

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 read with Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 and Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993 in the matter of Life Care Infrastructures India Limited

In respect of:

Serial no.	Entity Name	PAN	DIN/CIN
1.	Life Care Infrastructures India Limited	AACCL2342M	U70101MP2011PLC026822
2.	Mr. Pralay Kumar Saw	BBJPS6343H	03020064
3.	Mr. Sanjoy Kumar Maiti	APQPM8659A	03020095
4.	Mr. Sujit Mitra	AJNPM1411D	03028519
5.	Mr. Partha Pratim Ghosh	ADPPG0695P	03204655
6.	Mr. Ramprasad Sarkar	BDFPS5895A	03204658
7.	Debenture Trustee, viz. Life Care Debenture Trust (Represented by its Trustees, viz. Ms. Paromita Mondal)	AD Apartment, OD Road, Bazar Para, P.O. Uluberia, Howrah – 711316	Not Applicable

CASE FACTS

1. Life Care Infrastructures India Limited (hereinafter referred to as “**LCIIL**”/ “**the Company**”) is a Public company incorporated on September 26, 2011 and registered with Registrar of Companies–Gwalior (RoC) with CIN: U70101MP2011PLC026822. Its registered office is at 89/B Indra Nagar Colony, Thatipur, Gwalior, Madhya Pradesh - 474011.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from the office of the Registrar of Companies, Gwalior dated October

Order in the matter of M/s Life Care Infrastructure India Limited

29, 2013 against LCIL in respect of issue of Non-Convertible Redeemable Secured Debentures (hereinafter referred to as “**NCDs**”). It was stated that LCIL issued debentures to 2483 subscribers and that the RoC had filed prosecution on September 20, 2013 before the Hon’ble CJM Court at Gwalior. RoC vide letter dated December 19, 2013 provided a copy of Form 10 filed by the company. Subsequently, RoC vide letter dated December 31, 2013 also provided a copy of reply dated December 28, 2012 of the company and a list of allottees submitted by the company to them. SEBI undertook an enquiry to ascertain whether LCIL 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 LCIL had made an offer of NCDs in the financial years 2010-2011 and 2011-2012 (hereinafter referred to as “**Offer of NCDs**”) and raised an amount of Rs. 4,49,99,874 from 4,798 allottees. The number of allottees and funds mobilized has been collated from the records available on the *MCA21 portal*, as filed by the Company. It was also observed that LCIL created a charge for an amount of Rs. 100 Crores on September 30, 2011 and appointed *Life Care Debenture Trust (represented by its trustee, viz. Ms. Paromita Mondal)* as Debenture Trustee for the Offer of NCDs by that 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 June 29, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against LCIL and its Directors viz. Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh, and Mr. Ramprasad Sarkar, and its Debenture Trustee, *Life Care Debenture Trust*

(represented by its trustees, viz. Ms. Paromita Mondal) (hereinafter collectively referred to as “**Noticees**”).

5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded.

i. As per the brochures-cum-application form, LCIL is offering NCRSDs of Rs.100 Crores on basis under the following terms and conditions:

Scheme-1 Multiplier Non-Convertible Secure Debenture

<i>Plan</i>	<i>A2</i>	<i>A1</i>	<i>B</i>
<i>No. of debentures</i>	12	36	60
<i>Issue Price</i>	1200	3600	6000
<i>Redemption Value</i>	1300	5200	10500
<i>Bonus</i>	60	95	150
<i>Redemption Period</i>	15 months + 1 day	39 months + 1 day	63 months + 1 day

Scheme-2 Multiplier Non-Convertible Secure Debenture

<i>Plan</i>	<i>D1</i>	<i>E1</i>	<i>G1</i>
<i>Min. No. of debentures to be applied</i>	10	10	10
<i>Issue Price</i>	1000	1000	1000
<i>Redemption Value</i>	1414	2000	3175
<i>Redemption Period</i>	3 years	6 years	10 years

Scheme-3 Multiplier Non-Convertible Secure Debenture

<i>Plan</i>	<i>MIS(I)</i>	<i>MIS (II)</i>	<i>MIS (III)</i>
<i>Minimum No. of Debentures to be applied</i>	250	250	250
<i>Issue Price</i>	25000	25000	25000
<i>Interest Payable per month</i>	229	254	245
<i>Bonus (at the time of redemption)</i>	Nil	5%	7%
<i>Redemption Value</i>	25000	25000	25000
<i>Redemption Period</i>	3 Yrs.	5 Yrs.	10 Yrs.

ii. As per the debenture application form enclosed with Form 10 available on MCA 21 portal that the company is offering NCRSDs on following terms and conditions:

<i>Scheme- 1 Multiplier Non-Convertible Secure Debenture</i>			
<i>Plan</i>	<i>A</i>	<i>AI</i>	<i>B</i>
<i>No of debentures</i>	12	36	60
<i>Issue Price</i>	1200	3600	6000
<i>Redemption Value</i>	1340	4530	9550
<i>Bonus</i>	60	95	150
<i>Redemption Period</i>	15 months + 1 day	39 months + 1 day	63 months + 1 day

<i>Scheme- 2 Multiplier Non-Convertible Secure Debenture</i>					
<i>Plan</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>H</i>
<i>Minimum No. of Debentures to be applied</i>	10	10	10	10	10
<i>Issue Price</i>	1000	1000	1000	1000	1000
<i>Redemption Value</i>	1500	2000	3000	5000	10000
<i>Redemption Period</i>	3 Years	5 Years	7 Years	10 Years	14 Years

<i>Scheme -3 Multiplier Non-Convertible Secure Debenture</i>			
<i>Plan</i>	<i>MIS(I)</i>	<i>MIS(II)</i>	<i>MIS(III)</i>
<i>Min. No. of Debentures to be applied</i>	250	250	250
<i>Issue Price</i>	25000	25000	25000
<i>Interest Payable Per Month</i>	275	337.50	400
<i>Bonus (at the time of redemption)</i>	3%	4%	6%
<i>Redemption Value</i>	25000	25000	25000
<i>Redemption Period</i>	3 Yrs	5 Yrs	10 Yrs

iii. As per the brochure-cum-application form LCIL is managed by Mr. Pralay Kumar Saw (Chairman) under the superintendence, control and direction of the Board of directors of the company and the debentures are being issued pursuant to the resolution passed at the meeting of the Board of Directors of the company held on August 30, 2011. Form 10 filed by the Company with the RoC states that September 30, 2011 is the date of resolution authorizing the issue of debentures.

iv. Although LCIL in its letter dated December 28, 2012 to the RoC stated that the company allotted NCDs to 2483 allottees and mobilised funds amounting to Rs.45,79,800/- till March 31, 2012, as per the list of allottees attached with Form 20B (Form for filing annual return by a company) filed by the company on *MCA21 portal*, the company allotted NCD to 4,798 allottees in 228 tranches till financial year ending on March 31, 2012 and mobilised about Rs. 4.5 Crores. Details of investors in the list of allottees forwarded by RoC, when checked on sample basis, do not match with the list of allottees filed by the company on *MCA21 portal*. The amount which has been mobilised, as mentioned in Form 20B and as mentioned in the list of allottees forwarded by the RoC, are stated to be the same i.e. Rs.45,79,800/-.

v. LCIL had made allotment of debentures to 3803 allottees in 175 tranches even before its incorporation with RoC, and 995 allottees in 53 tranches, after incorporation. Details of the same are summarised below:

Dates of Allotment	No. of allottees	No. of tranches
02/01/2011 to 24/09/2011 (before incorporation)	3803	175
28/09/2011 to 24/12/2011 (after incorporation)	995	53
Total	4,798	228

Month-wise details of NCRSDs allotted are summarised below:

Sr. No.	FY	Month	No. of tranches (series of allotments)	No. of Investors	Amount mobilised (Rs.)
1	2010-11	January	20	334	2673300
2		February	18	350	2656320
3		March	20	444	5299250
4		April	18	398	4190350
5		May	16	349	2926200

6	2011-12	June	23	476	4603288
7		July	19	508	4741650
8		August	21	502	4301130
9		September	23	482	4557846
10		October	15	225	2083490
11		November	20	489	4823800
12		December	15	241	2143250
Total			228	4,798	4,49,99,874

To summarise, LCIL had made an *Offer of NCDs* during the financial years 2010-2011 and 2011-2012 and raised an amount of Rs. 4,49,99,874 as shown below:

Year of Issue	Security Issued	Amount raised (Rs.)	Number of allottees
2010-2011	NCDs	1,06,28,870	1128
2011-2012		3,43,71,004	3670
Total		4,49,99,874	4,798

6. Further, LCIL created a charge for an amount of Rs. 100 Crores on September 30, 2011 and appointed *Life Care Debenture Trust (represented by its trustees, viz. Ms. Paromita Mondal)* as Debenture Trustee for the Offer of NCDs by the company. *Life Care Debenture Trust (represented by its trustees, viz. Ms. Paromita Mondal)* was not registered as debenture trustee for the offer of NCDs by that 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 LCIL in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Life Care Debenture Trust (represented by its trustees, viz. Ms.*

Paromita Mondal) has 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 June 29, 2015 with immediate effect.
- i. "LCIIL shall forthwith cease to mobilize any fresh funds from investors through the *Offer of NCRSDs* 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. LCIIL (PAN:AACCL2342M) and its past/present Directors, viz. Mr. Pralay Kumar Saw (DIN:03020064, PAN:BBJPS6343H), Mr. Sanjoy Kumar Maiti (DIN:03020095, PAN:APQPM8659A), Mr. Sujit Mitra (DIN:03028519, PAN:AJNPM1411D), Mr. Partha Pratim Ghosh (DIN:03204655, PAN:ADPPG0695P) and Mr. Ramprasad Sarkar (DIN:03204658, PAN:BDFPS5895A), 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. LCIIL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
 - iv. LCIIL shall provide a full inventory of all its assets and properties;
 - v. LCIIL's abovementioned Directors shall provide a full inventory of all their assets and properties;

- vi. LCIIL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of NCRSDs*, without prior permission from SEBI;
 - vii. LCIIL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of NCRSDs*, which are kept in bank account(s) and/or in the custody of LCIIL;
 - viii. LCIIL shall furnish within 21 days from the date of receipt of this Order complete information as sought by SEBI vide letters dated December 06, 2013, February 21, 2014, September 18, 2014 and December 09, 2014 including balance sheets of the company for FY 2011-12 to 2014-15 and reconcile the debenture allotment data provided to RoC vide their letter dated December 28, 2012 and that filed along with Form 20B on MCA 21 portal.
 - ix. The Debenture Trustee, viz. Life Care Debenture Trust (represented by trustee Ms. Paromita Mondal), is prohibited from continuing with their present assignment as a debenture trustee in respect of the *Offer of NCRSDs* of LCIIL 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 LCIIL 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, should not be passed against them, including the following:
- 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. Vide the said interim order, LCIL, its abovementioned Directors 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.
11. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated June 30, 2015 which were not delivered. Subsequently, vide notification dated October 15, 2017 published in the newspapers *The Times of India*, *Dainik Bhaskar* and *Anand Bazar Patrika*, the following Noticees, viz. LCIL, Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Mr. Ramprasad Sarkar were notified by SEBI, that interim order dated June 29, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter and that an opportunity of personal hearing was being granted to them on November 22, 2017 at the time and the venue mentioned therein. Vide public notification dated October 17, 2017, SEBI issued an addendum notifying the Debenture Trustee viz. *Life Care Debenture Trust (represented by its trustees, viz. Ms. Paromita Mondal)*, of the above. The Noticees were advised that in case they failed 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.
12. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on November 22, 2017. None of the Noticees has filed any replies pursuant to the interim order, as on date.
13. 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 Life Care Debenture Trust (represented by its trustees, viz. Ms. Paromita Mondal), as the Debenture Trustee by LCIL is in violation of Section 117B of the Companies Act, 1956 and whether Life Care Debenture Trust and Ms. Paromita Mondal 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.

14. I have perused the interim order dated June 29, 2015 for the allegation of *Offer of NCDs*. I note that neither the company nor the directors filed any reply disputing the same.
15. I note that the Company vide its Board Resolution dated September 30, 2011 has authorized issuance of debentures, as annexed with Form 10, filed by the Company with the RoC.
16. I note that LCIL in its letter dated December 28, 2012 to the RoC has stated that the Company allotted NCDs to 2483 allottees and mobilised funds amounting to Rs.45,79,800/- till March 31, 2012. The company also provided a list of these allottees.
17. I have also perused Form 20B as obtained from the 'MCA 21 Portal' and other documents available on records filed by the Company, and I find that there is an

inconsistency in the data provided by the Company to the RoC, and as available on MCA in Form 20B. I find that the amount which has been stated to have been mobilized, as per the Form 20B is Rs. 45,79,800/-. However, from the list of allottees as annexed with the said Form 20B it is noted that LCIL has issued and allotted NCDs to 4,798 investors during the financial years 2010-2011 and 2011-2012 and raised an amount of Rs. 4,49,99,874/-.

18. I note that LCIL vide the interim order was directed, *inter alia*, to reconcile the debenture allotment data provided to the RoC vide their letter dated December 28, 2012 with the data filed along with Form 20B on MCA21 Portal. However, no submission in this regard has been made by the Noticees as on date and therefore, I conclude that LCIL came out with an offer of NCDs and issued and allotted NCDs to 4,798 investors during the financial years 2010-2011 and 2011-2012 and raised an amount of Rs. 4,49,99,874/-.

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.

19. 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).”

20. 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.”

21. 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*.

22. In the instant matter, I find that NCDs were issued by LCIL to 4,798 investors in the financial years 2010-2011 and 2011-2012. I find that LCIL has mobilized an amount of Rs. 4,49,99,874/- over the financial years 2010-2011 and 2011-2012. Further, I find that LCIL has created a charge of Rs. 100 Crores on September 30, 2011. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by LCIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
23. I find that LCIL 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 LCIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
24. I note that the brochure-cum-application form states that the NCDs would be issued on a private placement basis. However, the Company has not provided any evidence in support of the claim. Further, I note that in its reply dated December 28, 2012 to the RoC, LCIL has submitted that “*The debentures have been placed within closely held groups without any contravention of any relevant sections and no offer has been made to more than 49 persons at any point of time, neither the debenture has been offered to public.*” I note that LCIL had allotted NCDs in 228 tranches during 2010-2011 and 2011-2012, with allotments being made to less than 50 allottees in each tranche. However,

it appears to be a deliberate attempt on the part of LCIL to disguise the issuance of NCDs as a private placement. In this regard, 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 appellant 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*". 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 the present issuance, the directors have not placed any material on record to show that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956. Therefore, I find that the said issuance cannot be considered as private placement.

25. Therefore, in view of the above, I find that the *Offer of NCDs* by LCIL 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 LCIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
26. 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.

27. The allegations of non-compliance of the above provisions were not denied by LCIL 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 LCIL has contravened the said provisions. LCIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that LCIL 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.
28. 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, LCIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that LCIL 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 LCIL has not complied with the provisions of section 60 of the Companies Act, 1956.
29. 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 LCIL 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, LCIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

30. 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.
31. 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 LCIL 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.

32. 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"

33. 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...”

34. In view of the above findings, I am of the view that LCIL 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 Life Care Debenture Trust (represented by its trustees, viz. Ms. Paromita Mondal), as the Debenture Trustee by LCIL is in violation of Section 117B of the Companies Act, 1956 and whether Life Care Debenture Trust and viz. Ms. Paromita Mondal have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

35. I have perused the copy of the Debenture Trust Deed dated September 30, 2011. I find that LCIL had created a charge of Rs. 100 Crores for the Offer of NCDs by the Company. I further find that LCIL had appointed *Life Care Debenture Trust (represented by its trustees, viz. Ms. Paromita Mondal)* as the debenture trustee by way of trust deed dated September 30, 2011

36. 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.*
37. *Life Care Debenture Trust (represented by its trustees, viz. Ms. Paromita Mondal)* is 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 *Life Care Debenture Trust (represented by its trustee, viz. Ms. Paromita Mondal)* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that *Life Care Debenture Trust* and *Ms. Paromita Mondal* 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.
38. 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 LCIL has appointed *Life Care Debenture Trust (represented by its trustee, viz. Ms. Paromita Mondal)* 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 LCIL 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?

39. From the ‘MCA21 Portal’, I find that the present Directors in LCIL are Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra and Mr. Partha Pratim Ghosh. I also note that Mr. Ramprasad Sarkar, who was earlier a Director in LCIL, has since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Mr. Pralay Kumar Saw	September 26, 2011	Continuing
Mr. Sanjoy Kumar Maiti	September 26, 2011	Continuing
Mr. Sujit Mitra	September 26, 2011	Continuing
Mr. Partha Pratim Ghosh	September 26, 2011	Continuing
Mr. Ramprasad Sarkar	September 26, 2011	May 16, 2012

40. 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, LCIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

41. 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%.
42. From the details of the appointment and resignation of the directors of LCIL as reproduced in paragraph 39 of this Order, it is noted that Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Mr. Ramprasad Sarkar 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 LCIL 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 LCIL, 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 LCIL and its Directors, viz. Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Mr. Ramprasad Sarkar 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.

43. I note that during the financial years 2010-2011 and 2011-2012, LCIL through Offer of NCDs, had collected at least an amount of Rs. 4,49,99,874/- from various allottees. I note that Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra and Mr. Partha Pratim Ghosh have been directors of LCIL since financial years, 2011-2012 till present date. I note that Mr. Ramprasad Sarkar had been a director of LCIL since financial years, 2011-2012 till 2012-2013. 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 LCIL and other directors are limited to the extent of amount collected during his/her tenure as director of LCIL.
44. 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, LCIL 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 Life Care Debenture Trust (*represented by its trustee, viz. Ms. Paromita Mondal*) and Ms. Paromita Mondal are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
45. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 31 of this order, the liability is on the Company to comply

with the requirements therein.

46. 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 LCIL and its Directors, viz., Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Mr. Ramprasad Sarkar to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors, 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.
47. I also note that, vide the interim order dated June 29, 2015, LCIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of LCIL 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 LCIL or the other Noticees despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 11 of this Order.
48. In view of the discussion above, appropriate action in accordance with law needs to be initiated against LCIL and its Directors Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Mr. Ramprasad Sarkar, and debenture trustees, viz. Life Care Debenture Trust (*represented by its trustees, viz. Ms. Paromita Mondal*).

ORDER

49. 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) LCIIL, Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Mr. Ramprasad Sarkar 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” or through appropriate banking channels with clear identification of beneficiaries and supporting documents.
- (c) LCIIL and Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
- (d) Mr. Ramprasad Sarkar is directed to provide a full inventory of all his assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (e) LCIIL, Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra and Mr. Partha Pratim Ghosh 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) LCIL, Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Mr. Ramprasad Sarkar 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) LCIL and, on its behalf the present directors Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and the past director, Mr. Ramprasad Sarkar 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 in the area of fund mobilisation, 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, LCIL, Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Mr. Ramprasad Sarkar shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.
- (i) In case of failure of LCIL, Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Mr. Ramprasad Sarkar to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may recover such amounts, from the company and the directors liable to refund as specified in paragraph 49(a) of this Order, in accordance with

section 28A of the SEBI Act including such other provisions contained in securities laws.

- (j) LCIIL, Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Mr. Ramprasad Sarkar 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) Life Care Debenture Trust, and Ms. Paromita Mondal 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.
- (l) The above directions shall come into force with immediate effect.
50. I note that a writ petition No. 3171(W) of 2015 has been filed by Dibakar Das & Ors. and a writ petition No. 10983W of 2016 has been filed by Prasun Mondal and Ors. which are pending before the Hon'ble High Court of Calcutta. However, no significant orders which might affect the directions passed in this order, have been passed in the said matters. In view of the same, this Order is passed in accordance with the relevant provisions of the securities laws.
51. Copy of this Order shall be forwarded to the recognized stock exchanges, depositories and registrar and transfer agents for information and necessary action.

52. 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.
53. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: February 8th, 2018

PLACE: Mumbai

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