

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM : PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under sections 11(1), 11(4), 11A(1)(b) and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 28 of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008

In the matter of Idol India Infrastructures Limited

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") had conducted an inquiry into the money mobilization activities of the company, Idol India Infrastructures Limited (hereinafter referred to as "the Company") through the issuance of Non-Convertible Debentures ("the NCDs"). In the inquiry, SEBI observed that the Company had issued NCDs to 10,175 number of investors collecting an aggregate of ₹ 4,95,32,250/- as of October 30, 2012, in instalments under various schemes and plans. As the number of investors of the NCDs exceeded 49 persons, the issue of NCDs was a public issue in terms of the *proviso* to section 67(3) of the Companies Act, 1956 ("the Companies Act"). However, it was noticed that the Company had allegedly failed to comply with the provisions of sections 56, 60 and 73 of the Companies Act read with the *proviso* to section 67(3) thereof. Further, the Company was also found to have allegedly not complied with regulations 4, 5, 6, 7, 8, 9, 12, 14, 15, 16, 17, and 26 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("the ILDS Regulations") and regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993 read with section 12 of the SEBI Act, 1992 and section 117B of the Companies Act in respect of its public issue of non-convertible debentures.

2. In view of such alleged irregularities and contraventions by the Company with respect to its issue of NCDs, SEBI issued a Show Cause Notice ("SCN") dated April 30, 2013 to the Company and its directors/promoters, namely, Mr. Bapi Majumder, Mr. Bappaditya Majumder, Mr. Pintu Sarkar, Mr. Kanchan Das, Ms. Rumpa Sarkar, Ms. Aindrilla Majumder and Ms. Tapti Roy, calling upon them to show cause as to why appropriate directions including directions to refund the money solicited and mobilized through the prospectus issued with respect to the

impugned NCDs along with interest, and directions to prohibit the Company, its promoters and directors from accessing the capital market, should not be issued against them for the alleged violations.

3. The Company filed its reply to the SCN vide letter dated May 30, 2013, *inter alia* stating that the company never issued /offered / made invitation to general public, and that the offer is made on private placement basis.

4. The Company and its directors and promoters were afforded an opportunity of personal hearing (*which was rescheduled twice on the request of the Company*) on September 16, 2013. On the said date, Mr. Gopesh Majumder, the authorised representative of the Company appeared and filed additional submissions vide dated September 15, 2013. The authorized representative also made oral submissions, which were on the lines of the additional submissions made.

5. The Company had *inter alia* submitted that in order to provide interest to their marketing agents on the security deposit given by them for taking supply of ayurvedic/herbal products of the Company for sale, the Company had issued the NCDs. However, it is noted from the submissions dated September 15, 2013, that the Company has admitted raising funds through the issue of NCDs from 10,175 persons. The Company had submitted that it was not aware of the regulations that govern the issuance of such securities to the public and that it has not deliberately contravened such legal provisions. The Company has stated that on receipt of the communication from SEBI, it had stopped collecting monies from investors and is presently paying the redemption amounts on the matured NCDs. According to the Company, it has made a total payment of ₹ 5,16,28,583/- (principal of ₹ 4,41,04,300/- and interest 75,24,283/-) as of September 14, 2013. The Company has further stated that ₹ 54,27,950/- is the total principal amount due to be paid to its investors. The Company has also indicated that it plans to repay the principal amount of ₹ 15,08,250/- during the period September 2013 to March 2014 and that ₹ 39,19,700/- would be the amount due from April 01, 2014 to July 01, 2017.

6. I have considered such submissions. It is an admitted fact that the Company had issued NCDs to 10,175 persons and raised funds to the tune of ₹ 4.95 crore. The SCN has alleged that the Company was collecting subscriptions for debentures in instalments. The various schemes and plans employed by the Company in this regard was also mentioned in the SCN. The NCDs issued by the Company are 'debentures' and 'debt securities' within the meaning of section 2(12) of the Companies Act and 2(1)(e) of the ILDS Regulations and also a 'security' as defined under

section 2(45AA) of the Companies Act read with section 2(h) of the Securities Contracts (Regulation) Act, 1956. In terms of the *proviso* to section 67(3), the provisions of sub-section (3) of section 67 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 view of the same, the Company, by making an offer or invitation to subscribe for the NCDs to more than 50 persons and allotting NCDs to 10,175 persons, has definitely made a **public issue of such securities**. In this regard, the following observation made by the Hon'ble Supreme Court of India 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) is worth noting :

"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."

