

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4)(b), 11A(1)(b) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 107 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL DISCLOSURE REQUIREMENTS) REGULATIONS, 2009 AND REGULATION 25 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (DEBENTURE TRUSTEE) REGULATIONS, 1993 .

IN THE MATTER OF ISSUANCE OF OPTIONALLY FULLY CONVERTIBLE DEBENTURES BY RAMEL INDUSTRIES LIMITED.

AGAINST RAMEL INDUSTRIES LTD., MR. RAMESWAR PODDER, MR. RAMENDRA MOHAN SARKAR, MR. SUKANTA DEB, MR. PARTHA DAS, MR. RABI DAS, MR. SAMARESH MUKHERJEE AND MR. SHYAMALENDU SARKAR.

Appearances:

For Noticees:

Sl. No.	Name of the Noticees	DIN/PAN	Authorized Representative
1.	Ramel Industries Limited		None
Promoter-Directors of Ramel Industries Limited			
2.	Mr. Rameswar Podder (Managing Director)	1753196/ AFVPP4292B	None
3.	Mr. Ramendra Mohan Sarkar	1753154/ AUPS3363G	None
4.	Mr. Sukanta Deb	1753238/ AJIPD0118R	None
Director of Ramel Industries Limited			
5.	Mr. Partha Das	3631995/ ANMPD8317J	None
Debenture Trustees appointed by Ramel Industries Limited			
6.	Mr. Rabi Das	ADUPD2326D	In Person
7.	Mr. Samaresh Mukherjee	AVMPM4140Q	In Person
8.	Mr. Shyamalendu Sarkar		None

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received a reference from the Additional Director General of Police, Bureau of Investigation (E.O.), Guwahati, Assam stating *inter alia* that Ramel Industries Limited (hereinafter referred to as "RIL" or "the company") is soliciting/raising money from public through issue of optionally fully convertible debentures (OFCDs) in violation of the statutory requirements. SEBI also received a complaint alleging *inter alia* that RIL is issuing debentures to more than 49 persons.
2. Thereafter, in order to examine whether RIL issued debentures to 50 or more persons, SEBI, vide letter dated November 02, 2012, advised RIL to provide certain details such as:
 - (a). the documents through which subscription for debentures was solicited;
 - (b). copy of application form;
 - (c). copies of the pamphlets and other promotional materials circulated to solicit subscription;
 - (d). number of application forms circulated;
 - (e). number of application forms received;
 - (f). number of allottees;
 - (g). list of allottees;
 - (h). date of opening and closing of the subscription of its OFCDs;
 - (i). date of allotment;
 - (j). date of dispatch of OFCD certificates;
 - (k). copy of balance sheets and Profit & loss account for last three years;
 - (l). copy of prospectus/Red Herring Prospectus (RHP)/statement in lieu of prospectus/information memorandum filed with the Registrar of Companies (the RoC);
 - (m). copy of Memorandum and Article of Association of the company, etc.
3. Vide its letter dated November 14, 2012, RIL requested extension of time by 10 working days for furnishing the requisite information/documents. Thereafter, vide its letter dated November 24, 2012 RIL furnished the following:
 - (a). copy of board resolutions and special resolutions;
 - (b). copy of Form 10;
 - (c). particulars for registration of charges for debentures;
 - (d). copy of Form 23 [Registration of resolution(s) and agreement(s)];
 - (e). copy of debenture trust deed and details of securities provided in the debenture trust deed;
 - (f). copy of RHP - Form 62;

- (g). terms and conditions of the issuance of OFCDs;
 - (h). copy of application form for issuance of OFCDs;
 - (i). copy of audited Balance Sheet and Profit & Loss Account of RIL for last 3 years financial years (i.e., 2009–10, 2010–11 and 2011-12);
 - (j). certified copies of the Memorandum of Association and Articles of Association of RIL, etc.
4. On examination of the information/documents furnished by RIL and information available on records, it was *inter alia* observed that:-
- (a). Vide resolution passed at an Extraordinary General Meeting (EGM) held on November 4, 2009, RIL authorized its board of directors to borrow from time to time any sum of money which together with the moneys already borrowed by it may exceed the aggregate of its paid up capital and its free reserves i.e. to say reserves, not set apart for any specific purposes, provided that the total amount borrowed by the board of directors shall not at any time exceed ₹1000 Crores.
 - (b). At its EGM held on November 23, 2009, RIL had passed resolutions in respect of the following:
 - (i) to issue OFCDs by way of private placements to friends, associates, group companies, employees and other individuals who are associated/affiliated or connected, in any manner with Ramel Group of companies, without giving any advertisement in general public.
 - (ii) to authorize the board of directors of RIL to decide the terms and conditions, and revision thereof, viz. face value of each OFCDs, minimum application size, tenure, conversion, interest rate within parameters of present legislation
 - (iii) equity shares so allotted on conversion shall rank *pari passu* in all respects with the existing equity shares except the dividend, if declared in such year, which will be paid on *pro rata* basis from the date of allotment.
 - (c). RIL filed the RHP with the RoC, West Bengal on November 24, 2009 for issue of OFCDs without mentioning details regarding tranches or series (of financial year) of OFCDs.
 - (d). It was stated in the RHP that the issue consists of OFCDs with an option to the holders to convert the same into equity shares of ₹10/- each, at a premium to be decided at the time of issue of equity shares, equal to the face value of the privately placed OFCDs. It was also stated that the quantum and price of OFCDs is to be determined at future date.

- (e). From the copies of the balance sheet for the years 2009-10, 2010-11 and 2011-12 furnished by RIL it is observed that RIL had issued OFCDs to a total of 31,582 persons and raised total amount of ₹60.86 Cr (approx.) as detailed in the following table.

Year	Type of Security	No. of persons to whom issued	Total Amount (₹) (in crore)
2009-10	OFCD	6935	9.93
2010-11	OFCD	21979	39.97
2011-12	OFCD	2668	10.95
Total		31582	60.86

- (f). The terms and conditions of various schemes and plans of OFCDs issued by RIL as described in the application form were as follows:-

Name of OFCDs	A	B	C	D	E	MIS-3*	MIS-6*	MIS- 10*
Tenure (Yr)	1 ½	3	5	10	14	3	6	10
Face Value (₹)	1000	1000	1000	1000	1000	1000	1000	1000
Redemption Value (₹)	1210	1500	2000	5000	10,000	1120	1144	1180
Conversion (on completion of Yr)	1 ½	3	5	10	14	3	6	10
Minimum application Size (₹)	1000	1000	1000	1000	1000	20000	20000	20000
Nominee System (Double Nominee)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Transfer	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

**interest to be paid monthly.*

- (g). The application form issued by RIL for subscription to its OFCD issuance is superscribed by the words "*private, not for circulation*". The application form further elucidates that the holders of OFCDs may exercise option for conversion of OFCDs against the redemption value of each OFCD into four fully paid up equity shares of RIL of ₹10/- each at a premium of ₹ 240/- each, provided such option is exercised one month before completion of tenure of the OFCD. This option for conversion can also be exercised any time before tenure of the OFCD after giving one month advance application.
- (h). RIL issued notice of EGM dated November 24, 2009 alongwith the Explanatory Statement under section 173(2) of the Companies Act, 1956 calling for an EGM to be held on

December 15, 2009. The explanatory statement pursuant to section 173(2) of the Companies Act, 1956 attached with the said notice *inter alia* made the following disclosures:-

"..... At last Board approved issue OFCDs on private placement to friends, associate, group companies, employees and individuals, who are associated/affiliated or connected, in any manner with Ramel group companies, without giving any advertisement in the general public and the proposed issue of OFCDs by the company is not intended to get listed with any of the recognized Exchange of India.

The company keeping in view that the number of persons to whom the offer of OFCDs be issued might exceed the limits as specific under section 67 of the Companies Act. The company is in compliance of provision of Section 60 B of the Companies Act, as approval of members of the company in the Extra Ordinary General Meeting of the company held on November 23, 2009 and board of the directors of the company in their meeting held on November 24, 2009 have approved and signed the RHP of the company bearing details as required in the Schedule II along with all annexure and filed e-form 62 on 24th November 2009 vide SRN A73338576 dated November 24, 2009 with the RoC, West Bengal, Kolkata for approval."

- (i). A resolution was passed at its board meeting held on December 16, 2009, to appoint debenture trustees for issue of OFCDs pursuant to which Mr. Rabi Das, Mr. Samaresh Mukherjee and Mr. Shyamalendu Sarkar were appointed as debenture trustees in respect of the issue of OFCDs by RIL. A Debenture Trust Deed was also executed between RIL and the said debenture trustees on December 16, 2009.
 - (j). RIL created a charge for an amount of ₹67,02,36,600/- for issuance of OFCDs.
5. The above issuance of OFCDs by RIL were *prima facie* public issue of OFCDs in the garb of private placement and no draft offer document/RHP/Prospectus with regard to the same was filed by RIL with SEBI. On the basis of the information received during the examination of the case, it was *prima facie* observed that RIL had issued OFCDs to public in non-compliance of the provisions of the Companies Act, 1956, the Securities and Exchange Board of India Act, 1992 (the SEBI Act), the Securities and Exchange Board of India (Issue of Capital Disclosure Requirements) Regulations, 2009 (the ICDR Regulations) and the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993 (the Debenture Trustee Regulations). It was further observed that Mr. Rabi Das, Mr. Samaresh Mukherjee and Mr. Shyamalendu Sarkar were appointed as the debeture trustee by RIL in contravention of the provisions of the Debenture Trustee Regulations. Accordingly, SEBI issued a common Show

Cause Notice (SCN) dated September 30, 2013 to RIL, its directors, namely, Mr. Rameswar Podder, Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das, and the debenture trustees to the issues, namely, Mr. Rabi Das, Mr. Samaresh Mukherjee and Mr. Shyamalendu Sarkar (hereinafter collectively referred to as 'the noticees' and individually by their respective names) under section 11, 11A, 11B of the SEBI Act, 1992 read with regulation 107 of the ICDR Regulations and regulation 25 of the Debenture Trustees Regulations. It was alleged in the SCN that RIL and its directors had violated sections 56(1), 56(3), 60, 73 of the Companies Act, 1956 and regulations 4(2), 5(1), 5(2), 5(7), 6, 7, 20(1), 25, 26, 36, 37, 46 and 57 of the ICDR Regulations and regulation 7 of the Debenture Trustees Regulations read with section 12(1) of the SEBI Act and section 117B of the Companies Act, 1956. In the SCN, it was also alleged that Mr. Rabi Das, Mr. Samaresh Mukherjee and Mr. Shyamalendu Sarkar have violated section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustees Regulations.

6. RIL and its directors did not file reply to the SCN issued by SEBI. Mr. Rabi Das and Mr. Samaresh Mukherjee, the debenture trustees appointed by RIL, submitted their replies to the SCN vide their separate letters received on October 23, 2013. The SCN issued to the other debenture trustee appointed by RIL, Mr. Shyamalendu Sarkar, returned undelivered.
7. An opportunity of personal hearing was granted to RIL, its directors, and Mr. Rabi Das and Mr. Samaresh Mukherjee (the debenture trustees appointed by RIL) on January 02, 2014. On the said date, Mr. Sagnik Ghosh, Advocate appeared on behalf of the directors of RIL, namely, Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das and sought adjournment. Mr. Rabi Das and Mr. Samresh Muherjee also sought adjournment. However, RIL and Mr. Rameshwar Poddar (the director of RIL) neither appeared for personal hearing nor sought any adjournment in the matter.
8. Another opportunity of personal hearing was granted to Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das (directors of RIL) and Mr. Rabi Das and Mr. Samaresh Mukherjee (the debenture trustees appointed by RIL) on January 10, 2014 when Mr. Rabi Das and Mr. Samaresh Mukherjee appeared for personal hearing before me and made oral submissions. The replies/submissions of Mr. Rabi Das and Mr. Samaresh Mukherjee are *inter alia* as under:
 - (a). They had signed the debenture trust deed as per instruction of one Mr. Jayanta Kumar Das, the Legal Adviser of RIL.
 - (b). They had received ₹7000/- each from RIL for their signatures in the debenture trust deed.

- (c). They were assured by RIL that after registration of the debenture trust deed they would be paid ₹10,000/- per month as salary and some travelling allowance for attending the meeting of RIL.
 - (d). They are not aware as to whether the debenture trust deed was registered or not.
 - (e). They did not attend any meeting of RIL.
 - (f). No procedure for appointment of debenture trustee is maintained by RIL.
 - (g). Since they are individuals, the eligibility criteria for debenture trustees does not apply.
 - (h). They were only the signatories to the trust deed. Therefore, they are not liable to RIL and its investors for the charges and allegations leveled against them in the SCN.
 - (i). They have tendered their resignation to RIL through Mr. Jayanta Kumar Das vide letters on March 05, 2010.
 - (j). They might have committed some violations as they did not know about the Securities laws and the rules and regulations in respect of appointment of the debenture trustee.
 - (k). They do not know RIL or any person related to it.
9. On the said date, Mr. Arka Pratim Chowdhury, Advocate appeared alongwith Mr. Sagnik Ghosh, Advocate on behalf of RIL, Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das, and submitted written submission. He further informed that the aforementioned noticees have waived their right of personal hearing in the matter. However, it was observed that the written submission submitted on behalf of the aforementioned noticees was not relevant to the present proceedings and the same was brought to the notice of the authorised representatives. Vide letter dated January 15, 2014, the aforesaid noticees and their authorised representatives were once again advised to file their replies/submissions latest by January 21, 2014. In this regard, M/s Atpornatus, Advocates & Solicitors, vide letter dated January 20, 2014 (received at SEBI on January 24, 2014) writing on behalf of the directors of RIL, sought extension of time for 10 days from January 21, 2014 to submit the reply on behalf of the aforementioned directors. However, till date no reply has been received.
10. I find that sufficient opportunities have been granted to RIL, and its directors, namely, Mr. Rameswar Podder, Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das and the debenture trustee appointed by RIL, Mr. Shyamalendu Sarkar, and they are not keen to avail the same. In view of these facts and circumstances, I deem it appropriate to decide the matter in respect of the SCNs issued to them *ex parte* on the basis of material available on record. I note that save for Mr. Rabi Das and Mr. Samaresh Mukherjee, the debenture trustees appointed by RIL, none of the noticees have submitted any defense to the allegations/charges leveled in the SCN.

11. I have carefully considered the SCN, the replies and submission of Mr. Rabi Das and Mr. Samaresh Mukkherjee, and other material available on record. As discussed above, RIL had issued OFCDs to 31,582 investors and had received the subscription amount of ₹60.86 Crore (approx.). Issues such as whether an offer is public issue or private placement, SEBI's jurisdiction on the issuance of securities including OFCDs to 50 persons or more, intention/obligation to list such securities, etc. have been settled by the Hon'ble Supreme Court in its judgement and order dated August 31, 2012 in the matter of *Sahara India Real Estate Corporations Limited & Ors. Vs SEBI & Anr. - Civil Appeal No. 9813 and 9833 of 2011 [(2013) 1 SCC 1]* (hereinafter referred to as the "*Sahara Order*").
12. I note that in the above mentioned *Sahara Order* the Hon'ble Supreme Court held that an offer to fifty or more persons becomes public issue by virtue of first proviso to section 67(3) of the Companies Act, 1956. The Hon'ble Supreme Court also decided the issues as to whether listing of securities issued to 50 persons or more is mandatory. The Hon'ble Supreme Court has further held in the said *Sahara Order* as following:
- " 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."*
13. In the instant case, the aforesaid facts clearly indicate that the number of persons to whom the OFCDs were issued by RIL were clearly much more than 49 persons and therefore, in my view such offer would qualify as a public issue by virtue of the provisions of section 67(3) of the Companies Act, 1956 which has been elucidated by the Hon'ble Supreme Court of India in the *Sahara Order*.
14. In this regard, I note that the Hon'ble Supreme Court in the *Sahara Order* has conclusively upheld that SEBI has the power to administer the provisions referred to in section 55 A of the Companies Act, 1956 which relate to issue and transfer of securities and non payment of dividend by public companies, which have issued securities to fifty persons or more, though not listed on recognized stock exchange and whether they intend to list their securities or not.

The following observations of the Hon'ble Supreme Court in this regard are worth mentioning:

*"The main part of Section 55A confers jurisdiction on SEBI with regard to three categories i.e. issue of securities, transfer of securities and non payment of dividend. The expression "all other matters" mentioned in the explanation would refer to powers other than the above mentioned categories. Further, it may also be remembered that the explanation does not take away powers conferred on SEBI by other sections of Companies Act. At the same time, matter relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares be exercised by the Central Government, Tribunal, Company Law Board, Registrar of Companies, as the case may be. Further, Section 60B(9) clearly indicates that upon closing of securities a final 'prospectus' has to be filed in the case of listed company with SEBI and Registrar, **hence the explanation to Section 55A can never be construed or interpreted to mean that SEBI has no power in relation to the prospectus and issue of securities by an unlisted public company, if the securities are offered to more than forty nine persons.**"*

15. I note that section 67 of the Companies Act, 1956 provides for rule of construction for treating an issue of shares or debentures as public issue. From the language of section 67 of the Companies Act, 1956 it is very clear that construction of public issue under sub-sections (1) and (2) thereof is subject to provisions of section 67(3). Section 67(3) of the Companies Act, 1956 exempts an offer or invitation from the purview of the construction laid down in section 67(1) and 67(2), if such offer or invitation can properly be regarded, in all the circumstances -
 - (i) 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
 - (ii) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.
16. In terms of the first proviso to section 67(3), an offer or invitation to 50 or more persons is a public issue even if it is shown that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation or that the offer or invitation "*private, not for circulation*". The Hon'ble Supreme Court in the *Sahara order* has settled all the doubts relating to interpretation of section 67 of the Companies Act, 1956 and has held as under -

".....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."

17. In view of the provisions of section 67(3) of the Companies Act, 1956 and aforesaid observations of the Hon'ble Supreme Court, I find that once the number of allottees exceeds 49, it becomes irrelevant whether the allottees were friends, relatives, associates or members of an identified group or society. I, therefore, find that the issue of OFCDs by RIL in this case was a public issue.
18. I note that in terms of provisions of section 73 of the Companies Act, listing of securities issued pursuant to a public issue is mandatory and not optional at the intention of the issuer. Thus, when shares or debentures are issued by any company including an unlisted company to 50 or more persons, it is under a legal obligation to make an application on a recognized stock exchange for listing thereof. In this regard, I note that in the above mentioned *Sabara Order*, the Hon'ble Supreme Court has held as under:

*"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.*

***Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons.** In view of the clear statutory mandate, the contention raised, based on Rule 19 of the SCR Rules framed under the SCR Act, has no basis. Legal obligation flows the moment the company issues the prospectus expressing the intention to offer shares or debentures to the public, that is to make an application to the recognized stock exchange, so that it*

*can deal with the securities. 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. "*

19. Since in the instant case, the OFCDs were issued to more than fifty persons by RIL, this would attract the requirement of compulsory listing before a recognized stock exchange in terms of section 73(1) of the Companies Act, 1956. I, therefore, find that in this case, RIL has contravened the provisions of section 73 of the Companies Act, 1956 since it did not apply for listing of its OFCDs on any recognized stock exchange.
20. As per section 73(2) of the Companies Act, where the permission (to deal such shares or debentures on a stock exchange) has not been applied under sub-section (1), the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if 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 eight days, 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, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money. In the instant case, since RIL failed to make applications for listing of its OFCDs on any recognized stock exchange, the noticees (excluding the debenture trustees appointed by RIL) are liable to refund the amounts collected from subscribers of its OFCDs issued to them pursuant to its RHPs, along with interest at the rate of 15% per annum.
21. As per section 73(4) of the Companies Act, 1956 any condition purporting to require or bind any applicant for shares or debentures to waive compliance with any of the requirements of section 73 shall be void. In the instant case, as per the extract of the resolution passed at the EGM of RIL held on December 15, 2009, RIL did not intend to list its OFCDs on any recognized stock exchange. In view of the above mandatory provisions of section 73, such terms with regard to the issuance of OFCDs by RIL were void *ab initio* and they do not absolve RIL from compliance of these mandatory provisions. I, therefore, find that in this case, RIL has contravened the provisions of section 73 of the Companies Act, 1956 since it did not apply for listing of its OFCDs on any recognized stock exchange.
22. In terms of section 56(1) of the Companies Act, 1956 every prospectus should state the *matters/reports* specified in Schedule II of the Companies Act. As per section 56(3) of the Companies Act, 1956 it is mandatory for the company to issue the application forms for

shares or debentures accompanied by a memorandum containing the salient features of the prospectus which complies with the Companies Act and Form 2A prescribed under rule 4CC of the Companies (Central Government's) General Rules and Forms, 1956. In the instant case, there is nothing on record to illustrate that the application forms circulated by RIL were accompanied by such memorandum. In view of the above, I find that RIL *prima facie* violated the provisions of section 56(3) of the Companies Act, 1956.

23. I further note that in terms of Schedule II of the Companies Act, 1956 while authorising the prospectus by putting their signatures thereon, the directors of the company are required to make following declaration in the prospectus at its end:-

"Declaration:

That all the relevant provisions of the Companies Act, 1956, and the guidelines issued by the Government or the guidelines issued by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in prospectus is contrary to the provisions of the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or rules made thereunder or guidelines issued, as the case may be. "

24. In this case, at the end of RHP of RIL, its directors Mr. Rameshwar Podder, Ramendra Mohan Sarkar and Sukanta Deb made declarations as under:-

"Declaration:

All the relevant provisions of the Companies Act, 1956 and the guidelines issued by the Government have been complied with and no statement made in the prospectus is contrary to the provisions of the Companies Act, 1956 and rules thereunder."

25. It is pertinent to mention that while making the declaration in RHP the directors of RIL omitted the declaration with regard to compliance with the SEBI Act and regulations/guidelines made thereunder. Since, every prospectus must comply with such declarations, in my view, the aforesaid declaration by the directors of RIL is void by virtue of provisions of section 56(2) of the Companies Act, 1956 which provides that any condition to waive compliance with any of the requirements of section 56 shall be void. I, therefore, find that the declaration by the directors of RIL in its RHP and other deviations and waivers therein with regard to disclosure requirements of Schedule II of the Companies Act, 1956 and the ICDR Regulations, etc. were void.

26. As per section 2(36) read with section 60 of the Companies Act, 1956 a company is required to register its prospectus with the ROC, before making a public offer or issuing the prospectus. Section 2(36) defines "*prospectus*" to mean 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 mentioned above, since the issuance of OFCDs was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, RIL was required to register its prospectus with the RoC under section 60 of the Companies Act, 1956. Further, RIL had issued OFCDs in 2009-10, 2010-11 & 2011-12 and filed RHP in November 24, 2009 without mentioning for which series or which tranche of OFCDs the RHP was being filed by it. The issue size was also left blank in the RHP. Apparently, the prospectus filed by RIL does not contain the necessary details and declarations and as such RIL has *prima facie* failed to comply with the provisions of section 60 of the Companies Act, 1956.
27. It is trite to say that the SEBI Act is a special legislation to deal with the matters relating, *inter alia*, to the protection of interests of investors in securities. The ICDR Regulations framed for the purposes of section 11(1) and section 11A lay down various disclosure and other related requirements for public issues in furtherance of the objective and duties of SEBI enshrined under the SEBI Act. It is also to be kept in mind that these statutory requirements and obligations are intended to protect the interests of the investors in securities and to ensure transparency and integrity in the securities market. Accordingly, a company making a public issue of securities is obligated to comply with these requirements in addition to the requirements prescribed under the Companies Act, 1956. In the instant case, admittedly, RIL has not complied with any requirements of the ICDR Regulations. I, therefore, find that apart from non-compliance of above provisions of the Companies Act, 1956 RIL has failed to comply with requirements relating to public issue and listing of securities contained regulations 4(2), 5(1), 5(7), 6, 7, 20(1), 25, 26, 36, 37, 46 and 57 of the ICDR Regulations, as alleged in the SCN. The requirements of the relevant provisions are described in the following Table:-

Sl. No.	Relevant Provision	Requirements
1	Regulation 4(2) and 7 of the ICDR Regulations	To make application for listing of securities to a stock exchange.
2	Regulation 4(2) of the	To issue securities in demat mode.

Sl. No.	Relevant Provision	Requirements
	ICDR Regulations	
3	Regulation 5(1) of the ICDR Regulations	To appoint one or more SEBI registered merchant bankers.
4	Regulation 5(7) of the ICDR Regulations	To appoint a SEBI registered registrar which has connectivity with all depositories.
5	Regulation 6 of the ICDR Regulations	To file draft offer document with the Board.
6	Regulation 20(1) of the ICDR Regulations	To obtain a credit rating for the issuance of debt and convertible instruments.
7	Regulation 25 and 26 of the ICDR Regulations	To comply with the eligibility criteria before making an initial public offer.
8	Regulation 36 of the ICDR Regulations	To ensure lock-in of minimum promoters' contribution.
9	Regulation 37 of the ICDR Regulations	To ensure lock-in of pre-issue capital.
10	Regulation 46 of the ICDR Regulations	To close the issue within a maximum of 10 working days.
11	Regulation 57 of the ICDR Regulations	To ensure that the offer document/RHP contains the details specified in that regard.

28. It is also alleged in the SCN that RIL has also contravened section 117B of the Companies Act, 1956 which provides that no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it 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. RIL appointed certain individuals namely, Mr. Rabi Das, Mr. Samaresh Mukherjee and Mr. Shyamalendu Sarkar as debenture trustees and executed a Debenture Trust Deed with the aforesaid individuals on December 16, 2009, i.e., after the RHP was filed with the RoC. In my view, the provisions of section 117B of the Companies Act are mandatory and appointment of debenture trustee is a pre-requisite for issuing a prospectus/RHP. I, therefore, find that RIL has failed to comply with the requirements of section 117B of the Companies Act, 1956.
29. Further, in terms of section 12(1) of the SEBI Act no trustee of trust deed who may be associated with securities market shall buy, sell or deal in securities except under, and in

accordance with, the conditions of a certificate of registration obtained from SEBI in accordance with the Debenture Trustees Regulations made under the SEBI Act. As per regulation 7 of the Debenture Trustees Regulations no person shall act as a Debenture Trustee unless he is either:

- (a). a scheduled bank carrying on commercial activity; or
- (b). a public financial institution within the meaning of section 4A of the Companies Act, 1956; or
- (c). an insurance company; or
- (d). a body corporate.

30. In view of the above, Mr. Rabi Das, Mr. Samaresh Mukherjee and Mr. Shyamalendu Sarkar who were appointed as debenture trustees by RIL were not eligible to be appointed as debenture trustee in terms of the requirements of regulation 7 of the Debenture Trustees Regulations. RIL appointed unregistered debenture trustees in respect of the issuance of OFCDs which is in violation of section 12(1) of the SEBI Act read with regulation 5(2) of the ICDR Regulations and section 117B of the Companies Act, 1956. Further, RIL had appointed three individuals as debenture trustees in contravention of provisions of regulation 7 of the Debenture Trustee Regulations. These debenture trustees appointed by RIL continued to act as unregistered debenture trustees in contravention of the provisions of the SEBI Act and the Debenture Trustees Regulations.
31. I note that Mr. Rameswar Podder, Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das, the directors of RIL had authorised the issue of OFCDs and had given their consent for issuance of OFCDs issued by RIL. They had signed the RHPs and the Declaration therein. In my view, they are also "*officers in default*" as defined under section 5 of the Companies Act, 1956 for the contraventions/non-compliances by RIL. I, therefore, find that Mr. Rameswar Podder, Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das, the directors of RIL, are also responsible for the acts and omissions of RIL in the instant case.
32. Mr. Rabi Das, Mr. Samaresh Mukherjee and Mr. Shyamalendu Sarkar had given their consent to act as debenture trustees in respect of the issuances of OFCDs by RIL. However, as discussed above, they failed to seek registration as required in terms of the provisions of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustees Regulations. I, therefore, find that the Mr. Rabi Das, Mr. Samaresh Mukherjee and Mr. Shyamalendu Sarkar have contravened section 12 (1) of the SEBI Act read with regulation 7 of the Debenture Trustees Regulations and such contravention is an offence under section 24 of the SEBI Act.

33. I further find that RIL, its directors, namely, Mr. Rameswar Podder, Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das knowingly appointed three individuals as debenture trustees and represented them as such in its RHP. They were fully aware that those individuals cannot be appointed as debenture trustees. Such appointment and their reckless and careless misrepresentations are, in my view, surely fraudulent. In this regard SEBI may initiate appropriate proceedings against them including by way of prosecution under the SEBI Act and the Companies Act.
34. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11, 11(4), 11A and 11B read with section 19 of the SEBI Act and regulation 107 of the ICDR Regulations hereby issue the following directions:
- (a). RIL and its promoters/directors, Mr. Rameswar Podder, Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das, shall within two months from the date of this order, jointly and severally refund the money, collected through the application form issued by it for subscription to its OFCDs in 2009-2010, 2010-2011 and 2011-2012, to the subscribers of OFCDs with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund or the redemption value as promised and accrued till the date of refund, whichever is higher.
 - (b). Such refund shall be made only in cash through Demand Draft or Pay Order.
 - (c). RIL shall issue a public notice, in all editions of two national dailies (one English and one Hindi) having wide circulation, and any one regional language daily with wide circulation at the place where the registered office of RIL is situated, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this order coming into effect.
 - (d). Within seven days of completion of refund as directed hereinabove, RIL 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). RIL and its promoters/directors, Mr. Rameswar Podder, Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das and the debenture trustees appointed by it, namely, Mr. Rabi Das, Mr. Samaresh Mukherjee and Mr. Shyamalendu Sarkar are directed not to, directly or indirectly, access the capital market by issuing prospectus, any 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 till the expiry of three years from the date of completion of refund as directed hereinabove.
- (f). Mr. Rameswar Podder, Mr. Ramendra Mohan Sarkar, Mr. Sukanta Deb and Mr. Partha Das are further restrained from associating themselves with any listed public company and any public company which intends to raise money from the public till the expiry of three years from the date of completion of refund as directed hereinabove.
35. The above directions are without prejudice to the right of SEBI to take any other appropriate action for the violations found in this case in accordance with the provisions of applicable laws and, in case of failure to comply with the above directions, to initiate appropriate proceedings under the SEBI Act including recovery process under section 28A thereof.
36. The order shall come into force with immediate effect. A copy of the order shall be served upon the noticees to ensure compliance with the above directions.

DATE: 15th May, 2014
PLACE: MUMBAI

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA