on record and came to the following *prima facie* findings through the interim order cum show cause notice dated May 25, 2023 (hereinafter referred to as “interim order cum SCN”):-
4. Prima facie Findings:

- (a) IWIL had passed 34 board resolutions over the relevant period authorising the issuance of 3,99,86,268 RPS to the investors, for a total of INR 39,98,62,680. Though the board resolution referred the issue and allotment of RPS to the applicants as per the list attached, however, no such list was made available to the SEBI.
- (b) In the application form, it was mentioned that RPS were being issued on private placement basis and that the size of the issue was INR 44 Crore. The RPS so issued and allotted were freely transferable by execution of appropriate documents.
- (c) As per the IWIL's own admission, under the offer and allotment of RPS, during the period April 01, 2010 to March 31, 2014, the *Company* had issued RPS to a total of 32,454 investors and by making such allotment, an amount of INR 33,39,86,230 was mobilised by the *Company*. IWIL had also stated that it had submitted documents pertaining to issuance of RPS with ROC.
- (d) IWIL in its reply dated September 12, 2013 admitted to have issued and allotted RPS to public at large and had further claimed that it stopped the issuance of RPS and other instruments to raise capital w.e.f. August 10, 2013 and initiated the process of redemption/refund to the investor. As per information furnished by IWIL, the year wise details of RPS issued by IWIL, is as under:

Table No.1

Year	No. of Investors	Amount Mobilized in INR
2010-11	2,846	2,00,66,200
2011-12	9,852	8,98,15,200
2012-13	15,905	17,07,23,330
2013-14	3,851	5,33,81,500
Total	32,454	33,39,86,230

- (e) The *Company* filed a certificate issued by its statutory auditor claiming that IWIL had refunded the entire money issued by it to its investors. However, considering the facts that acts were done in violation of provisions of the SEBI Act, 1992 and regulations made thereunder, an adjudication

proceeding was initiated. The said proceeding ended up in passing of an order dated January 15, 2018, holding IWIL guilty of violation of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulation, 2013, (hereinafter referred to as “**SEBI(NCRPS) Regulations, 2013**”) and imposed a penalty of INR 1.00 Crore. The said order imposing a monetary penalty was challenged before the appellate authority i.e. Securities Appellate Tribunal (hereinafter referred to as “**Hon’ble SAT**”). The Hon’ble SAT, while disposing of the Appeal No. 85 of 2018 vide its order dated January 17, 2019, upheld the violations but considering the facts that mobilisation was stopped and the *Company* had initiated the process of refund, modified the monetary penalty from INR 1.00 Crore to INR 50.00 Lakhs. The *Company* has not paid the modified penalty, consequently, recovery proceedings has been initiated against IWIL and same is underway.

- (f) The *Company* had also submitted an audit report corroborating that the monies collected were refunded to all the investors. However, later on, SEBI started receiving complaints with respect to non-receipt of refund from IWIL. The examination of subsequent receipt of complaints falsify the claim of the *Company* of having refunded invested money to the investors.
- (g) Since, the examination of complaints *prima facie* demonstrated that the claim of the *Company* was not correct. SEBI also initiated making enquiry from the Auditor appointed by it, who had vide its report dated April 30, 2015 certified that all the 32,454 investors were refunded by IWIL by remitting the principal amount of INR 33,39,86,230. However, on further examination it was found that, the sample selected by the Auditor was from smaller list of 2,079 investors provided by the *Company* and not from the entire list of 32,454 investors. The Auditor had no back papers available with it pertaining to the audit done and stated to have not retained copies of any document with itself as records during the audit.

- (h) SEBI, also received a reference dated September 9, 2020 from ROC-NCT of Delhi & Haryana regarding receipt of complaints *inter alia* on non-redemption of RPS issued by IWIL. ROC, *inter alia* stated that it had referred the matter to Enforcement Directorate and also requested SEBI to re-examine the issue.
- (i) In the meantime, one of the investors of IWIL, namely Dilip Ravidas, along with certain other persons, filed a writ petition in the Hon'ble High Court of Patna stating that the *Company* had not refunded the money to them. The Hon'ble High Court vide its order dated December 02, 2022, *inter alia* directed the Petitioners to approach the authority concerned (SEBI) within 4 weeks from the date of order by filing a representation of their grievance.
5. Considering holistically, the entire facts and material available on record, it was felt that the matter required appropriate steps to be taken on priority basis to protect the interest of investors and consequently following directions were issued in the said interim order cum SCN .

Paragraph:41

- (a) *IWIL shall forthwith cease to mobilize any fresh funds from investors through the offer and allotment of RPS or any other securities, to the public or invite subscription, in any manner whatsoever, either directly or indirectly, till further directions.*
- (b) *IWIL and its directors namely; Prince Rana (DIN: 02694162, PAN: AQXPR2438L), Anuresh (DIN: 03115467), Anil Kumar Trivedi (DIN: 03116758), Rasheed Quamar (DIN: 03116801), Mazharul Quadri (DIN: 03128046), Parthsarathi Adhikari (DIN: 03128071, PAN: AHPPA3304H), Shyam Sunder Seth (DIN: 03129540), Paras Nath Sharma (DIN: 03142304), Ratnesh Kumar Pandey (DIN: 03612113) and Balchand Chaurasiya (DIN: 03129523, PAN AEFPC8555B) are prohibited from issuing prospectus or any offer document or advertisement for soliciting money from public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;*

- (c) *IWIL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*
- (d) *IWIL and its abovementioned Directors shall provide to SEBI a full inventory of all their assets and properties, within 30 days from the date of receipt of this Order;*
- (e) *IWIL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned / acquired by them out of funds raised through the Offer and allotment of RPS or any other securities, without prior permission from SEBI;*
- (f) *IWIL and its abovementioned Directors shall not divert any funds, raised from public at large through the offer and allotment of RPS or any other securities, which are kept in bank account(s) and/or in the custody of IWIL and its directors.*
- (g) *IWIL and its abovementioned Directors shall provide complete details of all the RPS or any other securities issued by the Company after July 31, 2013, within 30 days of the receipt of this Order.*
- (h) *IWIL and its abovementioned directors shall provide complete details of all the refunds made to the investors, till date, in respect of offer and allotment of RPS, which shall include complete list of investors to whom the refund was made, the date of refund, mode of refund etc. The said information shall be provided to SEBI within 30 days of receipt of this Order.*

Paragraph 42:

The foregoing prima facie observations contained in this Order, are made on the basis of the material available on record. IWIL and its directors namely; Prince Rana, Anuresh, Anil Kumar Trivedi, Rasheed Quamar, Mazharul Quadri, Parthsarthi Adhikari, Shyam Sunder Seth, Paras Nath Sharma, Ratnesh Kumar Pandey and Balchand Chaurasiya, are advised to show cause as to why suitable directions / prohibitions under Sections

11(1), 11(4), 11A and 11B of SEBI Act, 1992, including the following, should not be issued against them:

- (a) Directing them jointly and severally to refund money collected through the offer and allotment of RPS, along with interest, which is still due to be refunded investors.
- (b) Directing them not to issue prospectus or any offer document or issue any advertisement for soliciting money from public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period.
- (c) Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

B. SERVICE OF INTERIM ORDER CUM SCN:

6. Subsequent to the passing of the above mentioned interim order cum SCN, steps have been taken to serve the *Noticees* with the same. Details / status of service of interim order cum SCN to the *Noticees* is as under:

Table No.2

Sr.No.	Name of the <i>Noticee</i>	Delivery Status	Through paper publication
1	Indus Weir Industries Limited	Not delivered	September 29, 2023
2	Prince Rana	Not delivered	September 29, 2023
3	Anuresh	Not delivered	September 29, 2023
4	Anil Kumar Trivedi	Delivered on 05-06-2023	
5	Rasheed Quamar	Delivered on 05-06-2023	
6	Mazharul Quadri	Delivered on 05-06-2023	
7	Parthsarathi Adhikar	Not delivered	September 29, 2023
8	Shyam Sunder Seth	Delivered on 05-06-2023	
9	Paras Nath Sharma	Delivered on 16-06-2023	
10	Ratnesh Kumar Pandey	Delivered on 06-06-2023	
11	Balchand Chaurasiya	Not delivered	September 29, 2023

7. The copy of the interim order cum SCN could not be delivered to five *Noticees* and an attempt for affixation could not be carried out due to incomplete address. Therefore, in order to serve the *Noticees* through alternate mode of service i.e. newspaper publication was done on September 29, 2023.

C. HEARING AND SUBMISSIONS:

8. As seen at paragraph 6, the interim order cum SCN was delivered to six *Noticees* (*Noticees* Nos. 4, 5, 6, 8, 9 and 10) and rest of the *Noticees* were served through newspaper publication. From the record, it is noticed that there is no response from any of the *Noticees* except the *Noticee No.10*, Ratnesh Kumar Pandey.
9. In response to the allegations made in the interim order cum SCN, except for *Noticee No.10*, no response was received from any *Noticees*, therefore it has been thought proper that before moving further, it will be appropriate that *Noticees* should be provided with the opportunity of hearing. Accordingly, in order to ensure that the proceedings are being conducted in compliance with principle of Natural Justice, notice of hearing dated December 15, 2023 was sent through Regd. Post and all the *Noticees* were given an opportunity of hearing on January 11, 2024. The hearing notice was notified through newspaper publication on January 6, 2024. Again, except for *Noticee No. 10*, none of the other *Noticees* appeared for the hearing nor expressed their inability to appear for the hearing on the scheduled date. On the scheduled date, the authorised representative of *Noticee No. 10*, requested for time to file written reply to the SCN before the hearing in the matter is concluded. Considering the request of the *Noticee No. 10*, suitable time was accorded and it is noticed that a reply from *Noticee No. 10* was received vide email on January 25, 2024. As the written reply has been received from the *Noticee No. 10*, he has been provided with an opportunity to be heard and the same was provided on February 28, 2024. It is also noticed that additionally vide intimation dated February 6, 2024, *Noticees* who did not file reply were once

again reminded that in case they fail to appear for the hearing on the scheduled date, the matter would be proceeded ex-parte on the basis of material available on record. On the scheduled date of February 28, 2024, none of the *Noticees* except the *Noticee No. 10* appeared for making submission on his behalf.

10. Further, through investors, it is learnt that *Noticee No.3*, Managing Director of IWIL (for the period from December 2, 2012 to April 4, 2013) is in judicial custody at Varanasi District Jail. Hence, in order to provide fair opportunity to the *Noticee No.3*, to represent and defend the allegations, vide letters dated January 12, 2024 and January 30, 2024 the Interim cum SCN was forwarded to Varanasi District Jail with a request to the Jail Superintendent to deliver the copy of the same to *Noticee No.3* in order to enable him to provide response within 14 days. However, no response has been received from *Noticee No.3*.

11. Given facts and circumstances above, I am of the view that, sufficient opportunity has been accorded to the *Noticees* and matter is required to be concluded considering the materials available on record. Accordingly, I proceed to examine the allegations and record my findings in the following paragraphs.

D. CONSIDERATION OF ISSUES AND FINDINGS

12. Having gone through the allegations levelled through interim order cum SCN and materials available on record, I am of the view that following issues arise for consideration.

Issue No.1: Whether IWIL has come out with the Offer of RPS as stated in the interim order cum SCN? If so, whether the said issue of RPS is in violation of section 67; sub-sections (1) and (3) of section 56; section 60 read with sub-section (36) of section 2 and section 73 of the Companies Act, 1956 and sub-regulation (1) of regulation 16 of SEBI(NCRPS) Regulations, 2013?

Issue No.2: Who are liable for the violation committed, if the findings at issue no.1 are found in the affirmative?

Issue No.1: Whether IWIL has come out with the Offer of RPS as stated in the interim order cum SCN? If so, whether the said issue of RPS is in violation of section 67; sub-sections (1) and (3) of section 56; section 60 read with sub-section (36) of section 2 and section 73 of the Companies Act, 1956 and sub-regulation (1) of regulation 16 of SEBI(NCRPS) Regulations, 2013?

13. I have carefully perused the contents and facts narrated in the interim order cum SCN wherein the allegation of “Offer of Redeemable Preference Shares” in violations of various provisions of law have been made on IWIL. I note that in the interim order cum SCN, it has been stated that IWIL had through 34 board resolutions authorised the issuance of 3,99,86,268 RPS to investors for a total of INR 39,98,62,680. Further, IWIL issued RPS to a total of 32,454 investors and thereby mobilised/raised funds amounting to INR 33,39,86,230. In the board resolutions, it was stated that RPS was issued through the private placement basis, however, none of the board resolutions were having any list containing the name of persons who were decided/selected/chosen for the allotment of RPS. Further, the information as gathered and stated in the preceding paragraphs, particularly at paragraph 4(d) shows that RPS was issued by the *Company* to investors more than 49 in numbers. The *Company* through the process of issuance of RPS over the period i.e. between the FY 2010-11 to 2013-14 had mobilised approx. INR 33.39 crores by issuing freely transferable securities from investors at large and not from specific set of investors. In this respect, the year wise issuance of RPS and raising of funds has been detailed in paragraph 4(d) above.

14. The interim order cum SCN has alleged that the above acts on the part of the *Company* pertaining to raising of capital through issuance RPS by offering to more than 49 investors are in violations of various provisions of the Companies Act, 1956, SEBI Act and regulations made thereunder, being a 'public issue' and not a 'private placement'. Hence, the question that arises now for consideration is whether the issuance of RPS by IWIL be termed as a 'public issue' within the relevant provisions of law. In this respect, it is observed that the offer and allotment of RPS had taken place prior to April 1, 2014 and the provisions of Companies Act, 1956, is applicable at the relevant time for the offer and allotment of RPS. Accordingly, the interim order cum SCN has made a reference to sub-sections (1) and (3) of section 56; section 60 read with sub-section (36) of section 2; section 67; section 73 of the Companies Act, 1956 and sub-regulation (1) of regulation 16 of SEBI (NCRPS) Regulations, 2013, as having allegedly violated by the *Company* while issuing the RPS to more than 49 investors. Before moving further, it is pertinent to have the relevant provisions and the same are reproduced herein below:

Relevant extract of provisions of Companies Act, 1956:

.....”

56. Matters to be stated and Reports to be set out in Prospectus

(1) Every prospectus issued -

(a) by or on behalf of a company, or

(b) by or on behalf of any person who is or has been engaged or interested in the formation of a company,

shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule ;

and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule

(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed which complies with the requirements of this section :

Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him.

Provided further that this sub-section shall not apply if it is shown that the form of application was issued either -

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to fifty thousand rupees

60. Registration of Prospectus

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto -

(a) any consent to the issue of the prospectus required by section 58 from any person as an expert ; and (b) in the case of a prospectus issued generally, also -

(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and (ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(5) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to fifty thousand rupees. sign the prospectus depending on the circumstances of each case

Section 2(36) of the Companies Act, 1956, "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate."

"Construction of reference to offering shares or debentures to the public, etc.

67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation. **Provided** that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."

73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) ...

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2)."

Regulation 16 SEBI (Non Convertible Redeemable Preference Shares) Regulation, 2013

(1) An issuer desirous of making an offer of non-convertible redeemable preference shares to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956.

15.I note that sub-section (3) of section 67 of the Companies Act, 1956, provides for situations when an offer or invitation is not considered as offer or invitation made to public. As per the said sub section, if the offer or invitation is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer or invitation can properly be regarded as the domestic concern of the persons making and receiving the offer, the same is not considered as public offer. Under such circumstances, in ordinary parlance, such offer or invitation is considered as private placement of shares or debentures. The scheme of sub-section (3) of section 67 envisages the raising of funds by a company, privately, from informed and sophisticated investors or relatives/friends of promoters, who are capable of taking informed decisions on the basis of Letter of Offer or Information Memorandum issued by the company. The overarching intent of sub-section (3) of section 67 is not to burden such private placements with regulatory supervision and compliances, since, the number of investors involved is restricted to 49 known/pre-identified persons and the public at large is not involved. Hence, first proviso to sub-

section (3) of section 67 restricts this private placement only to 49 persons and once, the offeree or invitees exceeds 49 persons, then such a private placement is also deemed as public issue. In such case, the regulatory supervision becomes more stringent and hence, the requirement in respect of contents of Prospectus, filing of draft Prospectus with SEBI, registration of Prospectus with RoC, mandatory listing of securities on stock exchange etc. come into picture. In this regard, it would be appropriate to refer to the judgment of Hon'ble Supreme Court of India in *Sahara Real Estate Corporation and Others Vs. SEBI (2013) 1 SCC1*, wherein while examining the scope of section 67 of the Companies Act, 1956, it was observed as follows:

"85. The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Subsection (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more.

....

86. Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.

....

90. I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

16. It has been noted above at paragraph 4(c) that the *Company* itself in its letter dated July 24, 2014 has admitted to have issued RPS to 32,454 investors during 2010-11 to 2013-14 and the year wise number of investors to whom RPS was issued is detailed in the table no. 1 at paragraph 4(d). From the perusal of the same, it is noticed that number of investors to whom RPS was issued exceeded 49 persons/investors during each of the four financial years mentioned above. In this respect, it is also noticed that, IWIL is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and therefore, is not covered under the exception provided in the second proviso to sub-section

(3) of section 67 of the Companies Act, 1956. Therefore, the offer and allotment of RPS by IWIL evidently qualifies to be construed as an offer to be made to the public in terms of sub-section (3) of section 67 of the Companies Act, 1956.

