WTM/MPB/EFD-1-DRA-IV/52/2019

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Zenith Highrise Infracon Limited

In re Deemed Public Issue Norms

In respect of:

Sl. No.	Name of the Entity	PAN	DIN
1.	**Mr. Narayan Chandra Das**	**BRNPD4333G**	08000661

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") passed an order dated July 27, 2018, (hereinafter referred to as **'Order'**) *inter alia,* in respect of Mr. Narayan Chandra Das (hereinafter referred to as "**Noticee**") in the matter of Zenith Highrise Infracon Limited (hereinafter referred to as "**Zenith**"/ "**the Company**").

2. SEBI vide said Order dated July 27, 2018 observed that Zenith had engaged in fund mobilising activity from the public, through the Offer of Redeemable Preference Shares (hereinafter referred to as '**RPS**') in the financial year 2012-13 and raised at least an amount of Rs.43,04,000/- from at least 50 persons, which was found to be in violation of provisions of section 60 read with section 2(36), section 56, section 67 and section 73 of the Companies Act, 1956 read with section 27(2) of the SEBI Act, 1992.

3. The said Order, *inter alia,* made the following findings qua the Noticee:

"……

49. I note that Mr. Narayan Chandra Das (DIN: 08000661) was appointed as a director of Zenith on March 20, 2018, i.e. after the passing of the interim order dated January 10, 2017 with respect to Zenith and its present directors extant as on said date. Since, the issuance of RPS occurred before the appointment of Mr. Narayan Chandra Das as a director, he is not liable for the refund of the proceeds of the RPS. However, as a director of the Company, I find that Mr. Narayan Chandra Das is liable to ensure refund to the investors. In view of this appropriate direction in accordance with law needs to be passed against Mr. Narayan Chandra Das.

……"

4. In the light of the above, vide the Order dated July 27, 2018 the following directions were issued against the Noticee and other entities:

"……

50. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:

a) Zenith, Mr. Kalyan Banerjee, Ms. Shipra Banerjee and Mr. Kuntal Banerjee shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable".

c) Zenith, Mr. Kalyan Banerjee and Ms. Shipra Banerjee are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.

d) *Mr. Kuntal Banerjee, in his personal capacity, is directed to provide a full inventory of all his assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.*

e) *Zenith, Mr. Kalyan Banerjee and Ms. Shipra Banerjee are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.*

f) *Mr. Kalyan Banerjee, Ms. Shipra Banerjee and Mr. Kuntal Banerjee are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.*

g) *Zenith and Mr. Kalyan Banerjee (on behalf of the Company as well as in personal capacity to make refund), Ms. Shipra Banerjee (on behalf of the Company as well as in personal capacity to make refund) and Mr. Kuntal Banerjee (in his personal capacity to make refund), and* ***Mr. Narayan Chandra Das in the capacity as a present director and on behalf of Zenith****, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.*

h) *After completing the aforesaid repayments, Zenith, Mr. Kalyan Banerjee, Ms. Shipra Banerjee and Mr. Kuntal Banerjee, in their personal capacity, and* ***Mr. Narayan Chandra Das, in his capacity as the present director, on behalf of Zenith,*** *shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed*

Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.

i) *In case of failure of Zenith, Mr. Kalyan Banerjee, Ms. Shipra Banerjee and Mr. Kuntal Banerjee, to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from the company and the directors liable to refund as specified in paragraph 50(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.*

j) *Zenith, Mr. Kalyan Banerjee, Ms. Shipra Banerjee, and Mr. Kuntal Banerjee are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.*

k) *Ms. Namita De Pal and* ***Mr. Narayan Chandra Das*** *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, till the expiry of 4 (four) years from the date of this Order. The above said entities 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 till the expiry of 4 (four) years from the date of this Order.*

l) The above directions will take effect as final order against Mr. Narayan Chandra Das on the expiry of 30 days from the date of service of this order, unless Mr. Narayan

