

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Pailan Agro India Limited

In respect of:

S.No	Name of Entity	PAN	CIN/DIN
1.	Pailan Agro India Limited	Not available	U01111JK2012 PLC003624
2.	Shri Sekhar Chandra Koley	BUOPK8353F	06454703
3.	Shri Bipin Kumar Singh	BOGPS0921F	03395216
4.	Shri Chandan Chakraborty	ARCPC9106E	05120821
5.	Shri Avijit Chowdhury	APEPC8255N	05358817
6.	Shri Atul Agarwal	AZIPA5516C	05143420
7.	Shri Apurba Kumar Saha	AUIPS7765C	00952457
8.	Shri Madan Kaul	AEPPK9877A	03521799
9.	Shri Shrikant Jain	AAHPJ6073H	00088822
10.	Shri Rajindra Bahadur	AAEPM1429M	02284519
11.	Shri Himadri Bag	AJXPB3796L	02729318
12.	Shri Kamal Kishor Sagar	CSUPS4950H	06560318

Order in the matter of M/s. Pailan Agro India Limited

13.	Debenture Trustee, viz. Pailan Agro Debenture Trust (Represented by its Trustee, viz. Shri Dilip Das)	Address – 34/1, New Santoshpur Mail Road Dist: South 24 PGS, Kolkata - 700075	
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1. Pailan Agro India Limited (hereinafter referred to as “**PAIL**”/ “**the Company**”) is a Public company incorporated on July 25, 2012 and registered with Registrar of Companies–Jammu and Kashmir with CIN: U01111JK2012PLC003624. Its registered office is at House No. 226, Sector 1A, Trikuta Nagar, near PNB, Jammu–180012, Jammu and Kashmir, India.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received reference and complaints against PAIL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether PAIL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).
3. On enquiry by SEBI, it was observed that PAIL had made an offer of NCDs in the financial years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 (hereinafter referred to as “**Offer of NCDs**”) and raised an amount of Rs. 83.42 Crores from 23,685 allottees. The number of allottees and funds mobilized has been collated from the details submitted by the Company. It was also observed that PAIL created a charge for an amount of Rs. 100 Crores on August 08, 2012 and appointed *Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das)* as Debenture Trustee for the Offer of NCDs by that company.

4. As the above said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an interim order dated July 27, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against PAIL and its Directors and , viz. Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur and its Debenture Trustee, *Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das)*. (hereinafter collectively referred to as “**Notices**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. PAIL had made an *Offer of NCDs* during the financial years 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 and raised an amount of Rs. 83.42 Crores as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in Crores)	Number of allottees
2010-2011	<i>NCDs</i>	0.02	2
2011-2012		18.07	5,710
2012-2013		56.81	15,833
2013-2014		8.43	2,116
2014-2015		0.09	24
Total		83.42	23,685

6. Further, PAIL created a charge for an amount of Rs. 100 Crores on August 08, 2012 and appointed *Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das)* as Debenture Trustee for the Offer of NCDs by the company. *Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das)* was not registered as debenture trustee for the offer of NCDs by that company.

7. The above *Offer of NCDs* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) and sections 117B and 117C of the Companies Act, 1956 and the relevant provisions of the ILDS Regulations were not complied with by PAIL in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das)* has prima facie violated section 12(1) of the SEBI Act and regulation 7 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "**Debenture Trustees Regulations**").
8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated July 27, 2015 with immediate effect.
- i. *"PAIL shall forthwith cease to mobilize fresh funds from investors through the Offer of NCDs or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*
 - ii. *PAIL and its present Directors, viz. Shri Sekhar Chandra Koley (PAN: BUOPK8353F; DIN: 06454703), Shri Bipin Kumar Singh (PAN: BOGPS0921F; DIN: 03395216), Shri Chandan Chakraborty (PAN: ARCPC9106E; DIN: 05120821), Shri Avijit Chowdhury (PAN: APEPC8255N; DIN: 05358817) and Shri Atul Agarwal (PAN: AZIPA5516C; DIN: 05143420), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;*
 - iii. *The past Directors of PAIL, viz. Shri Apurba Kumar Saha (PAN: AUIPS7765C; DIN: 00952457), Shri Madan Kaul (PAN: AEPPK9877A; DIN: 03521799), Shri Shrikant Jain (PAN: AAHPJ6073H; DIN: 00088822) and Shri Rajindra Bahadur (PAN: AAEPM1429M; DIN:02284519), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money*

from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;

- iv. PAIL and its abovementioned past and present Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*
- v. PAIL shall provide a full inventory of all its assets and properties;*
- vi. PAIL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;*
- vii. PAIL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of NCDs, without prior permission from SEBI;*
- viii. PAIL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of NCDs, which are kept in bank account(s) and/or in the custody of PAIL;*
- ix. The Debenture Trustee, viz. Pailan Agro Debenture Trust (represented by Shri Dilip Das), is prohibited from continuing with its assignment as debenture trustee in respect of the Offer of NCDs of PAIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.”*

9. The interim order also directed PAIL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 should not be passed against them:

- i. Directing them jointly and severally to refund money collected through the Offer of NCDs along with interest, if any, promised to investors therein;*
- ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;*
- iii. Directing them to refrain from accessing the securities market and prohibiting them*

from buying, selling or otherwise dealing in securities for an appropriate period.

10. Similarly, the Debenture Trustee, viz. Pailan Agro Debenture Trust (represented by Shri Dilip Das) was advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining it from accessing the securities market and further restraining it from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
11. Vide the said interim order, PAIL, its abovementioned Directors along with its Debenture Trustee were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
12. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated July 28, 2015 which could not be delivered. Therefore, the interim order was delivered vide letter dated July 1, 2016/July 4, 2016 to Shri Chandan Chakraborty, Shri Atul Agarwal, Shri Sekhar Chandra Koley, Shri Avijit Chowdhury, Shri Bipin Kumar Singh, Shri Apurba Kumar Saha, Shri Dilip Das through hand delivery/affixture. Subsequently, vide notification dated November 09, 2016 published in newspaper *Times of India*, notification dated November 08, 2016 published in newspaper *Ananda Bazar Patrika*, notification dated November 25, 2016 published in newspapers *Hindustan Times* and *Navbharat Times*, the Noticees, Shri Madan Kaul and Shri Atul Agarwal were notified by SEBI, that interim order dated July 27, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.
13. Vide notification dated November 05, 2017 published in newspaper *Times of India*, *Ananda Bazar Patrika* and *Daily Excelsior*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on November 21, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to

appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.

14. *Hearing and submissions*: Noticees did not avail the opportunity of hearing held on November 21, 2017. Another hearing opportunity, in the interest of principles of natural justice, was provided to all the Noticees on March 13, 2018. Shri Sumantra Sarathi Mahata appeared on behalf of Shri Sekhar Chandra Koley on March 13, 2018 through video conferencing from SEBI, Eastern Regional Office (hereinafter referred to as “ERO”) and made, *inter-alia*, the following submissions:

- Shri Sekhar Chandra Koley was director of PAIL from May 7, 2014 to February 13, 2015.
- Was working as data entry operator in G.R.Agro and Shri Raju Ghosh made him director in different Pailan group companies and he was later informed that he was promoted as director.
- Did not sign the consent letter and was dummy director and later, he found that he was trapped and consulted a legal person and filed police complaint and filed DIR-11.

15. Shri Sekhar Chandra Koley was advised to provide proof of resignation, dispatch proof and acknowledgment of receipt by the Company, proof of date of upload of DIR-11 and proof regarding claim of forgery by PAIL by March 20, 2018.

16. Shri Sumantra Sarathi Mahata appeared on behalf of Shri Avijit Chowdhury, submitted the envelope carrying his original resignation letter dated February 18, 2015 (envelope returned undelivered) and made, *inter-alia*, the following submissions:

- Shri Avijit Chowdhury was director of PAIL from August 8, 2014 to February 18, 2015 and was appointed as director in 3 companies by Shri Raju Ghosh but did not get salary.
- Was dummy director, resigned in six months and did not know actual rules or consequences and during inspection by SEBI in July 2014, he was not in the Company.

- Shri Apurva Saha, Shri Raju Ghosh and Shri Vivek Kumar were key persons.
- Requested for lenient view.

17. Shri Avijit Chowdhury was advised to state in his submissions when he was appointed as director of PAIL and was also provided copy of his resignation letter in July 2014 in that reference. Further, he was given an opportunity to submit proof of date when DIR-11 was filed. He was given time till March 20, 2018 to make the submissions.

18. Shri Soham Banerjee appeared on behalf of Shri Chandan Chakraborty, filed written submissions and made, *inter-alia*, the following submissions

- Shri Chandan Chakraborty was in the Company from December, 2012 till August, 2013.
- His appointment was without his consent and any such letter from him was forged.
- He was looking after Pailan Educational Trust and got small salary and approached Company for resignation several times.
- He will co-operate towards liquidation of assets of the Company.

19. Further, copy of board minutes dated July 25, 2012 carrying Shri Chandan Chakraborty's signature as well as his consent letter was provided and he was given an opportunity to make submissions in this regard. He was also was given an opportunity to clarify date of appointment and resignation as director along with proof, submit proof regarding claim of forgery by PAIL and submit land details of PAIL. He was given time till April 13, 2018 to make the submissions. None of the other Noticees attended the hearing, accordingly, hearing in respect of all the Noticees was concluded.

20. In addition, letter dated April 9, 2018 was also sent to Shri Avijit Chowdhury advising him to submit proof of appointment and resignation as director in the Company and proof of date of upload of DIR-11. Similarly, Shri Chandan Chakraborty was also advised to submit proof of appointment and resignation as director, dispatch proof of resignation and acknowledgement of receipt by the Company, proof of claim of forgery

and submission regarding appearance of his signature on the board minutes dated July 25, 2012 as well as his consent letter. Further, Shri Sekhar Chandra Koley was advised to submit proof of resignation, dispatch proof and acknowledgment of receipt by the Company, proof of date of upload of DIR-11, proof of claim of forgery by PAIL.

21. Shri Rajindar Bahadur Mathur replied vide letter dated August 11, 2015. His submissions in brief are as under:

- a) He received letter dated November 26, 2013 and the same was promptly replied by him. Copy of the letter was enclosed.
- b) He was not involved in any activity of PAIL directly or indirectly and did not have knowledge about the working of the Company.
- c) He resigned from the directorship on May 7, 2014 and never attended any meetings of the company and was never informed about the meetings, if held. He did not receive remuneration or benefits directly or indirectly. These facts can be confirmed with present directors.
- d) He was based in Delhi, so has no access to information about PAIL and hence not in a position to reply to queries.
- e) His name is listed in the show cause notice without any involvement or fault of his and requested for deletion of his name.
- f) He enclosed reply dated December 7, 2013 wherein he stated that he had given his consent to be director of the Company on 25.10.2012 and since then has not heard from the Company if his consent was accepted or not and did not attend meetings of the Company.

22. Shri Shrikant Jain replied vide letter dated August 21, 2015. His submissions in brief are as under:

- a) He is a senior Citizen of 66 years having worked for almost 50 Years of his life. His last job was with an Indian Company as CEO & Head of Export & Tender business working in Iraq and Iran etc with base in Delhi and export was started

by him when he was 17 years old.

- b) He had never attended any board meeting of Pailan Agro, never seen or signed any paper relating to the day to day working or management of the Company. In fact except for his misjudgment / mistake of signing a consent letter to become a director of Pailan Agro he was not even informed that he had become a director of the Company, till much later.
- c) He did not have any idea of the activities or actions of Pailan Agro. He consented to joining the board as per request of Mr. Mathur as well as Mr. Saha. The first time he came to know about the problems was when the ROC in Jammu sent him a notice. He was shocked and immediately contacted Mr. Saha, Mr. Misra and Mr. Jha who then assured him that there were only some technical problems and matter would be sorted out. However, he was not satisfied with the answers contacted Mr. Jha, the person who was handling the company matters and was in fact instrumental in getting his signatures on the consent letters and forced him to accept his resignations not only from this Company but also tried and disassociated himself immediately from the whole group.
- d) He had a brain haemorrhage in April 2011 and thereafter does not do extensive work and a copy of his report is attached ready reference. He was partially paralysed for almost a year and was able to work because of his special exercise regime and brain training for normal body movement.
- e) In 2012 end his mother became very sick and she was diagnosed with Cancer in 2014 and passed away.
- f) He was introduced to Pailan Group by Mr. Rajinder Bahadur Mathur whom he had known for more than 4 decades as a social friend and the purpose of introduction was to show him the Potato Flakes unit of Mr. Apurba Kumar Saha which was located near Kolkata. They were looking into the possibility of export of the flakes as well as improving the quality of the product. His experience of almost four decades in manufacturing & International trade specially to erstwhile Soviet Union and Eastern Europe & middle East and interaction with customers

there was his strength. He made several trips to Kolkata but the product quality and lack of proper organization was an obvious hindrance. Thereafter Mr. Saha acquired a running Pharmaceutical Manufacturing Unit in Kolkata which was in production and had most of the clearances from various departments for GMP eligibility. This became a focal point, however the slow pace of progress and his displeasure on the same can be observed from his exchange of e mails, copies of some were for ready reference. Mr. Saha as well as one lady in his office Ms. Shamoshree were the decision makers and he was not very happy with the manner of management.

- g) His greatest grievance is that he is not only being penalised for no fault on his part but also that he was never given any opportunity by SEBI to either clarify himself or present his position. The first time he heard about SEBI was when his share account was frozen by SEBI order to Central Depository Services Ltd. Ironically he had made investments in 2007 in a mutual fund and wanted to put that money elsewhere. His money was refunded and was issued new cheques for further investment. However, after SEBI order, even that money has been stuck.
- h) He had been saving and investing money since 1994 or perhaps even earlier and paid income tax for almost 47 or 48 years.
- i) His son suffers from an incurable ailment called Multiple Sclerosis which is a central nerve disorder and cannot be cured as per the treatment available anywhere in the world. His desire was to visit them as his wife also lives with them since more than ten years.
- j) Except for Mr. R. B. Mathur who introduced him to Mr. Saha and Mr. Madan Kaul he does not know any of the other directors of this company or group. He had no financial connection with Pailan Agro in any way whatsoever. He will be 70 years old in three years and requested to kindly look at his case again. The only connection was to try and build up the organization for starting exports.
- k) He had no financial connection or hand in any way whatsoever in any illegal mobilization of funds.

- l) No letter of August 5, 2013 etc. was received by him. No information was sought from him vide letter of November 26, 2013 and no opportunity was given to him at any time. No investigating authority ever contacted him and he was always willing to cooperate with SEBI.
- m) He had nothing to do with the formation of the Company or working at any time and did not know any of the present directors of Pailan group or this company. Although his name appears in the group of ex. directors but clubbing him together with Shri Aporba Kumar Saha would be quite unfair because he had nothing to do with the company, its formation or its running or collection of funds etc at any time.
- n) He does not even know the full meaning of the word securities market. However, he has some shares in listed companies and in some mutual funds. These were all purchased from his own money with no connection to the Pailan group in any way. However restricting him from selling or purchasing of listed shares, mutual funds only harms him in his old age and does not serve the purpose and aim of SEBI in any way.
- o) His only mistake was to give consent to become a director. In fact had the Pailan group or Mr. Saha ever told him about the aims or what was planned or was happening in the company then he would have never agreed to giving consent to become a director. The moment he came to know that something was amiss he resigned from the director ship & also disassociated himself from the group.
- p) He has never been given the opportunity by SEBI to prove himself innocent, therefore, requested for opportunity of hearing and adducing evidence.

23. PAIL vide letter dated August 21, 2015 sought time to collect documents and data to reply to SEBI. The Company vide letter dated September 3, 2015 made, *inter-alia*, following submissions:

- a) The Company has always acted in a manner to support the investigations conducted by SEBI and it has always been the endeavor of the Company to pay

its investors their dues at the relevant point of time.

- b) The Company is not engaged in fund mobilization activities and there was never intention to defraud any investors.
- c) It has ceased to mobilize any funds from investors since April 2015 in any manner whatsoever and has not knowingly or otherwise violated any provisions of the Companies Act or SEBI Act etc. and ought not be penalized.
- d) Compliance of directions of SEBI may not be treated as an admission of any violation of any provisions of Companies Act, etc. It is requested that the Company may be allowed to invest in the securities market as a legitimate investor.
- e) The Company is willing to comply with the directions of SEBI and has already submitted the entire list of investors to SEBI along with the inventory of its assets and properties and enclosed the list of all landed properties owned in the name of the Company.
- f) The Company intends to repay its investors by selling the landed properties and using the consideration towards refund to the investors, subject to approval of SEBI and Calcutta High Court.

24. Shri Avijit Chowdhury replied vide letter dated September 1, 2016. His submissions in brief are as under:

- a) He was out of station to earn his livelihood. He was director of PAIL for 6 months 10 days. He never attended any Board Meetings of the Company during his stay as director of the Company and has no shareholding in his name.
- b) He was an unemployed person, started working in a company named PAILAN group, however, no formal letter was issued. PAILAN Group asked him to join as a director in the PAIL. In that time, PAILAN group received SEBI notices and key managerial persons of the Company resigned. The Company used his name as a dummy director and he did not have any idea about the consequences to become a director of the Company.

- c) As mentioned in the letter, his date of appointment was August 8, 2014 and Pailan Group received letter from SEBI in July and August 2014 and an inspection was carried out in July 2014 and he was nowhere on July 11, 2014.
- d) After coming to know that the Company is offering NCDs and has violated provisions of Companies Act, he resigned from the Company by filing DIR 11 and requested the Company to file DIR 12 but they never accepted his appeal or resignation.
- e) He has not signed any papers of Pailan Agro India Ltd. as a director and have not received salary from the Pailan group. He was not authorized signatory of any A/c of PAIL. In case Company has submitted any papers after his resignation, the same should be treated as created by forging signature.
- f) He requested for personal hearing.

25. Shri Avijit Chowdhury vide letter received on April 2, 2018 made, *inter-alia*, following submissions:

- Had been appointed twice, firstly on May 7, 2014 and secondly, on July 17, 2014. Had been appointed first time that a lucrative remuneration will be paid to him, but the promise wasn't fulfilled by the management as he never received letter of appointment and had resigned from the board and his resignation was accepted by the board. After sometime, the management of the Company contacted him and promised to join to pay the remuneration but it was not fulfilled.
- He was appointed on August 8, 2014 and did not attend Board meetings as director and doesn't have shareholding in his name.
- He was unemployed and started working in Pailan group, however, no formal offer letter was issued. Pailan group asked him to join as director after his joining. At that time, Pailan group received SEBI notice for inspection and key managerial person have resigned. In good faith, he had signed various letter head of the Company and the Company used his signed paper in wrongful manner and

without his consent, he was appointed as dummy director of the Company and he did not have any idea about the consequences of becoming director of the Company in that time.

- Never received any appointment letter for directorship, the Company had falsely used his signed document for the appointment and he is ready for the forensic test of the signature being used by the Company for appointment is not valid.
- He has not been with the Company from inception, was appointed when Company already started getting notices from various authorities after Sharda incident happened and no fresh money was invested by the public.

26. Further, Avijit Chowdhury vide letter dated April 23, 2018 enclosed proof of appointment and resignation (Form DIR-12 showing appointment on August 8, 2014), proof of date of upload of DIR-11 (showing service request date as February 19, 2015), copy of resignation letter and proof of receiving letter.

27. Shri Chandan Chakraborty vide letter dated March 12, 2018 made, *inter-alia*, following submissions:

- He was never involved and have no knowledge in the day to day affairs of the Company
- He has not signed any document or attended any meeting as director
- He tendered resignation and although it was accepted by the Company management in August 2013, no statutory obligations were complied with towards effecting the same till date.
- The Company has adequate immovable assets which can be sold off to liquidate the debts.
- He has no other specific information or knowledge regarding the modus operandi and/or assets of the Company and/or personal assets of other directors.

28. I have considered the allegations and materials available on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately

under different headings.

- (1) *Whether the company came out with the Offer of NCDs as stated in the interim order.*
- (2) *If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.*
- (3) *Whether appointment of Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das), as the Debenture Trustee by PAIL is in violation of Section 117B of the Companies Act, 1956 and whether Pailan Agro Debenture Trust and Shri Dilip Das violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations*
- (4) *If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1- *Whether the company came out with the Offer of NCDs as stated in the interim order.*

29. I have perused the interim order dated July 27, 2015 for the allegation of *Offer of NCDs*. I note that the directors have not disputed the same. The Company has taken contradictory stances. On the one hand it stated in its reply dated September 3, 2015 that it is not engaged in fund mobilization activities and in the same reply further stated that it has ceased to mobilize any funds from investors since April 2015. In the same reply it further stated that it is willing to repay the investors and stated that it has given also the list of investors to SEBI. Therefore, the Company is admitting to the mobilization of money from investors.
30. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on record. It is noted, from the details provided by the Company that PAIL has issued and allotted NCDs to at least 23,685 investors during the

financial years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 and raised at least an amount of Rs. 83.42 Crores. I also note that the number of allottees and funds mobilized has been collated from the details provided by the Company. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 23,685 allottees and Rs. 83.42 Crores respectively.

31. *I therefore conclude that PAIL came out with an offer of NCDs as outlined above.*

ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.

32. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of NCDs* made to the public. Therefore the primary question that arises for consideration is whether the issue of NCDs is 'public issue'. At this juncture, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

"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).”

33. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the “**Sahara Case**”), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

“Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the “section of the public”. Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the

offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

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

34. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer 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 is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

35. PAIL in its reply has, *inter-alia*, stated that the Company has always acted in a manner to support the investigations conducted by SEBI and it has always been the endeavor of the Company to pay its investors their dues at the relevant point of time and that the Company has ceased to mobilize any funds from investors since April, 2015. The Company further submitted that it has not knowingly or otherwise violated any provisions of the Companies Act or SEBI Act etc. and ought not be penalized and there was never intention to defraud any investors. The Company also submitted that it is willing to comply with the directions of SEBI and has already submitted the entire list of investors to SEBI along with the inventory of its assets and properties and enclosed the list of all landed properties owned in the name of the Company. The Company also submitted that it intends to repay its investors by selling the landed properties and using the consideration towards refund to the investors, subject to approval of SEBI and Calcutta High Court.
36. In regards the aforesaid submissions of the Company, I find that the Company has not disputed the issue of NCDs and is willing to repay the investors. Further, the Company's submission that it has not knowingly violated any provisions of the Companies Act or SEBI Act etc. and ought not be penalized and there was never intention to defraud any investors will not absolve the Company from responsibility for violation of law as ignorance of law is not an excuse and the Company will have to abide by law as well as the repercussions for violation of law.
37. In the instant matter, I find that NCDs were issued by PAIL to at least 23,685 investors in the financial years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015. However, this number is not conclusive as it is based on the details given by the Company and the actual number of investors could be more than 23,685. I find that PAIL has mobilized at least an amount of Rs. 83.42 Crores over the financial years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 which is not a conclusive value as it is based on on the details given by the Company. Further, I find that PAIL has created a charge of Rs. 100 Crores on August 08, 2012. The above findings lead to a

reasonable conclusion that the *Offer of NCDs* by PAIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

38. Neither PAIL nor its directors have contended that the *Offer of NCDs* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
39. I find that PAIL has not claimed it to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that PAIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
40. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that “In terms of Section 67(3) of the Companies Act any issue to ‘50 persons or more’ is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning”.
41. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by PAIL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of NCDs* are deemed to be public issues and PAIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

42. Further, since the offer of NCDs is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.
43. The allegations of non-compliance of the above provisions were not denied by PAIL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that PAIL has contravened the said provisions. PAIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that PAIL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.
44. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of NCDs was a deemed public issue of securities, PAIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that PAIL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of NCDs. I, therefore, find that PAIL has not complied with the provisions of section 60 of the Companies Act, 1956.
45. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on

behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Neither PAIL nor its directors produced any record to show that it has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, PAIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

46. As regards the allegation of section 117C of the Companies Act, 1956, it may be seen that the said provision mandates the company to create a debenture redemption reserve for the redemption of such debentures, to which every year, adequate amounts should be credited out of its profits, until such debentures are redeemed. None of the Noticees denied this allegation. There is no material on record to show that such debenture reserve was created. Therefore, I hold that the company has violated section 117C of the Companies Act, 1956.
47. ILDS Regulations are applicable to the public issue and listing of debt securities. Regulation 2(e) of the ILDS Regulations defines debt securities to mean non-convertible debt securities which create or acknowledge indebtedness, and include debentures. In view of the finding that PAIL has made a public issue of debt securities, the ILDS Regulations is also applicable to the instant offer of NCDs. Therefore, I find that the Company has violated the following provisions of the aforesaid ILDS Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.
- i. Regulation 4(2)(a) – Application for listing of debt securities
 - ii. Regulation 4(2)(b) – In-principle approval for listing of debt securities
 - iii. Regulation 4(2)(c) – Credit rating has been obtained
 - iv. Regulation 4(2)(d) – Dematerialization of debt securities
 - v. Regulation 4(4) – Appointment of Debenture Trustees

- vi. Regulation 5(2)(b) – Disclosure requirements in the Offer Document
 - vii. Regulation 6 – Filing of draft Offer Document
 - viii. Regulation 7 – Mode of disclosure of Offer Document
 - ix. Regulation 8 – Advertisements for Public Issues
 - x. Regulation 9 – Abridged Prospectus and application forms
 - xi. Regulation 12 – Minimum subscription
 - xii. Regulation 14 – Prohibition of mis-statements in the Offer Document
 - xiii. Regulation 15 – Trust Deed
 - xiv. Regulation 17 – Creation of security
 - xv. Regulation 19 – Mandatory Listing
 - xvi. Regulation 26 – Obligations of the Issuer, etc.
48. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara Case*, had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

49. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase “intend to get listed” in the context of deemed public issue the Hon’ble Supreme Court in *Sahara Case* observed-

“...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...”

“...Listing of securities depends not upon one’s volition, but on statutory mandate...”

“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”

50. In view of the above findings, I am of the view that PAIL engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act, 1956, and above mentioned provisions pertaining to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.

ISSUE No. 3-Whether appointment of Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das), as the Debenture Trustee by PAIL is in violation of Section 117B of the Companies Act, 1956 and whether Pailan Agro Debenture Trust and Shri Dilip Das have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

51. On perusal of Form 10 filed by the Company, I find that PAIL had created a charge of Rs. 100 Crores on August 8, 2012 for the Offer of NCDs by the Company. I further find that PAIL had appointed *Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das)* as the debenture trustee.
52. Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993, states that *only a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body corporate alone are eligible to get a certificate of registration as Debenture Trustee.*
53. *Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das)* are not eligible to obtain a certificate of registration since they do not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. None of the Noticees claimed that *Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das)* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that *Pailan Agro Debenture Trust* and *Shri Dilip Das* have dealt in the impugned Offer of NCDs as debenture trustees, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992.
54. Under section 117B of the Companies Act, 1956 no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. I find that PAIL has appointed *Pailan Agro Debenture Trust (represented by its trustee, viz. Shri Dilip Das)* who do not have a certificate of registration. Therefore, the appointment of

the same is in violation of section 117B of the Companies Act, 1956. Further, since PAIL has not issued a prospectus with the relevant information and therefore, the requirement of stating the consent of the debenture trustee to be so appointed on the face of the prospectus has not been complied with.

ISSUE No. 4- *If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?*

55. Shri Avijit Chowdhury in his reply has stated, *inter-alia*, that he was director of PAIL for 6 months and 10 days and he never attended any Board Meetings of the Company during his stay as director of the Company and has no shareholding in his name. He also submitted that he was an unemployed person who started working in a company in the PAILAN group, though, no formal letter was issued and that PAILAN Group asked him to join as a director in the PAIL. He also stated that in that time, PAILAN group received SEBI notices and key managerial persons of the Company resigned and the Company used his name as a dummy director and he did not have any idea about the consequences to become a director of the Company. He also submitted that as mentioned in the letter, his date of appointment was August 8, 2014 and after coming to know that the Company is offering NCDs and has violated provisions of Companies Act, he resigned from the Company by filing DIR 11 and requested the Company to file DIR 12 but it never accepted his appeal or resignation. He further submitted that he has not signed any papers of PAIL as a director and has not received salary from the Pailan group and was not authorized signatory of any A/c of PAIL and in case the Company has submitted any papers after his resignation, the same should be treated forged signature. In regard to the submissions of Shri Avijit Chowdhury that he never attended any Board Meetings of the Company during his stay as director and was a dummy director and did not have any idea about the consequences to become a director of the Company, I do not find these submissions tenable as he was a director of the Company and after accepting the position of director, he cannot wriggle out of his responsibility as

director. Hon'ble Securities Appellate Tribunal (SAT) vide its order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act. Further in regards his submissions that he became a director on August 8, 2014 and was a director for 6 months and 10 days, I note that as per the MCA records, Shri Avijit Chowdhury was director of the Company from May 7, 2014 and is still continuing as director. However, I also note from the MCA records that Shri Avijit Chowdhury has filed Form DIR-11 showing his resignation from directorship of the Company from February 18, 2015. The said DIR-11 also shows its filing date as February 19, 2015 and enclosed copy of resignation letter dated February 18, 2015 along with dispatch proof in form of speed post receipt dated February 18, 2015. Further, he has submitted the envelope carrying his original resignation letter dated February 18, 2015 (envelope returned undelivered) and proof of date of upload of DIR-11 (showing service request date as February 19, 2015). I also note his submissions that he had been appointed twice firstly May 7, 2014 and secondly July 17, 2014 and that first time he was promised that a lucrative remuneration will be paid to him, but the promise wasn't fulfilled by the management as he never received letter of appointment and had resigned from the board and his resignation was accepted by the board and after sometime the management of the Company contacted him and promised to pay the remuneration on joining but it was not fulfilled. Further, he submitted that during inspection by SEBI in July 2014, he was not in the Company and that in good faith, he had signed various letter head of the Company and the Company used his signed paper in wrongful manner and without his consent, he was appointed as dummy director of the Company and he did not have any idea about the consequences of becoming director of the Company in that time and that he never received any appointment letter for directorship and the Company had falsely used his signed document for the appointment and he is ready for the forensic test of the signature being used by the Company for appointment is not valid. I also note his submissions that

he has not been with the Company from inception, was appointed when Company already started getting notices from various authorities after Sharda incident happened and no fresh money was invested by the public and enclosed proof of appointment (Form DIR-12 showing appointment on August 8, 2014). I note that Shri Avijit Chowdhury is making contradictory submissions, by stating on one hand that he was appointed twice, on May 7, 2014 and July 17, 2014 and on the other hand stating that his date of appointment was August 8, 2014. Therefore, I find that as per his submissions, Shri Avijit Chowdhury was appointed firstly on May 7, 2014 and as per the Form DIR-12 enclosed by him, he had resigned from the directorship on July 17, 2014. Further, as per his submissions, he was appointed secondly on July 17, 2014 and as per his own submissions as well as the DIR-12 enclosed by him, he had been reappointed on August 8, 2014. There is no proof on record or the case of Shri Avijit Chowdhury that he resigned/was reappointed between July 17, 2014 to August 8, 2014. Therefore, considering the above as well as the MCA records, which show the original date of appointment as May 7, 2014 and date of appointment at current designation as August 8, 2014, I find that Shri Avijit Chowdhury was a director of the Company from May 7, 2014 till February 18, 2015, hence was a director during the issue of NCDs.

56. Shri Rajindar Bahadur Mathur in his reply has stated, *inter-alia*, that he was not involved in any activity of PAIL directly or indirectly, did not have knowledge about the working of the Company and that he resigned from the directorship on May 7, 2014. He also stated that he never attended any meetings of the company and was never informed about the meetings, if held and did not receive remuneration or benefits directly or indirectly. He submitted that he was based in Delhi, so has no access to information about PAIL and hence not in a position to reply to queries and that his name is listed in the show cause notice without any involvement or fault of his and requested for deletion of his name. He also stated that he had given his consent to be director of the Company on 25.10.2012 and since then has not heard from the Company if his consent was accepted or not. In regard Shri Rajindar's submissions that that he was not involved in

any activity of PAIL directly or indirectly, did not have knowledge about the working of the Company and never attended any meetings of the company, I do not find these submissions tenable as he was a director of the Company and after accepting the position of director, he cannot wriggle out of his responsibility as director. Hon'ble Securities Appellate Tribunal (SAT) vide its order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act. In regards his submissions that he resigned from the directorship on May 7, 2014, I note that as per the MCA records as well as his submissions, Shri Rajindar Bahadur was director of the Company from November 8, 2012 till May 7, 2014, hence was a director during the issue of NCDs.

57. Shri Shrikant Jain in his reply, *inter-alia*, has stated that he is a senior Citizen and never attended any board meeting of Pailan Agro or signed any paper relating to the day to day working or management of the Company and that except for his misjudgement / mistake of signing a consent letter to become a director of Pailan Agro he was not even informed that he had become a director of the Company, till much later. He also submitted that he did not have any idea of the activities or actions of Pailan Agro and consented to joining the board as per request of Mr. Mathur as well as Mr. Saha and the first time he came to know about the problems was when the ROC in Jammu sent him a notice and he subsequently resigned not only this Company but also tried to disassociate himself immediately from the whole group. He also stated that he had no financial connection with Pailan Agro as well as with the illegal mobilisation of funds. I do not find the aforesaid submissions of Shri Shrikant Jain tenable as as he was a director of the Company and after accepting the position of director, he cannot wriggle out of his responsibility as director. Hon'ble Securities Appellate Tribunal (SAT) vide its order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, has considered similar

contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act. Further, I note as per MCA records, Shri Shrikant Jain was a director of the Company from November 8, 2012 to May 20, 2013, hence was a director during the issue of NCDs. Herein, I note that Shri Shrikant Jain has submitted that he had brain haemorrhage in 2011 and was partially paralyzed for almost a year and has enclosed copy of his medical reports in support of the same. He further submitted that his son suffers from an incurable ailment called Multiple Sclerosis and has submitted medical reports in support of the same. Further, he submitted that his mother was diagnosed with cancer and expired in 2014 and has enclosed medical reports in support thereof. He has further stated that he had some shares in listed companies and mutual funds, purchased from his own money with no connection to Pailan group over several years from the surplus from his income and that restricting him from selling or purchasing of listed shares, mutual funds only harms him in his old age and does not serve the purpose of SEBI. Considering the medical reports of Shri Shrikant Jain, his son and mother and his old age and his request regarding restricting him from selling his shares and mutual funds, I permit him Shri Shrikant Jain to approach CDSL within 10 days of receipt of this order with the cost estimate towards his medical needs duly certified by the Hospital/ Registered Doctor. CDSL on verification of the same will defreeze the shares in demat account and give a letter addressing the RTA for defreezing of the mutual funds to the extent of the said cost plus 50% for incidentals within 10 days from the date of receipt of cost estimate and will also instruct the stock broker/mutual fund to liquidate the shares/mutual funds to the said extent as necessary. However, in view of the Hon'ble Calcutta High Court order dated January 15, 2016 in W.P. 11795 (W) of 2015- Sumita Chakraborty & Anr. v. Union of India & Ors., in respect of Pailan Group, directing the respondent group of companies and its directors to restrain from dealing with their properties in any manner so as to create third party interest without leave of the Court,

Shri Shrikant Jain is at liberty to approach Hon'ble Court for requesting necessary leave for the aforesaid defreezing request.

58. I also note the submissions of Shri Sekhar Chandra Koley that he was director of PAIL from May 7, 2014 to February 13, 2015 and was working as data entry operator in G.R.Agro and Shri Raju Ghosh made him director in different Pailan group companies and he was later informed that he was promoted as director. He also submitted that he did not sign the consent letter and was dummy director and later, he found that he was trapped and consulted a legal person and filed police complaint and filed DIR-11. In regards his submissions that he was dummy director, I note Hon'ble Securities Appellate Tribunal (SAT) vide order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, wherein it has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act. Further, Shri Sekhar Chandra Koley was advised to provide proof of resignation, dispatch proof and acknowledgment of receipt by the Company, proof of date of upload of DIR-11 and proof regarding claim of forgery by PAIL. However, no further reply has been received from him. Therefore, in regards his submissions that he did not sign the consent letter, I find that no proof of forgery has been provided by him. I note that as per MCA records, Shri Sekhar Chandra Koley was director of the Company from May 7, 2014 and is still continuing as director of the Company. However, I also find that as per MCA records, that Shri Sekhar Chandra Koley has filed DIR-11 showing his resignation from directorship of the Company from February 13, 2015 and the filing date of DIR-11 is shown as February 19, 2015. The DIR-11 also enclosed copy of resignation letter dated February 13, 2015 and a despatch proof in form of speed post receipt dated February 18, 2015. In view thereof, I find that Shri Sekhar Chandra Koley was director of the Company from May 7, 2014 till February 13, 2015, which were during the period of issue of NCDs.

59. I also note the submissions of Shri Chandan Chakraborty that he was in the Company

from December, 2012 till August, 2013 and his appointment was without his consent and any such letter from him was forged. He further stated that he was looking after Pailan Educational Trust and got small salary and approached Company for resignation several times. Further, he submitted that he was never involved and has no knowledge in the day to day affairs of the Company, not signed any document or attended any meeting as director and he tendered resignation and although it was accepted by the Company management in August 2013, no statutory obligations were complied with towards effecting the same till date. In regards his submissions that he was not involved and has no knowledge in the day to day affairs of the Company, I note Hon'ble Securities Appellate Tribunal (SAT) order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, wherein it has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act. Further, during the hearing, copy of board minutes dated July 25, 2012 carrying Shri Chandan Chakraborty's signature as well as his consent letter was provided and he was advised to make submissions in this regard. He was also given an opportunity to clarify date of appointment and resignation as director along with proof, submit proof regarding claim of forgery by PAIL and submit land details of PAIL. However, no further reply has been received from him. In view of non-production of proof of forgery and proof of resignation, I find that as per MCA records, he was director from July 25, 2012 and is still continuing as director which was during the period of issue of NCDs.

60. Further, I note that as per MCA records, Shri Atul Agarwal was director of the Company from February 23, 2015 and is still continuing as director of the Company. However, I also find that as per MCA records, Shri Atul Agarwal has filed DIR-11 showing his resignation from directorship of the Company from January 9, 2016 and date of filing of suhc DIR-11 is January 20, 2016. The said DIR-11 also encloses copy of resignation letter dated January 9, 2016. In view of the above, I find that Shri Atul Agarwal was

director of the Company from February 23, 2015 till January 9, 2016, which was also during the period of issue of NCDs.

61. From the documents available on record, I find that the present Directors in PAIL are Shri Bipin Kumar Singh and Shri Chandan Chakraborty. I also note that Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar who were earlier Directors in PAIL, have since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Sekhar Chandra Koley	May 07, 2014	February 13, 2015
Shri Bipin Kumar Singh	July 25, 2012	Continuing
Shri Chandan Chakraborty	July 25, 2012	Continuing
Shri Avijit Chowdhury	May 07, 2014	February 18, 2015
Shri Atul Agarwal	February 23, 2015	January 9, 2016
Shri Apurba Kumar Saha	July 25, 2012	May 08, 2014
Shri Madan Kaul	November 08, 2012	June 07, 2013
Shri Shrikant Jain	November 08, 2012	May 20, 2013
Shri Rajindra Bahadur	November 08, 2012	May 07, 2014
Shri Himadri Bag	May 7, 2014	July 17, 2014
Shri Kamal Kishor Sagar	July 17, 2014	August 26, 2014

62. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, PAIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
63. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.
64. From the material available on record and the details of the appointment and resignation of the directors of PAIL as reproduced in paragraph 61 of this Order, it is noted that Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar were directors at the time of the issuance of NCDs. Since these persons were acting as directors during the period of issuance of NCDs, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of PAIL was entrusted to discharge the

obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the past and present directors of PAIL, as officers in default, are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act. Therefore, I find that PAIL and its Directors, viz., Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

65. I note that during the financial years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015, PAIL through Offer of NCDs, had collected at least an amount of Rs. 83.42 Crores from various allottees. I note that Shri Sekhar Chandra Koley has been director of PAIL since financial year, 2014-2015. I note that Shri Bipin Kumar Singh has been director of PAIL since financial years, 2012-2013, 2013-2014, 2014-2015 till present date. I note that Shri Chandan Chakraborty has been director of PAIL since financial years, 2012-2013, 2013-2014, 2014-2015 till present date. I note that Shri Avijit Chowdhury has been director of PAIL in the financial year, 2014-2015. I note that Shri Atul Agarwal has been director of PAIL in the financial year, 2014-2015. I note that Shri Apurba Kumar Saha was director of PAIL during financial years, 2012-2013, 2013-2014, 2014-2015. I note that Shri Madan Kaul was director of PAIL during financial years, 2012-2013 and 2013-2014. I note that Shri Shrikant Jain was director of PAIL

during financial years, 2012-2013 and 2013-2014. I note that Shri Rajindra Bahadur was director of PAIL during financial years, 2012-2013, 2013-2014 and 2014-2015. I note that Shri Himadri Bag was director of PAIL during financial year 2014-2015. I note that Shri Kamal Kishor Sagar was director of PAIL during financial year 2014-2015. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with PAIL and other directors are limited to the extent of amount collected during his/her tenure as director of PAIL.

66. As far as the liability under sections 117B and 117C of the Companies Act, 1956, is concerned, the liability is on the company to comply with the said provisions. Therefore, PAIL is liable for the violation of sections 117B and 117C of the SEBI Act. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the Trustee who act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that both Pailan Agro Debenture Trust (*represented by its trustee, viz. Shri Dilip Das*) and *Shri Dilip Das* are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
67. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 47 of this order, the liability is on the Company to comply with the requirements therein.
68. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct PAIL and its Directors, viz. , Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar to refund the monies collected, with interest to such investors. Further, in view of the

violations committed by the Company and its Directors, to safeguard the interest of the investors who had subscribed to such NCDs issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.

69. I also note that, vide the interim order dated July 27, 2015, PAIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of PAIL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. In this regard, I note the Company's submissions that it has submitted the list of inventory of its assets and properties to SEBI and I find that the Company has submitted valuation reports of the different companies of Pailan Group vide letter dated September 3, 2015. However, I find that the other Noticees have not submitted list of inventory despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 12 of this Order.
70. In view of the discussion above, appropriate action in accordance with law needs to be initiated against PAIL and its Directors and debenture trustees, viz. Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Himadri Bag, Shri Kamal Kishor Sagar and Pailan Agro Debenture Trust (*represented by its trustee, viz. Shri Dilip Das*).
71. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:
- (a) PAIL, Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan

Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

- (b) If Pailan Agro India Limited had repaid/redeemed the NCDs to its investors, as per its submissions, as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions shall be applicable for the amounts still due to be returned to the investors. However, such prior repayments/redemption should have been made by the Company as per the requirement laid down in paragraph 71(c) below, with clear identification of the beneficiaries, and the same shall be certified by Chartered Accountants, as directed in paragraph 71(i) below.
- (c) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.
- (d) Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar are directed to provide a full inventory of all their assets and properties and details of all their bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (e) PAIL and Shri Bipin Kumar Singh, Shri Chandan Chakraborty are directed to provide a full inventory of all the assets and properties and details of all the bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form,

of the company (in case of any change from details last furnished by the Company) and their own.

- (f) PAIL, Shri Bipin Kumar Singh, Shri Chandan Chakraborty are permitted to sell the assets of 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.
- (g) PAIL, Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except 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.
- (h) PAIL and, Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- (i) After completing the aforesaid repayments, PAIL, Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri

Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar shall file a report of such completion 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") holding such certificate.

- (j) In case of failure of PAIL, Shri Apurba Kumar Saha, Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may recover such amounts, from the company and the directors liable to refund as specified in paragraph 71 (a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- (k) PAIL, Shri Apurba Kumar Saha , Shri Madan Kaul, Shri Shrikant Jain, Shri Rajindra Bahadur, Shri Sekhar Chandra Koley, Shri Bipin Kumar Singh, Shri Chandan Chakraborty, Shri Avijit Chowdhury, Shri Atul Agarwal, Shri Himadri Bag and Shri Kamal Kishor Sagar 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 (four) 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 (four) years from the date of completion of refunds to investors. However, Shri Shrikant Jain is

permitted to approach CDSL and RTA in regards defreezing his demat account/mutual fund account to the extent of his medical needs as stated at paragraph 57 of the Order but the said permission is subject to obtaining necessary leave from Hon'ble Calcutta High Court in view of its order dated January 15, 2016 in W.P. 11795 (W) of 2015- Sumita Chakraborty & Anr. v. Union of India & Ors., in respect of Pailan Group, directing the respondent group of companies and its directors to restrain from dealing with their properties in any manner so as to create third party interest without leave of the Court.

- (1) Pailan Agro Debenture Trust and Shri Dilip Das are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.

72. Further, I find that Interim Order has not been passed in respect of the two other directors of PAIL, Shri Himadri Bag and Shri Kamal Kishor Sagar. In view of this, this order will take effect as final order against the said Noticees on the expiry of 30 days from the date of service of this order against the respective Noticees, unless any of the Noticees, within such period of 30 days from the date of service of this order file their objections. If no objections are filed, the interim directions at paragraph 8 (iii), (iv), (vi), vide Interim order dated July 27, 2015 shall continue against the said Noticees (as if the order was issued to the Noticees) also till the time of said thirty days period, after which this order will come into effect. If objections are filed by any of the Noticees, the interim directions vide Interim order dated July 27, 2015 shall continue qua that Noticees till disposal of the said objections qua that Noticees and the directions passed herein against that Noticees shall be made applicable subject to the determination on the objections.

73. In respect of all other Noticees (except for Shri Himadri Bag and Shri Kamal Kishor Sagar as stated in paragraph 72), the above directions at 71 (d), (e), (k) and (l) shall come into force with immediate effect.
74. Hon'ble Calcutta High Court has passed order dated January 15, 2016 in W.P. 11795 (W) of 2015- Sumita Chakraborty & Anr. v. Union of India & Ors. in respect of Pailan Group. Therefore, the effect and implementation of the aforesaid directions stated in paragraph 71 excluding 71 (d), (e), (k), (l) shall be subject to the directions passed by the Hon'ble High Court in its Order dated January 15, 2016 or any further orders passed therein.
75. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.
76. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.
77. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

-Sd-

DATE: May 23, 2018

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**