7. The Company has made a public issue of NCDs without adhering to the provisions of section 73 of the Companies Act, 1956, which *inter alia* require a company to make an application to one or more recognised 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, the company is required to forthwith repay with interest all moneys received from the applicants. The Company has failed to file a prospectus/red herring prospectus to the Registrar of Companies in respect of its issuances of NCDs as required in terms of section 60 read with section 2(36) of the Companies Act, 1956. The Company has also not complied with the provisions of section 56(1) and 56(3) of the Companies Act, 1956. Further, as alleged in the SCN, the Company by failing –

- (i) to make an application for listing of NCDs ;
- (ii) obtain credit rating from atleast one credit rating agency ;
- (iii) to appoint one or more merchant bankers ;
- (iv) to make the required disclosures in the offer document ;
- (v) to file the draft offer document with the stock exchanges ;
- (vi) to display the draft offer document on the websites of the Company, merchant bankers and the stock exchanges ;
- (vii) to ensure that every application form is accompanied with a copy of the abridged prospectus ;
- (viii) to appoint SEBI registered debenture trustee ;

has contravened the provisions of regulations 4, 5, 6, 7, 8, 9, 12, 14, 15, 16, 17 and 26 of the ILDS Regulations.

8. The SCN has also alleged that the Company, by appointing an individual as the debenture trustee in respect of the Company's issuance of NCDs, has contravened the provisions of regulation 7 of the Debenture Trustee Regulations. The said provision states that no person shall be entitled to act as a debenture trustee unless he is either a scheduled bank, a public financial institution, an insurance company or a body corporate.

9. The submission of the Company that it has not deliberately contravened the provisions of law in this regard and has stopped collecting money as soon as it received a notice from SEBI, bolsters the above findings on violations committed by the Company in respect of its public issuance of NCDs. From the above, I find that the Company has not complied with the relevant legal provisions that governed the issuance of NCDs to the public, as specified under the Companies Act, the ILDS Regulations and the Debenture Trustee Regulations read with the SEBI Act, as alleged in the SCN. Further, by issuing financial instruments without disclosing the risks of the same to the investors and failing to comply with the legal requirements regulating the public issuance of NCDs, the Company has not acted in a bonafide manner and has imperilled the interests of the investors.

10. The Company has submitted before me that it is presently in the process of repaying its subscribers of the NCDs and that it would repay all its subscribers. According to the Company, it has repaid around 90% of the monies collected through the issuance of the NCDs. I also note that the Company has submitted that it has stopped collecting money from November 01, 2012. During the personal hearing, the Company, through its authorised representative was advised to submit a definitive scheme for repayment of the monies collected from all its investors through the issue of NCDs. Subsequently, SEBI vide letter dated October 22, 2013 while reiterating the proceedings of the personal hearing had advised the Company to state in its proposed scheme as to how its payments would be certified and to submit a certificate from a Chartered Accountant, who is in the panel of any public authority or public institution, to examine the veracity of the statement of the Company that it has already repaid a sum of ₹ 5,16,28,583/- (which included the principal amount of ₹ 4,41,04,300/- raised through the issuance of NCDs to investors). The said certificate was to be submitted along with the definitive scheme for repayment.

11. The Company, vide its letter dated November 11, 2013 submitted its proposal for repayment along with a Certificate from a chartered accountant. In terms of the proposed repayment scheme, the Company *inter alia* submitted that –

- (a) The Company has already repaid the maturity for the period September 16, 2013 to September 30, 2013 to 35 persons a total sum of ₹ 2,64,000/- together with interest of ₹ 33,460/- (total of ₹ 2,97,460/-) ;
- (b) The Company has also repaid the maturity for the period – October 01, 2013 to October 31, 2013 to 17 persons a total sum of ₹ 1,10,900/- together with interest of ₹ 17,314/- (total of ₹ 1,28,214/-) ;
- (c) The Company proposes to repay the remaining sum of money (₹ 50,53,050/- as claimed by it) as follows :

Actual period/month of Maturity	Principal	No. of persons/investors	Disbursing month
November 2013 – February 2014	6,47,150	186	November 2013
March 2014	4,86,200	140	December 2013
April-September 2014	7,40,800	185	January 2014
October – December 2014	4,47,200	17	February 2014
January-March 2015	8,47,500	98	March 2014
April 2015 – 31st March 2016	7,78,000	162	April 2014
April 2016 - July 2017 (end date)	11,06,200	356	May 2014

- (d) The Company is capable to provide the amount month-on-month and such amounts are below the operational profits of the Company earned at this point in time. However, in case of any downfall in sales and/or operational profits the Company will arrange to sale any of its properties and/or take bank/institutional finance/private finance against its properties and would comply with the payment scheme as proposed;
- (e) The Company shall unconditionally comply with any additional conditions and/or alteration of the proposed scheme as directed by SEBI ;
- (f) As regards the certification for the payments, the Company *inter alia* stated that –

- (i) The Company is in the process of repaying its redemptions to the holders of NCDs and would submit 'Satisfaction of Charge' by way of e-form 17 to the Registrar of Companies immediately after the complete redemption of NCDs. The Company would also publish notices in leading newspapers in all the regions where the NCD holders are present and will declare that all the NCDs are paid in full
- (ii) The Company would inform SEBI about the completion of redemption of NCDs, would provide copies of newspaper notices to SEBI and would also inform SEBI of any complaint or objections received, if any, from the NCD holders and the resolution status of such complaints.
- (iii) The Company would also provide a certificate from a Chartered Accountant in respect of complete redemption of NCDs and also regarding the satisfaction of charges.

12. A certificate from one Krishan Kumar Bengani, Chartered Accountant was enclosed, which stated that he had examined the books of accounts including the payment vouchers, 'matured and discharged certificates' of the NCDs issued by the Company and is of the opinion that the Company has already repaid a sum of ₹ 5,16,28,583 including the principal amount of ₹ 4,41,04,300/- against NCDs till September 15, 2013.

13. In view of the violations committed by the Company as outlined above, and to safeguard the interest of the investors who had subscribed to such NCDs issued by the Company to safeguard their investments, and also to ensure that the Company does not collect any further monies pursuant to its offer of NCDs, it becomes necessary for SEBI to issue appropriate directions against the Company, its promoters and directors.

14. 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 regulation 28 of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 hereby issue the following directions:

- (a) The Company, Idol India Infrastructures Limited, its promoter directors, Mr. Bappaditya Mujumder (PAN - AKNPM5664R ; DIN - 03323655), Mr. Pintu Sarkar (PAN - AYQPS1691H ; DIN - 03089042) and Ms. Rumpa Sarkar (PAN - BKOPS8275A ; DIN - 03200385) and promoters, Mr. Kanchan Das, Mr. Bapi Majumder, Ms. Aindrilla

Majumder and Ms. Tapti Roy, jointly and severally, shall forthwith refund the money collected by the Company through the issuance of non-convertible debentures, which had been impugned in the Show Cause Notice dated April 30, 2013 issued to them by the Securities and Exchange Board of India, with returns that were promised by the Company to its investors. In cases of delay in making the repayments, the Company, its promoters and directors, shall jointly and severally, return the money collected from its investors with an interest of 15% per annum compounded at half yearly intervals, from the date of this Order till the date of actual payment. The above directed interest on the delayed payments shall be over and above the returns that are due to its investors of such instruments. As noted above, the Company has claimed to have repaid a sum of ₹ 4,41,04,300/- along with interest to its investors. If the Company has actually made any repayments to its investors of the amounts collected from them along with promised returns, the above directions shall be applicable for the amounts due to be returned to remaining investors. However, such repayments as claimed to have been already made by the Company, shall be certified by Chartered Accountants, as directed in sub-paragraph (d) below.

- (b) The repayments to investors shall be effected only in cash through Bank Demand Draft or Pay Order.
- (c) Idol India Infrastructures Limited shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) with wide circulation, detailing the modalities for refund, including details on contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.
- (d) After completing the aforesaid repayments, the Company shall file a certificate of such completion with SEBI from 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").
- (e) Idol India Infrastructures Limited is restrained from accessing the securities market for the purposes of raising funds with immediate effect. This restraint shall continue be in

force for a further period of two years on completion of the repayments (to its investors), made to the satisfaction of SEBI.

- (f) Further, the Company's promoter directors, Mr. Bappaditya Majumder, Mr. Pintu Sarkar and Ms. Rumpa Sarkar and promoters, Mr. Kanchan Das, Mr. Bapi Majumder, Ms. Aindrilla Majumder and Ms. Tapti Roy are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, with immediate effect. They are also restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, with immediate effect. The above directions shall continue to be in force for a further period of two years on completion of the repayments, as directed above.
- (g) In case of failure of the parties to comply with the aforesaid directions, SEBI shall take appropriate action including launching of prosecution proceedings against them and other persons who are in default, in accordance with law.
- (h) The above directions shall come into force with immediate effect.

15. With the above directions, the show cause notice dated April 30, 2013 issued to Idol India Infrastructures Limited and its directors/promoters, namely, Mr. Bapi Majumder, Mr. Bappaditya Majumder, Mr. Pintu Sarkar, Mr. Kanchan Das, Ms. Rumpa Sarkar, Ms. Aindrilla Majumder and Ms. Tapti Roy, stands disposed off. Notwithstanding the same, this Order is without prejudice to any action that might be taken by SEBI in respect of the impugned NCDs issued by the Company to the public, including the other actions contemplated in the show cause notice dated April 30, 2013.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : May 19, 2014
Place: Mumbai