

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Adarsh Wealth Ventures Limited (CIN: U67120OR2010PLC012414) and its Directors/Promoters viz., Shri Bijaya Kumar Rout (PAN:AJAPR7516B); (DIN:02728049), Shri Gangadhar Nayak (PAN:AFYPN4413K); (DIN:03335449), Shri Ganeswar Mahanta (PAN: BAVPM4368K); (DIN:05164202), Shri Dipak Kumar Mohanty (PAN:AKOPM1988P);(DIN:02727987), Shri Ramakanta Mahakul (PAN:BFLPM3736C); Shri Anil Singh (PAN:BAMPS0082D); (DIN:03138348), Shri Choudhury Niranjana Pradhan (PAN:AIAPP3677Q); (DIN:03141451) and Shri Bibhuti Bhusan Nanda (PAN:AENPN4881R).

Date of Hearing: June 26, 2015

Appearances:

Noticee: Shri Deepak Kumar Mohanty and Shri Bibhuti Bhusan Nanda

For SEBI: Mr. N Murugan, Assistant General Manager
Mr. Binod Kumar Sharma, Assistant General Manager

1.1 Adarsh Wealth Ventures Limited (AWVL) having its registered office at Plot No. 504/2310, Kanan Vihar, Phase-II, Bhubaneswar, Orissa-751031, was incorporated on September 03, 2010, with CIN as U67120OR2010PLC012414.

1.2 Securities and Exchange Board of India ("SEBI") received complaint dated November 24, 2014 from the Ministry of Company Affairs, Office of the Registrar of Companies- cum-official Liquidator, Odisha, Cuttack with an observation that AWVL is raising funds from the public by way of issue of securities.

- 1.3 On enquiry by SEBI, it was observed that AWVL had made an offer and issued 14,28,906 Cumulative Redeemable Preference Shares ("offer of RPSs") with face value of Rs.100/- and with a coupon rate of 27% p.a. to 4,268 investors during the financial years 2010-11 to 2012-13.
- 2.1 As the above said offer of RPS were found *prima facie* in violation of respective provisions of the SEBI Act, 1992 ("SEBI Act"), the Companies Act, 1956, SEBI passed an interim order dated March 19, 2015 and issued directions mentioned therein against AWVL and its Directors, viz., Shri Bijaya Kumar Rout, Shri Gangadhar Nayak, Shri Ganeswar Mahanta, Shri Dipak Kumar Mohanty, Shri Ramakanta Mahakul, Shri Anil Singh, Shri Choudhury Niranjana Pradhan and Shri Bibhuti Bhusan Nanda.
- 2.2 *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings/allegation were recorded. AWVL had made an offer and issued Redeemable Preference Shares during the financial years 2010-11 to 2012-13 and allotted *Redeemable Preference Shares* to a total of 4,268 individuals/investors and mobilized funds amounting to approximately Rs.14,28,90,600 as shown below:-

Table 1

Sr. No.	Date of Allotment	No. of Preference Shares	Total Nominal Value (₹)	No. of Allottees
1	08/10/2010	5,000	5,00,000.00	5
2	31/12/2010	44,760	44,76,000.00	197
3	28/02/2011	73,388	73,38,800.00	277
4	30/03/2011	85,990	85,99,000.00	360
5	30/04/2011	31,453	31,45,300.00	164
6	30/05/2011	43,880	43,88,000.00	182
7	15/07/2011	62,480	62,48,000.00	213
8	15/08/2011	21,416	21,41,600.00	71
9	16/08/2011	54,180	54,18,000.00	221
10	31/08/2011	63,014	63,01,400.00	180
11	15/09/2011	8,080	8,08,000.00	40

Sr. No.	Date of Allotment	No. of Preference Shares	Total Nominal Value (₹)	No. of Allottees
12	30/09/2011	71,280	71,28,000.00	195
13	15/10/2011	18,320	18,32,000.00	39
14	17/10/2011	20,180	20,18,000.00	49
15	24/10/2011	17,560	17,56,000.00	49
16	27/10/2011	10,305	10,30,500.00	49
17	31/10/2011	6,590	6,59,000.00	28
18	14/11/2011	13,920	13,92,000.00	42
19	15/11/2011	5,100	5,10,000.00	12
20	21/11/2011	11,410	11,41,000.00	49
21	23/11/2011	14,990	14,99,000.00	49
22	25/11/2011	47,310	47,31,000.00	49
23	28/11/2011	17,350	17,35,000.00	49
24	29/11/2011	14,710	14,71,000.00	49
25	30/11/2011	8,510	8,51,000.00	29
26	14/12/2011	10,670	10,67,000.00	49
27	19/12/2011	6,160	6,16,000.00	19
28	20/12/2011	16,730	16,73,000.00	49
29	27/12/2011	21,770	21,77,000.00	49
30	28/12/2011	31,480	31,48,000.00	46
31	30/12/2011	16,320	16,32,000.00	49
32	31/12/2011	17,820	17,82,000.00	49
33	12/01/2012	22,980	22,98,000.00	48
34	18/01/2012	16,810	16,81,000.00	49
35	25/01/2012	16,210	16,21,000.00	51
36	30/01/2012	7,180	7,18,000.00	31
37	31/01/2012	14,980	14,98,000.00	47
38	14/02/2012	22,010	22,01,000.00	45
39	20/02/2012	14,950	14,95,000.00	45
40	20/02/2012	16,180	16,18,000.00	49
41	24/02/2012	21,700	21,70,000.00	45
42	28/02/2012	21,990	21,99,000.00	29
43	29/02/2012	15,870	15,87,000.00	49
44	12/03/2012	23,250	23,25,000.00	49
45	26/03/2012	18,680	18,68,000.00	49
46	29/03/2012	29,570	29,57,000.00	49
47	30/03/2012	15,550	15,55,000.00	49
48	31/03/2012	18,750	18,75,000.00	49

Sr. No.	Date of Allotment	No. of Preference Shares	Total Nominal Value (₹)	No. of Allottees
49	09/04/2012	17,000	17,00,000.00	49
50	14/04/2012	18,830	18,83,000.00	49
51	16/04/2012	24,200	24,20,000.00	49
52	20/04/2012	17,010	17,01,000.00	49
53	29/04/2012	23,380	23,38,000.00	49
54	30/04/2012	17,960	17,96,000.00	28
55	15/05/2012	17,740	17,74,000.00	49
56	31/05/2012	32,515	32,51,500.00	49
57	15/06/2012	18,130	18,13,000.00	49
58	29/06/2012	16,300	16,30,000.00	49
59	30/06/2012	7,870	7,87,000.00	19
60	15/07/2012	19,490	19,49,000.00	49
61	31/07/2012	9,695	9,69,500.00	41
Total		14,28,906	14,28,90,600.00	4,268

2.3 In short, the AWVL issued RPS year-wise as shown below:

Table 2

Sr.No.	Year	No. of Allottees	No. of RPS	Amount (Rs.)
1	2010-11	839	209,13	2,09,13,800.0
2	2011-12	2,851	979,64	9,79,64,800.0
3	2012-13	578	240,12	2,40,12,000.0
	Total	4,268	1,428,90	14,28,90,600.0

2.4 The above offer of RPS and pursuant allotment were deemed public issues of securities under the first proviso to Section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under Section 60, Section 56(1) and 56(3), Sections 73(1), (2) and (3) of the Companies Act were not complied with by AWVL in respect of offers of RPS.

2.5 In view of the prima facie findings on the violations, the following directions were issued in the said interim order dated March 19, 2015 with immediate effect.

i. AWVL shall forthwith cease to mobilize any fresh funds from investors through the Of

ferofRPS or through any other securities, to the public and/or invites subscription, in any manner whatsoever, either directly or indirectly, till further directions;

- ii. AWVL and its Directors, Shri Bijaya Kumar Rout , Shri Gangadhar Nayak, Shri Ganeswar Mahanta, Shri Dipak Kumar Mohanty , Shri Ramakanta Mahakul Shri Anil Singh , Shri Choudhury Niranjana Pradhan and Shri Bibhuti Bhusan Nanda, are prohibited from issuing prospectus or any offer document or issue advertisement or soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
- iii. AWVL and its above mentioned Directors, are restrained from accessing these securities market and further prohibited from buying, selling or otherwise dealing in these securities market, either directly or indirectly, till further directions.
- iv. AWVL shall provide a full inventory of all its assets and properties;
- v. The Directors of AWVL shall provide a full inventory of all their assets and properties; AWVL and its above mentioned 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 RPS*, without prior permission from SEBI;
- vi. AWVL and its above mentioned Directors shall not divert any funds raised from public at large through the *Offer of RPS*, which are kept in bank account(s) and/or in the custody of AWVL;
- vii. AWVL and its above mentioned Directors shall, within 21 days from the date of receipt of this Order, provide SEBI with all relevant and necessary information as sought by SEBI. BLO has not received any reply/details from AWVL and its Directors.

2.6 Videthesaidinterimorder,AWVLanditsabovementionedDirectorswere given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated that the concerned persons may also indicate whether they desired to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

3.1 *Service of interim order:* The copy of the said interim order was sent to the above mentioned entities by SEBI's letter dated March 19, 2015. The copies of interim order, were sent through registered post acknowledgement due. While letter to

Shri GangadharNayak, Shri GaneswarMahanta, Shri Dipak Kumar Mohanty, Shri RamakantaMahakul and Shri BibhutiBhusan Nanda were delivered, letters to AWVL and other Directors/Promoters of the company viz. Shri Bijaya Kumar Rout, Shri Anil Singh and Shri Choudhury Niranjana Pradhan returned undelivered.

3.2 Subsequently, vide letter dated May 15, 2015 all the persons against whom the above said interim order was passed, were intimated that they shall be given opportunities of personal hearing on June 26, 2015. While letter to Shri GangadharNayak, Shri GaneswarMahanta, Shri Dipak Kumar Mohanty, Shri RamakantaMahakul and Shri BibhutiBhusan Nanda were delivered, letters to AWVL and other Directors/Promoters of the company viz. Shri Bijaya Kumar Rout, Shri Anil Singh and Shri Choudhury Niranjana Pradhan returned undelivered.

3.3 Thereafter, vide notification dated June 21, 2015, published in newspaper *The Times of India* (West Bengal Edition), notification dated June 21, 2015 published in local vernacular newspaper of West Bengal, *AnandabazarPatrika*, notification dated June 21, 2015 published in local vernacular newspaper of Odisha, *The Samaja* and notification dated June 25, 2015 published in newspaper, *The Times of India* (Bhubaneswar Edition), AWVL and its abovementioned Directors were notified by SEBI that they will be given the final opportunity of being heard on June 26, 2015 at the time and the venue mentioned therein.

4.1 *Hearing and submissions:* Shri Deepak Kumar Mohanty and Shri BibhutiBhusan Nanda appeared on the date of hearing on June 26, 2015. Others did not avail the opportunity of hearing held on June 26, 2015. Both were given one week time for filing written submissions. Shri DipakKumarMohanty vide letter dated April 13, 2015 had submitted that he had already resigned from the Company before the Company started functioning after fulfilling the formalities. He submitted that he has no knowledge about the company's activities. At the time of personal hearing, he stated that he had furnished some documents to the C.M.D of the company, Mr.

Bijay Kumar Rout with signature. But in due process, he wanted to quit and demanded his documents several times. But they were not given. Finally he resigned in the month of July 2010. Thereafter, he had no connection with the Company. He also handed over the copies of the appointment order in Adarsh Stallfid Farms Pvt. Ltd and relieving order as Operations Manager in Adarsh wealth Ventures Ltd dated December 7, 2012. The submissions were reiterated by him vide letter dated July 3, 2015.

4.2 Shri Bibhuti Bhusan Nanda vide letter dated July 3, 2015 submitted as follows:

- a. He joined in the company, Adarsh Stallfid Farms Pvt. Ltd., as Asst. Regional Manager vide appointment with effect from May 4, 2010. Though the appointment letter was claimed to be attached, the same was not attached. At the time of appointment, he was aware that Company was engaged in managing the fund of the customers.
- b. The directors formed a new Public Limited company, AWVL and incorporated his name fraudulently in the List of members/promoters without his knowledge. He is not related to directors and has not paid any money for purchase of shares to become the member.
- c. As soon as it came to his knowledge, he raised the issue with the directors who shouted at him saying that he is not the director of the company and stated there is no issue being promoters of the company.
- d. Once it came to his knowledge that the company is mobilizing money from public, he resigned from the company.

4.3 I have considered the allegations, replies, documents downloaded from MCA21 Portal and other material 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 RPS?

2. If so, whether the said issues are in violation of Section 60, Section 56(1) and 56(3), Sections 73(1), (2) and (3), the Companies Act,1956?
3. If the findings on question No.2 are found in the affirmative, who are liable for the violation committed?

5.1 *Whether the company came out with the Offer of RPS?:* I have perused the interim order dated March 19, 2015 for the allegation of Offer of RPS. The company and its directors/promoters have not disputed the said issuance by way of any oral or written representations.

5.2 I have also perused the documents/ information obtained from the 'MCA 21 Portal' and the information submitted vide letters dated November 24, 2014 and January 21, 2015 by Registrar of Companies, Cuttack, I find that the Company had made allotment of 209,138 Redeemable Preference Shares to 839 persons, during the Financial Years 2010-11 raising an amount of Rs. 2,09,13,800.00, 9,79,648 Redeemable Preference Shares to 2,851 persons, during the Financial Years 2011-12 raising an amount of Rs. 9,79,64,800.00, 240,120 Cumulative Redeemable Preference Shares to 578 persons, during the Financial Years 2012-13 raising an amount of Rs. 2,40,12,000.00 as shown in Table 1 and 2 above.

6.1 *If so, whether the said issues are in violation of Section 60, Section 56(1) and 56(3), Sections 73(1) (2) (3), the Companies Act,1956?:* The provisions alleged to have been violated and mentioned in Issue No.2 are applicable to the offer made to the public. Therefore the primary question that arises for consideration is whether the issue of preference shares covered in Issue No 1 is a 'public issue'. At this juncture, reference may be made to sections 67(1) & (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)."

- 6.2 The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & ORs. Vs. 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:-

"84.

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 ho

whose expressions are to be understood, when reference is made to the Actor 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 invitation.

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.

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 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 of 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. (Emphasis supplied).*

- 6.3 Section 67(3) 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 {(section 67(3)(a)}, or, if the offer is the domestic concern of the persons making and receiving the offer {(section 67(3)(b))}, 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.

- 6.4 In the instant case, as the offer of RPS has been made by AWVL and allotment to more than 49 persons in respect of the allotments in serial Number 2 to 10 and 12 and 35 in Table No.1, the offer of RPS falls within the first proviso of section 67(3) of Companies Act,1956. As far as the allotments made to 49 persons on various dates is concerned, I find that within a short span of a few days the allotments were split into 49 each as in the case of allotments mentioned in Serial Nos. 14-16 in Table 1. Similar is the case in respect of allotments mentioned in Serial Nos. 20-24,26,28,29,31,32,34,40, 43-53,55-58 and 60 in Table 1. The sheer proximity in time of allotment and the periodicity of splitting the allotment within the month, by deliberately keeping the number of allottees below the statutory minimum, shows that the Company wantonly made repeated allotments to less than fifty persons in order to make an false appearance as if offer and allotment of RPS is a private placement, to evade the process of law and detection. Therefore, I find that the offer and allotment of RPS falls within the first proviso of section 67(3) of Companies Act, 1956. Thereby, such issues are deemed to be public issues and were mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
- 6.5 As far as the issuance to less than 49 persons as mentioned in serial Nos. 1,11,13,17,18,19,25,27,30,33,36,37,38,39,41,42,54,59 and 61 of Table 1, 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 issuance in these instances - , the Company or 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
- 6.6 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. 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.

- 6.7 The allegation of non-compliance of the above provisions was not denied by the company or directors or the promoters. Neither the company nor the directors/promoters produced any record to show that AWVL has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or filed a Prospectus with ROC or issued application forms accompanying the abridged prospectus. Therefore, I find that, AWVL and its directors and promoters responsible for the failure to issue prospectus, have not complied with Section 56(1), 56(3) and 60 of the Companies Act, 1956.
- 6.8 Further, by issuing RPS to more than 49 persons, AWVL had to compulsorily list such securities in compliance with 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 within 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.
- 6.9 The allegation of non-compliance of the above provisions was not denied by the company or directors. I find that no records have been submitted to indicate that it had made an application seeking listing permission from stock exchange nor did it refund the amounts consequent upon such failure. Thus, AWVL has contravened

the said provisions. AWVL has not provided any records to show that the amount collected by AWVL are kept in a separate bank account. Therefore, I find that AWVL has also not complied with the provisions of section 73(3) as it has not kept the amounts received from investors in a separate bank account and failed to repay the same in accordance with section 73(2) as observed above.

- 6.10 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"

- 6.11 In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 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.
- 6.12 In view of the forgoing findings, I am of the view that AWVL is engaged in fund mobilizing activity from the public, through the offer and issuance of RPS and has contravened the provisions of sections 56, 60 and 73 of the Companies Act, 1956.

- 7.1 *If the findings on question No.2 are found in the affirmative, who are liable for the violation committed:* Section 56(1) and 56(3) read with section 56(4) 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 section.
- 7.2 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 becomes 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.
- 7.3 SEBI, as per section 27(2) of the SEBI Act, has the powers to proceed against directors of such companies. In cases of financial fraud, the role of directors in prevention of the same is of utmost importance. They are required to take diligent measures in preventing the same. They are also required not to be neglectful in the affairs of the company which results in the violation of various laws such as deemed public issue in violation of law. In deemed public issue in violation of law, money is collected from innocent, ill-informed and gullible public, without the Company giving the statutory protection available to those investors under the law such as, full and necessary disclosures about the company, an exit opportunity by way of listing of the shares. The purpose of refund in such cases as per law, is to protect the investors who have parted their money without having any opportunity of exit and without full disclosures about the Company which deprives their informed consent.
- 7.4 Referencemay also be made to the ratio of the Hon'ble High court of Madras in ***MadhavanNambiar vs Registrar Of Companies*** (2002 108 Comp Cas 1 Mad) which observed "In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or

part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956”.

7.5 SEBI also *has* powers under section 11 and 11B of the SEBI Act to pass direction of refund along with interest. The Hon’ble Bombay High court in ***B.P.Plc (Formerly B.P.Amoco Plc) vs SEBI***, (2002 (4) Bom CR 79), held that that SEBI has powers to award interest in exercise its power under section 11 and 11B of SEBI Act, as stated below:-

“Applying the principles regarding award of interest as has been held by the Apex Court in *Secretary, Irrigation Department vs. G.C.Roy* (supra) to the effect "a person deprived of the use of money to which he is legitimately entitled to has a right to be compensated for the deprivation, call it by any name. It may be called "interest, compensation or damages," the investors are entitled to be compensated by way of interest for delayed payment.

Under these circumstances we find no substance that there is no power to award such an interest.”

7.6 In view of the provisions of law, AWVL and its Directors/Promoters, viz., Shri Bijaya Kumar Rout, Shri GangadharNayak, Shri GaneswarMahanta, Shri Dipak Kumar Mohanty, Shri RamakantaMahakul, Shri Anil Singh, Shri Choudhury Niranjana Pradhan and Shri BibhutiBhusan Nanda are responsible for the non-compliance of the above provisions. From the available information as per the *Form 32*, the details of the appointment and resignation of all the directors are given in the Table below:

Table 3

S.No.	Name of directors	Date of Appointment	Date of cessation
1	Shri GangadharNayak	December 20, 2010	Continuing
2	Shri GaneswarMahanta	January 01, 2012	Continuing
3	Shri Dipak Kumar Mohanty	September 03, 2010	October 10, 2010

S.No.	Name of directors	Date of Appointment	Date of cessation
4	Shri Bijaya Kumar Rout	September 03, 2010	Continuing
5	Shri Anil Singh	September 03, 2010	December 20, 2010
6	Shri Choudhury Niranjana Pradhan	September 03, 2010	March 15, 2013

- 7.7 ShriBijaya Kumar Rout, Shri GangadharNayak, Shri GaneswarMahanta, and Shri Choudhury Niranjana Pradhanwere serving as directors while the impugned issues and allotments were made.Therefore, these directors and the Company, are responsible for the issue of RPS in violation of law and regulations and hence co-extensively responsible along with the Company for making refunds along with interest.
- 7.8 The fact that Shri Choudhury Niranjana Pradhan resigned on March 15, 2013, does not take away his liability for the violations committed by him. Therefore, the resignation of Shri Choudhury Niranjana Pradhan does not affect his liability as person responsible for the issuance of RPS.
- 7.9 The liability of the company to repay under section 73(2) of the Companies Act, 1956 is continuing and such liability continues till all the repayments are made. Therefore, the directors who join subsequent to the some instances of the impugned public issuances are also officers in default in not making the refund, if the company does not repay the money collected, as mandated in section 73(2) of the Companies Act, 1956. Therefore, Shri GangadharNayak and Shri GaneswarMahantaare also officers in default and responsible for refund along with interest on the basis of their continuing liability.These directors also have not exercised necessary diligence after joining as directors in the Company. Neither did they make any attempts to report the wrongdoings of the company to appropriate authorities at the time of their joining.
- 7.10 Shri Bijaya Kumar Rout, Shri GangadharNayak, Shri Dipak Kumar Mohanty, Shri Anil Singh and Shri Choudhury Niranjana Pradhan, though directors are also the signatories to the Memorandum and Articles of Association dated September 02,

2010, as promoters of the Company. Shri Ramakanta Mahakul and Shri Bibhuti Bhusan Nanda though not directors are only promoters as per the Memorandum and Articles of Association.

- 7.11 In terms of Section 62 of the Companies Act, every person who is a director of the company at the time of the issue of the prospectus and every person who is a promoter of the company, are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein. Further, for the purpose of the said section, the expression “promoter” means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company. It is clear that promoters are liable for misrepresentation.
- 7.12 Shri Dipak Kumar Mohanty, Shri Anil Singh though in the capacity of directors resigned on September 03, 2010, as shown in Table No.3, the Company had allotted 5000 RPS only to 5 persons which is below the threshold for deemed public issue. However, they are also promoters. In view of their liability as promoters under section 62 of the Companies Act, they are liable for refund to the shareholders by not issuing Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956.
- 7.13 In view of Section 62 of Companies Act, by not issuing Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, Shri Bijaya Kumar Rout, Shri Gangadhar Nayak and Shri Choudhury Niranjan Pradhan, being the directors, are also liable in the capacity as promoters to refund along with interest and Shri Ramakanta Mahakul and Shri Bibhuti Bhusan Nanda are liable as promoters.
- 7.14 Regarding the direction in the interim order to the effect that AWVL and its above mentioned Director shall, within 21 days from the date of receipt of this

Order, provide SEBI with all relevant and necessary information as sought by SEBI, I find that the said information has not been given them so far to SEBI. ***Therefore, SEBI may take appropriate action in accordance with law.***

7.15 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 the AWVL and its directors/promoters, Shri Bijaya Kumar Rout, Shri Gangadhar Nayak, Shri Ganeswar Mahanta, Shri Dipak Kumar Mohanty, Shri Ramakanta Mahakul, Shri Anil Singh, Shri Choudhury Niranjana Pradhan and Shri Bibhuti Bhusan Nanda to refund the monies collected, with interest to such investors. It would be appropriate to levy an interest @ 15% p.a. as provided for under the above section read with rule 4D (which prescribes that the rates of interest, for the purposes of sub-sections (2) and (2A) of section 73, shall be 15 per cent per annum) of the Companies (Central Government's) General Rules and Forms, 1956. In view of the violations committed by the Company and its directors and promoters, to safeguard the interest of the investors who had subscribed to such preference shares issued by the Company 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.

8.1 In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(4), 11A and 11B thereof hereby issue the following directions:

- a) The Company, namely, Adarsh Wealth Ventures Limited and its Directors/Promoters, Shri Bijaya Kumar Rout, Shri Gangadhar Nayak, Shri Ganeswar Mahanta, Shri Dipak Kumar Mohanty, Shri Ramakanta Mahakul, Shri Anil Singh, Shri Choudhury Niranjana Pradhan and Shri Bibhuti Bhusan Nanda, shall forthwith refund the money collected by the Company through the issuance of RPS, including the money collected from investors, till date, pending allotment, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in

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

- b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order.
- c) Adarsh Wealth Ventures Limited and its present management is permitted to sell the assets of the Company only for the sole purpose of making the repayments including interest, as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank.
- d) The Company, namely, Adarsh Wealth Ventures Limited and its Directors/Promoters, Shri Bijaya Kumar Rout, Shri Gangadhar Nayak, Shri Ganeswar Mahanta, Shri Dipak Kumar Mohanty, Shri Ramakanta Mahakul, Shri Anil Singh, Shri Choudhury Niranjan Pradhan and Shri Bibhuti Bhusan Nanda, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Oriya) with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.
- e) After completing the aforesaid repayments, Adarsh Wealth Ventures Limited and its Directors/Promoters, Shri Bijaya Kumar Rout, Shri Gangadhar Nayak, Shri Ganeswar Mahanta, Shri Dipak Kumar Mohanty, Shri Ramakanta Mahakul, Shri Anil Singh, Shri Choudhury Niranjan Pradhan and Shri Bibhuti Bhusan Nanda, shall file a report of such completion of repayment with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI").
- f) Adarsh Wealth Ventures Limited and its Directors/Promoters, Shri Bijaya

Kumar Rout, Shri GangadharNayak, Shri GaneswarMahanta, Shri Dipak Kumar Mohanty,ShriRamakantaMahakul, Shri Anil Singh , Shri Choudhury Niranjan Pradhan and Shri BibhutiBhusan Nandaare directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

- g) In case of failure of Adarsh Wealth Ventures Limitedand its Directors/Promoters, Shri Bijaya Kumar Rout , Shri GangadharNayak, Shri GaneswarMahanta, Shri Dipak Kumar Mohanty ,Shri RamakantaMahakul, Shri Anil Singh , Shri Choudhury Niranjan Pradhan and Shri BibhutiBhusan Nanda, to comply with the aforesaid directions, SEBI, on the expiry of the three months period from the date of this order,-
- i. shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.
 - iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
 - iv. would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.
- h) Adarsh Wealth Ventures Limitedand its Directors/Promoters, Shri Bijaya Kumar Rout, Shri GangadharNayak, Shri GaneswarMahanta, Shri Dipak Kumar Mohanty ,Shri RamakantaMahakul, Shri Anil Singh, Shri

Choudhury Niranjan Pradhan and Shri BibhutiBhusan Nanda, are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 years from the date of completion of refunds to investors.

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

- 9.1 This Order is without prejudice to any action, including adjudication and prosecution proceedings that might be taken by SEBI in respect of the above violations committed by the Company, its promoters, directors and other key persons.
- 9.2 Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.
- 9.3 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.

Date : December 10, 2015
Place: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

