

integrated Amusement Ltd. and Vs. Securities and Exchange Board of India

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Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : Sep-01-2000

Judge : C Achuthan

Appellant : integrated Amusement Ltd. and

Respondent : Securities and Exchange Board of

Judgement :

1. M/s. Integrated Amusement Ltd., and its directors (the Appellants) are aggrieved by the order dated 3.2.2000 made by the Respondent, whereby the Appellants have been directed to disassociate themselves in every respect from the capital market related activities for a period of 5 years. They have also been debarred from associating with any of the intermediaries in the capital market during the said period. The present appeal is against the said order.

2. The Appellant Company was incorporated as a public limited company on 24.8.1994 and obtained the certificate for commencement of business on 31.8.1994 from the Registrar of Companies, Gujarat. The main objects of the Appellant Company, as per its Memorandum of Association are to set up, build, construct and carry on the business of an Amusement Park, including Water Park, Theme Park etc. The Appellant Company raised Rs. 575 lakhs towards capital, by issuing 57, 50, 000 equity shares of Rs. 10/- each for cash at par through a prospectus dated 20.3.1995. The main object of the public issue as per the prospectus was to part finance the cost of the project and to meet the working

capital requirements of the Appellant company.

3. The background information leading to the issuance of the impugned order has been furnished in the order itself. According to the Respondent's version it came to their notice that the Appellants had not utilised the money raised from the public for the purposes as disclosed in the prospectus. Ahmedabad Stock Exchange (ASE) had reported that the Appellant company had not been complying with various clauses of listing agreement entered into by it with them and that on physical verification of the existence of the Appellant company, ASE found that it had vanished from the registered office address given in the prospectus. On the basis of ASE's report the Appellant company was considered as a vanishing company and Show Cause Notice was issued to the Appellants calling upon them to explain as to why action should not be initiated against them under the provisions of sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (the Act), including debarring them from associating with any capital market activity and also prohibiting them from accessing the capital market for a period of 5 years. The Appellant company denied the charges. It has been stated in the impugned order that ASE vide its letter to the Respondent, dated 18.8.1999 had reported that the Appellant company "which was earlier declared as vanished has claimed its existence at the changed address and the exchange has confirmed the existence of the company at the changed address after physical verification".

4. During the course of a personal hearing granted in the inquiry, the Appellant company's Managing Director and one Shri B.P.Kanani, a Chartered Accountant had submitted that the Appellant had shifted its registered office from the address stated in the prospectus to the project site and this change was duly notified to the Registrar of Companies and the stock exchanges. It has been stated in the order that the Respondent informed the representatives that "from the facts and circumstances prima-facie it appears that the company and its directors had misappropriated and misutilised the money raised through the public issue and entrusted to them by the public and have fraudulently induced the public by deceiving them to subscribe to the issue of the company".

As per the order, the Appellants were "advised to clarify and submit documents in support of the utilisation of the money raised by the company from the public for the purposes as disclosed in the offer documents". According to the Respondent's version the representatives "agreed and undertook to submit documents, annual accounts, and statement on end use of funds from the date of the public issue", till the date of hearing, within 15 days of the date of hearing (18.11.1999 was the date of hearing). It has been stated that it was made clear to them that in case they fail to furnish these requisite particulars, the Respondent would presume that Appellants had no explanation to give and the matter will be decided on that assumption. The Appellants failed to submit the information as promised and in that context the Respondent drew adverse inference and issued the impugned direction. The Chairman, SEBI, who had issued the order in exercise of the powers of the Respondent, under section 4(3) of the Act felt that "the directors who have been entrusted with the funds have misappropriated the money for their own use in violation of the directions of law and contract between the company and the investors in contravention of law". In this context he stated "I observe that the State Government be requested to initiate appropriate criminal action in the matter under the India Penal Code, 1860 or any other relevant state law through the police against the company and its directors". He had also viewed that Shri B.P.Kanani who had appeared for the Appellant Company during the personal hearing, did not furnish the details of the account of funds despite an undertaking given by him. He felt that Shri Kanani's action may amount to professional misconduct and viewed that the matter be referred to the Institute of Chartered Accountants of India to take appropriate action against him.

5. Shri Rajendra C Dhuru, learned Counsel for the Appellants submitted that the Respondent had no power to define the criteria for declaring a company to be vanishing company, that the concept has been defined without application of mind. Further the Respondent lacked authority to regulate the manner in which the affairs of the Appellant company needed/required to be carried on. It is for the Registrar of Companies and the shareholders to proceed against the Appellants, if they felt there was any oppression or mismanagement. According to the learned Counsel action against vanishing company would tantamount to regulating or prohibiting that company from carrying out its affairs in a particular manner. Since

Registrar of Companies is empowered under the Companies Act to take action against a defaulting company, the Respondent had no role or authority to exercise those powers by usurping the same from the Registrar. He submitted that the Respondent had no jurisdiction to issue direction in the impugned order in as much as it relates to cause police action under IPC etc. or action for professional misconduct of Chartered Accountant.

6. He claimed that the requisite inquiry did not precede issuance of direction as required under the Act. The Appellants are not persons covered under section 11B to whom directions can be issued, as they are not persons referred to in section 12 or persons associated with the securities market. He submitted that the inquiry contemplated under the Act has to be with reference to requirements under the Act and not in relation to Securities Contracts (Regulation) Act or Companies Act. The Respondent's power under section 11(1) to protect the interests of investors would essentially mean to protect the interest arising out of transactions relating to the securities effected through the primary market or secondary market or even off market. The generality cannot go beyond that. In the instant case the question is not related to the transaction involving the Appellant Company or its directors with investors or potential investors. Since the Respondent had no power to collect financial information from listed companies, Respondent cannot take unbiased, just and proper decision as to violations committed by such companies. The cut off date adopted for selecting companies for scrutiny, on the basis of public issues made after 1992 is arbitrary and discriminatory, that the list of companies published as vanishing companies is an incomplete list and that it is not based on the verification made by the Respondent, but based on a study and physical verification undertaken by the stock exchanges and hence not acceptable. According to the learned Counsel exclusion of matters relating to deposits and loan instruments from the purview of the task force is discriminatory.

7. The learned Counsel submitted that the Appellant Company had shifted its registered office to the project site for operational reasons and that the change had been notified to the Registrar of Companies, Gujarat. Copy of the fees receipt issued against filing fee for the document filed in this regard in the Registrar of Companies' office annexed to the appeal was referred to. It was also submitted

that the Appellant was filing returns and documents with the stock exchange. In support of the fact that they are reporting to ASE, the learned Counsel relied on the copy of the acknowledgements issued by ASE and also copies of receipts acknowledging payment of listing fee. He had relied on the Respondent's own version that the Appellant is functioning from the notified address. He had vehemently denied misappropriation of funds as alleged and pointed out that even though it was not a charge in the SCN, they had agreed to furnish the details to the Respondent.

Since one of the relatives of the Managing Director fell ill critically and died immediately after the personal hearing, the Appellants could not furnish the details within that period and even without giving another opportunity the impugned order was issued. He pointed out that the order is *ex parte*, the Appellants. The finding is based on assumptions and presumptions and not on real facts. He submitted that before imposing such a penalty, had the Respondent waited for the material fact, the finding would have been different. He referred to the audited Annual Accounts of the company for the period ended 31.3.1995 to the latest one for the year ended on 31.3.1999 annexed to the appeal. He had also produced acknowledgement stated to have been issued by ASE, evidencing the filing of unaudited financial results on quarterly basis as required. He submitted that since the Appellant had been responding to each and every query from the Respondent, by no standard the Appellant Company can be considered as a vanishing company. He pointed out that if there had been any lapse on the part of the Appellants, the shareholders would not have kept quiet. The fact that there was not even a complaint from them shows the company's bonafides.

8. Ms. Poonam A Bamba, learned representative of the Respondent explained the background in which the Respondent had identified companies as vanishing companies and the nature of action taken against them. She invited the Tribunal's attention to the PIL filed by an Investor's Association in the Allahabad High Court seeking court's intervention to protect the interests of investors who had been duped by those companies which after raising funds from the public by issuing prospectus had vanished without any trace. She submitted that many companies and their promoters/directors which raised funds from the public through public

issues were not traceable and had disappeared without utilising the funds raised for the purposes mentioned in the offer documents. Regulatory authorities like Department of Company Affairs, Reserve Bank of India and the Respondent were blamed for failing to take action against those unscrupulous companies and their promoters/directors. In such a scenario, Department of Company Affairs, Reserve Bank of India and the Respondent decided to take whatever action was possible and to co-ordinate their efforts in this regard. A Central Co-ordination and Monitoring Committee was set up as a joint mechanism consisting of senior officers of the said authorities and seven task forces were also formed at the field level. To begin with 80 companies were identified by the Respondent on the basis of the following criteria evolved by the said joint mechanism, "(a) Companies which did not comply with listing requirements such as submitting various returns and reports to the stock exchange(s) for a period of 2 years and (i) Where no correspondence has been received by the stock exchange for a long time (ii) no office of the company is located at the mentioned registered office address." She submitted that the said criteria for identifying vanishing companies had been adopted in furtherance of the statutory objects in a just fair and reasonable manner.

9. The learned Representative submitted that the Respondent has been invested with the power to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. In terms of section 11 of the Act, the Respondent is empowered to take such measures, as it thinks fit for achieving the objectives of the Act. She reiterated that the Respondent certainly has the power to regulate the securities market, which included regulation through prohibitory as well as mandatory directions. It was further submitted that in order to achieve the objective of the Act and to effectively perform its duties, the Respondent also has incidental powers for taking appropriate measures for the protection of the interests of investors. She denied the Appellants' contention that the Respondent is usurping the powers of other statutory agencies and regulating the management and affairs of companies falling under the domain of the Company Law Administration. According to her the Respondent is duty bound to regulate the securities market and is empowered to issue directions to any person associated with the securities market as provided under section 11B. The

impugned direction under section 11B was issued to vanishing companies identified by the task force and also in tune with the direction of the Allahabad High Court.

10. Explaining the scope of section 11B of the Act, it was submitted that if the unscrupulous companies/their promoters who raised money and did not utilise the same for the objects, stated in the offer documents and have disappeared, it would seriously affect the confidence of the investors in the market. Therefore, for an orderly development of the market, such persons have to be declared unfit for remaining in the market. Accordingly, suitable directions have been issued to such persons. She denied the Appellant's contention that directions can be issued only in respect of the transactions in securities. The learned Representative submitted that the Respondent has power to call for information for undertaking inspection and conducting inquiries.

Countering the Appellant's charge, she stated that decision to refer the matter to police or to the Institute of Chartered Accountants referred to in the order was not in the nature of direction and the Respondent had not taken any action under the SCR Act or under the Companies Act. Justifying the cut off date of 1992, for identifying vanishing companies, she submitted that it was the year in which the Act was brought into force, and as such the earliest date to be reckoned for the purpose. It was also submitted that identification of 80 companies by the Task Force and issuance of press release was only the beginning. Identification was an on going process and that as and when any information/report is received and if it is found that the company had vanished, suitable action will be taken against that company as well. She submitted that the list of 80 companies was not a final list.

11. She submitted that the Appellant Company was considered as a vanishing company by the task force on the basis of the information furnished by ASE. However subsequently, ASE reported that the Appellant Company, which was declared as vanished, was found existing at its changed address. Therefore, before the matter could be concluded on merits it was decided to grant an opportunity of personal hearing to the Appellant Company and its directors. Even though the representatives of the Appellants had submitted that funds collected

have been utilised for the purposes mentioned in the prospectus, that the project could not be completed because of shortage of funds, they could not produce any document in support of the submission. According to the learned Representative, during the course of hearing the Respondent had asked for the details of utilisation of the funds raised through the public issue and the representatives at that time had submitted that the documents concerning the financial affairs of the Appellant were not readily available at the time of personal hearing and gave an undertaking to submit the same later. She submitted that even though vide letter dated 30.11.1999, the Appellant company was advised to send the details, till the issuance of the impugned order there was no response. Thus the allegation that they were not given opportunity to explain their case was unfounded. According to her the Appellants had failed to file reports/documents with Registrar of Companies and stock exchange. Non-compliance of the requirements of the listing agreement, especially failure to furnish financial data etc., is detrimental to the interests of investors. She submitted that in the light of the submissions made by the Appellants, there existed a prima facie case that the Appellants had not made proper utilisation of the funds raised through public issue. Reasons, if any, justifying non-utilisation or misutilisation of funds by the Appellant Company could not be given by them though ample opportunities were provided. It was made clear to the Appellants' representatives during the personal hearing that in case they fail to submit the documents as per the undertaking given by them, adverse inference will be drawn and appropriate action will follow. Since they failed to fulfill their own assurance, the Respondent was constrained to draw an adverse inference against them and issued impugned direction, exparte the Appellants.

Referring to the applicability of Limitation Act, she submitted that the default under the facts of the instant case was in the nature of continuing default and as such not barred by limitation.

12. I have carefully considered the rival contentions put forth by the parties before me.

13. The menace of companies raising capital from the public with rosy promises and thereafter disappearing from the scene after duping the investors has become

a common feature these days. Gullible investors are taken for a ride by the smarter persons by inducing them to part with their hard earned money by way of subscription to shares in the public issue. Authorities such as Department of Company Affairs, (responsible for administering Companies Act), Reserve Bank of India and the Respondent, being primarily concerned with the investor protection, the harassed investors often look at them for redressal of their grievances. But they could not do much to alleviate the grievances of the investors for various constraints. In fact they were subjected to adverse criticism for their inaction in booking those fly by night operators. Some of the investors' associations even had filed Writ Petitions in the High Courts seeking directions to authorities to do the needful. It was in this context a high level committee consisting of the Finance Secretary to Govt. of India, Secretary, Department of Company Affairs and Chairman, SEBI decided to set up a joint mechanism for taking stringent action against the unscrupulous companies and the promoters who duped the public. A Co-ordination and Monitoring Committee to decide policy issues and provide broad guidelines and seven Task Forces at field level to identify the companies which had disappeared after raising funds by issuing prospectus after 1992 were set up. The concept of vanishing companies with the attributes mentioned by the Respondent was identified for functional purpose. In fact this concept was brought to the notice of the Allahabad High Court in W.P. No. 659(MB)/ 1998 filed by Midas Touch Investors Association. In an affidavit filed by the petitioner before the High Court, it has been stated that in a meeting held between Secretary, Department of Company Affairs and Chairman, SEBI along with their officials in order to devise a common strategy, on March 12, 1999, it was decided that a Co-ordination and Monitoring Committee would settle the policy issues regarding the delinquent companies/promoters and monitor the progress in this regard to the action, that it was also decided that seven Task Forces would assist the Co-ordination and Monitoring Committee and that the focus of these groups would be to identify the companies which have disappeared or which have misutilised the funds mobilised from the public. The information filed with the stock exchanges pursuant to the requirements of the listing agreements as also the various documents/ returns filed with Registrar of Companies could be the basis for initiating preliminary exercise of identifying the delinquent companies. The High

Court had endorsed the action including the criteria for identifying the companies subject to probe, is evident from the following observation made by the High Court in its order dated 26.3.1999.

"Now in view of the decision taken by the Securities and Exchange Board of India, Department of Company Affairs and the Finance Secretary, Govt of India, it is clear that the Central Government, Deptt. Of Company Affairs and Securities and Exchange Board of India are already seized of the matter and appropriate steps have been taken for putting a check upon the defaulting companies and to watch the interest of the investors. The work of identifying the defaulting companies has been entrusted to seven Task Forces and thereafter as soon as the defaulting companies are identified further action in the light of the decision referred to above will have to be taken. We are satisfied that the action taken and the principle enunciated therein would certainly be a step towards identifying the defaulting companies and protecting the interest of the investors regarding claim of their money. Besides this the defaulting companies and their directors and promoters will also be subjected to penal consequences under the provisions of the Indian Penal Code and the defaulting companies can also be subjected to proceedings under the Companies Act. At this juncture we may hope and trust that the opposite parties (i.e. Union of India and Another), would abide by the decision taken by them and would bring to the notice the names of the defaulting companies as envisaged in the Supplementary Affidavit. They would also permit the petitioner and other law abiding citizens of the society to submit a list of the defaulting companies, if at all they can furnish and after such a list is submitted, action as envisaged in the Supplementary Affidavit and the decision of the SEBI, DCA and the Finance Secretary Government of India shall be taken"(emphasis supplied).

14. In view of the above observation of the Allahabad High Court the Appellants' contention on the power of the Respondent and criteria adopted for declaring a company as vanishing company cannot survive.

For the reasons stated by the Respondent for choosing the year 1992 as the cut off year for preparing the list, the argument that the line has been drawn out arbitrarily excluding companies which had issued capital prior to 1992, is also

unsustainable. From the order cited above it is clear that the list of 80 companies is not a rigid list as freedom has been given to add names to the list if considered necessary and that the Respondent had also submitted that the identification exercise is not a one time exercise but a continuing process. I agree with the views of the learned Representative of the Respondent that the matter under inquiry is not hit by the provisions of the Limitation Act.

15. It is incorrect to say that by using section 11B the respondent is usurping the powers of Registrar of Companies or that they are interfering with the management of the company. In this context it is pertinent to note that the Act is intended "to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto". Section 11 of the Act prescribing the powers and functions of the Board inter alia provides that subject to the provisions of the Act, it shall be the duty of the Board to protect the interests of investors and to promote the development of and to regulate the securities by such measures as it thinks fit. The Respondent's power to take suitable measures subject to the provisions of the Act has been upheld by several High Courts (SEBI Vs Alka Synthetics Ltd (1999) 19 SCL 460 (Guj); M.Z.Khan Vs. SEBI - AIR 1999 Del 164; Ramrak R Bohra Vs. SEBI (1999) 33 CLA (Bom)). As the Delhi High Court put in M.Z.Khan's case the power under section 11 is of a very wide nature and not hedged by any restriction.

16. Section 11B enables the Respondent to issue direction. Section 11B is reproduced below 11B. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary: - (i) in the interest of investors, or orderly development of securities market; or (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or (iii) to secure the proper management of any such intermediary or person, it may issue such directions,- (a) to any person or class of persons referred to in section 12, or associated with the securities market; or (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market".

17. Sections 11 and 11B are interconnected and co-extensive as both these sections are mainly focussed on investor protection. On a perusal of the said section 11 it could be seen that the Respondent has been in no uncertain terms mandated to protect the interests of investors in securities by such measures as it thinks fit. The expression measure has not been defined in the Act. So we have to go by its Company Affairs, (responsible for administering Companies Act), Reserve Bank of India and the Respondent, being primarily concerned with the investor protection, the harassed investors often look at them for redressal of their grievances. But they could not do much to alleviate the grievances of the investors for various constraints. In fact they were subjected to adverse criticism for their inaction in booking those fly by night operators.

18. Sections 11 and 11B are interconnected and co-extensive as both these sections are mainly focussed on investor protection. On a perusal of the said section 11 it could be seen that the Respondent has been in no uncertain terms mandated to protect the interests of investors in securities by such measures as it thinks fit. The expression measure has not been defined in the Act. So we have to go by its generally understood meaning. According to Corpus Juris Secundum measure means "anything desired or done with a view to the accomplishment of a purpose, a plan or course of action intended to obtain some object, any course of action proposed or adopted by a Government". Measure is also understood "as a means to an end". Thus, measure in its generic sense is of wider amplitude. I do not consider it necessary to go into the details of the nature of measures which the Respondent is empowered to take, for discharging its duties, for the purpose of disposing the present appeal.

19. While section 11 deals with the functions of the Board, section 11B is on the powers of the Board. Section 11B is in a sense a functional tool in the hands of the Board. In effect 11B is one of the executive measures available to the Respondent to enforce its prime duty of investor protection. As could be seen from the text of the section reproduced above the Respondent is empowered to issue directions in the interest of investors to any person or class of persons referred to in section 12 of the Act or associated with the securities market. It cannot be said that a company having its shares listed on the exchange is out of the reach of sections

11 and 11B. Since the company is operating through its Board of Directors, the Directors of that Company also can be considered as persons associated with the capital market, as long as the company's shares are listed on the exchange. It does not stand to reason to say that a company, whose shares are traded in the securities market, is not associated with the securities market.

Trading is permitted subject to compliance of several requirements, flowing from the listing agreement entered into between the company and the stock exchange. Taking into consideration the scope and reach of sections 11 and 11B I am not inclined to agree with the view that the Respondent is lacking authority to issue direction to the Appellants.

It appears that the Appellant has not appreciated the scope of observations made in the order to refer the matter to the police authorities and the conduct of Shri B.P. Kanani to Institute of Chartered Accountants to take appropriate action. These are mere observations and not in the nature of an enforceable order or direction as such. Further, the impugned direction is not one for violation of the Companies Act or the Securities Contracts (Regulation) Act. It is issued in the interests of investors under section 11B of the Act, independent of the provisions of the Companies Act and the Securities Contracts (Regulation) Act. Further referring to the reliance on ASE's report, I do not find anything wrong in relying on a report submitted by an authority like stock exchange, as the information furnished by itself is only a starting point. An inquiry thereafter follows and the concerned persons are given sufficient opportunities to put across their views before the authorities. Similarly exclusion of public deposits and debt instruments from the scope of inquiry cannot be considered to be in any way discriminatory, as the matter relating to public deposits etc., are taken care of by other regimes vested with powers for the purpose. For these reasons, I am inclined to hold that the Respondent is justified in pursuing the course of action against the vanishing companies and its promoters and directors and the Respondent is legally invested with the requisite authority for the purpose.

20. Now coming to the facts specific to the present case, it is seen that ASE had already reported the Appellant's existence at the given address. However, the

Respondent claims that the Appellant had not been complying with the listing requirements and the statutory requirements of filing returns with Registrar of Companies, etc. But at the same time the Appellants have produced photocopies of filing acknowledgements stated to have been issued by ASE and Registrar of Companies. In view of the conflicting version it is felt that the factual position need be verified by the Respondent with reference to the original records available with stock exchange and Registrar of Companies. The Respondent will do so. In any case it is not the Respondent's case that the company is not traceable at present. The Respondent is on a more important issue regarding fund utilisation by the Appellants, adversely affecting the investors' interests.

21. The main reason based on which the impugned order has been issued is an inference, in the absence of relevant material before the Respondent, that the Appellants had misused the fund collected from the public for purposes other than for which it was collected. The Appellants though promised to furnish the requisite details did not do so. The Appellants have explained the reasons for the same as serious illness and death of a close relative of the Managing Director. Medical papers in support have been produced. Application of funds is a matter, which can be verified from the records of the Appellant Company. In terms of section 11(2) (i) the Respondent is empowered to call for information, etc. from the Appellant Company also for the reason that it is also a person associated with the securities market. The Appellants have not refused to furnish the details, but they had put forth certain reasons, which disabled them to furnish the requisite information. During the proceedings before the Tribunal, the Appellants had expressed their willingness to produce the records/information before the Respondent. In fact the Appellants have annexed copies of the Appellant company's audited Annual Accounts for the years ended on 31.3.1995, 31.3.1996, 31.3.1997 31.3.1998 and 31.3.1999 to the appeal.

As per the Appellant Company's balance sheet as on 31.3.1999, Rs.754.22 lakhs have been shown as capital work in progress and fixed assets net of depreciation has been valued at Rs.47.33 lakhs. I am of the view that the fund utilisation by the Appellant Company need be looked into with reference to its records in the context of the charge of misuse of funds raised from the public issue. Since the Appellants

have expressed their willingness to make available the requisite information, in depth study of the same would be useful to reach at a definite conclusion and also to pursue the matter thereafter, if considered necessary, to protect the interests of the investors. Since the impugned order is based on inference and ex parte the Appellants, it is felt proper that the Appellant be given one more opportunity to furnish the information to the Respondent in a reasonable time frame and the Respondent in the light of that information, will pass appropriate orders in accordance with the provisions of the law. The Department of Company Affairs may also be requested, if so desired, to examine the books of accounts and other records of the Appellant company to ascertain the utilisation of the funds and if necessary follow up the matter.

22. The impugned order does not in any way redress the grievances of the persons who have already invested in the shares of the Appellant Company. The prohibition put in on the Appellants is effective only prospectively. Since the Appellants have come forward to furnish the details, and the impugned order is ex parte the Appellants, it is felt that further inquiry on the lines embarked on by the Respondent as stated in the impugned order and follow up action thereafter would be in the interests of the investors. For the purpose it is felt that the matter need be remanded.

23. In the light of the above discussion the impugned order is set aside and the matter is remanded with the direction to the Appellants to furnish the requisite information and all the documents and records showing the utilization of funds raised from the public issue, as called for by the Respondent within the time stipulated by the Respondent. The Respondent will examine the same and if any additional particulars are required from the Appellants, they will furnish the same within two weeks of calling for the same by the Respondent. The Appellants will cooperate with the inquiry and produce necessary documents and information as called for by the Respondent and the Respondent thereafter will pass appropriate order according to the law.

If the Appellants fail to furnish the documents and information as called for by the Respondent within the time frame, the Respondent will be at liberty to pass such

order as is deemed fit, at the risk of the Appellants.

24. It is made clear that this order will not in any way affect the proposal of the Respondent to approach the State Government to initiate appropriate criminal action in the matter under the Indian Penal Code or any other state law and referring the conduct of Shri B.P.Kanani, Chartered Accountant, to the Institute of Chartered Accountants of India, for taking appropriate action against him.

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