WTM/PS/ 110 /ERO/BLO/DEC/2015

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 Hum Projects Limited (PAN: AACCH5858G) and its Directors viz., Shri Sandip Roy (DIN:03045009; PAN:AHIPR2184B), Shri Chandra Shekhar Sabat (DIN:03578994; PAN:CXKPS4104E), Shri Nasirul Islam Seikh (DIN: 03187097), Shri Subhas Kundu (DIN:03461357; PAN:BBOPK6136M), Shri Subhasish Pandey (DIN:03461814; PAN:AMNPP2918D)and Shri Suranjan Kar (DIN:03579005; PAN:AFCPK5730L)

1.1 Hum Projects Limited ("HUM") having its office at Uttarayan, M.S. 1/3, Bengal Ambuja, City Centre, Durgapur, Burdwan, West Bengal -713216, was incorporated on December 21, 2010, with CIN as U45400WB2010PLC156053.

1.2 Securities and Exchange Board of India ("SEBI") received information that HUM is raising funds from the public by way of issue of securities and there was non-payment of dues to the investors.

1.3 On enquiry by SEBI, it was observed that HUM had made an offer and issued Redeemable Preference Shares ("offer of RPSs") in a series of allotments to 1272 investors and raised an amount of Rs. 1,66,40,470/- during the financial year 2011-12. At the same time as per Form 2 (Return of Allotment) obtained from '*MCA21 Portal'*, it was noted that funds to the tune of Rs. 1,67,16,970/- were mobilized till March 31, 2012 through issuance of 16,71,697 *Redeemable Preference Shares*

with face value of Rs. 10/-.

1.4 As the above said offer of Offer of RPS was 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 20, 2015 and its Directors viz., Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey and Shri Suranjan Kar.

2.1 *Prima facie findings/allegations***:** In the said interim order, the following *prima facie* findings/allegation were recorded. HUM made an offer of RPS with the following terms and conditions: An example of such offer through "Mode –B" and "Mode-C" is brought out below.

Table 1 (A and B):

Terms & Conditions of NPRPS:

HUM is offering on private placement basis NPRPS in the following nature:

Mode-'B' (Minimum 100 NPRPS)					
12 Months	36 Months	62 Months	96 Months	132 Months	168
1000	1000	1000	1000	1000	1000
Dividend	Dividend	Dividend	Dividend	Dividend	Dividen
110	500	1000	2000	4000	9000

Mode-'C' (Minimum 100 NPRPS)		
12 Months	36 Months	62 Months
1,00,000	1,00,000	1,00,000
Dividend	Dividend	Dividend
0.8%(Monthly)	1% (Monthly)	1.13% (Monthly)

Related with the profit of HUM *Any default will attract penalty*

2.2 HUM had made allotment of Redeemable Preference Shares during the financial year 2011-12 to 1272 investors and raised an amount of Rs. 1,66,40,470, as shown below:-

Table 2

Sr. No	Date of Allotment	No. of Allotees	No. of RPS	Value of Allotment (Rs.)
1	15/04/2011	4	2,700	27,000
2	30/04/2011	11	21,600	2,16,000
3	15/05/2011	5	7,700	77,000
4	31/05/2011	24	13,280	1,32,800
5	30/06/2011	12	9,150	91,500
6	31/07/2011	44	36,750	3,67,500
7	31/08/2011	31	67,670	6,76,700
8	30/11/2011	235	3,52,526	35,25,260
9	31/01/2012	431	5,22,012	52,20,120
10	31/03/2012	475	6,30,659	63,06,590
	Total	**1,272**	**16,64,047**	**1,66,40,470**

2.3 However, as per Form 2 (Return of Allotment) obtained from 'MCA21 Portal', it was prima facie noted that funds to the tune of Rs. 1,67,16,970/- were mobilized till March 31, 2012 through issuance of 16,71,697 Redeemable Preference Shares with face value of Rs. 10/-.

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 requirements under Section 60, Section 56(1) and 56(3), Sections 73(1), (2) and (3) of the Companies Act were not complied with by HUM and its directors.

2.5 In view of the prima facie findings on the violations, the following directions were issued in the said interim order dated March 20, 2015 with immediate effect.

i. HUM shall forthwith cease to mobilize any fresh funds from investors through the *Offer of RPS* or through any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly, till further directions;

ii. HUM (CIN: U45400WB2010PLC156053; PAN:AACCH5858G) and its Directors viz., Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul

Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, Shri Suranjan Kar, 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. HUM and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;

iv. HUM shall provide a full inventory of all its assets and properties;

v. The Directors of HUM shall provide a full inventory of all their assets and properties;

vi. HUM and its abovementioned 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;

vii. HUM and its abovementioned 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 HUM;

viii. HUM and its abovementioned Directors shall, within 21 days from the date of receipt of this interim order cum show cause notice, provide SEBI with all relevant and necessary information as sought vide SEBI letters dated September 30, 2014 and November 14, 2014.

2.6 Vide the said interim order, HUM and its abovementioned Directors 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 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 20, 2015 through speed post acknowledgement due. Letters issued to Hum Projects Ltd. and Shri Chandra Shekhar Sabat returned undelivered while status of letter issued to other directors is not known.

4.1 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 an opportunity of personal hearing on June 26, 2015. Letter issued to Hum Projects Ltd. and Shri Chandra Shekhar Sabat returned undelivered while letters issued to other directors were delivered.

4.2 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, *Anandabazar Patrika*, 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)*, HUM 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.

5.1 *Hearing and submissions*: Mr. Shounak Ghosh, Advocate from Kolkata appeared on behalf of Mr. Sandip Roy. Mr. Sekhar Kanti Das, Advocate appeared for Shri Subhas Kundu and Shri Subhasish Pandey. They filed affidavits and made oral submissions along the lines of submissions made in the affidavits. Others did not avail the opportunity of hearing granted on June 26, 2015.

5.2 Mr. Subhasish Pandey filed reply dated April 08, 2015. The brief submissions are as follows:-

- On March 22, 2011 he along with Shri Subhas Kundu was appointed as an ordinary employee of the company by one of its directors Shri Sandip Roy.
- At the time of his appointment, he had been told to do office related jobs on Shri Sandip Roy's behest and he joined the company in good faith in the hope of earning bread and butter by means of a decent, honest job.
- During the course of his employment, he was asked by Shri Sandip Roy to sign a few blank papers and he did so in good faith as Sandip Roy insisted that the same was urgently needed for smooth running of the company and for his

welfare.

- He came to know, four months after his appointment, from some of the clients of the company about the serious irregular practice done by the high-ranked officials of the company.
- On hearing about the unhealthy state of affair of the company, he along with his friend Shri Subash Kundu had gone to Shri Sandip Roy on July 28, 2011 and enquired about the matter. Sandip Roy behaved rudely and asked them to sign a printed resignation letter which he signed on that very day. The copy of the said letter was enclosed.
- Neither did he participate in any decision making process of the company nor did he possess any knowledge of the fact that he held the post of Director in that company either during the period of employment or after that. He is also not responsible or liable for any activities, decision and transaction of the said company.
- His activity and function in the company was limited only as on ordinary employee and he has nothing to do with the position of the Director.
- Since he has resigned from the company on July 28, 2011, he has no connection or knowledge about the functioning and activities of the company.

5.3 Mr. Subhashish Pandey also filed an affidavit through his counsel Mr. Sekhar Kanti Das at the time of personal hearing on June 26, 2015. The brief averments in the affidavit are as follows:-

- Subhashish Pandey is a very poor man working in a small book shop owned by Mr. Sandip Roy in village Galsi in District Burdwan.
- In the year 2011, Chandra Shekhar Sabat through Sandip Roy approached him for incorporating a company with a purpose of establishing a B. ED. college in his village.
- The company was incorporated by the sole effort of Chandra Sekhar Sabat and

Mr. Subhashish Pandey was inducted as an employee of the company by way of Company's letter dated March 22, 2011.

- He resigned on July 28, 2011 following stark differences that grew between him and Chandra Sekhar Sabat. Thereafter he has not kept any touch with the said company and continued with Tea selling business in small shop room which is his family business.
- The financial affairs of the company was never looked after by him and the same was always managed by Mr. Sabat.
- His lawyer Singhania & Co. on verifying the documents filed before the RoC had found that Mr. Sabat actually used his digital signature to file several documents recording his appointment and resignation through Form 32
- Chandra Sekhar Sabat and/or the other directors of the company have not even filed the returns of the company after 2011-12 and the investments which were obtained by the said company using the name was also not returned by the said company to its investors.
- Mr. Sabat being the contributory and the promoter of the company and the person who was always at the helm to the affairs of the company had actually incorporated the company with the mala fide motive of making people invest the company using his name and later duped the investors by siphoning off the funds of the said company.
- He has filed a civil suit before the learned civil judge (junior Division) at Durgapur being T.S. No.137 of 2015 praying for a declaration and permanent injunction against Mr. Chandra Shekhar Sabat and has made SEBI a Proforma defendant. The said suit is pending adjudication before the Learned Court. A copy of the plaint in the said suit has been annexed.
- Subhashish Pandey has also filed proceedings under section 200 of the code of Criminal Procedure being C.R Case No. 333 of against Chandra Sekhar Sabat before the Learned A.C.J.M. at Durgapur which is pending consideration before

the Learned Court. A copy of the petition under Section 200 has been annexed.

- In regard to the order served upon by SEBI ,he has stated that since he had resigned from the company way back in 2011, he is not aware of any of the affairs of the company after that and as such cannot be made liable for the acts and/or actions of the company after his resignation.
- With reference to the paragraph no.8 of the SEBI order, he has submitted that the said company has ceased to exist and stopped all activities as per his knowledge in and around their village. He was not a policy making figure in the company, he cannot talk about assets and the properties.
- He has stated that Chandra Sekhar Sabat is solely responsible to refund the whole money collected through the offer of RPS as the alleged dummy Directors did not take any money there from and do not know whereabouts of the money. He is a poor village man having no knowledge about the law in such matter and SEBI can impose any sorts of restrictions and injunction against the said company under the law.

5.4 Mr. Subhas Kundu filed a reply dated April 08, 2015. The brief submissions are as follows:-

- He along with Shri Subhasish Pandey were appointed on March 22, 2011 as an ordinary employee of the company by one of its directors Shri Sandip Roy.(copy attached)
- That at the time of his appointment, he had been told to do office related jobs on Shri Sandip Roy's behest and he joined the company in good faith in the hope of earning bread and butter by means of a decent, honest job.
- That during the course of his employment, he was asked by Shri Sandip Roy to sign a few blank papers and he did so in good faith as Sandip Roy insisted that such was urgently needed for smooth running of the company and for his welfare.

- That four months after his appointment, he came to knew from some of the clients of the company about the serious irregular practice done by the high-ranked officials of the company.
- That on hearing about the unhealthy state of affair of the company, he along with his friend Shri Subash Kundu went to Shri Sandip Roy on 28.07.2011 and enquired about the matter. Further it is stated that Sandip Roy behaved with them rudely and asked them to sign a printed resignation letter to which he signed on that very day.
- That he neither participated in any decision making process of the company nor did he have knowledge of the fact that he held the post of Director in that company during either the period of employment or after that. He is also not responsible or liable for any activities, decision and transaction of the said company.
- That his activity and function of the company was limited only as an ordinary employee and he has nothing to do with the position of the Director.
- That since he has resigned from the company on 28.07.2011, he has no connection nor any knowledge about the functioning or activities of the company.
- In the light of the above, he has prayed before SEBI to delink and free him from the proceedings.

5.5 Mr. Subhas Kundu also filed an affidavit through Mr. Sekhar Kanti Das Advocate during personal hearing on June 26, 2015. The affidavit, inter alia, states the following:

- That Mr. Subhas Kundu, is a very poor man running a small tea shop owned by family in village Galsi in District Burdwan.
- In the year 2011, Chandra Shekhar Sabat through Sandip Roy approached him for incorporating a company with a purpose of establishing a B.Ed college in his

village.

- The company was incorporated and he was inducted as an employee of the company by way of Company's letter dated March 22, 2011.
- He resigned on July 28, 2011 following stark differences that grew between him and Chandra Shekhar Sabat. Thereafter he has not kept any touch with the said company and continued with Tea selling business in small shop room which is his family business.
- He has mentioned that the financial affairs of the company was never looked after by him and the same was always managed by Chandra Shekhar Sabat.
- His lawyer on verifying the documents filed before the RoC had found that Chandra Shekhar Sabat actually used his digital signature to file several documents which were not intended to be filed by him which included a Form 32 by which he was made a director of the company and another Form 32 by which he had allegedly resigned as a director.
- Chandra Shekhar Sabat and/or the other directors of the company has not even filed the returns of the company after 2011-12 and the investments which were obtained by the said company using the name was also not returned by the said company to its investors.
- Chandra Shekhar Sabat being the contributory and the promoter of the company and the person who was always at the helm to the affairs of the company had actually incorporated the company with the mala fide motive of making people invest in the company using his name and later dupe the investors by siphoning off the funds of the said company.
- He has filed a civil suit before the learned civil judge (junior Division) at Durgapur being T.S. No.137 of 2015 praying for a declaration and permanent injunction against Mr. Chandra Shekhar Sabat and has made SEBI as a *Proforma* defendant. The said suit is pending adjudication before the Learned Court. A copy of the plaint in the said suit has been annexed.

- He has also filed proceedings under section 200 of the code of Criminal Procedure being C.R Case no. 333 of against Chandra Sekhar Sabat before the Learned A.C.J.M. at Durgapur which is also pending consideration before the Learned Court. A copy of the petition under Section 200 of Cr.P.C has been annexed.

- In regard to the order served upon by SEBI, he has stated that since he had resigned from the company way back in 2011,he is not aware of any of the affairs of the company after that and as such cannot be made liable for the acts and/or actions of the company after his resignation.

- With reference to the paragraph no.8 of the SEBI order, he has submitted that the said company has ceased to exist and stop all activities as per his knowledge in and around our village. He was not a policy making figure in the company, he cannot say about assets and the properties.

- He has stated that Chandra Shekhar Sabat is solely responsible to refund the whole money collected through the offer of RPS as the alleged dummy Directors did not take any money there from and do not know the whereabouts of the money. He is a poor village man having no knowledge about the law in such matter and SEBI can impose any sorts of restrictions and injunction against the said company under the law.

5.6 Mr. Sandip Roy filed an affidavit through his advocate Mr. Shounak Ghosh, during personal hearing on June 26, 2015. The affidavit, inter alia, states the following:

- That Mr. Sandip Roy, is a very small businessman presently residing in village Galsi in District Burdwan. He had acquired trust and good faith among the people of his village since he was involved in various philanthropic activities.

- In the year 2011, Chandra Shekhar Sabat approached him for incorporating a company with the purpose of establishing a B.Ed college in his village. Since he had a good reputation in the society, he would be the face of the company.

- The company was incorporated. During the incorporation of the company, his digital signature was prepared by Chandra Shekhar Sabat who told that the same were required for various papers to be filed online in the Ministry of Corporate Affairs website for incorporation of the company.
- He was inducted as a director of the company. After the Company was incorporated. RPS were issued to fund B.Ed College.
- He resigned on November 28, 2011 following stark differences that grew between him and Chandra Shekhar Sabat. However, he left the digital signature with Chandra Shekhar Sabat as necessary formalities have to be complied with.
- Chandra Shekhar Sabat was continuing to use his name as the face of the company even after receipt of his resignation letter, therefore he again wrote another letter April 09, 2012 (copy annexed) making it clear that he is resigning from the Board of Directors with immediate effect. Thereafter he has not kept any touch with the said company and continued with Tea selling business in small shop room which is his family business.
- The financial affairs of the company was never looked after by him and the same was always managed by Chandra Shekhar Sabat
- His lawyer on verifying the documents filed before the RoC had found that Chandra Shekhar Sabat actually used his digital signature to file several documents which were not intended to be filed by him (Para 17 of the affidavit identifies those documents).
- Chandra Shekhar Sabat and/or the other directors of the company has not even filed the returns of the company after 2011-12 and the investments which were obtained by the said company using the name was also not returned by the said company to its investors.
- Chandra Shekhar Sabat being the contributory and the promoter of the company and the person who was always at the helm to the affairs of the company had actually incorporated the company with the mala fide motive of making people

invest the company using his name and later dupe the investors by siphoning off the funds of the said company.

- He has filed a civil suit before the learned civil judge (Junior Division) at Durgapur being T.S. No.137 of 2015 praying for a declaration and permanent injunction against Mr. Chandra Shekhar Sabat and has made SEBI as a Proforma defendant. The said suit is pending adjudication before the Learned Court. A copy of the plaint in the said suit has been annexed.
- He has also filed proceedings under section 200 of the code of Criminal Procedure being C.R Case 333 of against Chandra Sekhar Sabat before the Learned A.C.J.M. at Durgapur which is also pending consideration before the Learned Court. A copy of the petition under Section 200 has been annexed.
- In regard to the order served upon by SEBI, he has stated that since he had resigned from the company way back in 2011 ,he is not aware of the affairs of the company after that and as such cannot be made liable for the acts and/or actions of the company after his resignation.
- With reference to the paragraph no.8 of the SEBI order, he has submitted that the said company has ceased to exist and has stopped all activities as per his knowledge in and around their village. Further, he has submitted that as he was not a policy making figure in the company, he cannot talk about the assets and the properties.
- He has stated that Chandra Shekhar Sabat is solely responsible to refund the whole money collected through the offer of RPS as the alleged dummy Directors did not take any money there from and do not know the whereabouts of the money. He is a poor village man having no knowledge about the law in such matter and SEBI can impose any sorts of restrictions and injunction against the said company under the law.

5.7 Further, Mr. Sandip Roy has submitted an affidavit of his assets (as enclosed). In the said affidavit, he affirmed that he has not received any money from the

Company except for the meagre salary.

5.8 I have considered the allegations, replies, documents downloaded from MCA 21 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?

6.1 *Whether the company came out with the Offer of RPS?:* I have perused the interim order dated March 20, 2015 for the allegation of Offer of RPS. The company and its directors have not disputed the said issuance by way of any oral or written representations.

6.2 I have also perused the documents/ information obtained from the Form 2 filed by the company in the ten instances as mentioned in Table 2. On perusal of the form 2 in the said 10 instances and the list of allottees, I find that the Company has filed Form 2 in respect of those ten instances and as per the said number of Form 2s, the Company has collected money and issued 16,64,047 preference shares to 1,272 persons and raised an amount of Rs. 1,66,40,470. However, on perusal of the Form 2 filed for the Allotment dated March 31, 2012, I find that the Company has recorded in the column meant for the total number of the preference shares paid up as on the date, figure of 16,71,697 with the paid up preference share capital of Rs. 1,67,16,970. This shows that there is a difference of 7,650 preference shares for which no Form 2 has been filed. Therefore, I hold that the Company as on March 31, 2012 had issued 16,71,697 RPS of which 16,64,047 preference shares were issued to 1,272 persons with the collection of Rs. 1,66,40,470 and no Form 2 has been filed in respect of 7650 preference shares for an amount of Rs. 76,500.

7.1 *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).”

7.2 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 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.

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 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. (Emphasis supplied).

7.3 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.

7.4 In the instant case, since the offer of RPS has been made by HUM and allotment to more than 49 persons in respect of the allotments in serial Number 8 to 10 of Table No.2, the offer of RPS falls within the first proviso of section 67(3) of Companies Act,1956. As far as the allotments made to less than 50 persons on various dates as shown in serial no. 1-7 of Table No.2 is concerned, I find that allotments were split into numbers which is less than 50 over a short span of period. 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.

7.5 As far as the issuance to less than 49 persons as mentioned in serial no. 1-7 of Table No.2, 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 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.

7.6 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.

7.7 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 produced any record to show that HUM 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, HUM 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.

7.8 Further, by making a deemed public issue, HUM 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.

7.9 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, HUM has contravened the said provisions. HUM has not provided any records to show that the amount collected by HUM are kept in a separate bank account. Therefore, I find that HUM 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.

7.10 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"

7.11 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.

7.12 In view of the forgoing findings, I am of the view that HUM 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.

8.1 *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.

8.2 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.

8.3 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.

8.4 Reference may also be made to the ratio of the Hon'ble High court of Madras in *Madhavan Nambiar 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".

8.5 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."

8.6 In the *above* context of law, it is noted that Shri Subhas Kundu and Mr. Subhasish

Pandey in their initial replies dated April 8, 2015, stated that both of them were appointed by Shri Sandip Roy as ordinary employee of the company. It was submitted in the said letters by both of them, that they were asked by Shri Sandip Roy to sign a few blank papers and the same were done by both of them in good faith and both of them found foul play by high ranked officials of the company within four months of joining and both of them went to Sandip Roy who behaved rudely with them. On that, both of them signed on the printed piece of paper which was told by Shri Sandip Roy as Resignation letter.

8.7 However, this version was changed by both by Shri Subhas Kundu and Mr. Subhasish Pandey in their affidavits filed during the personal hearing. In the affidavits, there is no mention about Shri Sandip Roy. Instead, it is stated therein that they were mistreated by Mr. Chandra Shekhar Sabat and stark difference started between them and Mr. Sabat. Mr. Chandra Shekhar Sabat caused both of them to sign resignation letter written in English, though they can only read and write Bengali.

8.8 The point that is worth mentioning here is an entirely new and contradictory version is placed before me. The fact that there is a contradiction on the person to whom the resignation letter was given and whether the same was printed or written in English and in respect of the person who required the same to be given, raises the issue of credibility of the statements.

8.9 This is further strengthened by the fact of filing of civil suit No. 137/ 2015 by Sandip Roy before Hon'ble Civil Judge (junior Division) at Durgapur on his behalf and on behalf of Shri Subhas Kundu and Mr. Subhasish Pandey espousing the version mentioned in the affidavit filed before SEBI.

8.10 In the said civil suit, an averment has been made that the digital signature of the Shri Sandip Roy was used by Chandra Sekhar Sabat without the consent of Shri Sandip Roy for *malafide* intention. The said suit had been filed with the declaration that Shri Chandra Shekhar Sabat is the sole founder promoter and contributory and is in the management and affairs of the Company and with a further declaration that

the Company and Shri Chandra Shekhar Sabat are jointly and severally liable to pay all the public money (Rs. 1,67,16,970).

8.11 It is also submitted by Shri Sandip Roy, Shri Subhas Kundu and Mr. Subhasish Pandey that they have filed criminal complaint (C.R Case No 333 of 2015) under section 200 of the Code of Criminal Procedure against Chandra Sekhar Sabat before the Learned A.C.J.M. at Durgapur. However, on perusal of the enclosures annexed along with their affidavits, I find that C.R Case No 333 of 2015 had been filed only by Shri Sandip Roy and not by Shri Subhas Kundu and Mr. Subhasish Pandey. Further, the said criminal complaint had been filed arraying not only Shri Chandra Shekhar Sabat as accused but also, arraying the Company, Shri Prabhat Chatterjee, Shri Suranjan Kar and Shri Nasirul Islam Seikh. The complaint alleges forgery and fraud by the accused. There is no allegation in the Civil suit that the digital signatures of Shri Subhas Kundu and Mr. Subhasish Pandey have been misused.

8.12 In this context it is noted that as per section 20A of the SEBI Act, "no civil court shall have jurisdiction in respect of any matter which the Board or the Adjudicating Officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board or the Adjudicating Officer by, or under, this Act".

8.13 I note that that SEBI has been entrusted with the power to pass refund of the money collected in violation of public issue norms. As discussed earlier, the determination of liability of persons who are required to refund the money also falls within SEBI's jurisdiction. As a necessary corollary, determination as to the extent of refund, the method of refund, the consequence of failure to refund also falls within the statutory duty and powers of SEBI. However, above said civil suit has been filed by Shri Sandip Roy for the declaration of liability that Company and Shri Chandra Shekhar Sabat are jointly and severally liable to pay all the public money (Rs. 1,67,16,970). It shows very clearly the plaintiff is agitating a cause of action over which section 20A of SEBI Act applies.

8.14 In this context, reference may be made to the observation made in the judgment dated December 19, 2012 rendered by the Hon'ble high court of Calcutta in *SEBI vs. Satya Ranjan Baidya*,

> "….Section 20A of the said Act of 1992 provides that no civil court shall have jurisdiction in respect of any matter over which the Securities and Exchange Board of India (SEBI) is empowered by, or under, such Act to pass any order…
>
> …Notwithstanding the several decorative reliefs adorning the plaint to disguise the action as genuine and some of them being ostensibly directed against the first defendant, it is evident that the substance of the action is to negate the orders passed by the SEBI in public interest in discharge of its statutory duties and to arrest the corrective measures sought to be put in place by the watchdog…"

8.15 Therefore, in exercise of powers under section 55 of the Companies Act, read with section 11(1), 11(4), 11A and 11B of SEBI Act, I hold that HUM and its Directors, viz., Shri Subhas Kundu, Shri Subhasish Pandey, Shri Suranjan Kar, Shri Chandra Shekhar Sabat and Shri Nasirul Islam Seikh are responsible for the non-compliance of the above provisions. I note that *SEBI is a pro-forma party in the matter*. ***Therefore, the finding regarding the liability as above and the position of law enunciated under Section 20A of SEBI Act, shall be brought to the knowledge of the Hon'ble Civil Court for its consideration. Moreover, no order of stay of the interim order by the Hon'ble Civil court in Civil Suit No. 137/ 2015, was brought to my notice.***

8.16 However, as far as Shri Sandip Roy is concerned, though he has disputed his digital signatures in the Complaint, he stated in his reply that he had filed a resignation letter as director on November 28, 2011. The copy of letter dated November 28, 2011 was not annexed along with his written submissions. Instead copy of the subsequent letter of resignation letter dated April 09, 2012 was annexed. However, the letter dated November 28, 2011 was annexed vide letter dated October 10, 2014

in response to the SEBI's letter dated September 30, 2014 seeking information from him. Even if his own version is accepted, he has been a director till November 28, 2011. Therefore, he is also liable as director for the non-compliances, as there is no case that he took the necessary due diligence for preventing the non-compliance of public issue norms.

8.17 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 Sandip Roy	21/12/2010	Continuing
2	Shri Chandra Shekhar Sabat	28/07/2011	Continuing
3	Shri Nasirul Islam Seikh	28/07/2011	Continuing
4	Shri Subhas Kundu	22/03/2011	28/07/2011
5	Shri Subhasish Pandey	22/03/2011	28/07/2011
6	Shri Suranjan Kar	28/07/2011	31/12/2011

8.18 Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey and Shri Suranjan Kar were serving as director 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.

8.19 The fact that Shri Subhas Kundu, Shri Subhasish Pandey, resigned on July 28, 2011 and Shri Suranjan Kar resigned on December 31, 2011, or Shri Sandip Roy, even if it is assumed that he resigned on November 28, 2011, does not take away their liability for the violations committed.

8.20 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 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, they are 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

8.21 Regarding the direction in the interim order to the effect that HUM and its abovementioned 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 in its letters dated September 30, 2014 and November 14, 2014, I find that except Shri Sandip Roy, HUM and other directors have not provided the information**.** ***Therefore, SEBI may initiate appropriate proceeding as per law for non-compliance of the interim order.***

10.1 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 HUM and its directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, and Shri Suranjan Kar, 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.

11.1 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, Hum Projects Limited and its Directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, and Shri Suranjan Kar, 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) Hum Projects 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) Hum Projects Limited and its Directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, Shri Suranjan Kar, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) 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, Hum Projects Limited and its Directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, Shri Suranjan Kar, 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) Hum Projects Limited and its directors namely, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, Shri Suranjan Kar are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

g) In case of failure of Hum Projects Limited and its Directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, and Shri Suranjan Kar, 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) Hum Projects Limited and its Directors, Shri Sandip Roy, Shri Chandra Shekhar Sabat, Shri Nasirul Islam Seikh, Shri Subhas Kundu, Shri Subhasish Pandey, and Shri Suranjan Kar, 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.

12.1 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.

12.2 Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

12.3 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.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : December 11th, 2015
Place: Mumbai