

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

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of M/s Life Care Infra Tech Limited (CIN- U70102UP2011PLC047389) and its Directors viz. Shri Yogendra Pratap Shahi (DIN – 03453495; PAN-ATBPS3325E), Shri Ashok Kumar Singh (DIN – 05111466; PAN- AKGPS7982R), Shri Bhardwaj Muni Tripathi (DIN – 05111477; PAN-ADDPT0119K), Shri Ramashish Singh (DIN- 05117710; PAN-BSFPS9624C), Shri Harendra Kumar Upadhyay (DIN – 05117715; PAN-AAOPU9033B) and Shri Satyendra Rai (DIN – 06376984)

1. Securities and Exchange Board of India ("SEBI") received a complaint against M/s. Life Care Infra Tech Limited ("LCITL") alleging that LCITL was collecting money by way of issuing of Redeemable Preference Shares ("RPS") without following the statutory process.
2. In order to ascertain the nature of fund mobilizing activity of LCITL through its schemes, SEBI vide letter dated September 09, 2013 sought information/documents from LCITL within 15 days of the receipt of the letter. The letter sent to the company was returned undelivered.
3. As the letter to LCITL was returned undelivered, SEBI vide letter dated September 30, 2013 sought information and documents relating to LCITL and issue of RPS by LCITL from the complainant.
4. Subsequently, SEBI, vide letter dated December 09, 2013 again sought the following information/documents from LCITL and its Directors, viz., Shri Satyendra Rai and Shri Yogendra Pratap Shahi :
 - i. Copy of the Memorandum and Articles of Association of the company as filed with ROC;



- ii. Names of the past and present promoters/ directors/ key management personnel;
- iii. Details of past and present directors of LCITL;
- iv. Copy of Resolutions pursuant to which redeemable preference shares were/ are being issued by LCITL;
- v. Prospectus/ brochure pertaining to the schemes/ investment plans/ offers whereby investment/ funds were/ are invited from public;
- vi. Applications forms that are required to be submitted by the investors/ applicants to participate in your schemes/ investment plans/ offers
- vii. Sample copies of certificates/ investment proof/ arrangement issued to the investors who subscribe to such schemes/ and or arrangements;
- viii. Details of the scheme wise amount mobilized by LCITL till date along with the number of investors under each schemes/ investment plans/ offers;
- ix. List of allottees of Redeemable Preference Shares containing the amount invested by each allottee;
- x. Advertisements inviting subscription to Redeemable Preference Shares issued;
- xi. Annual Returns of LCITL since incorporation as filed with concerned RoC;
- xii. Certified copy of audited financial statement for the financial year 2010-11, 2011-12, 2012-13;
- xiii. Copy of the Income Tax returns filed by LCITL for the last 3 years;
- xiv. Details of regulatory approvals obtained if any, for schemes/ investment plans/ offers;
- xv. Details of any other similar schemes/ investment plans/ offers, if any, floated by LCITL or its group/ associated companies;
- xvi. Terms and conditions of each of your schemes/ investment plans/ offers;
- xvii. Balance sheets and Profit and Loss accounts of LCITL since incorporation as filed with concerned RoC;
- xviii. Any other document in connection with the Redeemable Preference Shares issued by LCITL.

5. SEBI, vide letter dated December 09, 2013 also sought the following information/documents from Registrar of Companies, Kanpur and Nainital ("RoC, Kanpur"):

- i. Copy of the Memorandum and Articles of Association of the company;
- ii. Form 32 for last 5 years containing names of the past and present promoters/ directors/ key management personnel;
- iii. Details of past and present directors of LCITL containing name, address, Permanent Account Number (PAN) and contact details (E-mail/ fax/ contact numbers);
- iv. Prospectus/ Information Memorandum/ Statement in lieu of prospectus, if any, pertaining to the schemes/ investment plans by LCITL;
- v. Board resolution(s) pursuant to which Redeemable Preference Shares were/ are being issued by LCITL;



- vi. *Applications Forms, if any, required to be filled/given by the investors/applicants to participate in schemes/investment plans/ offers of LCITL;*
- vii. *List of allottees of Redeemable Preference Shares were/ are being issued by LCITL;*
- viii. *Details of the scheme wise amount mobilized by LCITL till date along with the number of investors under each schemes/investment plans/offers;*
- ix. *Annual Returns of LCITL for last 5 years;*
- x. *Copy of audited financial statement including Balance Sheet and Profit Loss Statement for financial year 2010-11, 2011-12, 2012-13;*
- xi. *Copy of the Income Tax returns filed by LCITL for the last 3 years;*
- xii. *Details of regulatory approvals obtained if any, for schemes/investment plans/ offers including Redeemable Preference Shares were/ are being issued by LCITL;*
- xiii. *Any other document filed by LCITL in connection with the Redeemable Preference Shares issued by LCITL.*

6. In addition, vide letter dated December 09, 2013, SEBI also sought information/documents relating to LCITL and the issue of RPS by LCITL from the complainant and his advocate.
7. In response to SEBI's letter dated December 09, 2013, Shri Yogendra Pratap Shahi, Director of LCITL, vide letter dated December 24, 2013, stated that SEBI's letter dated September 09, 2013 had not been received by them. He further stated that they were in the process of collecting and compiling their submissions and documents and requested time till January 31, 2014 to submit the information and documents. However, as on date neither LCITL nor its Directors have submitted the information/documents sought vide the abovementioned letters of SEBI.
8. In the meanwhile, relevant information regarding the capital structure of LCITL was accessed from the website of the Ministry of Corporate Affairs i.e. 'MCA21 Portal'.
9. SEBI again vide letter dated May 09, 2014, sent to the new address of LCITL mentioned on 'MCA21 Portal', advised LCITL to submit the documents/information within 7 days from the receipt of the letter. The letter sent to LCITL was once again returned undelivered. LCITL and its Directors have not submitted the information sought vide the abovementioned letters to SEBI till date.



10. The material available on record such as the complaint received by SEBI, the correspondence exchanged between SEBI and LCITL and information obtained from the 'MCA 21 Portal' have been perused. On an examination of the said documents/information, it is observed as under:

- a) LCITL was incorporated on November 12, 2011 with RoC, Kanpur, Uttar Pradesh with CIN U70102UP2011PLC047389. Its registered office is at Nanda Bhawan, 5, Ashok Avenue, Sapru Marg, Lucknow – 226001 (Uttar Pradesh, India).
- b) The Directors of LCITL are Shri Yogendra Pratap Shahi (DIN:03453495), Shri Ashok Kumar Singh (DIN:05111466), Shri Bhardwaj Muni Tripathi (DIN:05111477), Shri Ramashish Singh (DIN:05117710), Shri Harendra Kumar Upadhyay (DIN:05117715) and Shri Satyendra Rai (DIN:06376984).
- c) As per LCITL's brochure, LCITL offers RPS with the following terms and conditions:
 - i. *"This offer is being made on a private placement basis and cannot be accepted by any person other than to whom it has been offered. Further, this offer cannot be transferred or renounced in anyone's favour.*
 - ii. *The size of the issue is Rs. 5 Crore, with an option to retain. The company has right to increase/decrease the size of the offer.*
 - iii. *The application can be made for a minimum amount of Rs.1000/- & multiple of Rs.1000/- & in multiples of Rs.1000/-*
 - iv. *ROI is on quarterly compounding basis.*
 - v. *Surrender of the preference share certificate before the maturity or due date rate of interest will be applicable as per time.*
 - vi. *The principal and redemption premium shall be paid on maturity on surrender of the preference share certificate.*
 - vii. *The share certificates may be surrendered to the company in advance i.e. two months before the due date, to enable the company to issue repayment warrant/DD in time.*
 - viii. *Who can invest - Any person/trust, corporate/co-operative bodies are associated with marketing trust."*



- d) As per LCITL's brochure, the details of plan launched by LCITL in respect of the RPS are as under –

Plan	A	B	C	D	E	F	G
Issue price minimum 100 preference shares	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-
Redemption period	45 months	66 months	102 months	141 months	177 months	36 months	12 months
Per month Dividend	-	-	-	-	-	10/-	-
Maturity Value	1,500/-	2,000/-	3,000/-	5,000/-	10,000/-	1,000/-	1,110/-

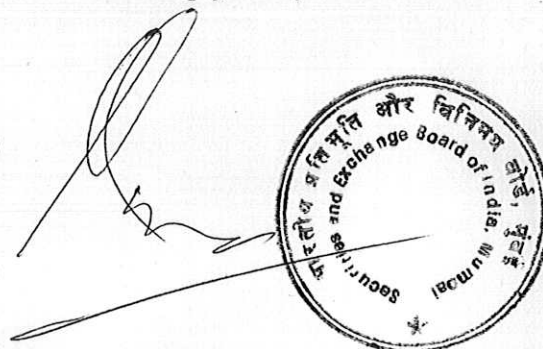
- e) The details of allotment made by issue of RPS such as number of allottees and amount raised etc. as noted from the 'MCA21 portal' are as under:

Year	Date of Allotment	No. of Allottees	Amount (₹)
2011-12	31/03/2012	1045	1,79,42,000
2012-13	31/03/2013	1558	3,10,35,500
Total		2603	4,89,77,500

11. In the context of the abovementioned details, the issue for determination in the instant matter is whether the mobilization of funds by LCITL through the issue of RPS, is in accordance with the provisions of the SEBI Act, 1992 ("SEBI Act"); the Companies Act, 1956 read with the Companies Act, 2013.

12. I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, 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 :

"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 companies which intend to get their securities listed on a recognized stock exchange in India."

13. 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) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitation to subscribe for them extended 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 manner.

(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

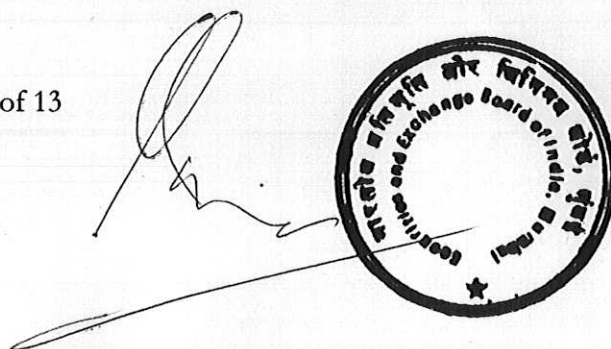
(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

***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 :

"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.

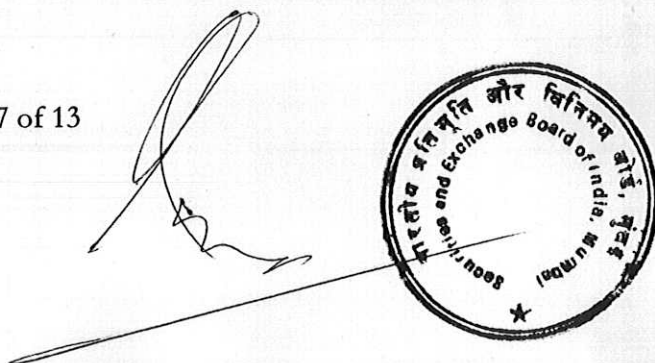
...

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. ..."

14. In the instant matter, for ascertaining whether the issuance of RPS 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) It is observed that during the financial years 2011-12 and 2012-13, LCITL allotted preference shares to at least 2603 persons and raised ₹ 4,89,77,500/-. The number of allotments made under the RPS issue along with the amount raised therein, when viewed in light of failure on the part of LCITL and its Directors to submit relevant information to SEBI, would *prima facie* indicate that the issue of RPS was a public issue of securities as the number of persons to whom such issue was made, was above the limit of forty-nine persons as prescribed under Section 67(3) of the Companies Act, 1956.
- b) It is noted that LCITL is not a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and hence is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.



- c) In view of above, the issue of RPS by LCITL would *prima facie* qualify as a public issue under the first proviso to Section 67(3) of the Companies Act, 1956. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act read with Section 67 of the said Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

15. I note that -

- i. From the abovementioned, it will follow that since the issue of RPS 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.

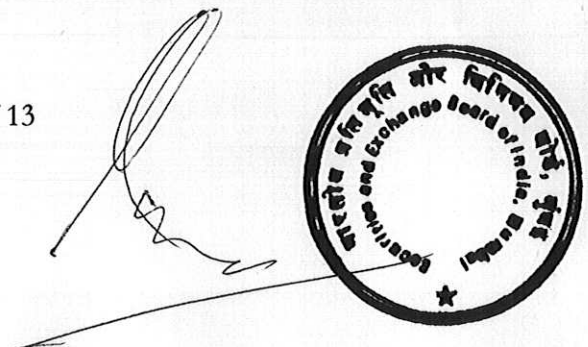
(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate 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 fifty 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 issue of RPS was made to fifty persons or more by LCITL, 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 LCITL has violated the provisions of Section 73(1) of the Companies Act, 1956, since it has failed to ensure listing of the securities issued under the issue of RPS with a recognized stock exchange.
- 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 issue of RPS is mandatory on LCITL. In this regard, there is no evidence on record to indicate whether or not LCITL has paid interest to the investors as per the aforesaid Section. In the absence of any evidence and information submitted by LCITL, I find that *prima facie* LCITL has not complied with the provisions of Section 73(2) of the Companies Act, 1956.
- v. Section 73(3) of Companies Act, 1956, states 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 fifty thousand rupees. In the instant case, there is no evidence on record to indicate whether or not funds received

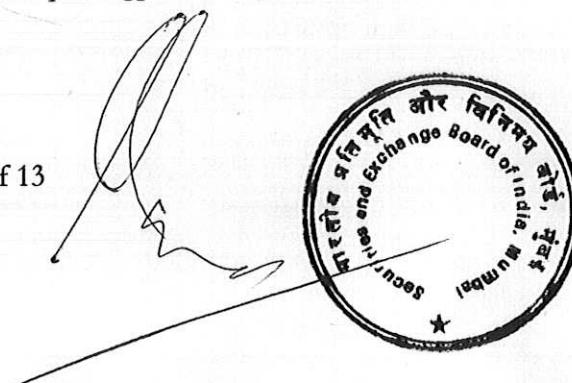


from the investors under the issue of RPS have been kept in separate bank account by LCITL. In view of the same, I find that LCITL has *prima facie* not complied with the provisions of Section 73(3) of Companies Act, 1956.

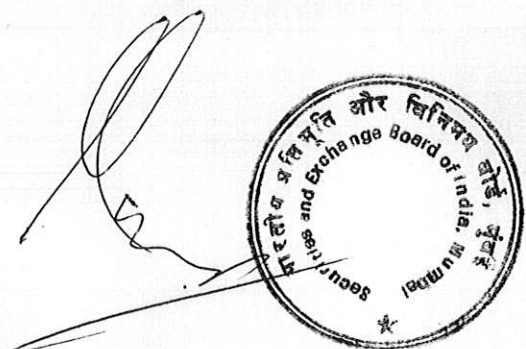
16. Under Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the RoC, before making a public offer or issuing the prospectus to the public. As per Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, 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 issue of RPS was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, LCITL 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 LCITL has not complied with the provisions of Section 60 of Companies Act, 1956.
17. 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 LCITL 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.
18. 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;"



19. Upon a consideration of the aforementioned paragraphs, I am of the view that LCITL is *prima facie* engaged in fund mobilizing activity from the public, through the issue of RPS and a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60, 67 read with Section 2(36), Section 73) read with Section 465 of the Companies Act, 2013.
20. Protecting the interests of investors is the foremost mandate for SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with Section 55A of the Companies Act, 1956 and Section 465 of the Companies Act, 2013, over the companies who issue securities to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts. In the instant matter, steps have to be taken to ensure that only legitimate fund raising activities are carried on by LCITL and no investors are defrauded. In light of the same, I find that there is no other alternative but to take recourse through an interim action against LCITL and its Directors, for preventing it from further carrying on with its fund mobilising activity under the issue of RPS.
21. I also note that vide order dated September 29, 2014 in the matter of M/s. Life Care Real Developers Limited, Shri Yogendra Pratap Shahi (DIN.03453495), has been 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.
22. In view of the foregoing, I, in exercise of powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:
- LCITL shall not mobilize any further funds from investors through the issue of RPS or through the issue of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further orders;
 - LCITL (CIN- U70102UP2011PLC047389) and its Directors viz. Shri Yogendra Pratap Shahi (DIN – 03453495; PAN-ATBPS3325E), Shri Ashok Kumar Singh (DIN – 05111466; PAN-

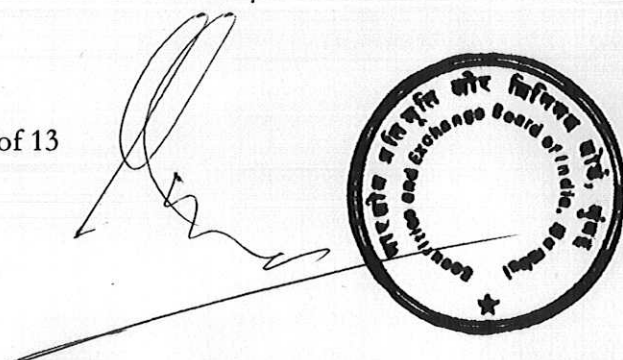


AKGPS7982R), Shri Bhardwaj Muni Tripathi (DIN – 05111477; PAN-ADDPT0119K), Shri Ramashish Singh (DIN- 05117710; PAN-BSFPS9624C), Shri Harendra Kumar Upadhyay (DIN – 05117715; PAN-AAOPU9033B) and Shri Satyendra Rai (DIN – 06376984) are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;

- c) LCITL and the 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;
- d) LCITL and its abovementioned Directors shall provide a full inventory of all its assets and properties;
- e) LCITL and its Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the issue of RPS, without prior permission from SEBI;
- f) LCITL and its Directors shall not divert any funds raised from the public at large through the issue of RPS, which are kept in bank account(s) and/or in the custody of LCITL;
- g) LCITL and its Directors shall, within 21 days from the date of receipt of this Order, provide SEBI with all relevant and necessary information, as sought vide SEBI letters dated December 09, 2013 and May 09, 2014.

23. The above directions shall take effect immediately and shall be in force until further orders.

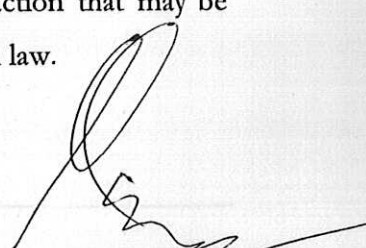
24. The prima facie observations contained in this Order are made on the basis of the material available on record i.e. the complaint received by SEBI, the correspondence between SEBI and LCITL and information obtained from the 'MCA 21 Portal'. In this context, LCITL and its Directors may, within 21 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.

25. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against LCITL and its abovementioned Directors, in accordance with law.

Place: Mumbai
Date: November 03, 2014


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

