

**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 Roofers Infra–Projects Limited

In respect of:

1. Roofers Infra–Projects Limited (PAN: AAECR6118F)
2. Shri Khudiram Sounth (PAN: AKEPS8245D; DIN: 01642426).
3. Shri Hirak Nath Sounth (PAN: APKPS6248B; DIN: 01642426).
4. Smt Jayanti Sounth (PAN: AZGPS4138J; DIN: 01642127).
5. Roofers Infrastructure India Private Limited (PAN: AADCR8150J).
6. Shri Rabindra Nath Sounth (PAN: BDLPS1922A).
7. Shri Tarak Nath Sounth (PAN: AZJPS2963G).
8. Shri Sujit Kumar Pal (PAN: BGBPP6436M).
9. Smt Kabita Rani Pal (R/o VPO-Changuyal, PS-Kharagpur (Local) Paschim Midnapur, PIN: 721301).
10. Shri Saurovemoy Ghosh (PAN: AIDPG1944N; DIN: 03580554).
11. Shri Sukumar Bhattacharya (PAN: AHNPB5569M; DIN: 06538554).
12. Shri Sudhir Chandra Bera (PAN: AXAPB8554D; DIN: 06500319).
13. Shri Bhadrashwar Pal (PAN: ANZPP6080B; DIN: 01557670).
14. Shri Anjan Bandyopadhyay (PAN: ADYPB3215H; DIN: 02599213).
15. Shri Aniruddha Ghosal (PAN: AHEPG6300N; DIN: 03398215).
16. Shri Sukumar Chatterjee (PAN: ACFPC4630F; DIN: 03576773).
17. Shri Ajoy Sankar Sanyal (PAN: DUGPS0846K; DIN: 06548210).
18. Debenture Trustees, viz. Roofers Debenture Trust having Office at P103A, C.I.T, Road, 2nd Floor, Kolkata-700014 (Represented by its Trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (Represented by its Trustee, viz. Shri Biman Kumar Tat, R/o 62/3A, Ichapur Road, Kadamtala, Howrah-711101).

1. Roofers Infra–Projects Limited (hereinafter referred to as “**RIPL**”/ “**the Company**”) is a Public company incorporated on December 17, 2009 and registered with Registrar of Companies–Kolkata with CIN: U45400WB2009PLC140341. Its registered office is at

Diamond Tower-1, Ground Floor, Jhapetapur, Post Office – Kharagpur, West Midnapore –721301, West Bengal, India.

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons against RIPL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether RIPL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).
3. On enquiry by SEBI, it was observed that RIPL had made an offer of NCDs in the financial years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 (hereinafter referred to as “**Offer of NCDs**”) and raised an amount of at least Rs.74.40 Crores from at least 42,269 allottees. The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI and the Company Petition. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures. It was also observed that RIPL created a charges amounting to Rs. 15.00 Crores on January 22, 2010, Rs.50.00 Crores on April 19, 2011 and 150.00 Crores on January 27, 2012 and appointed *Roofers Debenture Trust (represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its trustee, viz. Shri Biman Kumar Tat)* as Debenture Trustees for the Offer of NCDs by the company.
4. As the above said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an interim order dated March 18, 2016 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against RIPL and its Directors and

promoters, viz. Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Roofers Infrastructure India Private Limited, Shri Rabindra Nath Sounth, Shri Tarak Nath Sounth, Shri Sujit Kumar Pal, Smt Kabita Rani Pal, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya, Shri Sudhir Chandra Bera, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal and its Debenture Trustees *Roofers Debenture Trust (represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its trustee, viz. Shri Biman Kumar Tat)* (hereinafter collectively referred to as “**Noticees**”).

5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. RIPL had made an *Offer of NCDs* during the financial years 2009-2010 , 2010-2011 , 2011-2012 , 2012-2013 , 2013-2014 and raised an amount of Rs.74.40 Crores as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in Crores)	Number of allottees
2009-2010	NCDs	74.40	42,269
2010-2011			
2011-2012			
2012-2013			
2013-2014			
Total		74.40^	42,269*

**The year-wise number of debenture holders is not known since RIPL has failed to provide such information to SEBI. On a scrutiny of the latest Annual Return filed by RIPL with the ROC for the Financial Year ending March 31, 2013, it is observed that details of number of debenture holders has not been provided by the company. Further, on further scrutiny of the previous Annual Returns filed by the company for the Financial Year ending March 31, 2012 and Financial Year ending March 31, 2011, it is observed that the company has shown only one noticee viz. ‘Roofers Capital Management Limited’ as its debenture holder for the entire amount of debentures issued by it i.e. Rs.1.3 Crores and Rs. 6.14 Crores respectively. (The estimate of number of allottees is based on the complaints received by SEBI and the Company Petition.)*

[^]The amount has been taken from RIPL's Balance Sheet for the Financial Year ending March 31, 2013.

