

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI  
CORAM: S. RAMAN, WHOLE TIME MEMBER**

**ORDER**

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, against MBK Business Development (India) Limited and its Promoter/Directors, viz. Shri Prafulla Kumar Kundu (DIN: 02725120), Shri Saikat Roy (DIN: 06591224) and Shri Anshuman Ghosh (DIN: 06591238); its Debenture Trustee, viz. Trustees of Secured Debentures Trust of MBK Business Development India Limited (represented by its Trustees, viz. Shri Ram Sundar Bhattacharya and Smt. Pratima Roy).

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1. Securities and Exchange Board of India ("SEBI") received an e-mail dated January 1, 2013, wherein a request was made to SEBI, for examination of the issue of debentures through private placement by certain companies including MBK Business Development (India) Limited ("MBK").
- 2.1 Thereafter, SEBI vide letter dated May 2, 2013, while stating: *"It has come to our notice that you (MBK) are raising funds from public by issuing Non-Convertible Debentures ostensibly by way of private placement. No Prospectus or DRHP or statement in lieu of prospectus or information memorandum (was) filed with (SEBI)"*, advised MBK to furnish the following information within 15 days from the date of receipt of the aforesaid letter, viz. –
  - i. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with ROC for issuance of Non-Convertible Debentures.
  - ii. Copy of the Memorandum and Articles of Association of the company;
  - iii. Audited Balance Sheet and Profit & Loss Account of the company for the last 3 years;
  - iv. Name, addresses and occupation of all the promoters/directors of the company;
  - v. Names and details of the Key Managerial Personnel of the company;
  - vi. Other information in respect of every series of Non-Convertible Debentures issued by the company, viz. –
    - a. Date of opening and closing of the subscription list;
    - b. Details regarding the number of application forms circulated inviting subscription;

- c. Details regarding the number of applications received;
- d. Details regarding the number of allottees and list of such allottees;
- e. Number of Non-Convertible Debentures allotted and value of such allotment against each allottee's name.
- f. Details regarding subscription amount raised;
- g. Date of allotment of Non-Convertible Debenture certificates;
- h. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
- i. Date of dispatch of Non-Convertible Debentures;
- j. Details of the total number of applicants for each of MBK's scheme besides the list of final allottees;
- k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of Non-Convertible Debentures.
- l. Terms and conditions of the issue of Non-Convertible Debentures.

2.2 Vide letter dated June 4, 2013, MBK while seeking an extension of 21 days from SEBI, submitted the following documents, viz. -

- i. Copy of the Memorandum and Articles of Association of the company;
- ii. Copy of Audited Balance Sheet and Profit & Loss Account for the Financial Year 2009–10 and 2010–11;
- iii. Name, addresses and occupation of all the promoters/directors of the company.

2.3 SEBI vide letter dated July 8, 2013, advised MBK to submit the remaining information (sought vide the abovementioned SEBI letter dated May 2, 2013) within the period mentioned therein. MBK replied to SEBI vide an undated letter (received at SEBI on July 19, 2013), wherein while providing details of applicants for Non-Convertible Debentures (*and not allottees*), it submitted: *"As informed by us to ROC, we reconfirm that there has been an inadvertent mistake on our part in the process of private placement of debentures and we have already initiated action to refund the money to the investors in line with the relevant regulatory provisions."*

2.4 Thereafter, vide e-mail dated September 10, 2013 and letter dated September 11, 2013, SEBI sought further details from MBK regarding the Non-Convertible Debentures issued by it such as name, folio number, PAN, contact number, etc. of debenture

holders. MBK replied to SEBI vide letter dated October 7, 2013, wherein while seeking extension of 21 days, submitted the Audited Accounts for the Financial Year 2011–12.

- 2.5 As MBK had failed to submit complete and relevant information (sought vide letter dated September 11, 2013), SEBI, vide letter dated February 13, 2014, sought the abovementioned information from the Directors of MBK. Subsequently, MBK replied to SEBI vide an undated letter (received at SEBI on March 4, 2014), wherein while providing a copy of the Annual Report for Financial Year 2012–13 alongwith the list of outstanding debentures as on September 30, 2013, it *inter alia* submitted:

*"... we ...would like to clarify that the company is not raising funds from the public by issuing debentures nor is it launching any scheme. ...the company management had issued secured redeemable ("SRDs") debentures to more than 49 persons between the period June 2010 to September 2012. The total amount of such debentures issued was to the tune of 9,06,82,615 out of which nearly 50% have already been repaid to the retail investors and the net outstanding as on September 30, 2013, is only to the tune of 5,10,57,000.*

*The Management upon realising its mistake had already stopped issuing debentures from the month of October 2012, which was subsequently informed to ROC..."*

- 2.6 SEBI visited the Registered Office of MBK on March 28, 2014, for examining the books of accounts and other records of that company in relation to the SRDs issued by it. During the course of the examination, MBK was advised to furnish information such as list of allottees of debenture holders; details of projects, debenture trustee, bank account, mode of acceptance and payment of funds from investors, etc. Vide letter dated March 28, 2014, MBK replied to SEBI; however, the information furnished was incomplete. MBK also sought time till April 30, 2014, to furnish complete and relevant information. However, as on date, MBK has not furnished such information to SEBI.

- 3.1 SEBI also sought information from the Registrar of Companies, Kolkata ("**ROC**"), vide letters dated February 27, 2014 and May 14, 2014, in respect of repayment of SRDs issued by MBK. The ROC replied to SEBI vide letter dated May 21, 2014, stating: *"According to the last filed Balance Sheet of MBK as at March 31, 2013, the amount of liability towards debentures issued by the company was 5,55,25,063 as on March 31, 2013. The Charge ID created in respect of the debentures issued also remains active as on date."*

- 3.2 Subsequently, vide letter dated August 6, 2014, the ROC informed SEBI that: *"(it) had issued a letter dated 2.11.2012 to the company calling for information. On 23.11.2012, an order under Section 234(3A) of the Companies Act, 1956, was issued to the company for furnishing information not yet submitted by the company. The company replied by letter dated 29.11.2012, wherein it was stated that the company collected debenture monies of 9.07 Crore and 1.42 Crore was paid back to the investors on request, leaving a balance of 7.65 Crore. No documentary evidence regarding such repayment of debentures was attached to the letter. Further, as stated in this office letter ...dated 21.5.2014, the charge ID regarding charge created relevant to the debentures remain active as on date. If the debentures were repaid, the company would have proceeded to file particulars of satisfaction of the charge with this office."*
4. The material available on record i.e. correspondences exchanged between SEBI and MBK alongwith the documents contained therein, information obtained from *MCA21 Portal*, have been perused. On an examination of the same, it is observed that –
- i. MBK was incorporated on September 1, 2009, with the ROC, Kolkata, West Bengal with CIN No. as U52390WB2009PLC138103. MBK has its Office at C–3, Pritilata Waddedar Bithi, City Centre, Durgapur, West Bengal–713216, India.
  - ii. The Promoter/Directors in MBK are Shri Prafulla Kumar Kundu, Shri Saikat Roy and Shri Anshuman Ghosh.
- 5.1 The issue for determination in the instant matter is whether the mobilization of funds by MBK through the issuance of SRDs ("***Offer of SRDs***"), is in accordance with the provisions of the SEBI Act, 1992 ("***SEBI Act***") read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("***Debt Securities Regulations***"); the Companies Act, 1956 read with the Companies Act, 2013.
- 5.2 I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in ***Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)*** (hereinafter referred to as the "***Sahara Case***"), had observed that:

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

5.3 In this regard –

- i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced as under:

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

*(2) ...*

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

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

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

*...*

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

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

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sahara Case* observed that:

*"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to*

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

*The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...*

*Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ...*

*I may, therefore, indicate, subject to what has been stated above, 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. ..."*

- iii. In the instant matter, for ascertaining whether the *Offer of SRDs* is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.
  - a. In the facts of the instant case, it is observed that MBK admittedly issued *Secured Redeemable Debentures (Offer of SRDs)* "to more than 49 persons between the period June 2010 to September 2012. The total amount of such debentures issued was to the tune of 9,06,82,615...".
  - b. As per details furnished by MBK, it is observed that during the Financial Years 2010–11, 2011–12 and 2012–13, the company exceeded the threshold for a private placement through the allotment of SRDs to 386, 1772 and 2360 investors respectively i.e. a total of 4518 investors, under the *Offer of SRDs*. Details of the aforesaid are provided below –

| Table A<br>Number of investors to whom <i>Offer of SRDs</i> was made by MBK |                     |
|-----------------------------------------------------------------------------|---------------------|
| Year                                                                        | Number of Investors |
| 2010                                                                        | 386                 |
| 2011                                                                        | 1772                |
| 2012                                                                        | 2360                |
| <b>Total</b>                                                                | <b>4518</b>         |

| Table B<br>Plan-wise Number of investors to whom <i>Offer of SRDs</i> was made by MBK |                     |             |             |
|---------------------------------------------------------------------------------------|---------------------|-------------|-------------|
| Plan                                                                                  | Year of Application |             |             |
|                                                                                       | 2010                | 2011        | 2012        |
| <b>3 Year</b>                                                                         | 34                  | 150         | 131         |
| <b>5 Year</b>                                                                         | 105                 | 226         | 162         |
| <b>7 Year</b>                                                                         | 235                 | 1031        | 1373        |
| <b>10 Year</b>                                                                        | 12                  | 365         | 694         |
| <b>Total</b>                                                                          | <b>386</b>          | <b>1772</b> | <b>2360</b> |

c. As has been stated earlier, SEBI had, on March 28, 2014, made a visit to the Registered Office of MBK for examining the books of accounts and other records of that company in relation to the *Offer of SRDs* made by it. The observations recorded during the course of the aforesaid examination are reproduced below –

- MBK could not produce books of accounts viz. cash book, bank book, bank statement, minutes book, vouchers, etc. and/or other relevant documents sought by the SEBI Officers. Only copies of Balance Sheets, Profit And Loss Accounts for the year ended 2009–10, 2010–11, 2011–12 and 2012–13 were produced at the office. The Director, Shri Prafulla Kumar Kundu, stated that all other documents had been kept either at the project site or submitted with the Auditor of the company for the purpose of audit for the year 2013–14. In this regard, one of the Directors of the company i.e. Shri Anshuman Ghosh, had been subsequently contacted to ascertain the status of financial statements for the year ended 2013–2014 and he informed SEBI that audit for the year 2013–14 was still under process as on date.
- On examination of the computer systems installed at the Registered Office of MBK, it *prima facie* appeared that the company had deleted majority of all data files installed therein.

- The premises had no name–plate outside to indicate that it was indeed the Registered Office of MBK.
  - No verifiable documentary evidence i.e. acknowledgements from investors that money has been refunded to them, could be produced by MBK for substantiating its claim that it had refunded the amounts mobilized under the *Offer of SRDs*, to the investors under such *Offer*. Vide their undated letter (received by SEBI on May 26, 2014), MBK submitted copies of only two sample refund and receipt notes amounting to 1500 and 5000 respectively, which is not at all sufficient to substantiate its claims of having repaid nearly 50% of 9,06,82,615 collected as debentures. It is also noted that the date of refund as stated in the refund note is December 9, 2015, which cannot be possible as on date.
- d. MBK 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 and therefore, is not covered under the *second proviso* to Section 67(3).
- e. In view of the above, the *Offer of SRDs* would *prima facie* qualify as a public issue under the first proviso to Section 67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the *Sabara Case*. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI in the case of companies who intend to get their securities listed.

5.4 I note that –

- i. From the abovementioned, it will follow that since the *Offer of SRDs* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard, reference is made to Sections 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which is reproduced as under:

*"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.*

*(1A) ...*

*(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from 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 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.*

*(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1 [until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2)]; and if default is made in complying with this sub- section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees."*

- ii. In the *Sabara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that –

*"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."*

- iii. In the facts of the instant case, since the *Offer of SRDs* was made to fifty persons or more by MBK, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956. It therefore *prima facie* appears that MBK has violated the provisions of Section 73(1) of the Companies Act, 1956, since it has failed to ensure listing with a recognised stock exchange of the securities issued under the *Offer of SRDs*.
- iv. As per Section 73(2) of the Companies Act, 1956, the obligation to refund the amount with interest that was collected from investors under the *Offer of SRDs* is mandatory on MBK. In this regard, there is no evidence on record to indicate whether or not MBK has paid interest to the investors where such *Debentures* are not allotted within 8 days under the *Offer of SRDs*, as per the aforesaid Section. In view of the same, I find that MBK has *prima facie* not complied with the provisions of Section 73(2) of the Companies Act, 1956.
- v. Section 73(3) of Companies Act, 1956, says that all moneys received shall be kept in a separate bank account maintained with a Scheduled Bank and if default is made in complying with this sub-Section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees. In the instant case, there is no evidence on record to indicate whether or not funds received from the investors under the *Offer of SRDs* has been kept in separate bank account by MBK. In view of the same, I find that MBK has *prima facie* not complied with the provisions of Section 73(3) of Companies Act, 1956.

5.5 Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the ROC, before making a public offer or 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 mentioned above, since the *Offer of SRDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, MBK was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. Based on the material available on record, I find that *prima facie*, MBK has not complied with the provisions of Section 60 of Companies Act, 1956.

- 5.6 Under Section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that MBK has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
- 5.7.1 Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless 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.
- 5.7.2 Further, under Section 117C of the aforesaid Act, where a company issues debentures, it shall create a Debenture Redemption Reserve ("**DRR**") for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. In this regard, upon a perusal of the Balance Sheet of MBK for the Financial Year ended March 31, 2013, it is observed that company has not created any DRR.
- 5.7.3 Accordingly, based on the material available on record, I find that *prima facie*, MBK has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
- 5.8 As per Section 465(1) of the Companies Act, 2013, the Companies Act, 1956, "*shall stand repealed*". However, Section 465(2)(i) of the Companies Act, 2013, provides that:

*"(2)Notwithstanding the repeal under sub-section (1) of the repealed enactments,—*

*(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the*

*provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;"*

5.9 In addition to the above, reference may be made to the Debt Securities Regulations, which were framed by SEBI in exercise of its powers under Section 30 of the SEBI Act and are applicable to the public issue and listing of debt securities. It may be relevant to note that under the aforesaid Regulations, '*debt securities*' have been defined as '*non-convertible debt securities which create or acknowledge indebtedness, and include debenture...*' In this context, I find that *prima facie*, MBK, through the *Offer of SRDs*, which is a public issue of debt securities, has violated the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- i. Regulation 4(2)(a) – *Application for listing of debt securities*
- ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
- iii. Regulation 4(2)(c) – *Credit rating has been obtained*
- iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
- v. Regulation 4(4) – *Appointment of Debenture Trustee*
- vi. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- vii. Regulation 6 – *Filing of draft Offer Document*
- viii. Regulation 7 – *Mode of disclosure of Offer Document*
- ix. Regulation 8 – *Advertisements for Public Issues*
- x. Regulation 9 – *Abridged Prospectus and application forms*
- xi. Regulation 12 – *Minimum subscription*
- xii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiii. Regulation 15 – *Trust Deed*
- xiv. Regulation 16(1) – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of Security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

5.10 In addition to the above, the following may also be noted in respect of the *Offer of SRDs* made by MBK –

- i. Form 10 (filed by MBK with the ROC in accordance with the provisions of the Companies Act, 1956), reveals that MBK created Charge for an amount of 15.09

Crores on March 26, 2010, in respect of the *Offer of SRDs*. It is observed from the Trust Deed (executed by MBK with its Debenture Trustee) that the *SRDs* so issued are secured by creating Charge on 'Land at Plot No. 701, Mouza- Rasiknagarapur, LR. Kb. No. 135, C.S. Kb No. 47, P.S and Dist Bankura, West Bengal' (value of consideration 11,40,075) and Current Assets including bank balance, cash balance and furniture and fixtures of that company. However, from the Balance Sheet for the year ended March 31, 2010 (as submitted by MBK), it is seen that the value of Current Assets i.e. Cash And Bank Balances was 16685 and value of Furniture And Fixtures was 32600 aggregating to 49285 only. The aforesaid facts *prima facie*, indicate that Charge created by MBK to secure the *Offer of SRDs*, may not have been backed by sufficient assets.

- ii. From the Balance Sheet for the year ended March 31, 2013, by correctly classifying the *SRDs* under long-term debt instead of current liabilities (as shown by MBK), it is observed that there was a significantly high Debt–Equity ratio i.e. approximately 78.16 times. Such a high Debt–Equity ratio is prejudicial to the interests of the debenture holders and may significantly hamper the ability of the company to fulfill its obligation of redeeming the debentures on maturity.

5.11 Upon a consideration of the aforementioned paragraphs, I am of the view that *prima facie*, MBK is engaged in fund mobilising activity from the public, through the *Offer of SRDs* and a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Sections 117B–C) read with Section 465 of the Companies Act, 2013 and the Debt Securities Regulations.

6. 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. Further, as per the provisions of Section 55A of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013, administrative authority on the subjects relating to public issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 and Section 465 of the Companies Act, 2013, over companies who issue *Secured Redeemable Debentures* to fifty persons or more, but

do not comply with the applicable provisions of the aforesaid Companies Acts and the Debt Securities Regulations (as mentioned in paragraphs 5.1–5.11 above).

- 7.1 From information obtained by SEBI from the *MCA 21 Portal*, it is observed that MBK appointed *Trustees of Secured Debentures Trust of MBK Business Development India Limited* [(represented by its Trustees, viz. *Shri Ram Sundar Bhattacharya* (... by occupation *Business*) and *Smt. Pratima Roy* (... by occupation *Housewife*)] as Debenture Trustee for the Offer of SRDs by that company.
- 7.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("**Debenture Trustees Regulations**"), provides that: "*no person should act as a debenture trustee unless he is either –*
- i. a scheduled bank carrying on commercial activity; or*
  - ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
  - iii. an insurance company; or*
  - iv. body corporate."*
- 7.3 Based on the material available on record, I find that *Trustees of Secured Debentures Trust of MBK Business Development India Limited* (represented by its Trustees, viz. *Shri Ram Sundar Bhattacharya* and *Smt. Pratima Roy*) has *prima facie* failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as unregistered Debenture Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.
8. Protecting the interests of investors is the foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by MBK and no investors are defrauded. In light of the same, I find there is no other alternative but to take recourse through an interim action against MBK and its Directors alongwith its Debenture Trustee, viz. *Trustees of Secured Debentures Trust of MBK Business Development India Limited* (represented by its Trustees, viz. *Shri Ram Sundar*

*Bhattacharya and Smt. Pratima Roy*), for preventing that company from further carrying on with its fund mobilising activity under the *Offer of SRDs*.

9. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions –
- i. MBK shall not mobilize funds from investors through the *Offer of SRDs* 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. MBK and its Directors, viz. Shri Prafulla Kumar Kundu (DIN: 02725120), Shri Saikat Roy (DIN: 06591224) and Shri Anshuman Ghosh (DIN: 06591238), 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. MBK and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
  - iv. MBK shall provide a full inventory of all its assets and properties;
  - v. MBK's abovementioned Directors shall provide a full inventory of all their assets and properties;
  - vi. MBK and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of SRDs*, without prior permission from SEBI;
  - vii. MBK and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of SRDs*, which are kept in bank account(s) and/or in the custody of MBK;
  - viii. MBK shall furnish complete and relevant information (as sought by SEBI during the examination of books of accounts, etc. made by it on March 28, 2014), within 21 days from the date of receipt of this Order.
  - ix. *Trustees of Secured Debentures Trust of MBK Business Development India Limited (represented by its Trustees, viz. Shri Ram Sundar Bhattacharya and Smt. Pratima Roy)* is prohibited from continuing with its present assignment as a debenture trustee in respect of the *Offer of SRDs* of MBK and also from taking up any new assignment or involvement

in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.

10. The above directions shall take effect immediately and shall be in force until further orders.
- 11.1 The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondences exchanged between SEBI and MBK alongwith the documents contained therein; information obtained from the 'MCA 21 Portal'. In this context, MBK and its abovementioned Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to 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.
- 11.2 Similarly, the Debenture Trustee i.e. *Trustees of Secured Debentures Trust of MBK Business Development India Limited (represented by its Trustees, viz. Shri Ram Sundar Bhattacharya and Smt. Pratima Roy)*, may, within 21 days from the date of receipt of this Order, file its reply, if any, to this Order and may also indicate whether it desires to avail itself an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
12. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against MBK and its abovementioned Directors; its Debenture Trustee, viz. *Trustees of Secured Debentures Trust of MBK Business Development India Limited (represented by its Trustees, viz. Shri Ram Sundar Bhattacharya and Smt. Pratima Roy)*, in accordance with law.

Place: Mumbai  
Date: August 7, 2014

S. RAMAN  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA