

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Prayag Infotech Hi-Rise Limited

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") had received a copy of the letter dated October 25, 2010 from the Office of the Registrar of Companies, West Bengal addressed to The Director, Economic Offences Investigation Cell, Finance Department, Government of West Bengal. The said letter informed that a company, namely, Prayag Infotech Hi-Rise Limited (hereinafter referred to as "the Company") had raised monies by way of issue of preference shares from a large number of persons without complying with various provisions of law. It was also informed therein that : -

- (i) On September 03, 2007, the Company issued 19,50,000 preference shares of ₹10/- each to 2,521 allottees;
- (ii) On November 04, 2008, the Company had allotted 30,00,000 preference shares to 3,462 allottees; and
- (iii) On March 16, 2009, the Company had allotted 2,00,00,000 preference shares of ₹10/- each to "a large number of allottees running into 246 pages".

The Registrar of Companies ("RoC"), West Bengal further informed that the Company issued preference shares to more than 49 persons and had therefore made public issues of such securities. The RoC stated that, upon perusing the website of SEBI, it was noticed that the Company had not filed any offer document with respect to such issue of securities in contravention of the provisions of the Companies Act, 1956 ("the Companies Act") and the SEBI (Disclosure and Investor protection) Guidelines, 2000 ("the DIP Guidelines").

2. Subsequently, the RoC, vide letter dated November 22, 2011, had also categorically stated that as per available records with them, no statement in lieu of prospectus with respect to the issue



of preference shares had been filed so far by the Company. The RoC also forwarded copies of certain documents as mentioned in the afore-mentioned letter.

3. In the meanwhile, SEBI initiated a preliminary examination into the money mobilization activities of the Company from the public and accordingly vide letter dated October 18, 2011 required the Company to furnish information the following documents/information:

1. Certified copy of the memorandum and articles of association of the company.
2. Audited balance sheet and profit & loss account of the company for the last 3 years.
3. Name, addresses and occupation of all the promoters/directors of the company.
4. Statement of mobilization of funds through issue of preference shares duly certified by the statutory auditors of the company.
5. Names and details of the key managerial personnel of the company.
6. Information in respect of every series of preference shares issued by the Company as required below :
 - a) Details regarding the filing of prospectus/RHP with RoC for issuance of debentures.
 - b) Date of opening and closing of the subscription list for the said preference shares
 - c) Details regarding the number of application forms circulated inviting subscription for preference shares
 - d) Details regarding the number of applications received
 - e) Details regarding the number of allottees
 - f) List of such allottees
 - g) Number of preference shares allotted and value of such allotment against each allottees' name
 - h) Details regarding subscription amount raised
 - i) Date of allotment of preference shares
 - j) Copies of the minutes of board/committee meeting in which the resolution has been passed for allotment
 - k) Date of dispatch of preference share certificates etc



- l) Copies of application forms, RHP, pamphlets, advertisements and other promotional material circulated for issuance of preference shares
- m) Terms and conditions of the issue of preference shares.

SEBI advised the Company to furnish the above documents and information within a period of 15 days from the date of receipt of the letter. As the Company did not submit the documents, SEBI vide letter dated December 05, 2011 advised the Company to submit the documents/information within 7 days from the date of receipt of the letter. Thereafter, the Company, vide letter dated December 12, 2011, forwarded (i) copies of its memorandum and articles of association, (ii) name, addresses and occupation of all the Company's promoters and directors, and (iii) names and details of the key managerial personnel of the Company. As per the said letter, the following are the key managerial personnel of the Company –

- (i) Mr. Basudeb Bagchi,
- (ii) Mr. Avik Bagchi,
- (iii) Mrs. Swapna Bagchi, and
- (iv) Mr. Lakshami Kant.

4. Subsequently, vide letter dated January 02, 2012, the Company while contending that SEBI has not disclosed as to how or in what manner it was mobilizing funds from the public through issue of shares, denied mobilizing funds from the public. The Company also made the following submissions :

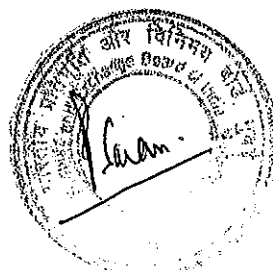
- (i) For the years 2007, 2008 and 2009, the Company had issued redeemable preference shares on a purely private placement basis and that no offer or invitation have been made to the public.
- (ii) The issue of redeemable preference shares has been made with the approval of its shareholders and after passing necessary resolutions under section 81(1A) of the Companies Act.
- (iii) Allotment of the preference shares by the Company was made with the knowledge of the RoC and all required intimation has been given to the RoC. The issue of preference shares has been duly approved by the competent authority for every year of such issue.