6. Further, RIPL created a charge for an amount of Rs. 15.00 Crores on January 22, 2010 and Rs.50.00 Crores on April 19, 2011 and appointed *Roofers Debenture Trust (represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat)* as Debenture Trustee for the Offer of NCDs by the company. Thereafter, RIPL created further charge of Rs.150.00 Crores on January 27, 2012 and appointed *Diamond Debenture Trust (represented by its trustee, viz. Shri Biman Kumar Tat)*. *Roofers Debenture Trust (represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat)* and *Diamond Debenture Trust (represented by its trustee, viz. Shri Biman Kumar Tat)* were not registered as debenture trustee for the offer of NCDs by the company.
7. The above *Offer of NCDs* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) and sections 117B and 117C of the Companies Act, 1956 read with section 27(2) of the SEBI Act and the relevant provisions of the ILDS Regulations were not complied with by RIPL in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Roofers Debenture Trust (represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat)* and *Diamond Debenture Trust (represented by its trustee, viz. Shri Biman Kumar Tat)* *prima facie* violated section 12(1) of the SEBI Act and regulation 7 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "**Debenture Trustees Regulations**").
8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated March 18, 2016 with immediate effect.
 - i. "RIPL (PAN: AAECR6118F), shall forthwith cease to mobilize funds from investors through the *Offer of NCDs* or through the issuance of equity shares or

- any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*
- ii. RIPL and its past and present Directors and Promoters, viz. Shri Saurovemoy Ghosh (PAN: AIDPG1944N; DIN: 03580554), Shri Sukumar Bhattacharya (PAN: AHNPB5569M; DIN: 06538554), Shri Sudhir Chandra Bera (PAN: AXAPB8554D; DIN: 06500319), Shri Khudiram Sounth (PAN: AKEPS8245D; DIN: 01642426), Shri Hirak Nath Sounth (PAN: APKPS6248B; DIN: 01642164), Smt Jayanti Sounth (PAN: AZGPS4138J; DIN: 01642127), Shri Bhadreswar Pal (PAN: ANZPP6080B; DIN: 01557670), Shri Anjan Bandyopadhyay (PAN: ADYPB3215H; DIN: 02599213), Shri Aniruddha Ghosal (PAN: AHEPG6300N; DIN: 03398215), Shri Sukumar Chatterjee (PAN: ACFPC4630F; DIN: 03576773), Shri Ajoy Sankar Sanyal (PAN: DUGPS0846K; DIN: 06548210), Roofers Infrastructure India Private Limited (PAN: AADCR8150J), Shri Rabindra Nath Sounth (PAN: BDLPS1922A), Shri Tarak Nath Sounth (PAN: AZJPS2963G), Shri Sujit Kumar Pal (PAN: BGBPP6436M) and Smt Kabita Rani Pal, are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;*
 - iii. RIPL and its abovementioned past and present Directors and Promoters, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*
 - iv. RIPL shall provide a full inventory of all its assets and properties;*
 - v. RIPL's abovementioned past and present Directors and Promoters, shall provide a full inventory of all their assets and properties;*
 - vi. RIPL and its abovementioned present Directors and Promoters, shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of NCDs, without prior permission from SEBI;*
 - vii. RIPL and its abovementioned present Directors and Promoters, shall not divert any funds raised from public at large through the Offer of NCDs, which are kept in bank account(s) and/or in the custody of RIPL;*

- viii. *RIPL and its abovementioned past and present Directors and Promoters, shall co-operate with SEBI and shall furnish all information/documents sought vide letters dated December 24, 2013 and February 12, 2014;*
- ix. *The Debenture Trustees, viz. Roofers Debenture Trust (represented by its Trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its Trustee, viz. Shri Biman Kumar Tat), are prohibited from continuing with their assignment as debenture trustee in respect of the Offer of NCDs of RIPL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.”*
9. The interim order also directed the RIPL and its Directors/promoters to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act should not be passed against them:
- i. *“Directing them jointly and severally to refund money collected through the Offer of NCDs along with interest, if any, promised to investors therein;*
- ii. *Directing them not to issue 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, for an appropriate period;*
- iii. *Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.”*
10. Similarly, Debenture Trustees, viz. Roofers Debenture Trust (represented by its Trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its Trustee, viz. Shri Biman Kumar Tat), were advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the Debenture Trustee Regulations including restraining them from accessing the securities market and further restraining them from

buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.

11. Vide the said interim order, RIPL, its abovementioned Directors/promoters along with its Debenture Trustee were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
12. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated March 21, 2016 which were not delivered. Subsequently, vide notification dated November 09, 2016 published in newspaper *Times of India* and notification dated November 08, 2016 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI, that interim order dated March 18, 2016 was issued against them and they were given a final opportunity to submit their reply in the matter.
13. In response to the interim Order, the following Noticees have filed their replies, the details of which are as under:

Sl. No	Name of the entity	Date of Reply
1.	Shri Sukumar Chatterjee	11.04.2016; 12/09/2017 *
2.	Shri Bhadreshwar Pal	18.04.2016; 18/09/2017*
3.	Shri Tarak Nath Sounth	20.4.2016
4.	Shri Khudiram Sounth	20.03.2016
5.	Smt Jayanti Sounth	20.03.2016
6.	Smt Kabita Rani Pal	20.04.2016
7.	Shri Rabindra Nath Sounth	20.04.2016; 29.06.2016
8.	Shri Sujit Kumar Pal	21.04.2016
9.	Shri Ajoy Sankar Sanyal	28.7.2016

**In response to SEBI's letter dated August 29, 2017*

13.1 Submissions of Shri Sukumar Chatterjee made vide letters dated 11.04.2016 and 12.09.2017 are summarized as under:

- i. *“...the undersigned was approached by Shri Hirak Nath Sounth who identified himself as the Managing director of the subject company informed the undersigned that Shri Hirak Nath Sounth has a number of companies under his belt which are mainly dealing in sell & purchase of landed properties including developing such properties to make them habitable for common people...*
- ii. *...the undersigned agreed to join the company as an ordinary director only on one condition i.e. the undersigned will only be concerned for matters relating to land and properties and/or its sister concerns;*
- iii. *the undersigned was a mere director in those companies holding no managerial/administrative power to take any final decision on any affairs of the company nor was ever entrusted with any financial power/authority.;*
- iv. *Accordingly in terms of such understanding with Shri Hirak Nath Sounth, Managing Director, the undersigned started his job which included documentation of various documents relating to the land and properties of the company; follow up with the land revenue department, BLLRO office, company lawyers looking after the properties of the companies.;*
- v. *It is only during 2013 that undersigned sensed some foul play is going on and the subject company is involved in financial activities which is known as chit fund;*
- vi. *Upon hearing, the undersigned forthwith tendered his resignation from the directorship in those companies and by the end of March 2013 the undersigned got retired from all 10 companies belonging to the Roofers Group.;*
- vii. *Being an old an old person aged above 65 years the undersigned admits that he has been totally misled by Shri Hirak Nath Sounth leading the undersigned to face such serious allegations;*

- viii. *I was no way connected with any offer of NCDs allotted by subject company and/or its sister concerns since the undersigned had no knowledge of the same at the time of happening of such event as alleged at all;*

13.2 Submissions of Shri Bhadreshwar Pal made vide letters dated 18.04.2016 and 18.09.2017 are summarized as under:

- a. "I am a poor man employed as an office Peon in an organization carrying out printing job having a meager salary;*
- b. I have no knowledge or information about any kind of investigation undertaken by SEBI against Roofers Infra Projects Ltd;*
- c. I had never participated in the policy making decisions/financial and/or commercial affairs or in the day to day affairs of the said company, nor had I received any benefit-financial or otherwise from the said company.*
- d. I came to know one of the owner and managing Director of the said Company Shri Hirak Nath Sounth who offered employment for me in his Cement Plant going to open in Midnapore, West Bengal. I consented to such proposal and signed some papers forwarded by him. These talks were made in 2010. I never went to the job nor received any money and have come to the knowledge that the papers so signed by me were utilized for making me a Director of the said company;*
- e. Then I requested Shri Hirak Nath Sounth to relieve me which he did in the month of January 2011 under my continued pressure;*
- f. Therefore, I have no idea about the internal affairs, management, books of accounts or activities of the said company.*
- g. I do not have any idea about the registered office or auditor of the said company; I have no knowledge about the service of anything except the said order dated 18.3.2016. I have been cheated and victimized and kindly absolve me from all the charges..."*

13.3 Submissions of Shri Tarak Nath Sounth made vide letter dated 20.4.2016 are summarized as under:

“...I am not the director of Roofers Infra Projects Ltd. It is a fact that I am 5% shareholder of the said company hence at present I have no information of the said company and I am not in any way connected with the said company. Hence, it is not possible for me to say anything about your alleged allegations. Since I am not Director of the said company nor a promoter of the said company, this show cause notice does not apply to me.”

13.4 Submissions of Shri Khudiram Sounth made vide letter dated 20.03.2016 is summarized as under:

“...I am not the director of Roofers Infra Projects Ltd. It is a fact that I was a Director of the said company but I resigned from the Directors of the said company on 22.12.2010 and said resignation was accepted by the authority. Hence I am not the director of the said company and I am not in any way connected to the said company. Since I am not a director of the said company, it is not possible for me to say anything about alleged violations...”

13.5 Submissions of Smt Jayanti Sounth made vide letter dated 20.03.2016 is summarized as under:

“...I am not the director of Roofers Infra Projects Ltd. It is a fact that I was a Director of the said company but I resigned from the Directors of the said company on 22.12.2010 and said resignation was accepted by the authority. Hence I am not the director of the said company and I am not in any way connected to the said company. Since I am not a director of the said company, it is not possible for me to say anything about alleged violations...”

13.6 Submissions of Smt Kabita Rani Pal made vide letter dated 20.04.2016 is summarized as under:

“...I am not the director of Roofers Infra Projects Ltd. It is a fact that I am 5% shareholder of the said company hence at present I have no information of the said company and I am not in any way connected with the said company. Hence, it is not possible for me to say anything about your alleged allegations. Since I am not Director of the said company nor a promoter of the said company, this show cause notice does not apply to me.”

13.7 Submissions of Shri Rabindra Nath Sounth made vide letter dated 20.04.2016 and 29.06.2016 are summarized as under:

“...I am not the director of Roofers Infra Projects Ltd. It is a fact that I am 5% shareholder of the said company hence at present I have no information of the said company and I am not in any way connected with the said company. Hence, it is not possible for me to say anything about your alleged allegations. Since I am not Director of the said company nor a promoter of the said company, this show cause notice does not apply to me.”

13.8 Submissions of Shri Sujit Kumar Pal made vide letter dated 21.04.2016 is summarized as under:

“...I am not the director of Roofers Infra Projects Ltd. It is a fact that I am 5% shareholder of the said company hence at present I have no information of the said company and I am not in any way connected with the said company. Hence, it is not possible for me to say anything about your alleged allegations. Since I am not Director of the said company nor a promoter of the said company, this show cause notice does not apply to me.”

13.9 Submissions of Ajoy Sankar Sanyal made vide letter dated 28.7.2016 is summarized as under:

- a) *“At the outset, I most respectfully state and submit that I was never holding the post of director in respect of the company named Roofers Infra-Projects Limited. I further submit that from 15th March, 2013 upto 16th July, 2013 my name was proposed as an Additional Director having no right to sign any papers and documents of the said company and also without any remuneration.*
- b) *My name was proposed as an Additional Director of the aforesaid company but the same was not approved under section 161 of the Companies Act, 2013 and its latest amendment.*
- c) *I was looking after the civil cases of Roofers Group exclusively managed and controlled by Hirak Nath Sounth, Chairman cum Managing Direction for all the companies of the said group. Thus my association with the company was in a professional capacity*
- d) *I further say that (i) Hirak Nath Sounth (ii) Anjan Bandopadhyay (iii) Aniruddha Ghosal (iv) Mr. Khudiram Sounth (v) Sauravemoy Ghosh (vi) Smt Jayanti Sounth, (vii) Tarak Nath Sounth (viii) Rabindra Nath Sounth and (ix) Sujit Kumar Pal to the best of my knowledge are the key persons to look after, manage and control the day to day business and affairs of all the companies of Roofers Group, including the company Roofers Infra- Projects Limited as gathered from the information received from the company and my association with them was solely for professional reasons.*
- e) *I appeared on behalf of the aforesaid company namely Roofers Infrastructures India Private Limited to contest the case. I am giving the following case numbers for your kind perusal:*
 - i. *T.S No.132 of 2010 before the Civil Judge (Junior Division) 2nd Court at Sealdah. M/s. Roofers Infrastructures India Private Limited Versus – M/s Bengal Greenfield Housing Development Co. Limited.*

- ii. *Misc. Appeal no. 25 of 2010 before the Learned Assistant District Judge at Sealdah M/s. Roofers Infrastructures India Private Limited – Versus M/s. Bengal Greenfield Housing Development Co. Limited.*
- iii. *C.P. No. 410 of 2013 before the Hon'ble High Court at Calcutta M/s. Roofers Infrastructures India Private Limited – Versus Kolkata West International City Private Limited.*
- iv. *Relying upon the statement made by the aforesaid Hirak Nath Sounth, Chairman cum Managing Director of Roofers Group of Companies that the said Roofers Infra Projects Limited is running its business according to the law of the country and that I shall have no difficulty after accepting the additional directorship of the company and I had given consent to act as an Additional Director of the said company namely Roofers Infra Project Limited on March 15, 2013 and such appointment was made to me without any remuneration and also having no power of signature anywhere.*
- v. *That due to my personal problem as well as old age of 60 years, I tendered my Resignation Letter on 16.7.2013 to the said company.*
- vi. *I further say that the aforesaid company did not hold Annual General Meeting after proposal of my name as an Additional Director on March 15, 2013 for approval of my name as per under Section 161 of Companies Act, 2013 and its latest amendment.*
- vii. *I categorically state and submit that I never signed in any paper or document in the capacity of additional director or directors of the company named by Roofers Infra Project Limited*
- viii. *I categorically state and submit that I was never part of the day to day business activity of the aforesaid company in any manner whatsoever and I had no power or responsibility in the day to day affairs of the company or its decision and policy.*

- ix. *Lastly I state and submit that your goodself would be pleased to see that my involvement with the said company was only in connection with the litigation and legal matters which is my profession and nothing else.*
- f) *With regard to the inventory of personal property, I state and submit I have no property in my name and I am residing with my old mother and family members in a rental flat at 6, Dr. Kartik Bose Street, Post Office Amherst Street, Kolkata 700009*
- g) *I Further state and submit that the aforesaid company namely Roofers Infra-Projects Limited has already filed an application under the Companies Act, 2013 before the Hon'ble High Court at Calcutta registered as C.P. no.565 of 2014 C.A. no. 67 of 2014 seeking permission for making payment to the debenture holders and creditors of Company and the said case is still now pending.”*
14. Vide notification dated June 10, 2017 published in newspaper *Times of India* and notification dated June 10, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on July 25, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they fail to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.
15. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on July 25, 2017. Subsequently, SEBI vide letter dated August 29, 2017 granted another opportunity to the Noticees who had replied to the interim Order for submission of additional documentary evidence if any, in support of their earlier submissions. In response, Shri Sukumar Chatterjee and Shri Bhadreshwar Pal vide their letters dated September 12, 2017 and September 18, 2017 respectively, reiterated their earlier submissions. Further, Shri Biman Kumar Tat vide his letter dated September 05, 2017 submitted *inter alia* as under:

- i. *“I am very much surprised to note that you have alleged me for not availing the opportunity of personal hearing. In this connection, I am enclosed letter dated*

April 08, 2017 wherein I have clearly stated that I am available at any time of your choice at Kolkata Office.

- ii. *Now, till writing this letter I did not receive any communication either over phone or any other means except your letter dated August 29, 2017. However, I have enclosed a letter which was written in reply to your summons and that may be regarded as my personal representation in this regard.”*

Submissions of Shri Biman Kumar Tat in the aforesaid letter dated Nil in reply to SEBI’s Summons dated March 21, 2016 are as under:

1) *“My activities as Trustee of Roofers Debenture Trust, changed name Diamond Debenture Trust at various times are detailed below:*

- a. At the time of signing the Trust deed, RIPL filed Form 2 and 10 with MCA. That means MCA checked all the relevant documents of issuing NCDs on private placements basis and I felt whenever all those documents were checked by MCA everything were perfectly in order. Trust Deeds were also in order. I as a Trustee was the competent individual to sign the contract, signed the Trust Deed with a strong belief that everything was in order.*
- b. During the continuance of my service as Trustee till writing this letter, I have not received any complaint letter from any corner or no such event happened on the basis of which action may be taken*
- c. At the time of tendering my resignation from the office of Trustee w.e.f., May 24, 2013, the resignation was filed as per Clause 16 of the Trust Deed.*
- d. In this instant case, both the contracts made between RIPL (an artificial person engaged with illegal activities of raising money from public through issue of NCDs showing a public issue as private placement basis) and me through its directors for the appointment of trustee should be considered to be made by an illegal person. Moreover, the object of the agreement (showing a public issue as private placement basis) were also illegal. In this case the transparency of the agreement which were essential in a contract*

were lost and were not maintained at all in both the contracts.

- e. So both the contracts made between RIPL and me for the appointment of trustee of roofer debenture trust failed to be enforceable in the court of law and I would never be considered to be a trustee in both the contracts.*

16. I have considered the allegations and materials available on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

- (1) Whether the company came out with the Offer of NCDs as stated in the interim order.*
- (2) If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.*
- (3) Whether appointment of Roofers Debenture Trust (represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat), Diamond Debenture Trust (represented by its trustees, viz. Shri Biman Kumar Tat) as the Debenture Trustee by RIPL is in violation of Section 117B of the Companies Act, 1956 and whether Roofers Debenture Trust and Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat, Diamond Debenture Trust (represented by its trustee, viz. Shri Biman Kumar Tat) violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations*
- (4) If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1- *Whether the company came out with the Offer of NCDs as stated in the interim order.*

17. I have perused the interim order dated March 18, 2016 for the allegation of *Offer of NCDs*. I note that neither the company nor the directors filed any reply disputing the

same.

18. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the investors' complaints received by SEBI in the matter that RIPL has issued and allotted NCDs to at least 42,269 investors during the financial years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 and raised an amount of at least Rs.74.40 Crores. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI, information gathered from MCA21 Portal and from the Company Petition (C.P. No. 565 of 2014; C.A. No. 67 of 2014—filed before the Calcutta High Court. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 42,269 allottees and Rs.74.40 Crores Further, RIPL had also created charge for an amount of Rs.215 Crores for the Offer of NCDs, which clearly indicate the intention to mobilize much more funds through such issue.
19. *I therefore conclude that RIPL came out with an offer of NCDs as outlined above.*

ISSUE No. 2- *If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.*

20. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of NCDs* made to the public. Therefore the primary question that arises for consideration is whether the issue of NCDs is 'public issue'. At this juncture, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”

21. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI* (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the “**Sahara Case**”), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

“Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and

debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the “section of the public”. Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”

22. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation,

or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

23. In the instant matter, I find that NCDs were issued by RIPL to at least 42,269 investors in the financial years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014. However, this number is not conclusive as it is based on the documents received by SEBI along with complaints, information gathered from MCA21 Portal and from the Company Petition (C.P. No. 565 of 2014 filed before the Calcutta High Court. Hence, the actual number of investors could be more than 42,269. I find that RIPL has mobilized at least an amount of Rs.74.40 Crores over the financial years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 which is not a conclusive value as it is based on the complaints received by SEBI, information gathered from MCA21 Portal and from the aforementioned Company Petition, etc. Further, I find that RIPL had also created charge for an amount of Rs.215 Crores for the Offer of NCDs, which clearly indicate the intention to mobilize much more funds through such issue. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by RIPL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
24. Neither RIPL nor its directors have contended that the *Offer of NCDs* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
25. I find that RIPL 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 RIPL is covered under

the second proviso to Section 67(3) of the Companies Act, 1956.

26. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by RIPL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of NCDs* are deemed to be public issues and RIPL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
27. Further, since the offer of NCDs is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.
28. The allegations of non-compliance of the above provisions were not denied by RIPL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that RIPL has contravened the said provisions. RIPL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that RIPL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.
29. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of NCDs was a deemed public issue of securities, RIPL was required to register a

prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that RIPL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of NCDs. I, therefore, find that RIPL has not complied with the provisions of section 60 of the Companies Act, 1956.

30. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Neither RIPL nor its directors produced any record to show that it has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, RIPL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
31. As regards the allegation of section 117C of the Companies Act, 1956, it may be seen that the said provision mandates the company to create a debenture redemption reserve for the redemption of such debentures, to which every year, adequate amounts should be credited out of its profits, until such debentures are redeemed. None of the Noticees denied this allegation. There is no material on record to show that such debenture reserve was created. Therefore, I hold that the company has violated section 117C of the Companies Act, 1956.
32. ILDS Regulations are applicable to the public issue and listing of debt securities. Regulation 2(e) of the ILDS Regulations defines debt securities to mean non-convertible debt securities which create or acknowledge indebtedness, and include debentures. In view of the finding that RIPL has made a public issue of debt securities, the ILDS Regulations is also applicable to the instant offer of NCDs. Therefore, I find that the Company has violated the following provisions of the aforesaid ILDS Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- i. Regulation 4(2)(a) – Application for listing of debt securities
 - ii. Regulation 4(2)(b) – In-principle approval for listing of debt securities
 - iii. Regulation 4(2)(c) – Credit rating has been obtained
 - iv. Regulation 4(2)(d) – Dematerialization of debt securities
 - v. Regulation 4(4) – Appointment of Debenture Trustees
 - vi. Regulation 5(2)(b) – Disclosure requirements in the Offer Document
 - vii. Regulation 6 – Filing of draft Offer Document
 - viii. Regulation 7 – Mode of disclosure of Offer Document
 - ix. Regulation 8 – Advertisements for Public Issues
 - x. Regulation 9 – Abridged Prospectus and application forms
 - xi. Regulation 12 – Minimum subscription
 - xii. Regulation 14 – Prohibition of mis-statements in the Offer Document
 - xiii. Regulation 15 – Trust Deed
 - xiv. Regulation 17 – Creation of security
 - xv. Regulation 19 – Mandatory Listing
 - xvi. Regulation 26 – Obligations of the Issuer, etc.
33. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara Case*, had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

34. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase “intend to get listed” in the context of deemed public issue the Hon’ble Supreme Court in *Sahara Case* observed-

“...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...”

“...Listing of securities depends not upon one’s volition, but on statutory mandate...”

“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”

35. Even in cases where the allotments are considered separately, reference may be made to *Sahara Case*, wherein it was held that under Section 67(3) of the Companies Act, 1956, the *"Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged."* In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I

find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that “*In terms of Section 67(3) of the Companies Act any issue to ‘50 persons or more’ is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellants have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning*”.

36. In view of the above findings, I am of the view that RIPL was engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act, 1956, and above mentioned provisions pertaining to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.

ISSUE No. 3-Whether appointment of Roofers Debenture Trust (represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its trustee, viz. Shri Biman Kumar Tat) as Debenture Trustees by RIPL is in violation of Section 117B of the Companies Act, 1956 and whether Roofers Debenture Trust, Diamond Debenture Trust, Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

37. I have perused the copy of the Debenture Trust Deeds filed by RIPL. RIPL created a charge for an amount of Rs. 15.00 Crores on January 22, 2010 and Rs.50.00 Crores on April 19, 2011 and appointed *Roofers Debenture Trust (represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat)* as Debenture Trustee for the Offer of NCDs by the company. Thereafter, RIPL created further charge for an amount of Rs.150.00 Crores on January 27, 2012 and appointed *Diamond Debenture Trust*

(represented by its trustee, viz. Shri Biman Kumar Tat).

38. From the reply made by *Shri Biman Kumar Tat* as brought in the previous paragraphs, I find from the letter of resignation dated May 24, 2013 (addressed to the director of the company) that he has been acting as debenture trustee till May 24, 2013. The argument of *Shri Biman Kumar Tat* that he was appointed under unenforceable contract cannot be accepted as the liability of debenture trustee arises when *Shri Biman Kumar Tat* deals with the NCDs as an unregistered trustee. In the instant case, he has dealt with the NCDs by way of standing as debenture trustee to the NCDs through the debenture trust deed. The argument that trust deed became unenforceable, does not take away the liability of *Shri Biman Kumar Tat* as debenture trustee, as *Shri Biman Kumar Tat* should not have entered into the contract, in the initial instance itself, without certificate of registration as debenture trustee. It is further noted that the liability of *Shri Biman Kumar Tat*, debenture trustee does not further whittle down by the fact that he was, acting as debenture trustee, during the time of issuance of NCDs, till the time of his resignation, assuming but not agreeing under unenforceable contract.
39. Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993, states that *only a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body corporate alone are eligible to get a certificate of registration as Debenture Trustee.*
40. *Roofers Debenture Trust (represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) , Diamond Debenture Trust (represented by its trustee, viz. Shri Biman Kumar Tat)* are not eligible to obtain a certificate of registration since it does not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. None of the Noticees claimed that *Roofers Debenture Trust*

(represented by its trustees, viz., Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its trustee, viz. Shri Biman Kumar Tat) had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that Roofers Debenture Trust, Diamond Debenture Trust, Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat have dealt in the impugned Offer of NCDs as debenture trustees, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992.

41. Under section 117B of the Companies Act, 1956 no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. I find that RIPL has appointed *Roofers Debenture Trust (represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat)*, *Diamond Debenture Trust (represented by its trustee, viz. Shri Biman Kumar Tat)* who do not have a certificate of registration. Therefore, the appointment of the same is in violation of section 117B of the Companies Act, 1956. Further, since RIPL has not issued a prospectus with the relevant information and therefore, the requirement of stating the consent of the debenture trustee to be so appointed on the face of the prospectus has not been complied with.

ISSUE No. 4- If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?

42. Before dealing with the above issue, it would be appropriate to deal with the submissions/objections of the Noticees. The same are as under:

- 42.1 It is noted that Shri Sukumar Chatterjee vide his reply dated April 11, 2016 *inter alia* contended that he was just a mere director in the company and did not hold any managerial/administrative power to take any final decision on any affairs of the company. In this regard, I note that being a Director of the company during the

relevant period he cannot wriggle out of his responsibility as director and plead ignorance of the affairs of the company. Further, from the documents available on record I note that Shri Sukumar Chatterjee was the director of RIPL at the time of issuance of NCDs. In view of the same, I am not inclined to accept the contentions of Shri Sukumar Chatterjee.

42.2 Similarly, Shri Bhadreshwar Pal also vide his various replies contented that he was director for merely one month and 17 days and resigned thereafter. He had also claimed that he never participated in the policy making decisions/financial and/or commercial affairs or in the day to day affairs of the said company, nor received any benefit-financial or otherwise from the company. In this regard, I note that though Shri Bhadreshwar Pal had resigned from the company on Janaury 25, 2011, from the material available on record he was nonetheless director of RIPL during the period when NCDs were issued by RIPL. Hence, I find that he cannot wriggle out of his responsibility as director and plead ignorance of the affairs of the company.

42.3 It is noted from the submissions of Shri Khudiram Sounth and Smt Jayanti Sounth that they had resigned from the company on December 22, 2010. In support of their submissions, Shri Khudiram Sounth and Smt Jayanti Sounth enclosed Form 32 filed with RoC of Kolkata. As per the same it is noted that Shri Khudiram Sounth and Smt Jayanti Sounth ceased to be a director of the company with effect from September 20, 2009. However, I note that they were nonetheless directors of RIPL during the period when NCDs were issued by RIPL.

42.4 It is noted from the submissions of Shri Ajoy Sankar Sanyal that he was an Additional Director having no right to sign any papers and documents of the said company and also without any remuneration. He used to appear for the company to contest various cases and later resigned from the company and he was never part of

the day to day business activity of the aforesaid company in any manner. From the material available on record, I find that he has resigned on July 16, 2013. Though he had resigned from the directorship of the company, I note that Shri Ajoy Sankar Sanyal was nonetheless the director of RIPL during the period when NCDs were issued by RIPL.

42.5 In this regard, it is pertinent to mention the Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, wherein Hon'ble SAT has considered the contentions similar to that of these directors that merely lending name to be a director and non involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act. Further, in view of the decision of Hon'ble SAT in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with RIPL and other directors are limited to the extent of amount collected during his/her tenure as director of RIPL.

42.6 I find that the following are/were directors of the Company and the details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Saurovemoy Ghosh	August 05, 2011	Continuing
Shri Sukumar Bhattacharya	March 15, 2013	Continuing
Shri Sudhir Chandra Bera	February 12, 2013	Continuing
Shri Khudiram Sounth	December 17, 2009	September 20, 2010
Shri Hirak Nath Sounth	December 17, 2009	August 30, 2011

Smt Jayanti Sounth	December 17, 2009	September 20, 2010
Shri Bhadreshwar Pal	September 10, 2010	January 25, 2011
Shri Anjan Bandyopadhyay	September 10, 2010	January 31, 2013
Shri Aniruddha Ghosal	December 28, 2010	January 31, 2013
Shri Sukumar Chatterjee	August 05, 2011	March 14, 2013
Shri Ajoy Sankar Sanyal	March 15, 2013	July 16, 2013

43. From the documents available on record, I find that the present Directors in RIPL are Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya, Shri Sudhir Chandra Bera. I also note that Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar Chatterjee and Shri Ajoy Sankar Sanyal who were earlier Directors in RIPL, have since resigned.
44. I find that Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Roofers Infrastructure India Private Limited, Shri Rabindra Nath Sounth, Shri Tarak Nath Sounth, Shri Sujit Kumar Pal , Smt Kabita Rani Pal are promoters of RIPL.
45. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, RIPL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
46. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, be jointly and severally liable to repay that money with interest

at such rate, not less than four per cent and not more than fifteen per cent if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.

47. From the material available on record and the details of the appointment and resignation of the directors of RIPL as reproduced in paragraph 42 of this Order, it is noted that Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera were directors at the time of the issuance of NCDs. Since these persons were acting as directors during the period of issuance of NCDs, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of RIPL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the past and present directors of RIPL, as officers in default, are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. None of the Noticees disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act. Therefore, I find that

RIPL and its Directors, viz. Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

48. I note that during the financial years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014, RIPL through Offer of NCDs, had collected at the least an amount of Rs.74.40 Crores from various allottees. I note that Shri Khudiram Sounth was director of RIPL during financial years 2009-2010 and 2010-2011. I note that Shri Hirak Nath Sounth was director of RIPL during financial years 2009-2010, 2010-2011 and 2011-2012. I note that Smt Jayanti Sounth was director of RIPL during financial years 2009-2010 and 2010-2011. I note that Shri Saurovemoy Ghosh has been director of RIPL since financial years 2011-2012, 2012-2013 and 2013-2014 till present date. I note that Shri Sukumar Bhattacharya has been director of RIPL since financial years 2012-2013 and 2013-2014 till present date. I note that Shri Sudhir Chandra Bera has been director of RIPL since financial years 2012-2013, 2013-2014 till present date. I note that Shri Bhadreshwar Pal was director of RIPL during financial years 2010-2011. I note that Shri Anjan Bandyopadhyay was director of RIPL during financial years 2010-2011, 2011-2012 and 2012-2013. I note that Shri Aniruddha Ghosal was director of RIPL during financial years 2010-2011, 2011-2012 and 2012-2013. I note that Shri Sukumar Chatterjee was director of RIPL during financial years 2011-2012 and 2012-2013. I note that Shri Ajoy Sankar Sanyal was director of RIPL during financial years 2012-2013 and 2013-2014. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with RIPL and other directors are limited to the extent of amount collected during his/her tenure as director of RIPL.

49. As far as the liability under sections 117B and 117C of the Companies Act, 1956, is concerned, the liability is on the company to comply with the said provisions. Therefore, RIPL is liable for the violation of sections 117B and 117C of the SEBI Act. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the Trustee who act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that both Roofers Debenture Trust, *Diamond Debenture Trust*, *Shri Kanai Lal Bhattacharya* and *Shri Biman Kumar Tat* are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
50. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 32 of this order, the liability is on the Company to comply with the requirements therein.
51. I find that Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Roofers Infrastructure India Private Limited, Shri Rabindra Nath Sounth, Shri Tarak Nath Sounth, Shri Sujit Kumar Pal and Smt Kabita Rani Pal are promoters of RIPL and therefore, are liable as promoters for the *Offer of NCDs* against the norms of deemed public issue. Shri Khudiram Sounth, Smt Jayanti Sounth, Shri Rabindra Nath Sounth, Shri Tarak Nath Sounth, Shri Sujit Kumar Pal and Smt Kabita Rani Pal vide their respective replies reproduced at paragraph 13 above contended that they are mere shareholders of the company and did not have any information about the company and at present no way connected with the company. Shri Khudiram Sounth and Smt Jayanti Sounth were also Directors of the Company apart from being Promoters. Shri Rabindra Nath Sounth, Shri Tarak Nath Sounth, Shri Sujit Kumar Pal and Smt Kabita Rani Pal are Promoters as per the Memorandum of Association dated December 11, 2009. Being the Promoters pleading that they are not connected to the company cannot be accepted. Further, it is noted that there is no material available on record to show that the promoters have ceased to be so during the period of issuance/allotment of NCDs. In view of the same, I find that Shri Khudiram Sounth, Smt Jayanti Sounth, Shri Rabindra

Nath Sounth, Shri Tarak Nath Sounth, Shri Sujit Kumar Pal and Smt Kabita Rani Pal are liable to be debarred for an appropriate period of time since they were acting as Promoters during the relevant period. Further, the other Noticees viz., Shri Hirak Nath Sounth, and Roofers Infrastructure India Private Limited have not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue and public interest requires that the persons who had such knowledge/connivance/consent be made accountable to the investors. Therefore, the said Noticees are liable to be debarred for an appropriate period of time.

52. Further, it is noted from the submissions of Shri Ajoy Sankar Sanyal and also from the material available on record that RIPL has already filed a C.P. no.565 before the Hon'ble High Court at Calcutta seeking permission with respect to a scheme of arrangement for making payment to the debenture holders and creditors of Company and the said case is till now pending. In this regard, it is pertinent to mention here that the debenture holders in the deemed public issue are protected by way of full refund of the money collected by the company with interest for delay in making the repayment. In discharging this liability, the officers in default are equally liable jointly and severally with the company. In order to enforce the liability of 'officers in default' to repay the amount collected in deemed public issue under section 73(2) of the Companies Act, 1956 powers under the SEBI Act are available which include the power to pass direction to refund under section 11B of the SEBI Act and power to recover the same under section 28A of the SEBI Act in case noncompliance of directions issued under section 11B. Therefore, a separate order is required to be passed wherein both the Company and the directors are made liable for repayment under section 73(2) of the Companies Act, 1956. Considering the same, I am of the view that in so far as the liability of the company is concerned, this order needs to be harmoniously read with the orders in C.P. no.565 of 2014 by the Hon'ble High Court at Calcutta.

53. In view of the foregoing, the natural consequence of not adhering to the norms

governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct RIPL and its Directors, viz. Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors and promoters to safeguard the interest of the investors who had subscribed to such NCDs issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.

54. I also note that, vide the interim order dated March 18, 2016, RIPL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors/promoters of RIPL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided either by RIPL or the other Noticees despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 12 of this Order.

55. In view of the discussion above, appropriate action in accordance with law needs to be initiated against RIPL and its Directors, promoters and debenture trustees, viz. Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Roofers Infrastructure India Private Limited, Shri Rabindra Nath Sounth, Shri Tarak Nath Sounth, Shri Sujit Kumar Pal, Smt Kabita Rani Pal, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya, Shri Sudhir Chandra Bera, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal, Roofers Debenture Trust (*represented by its trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat*), *Diamond Debenture Trust (represented by its trustee, viz. Shri*

Biman Kumar Tat).

56. 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) RIPL, Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs 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) Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar Chatterjee and Shri Ajoy Sankar Sanyal are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (d) RIPL, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya, Shri Sudhir Chandra Bera 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.

- (e) RIPL, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera 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) RIPL, Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal , Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera 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) RIPL, Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal , Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera in their personal capacity to make refund, 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, RIPL, Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal , Shri Sukumar Chatterjee , Shri Ajoy Sankar Sanyal , , Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera 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")

- (i) In case of failure of RIPL, Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreswar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya, Shri Sudhir Chandra Bera to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order:
- i) may recover such amounts, from the company and the directors liable to refund as specified in paragraph 56 (a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - ii) may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.
 - iii) would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds;
- (j) RIPL, Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadreswar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal , Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera 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) Roofers Infrastructure India Private Limited, Shri Rabindra Nath Sounth, Shri Tarak Nath Sounth, Shri Sujit Kumar Pal and Smt Kabita Rani Pal 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 for a period of 4 (four) years from the date of this Order. The above said persons 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 for a period of 4 (four) years from the date of this order.

(l) Roofers Debenture Trust, Diamond Debenture Trust and Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.

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

(n) This order shall, so far as the liability of the company is concerned, be harmoniously read with the orders in C.P. no.565 of 2014 by the Hon'ble High Court at Calcutta.

57. This Order is without prejudice to any action that SEBI may initiate under securities laws, as deemed appropriate in respect of the above violations committed by Noticees

and other key persons.

58. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.

59. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.

DATE: October 06, 2017

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**