17. The issuance of RPS by IWIL to more than 49 investors over the relevant period of time have not been disputed either by the *Company* or any of the directors including the *Noticee No.10*. Further, there is also no document available on record contradicting the issuance of RPS as ascertained in the course of examination and narrated in the interim order cum SCN. Under the circumstances, I have no hesitation in holding that the issuance of RPS by the *Company* during the period of 2010-11 to 2013-14 to 32,454 set of investors was a public issue of securities. Further, there is no reply available on record refuting the allegations made in the interim order cum SCN. In order to further find support to my findings that the issuance of RPS by the *Company* was a public issue, I refer to the order dated December 08, 2006 of Hon'ble SAT passed in the matter of *Classic Credit Ltd. vs SEBI (Appeal No. 68 of 2003)* wherein, it was held ,

"... 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".

18. Similar findings were also made by the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Ors. vs SEBI (Appeal 68 of 2013 dated February 11, 2014)* inter alia holding 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 levelled against them in the show cause notices..."

19. Giving a consolidated reading to the materials on record and the absence of counter or rebuttal on the part of IWIL coupled with the reasons recorded at paragraphs 16 and 17, it is a well established fact that the issuance of RPS by IWIL during the period of 2010-11 to 2013-14 to 32,454 investors was a public issuance of securities and sufficiently qualifies to be construed as an offer to be made to the public in terms of sub-section (3) of section 67 of the Companies Act, 1956.

20. Once an offer or invitation is a public offer, then the provisions relating to public issue such as filing of Prospectus, listing of securities etc. including Section 73 of the Companies Act, 1956 come into play and a company making such offer or invitation to public is required to make application, to one or more recognized stock exchanges for listing of securities offered to the public. Section 73 of the Companies Act, 1956, further provides that where the permission has not been applied for, such permission, having been applied for, has not been granted, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the Prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an 'officer in default' shall, on and from the expiry of the eighth day, become jointly and severally liable to repay that money with interest. A company making a public issue of shares or debentures is also required to comply with provisions of the SEBI Act, 1992 and the regulations/guidelines made thereunder, in this regard. In terms of the above discussed provisions of law, issuance of such securities under the public issue norms were required to be listed on a recognized stock exchange, as mandated under relevant provisions of section 73 of the Companies Act, 1956. In the *Sahara Case (supra)*, the Hon'ble Supreme Court of India had examined the scope and implication of section 73 of the Companies Act, 1956, wherein it has observed that –

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty-nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

21. The allegations of non-compliance to the above provisions of Companies Act, have not been denied by IWIL or its directors nor are there any documentary records indicating IWIL made an application to any recognised stock exchange seeking permission for listing of its RPS. Further, there are no evidence indicating refund of money raised by IWIL on account of failure to get the securities listed on any of the stock exchange. There is further no material brought to my notice to show that amount mobilised through issuance of RPS by IWIL were kept in a separate bank account.
22. Since, sub-section (1) of section 73 of the Companies Act, 1956, was not complied with in this case, therefore, the amounts collected through these offers of securities is required to be repaid forthwith as mandated under sub-section (2) of section 73 of the Companies Act, 1956 and if such refund was not made within eight days, the company and every director of the company who is an officer in default is liable to repay the amount with interest to the investors. Since, there is no evidence on record to indicate that the amounts collected from the investors have been repaid in terms of sub-section (2) of section 73 of the Companies Act, 1956, therefore, I find

that the Company and every officer who is in default has violated the provisions of sub-section (2) of section 73 of the Companies Act, 1956.

23. I also note that there is no evidence on record to indicate that funds received from the investors by issuing of RPS have been kept in separate bank account. Hence, I find that IWIL and its every officer who is in default have also not complied with the provisions of sub-section (3) of section 73 of the Companies Act, 1956.

24. In addition to the above, I note that if a company issues shares/debenture to public, it has to *inter alia* follow other compulsory requirements pertaining to public issues viz: filing of draft offer document with SEBI, issuance of Prospectus with required disclosures, registering of final Prospectus with RoC and listing of securities issued through the Prospectus on a recognized stock exchange, etc. In this respect, I note that terms of section 56 of the Companies Act, 1956, every Prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Sub-section (3) of section 56 further provides that no one shall issue any form of application for issuance of shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a Prospectus as may be prescribed. The liability for compliance of this section is on the company as well as the directors.

25. In terms of sub-section (1) of section 60, a Prospectus is required to be signed by every director of the company concerned. Sub-section (5) of section 60 of the Companies Act, 1956 makes the company, and every person who is knowingly a party to the issue of the Prospectus liable if there is a failure to file the Prospectus before RoC and the required disclosures are not made in the Prospectus. Further, section 60 of the Companies Act, read with sub-section (36) of section 2, defines "*prospectus*" to mean or any document described or issued as a prospectus and includes any notice,

circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate". I note that the material available on record does not provide any evidence of IWIL having filed a Prospectus with the RoC with respect to its issue of RPS, as detailed above. Therefore, I find that IWIL as well as its directors have violated the provision of sub-sections (1) and (5) of section 60 read with sub-section (36) of section 2 of the Companies Act, 1956.

26. In addition to the above, it is also noticed that IWIL is alleged to have acted in violation of sub-regulation (1) of regulation 16 of SEBI (NCRPS) Regulations 2013, which has been notified on June 12, 2013 and is therefore applicable, for the mobilisation or fund raised by the *Company* during the period FY 2013-14. It is noted that the said provision mandates that an issuer desirous of making an offer of non-convertible redeemable preference shares to the public shall make an application for listing to one or more recognised stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956. As brought out at in the preceding paragraphs, IWIL failed to make an application for listing of securities i.e. RPS under sub-section (1) of section 73 of the Companies Act, 1956 and therefore, the *Company* has acted in violation of provisions of sub-regulation (1) of regulation 16 of the SEBI(NCPRS) Regulations, 2013.

27. In view of the findings above, I am of the opinion that-

- i. the issuance of RPS by IWIL during the period of 2010-11 to 2013-14 to 32,454 investors was a public issue of securities and qualifies to be construed as an offer made to the public in terms of sub-section (3) of section 67 of the Companies Act, 1956.
- ii. IWIL failed to issue Prospectus containing disclosures mentioned in sub-section (1) of section 56 of the Companies Act, 1956 and failure to issue application forms accompanying the abridged Prospectus as stated in sub-section (3) of section 56 of the Companies Act, 1956.

- iii. did not file a Prospectus with the RoC resulting in violation sub-sections (1) and (5) of section 60 read with sub-section (36) of section 2 of the Companies Act, 1956.
- iv. IWIL failed to make an application for listing of offered securities under sub-section (1) of section 73 of the Companies Act, 1956 and thereby violated the said provision of sub-section (1) of section 73 of the Companies Act and sub-regulation (1) of regulation 16 of the SEBI(NCPRS) Regulations, 2013.

Issue No.2: Who are liable for the violation committed, if the findings on issue no.1 are found in the affirmative,?

28. In the preceding paragraphs, I have concluded my findings on the alleged violations committed by IWIL under section 67; sub-sections (1) and (3) of section 56; sub-sections (1) and (5) of section 60 read with sub-section(36) of section 2 and section 73 of the Companies Act, 1956, alongwith sub-regulation (1) of regulation 16 of SEBI(NCRPS) Regulations, 2013, with respect to its issuance of RPS which has been found to be a public issue of securities and the issuance of securities was not on a private placement basis, confined only a certain set of persons/entities.

29. I now move on to the issue with respect to the liability for the violation committed by IWIL, which has been discussed in the earlier paragraphs. I would draw the attention to sub-section (2) of section 73 of the Companies Act, 1956.

In terms of sub-section (2) of section 73 of the Companies Act, 1956, every director of the company who is an “officer in default” shall be jointly and severally liable for the violations established against the company. In this respect, Companies Act, 1956 defines “officer” as follows:

“officer” includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act ;

It further defines "officer who is in default", as referred to in section 5, has the meaning specified in that section ;

5. MEANING OF "OFFICER WHO IS IN DEFAULT"

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely :

- (a) the managing director or managing directors ;*
- (b) the whole-time director or whole-time directors ;*
- (c) the manager ;*
- (d) the secretary ;*
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act ;*
- (f) any person charged by the Board with the responsibility of complying with that provision :*

Provided that the person so charged has given his consent in this behalf to the Board ;

- (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors :*

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.]

30. Sub-section (2) of section 73 read with section 5 of the Companies Act, 1956 states that every director who is an 'officer in default' shall be jointly and severally liable for the violations established against the Company. In the instant matter, I would now deal with, who would be the 'officer in default' for the acts of issuance of RPS by IWIL during the period from 2010-11 to 2013-14, which is a public issue of securities. Clauses (a) to (f) of section 5 of the Companies Act, 1956 give a list of persons who would be liable for the violation established against the company. Clauses (a) to (f) of section 5 of the Companies Act, 1956 states that the 'managing director'; 'whole time director'; 'manager'; 'the secretary'; 'any person' with whose directions the Board of Directors were accustomed to act or any person who has been given the responsibility by the Board for complying with the provision and has given his consent to the Board. Further, clause (g) of section 5 states that, where a company does not have officers specified as 'managing director'/'whole time director'/'manager' then the 'officer' who may be specified by the Board for carrying out the specified acts would be the 'officer in default'. In cases where no such person is specified then all the 'directors'

would be the 'officers in default'. In the instant matter, from the details ascertained from ROC, the table below gives the details of the directors of IWIL, their designations and the tenure when they held the designations during the period from 2010-11 to 2013-14:-

Table No.3

S. No.	Name of Director	DIN	PAN	Designation	Date of Appointment	Date of Cessation
Present Directors						
1.	Prince Rana	02694162	AQXPR2438L	Director	13.08.2010	10.04.2013
				Managing Director	10.04.2013	
2.	Balchand Chaurasiya	03129523	Not available	Director	13.08.2010	18.01.2017
				Additional Director	21.02.2018	
Past Directors						
3.	Anuresh	03115467	Not available	Director	13.08.2010	02.12.2010
				Managing Director	02.12.2010	10.04.2013
4.	Anil Kumar Trivedi	03116758	Not available	Director	13.08.2010	10.04.2013
				Additional Director	18.01.2017	21.04.2018
5.	Rasheed Quamar	03116801	Not available	Director	13.08.2010	10.04.2013
6.	Mazharul Quadri	03128046	AHPPA3304H	Director	13.08.2010	10.04.2013
7.	Parthsarathi Adhikari	03128071	Not available	Director	13.08.2010	21.04.2018
8.	Shyam Sunder Seth	03129523	Not available	Director	13.08.2010	01.09.2011
9.	Paras Nath Sharma	03142304	Not available	Director	13.08.2010	07.06.2012
10.	Ratnesh Kumar Pandey	03612113	AEFPC8555B	Director	30.09.2011	10.04.2013

31. As discussed in the preceding paragraphs, IWIL issued RPS during the period of 2010-11 to 2013-14 to 32,454 investors and this issue of securities has been found to be an offer made to the public, in terms of sub-section (3) of section 67 of the Companies Act, 1956. As evident from the table above, Mr. Arunesh, was the Managing Director of IWIL for the period from December 2, 2010 to April 10, 2013 and Mr. Prince Rana has been continuing as the Managing Director of IWIL from April 10, 2013 onwards. While coming to the liability of refund of money mobilised from investors, I

find that the same issue came up for consideration before the Hon'ble Tribunal in the matter of *Sayanti Sen vs SEBI* (Appeal No. 163 of 2018) wherein vide its order dated August 09, 2019, the Hon'ble Tribunal has held that :

Paragraph 13

As per Section 5 of the Companies Act it becomes clear that a managing director, whole time director, manager, secretary and any person who has been authorized by the board or by any director are now officers in default. Section 5(g) of the Companies Act makes it apparently clear that if there is a managing director appointed in a company, he would be an officer in default. Further, in the absence of any managing director, if the board has specified any particular director or manager or any other person as an officer in default in which case only that specified director or manager etc. as the case may be would be an officer in default.

Section 5(g) of the Companies Act further provides that apart from the directors any officer can also be penalized if his role can be attributed to be an officer in default. If any officer has played some role in bringing about the default or he might have performed the duties assigned to him then he could be penalized as an officer in default. Section 5(g) of the Companies Act thus makes it clear that in the absence of any managing director or any specific order of a board, then by a deeming fiction, all the directors of the company would be officers in default.

32. In view of the above findings, I am of the view that, Noticee No.3, ('Managing Director' of IWIL for the period from December 2, 2010 to April 10, 2013); Noticee No. 2, ('Managing Director' of IWIL since April 10, 2013) are the 'Officers in Default' and therefore, are liable along with IWIL for refund of the money raised through the issuance of RPS to 32,454 investors and mobilised funds amounting to INR 33.39 crores during the period 2010 -11 to 2013-14.

33. Having come to a finding that *Noticee No. 2* and *Noticee No.3*, being the Managing Director of *Noticee No. 1*, during the relevant period were 'officer in default' and are liable along with *Noticee No. 1* (IWIL), for the refund of money mobilised by the *Company* from investors at large during the period 2010-11 to 2013-14, I further note that there were other directors, who have also been proceeded against vide the interim order cum SCN. In this respect, it has been observed above that none of the directors (except the *Noticee No. 10*) have filed any response rebutting the allegations pertaining to violations of different provisions of the Companies Act and regulation 16 of SEBI(NCRPS) Regulations, 2013. At this stage, I find it relevant to reiterate that the IWIL had mobilised funds from a large set of investors under the guise of private placement and not followed the process of issuance of securities through public issue norms. A company who engages in offering of securities through public issue norm requires to file Prospectus disclosing facts as required to be stated in terms of the provisions regulating the disclosure. Further, the provision also provides for the signing of the Prospectus stating that facts stated in the Prospectus are true and correct and even in this respect also, it is found that no steps were taken by company and its board comprising of directors to state and disclose true and correct facts to the investors to whom RPS were issued and also for the listing of securities. In this regard, it is noticed that issue pertaining to the liability of a director has come up for judicial scrutiny in several matters, wherein it has been held that the same can't be fit in a straight jacket formula. It depends on the fact of each matter, depending upon the nature of allegations and law governing the alleged violation of such provisions. In this respect, the Hon'ble Supreme Court of India, in the matter of *SEBI vs Gaurav Varshney* (2016) 14 SCC 430, has held that; *a company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the*

conduct of business of the company, as well as the company, liable for the offence.

34. In the interim order cum SCN, the *Company* and *Noticees* have been allegedly found to have indulged in activities in violations of section 56 and 60; section 67, section 73 of Companies Act, 1956 and regulation 16 of SEBI(NCRPS) Regulations, 2013. In response, to the same the *Noticees Nos. 2 to 9 and 11* have not produced any document disputing the fact of holding the post of directors of the *Company* during the relevant period, when funds were mobilized through RPS issue and therefore are liable for appropriate action against them for the violations and default as alleged against them in the interim order cum SCN.

35. Under the circumstances and based on the discussion recorded above, I find that none of the *Noticee* directors (except the *Noticee No.10*) has brought any evidence or made any submission to demonstrate that acts on the part of the *Company* relating to mobilisation of funds through issuance of RPS and other related acts were done without their knowledge or they have taken sufficient steps or exercised sufficient due diligence to prevent the commission of such contravention. This in my opinion is more than sufficient to hold them guilty for the contravention/violation done by the *Company*.

E. Findings with respect to submissions of Noticee No.10, Ratnesh Kumar Pandey (hereinafter referred to as Noticee No.10)

36. I have noted above that except for *Noticee No. 10*, none of the *Noticees* have responded to the show cause notice issued in the form of interim order cum SCN. It is also noted that *Noticee No. 10*, vide replies dated March 24, 2022, September 26, 2022, April 24, 2023, June 26, 2023, January 23, 2024, February 23, 2024 and March 5, 2024 made the following submissions:

36.1 While denying all allegations and statements made in the SCN, it has been stated that *Noticee No.10* was not aware about the issue of RPS or any other deposit scheme run by the *Company* nor signed any such

RPS or any bond or any related documents/securities. He has further submitted that he had no knowledge regarding IWIL's mode of acceptance of any amount nor does he have any knowledge about amount being returned to any investor.

- 36.2 He further denies having involvement in managing the day to day affairs of the *Company* and stated that he neither signed any of the related documents of the *Company* nor was signatory of the *Company* in any capacity.
- 36.3 He has further submitted that he received the proposal to act as a consultant through Mr. Arunesh, the then Managing Director. It has been submitted that Mr. Arunesh had offered the he would be considered as a professional director in a company proposed to be incorporated for specific project in coming days. IWIL had collected his photograph and PAN card, to generate his offer letter. On September 23, 2011, *Noticee No.10* got his offer letter from IWIL to act as "Technical Consultant" for its Power Project & Geotechnical Investigations work. The offer letter accepted on September 28, 2011, specifically mentions the area of work of *Noticee No. 10* at IWIL and that does not include the role as a director of IWIL.
- 36.4 It has been stated that, without his knowledge, the DIN number was generated and the said allotment letter for DIN was sent at the email ID arunesh8005@yahoo.co.in which belongs to Mr. Arunesh, MD of IWIL. He has submitted that he did not even apply for his DIN and had never requested Mr. Arunesh either verbally or in writing to apply to MCA for the DIN. *Noticee No.10* further submits that his consent form for appointment as director of IWIL which was submitted along with the Form 32 to ROC is an unsigned consent form.
- 36.5 *Noticee No. 10* had never given his consent to act as a director of IWIL, neither was aware about such appointment, hence, upon being aware of the same, he immediately sought explanation from Mr. Arunesh, who suggested that since, he had been appointed as a director, he was required to submit his resignation to do away with his

appointment as per the law and procedure governing the appointment and resignation of a person as a director of a company. Under these circumstances, even though, he was appointed a director without his consent and knowledge, he had to submit resignation, which he did on April 13, 2012.

36.6 It has further been submitted that on becoming aware that the resignation was not put to the Board of Directors and relevant forms were not submitted to ROC, he sent a reminder on May 17, 2012 and warned to take legal action if his name is not removed from MCA portal. Subsequently, IWIL issued an acceptance letter dated October 4, 2012, which mentions that *Noticee No.10* was involved only in Geotechnical/ Drilling projects.

36.7 He has also submitted that he had neither received any notice for Board meeting of IWIL nor attended any board meeting of IWIL which shows that he was not involved in the business operations of IWIL except for his capacity as a Technical Consultant. Further, as he was appointed as a consultant, he does not have any salary slips during his period of employment with IWIL.

36.8 *Noticee No.10*, also states that in June 2019 certain original documents pertaining to this case were stolen during one of his travels for which he had filed FIR through online. Further, as the matter pertains to the period 2011-12, he does not have access to relevant documents in original form.

36.9 *Noticee No.10* has also submitted that his name is not mentioned in the list of directors in the Civil Writ Petition no. 13358 of 2019 filed before the Hon'ble High Court of Bihar at Patna.

37. I have perused the submissions of *Noticee No.10* along with the documents filed by IWIL with MCA in relation to the contentions put forward by *Noticee No.10*.

37.1 The first contention put forward by *Noticee No.10* is that he was appointed in IWIL as a 'Technical Consultant'. In this regard, I have

perused the offer letter dated September 23, 2011, which gives details of the designation offered to *Noticee No.10* being that of 'Technical Consultant'. The offer letter also gives details of his job profile and other terms and conditions of his appointment. Further, there is nothing available on record disputing or contradicting the above contention advanced on behalf the *Noticee No. 10*.

37.2 With respect to his appointment as director of IWIL, I note that *Noticee No.10*, in support of this contention has submitted copy of Form 32 filed by IWIL with ROC, Delhi during the year 2011. The Form 32 is accompanied with an attachment, which seems to be the consent form of *Noticee No.10*, to act as a director of the *Company*. On careful perusal of the consent letter, I note that the said letter is an unsigned letter, which substantiates the submission of *Noticee No.10* that his appointment as a director of IWIL was without his consent. The claims of the *Noticee No. 10*, is further found to be right upon verification of the documents from the MCA Portal.

37.3 Apart from above, I further find merit in submission of the *Noticee No.10*, who in support of his submission has submitted documents communicated with *Noticee No.3*, MD of IWIL and that fortifies his claim that he was appointed as Director of IWIL without his consent. I have noted the letter of *Noticee No.3*, MD of IWIL dated October 4, 2012, whereby he (*Noticee No.3*) has acknowledged the resignation letter of *Noticee No.10* dated April 13, 2012. In the referred letter, *Noticee No.3* has stated that *Noticee No.10*, during his tenure was only involved in project board consultancy (Geotechnical and Drilling) without being an authorised signatory for cheques issued by the *Company*.

37.4 Further, there are no financial statements or any other documents which demonstrate that the *Noticee No. 10* was ever involved in the regular decision making process in IWIL so as to even indicate his role in the day-to-day functioning and management of affairs of the *Company*.

37.5 I have also noted that a writ petition (CWJC No.13358 of 2019) was filed by certain investors in the Hon'ble High Court of Bihar at Patna stating that IWIL had not refunded money received through the issuance and allotment of RPS. In the said petition, apart from the *Company*, other directors of the *Company* were roped in and named as a party, however, the *Noticee No. 10* was not made a party and that further establishes his claim that he was never appointed as a director of IWIL.

37.6 Apart from the records of Form 32, filed with ROC, the interim cum SCN does not specifically mention any other documents relied upon to establish the directorship of *Noticee No.10* in IWIL during the period 2010-2014.

38. Taking into consideration the replies of *Noticee No. 10* and other documents placed before me, I am of the opinion that, *Noticee No. 10*, was appointed as a 'Technical Consultant' during his tenure of association with IWIL. Though, the record in the form of Form 32 shows his appointment as a director of IWIL, however, the *Noticee No. 10* is successful in demonstrating that his appointment was not genuine and in compliance with the rules governing the appointment of a director. He has also succeeded in proving that his appointment was against his wishes and he never performed as a director of IWIL during his association with the *Company*. *Per contra*, the association of the *Noticee No. 10* with the IWIL was only in the capacity of 'Technical Consultant', which stands substantiated as per above discussion recorded in the preceding paragraphs. Having considered that, I am inclined to give benefit to the *Noticee No.10* and exonerate him from the contraventions alleged in the interim order cum SCN.

F. Conclusion

39. In view of my findings at paragraphs 32 to 35, it has been held that *Noticee No. 1*, *Noticee No.2* and *Noticee No. to 3*, are liable to refund the amount mobilised from investors. Notwithstanding the above, the *Noticee No. 4* to *Noticee No. 9* and *Noticee No.11* can't be exonerated from the charges

levelled against them in the Interim Order cum SCN completely. It is undisputed that they were directors of the *Company* during the relevant period and while holding the post of director, they have not made any submissions and have not produced any evidence to suggest that they were diligent in their duty as directors and have performed their role diligently so as to protect the interest of investors and make sure that acts of the *Company* were done in due compliance of law. Undeniably, the above *Noticees* i.e. *Noticee No. 2 to Noticee No. 9 and Noticee No.11* were associated with the *Company* at the time of issuance of RPS and the records of MCA show them associated with the *Company* in the capacity of a director. These *Noticees* through their failure to act diligently and by giving their consent for the RPS issue made by the *Company* in non-compliance with the public issue norms and rules have rendered themselves, liable for directions u/s 11 B of the SEBI Act.

40. Having gone through the records carefully and having examined the materials on record, I have found that the *Company* was engaged in mobilisation of fund through public issue norms without following the law governing the issuance of securities through public issue norms. Further, having guided by the law laid down by the Hon'ble Tribunal in the matter of Sayanti Sen (supra), I find that apart from the *Company*, *Noticee No. 2* and *Noticee No.3* being Managing director the *Company*, are liable to refund the amount mobilised from the investors by issuance of RPS during the period 2010-11 to 2013-2014. Rest of directors i.e. *Noticee No. 4 to Noticee No.9* and *Noticee No.11* alongwith IWIL, *Noticee No. 2 and Noticee No.3* are found to be guilty of the contraventions of provisions prescribed under section 56, sub-sections (1) and (5) of section 60 read with sub-section (36) of section 2, sub-section (3) of section 67, sub-section (1) of section 73 of the Companies Act, 1956 read with regulation 16 of SEBI (NCRPS) Regulations, 2013 and therefore liable for appropriate directions.

G. DIRECTIONS

41. In view of the foregoing, I , in exercise of the powers conferred upon me in terms of sub-sections (1) and (4) of section 11 and section 11B read with section 19 of the SEBI Act, 1992 hereby issue the following directions:

41.1. IWIL alongwith its Managing Directors, namely Prince Rana (DIN: 02694162, PAN: AQXPR2438L) and Anuresh (DIN: 03115467), shall within a period of five months from the date of this order, jointly and severally refund the money collected through the issue of RPS to the allottees with interest @ 8 per annum from the date of receipt of money till the date of such refund.

41.2. Such refund shall be made only in cash through a Demand Draft or Pay Order or other known or recognised electronic mode having trail of making of the payment.

41.3. IWIL and its present Managing Director namely Prince Rana (DIN: 02694162, PAN: AQXPR2438L) and Director Balchand Chaurasiya (DIN: 03129523), shall within fifteen days from the date of this Order 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 requesting investors to lodge their claim within a period of thirty days from the date of public notice.

41.4. IWIL alongwith its Managing Directors, namely Prince Rana (DIN: 02694162, PAN: AQXPR2438L) and Anuresh (DIN: 03115467), are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 3 years or till the date of refund of money to the allottees, whichever is later.

- 41.5. IWIL alongwith its Managing Directors, namely Prince Rana (DIN: 02694162, PAN: AQXPR2438L) and Anuresh (DIN: 03115467), are restrained from, directly or indirectly, accessing the capital market by issuing Prospectus, any offer document or advertisement soliciting money from the public for a period of 3 years or till the date of refund of money to the allottees, whichever is later.
- 41.6. Managing Directors of IWIL, namely Prince Rana (DIN: 02694162, PAN: AQXPR2438L) and Anuresh (DIN: 03115467) are further 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 for a period of 3 years or till the date of refund of money to the allottees, whichever is later.
- 41.7. Directors of IWIL stated as *Noticee No.4 to Noticee No.9 and Noticee No.11* namely Anil Kumar Trivedi (DIN: 03116758), Rasheed Quamar (DIN: 03116801), Mazharul Quadri (DIN: 03128046), Parthsarthi Adhikari (DIN: 03128071, PAN: AHPPA.3304H), Shyam Sunder Seth (DIN: 03129540), Paras Nath Sharma (DIN: 03142304) and Balchand Chaurasiya (DIN: 03129523, PAN AEFPC8555B), 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 3 years from the date of this order.
- 41.8. IWIL alongwith its directors including the *Noticee No. 2 and 3* 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 mutual funds / shares / securities, if held in physical form and demat form and the information sought shall be provided within a period of 15 days from the date of the order.

41.9. IWIL alongwith its present directors including the *Noticee No. 2* are permitted to sell the assets, properties and holding of mutual funds/shares/securities held in demat and physical form, by the *Company* for the sole purpose of making the refunds as directed above and deposit the 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 investors till the full refund / repayment as directed above is made.

41.10. After completing the aforesaid repayments as directed under paragraph 41.1 above, IWIL, its present directors shall file a report of such completion with SEBI, within a period of six months from the date of this order. The said report shall be 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"**) holding such certificate.

41.11. The directions issued vide interim order cum SCN against Mr. Ratnesh Kumar Pandey, *Noticee no. 10*, is hereby revoked with immediate effect and the interim order cum SCN issued against him is disposed of without any directions.

41.12. In view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the *Noticees* shall remain frozen.

41.13. The above directions shall come into force with immediate effect unless otherwise specified in any of the sub-paragraphs of this paragraph.

41.14. Copy of this order shall be sent to all the *Noticees*.

41.15. Copy of this Order shall be forwarded to the recognised stock exchanges, depositories and registrar and transfer agents for information and necessary action.

Sd/-

DATE : MAY 08, 2024

PLACE : MUMBAI

KAMLESH C. VARSHNEY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA