BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OFINDIA
ADJUDICATION ORDER NO. EAD/BJD/BKM/ 100 /2017-18

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

M/s. Indus Weir Industries Limited (PAN: Not Available)

BACKGROUND

1. On the information that M/s. Indus Weir Industries Limited (hereinafter referred to as IWIL/company/Noticee) had mobilized funds in the period from financial year 2010-11 to 2013-14 through issuance of redeemable preference shares (hereinafter referred to as "RPS"), Securities and Exchange Board of India (hereinafter referred to as 'SEBI) had conducted an examination whether Noticee had complied with the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made there.

2. Upon examination, it was observed that the Noticee was mobilizing the funds through different modes and schemes as under:

TERMS & CONDITIONS OF REDEEMABLE PREFERENCE SHARE

PLAN	**A**	**B**	**C**	**D**	**E**	**F**
Issue Price Minimum 100 Preference Shares	1000	1000	1000	1000	1000	1000
Redemption Period	3 Yr	4 Yr 6M	6Yr 3M	8Yr	10Yr	12Yr 6 M
Redemption Premium	700	1000	2000	3000	5000	9000

Redemption Amount	1700	2000	3000	4000	6000	10000

3. I note that the Noticee was mobilizing the funds by issuing RPS to investors and also running two schemes by nomenclature Advance Product Scheme (APS) and Monthly Investment Scheme (MIS).

4. It was noted that the Noticee had mobilized a substantial amount by issuance of lakhs of RPS from 32,454 investors during the year from 2010-11 to 2013-2014. The details of amount mobilized along with number of investors are mentioned in the table below.

Financial Years	**Redeemable Preference Shares**	
	No of Investors	**Amount Collected**
2010-11	2,846	2,00,66,200
2011-12	9,852	8,98,15,200
2012-13	15,905	17,07,23,330
2013-14	3,851	5,33,81,500
Total	**32,454**	**33,39,86,230**

5. It was noted that Noticee had failed to comply with the provisions of issue and listing of RPS while mobilizing money from investors. It was, therefore, alleged that the Noticee had violated Regulation 4(2) & 16 of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations 2013 (hereinafter referred to as Issue and Listing Regulations 2013).

6. It is observed that the copies of the brochures pertaining to the RPS and mobilizing of fund by different schemes were forwarded to the Reserve bank of India (RBI) vide letter dated August 13, 2013 to consider examining whether the said acceptance of deposits by the company was in accordance with the regulatory framework as prescribed by RBI. Since the Company was an unlisted company and was raising money, inter alia, through issue of RPS, the copies of the brochures pertaining to the schemes were forwarded to the Registrar of Companies (ROC), New Delhi vide letter dated August 13, 2013 seeking the information, inter alia,

names of all the past and present directors of the company since incorporation along with their particulars such as addresses, father's name, e-mail id, phone no. etc, period of directorship of each director, Changes in directorship since incorporation of the company, Copies of Memorandum and Article of Association, Annual Returns, Form No(s) 32, Balance sheets, Certificate of Incorporation as well as any other document filed by the company with ROC office, if any. Since the operation of various schemes run by the company, prima facie, appeared to be the Multi-Level Marketing Schemes(MLM), the matter was also referred to the Government of NCT of Delhi vide letter dated August 14, 2013 for their actions in the interest of the depositors.

APPOINTMENT OF ADJUDICATING OFFICER

7. Based on the findings of the examination, SEBI has initiated Adjudication Proceedings and Ms. Anita Kenkare, General Manager was appointed as the Adjudicating Officer vide order dated March 16, 2016 under section 15 I of SEBI Act, 1992 to inquire into and adjudge the alleged violation of Regulation 4(2) & 16 of Issue and Listing Regulations 2013 by IWIL. Consequent to the inter department transfer, I was appointed as the Adjudicating Officer vide order dated August 08, 2017 to inquire into and adjudge the alleged violation of Regulations 4(2) and 16 of Issue and Listing Regulations 2013 by IWIL.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/BKM/25042/2017 dated October 10, 2017 was issued to the Noticee under Rule 4 of SEBI Adjudication Rules 1995 to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15 HB of the SEBI Act for the violations of Regulations 4(2) and 16 of Issue and Listing Regulations 2013.

6. The SCN was sent to the last known address of the Noticee, as available on records. However, the same returned undelivered. Thereafter, the SCN was sent to the Noticee by way of affixture in terms of Rule 7(c) of the Adjudication Rules, which

also could not be affixed as the Noticee had left the place of the venue. The copy SCN was uploaded on SEBI website and the SCN as well as hearing notice for personal hearing in the interest of natural justice were published in the Times of India as well as in Nav Bharat Times, a daily Hindi regional newspaper of Delhi edition on November 28, 2017. However, the Noticee had neither submitted its reply towards the SCN nor availed the opportunity of hearing on the scheduled date i.e. December 22, 2017. It is also noted from the available record till date that no reply or communication has been received from the Noticee towards the SCN or Hearing Notice.

7. Keeping the aforesaid in mind, I am of the opinion that the SCN and the Hearing Notice have been duly served upon the Noticee in accordance with the provisions of Adjudication Rules relating to service of notice. However, Noticee failed to file its reply to SCN and also failed to avail the opportunity of hearing granted to it. I am also of the view that principles of natural justice have been complied with. Therefore it is necessary to conclude the matter with any further delay. I consider it appropriate to proceed further in the matter ex-parte on the basis of material available on record, in the interest of justice.

CONSIDERATION OF ISSUES

8. On careful perusal of the material available on record, I note that the issues that arise for consideration in the present case are:

   a) *Whether the Noticee has violated Regulations 4(2) and 16 of Issue and Listing Regulations 2013?*
   b) *Does the violation, if any, attract monetary penalty under Sections 15 HB of SEBI Act?*
   c) *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

9. Before proceeding further, I would like to refer to the relevant allegedly violated provisions of the law which read as under:

ISSUE REQUIREMENTS FOR PUBLIC ISSUES

General Conditions

Regulation 4 (2). No issuer shall make a public issue of non-convertible redeemable preference shares unless the following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations, -

(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein: Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange: Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange; Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation; (b) it has obtained in-principle approval for listing of its non-convertible redeemable preference shares on the recognized stock exchanges where the application for listing has been made;

(c) it has obtained a credit rating from at least one credit rating agency registered with the Board and is disclosed in the offer document: Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

(d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the non-convertible redeemable preference shares that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder;

(e) the minimum tenure of the non-convertible redeemable preference shares shall not be less than three years; and

*(f) the issue has be*en assigned a rating of not less than ―AA-‖ or equivalent by a credit rating agency registered with the Board.

LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCESHARES

Mandatory listing

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

(2) The issuer shall comply with conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange where such non-convertible redeemable preference shares are sought to be listed.

(3) Where the issuer has disclosed the intention to seek listing of nonconvertible redeemable preference shares issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such non-convertible redeemable preference shares.

FINDINGS:

10. I find from the submission of the Noticee that the Noticee as a company is incorporated in 2010 and is registered in Delhi (Registration Number 207057) and have its registered office at 74/8, Defence Encalve, Part-I, Mohan Garden, Uttam Nagar, New Delhi. The Head Office of the company is at FF-42, 3rd Floor, Mangal Bazar Road, Near V3S Mall, Laxmi Nagar, Delhi. The website is at www.indusweir.com. The company is having offices in 55 locations across India. As per MCA website, the authorised and paid up capital of the company is Rs. 450,000,000 and Rs. 281,105,880 respectively. The company is a part of the Indus Group which has total nine companies namely Indian Animal Farming Private Limited, Indus Retailers Pvt Ltd, Indus Cine Production Pvt. Ltd, Indus MD Tech Pvt. Ltd, Indus Charitable Trust Pvt. Ltd., Inn Indus Pvt. Ltd., Indian Multi Services, Indus PVC Pvt. Ltd and Indus Valley Agro Industries Ltd.

11. I note that Noticee did not file any reply to SCN although same was served on them at the last known address and public advertisement issued thereafter in accordance with the Adjudication Rules. Therefore, in order to conclude the matter in the interest of justice, for the purpose of current proceedings, I am considering the submissions made by the Noticee vide letter dated September 12, 2013 where documents and detailed explanation were submitted in reply to SEBI letter dated

August 13, 2013. Further, Noticee had also stated in its replies to SEBI letters dated December 09, 2013, December 24, 2013 and July 10, 2014 that its submission made by September 12, 2013 be considered as substantive submission.

12. As stated above, sufficient opportunities to submit reply and appear in personal hearing have been given to the Noticee, none of which were availed by the Noticee. Therefore, I find it pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed, "… the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them". I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that, "...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..." Thus, I am of the view that the allegations levelled in the SCN and the evidences enclosed therewith are not in dispute in absence of any reply from the Noticee.

13. I find that the company has mobilised funds from Investors via three different methods namely:

i. Mixture of Recurring deposit cum product scheme and
ii. Monthly investment scheme.
iii. Issue of shares on private placement basis flouting private placement rules (Redeemable Preference Share).

14. It is observed that the Noticee raised varying amount from huge number of investors as observed from the list of investors provided by the company as under:

Advance Product Scheme		
S. No.	**Financial Year**	**No. of Investors**
1.	2011-12	4299
2.	2012-13	2658
Monthly Investment Scheme		
1.	2010-11	110
2.	2011-12	707
3.	2012-13	2620
4.	2013-14	448(Rs. 42,073,000/-)

Mixture of Recurring Deposit cum Product Scheme (Advance Product Scheme):

15. This scheme offered 5 plans differentiated by the tenure of deposit. The scheme was available from 1 year to 5 years. Fixed rate of return was offered in the deposit scheme. At the end of the tenure an option was given to the investors to encash their investment or take specified product. Again this was a multi-level scheme wherein there was 15 layer structure of marketing team was created who were offered varying returns for different tenure at specified levels.

Monthly investment scheme:-

16. In the monthly investment scheme plans were offered to investors as under.

Plan A:-

The scheme is for three different tenures of 3, 6 and 10 months. A deposit of Rs. 25000 is to be taken for in fixed installments of Rs. 325, Rs. 450 and Rs. 550 for the above mentioned tenures respectively. The scheme is offering a fixed return of 3%, 6% and 10% for above three tenures.

Plan B:-

The scheme is for three different tenures of 3, 6 and 10 months. A deposit of Rs. 50000 is to be taken for in fixed installments of Rs. 700, Rs. 950 and Rs. 1200 for the

above mentioned tenures respectively. The scheme is offering a fixed return of 5%, 10% and 15% for above three tenures.

Plan C:-

The scheme is for three different tenures of 3, 6 and 10 months. A deposit of Rs. 25000 is to be taken for in fixed installments of Rs. 325, Rs. 450 and Rs. 550 for the above mentioned tenures respectively. The scheme is offering a fixed return of 3%, 6% and 10% for above three tenures.

17. Details of the different schemes and plans as observed from the brochures are as under:

PRODUCT & TOURISM

PLAN –A (12 Months)

M/D	**T/D**	**Del.**	**PV.**	**PRODUCT**
100	1200	13	1356	CD
200	2400	13	2712	DVD
300	3600	13	4068	Colour Mobole
500	6000	13	6780	14' Samsung Flat TV
1000	12000	13	13560	Inverter

PLAN –B (24 Months)

M/D	**T/D**	**Del.**	**PV.**	**PRODUCT**
100	2400	25	2880	LG DVD
200	4800	25	5760	14' C/TV
300	7200	25	8640	LG21' TV
500	12000	25	14400	Computer
1000	24000	25	28800	Computer

PLAN - C (36 Months)

M/D	T/D	Del.	PV.	PRODUCT
100	3600	37	4608	LG DVD
200	7200	37	9216	Water Purifier
300	10800	37	13824	Dub. Door Refg.
500	18000	37	23040	Computer
1000	36000	37	46080	Two Wheeler

PLAN – D (48 Months)

M/D	T/D	Del.	PV.	PRODUCT
100	4800	49	6576	14′ LG Flat TV
200	9600	49	13152	Inverter
300	14400	49	19728	Dub. Door Refg.
500	24000	49	32880	Laptop
1000	48000	49	65760	Two Wheeler

PLAN – E (60 Months)

M/D	T/D	Del.	PV.	PRODUCT
100	6000	61	8760	Colour TV 21′
200	12000	61	17520	Desktop
300	18000	61	26280	Acer Laptop
500	30000	61	43800	Sony Laptop
1000	60000	61	87600	Karizma Bike

NEW M I PLAN

(MONTHLY INCOME PLAN)

		M I (Monthly Income)			
PLAN	**Deposit In Amount (In Rupees)**	**Term (In Year)**	**Bonus (In %)**	**Bonus (In %)**	**These payments will be on 1st January 2013**
A	25,000.00	1.6	0%	Plan Closed	Plan Closed
B	25,000.00	3	5%	3%	325.00
C	25,000.00	6	10%	7%	450.00
D	25,000.00	10	15%	10%	550.00
PLAN	**Deposit In Amount (In Rupees)**	**Term (In Year)**	**Bonus (In %)**	**Bonus (In %)**	**These payments will be on 1st January 2013**
A	50,000.00	**1.6**	**0%**	Plan Closed	Plan Closed
B	50,000.00	3	5%	3%	700.00
C	50,000.00	6	10%	7%	950.00
D	50,000.00	10	15%	10%	1200.00
PLAN	**Deposit In Amount (In Rupees)**	**Term (In Year)**	**Bonus (In %)**	**Bonus (In %)**	**These payments will be on 1st January 2013**
A	1,00,000.00	**1.6%**	**0%**	Plan Closed	Plan Closed
B	1,00,000.00	3	5%	3%	1400.00
C	1,00,000.00	6	10%	7%	1900.00
D	1,00,000.00	10	15%	10%	2400.00

18. With respect to aforesaid schemes, SEBI vide letters dated August 13, 2013, forwarded copies of the brochures pertaining to the schemes to the Reserve bank of India (RBI) to examine whether the said acceptance of deposits by the company was in accordance with the regulatory framework as prescribed by RBI. Further, SEBI, vide letter dated August 14, 2013 referred the matter to the Government of NCT of Delhi to examine whether various schemes run by the company are Multi-Level Marketing Schemes (MLM) and take necessary actions in the interest of the depositors.

19. In the instant proceedings, the charges before me to be inquired and adjudged, as per SCN, are as under:

(i) Issuance and Redemption of Redeemable Preference Shares

(ii) Noncompliance of conditions as on the date of filing of draft offer document and final offer document as provided

(iii) Noncompliance of conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange

20. It was observed that the Noticee had mobilized a substantial amount from 32,454 investors by issuance of lakhs of NCRPS during the year from 2010-11 to 2013-2014. The details of amount mobilized along with number of investors are mentioned in the table below.

Financial Years	**Redeemable Preference Shares**	
	No of Investors	**Amount Collected**
2010-11	2,846	2,00,66,200
2011-12	9,852	8,98,15,200
2012-13	15,905	17,07,23,330
2013-14	3,851	5,33,81,500
Total	**32,454**	**33,39,86,230**

8. SEBI had sought from IWIL vide letters August 13, 2013, December 09, 2013, December 24, 2013 and July 10, 2014 , certain information, inter alia, the following information and documents, related to issuance of RPS:

i Copy of letter of offer, prospectus/brochure, application form, advertisement circulated by the company and any other document/ details with regard to the redeemable preference shares issued by IWIL.

ii The regulatory approvals of accepting deposits under the companies (Acceptance of Deposits) Rules, 1975.

iii Declaration of the effect that the above mentioned deposits under Advance Product Scheme (APS) & Monthly Investment Scheme (MIS) have been invited and accepted in terms of the rules and laws relating to Companies (Acceptance of Deposits) Rules, 1975.

iv Information with respect to the total no. of persons/investors/depositors etc., to whom RPS were issued with details of opening of issue and closure details.

v Total no. of persons/investors/customers/depositors etc., to whom, as claimed, refunds have already been made and the mode of refund, with supporting bank a/c details of the company.

9. Vide letter dated September 12, 2013, the Noticee submitted the documents as under:

(i) Sample of letter of offer/application form issued by the Noticee

(ii) Copy of Annual Returns & Annual Reports filed with the Registrar of Companies (ROC) and all forms filed with the ROC in relation to the issuance of redeemable Preference Shares since incorporation, Copies of the Tax Returns filed with the Income Tax Department.

(iii) Copies of Board resolutions authorizing the issuance of redeemable Preference Shares-necessary board resolution.

(iv) Details of opening and closing of the issue with the quantum of funds issued.

(v) Entire list of allottees with their complete details like, Name, Address, No Preference share issued and folio no, distinctive no and Certificate number.

(vi) Further the Noticee submitted that the scheme stands permanently closed with effect from August 10, 2013 and it stopped raising any money from public by any nature, earlier, it had issued redeemable preference shares and additional two other schemes.

10. Further the Noticee submitted that it started the process of redemption of preference shares and repaying the amount back to investors collected through other schemes after passing the necessary resolutions after Hon'ble Supreme Court judgment in the matter of Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal No. 98833 of 2011) (Sahara Case) and closure of other similar nature companies in its vicinity.

Issuance and Redemption of Redeemable Preference Shares

11. I note from records that Noticee printed individual letter of offer and corresponding application forms. The letter of offers states as under highlights of Redeemable Preference Shares and their mission. It is also mentioned as private placement of Redeemable Preference Shares of Rs 10 each. The extract of the letter of offer is as under:

" ……. Issue open on : 01-March-2013

ISSUE OF REDEEMABLE PREFERENCE SHARES

Private Placement of Redeemable Preference Shares of Rs. 10/- each….

Dear Sir,

IWIL is privately placing Redeemable Preference Shares. We invite you to participate in the offer on the terms listed herein…..

PLAN	**A**	**B**	**C**	**D**	**E**	**F**
Issue Price Minimum 100 Preference Shares	1000	1000	1000	1000	1000	1000
Redemption Period	3 Yr	4 Yr 6M	6Yr 3M	8Yr	10Yr	12Yr 6 M
Redemption Premium	700	1000	2000	3000	5000	9000

Redemption Amount	1700	2000	3000	4000	6000	10000

REDEMPTION:

The principal & redemption premium shall be paid on maturity on surrender of the preference share certificate. The duty discharged shares certificate may be surrendered to the company in advance i. e. six months before the due date, to enable the company ton issue repayment Warrant/DD in time."

12. The letter of offer along with application form had application number imprinted on it. The application form had various details to be filled in by the applicant. It also had Purpose of Issue, Authority of Issue, Who can Invest, Size of Issue, Right to Reject or Accept Application, Tile and Transferability of Redeemable Preference Share, Transfer, Mode of Payment and Allotment mentioned along with General Instructions overleaf of application form.

13. I note from letter of offer and application form (application no 160766 and 160778) on record that the issue opened on March 1, 2013, which incidentally is the same day when the Board of Noticee had passed resolution regarding issuance of Redeemable Preference shares. It is highly unlikely that Noticee had managed to print around 1,60,766 applications on the same day when the Board of Noticee passed its resolution. Such an observation hints at the possibility that letter of offers and application forms were printed even before Board Resolution was passed in its Board meeting held on March 1, 2013.

14. I also note from letter of offer that it was mentioned as private placement of shares, whereas there was no mention of name of the applicant to whom such letter of offer and application form was address to. Rather, I note that around 1,60,766 blank letter of offers and application forms were already printed which suggests that letter of offers were proposed and meant to be made to more than 49 applicants. Further, it is also evident from the own submission of Noticee that it had allotted redeemable preference shares to more 33,000 investors. Section 67 of the Companies Act, 1956 (the "Companies Act") deals with the offers made by a company to subscribe to its

shares and debentures. As per proviso to Section 67 (3) of the Companies Act, if the offer to subscribe shares or debentures has been given to 50 or more persons then such offer shall be construed as public offer. The Unlisted Public Companies (Preferential Allotment) Rules, 2000 prohibits an unlisted public company from inviting more than 49 persons from subscribing to its shares and debentures. Thus, I conclude that Issuance of Redeemable Preference Shares by Noticee was not private placement as mentioned in the letter of offer but is a public offer as invitation was made to more than 49 investors.

15. Based on the examination of the list of allottee list on record, I have noted that Noticee failed to adhere to its own procedures laid down in the application form and also failed to adhere to general regulatory procedures and requirement relating to allotment and refund of shares manner. Few of such observations as noted form the list of allottees are mentioned below.

    a. Instances where same persons with multiple applications and allotted multiple times. Few instances are mentioned in the table below:

Name Of the Investor	**Address**	**Certificate nos.**	**No of times applied and alloted**	**Amount**	**Interest**	**Total Amount**	**Cash Or Draft**
Urmila Devi	Vill-Erki Post+Ps-Dist – Aurangabad, Bihar	0043/24482- 0043/24761	**2**	10000 10000	2979 2979	12962 12962	Cash Cash
Sarita Devi	Vill-Keuti,Post-Barbigha,Ps-Keuti,Dest-Sheijhpura State Bihar	0019/15653 0019/15697	**2**	10000 10000	3607 3607	13607 13607	Cash Cash
Prabhawati Devi	Vill-Bramchary Post Sherpur Ps Maner Dist Patna State Bihar	0010/13790 0010/13791	**2**	10000 10000	4011 4011	14011 14011	Cash Cash
Rubi Devi	Vill Dihara Post - Khajuri Ps Naubatpur dist Patna state Bihar	0028/28596 0028/32954 0028/37736 0028/40022 0028/42274 0028/44694 0028/46340	**7**	2500 2500 2500 2500 2500 2500 2500	716 716 716 716 716 716 716	3216 3216 3216 3216 3216 3216 3216	Cash Cash Cash Cash Cash Cash Cash
Shiv jee Kumar	Vill-Erki Post+Ps-Dist - Hehanabad State-Bihar	0045/22877- 0045/22879 0045/22886	3	10000 10000 10000	3067 3067 3067	13067 13067 13067	Cash Cash Cash

16. From the above observations, I note that Noticee had not exercised due diligence with respect to its own procedure laid down in application form, while processing the applications and allotment. The applicant who were supposed to be rejected have been accepted. The applications should be accompanied by DD / Cheque only whereas there is no evidence before me suggesting that application money was received in Cheque / DD. Rather, I note that entire refunds claimed to have been made by the noticee were made only in cash which strengthens the suspicious that application money could have also been received in cash which was not in accordance with its own procedure laid down for processing of application. Had the application money received in Cheque / DD, there would not have been requirement for notice to issue refund in cash instead of cheque / DD. Repetitive pattern of multiple first name with same surnames hints at the possibility of absence of any supporting KYC documents taken at the time of allotment and refund. I am of the view that there is a need and necessity to verify the genuineness of the refunds made to investors, as they were claimed to be paid in cash.

17. As per Regulation 13 of SEBI (issuance of Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013, issue may decide the amount of minimum subscription which it seeks to raise and disclose the same in the offer documents. In the event of non-receipt of minimum subscription, all the application money received in the public issue shall be refunded forthwith to the applicants. In the event the application monies are refunded beyond eight days from last day of the offer, then such amounts shall be refunded together with interest at such rate as may be set out in offer documents which shall not be less than 15% per annum.

18. I have noted that size of offer as stated in the offer document was Rs 44 crores with an option to retain over subscription. The issue opened on March 1, 2013 whereas there was no mention of the closure date which implies that it was continuous issue without any closure date. Based on its admitted submission of Noticee, I note that it had collected around Rs 17 cores during 2012-13 and Rs 5.33 crores during 2013-14. Similarly, it had also collected Rs 8.98 cores during 2011-12 and Rs 2 crores during 2010-11. I note that Noticee had collected money from 15,900 investors

during 2012-13 and 3,851 investor during 2013-14. In the absence of closure date in the letter of offer and incomplete list of allottees, I infer that majority of investors would have been allotted (as per allotment terms stated in offer letter, allotment would be made within 60 days from the date of receipt of application) shares after June 2013 i.e after applicability of Issue and Listing Regulations 2013. It is thus evident from records that Noticee failed to mobilize the minimum subscription of 44 crores as stated in its offer document dated March 1, 2013 and therefore provisions relating to Minimum Subscription and Refund shall be applicable to the Noticee. Regulations 13 (1) and (2) of Issue and Listing Regulations 2013 states that in case minimum subscription is not attained, application monies should be refunded at the rate of interest of 15 % per annum. I note that Noticee in its Board Meeting held on August 10, 2013 had decided to refund the money collected from investors along with interest of 12 % per annum.

19. I am of the view that investors have agreed to invest in the Issue on the basis of terms and conditions stated in the letter of offer and therefore any changes in the terms of offer should have consent of the three fourth of such preference shareholders. Further, Section 55(3) of Companies Act, 2013 also provided for procedure to be followed in case company is not in a position to redeem any preference shares in accordance with the terms of issue. I see from records before me that there was no such consent taken from preference shareholders before changing the terms of issue to pre-maturely refund / redeem preference shares. Rather, it was taken unilaterally through Board Resolution in its Board meeting held on August 10, 2013. Further, I note that actual refunds claimed to have been made began in the month of July 2014 and therefore I am of the view that the provisions of 55(3) of Companies Act, 2013 shall be applicable.

Redemption of Redeemable Preference Shares

Section 55(3) of Companies Act, 2013 states as under

"Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed

preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed:

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares."

20. As per Section 80 of companies Act 1956 and Section 55 (2) of Companies Act, 2013 Preference shares can be redeemed out of
    a Profits of the company which would otherwise be available for dividend or
    b Proceed of a fresh issue of shares made for the purpose of redemption.

    Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called the capital redemption reserve account, a sum equal to the nominal amount of the shares redeemed

21. I have noted from the CA certificate issued by Rajeev Mahajan & Associates dated September 16, 2014, which was submitted by notice vide letter dated September 16, 2014, that following payments were received in the bank account of Noticee which were subsequently used for payment principal and corresponding interest to the investors towards refund.

Name of the Transferor	**Amount Transferred**
Indus Cine Production Pvt. Ltd	80,00,000
Indus Animal Farming Pvt Ltd	91,89,059
Indus Realtors Builders Ltd	48,66,514
Indus Valley Agro Industry Ltd	23,83,644
Indus PVC Pipe Pvt Ltd	4,37,285
Trade Receivable	1,72,898
Total	**2,50,49,400**

22. I note from the submissions made by the Noticee that it had received money from aforesaid group entities during the period August 8, 2014 to August 23, 2014 which was used for the purpose of repayment of principal and interest investors to 3,463 investors. The total amount claimed to have been paid is Rs 3,68,08,426 which includes principal amount of Rs 2,89,48,300 and interest of Rs 78,60,126.

23. I note from reply of Noticee vide letter dated September 12, 2013 that it had stopped raising any money from public by any nature which it had earlier raised through RPS and additional two schemes (Monthly Investment Scheme and Advance Product Scheme). It was also submitted that Noticee after Hon'ble Supreme court Judgment in the matter of Sahara case and closure of other similar nature companies in their vicinity, it had taken legal opinion regarding the its schemes and RPS and on the basis of legal opinion received, voluntarily decided to close all the three schemes and Board had decided to return all the money along with interest of 12% per year. As per the submission of Noticee, all schemes of collecting funds including the scheme of RPS were closed with effect from August 10, 2013. From the facts available on record, I note that Hon'ble Supreme Court passed its Order in the Sahara matter, on August 31, 2012 and the facts of the case are similar to the facts in the instant case. However, I note that despite such an Order in public domain, Noticee had gone ahead and issued letter of offer dated March 1, 2013 (Board Resolution dated March 1, 2013) collected Rs 17.07 crores and Rs 5.33 crores money from 3,851 shares and 15,905 investors during 2012-13 and 2013-14 respectively. Thus, I do not see any merit in the submission of the Noticee that it had stopped raising funds in view of Order passed by Hon'ble Supreme Court in Sahara Case.

24. Noticee in its submission stated that it values rural folks of India who have reposed confidence in the Noticee and that Noticee has always vindicated that confidence in all possible manner. Upon perusal of the list of allottees of RPS, I note that entire allottees appear to be from a remote places in Bihar which is also corroborated from the fact that around 3,463 allottees out of 3,487 allottee, do not have a bank account and therefore, Noticee as claimed by it, chose to refund principal along with interest

only in cash. I am of the view that Noticee had enticed gullible investors who were not financially literate to invest in markets by making false assurance regarding guaranteed return which is evident from the terms of redeemable preference shares and other two schemes which were concurrently floated at the same time. The terms of letter of Offers are as follow

TERMS & CONDITIONS OF REDEEMABLE PREFERENCE SHARE

PLAN	**A**	**B**	**C**	**D**	**E**	**F**
Issue Price Minimum 100 Preference Shares	1000	1000	1000	1000	1000	1000
Redemption Period	3 Yr	4 Yr 6M	6Yr 3M	8Yr	10Yr	12Yr 6 M
Redemption Premium	700	1000	2000	3000	5000	9000
Redemption Amount	1700	2000	3000	4000	6000	10000

25. On sample basis, I note that the rate of interest offered for Plan B and Plan D is around 22 % and 27% respectively which is quite unreasonable and high. I note that there is no business strategy or plan to demonstrate that Noticee would able to generate such high return through investments in various projects. I note that there was no mentioning about the various risk factors in the letter of offer which would have to be dealt with had it complied with the SEBI regulatory requirement stated at Issue and Listing Regulations 2013. Thus, I am of the view that Noticee had deliberately devised a scheme which was attempted to be designed not to fall within the regulatory purview in order get advantage of gullible investors by misleading them and collecting money from them. I have noted that noticee had printed more than 1 lakh letters of offers and application forms which definitely was meant for more than 49 investors and yet going ahead without complying with regulatory compliances gives a flare of its intention to escape from being monitored, supervised, and accountable to any regulatory authorities. Had, the noticee intended to issue by redeemable preference shares by complying with the laws, i.e. ICDR Regulations 2009, Companies Act and Issue and Listing Regulations 2013, gullible investor's interest would have been protected.

26. I note from the letter of offer that money collected through redeemable preference shares would be used for the purpose of investments in corporates having interest in the various sectors including Print Media, Real Estates, Hotels and Restaurants, Pharmaceuticals, Travel and Tourism. In note from the details available in MCA website that Noticee was in the business of Manufacturing (Food products and beverages) and raising money for the purpose of investment in corporates which are also their subsidiaries. There are no records before me evidencing that money had been utilized for the purpose stated in the letter of offer. In the absence of same, I cannot comment whether money has been misused / diverted to other purposes. I am of the view that had Noticee complied with the mandatory listing requirements, the proceeds collected through RPS would have been segregated and monitored and reported to investors through various disclosures required to be made to stock exchanges.

27. Pursuant to redemption of preference shares, Noticee had to file SH-7 with Registrar within 30 days of passing of Resolution along with Certified True copy of Resolution and Minutes of Board Meeting, which is admittedly not filed by Noticee.

DEEMED PUBLIC ISSUE

28. In the Sahara Case, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act , wherein it observed that –

"Section 73(1) of the Companies Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 Companies Act gives indication of what are the particulars to be stated in such a prospectus. The

consequences of not applying for the permission under sub-section (1) of Section 73 Companies Act or not granting of permission is clearly stipulated in sub-section (3) of Section 73 Companies Act. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Companies Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

29. In the facts of the instant case, since the Offers of Preference Shares were made to fifty persons or more by IWIL, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act. Thus, IWIL has failed to comply with the provisions of Section 73(1) of the Companies Act, since it has failed to ensure listing with a recognised stock exchange of the securities issued under the Offer of Preference Shares were public issues of securities.

30. Hon'ble Supreme Court of India in the matter of Sahara Case has, vide its judgment and order dated August 31, 2012 held that an offer to fifty or more persons becomes public issue by virtue of first proviso to section 67(3) of the Companies Act and thereby attracts compulsory listing as mandated under section 73 of the Companies Act.

31. In terms of section 2(36) of the Companies Act any notice, circular, advertisement or other document inviting offers from the public (50 or more persons) for subscription or purchase of any shares in or debenture of a body corporate is a prospectus and such offer/issue is public issue. It may also be added that section 56 read with Schedule II of the Companies Act emphasizes the need to comply with SEBI Act/ Guidelines (Regulations) for public issues. The Hon'ble Supreme Court, in the above mentioned Sahara case, has also confirmed that in case of public issue of shares or debentures the provisions of the Companies Act, Issue of Capital and Disclosure Requirements, Regulations, 2009 ("**ICDR** Regulations 2009") must be complied with by the companies.

32. In case of the Noticee also, it has issued shares to more than 49 investors without complying with the provision of the Companies Act, ICDR as well as the provisions of Issue and Listing Regulations 2013 on deemed public issue.

33. I note that Issue and Listing Regulation 2013 was effective from June 12, 2013. As per records, Noticee admitted mobilized funds through issuance and allotment of RPS since financial year 2010-2011 onwards till 2013-14. I also note as per the letter of offer on record that Issue was opened on March 1, 2013 for issue size of 44 Crores. I am of the view that as on the effective date of applicability of Issue and Listing Regulations, the noticee had already mobilized substantial funds through issuance of RPS without complying with mandatory requirement applicable for deemed public issue. Further, the same continued even after applicability of the Issue and Listing Regulations 2013. As per regulations 4(2) and 16 of Issue and Listing Regulations 2013, noticee had to mandatorily get the RPS, already issued since 2010-11, listed and also enter into agreement with depositories, which it failed to do.

NON COMPLIANCE OF REGULATION 4(2) OF ISSUE AND LITING REGULATIONS 2013 - ISSUE REQUIREMENTS FOR PUBLIC ISSUES

34. From the above, as concluded Noticee had offered redeemable preference shares to more than 49 investors and therefore the offer is considered as deemed public issue as observed by Hon'ble Supreme Court in Sahara Case. Since it is considered as deemed public issue, all relevant provisions Issue and Listing Regulations 2013.

35. As per Regulation 4 (2) No issuer shall make a public issue of non-convertible redeemable preference shares unless (a) the entity makes an application to one or more recognized stock exchanges for listing of such securities therein, (b) it has obtained in-principle approval for listing of its non-convertible redeemable preference shares on the recognized stock exchanges where the application for listing has been made;(c) it has obtained a credit rating from at least one credit

rating agency registered with the Board and is disclosed in the offer document: (d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the non-convertible redeemable preference shares that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder.

36. Listing on the stock exchange is mandatory with an object to maintain the fair transferability and provide an entry, exit to the investors and tracking of the performance of the company on continuous basis. Rating by the Credit rating agency does asses the fundamentals as well as the financial stability of the company which provides the vital inputs to investors to take informed decisions also highlights the risk factors. The purpose of demat is to ensure the speedy transfer of shares and to eliminate various risks associated with physical share certificates like, forgery, stolen shares etc. I note that in the instant case the Noticee not complying with the above provision has put the investors to various risk by denying them all the regulatory safeguards put in place by SEBI in interest of investors.

37. I note that the issue of redeemable preference shares was opened on March 1, 2013 as per the letter of offer, available on record. However, I note that Noticee had not submitted any information brochures, letter of offer and other relevant documents with respect to raising of funds prior to March 1, 2013 (during the period 2010 to 2013). It is admitted fact that Noticee had been issuing the redeemable preference shares since financial year 2010-11 onwards which is evident from the details submitted by Noticee vide letter dated July 24, 2014. Thus, considering the admitted facts, as mentioned in table below, I conclude that Noticee was indulged in raising money through issuance of redeemable preference shares since 2010-11.

Financial Years	**Redeemable Preference Shares**	
	No of Investors	**Amount Collected**
2010-11	2,846	2,00,66,200
2011-12	9,852	8,98,15,200

2012-13	15,905	17,07,23,330
2013-14	3,851	5,33,81,500
Total	**32,454**	**33,39,86,230**

38. I note from the table mentioned above that Notice has mobilised the funds since 2010-11 to 2013-14 from 32,454 investors. However, Noticee has neither made application to stock exchanges for listing nor obtained in-principle approval for listing of its non-convertible redeemable preference shares on the recognized stock exchanges nor obtained a credit rating nor disclosed in the offer document nor entered into the arrangement with a depository. Therefore I conclude that Noticee has violated Regulation 4(2) of Issue and Listing Regulations 2013.

NON COMPLIANCE OF REGULATION 16 OF ISSUE AND LITING REGULATIONS 2013 - LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES

39. As per Regulation 16. (1) An issuer desirous of making an offer of non-convertible redeemable preference shares to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act. (2) The issuer shall comply with conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange where such non-convertible redeemable preference shares are sought to be listed.

40. However, the Noticee as an issuer issued and allotted non-convertible redeemable preference shares to the public without making mandatory application to stock exchange to get RPS listed. Thus I conclude that the Noticee has not complied with Regulation 16 of Issue and Listing Regulation 2013.

41. I note that Issue and Listing Regulation 2013 was effective from June 12, 2013. As per records, Noticee admitted mobilized funds through issuance and allotment of RPS since financial year 2010-2011 onwards till 2013-14. I also note as per the letter

of offer on record that Issue was opened on March 1, 2013 for issue size of 44 Crores. I am of the view that as on the effective date of applicability of Issue and Listing Regulations, the Noticee had already mobilized substantial funds through issuance of RPS without complying with mandatory requirement applicable for deemed public issue. Further, the same continued even after applicability of the Issue and Listing Regulations 2013. As per regulations 4(2) and 16 of Issue and Listing Regulations 2013 Noticee had to mandatorily get the shares already issued since 2010-11 to get listed and also enter into agreement with depositories. However, the Noticee failed to comply with the condition of listing.

42. In view of the facts and circumstances of the case and various observations made above, I conclude that the entire money raised through RPS by the Noticee since 2010-11 i.e. around Rs 33.5 crores, was in violation of regulations 4(2) and 16 of Issue and Listing Regulations 2013.

43. The aforesaid violations of Regulations 4(2) and 16 of Issue and Listing Regulations 2013 by the Noticee make it liable for penalty under Section 15 HB of the SEBI Act which reads as under:

Penalty for contravention where no separate penalty has been provided.

15HB of SEBI Act 1992.

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees

44. *The Hon " ble Supreme Court of India in the matter of Chairman, SEBI v.. Shriram Mutual Fund {[2006] 5 SCC 361} held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

45. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of SEBI Act which reads as under:

"15J ***- Factors to be taken into account by the adjudicating officer****: While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

b) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

c) the amount of loss caused to an investor or group of investors as a result of the default;

d) the repetitive nature of the default."

Explanation*: For removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under Sections 15A to 15E, Clauses (b) and (c) of Section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

46. I note that exact quantification of disproportionate gains or unfair advantage accrued to the Noticee is not possible in this case. Similarly, from the material available on record, it is not possible to ascertain the exact monetary loss caused to the investors as a result of violation by the Noticee. However, I note that Noticee had collected funds from 32,454 gullible investors who appear to belong to remote place in Bihar through three deposit schemes, including issuance of redeemable preference shares, during the period 2010-2014. Based on material on record, I note that Noticee was fully aware that issuance of Redeemable Preference Shares were for more than 49 investors and also aware of Judicial Pronouncement of Hon'ble Supreme Court, vide its Order dated August 12, 2012 with similar facts. Despite such awareness, Noticee proceeded and collected funds from public without complying the mandatory listing and other general conditions laid down in Companies Act, ICDR and Issue and listing Regulations 2013. Noticee by not complying aforesaid regulations, as dealt in above paras, managed to lure gullible investors with high returns and thereafter successfully collected funds from them which would not have been possible otherwise. I am of the view that any attempt by any person or entity to raise funds illegally, without complying with regulatory requirements, especially from gullible investors from remote places where financial literacy is minimal, warrants strict action. Considering the facts and circumstance of the case and repeatedly raising funds illegally for four consecutive financial years

i.e. 2010-11, 2011-12, 2012-13 and 2013-14, I consider it as fit case for imposition of maximum penalty provided under Section 15HB of SEBI Act.

47. Noticee submitted that they have on their own decided to discontinue the scheme of Issuance of Redeemable Preference Shares from August 10, 2013 and thereafter repaid entire funds raised along with interest to all investors. I find that Noticee had claimed to have repaid to investors in cash. In the absence of verifiable documents before me, I am of the view that there is a need to verify the genuineness of the refunds made to 32,454 investors, along with source of funds for such claimed repayments. Therefore, I am not considering the claimed repayment to investors as mitigating factor while imposing penalty under Section 15 HB of SEBI Act.

ORDER

48. In light of all the above stated facts and circumstances of the case, in exercise of the powers conferred upon me under Section 15 I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs 1,00,00,000/- (Rupees One Crore only) under section 15HB of the SEBI Act, 1992 on the Noticee viz. M/s. Indus Weir Industries Limited for violation of Regulations 4(2) and 16 of Issue and Listing Regulations 2013. I am of the view that the said penalty is commensurate with the violations committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors the aforesaid failure committed by the Noticee.

49. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

50. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, DRA-Enforcement Department, SEBI, Mumbai as per the following format.

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	Penalty

51. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: January 15, 2018 **B J DILIP**

Place: Mumbai **ADJUDICATING OFFICER**