- (iv) Pursuant to its intimation to SEBI with respect to the redeemable preference shares, SEBI has opined, vide letter dated, January 27, 2009, that the issue of such shares and the Company are not under the regulatory purview of SEBI.
- (v) As the Company is not listed, it is therefore of the opinion that it does not come under the regulatory purview of SEBI. Therefore, SEBI does not have jurisdiction to seek information from the Company as sought vide letter dated October 18, 2011.
- (vi) The Company has not issued any debentures, so it need not file any Prospectus/Red Herring prospectus with the RoC.
- (vii) The allotment of preference shares were made strictly on private placement basis and therefore, there is no opening date or closing of the subscription.
- (viii) No application forms have been circulated inviting subscription for preference shares. The issue of redeemable preference shares have been done on private placement basis and as such the total number of application forms is equal to the total number of allottees. The terms and conditions of the issue have been mentioned in the application form.
- (ix) Applications have been received as per the number of allottees for shares.
- (x) The Company had allotted preference shares on three occasions – on September 03, 2007, November 04, 2008 and March 16, 2009. The total number of preference shares allotted is 2,49,50,000 shares at ₹10/- each for ₹24,95,00,000/-. The value of allotment against each allottee is evident from the list of allottees.
- (xi) Out of the above preference shares, shares for ₹2,49,50,000/- has already been redeemed.
- (xii) The Company dispatched the preference share certificates within 10 days of the allotment.
- (xiii) There are no Red Herring Prospectus ("RHP"), Prospectus, pamphlets, advertisements and promotional material circulated for such issuance of preference shares.

5. Thereafter, the Company forwarded certain documents vide its letter dated February 15, 2012. From the information/ details submitted by the Company, the information as contained in the RoC letters, and the preliminary findings of SEBI's examination into the matter, the following are noted/observed :

- (i) The Company is a flagship company of the Prayag Group. The Prayag Group appears to comprise of around 19 companies. Most of the companies are registered with the RoC, West



Bengal. Mr. Basudeb Bagchi and Mr. Avik Bagchi are the common directors in the group companies.

- (ii) The Company has *prima facie* mobilized funds from the public to the tune of ₹ 341 crores as it has been mentioned in the Annual Report (*in Schedule 9 to the Accounts forming part of the year ended 31.03.2011*) for the year ending March 2011, that it had taken "Advance against Real Estate Business/Multi Projects" to the tune of ₹3,41,14,66,645/- as at March 31, 2011. In the year 2009-2010, the Company had mobilized ₹85,61,85,603/- under the said head (i.e., Advance against Real Estate Business/Multi Projects). The amount of funds mobilized for the years ended March 2012 and March 2013 are not available on record as the Company has not yet submitted the Annual Report for the year ended March 2012.
- (iii) The Company has an Authorized Capital of ₹50 crores and issued and paid up capital of ₹25 crores. As per the statement of accounts of the Company and the Auditor's Report for the year ended March 31st 2011 and the Balance Sheet as at March 31st 2011, the share capital of the Company was ₹25,00,00,000/- comprised of equity share capital of ₹5,00,000/- and redeemable preference share capital of ₹24,95,00,000/-. It is noted that the capital raised through the redeemable preference shares by the Company are substantially larger than the capital raised through equity. Relevant details with respect to the issuances of redeemable preference shares by the Company are tabulated below :

Year	Type and nature of shares issued	Amount Raised (₹ in Crore)	No of Allottees as per Letter submitted by the Company
2007-08	Redeemable Preference Shares	1.95	1,558
2008-09	Redeemable Preference Shares	3.00	3,462
		20.00	18,254
Total		24.95	24,237

The details noted above would indicate that the Company had issued redeemable preference shares in three tranches. A total of ₹24.95 crores has been mobilized from 24,237 investors during the relevant period through subscriptions received against the issuance of redeemable



preference shares. Further, the number of allottees in such issuances are not small but substantial, as can be seen from the above table.

(iv) From the material available on record, the following details are also noted:

Issue of Preference Shares			
	2007 - 08	2008-09	
Date of Notice for increase in Authorized Share Capital	August 22, 2007	October 01, 2008	February 10, 2009
Increase in Authorized Share Capital	5,00,000 to 2,00,00,000	2,00,00,000 to 5,00,00,000	5,00,00,000 to 25,00,00,000
Date of Approval of resolution in the Extra - Ordinary General Meeting	September 03, 2007	November 04, 2008	March 16, 2009
No. of cumulative preference shares offered	19,50,000	30,00,000	2,00,00,000
Date of Passing of resolution for allotment	September 03, 2007	November 04, 2008	March 16, 2009
Date of Allotment as per Form 2 filed with the RoC	September 03, 2007	November 04, 2008	March 16, 2009
No. of allottees (approx)	1,558	3,462	18,254

(v) As per the Balance Sheet as at March 31, 2011, it is mentioned that ₹1,02,11,98,400/- was the share application money against Preference Shares. The figure was at ₹25,00,00,000/- for the year ended March 31, 2010. It was also mentioned that the same was certified by the management and relied upon by the auditors. The amount received by the Company has been shown under "Current Liabilities" instead of shareholders funds.

6. I have also perused the following documents which were forwarded by the Company to SEBI :

(i) Minutes of the meeting of the Board of Directors of the Company held on August 22, 2007;



- (ii) Minutes of the Extraordinary General Meeting of the members of the Company held on September 03, 2007;
- (iii) Minutes of the Extraordinary General Meeting of the members of the Company held on August 26, 2009;
- (iv) Minutes of the meeting of the Board of Directors of the Company held on July 22, 2009;
- (v) Minutes of the Extraordinary General Meeting of the members of the Company held on March 16, 2009;
- (vi) Minutes of the meeting of the Board of Directors of the Company held on February 10, 2009;
- (vii) Minutes of the Extraordinary General Meeting (EoGM) of the members of the Company held on November 04, 2008;
- (viii) Minutes of the meeting of the Board of Directors of the Company held on October 01, 2008;
- (ix) Statement dated January 02, 2012 from the statutory auditor of the Company;
- (x) Application form for subscribing to the redeemable preference shares along with its terms and conditions.

7. The Company has stated that the redeemable preference shares which were issued by it were in pursuance of section 81(1A) of the Companies Act and that the same were authorised by its shareholders. In this regard, I note from the minutes of the meeting dated August 22, 2007, that the directors of the Company, namely, Mr. Basudeb Bagchi, Mrs. Swapna Bagchi and Mr. Arunava Ganguly, decided to call for an EoGM for the issue of 19,50,000 redeemable preference shares of ₹10/- each. As per the minutes of the EoGM dated **September 03, 2007**, the Company had resolved to issue the said shares. The resolution also mentioned that "*... such share be offered, issued and allotted, inter alia, on the following terms & conditions to such persons, institutions and/or bodies corporate as the board may deem fit and proper.'...*". Four plans on the basis of the redemption period was also mentioned therein and the same is reproduced as below :

Plan	A	B	C
Issue price (Rs.)	1000/-	1000/-	1000/-
Minimum 100 preference shares of Rs.10/- each			



Redemption period	36 months	66 months	120 months
Redemption amount (Rs.)	500/-	1000/-	3000/-
Total redemption value (Rs.)	1500/-	2000/-	4000/-

Plan D	
Issue price (Rs.)	50,000/-
Minimum 5000 preference shares of Rs.10/- each	
Redemption period	60 months
Yearly redemption amount	6000/-
Quarterly redemption amount	1500/-

8. From the minutes of the EoGM dated **November 04, 2008**, it is seen that the Company had resolved to issue 30,00,000 redeemable preference shares of ₹10/- each for ₹3,00,00,000/-, as per the plans mentioned below :

Plan	BB 002	BB 013	BB 014	BB 009	BB 015
Issue price (Rs.)	1000/-	1000/-	1000/-	1000/-	1000/-
Minimum 100 preference shares					
Redemption period	36 months	60 months	84 months	120 months	168 months
Redemption amount (Rs.)	500/-	1000/-	2000/-	3000/-	9000/-
Total redemption value (Rs.)	1500/-	2000/-	3000/-	4000/-	10000/-

Plan	BB 021	BB 016
Issue price (Rs.)	25,000/-	25,000/-
Minimum 5000 preference shares each		
Redemption period	36 months	60 months
Yearly redemption amount	3000/-	3250/-
Monthly redemption amount	250/-	271/-



Final redemption amount	750/-	1250/-
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9. I also note from the minutes of the EoGM held on **March 16, 2009**, that the Company had resolved to issue 2,00,00,000 redeemable preference shares of Rs.10/- each for ₹20,00,00,000/-, as follows :

Plan	BB 017	BB 013	BB 018	BB 019	BB 020
Issue price (Rs.)	1000/-	1000/-	1000/-	1000/-	1000/-
Minimum 100 preference shares					
Redemption period	40 months	60 months	88 months	116 months	178 months
Redemption amount (Rs.)	500/-	1000/-	2000/-	3000/-	9000/-
Total redemption value (Rs.)	1500/-	2000/-	3000/-	4000/-	10000/-

Plan	BB 021	BB 016
Issue price (Rs.)	25,000/-	25,000/-
Minimum 5000 preference shares each		
Redemption period	40 months	60 months
Yearly redemption amount (Rs.)	3000/-	3250/-
Monthly redemption amount	250/-	271/-
Final redemption amount	750/-	1250/-

10. I note from the minutes of the EoGM dated **August 26, 2009** that the Company resolved to issue further 2,50,00,000 redeemable preference shares of ₹10/-, i.e., for value ₹25,00,00,000/-. The following were the plans mentioned therein :

Plan	BB 024	BB 025	BB 026	BB 027	BB 028	BB 029
Issue price (Rs.)	1000/-	1000/-	1000/-	1000/-	1000/-	1000/-
Minimum 100 preference shares of Rs.10/-						



each						
Redemption period	28 months	48 months	72 months	98 months	140 months	192 months
Redemption amount (Rs.)	250/-	500/-	1000/-	2000/-	4000/-	9000/-
Total redemption value (Rs.)	1250/-	1500/-	2000/-	3000/-	5000/-	10000/-

Plan	BB 030	BB 031
Issue price (Rs.)	25,000/-	25,000/-
Minimum 25000 preference shares of Rs.10/- each		
Redemption period	36 months	60 months
Monthly redemption amount	229/-	240/-
Quarterly redemption amount	687/-	719/-
Yearly redemption amount	2750/-	2875/-
Final redemption amount	1250/-	2500/-

Though the Company has stated that it issued preference shares in three tranches, the resolution dated August 26, 2009 to issue further 2,50,00,000 redeemable preference shares of ₹10/-, indicates *prima facie* to me that the Company had made further issuance of redeemable preference shares in addition to the above three issuances of those shares in pursuance of its money mobilization activities from the public. The same needs to be further probed by SEBI in its investigation.

11. I have also perused a sample application form for subscribing to the redeemable preference shares, forwarded by the Company. The said form contained details of plans – BB 017, BB 013, BB 018, BB 019, BB 020, BB 021 and BB 022. The details included the minimum subscription, the redemption period available under the different plans, the redemption amount and the total redemption value. In the terms and conditions, as contained in the said sample form, I note that one of conditions state that the offer (*to subscribe to the redeemable preference shares*) is being made on a private placement basis and cannot be accepted by any person other than to whom it has been offered. However, the application also required the applicants/subscribers to be introduced, as a separate entry for the same is provided for in the form. The application form also mentions that

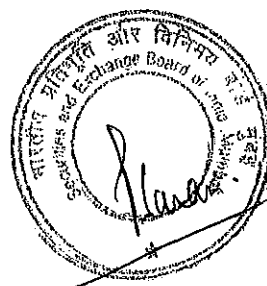


the principal and redemption premium shall be paid on maturity on surrender of preference share certificates and that the share certificates may be surrendered to the Company before six months of the due date to enable the company to issue the repayment warrant/DD in time.

12. Having noticed the limited facts on record till this date in the matter, I proceed to refer to the statutory/legal provisions, which are relevant to the facts of the case. Firstly, it would be appropriate to understand the nature and class of securities to which the subject i.e., *the redeemable preference shares* issued by the Company falls. In terms of section 2(46) of the Companies Act, a **share** means **share in the share capital of a company**, and includes stock except where a distinction between stock and shares is expressed or implied. According to section 86 of the Companies Act, the share capital of a company limited by shares shall be of two kinds only – (i) equity share capital and (ii) **preference share capital**. Therefore, it can be seen that the share capital of a company limited by shares, comprises of equity shares and preference shares issued, if any. From the foregoing, it is easy to comprehend that **shares** defined under section 2(46) of the Companies Act would include **preference shares**.

13. The Company has issued **redeemable preference shares**, which fall under one of the kinds of preference shares. Redeemable preference shares would mean that such preference shares could be redeemed on or after a period fixed for redemption under the terms of issue or after giving a proper notice of redemption to preference shareholders. The Companies Act, under section 80, provides for the issuances of redeemable preference shares and also imposes certain restrictions for the redemption of preference shares. As mentioned above, the Company, while issuing the redeemable preference shares, has evolved various plans for the redemption of such shares.

14. The Company has contended that its issuance of the redeemable preference shares was done on private placement basis and as it is not listed, it does not come under the regulatory purview of SEBI. The Company has also stated that, in response to its letter, SEBI had informed that unlisted companies are not under the regulatory purview of SEBI. In this regard, section 67 of the Companies Act, provides the necessary guidance to ascertain whether an issue of shares was made to public or was done on a private placement by companies. In this regard, I have perused the provisions of section 67 of the Companies Act. In terms of section 67(3), as amended by the *Companies (Amendment) Act, 2000, with effect from December 13, 2000*, no offer or invitation shall be



treated as made to the public by virtue of sub-sections (1) or (2), as the case may be, if the offer or invitation can properly be regarded, in all 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. Further, in terms of the *proviso* to the aforesaid section, the provisions of section 67(3) shall **not** apply in a case where the **offer or invitation to subscribe for shares or debentures** is made to **fifty persons or more**. In all the three tranches in which such shares were issued by the Company, the allottees were always more than 50 in number. The number of subscribers becomes relevant to judge whether an issue of shares are for public or on a private placement basis, in the light of the provisions of section 67 of the Companies Act. The Company is not stated to be a non-banking financial company or a public financial institution within the meaning of section 4A of the Companies Act. Therefore, it is not covered under the *second proviso* to section 67(3). In view of the foregoing, the issuance of redeemable preference shares by the Company, becomes a **public issue** of such securities.

15. In this regard, I find it necessary to refer to the judgment of the Hon'ble Supreme Court of India made in the matter of **Sahara India Real Estate Corporation Limited & Others vs. SEBI and another** (Civil Appeal Nos. 9813 and 9833 of 2011 ; decided on August 31, 2012) ("the Saharas case"):

"..... 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."

"90. in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue."

16. As the Company has issued and allotted the redeemable preference shares to more than 50 persons, I *prima facie* observe that the Company had made a public issue of such shares during the years 2007, 2008 and 2009. The Company should have complied with all relevant provisions of the Companies Act, the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"), the rules, regulations, guidelines framed thereunder and other provisions that regulate such public issues.



17. When any company makes a public issue, an important obligation attached to such public issue is that the company should list such shares in stock exchanges, in accordance with section 73 of the Companies Act. In terms of section 73(1), **every company intending to offer shares or debentures to the public for subscription** by the issue of a prospectus shall, before such issue, **make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange** or each such stock exchange. Sub-section (1A) requires that where a prospectus states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made, be void if the permission has not been granted by the stock exchange or each of such stock exchange, as the case may be, before the expiry of ten weeks from the date of closing of the subscription lists. The important requirement is contained in sub-section (2), which states that **where the permission has not been applied under sub-section (1) or such permission has not been granted, the company shall forthwith repay without interest all moneys received from the applicants** in pursuance of the prospectus and if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest. The Company has neither made an application for listing nor has it refunded the investors, as required in terms of section 73. Therefore, the Company, having made public issues of redeemable preference shares, as discussed above, has *prima facie* contravened the provisions of section 73 of the Companies Act.

18. As regards the non-adherence to the provisions of section 73 by the Company, I note the following observations made by the Hon'ble Supreme Court in the matter of the Sahara companies :

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



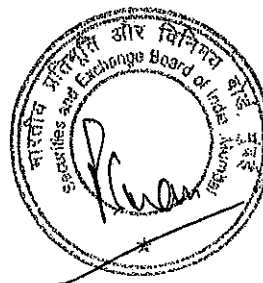
(1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act.

94. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons. A company cannot be heard to contend that it has no such intention or idea to make an application to the stock exchange. Company's option, choice, election, interest or design does not matter, it is the conduct and action that matters and that is what the law demands. Law judges not what is in their minds but what they have said or written or done.

96. Section 73, their failure to list the securities offer to the public was, therefore, intentional and the plea that they did not want their securities listed, is not an answer, since they were legally bound to do so. The duty of listing flows from the act of issuing securities to the public, provided such offer is made to fifty or more than fifty persons. Any offering of securities to fifty or more is a public offering by virtue of Section 67(3) of the Companies Act, which the Saharas very well knew, their subsequent actions and conducts unquestionably reveal so.

98. However, after the amendment to the Companies Act, 1956 on 13.12.2000, every private placement made to fifty or more persons becomes an offer intended for the public and attracts the listing requirements under Section 73(1). Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange.

101. Section 81(1A), it may be noted, is only an exception to the said rule, that the further shares may be offered to any persons subject to passing a special resolution by the company in their general meeting. Section 81(1A) cannot, in any view, have an overriding effect on the provisions relating to public issue. Even if armed with a special resolution for any further issue of capital to person other than shareholders, it can only be subjected to the provisions of Section 67 of the Company Act, that is if the offer is made to fifty persons or more, then it will have to be treated as public issue and not a private placement. A public issue of securities will not become a preferential allotment on



description of label. Proviso to Section 67(3) does not make any distinction between listed and unlisted public companies or between preferential or ordinary allotment."

19. In view of the provisions of sections 67(3) and 73 of the Companies Act and the material available on record at this stage, it becomes amply clear that the Company had issued redeemable preference shares to the public which mandated the Company to apply for listing of those shares, which was not adhered to by the Company.

20. The Company has contended that it does not come under the regulatory purview of SEBI as it is not a listed company. In support of this submission, the Company has stated that SEBI had already vide letter dated January 27, 2009, advised it that unlisted companies are not under the regulatory purview of SEBI. In this regard, I have perused the letters dated December 22, 2008 and December 24, 2008 forwarded by the Company to SEBI, to which SEBI had replied vide the aforesaid letter dated January 27, 2009. In its afore-mentioned letters to SEBI, the Company had *inter alia* stated that it is not a listed company and that it has issued "Redeemable Preferential Share as a private placement U/S 80(C) of the Companies Act, 1956; whose permission certificate has been obtained from RoC, Kolkata". The letters state that the permission certificate was enclosed therein. The Company had requested SEBI to issue a no-objection or a letter stating that no approval is necessarily required from SEBI. I have also perused the 'permission certificate' enclosed by the Company. The same is a letter dated November 06, 2007 issued by the Office of the Registrar of Companies, West Bengal, to the Company, wherein the following were its contents :

"Sirs,

With reference to your letter No. Nil dated 06//1/2007 addressed to this office in respect of e-filing of Form No.23 dated 03/10/2007 vide SRN No. A-23500259 I am to say that it has been duly passed/ approved and taken on record by this office on 04/11/2007 and you have no bar to act accordingly as per your Resolution passed i.e. in respect of issuing Redeemable Preferential Shares for private placement"

[Emphasis supplied]

From the above, it can be inferred that SEBI had issued the letter dated January 27, 2009 stating that "unlisted companies are not under the regulatory purview of SEBI" only on the basis of the representation of the Company that it is an unlisted company and that it is issuing redeemable preference shares on private placement. The fact that the issue of redeemable preference shares were issued to more than



49 persons was not disclosed by the Company to SEBI at that point in time. This fact has come to light only now in the inquiry conducted by SEBI in the matter. It appears to me that the Company has mischievously concealed the number of investors to whom it was issuing the redeemable preference shares when it approached SEBI for a no-objection letter for its issue. Therefore, the submissions of the Company made in this regard does not have any merit.

21. Having made the *prima facie* observation that the Company had made a public issue of redeemable preference shares, I note that in terms of section 60 of the Companies Act, a company needs 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 Company had offered the redeemable preference shares to more than 49 persons, it is construed a public issue and therefore, the Company was required to register a prospectus with the concerned RoC under section 60 of the Companies Act. The Company, vide its letter dated February 15, 2012, has expressly stated **that it has not filed any prospectus/red herring prospectus with RoC for the issuance of preference shares.** In view of the same, I find that the Company has *prima facie* not complied with the provisions of section 60 of the Companies Act. It is surprising to note as to how the Company could contend that it issued the redeemable preference shares to large number of investors in a private placement, contrary to the prescriptions of law in that regard.

22. I also note that in terms of section 56(1) of the Companies Act, 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, no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. The Company has, therefore, not *prima facie* complied with such provisions also.

23. On arriving at such *prima facie* observations, it would be appropriate to discuss the regulatory powers and the jurisdiction of SEBI on companies that raise funds, through issue of securities, from the public. In this regard, I refer to section 55A of the Companies Act. In terms of the relevant



provisions of the said section, the provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of **securities** and non-payment of dividend shall – (i) in case of listed public companies and (ii) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by SEBI. As the above provision uses the terms **securities** it is relevant to refer to the provisions of section 2(45AA) of the Companies Act, which provides that 'securities' means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "the SCRA"). As per section 2(h) of the SCRA, "**securities**" includes "**shares**". I have already observed above that shares includes preference shares. Sections 67 and 73 of the Companies Act are included in the list of sections mentioned in section 55A of the Companies Act. Therefore, such sections are to be administered by SEBI.

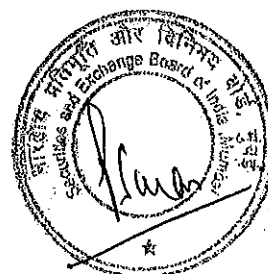
24. The preamble to the SEBI Act provides for the establishment of a Board to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith of incidental thereto. In terms of section 11(1) of the SEBI Act, subject to the provisions of the SEBI Act, it shall be the duty of SEBI to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. Further, SEBI can, under section 11A of the SEBI Act, regulate or prohibit the issue of prospectus, offer document or advertisement soliciting money for issue of securities. Prior to the amendment in 2002, section 11A empowered SEBI to specify by regulations, for the protection of the investors, the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies. The provisions of the section 11A, as amended by the SEBI (Amendment) Act, 2002, with effect from 29-10-2002, are reproduced below :

"11A. (1) Without prejudice to the provisions of the Companies Act, 1956 (1 of 1956), the Board may, for the protection of investors,—

(a) specify, by regulations—

- (i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and**
- (ii) the manner in which such matters shall be disclosed by the companies;**

(b) by general or special orders—



- (i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
- (ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.
- (2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.

Further, in terms of section 32 of the SEBI Act, the provisions of the said Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

25. SEBI had framed the DIP Guidelines in exercise of the powers conferred upon itself under the SEBI Act. In the words of the Hon'ble Supreme Court in the matter of Saharas, "DIP Guidelines had statutory force since they were framed by SEBI in exercise of its powers conferred on it under Sections 11 and 11A of the SEBI Act. Powers have been conferred on SEBI to protect the interests of the investors in securities and regulate the issue of prospectus, offer documents or advertisement soliciting money through the issue of prospectus. Section 11 of the Act, it may be noted has been incorporated, evidently to protect the interests of investors whose securities are legally required to be listed. DIP Guidelines were implemented by SEBI with regard to the listed and unlisted companies, which made public offer, until it was replaced by ICDR 2009". The DIP Guidelines were applicable to all public issues by listed and unlisted companies. The DIP Guidelines had prescribed various guidelines with respect to the public issue of securities by companies. These guidelines acted as reasonable safeguards for the investors who subscribed or intended to subscribe in public issues of securities.

26. In this regard, I observe *prima facie* that the Company has not complied with the provisions of the DIP Guidelines including the following clauses :

- a) Clause 2.1.1. (filing of offer document)
- b) Clause 2.1.4 (application for listing)
- c) Clause 2.1.5.(issue of securities in dematerialized form),
- d) Clause 2.8. (means of finance),
- e) Clause 4.1.(promoters contribution in a public issue by unlisted companies),
- f) Clause 4.11. (lock-in of minimum specified promoters contribution in public issues),
- g) Clause 4.14 (lock-in of pre-issue share capital of an unlisted company)
- h) Clause 5.3.1(memorandum of understanding),



- i) Clause 5.3.3 (due diligence certificate)
- j) Clause 5.3.5 (*undertaking*),
- k) Clause 5.3.6 (*list of promoters group and other details*),
- l) Clause 5.4 – appointment of intermediaries
- m) Clause 5.6 (*offer document to be made public*)
- n) Clause 5.6A (*Pre-issue Advertisement*),
- o) Clause 5.7 - *despatch of issue material*,
- p) Clause 5.8 – *no complaints certificate*
- q) Clause 5.9 – *mandatory collection centres and Clause 5.9.1.(minimum number of collection centres)*,
- r) Clause 5.10 – *authorised collection agents*
- s) Clause 5.12.1. (*appointment of compliance officer*),
- t) Clause 5.13 – *abridged prospectus*
- u) Clause 6.0 – *contents of offer documents - Clause 6.1 to Clause 6.15 (contents of prospectus), Clause 6.16 to Clause 6.34 (contents of abridged prospectus) including Clause 6.17.13 and Clause 41.6 – rating for the proposed debentures/preference shares issue, if any, obtained from credit rating agencies,*
- v) Clause 8.3 (*Rule 19(2)(b) of SC(R) Rules, 1957*)
- w) Clause 8.8.1 (*Opening & closing date of subscription of securities*)
- x) Clause 9 – guidelines on advertisements by issuer company
- y) Clause 10.1. (*requirement of credit rating*), and
- z) Clause 10.5. (*redemption*)

27. Another observation which I would like to make is with respect to the Company's statement that it had issued redeemable preference shares on a **purely private placement basis** for the years 2007, 2008 and 2009. If this is true, then it is surprising to note that the applicant had to be introduced as the application form contains a column to be filled in by an "**Introducer**". In this regard, I refer to the following observation of the Hon'ble Supreme Court made in the matter of the Sahara Companies as follows "*..... Bonds also required to name an introducer, whose job evidently was to introduce the company to the prospective investor. If the offer was made to those persons related or associated with Sahara Group, there was no necessity of an introducer and an introduction.....*"



28. From the foregoing, the *prima facie* observation that arises is that the Company, by disguising its issuances of redeemable preference shares during the relevant years as private placement of shares, has *prima facie* contravened the laid down norms as contained in the Companies Act, SEBI Act, DIP Guidelines etc., with respect to public issuances of such securities.

29. I also note that as per the Balance Sheet of the Company for the period ending March 31, 2009, the Company's authorized share capital was mentioned as ₹5,00,00,000/- (₹5,00,000/- equity capital and ₹4,95,00,000/- redeemable preference share capital). It appears that the Redeemable Preference Share ("RPS") capital of ₹4,95,00,000/- comprised only of 19,50,000 RPS of ₹10/- each issued on September 03, 2007 and 30,00,000 RPS of ₹10/- each issued on November 04, 2008, and did not take into account the 2,00,00,000 RPS of ₹10/- each (*for value ₹20,00,00,000/-*) issued on March 16, 2009. The authorized share capital of the Company as on March 31, 2009 should ideally be at least ₹25,00,00,000/- (5,00,000/- equity and 24,95,00,000/- RPSs that were issued). Therefore, the Balance Sheet for the year 2008-09, as submitted by the Company, does not give a true and fair view of the state of affairs of the company. The auditor's report also does not comment on this irregularity.

30. The Company has also submitted that the allotment of preference shares were made strictly on private placement basis and therefore, there is no opening or closing dates of the subscription. This indicates to me that the Company is or could be continuing with its fund mobilization activity without adhering to the statutory norms laid down with respect to public issues. The Company has also not submitted the Annual Accounts for the year ended March 31, 2012. The Company has informed that its promoters/directors are Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant. The said directors are *prima facie* responsible for the conduct of the Company in not complying with the provisions of law that regulates the public issue of redeemable preference shares by the Company. Though I note from the records that Mr. Avik Bagchi and Mrs. Swapna Bagchi had resigned from their directorship in the Company during the year 2012, I note that the said persons were the directors of the Company during the period when the Company had made such issuances of redeemable preference shares to the public.

31. It is also noted that the Company is maintaining ₹ 180.80 crore (*as per balance sheet as at March 31, 2011*) as 'Cash & Bank Balance' for the year ended March 31, 2011. However, the income for the



same year was only ₹7,90,65,958/- and the income for the year ended March 31, 2010 was ₹6,17,80,597/-, as per the balance sheets. As stated above, the Company has not submitted the Annual Accounts for the year ended March 31, 2012 to SEBI even when it was specifically asked for the same by SEBI vide various letters including the letters dated January 16, 2013, January 29, 2013 and March 06, 2013. The latest balance sheet also needs to be analyzed in the investigation which is in progress in the matter.

32. I also note that the Company has informed that it has refunded ₹1,20,72,750/- (out of the funds raised through preference shares issued on September 2007), ₹41,46,853/- (out of the funds raised through preference shares issued on November 2008) and ₹2,54,32,150/- (out of the funds raised through preference shares issued on March 2009). The said claims also need to be probed in the investigation to verify their genuineness.

33. SEBI has initiated a formal investigation into the conduct of the business of the Company in order to probe into the alleged non-compliance by the Company with the norms laid with respect to the issue of securities to the public, to ascertain whether the money mobilization activities are detrimental to the interest of the investors and for finding out possible violations, committed by the Company, if any, of the provisions of the Companies Act, SEBI Act or the rules or the regulations made or directions issued by SEBI. However, in view of the nature of the alleged violations and to prevent the Company from further mobilization of funds from the public under the garb of issuing redeemable preference shares or any other form of security, and in the interests of investors, it becomes necessary for SEBI to intervene at this stage by passing suitable directions, pending investigation and passing of further orders.

34. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. Raising of funds from the general public without complying with the provision of the Companies Act, SEBI Act and the DIP Guidelines (*as applicable during the relevant period*), is prejudicial to the interest of investors and unless urgent directions are issued, the interest of thousands of investors may be in jeopardy. Therefore, in order to protect those investors who have already subscribed to the redeemable preference shares issued by the Company and to prevent the Company from its uncontrolled money collection activity



in the garb of private placement made in *prima facie* contravention of the applicable laws, it becomes necessary for SEBI to intervene in the matter and pass suitable preventive and remedial directions.

35. In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1), 11(4), 11A and 11B thereof and Clause 17 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 read with regulation 111 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby, pending investigation and passing of further directions, issue the following directions :

- (i) The Company, namely, Prayag Infotech Hi-Rise Limited is restrained from mobilizing funds through the issue of redeemable preference shares 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) Prayag Infotech Hi-Rise Limited, its promoters and directors including Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant 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) Prayag Infotech Hi-Rise Limited, its promoters and directors including Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant shall not dispose any of the properties of the said company or alienate the assets acquired/created through the funds raised from public by issuance of the impugned redeemable preference shares.
- (iv) Prayag Infotech Hi-Rise Limited, its promoters and directors including Mr. Basudeb Bagchi, Mr. Avik Bagchi, Mrs. Swapna Bagchi and Mr. Lakshmi Kant shall not divert any funds raised from public at large through the issuance of the impugned redeemable preference shares, kept in its bank accounts and/or in the custody of the company without prior permission of SEBI until further orders.
- (v) Prayag Infotech Hi-Rise Limited and its promoters and directors shall co-operate with SEBI in the investigation and shall furnish documents, that are in their possession, which may be required by SEBI in the course of its investigation.
- (vi) Prayag Infotech Hi-Rise Limited shall produce proof for its claim that it has refunded ₹4,16,51,753/- out of the subscription received with respect to its issuance of the redeemable



preference shares which would be certified by a Chartered Accountant, who is in the panel of any public authority or public institution, who would examine the veracity of such submissions. This certificate shall be submitted by the Company within a period of 30 days from the date of receipt of this Order.

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

37. Further, the observations made in this Order are *prima facie* observations made on the basis of the preliminary investigation/examination by SEBI. The entity/persons against whom this Order is passed may file their objections, if any, within a period of 21 days from the date of receipt of this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

38. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against the company, Prayag Infotech Hi-Rise Limited, its promoters and directors, in accordance with law.



★ PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date :September 30, 2013
Place: Mumbai