Chandra Das, within such period of 30 days, files his objections. If objections are filed, the following directions shall be applicable against Mr. Narayan Chandra Das, till the time of disposal of the said objections, after which this Order shall come into effect:

i. ***Mr. Narayan Chandra Das is 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,***

ii. ***Mr. Narayan Chandra Das is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly,***

iii. ***Mr. Narayan Chandra Das shall not divert any funds raised from the public at large through preference shares issue which are kept in bank account(s) and/or in the custody of Zenith.***

m) The above directions with respect to Zenith, Mr. Kalyan Banerjee, Ms. Shipra Banerjee, Mr. Kuntal Banerjee, and Ms. Namita De Pal shall come into force with immediate effect."

5. In response to the Order, the Noticee vide letter dated September 07, 2018 submitted the following:

5.1 "*Photocopy of the final order dated July 27, 2018 served upon the company on August 17, 2018 has been supplied to me by the company and upon going through the same, I find that the said final order was passed in haste without giving any opportunity of hearing to me.*

5.2 At the very outset, I would like to state that though I have joined the Company as a director on March 20, 2018, but the statement of affairs of the company for the financial year 2012-2013 and other registers/documents shows that the company has made allotment of RPS to 47 persons only.

5.3 Nevertheless, the company has preferred appeal being case No. 389 against the impugned final order before the Securities Appellate Tribunal on August 29, 2018.

5.4 That with regard to the impugned final order passed against me (as per paragraph no. 50(k) and 50 (l), I hereby raise my objections against the same on following grounds:

5.5 The said impugned order dated July 27, 2018 was passed in haste without giving me an

opportunity of hearing in as much as no notice of hearing was served upon me and I was not made a party to the proceeding. Be it mentioned here that the impugned order was also not served upon me. Therefore, the directions passed in the final order is arbitrary and in violation of natural justice and not binding upon me.

5.6 That so far as my role in the company is concerned I have joined the company as director on March 20, 2018 and therefore relying on Manoj Agarwal Vs. SEBI (in para 44 of the impugned final Order), it is contended by me that my obligation as director cannot be stretched to the back period when I was not a director of the Company. Therefore, the directions passed in the said final order are not sustainable in the eye of law.

5.7 That after passing the final order dated July 27, 2018 there is no scope for you in law to pass any further orders with regard to the disposal of my objection inasmuch as that such further consideration of objection/matter after passing final order would be a review of the order which is not conferred upon you by law. That as your final order dated July 27, 2018 has attained finality, your directions under paragraph 50(l) with regard to disposal of my objection after passing of final order have no legal sanctity.

5.8 This reply is without prejudice to right to seek relief before the appropriate court of law against the impugned order. The said order is liable to set aside against me."

6. It is also noted that the Noticee vide letter dated December 12, 2018 sought certified copy of the said order. Considering the request of the Noticee, SEBI vide letter dated January 02, 2019 forwarded the certified copy of Order dated July 27, 2018 to the Noticee at the address mentioned in his reply and also at the address of the Company. However, the same were returned undelivered. It is noted that the Noticee vide his letter dated December 12, 2018 stated that the certified copy will be collected from SEBI's Eastern Regional Office at Kolkata. However, it is noted from the visitor records of the said office of SEBI that the Noticee did not approach the said office for the same.

7. In the interest of principles of Natural Justice, vide notice of hearing dated January 22, 2019, the Noticee was granted an opportunity of hearing on February 07, 2019 at SEBI. It is noted that the said notice was also returned undelivered. Considering the fact that the letters sent to

the address mentioned in the reply of the Notice i.e. "*Narhuya Dharammatala Dakshin, Chandannagar, Hoogly, West Bengal, PIN-715136"* were returned undelivered, for effecting the service of the hearing notice, another opportunity of hearing was granted to the Noticee on May 07, 2019 at SEBI. Since the address from which the Noticee communicated was found to be insufficient for the purpose of effecting the service through affixture as there was no identifiable building name, plot number, house number or flat number, hence, SEBI vide notification dated April 17, 2019 in the newspapers viz., "the Statesman" and "Anand Baazar Patrika", Kolkata Edition, advised the Noticee to be present for personal hearing, either personally or through authorised representative at SEBI Mumbai subject to prior request of tele-conference at Eastern Regional Office of SEBI. However, I note that neither the Noticee nor any authrorised representative appeared before me for the personal hearing granted on May 07, 2019. In view of the same, I am constrained to pass the order against the Noticee with the material available on record.

Consideration and Findings

8. Before dealing with the issue, I would like to deal with the preliminary objection of the Noticee. I note from the submission of the Noticee that he has contended that order dated July 27, 2018 was passed in haste without giving him an opportunity of hearing and he was not made a party to the proceeding. He has also contended that the impugned order was also not served upon him, hence, the directions passed in the final order are arbitrary and in violation of natural justice and not binding upon him.

In this regard, I note that the order dated July 27, 2018 clearly mentions that the same is passed as an ad-interim order qua him and the said order will take effect as a final order qua the Noticee on the expiry of 30 days from the date of service of the order and the Noticee was specifically granted a period of 30 days to file his objections and seek personal hearing. Therefore, the contention that after passing the final order dated July 27, 2018 there is no scope for SEBI in law to pass any further orders with regard to the disposal of his objection in as much as that such further consideration of objection/matter after passing final order would be a review of the order which is not conferred upon SEBI by law is not well founded. The contention that order dated July 27, 2018, has attained finality is not correct as the same qua

the Noticee was only having the effect of interim order as envisaged in paragraph 50(l) therein. I note that the Noticee has filed his reply/objections to the order dated July 27, 2018 and sought a certified copy of the said order. The same was sent to the address of the Noticee from which he had communicated and also to the address of the Company (since company has provided the copy of the order dated July 27, 2018 to the Noticee).Though the Noticee communicated vide letter dated December 12, 2018 that he will collect the certified copy from the Regional office of SEBI at Kolkata, I note from the visitor records of the said office of SEBI that the Noticee failed to do so. Further, an opportunity of hearing was also granted to the Noticee in the interest of principles of natural justice. Considering the fact that the letters sent to the Noticee were returned undelivered, I note that the hearing opportunity was notified through publication in the newspapers. I note that the Noticee failed to avail the said opportunity to defend his case in person.

It is pertinent to mention that the power of SEBI to pass interim orders flows from Sections 11 and 11B of the SEBI Act which empowers SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. The second proviso to Section 11(4) of the SEBI Act clearly provides that "Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned". Further, various Courts, while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an interim order is passed and a post-decisional hearing is provided to the affected entity. I note that the interim directions have been passed qua the Noticee on account of the fact that the Noticee has been shown as the present director of the Company as per the MCA records. In view of the same, I find that the principles of natural justice is complied with qua the Noticee.

9. Now, I shall deal with the allegations, material available on record such as Order dated July 27, 2018 and submissions of the Noticee vide his letter dated September 07, 2018. On perusal of the same, my findings are as under:

10. I note that the final order dated July 27, 2018 had held that Zenith has issued and allotted RPS to at least 47 investors during the financial year 2012-2013 and raised at least an amount of

Rs.43,04,000/- . I note from the order dated July 27, 2018 that the number of allottees and funds mobilized had been collated from the investor complaints received by SEBI and documents filed by the Company.

11. Further, the Noticee contended that the statement of affairs of the Company for the financial year 2012-2013 and other registers/documents shows that the company has made allotment of RPS to 47 persons only. This discrepancy was discussed at length in the order dated July 27, 2018 as reproduced below. The Noticee also has failed to submit any evidence to counter the rationale given in the said order, despite being given sufficient opportunity to defend the case. Therefore, I reiterate the findings mentioned in the Order dated July 27, 2018 in respect of the fact of deemed public issue (offer of RPS) which are as under:

20. In the instant matter, I note that as per RoC records RPS were issued by Zenith to 49 investors in the financial years 2012-2013. However, Zenith vide its reply dated June 1, 2018, has submitted that due to repetition of certain names, and after inclusion of the names of Mr. Mohadeb Das, Mr. Joydeb Lohar and Ms. Suchitra Thandar, the total number of allottees is 47 and not 49. I note that Zenith has submitted vide emails dated July 13, 2018, copies of two affidavits from Mr. Pradipta Das and Mr. Krishna Chandra Das claiming that Zenith had allotted no more than 600 RPS and 1500 RPS, respectively to them. I further note that the three complainants, Mr. Mohadeb Bose, Mr. Joydeb Lohar and Ms. Suchitra Thandar, together held 1050 RPS. I also note that Zenith has submitted that details of Mr. Krishna Chandra Das were inadvertently included in the list of allottees in place of Mr. Mohadeb Das, and corresponding excess 1000 shares were shown against the name of Mr. Krishna Chandra Das, whereas in actual fact the 1000 RPS were allotted to Mr. Mohadeb Das. Similary, 50 RPS which were wrongfully shown to have been allotted to Mr. Pradipta Das were actually allotted to Mr. Joydeb Lohar (20 RPS) and Ms. Suchitra Thandar (30 RPS). I note that the Company has failed to provide any other documentary proof apart from the copies of the affidavits, showing that in fact, Mr. Pradipta Das and Mr. Krishna Chandra Das were allotted 600 RPS and 1000 RPS respectively. For instance, copies of RPS certificates showing the claimed number of shares, bank account statements showing claimed value of investment flowing from Mr. Pradipta Das and Mr. Krishna Chandra Das to the Company's account, the initial letter of

allotment, copy of payment receipts or copy of the amended letter of allotment with respect to Mr. Pradipta Das and Mr. Krishna Chandra Das. I am of the view that merely an affidavit claiming so cannot be considered as sufficient proof of the same, and taking that argument as the basis of reconciliation of the information of the list of allottees with the details of the three complainants seems to be an afterthought to avoid liability under the respective legal provisions. Therefore, I am of the opinion that the submission of having committed errors at the time of filing the list of allottees with the RoC cannot be accepted to have been substantiated satisfactorily.

21. However, after giving due consideration to the repeated names in the list of allottees, I note that Zenith has issued and allotted RPS to 47 investors during the financial year 2012-2013 and raised an amount of Rs. 43,04,000 (excluding the money raised from the three complainants).

22. The same has been admitted by the Company vide its replies dated March 9, 2017 and June 1, 2018. 23. I therefore conclude that Zenith came out with an offer of RPS as outlined above."

12. Paragraphs 27, 28 and 29 of the order dated July 27, 2018 hold how the Offer of RPS by Zenith can be construed to be a "public issue" within the meaning of the section 67(1) of the Companies Act, 1956 as the order has taken the cognizance of the fact that the issue was made to 47 persons and therefore the first proviso to Section 67 of the Companies Act, 1956 is not applicable to the case. However, the Order proceeded to hold the issue of RPS as public issue under Section (3) (a) and (b) of the Companies Act, 1956. No contradictory evidence was produced by the Noticee disputing the same. Therefore, I reiterate the findings made in the said paragraphs of the order dated July 27, 2018 which are reproduced hereunder:

"27. I note that the Company has submitted that the issuance of RPS was made in private placement and thus falls within the non-obstante clause of section 67(3)(a). However, I note that the Company has not provided any further proof to substantiate its claim. Instead, I note that in its submission dated June 1, 2018, it has claimed that since the allotments were made to friends and relatives of the members/directors, no written invitation or offer was ever issued by the Company. This in itself shows that the Company had made an Offer

of RPS through word of mouth, which could not be said to have been calculated to be made only to its intended recipients. Further, even assuming that the said oral offer was made only to the persons other than the three complainants, the fact that the three complainants have been allotted RPS shows that the offer or invitation falls in the category of one which is 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. Further, the Company has not demonstrated any process to ensure that the offer and the subsequent allotments of RPS were made only to the intended recipients. Thus the present Offer of RPS falls outside the scope of the non-obstante clause of section 67(3)(a) of the Companies Act, 1956.

28. *As per non-obstante clause of section 67(3) sub-clause (b), if the offer is one that can be regarded as a domestic concern of the one making and receiving the offer of shares, it would not be considered a public offer under section 67(1). Reference may be made in this regard to the 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." The Company has not placed any other material for consideration to show that the offer was in satisfaction of section 67(3)(b) of the Companies Act, 1956, i.e. it was made to the known associated persons or domestic concern. In fact on perusal of the letters received from the complainants, I note that the same reflects that the Company had closed all their branches and as a result the complainants could not understand the process to get refund of the amounts invested by them. If the Company had made allotments to friends and relatives as claimed by it, then the aforesaid complainants should not have had a problem in claiming refund from the Company. In view of the above, I find that the issuance of RPS by Zenith cannot be considered as private placement. The above findings lead to a reasonable conclusion that the Offer of RPS by Zenith can be construed to be a "public issue" within the meaning of the section 67(1) of the Companies Act, 1956.*

29. *I find that Zenith has not claimed it to be a Non–banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view*

of the aforesaid, I, therefore, find that there is no case that Zenith is covered under the second proviso to Section 67(3) of the Companies Act, 1956."

13. I note that the Company and its directors viz., Mr. Kalyan Banerjee and Mr. Kuntal Banerjee (appellants) have filed appeal before the Hon'ble Securities Appellate Tribunal ("SAT"), against the impugned order dated July 27, 2018, *inter alia*, on the ground that the offer of RPS made by the Company was private placement and the same was offered to only 47 persons including complainants in the matter. I note that the said appeals are *sub-judice* and there is no interim relief granted to the appellants by the Hon'ble SAT. Hence, I am of the view that there is no restraint on deciding the present proceedings qua the Noticee.

14. Further, the order dated July 27, 2018 held that Zenith engaged in fund mobilizing activity from the public, through the offer of RPS and had contravened the provisions of sections 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956.

15. Considering that the order dated July 27, 2018 which has already held that Zenith has engaged in fund mobilizing by making a public offer of RPS in violation of deemed public issue norms and issued directions against the Company and its directors, given the fact that no contrary evidence has been brought on record by the Noticee, and in view of Noticee's submissions, the issues that arise for consideration in the instant order is as under:

Issue: Whether the Noticee is liable for the offer of RPS made by Zenith to public in violation of deemed public issue norms and the extent of his liability, if any.

16. From the documents available on record, I find that the Noticee joined the Company on March 20, 2018 and is continuing as a director of the Company till date. I note that the Company came out with an offer of RPS during the financial year 2012-2013 and as per the MCA records, the Noticee became the director only on March 20, 2018 i.e. after the period of issuance and continuing as the director of the Company till date. The said fact is not disputed by the Noticee vide his reply dated September 07, 2018. Thus, from the documents available on record and from the submissions of the Noticees, I am of the view that tenure of the directorship of the Noticee and his appointment as director in Zenith is not in dispute.

17. The Noticee contended that the directions passed in the said final order are not sustainable in

the eye of law since he has joined the company as director on March 20, 2018 and therefore relying on Manoj Agarwal Vs. SEBI his obligation as director cannot be stretched to the back period when he was not a director of the Company. In this regard, I note that the Order dated July 27, 2018 clearly records the finding (*paragraph 49 of the Order dated July 27, 2018*) that the Noticee was appointed as a director of the Company on March 20, 2018 i.e. after the period of issuance of RPS and he is not liable for refund of the amount collected by the issue of RPS.

18. I note that the Order dated July 27, 2018 clearly fastens the liablity upon the Company to refund money collected from the investors through the offer and allotment of RPS. I note that the said liability of the Company is continuing till date. I note that the Noticee joined the Company on March 20, 2018 and continuing as a director of the Company till date. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

> *" 13. .... A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.*
>
> *14. 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. "*

A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The director cannot therefore wriggle out from liability. A director who becomes part of a company's board shall be responsible and liable for all acts carried out by a company.

It is noted that the liability to repay is a statutory liability on the Company under section

73(2) of the Companies Act, which mandates the repayment of money to be made forthwith. The order dated July 27, 2018 only enforces the pre-existing liability of the Company and other officers in default to repay the money along with interest. It is an additional liability of every director on behalf of the company to ensure that the Company complies with the obligation under section 73(2) forthwith. One may argue that the liability of the Company is crystalised only by virtue of an Order by SEBI, therefore, till then there was no liability on the Company and therefore, on the directors. If such argument is accepted, all the legal obligations and compliance requirements pose the risk of being not discharged or postponed on the pretext of non-crystallization. Also, it would make the compliance of regulatory/statutory requirement imposed on the Companies bereft of clarity and incentivize delay in compliance of statutory obligation by the Companies untill such non-compliance is enforced through proceedings such as this. If the Board of Directors of a Company cannot be considered to be liable to ensure the legal obligations cast upon a Company, there would be no human instrumentality for discharge of such legal obligations on behalf of the company. Considering the fact that Zenith has not complied with its obligation to repay the amounts collected in violation of deemed public issue and such liability is continuing, I find that the same can only be ensured by its directors. It is to be noted in the light of such continued non-compliance of refund liability by Zenith, the Noticee who joined subsequent to the issuance and allotment of RPS was obligated to ensure compliance of the refund on behalf of the Company.

I note that the Noticee has not furnished any evidence of having taken any steps to ensure refund of the money to the investors of the Company. Therefore, in view of the failure to discharge the said liability of ensuring refund on behalf of the Company, I find that the Noticee is liable to be debarred for an appropriate period of time.

19. Therefore, the direction issued qua the Noticee in his capacity as a director who joined subsequent to issue/allotment of RPS and continuing to be a director and responsible for ensuring that the refund is made by the Company to the investors in terms of section 73(2) of the Companies Act, 2013, needs to be made applicable to the Noticee. Accordingly, I, in exercise of the powers conferred under section 19 read with sections 11, 11(4), 11A and 11B of the SEBI Act, 1992 hold that the directions stated at paragraph 50 (g), (h), (k) of the Order

dated July 27, 2018, without prejudice to its force and effect of directions issued in respect of other entities mentioned in the said order dated July 27, 2018, are made applicable to the Noticee Mr. Narayan Chandra Das as stated hereunder:

(a) Mr. Narayan Chandra Das in the capacity as a present director and on behalf of Zenith, is directed to provide full inventory of all the assets and properties and details of all the bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company.

(b) Mr. Narayan Chandra Das in the capacity as a present director and on behalf of Zenith, is permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

(c) Mr. Narayan Chandra Das in the capacity as a present director and on behalf of Zenith, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.

(d) After completing the aforesaid repayments, Mr. Narayan Chandra Das in the capacity as a present director and on behalf of Zenith, shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("**ICAI**") holding such certificate.

(e) Mr. Narayan Chandra Das is restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of 4 (four) years from the date of this Order. Mr. Narayan Chandra Das is also restrained from associating himself with any listed public company and any public company which

intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years from the date of this Order.

20. The above directions shall come into force with immediate effect.

21. It is pertinent to mention that Zenith and its director Mr. Kalyan Banerjee and past director Mr. Kuntal Banerjee filed Appeal No. 459/2018 and Appeal No. 460/2018, respectively, before the Hon'ble SAT, hence, the effect and implementation of the aforesaid directions of this order shall be subject to the outcome of the said Appeals.

22. The Order shall be sent to the Noticee. Copy of this Order shall be forwarded to the recognised Stock Exchanges, Depositories and Registrar and Transfer Agents for information and necessary action.

23. 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.

DATE: June 27, 2019 **MADHABI PURI BUCH**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA