

**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 Bharat Krishi Samridhi Industries Limited and its Directors, viz. Shri Prabir Kumar Chattopadhyay (DIN: 03529413; PAN: AHWPC8359F), Shri Pradip Kumar Das (DIN: 06546895; PAN: APKPD4256J), Shri Gulzar Ahmed (DIN: 06701232; PAN: APHPA0788H) and Shri Firoz Hossain (DIN: 02960200; PAN: ABXPH8897C); its Debenture Trustees, viz. Bharat Krishi Secured Debenture Trust (represented by its Trustee viz. Shri Swadesh Banerjee); Bharat Krishi Secured Debenture Development Trust (represented by its Trustees viz. Shri Amit Samanta and Shri. Jagdish Chandra Nag).

1. Securities and Exchange Board of India ("**SEBI**") received a complaint dated November 11, 2013, from an investor alleging issue of shares/debentures by Bharat Krishi Samridhi Industries Limited ("**BKSIL**").
- 2.1 Thereafter, SEBI vide letter dated December 6, 2013, advised BKSIL to furnish *inter alia* 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 Registrar of Companies ("**ROC**") for issuance of shares/debentures.
 - ii. Copy of the Memorandum and Articles of Association of the company;
 - iii. Copy of Audited Annual Accounts 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 shares/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 shares/debentures allotted and value of such allotment against each allottee's name.
- f. Details regarding subscription amount raised;
- g. Date of allotment of share/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 shares/debentures;
- j. Details of the total number of applicants for each of BKSIL's scheme besides the list of final allottees;
- k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/debentures.
- l. Terms and conditions of the issue of shares/debentures.
- m. Confirmation of application for listing of securities with any of the stock exchanges.
- n. Copy of Form 2 and Form 10 filed with the ROC.
- o. Details of debenture trustee.

2.2 Thereafter, vide letters each dated January 30, 2014 and March 24, 2014, SEBI once again advised the Directors of BKSIL to submit the information sought vide its abovementioned letter dated December 6, 2013.

2.3 However, as on date, neither BKSIL nor its Directors have submitted the information sought vide the abovementioned letters, to SEBI.

3. SEBI was also in receipt of additional information from the complainants of the abovementioned complaint dated November 11, 2013, such as copies of application forms, brochures, etc. issued by BKSIL, which was submitted vide their letters dated March 13, 2014 and May 15, 2014.

4. The material available on record i.e. information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*' alongwith documents annexed with the abovementioned complaints dated November 11, 2013; March 13, 2014 and May 15, 2014, have been perused. On an examination of the same, it is observed that –

- i. BKSIL was incorporated on June 30, 2011, with the ROC, Kolkata, West Bengal with CIN No. as U74999WB2011PLC164406. BKSIL has its Office at 1st Floor, Fatma Court 59/C, Tiljala Road, Kolkata–700046, West Bengal, India.
- ii. The Directors in BKSIL are Shri Prabir Kumar Chattopadhyay, Shri Pradip Kumar Das and Shri Gulzar Ahmed. Shri Firoz Hossain, who was earlier the Chairman of BKSIL, had tendered his resignation with effect from September 27, 2013.
- iii. From the material available on record, it is observed that BKSIL issued *Secured Non-Convertible Redeemable Debentures ("NCDs")* in accordance with the following terms and conditions contained in the brochure:
 - a. *"The offer is being made on a private placement basis and cannot be accepted by any person other than to whom it has been offered. This offer cannot be transferred or rendered in anyone's favour.*
 - b. *The issue of NCDs on private placement basis is issued in terms of the resolution passed by the Board of Directors of the Company at its meeting held on March 10, 2012.*
 - c. *Each NCDs will have a face value of ₹ 100 Application can be made for a minimum of 10 Debentures amounting of ₹ 1000.*
 - d. *Size of the Issue: ₹ 200 Crore, with an option to retain oversubscription to be decided by Board of Directors.*
 - e. *Security: The NCDs will be secured by a first charge favouring the Debenture Trustee, on company's immovable properties as per the Trustee Agreement.*
 - f. *Who Can Invest: Individuals, Trusts, Corporate Bodies, Minors (through Guardians), Institutions, Mutual Funds, HUFs and Co-operative Bodies."*

TERMS & CONDITIONS OF THE SECURED NON-CONVERTIBLE REDEEMABLE DEBENTURES						
PLAN- 1	A	B	C	D	E	F
Maturity Period	1 Year	3 Years	5 Years	8 Years	10 Years	12 Years
Minimum Investment	1000	1000	1000	1000	1000	1000
Yield	150	500	1000	3000	5000	9000
Redemption Value	1150	1500	2000	4000	6000	10000

- iv. In addition to the above, BKSIL also issued redeemable preference shares in accordance with the following terms and conditions contained in the brochure:

- a. "The application can be made for a minimum amount of ₹ 1000 and in multiples of ₹ 10.
- b. This offer of Redeemable Preference Shares to Promoters/Directors, the employees, the share holder and their friends and relatives only on private placement basis.
- c. Size of Issue: ₹ 4.95 Crore
- d. Date of Issue Open: 06.07.2011."

TERMS & CONDITIONS OF THE REDEEMABLE PREFERENCE SHARES		
Category A		
Plan	A	B
Redemption Period (Years)	3	5
Minimum Investment (₹)	10000	10000
Indicative Return p.a. @ (%)	20%	24%
Redemption Value (₹)	10000	10500
** The indicative/redemption value works out to be ₹167 and ₹200 on monthly rests in respect of the above categories of investment.		

Category B					
Plan	A	B	C	D	E
Redemption Period (Years)	2.6	4.6	6.6	9	11
Minimum Investment (₹)	1000	1000	1000	1000	1000
Indicative Return (₹)	500	1000	3000	5000	9000
Redemption Value (₹)	1500	2000	4000	6000	10000

4.1 The issue for determination in the instant matter is whether the mobilization of funds by BKSIL through the *Offer of NCDs* and *Offer of Preference Shares*, is in accordance with –

- i. the provisions of the SEBI Act, 1992 ("**SEBI Act**"); the Companies Act, 1956 read with the Companies Act, 2013; and
- ii. in respect of *Offer of NCDs*, the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("**Debt Securities Regulations**").

4.2 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."

4.3 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. ..."

- v. In the instant matter, for ascertaining whether the *Offer of NCDs* and *Offer of Preference Shares* are public issues or issues on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.

A. Offer of NCDs

- As per information annexed with the complaint received by SEBI against BKSIL, it was discovered that there existed at least 58 debenture holders who invested in the NCDs issued under the *Offer of NCDs*.

- From the brochure circulated by BKSIL for the *Offer of NCDs*, it is observed that *"The offer is being made on a private placement basis and cannot be accepted by any person other than to whom it has been offered. This offer cannot be transferred or rendered in anyone's favour"* and the invitation for subscription to the *Offer of NCDs* extended to *"Individuals, Trusts, Corporate Bodies, Minors (through Guardians), Institutions, Mutual Funds, HUFs, and Co-operative Bodies"*. Such a generalized category of investor(s) cannot be said to satisfy the condition of specificity as required under Section 67(3) of the Companies Act.
- Further, the acknowledgment slip issued to an applicant/investor (acknowledging receipt of investment under the *Offer of NCDs*) clearly records the name of an *'Introducer'* in addition to the applicant/investor's name, which would not have been required if such *Offer* was of domestic concern and made on private placement basis. In this regard, reliance is placed on the following observations of the Hon'ble Supreme Court in the *Sahara Case* wherein it observed:

"... Bonds also required to name an introducer, whose job evidently was to introduce the company to the prospective investor. If the offer was made to those persons related or associated with Sahara Group, there was no necessity of an introducer and an introduction ..."

B. Offer of Preference Shares

- While the brochure circulated by BKSIL for the *Offer of Preference Shares*, stated: *"... offer of Redeemable Preference Shares to Promoters/Directors, the employees, the share holder and their friends and relatives (is) only on private placement basis"*, however, as per information annexed with the complaint received by SEBI against BKSIL, it was discovered that there existed at least 50 preference share certificates which had been issued by BKSIL.

C. The abovementioned facts coupled with the refusal by BKSIL and its Directors to submit information to SEBI *prima facie* indicate that the *Offer of NCDs* and *Offer of Preference Shares* were public issues of securities 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 *Sahara 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.

4.4 I note that –

- i. From the abovementioned, it will follow that since the *Offer of NCDs* and *Offer of Preference Shares* were public issues 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 *Sahara 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 NCDs* and *Offer of Preference Shares* were made to fifty persons or more by BKSIL, 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 BKSIL 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 NCDs* and *Offer of Preference Shares* were public issues of securities.
- 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 NCDs* and *Offer of Preference Shares*, is mandatory on BKSIL. In this regard, there is no evidence on record to indicate whether or not BKSIL has paid interest to the investors where such *NCDs/Preference Shares* are not allotted within 8 days under the *Offer of NCDs* and *Offer of Preference Shares*, as per the aforesaid Section. In view of the same, I find that *prima facie*, BKSIL has 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 NCDs* and *Offer of Preference Shares* were kept in separate bank account by BKSIL. In view of the same, I find that *prima facie*, BKSIL has not complied with the provisions of Section 73(3) of Companies Act, 1956.

- 4.5 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 NCDs* and *Offer of Preference Shares* were made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, BKSIL 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*, BKSIL has not complied with the provisions of Section 60 of Companies Act, 1956.
- 4.6 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 BKSIL 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.
- 4.7 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.

- 4.8 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 BKSIL for the Financial Year ended March 31, 2012, it is observed that company has not created any DRR.
- 4.9 Accordingly, based on the material available on record, I find that *prima facie*, BKSIL has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
- 4.10 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,"
- 4.11 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*, BKSIL, through the *Offer of NCDs*, 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.*

4.12 The following may also be noted in respect of the *Offer of NCDs* made by BKSIL –

- i. As per the brochure for the *Offer of NCDs*, "*The NCDs will be secured by a first charge favouring the Debenture Trustee, on company's immovable properties as per the Trustee Agreement.*"
- ii. Form 10 (filed by BKSIL with the ROC in accordance with the provisions of the Companies Act, 1956), reveals that BKSIL created Charge for an amount of ₹50 Crores on September 8, 2011, on immovable property having total area of approximately 1186 kottahs (1 kottah = 720.75 sq. ft.) However, BKSIL filed Form 17 (in accordance with the provisions of the Companies Act, 1956) with the ROC on June 15, 2012, for satisfaction of charge.
- iii. During the intervening period, BKSIL filed another Form 10 with the ROC on March 10, 2012, wherein it created Charge for an amount of ₹200 Crores on immovable property of total area 36.30 Decimal (1 Decimal = 435.6 sq ft.).
- iv. From the Balance Sheet for the year ended March 31, 2012, it is observed that the value of fixed assets of the company comprised of land having book value of ₹21.14 Lakhs.

4.13 Upon a consideration of the aforementioned paragraphs, I am of the view that *prima facie*, BKSIL is engaged in fund mobilising activity from the public, through the *Offer of NCDs* and *Offer of Preference Shares* and as 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) read with Section 465 of the Companies Act, 2013; and in respect of the *Offer of NCDs* only, Sections 117B–C of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013 and the Debt Securities Regulations.

- 5.1 From information obtained by SEBI from the *MCA 21 Portal*, it is observed that BKSIL appointed *Bharat Krishi Secured Debenture Trust (represented by its Trustee viz. Shri Swadesh Banerjee); Bharat Krishi Secured Debenture Development Trust (represented by its Trustees viz. Shri Amit Samanta and Shri. Jagdish Chandra Nag)*, as Debenture Trustees for the *Offer of NCDs* by that company.
- 5.2 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."*
- 5.3 Based on the material available on record, I find that *Bharat Krishi Secured Debenture Trust (represented by its Trustee viz. Shri Swadesh Banerjee); Bharat Krishi Secured Debenture Development Trust (represented by its Trustees viz. Shri Amit Samanta and Shri. Jagdish Chandra Nag)*, have *prima facie* failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, have acted as unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee 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 *Non-Convertible Redeemable Debentures and Preference Shares* 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 4.1–4.13 above). Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by BKSIL 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 BKSIL and its Directors alongwith its Debenture Trustees, viz. *Bharat Krishi Secured Debenture Trust (represented by its Trustee viz. Shri Swadesh Banerjee); Bharat Krishi Secured Debenture Development Trust (represented by its Trustees viz. Shri Amit Samanta and Shri. Jagdish Chandra Nag)*, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs and Offer of Preference Shares*.

7. 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. BKSIL shall not mobilize any fresh funds from investors through the *Offer of NCDs and Offer of Preference Shares* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - ii. BKSIL and its Directors, viz. Shri Prabir Kumar Chattopadhyay (DIN: 03529413; PAN: AHWPC8359F), Shri Pradip Kumar Das (DIN: 06546895; PAN: APKPD4256J), Shri Gulzar Ahmed (DIN: 06701232; PAN: AHPHA0788H) including its past Director, Shri Firoz Hossain (DIN: 02960200; PAN: ABXPH8897C), 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. BKSIL 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. BKSIL shall provide a full inventory of all its assets and properties;

- v. BKSIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. BKSIL and its abovementioned present 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 NCDs* and *Offer of Preference Shares*, without prior permission from SEBI;
 - vii. BKSIL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of NCDs* and *Offer of Preference Shares*, which are kept in bank account(s) and/or in the custody of BKSIL;
 - viii. BKSIL shall furnish complete and relevant information (as sought by SEBI letters dated December 6, 2013; January 30, 2014 and March 24, 2014), within 21 days from the date of receipt of this Order.
 - ix. *Bharat Krishi Secured Debenture Trust (represented by its Trustee viz. Shri Swadesh Banerjee); Bharat Krishi Secured Debenture Development Trust (represented by its Trustees viz. Shri Amit Samanta and Shri. Jagdish Chandra Nag)*, are prohibited from continuing with its present assignment as a debenture trustee in respect of the *Offer of NCDs* of BKSIL 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.
8. The above directions shall take effect immediately and shall be in force until further orders.
- 9.1 The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*' alongwith documents annexed with the complaints dated November 11, 2013; March 13, 2014 and May 15, 2014. In this context, BKSIL 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.
- 9.2 Similarly, the Debenture Trustees i.e. *Bharat Krishi Secured Debenture Trust (represented by its Trustee viz. Shri Swadesh Banerjee); Bharat Krishi Secured Debenture Development Trust (represented by its Trustees viz. Shri Amit Samanta and Shri. Jagdish Chandra Nag)*, 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.

10. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against BKSIL and its abovementioned Directors; its Debenture Trustees, viz. *Bharat Krishi Secured Debenture Trust (represented by its Trustee viz. Shri Swadesh Banerjee); Bharat Krishi Secured Debenture Development Trust (represented by its Trustees viz. Shri Amit Samanta and Shri. Jagdish Chandra Nag)*, in accordance with law.

Place: Mumbai
Date: September 5, 2014

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