

**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 Prism Infracon Limited (PAN: AAFCP1275L) and its Directors, viz. Shri Rajesh Kumar Agarwal (DIN: 00403730; PAN: AFAPA9440H), Shri Koushik Ghosh (DIN: 02635333; PAN: AHLPG4351N), Shri Navin Pratap Singh (DIN: 02683191; PAN: AVUPS8738C) and Debenture Trustees, viz. Shri Hemanta Banerjee, Shri Tapas Kumar Dey and Shri Abhishek Loharuka.

1. Securities and Exchange Board of India ("**SEBI**") received a complaint vide e-mail dated August 17, 2012 from an investor informing that Prism Infracon Limited ("**PIL**") is issuing secured redeemable non-convertible debentures to general public illegally. The following documents were also provided by the complainant, viz. –
 - a) Copy of the Application form;
 - b) Copy of the brochure for issue of secured redeemable non-convertible debenture on private placement basis;
 - c) Terms and conditions of the offer;
 - d) Copy of the certificates issued by the PIL.
- 2.1 As a matter of preliminary inquiry, SEBI, vide letter dated November 09, 2012, sought the following information from PIL and Registrar of Companies ("**ROC**"), WB, viz. –
 - a) Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with RoC for issuance of debentures;
 - b) Copy of the Memorandum and Articles of Association of the Company as filed with the ROC;
 - c) Copy of audited Balance Sheet and Profit & Loss account of the company for last 3 years;
 - d) Names, addresses and occupation of all the promoters/directors of the company;

- e) Names and details of the Key Managerial Personnel of the company;
- f) Other information in respect of every series of debentures issued by PIL, viz. -
 - i. Date of opening and closing of the subscription list for the said debentures;
 - ii. Details regarding the number of application forms circulated inviting subscription for debentures;
 - iii. Details regarding the number of applications received;
 - iv. Details regarding the number of allottees and list of such allottees;
 - v. Number of debentures allotted and value of such allotment against each allottee's name;
 - vi. Details regarding subscription amount raised;
 - vii. Date of allotment of the debentures;
 - viii. Copies of the minutes of Board/committee meeting in which the resolution has been passed for allotment;
 - ix. Date of dispatch of debenture certificates etc.;
 - x. Details of the total number of applicants for each of its scheme besides the list of final allottees;
 - xi. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of debentures;
 - xii. Terms and conditions of the issue of debentures.

The aforementioned letter sent to the Registered Office address of the company and to the directors was returned as undelivered.

- 2.2 Subsequently, SEBI, vide letters dated January 31, 2014, advised the three Directors of PIL to submit relevant information in respect of debentures issued by the company. One of the Directors, Shri Navin Pratap Singh, vide letter dated February 06, 2014, requested extension of time for furnishing the required information.
- 2.3 As on date, SEBI has not received any information from PIL. Since PIL failed to furnish the information even after sufficient time, SEBI examined the captioned matter on the basis of available information at "*MCA 21 Portal*".

3. The material available on record i.e. information/documents obtained from the complainant and the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal' have been perused. On an examination of the same, it is observed that –

- i. PIL was incorporated on July 23, 2009 with the ROC, Kolkata, West Bengal with CIN No. as U45209WB2009PLC137113. PIL has its Registered office at 124, Karaya Road, Kolkata-700017, India.
- ii. The Directors in PIL are Shri Rajesh Kumar Agarwal, Shri Koushik Ghosh and Shri Navin Pratap Singh.
- iii. The company came out with an issue of Non- Convertible Redeemable Debentures ("**Offer of NCD**") aggregating to ₹59.372 Crores. The details of Debentures issued by the company are as under:-

Year	Type of Security	No. of persons to whom issued(approx)	Total Amount (₹ in Cr.)
2009- 10	Non convertible Redeemable Debentures of Rs.100/- & Rs. 1000/-	2580	1.00
2010-11	-Do-	5763	0.88
2011-12	-Do-	13035	33.13
2012-13	-Do-	Not available	16.47
Total		21378*	59.37 (approx.)

** Total number of allottees could be higher since the fresh number of allottees is not available for the year 2012-13.*

- iv. From the above table, it is observed that PIL raised funds to the tune of ₹59.37 Cr through Offer of NCD during the years 2009-10, 2010-11, 2011-12 & 2012-13 from more than 21378 persons. For the year 2012-13, the funds raised through Offer of NCD is ₹16.47 Cr. Although the number of debenture holders for the year 2012-13 is not available, it is reasonable to presume that the number would be more than 49

since the funds raised are in excess of ₹16 Crores and also in view of the comparative number of investors in past years.

- v. PIL had created a Debenture Redemption Reserve to the tune of ₹7.89 lakhs as noted from the Balance Sheet for the financial year ended March 31, 2013. In view of the amount of liability towards debentures as on March 31, 2013, the amount of Debenture Redemption Reserve is insignificant.
- vi. PIL had created a charge for issue of debentures, details of which are as follows:
 - a. PIL had secured a charge of ₹5 Crores for the series of debentures issued on 15/10/2009.
 - b. The company has secured a charge of ₹25 Crores (which was modified from ₹10 Crores) for the series of debentures issued on 21/09/2010.
 - c. The company has secured a charge of ₹30 Crores (which was modified from ₹3 Crores) for the series of debentures issued on 28/09/2011.

For the above series of Debentures, the company had passed Board resolutions dated August 31, 2009, September 06, 2010 and August 31, 2011 respectively.

It can be observed from above that PIL had created total charge to the tune of ₹60 Crores for all the debentures issued, primarily on Immovable Properties, Plant & machinery, Furniture & Fixture etc. However, from the Balance Sheet of 2011-12, it is observed that as on March 31, 2012 the value of total fixed assets (including Capital Work in Progress) of the company was ₹39 Crores (approx).

- vii. PIL had filed Form 10 with the ROC, West Bengal for all the aforesaid series of Debentures. It is observed from the aforesaid Form 10 that Shri Tapas Kumar Dey and Shri Abhishek Loharuka were appointed as the Debenture Trustees for series of debentures issued on October 15, 2009. Further, Shri Abhishek Loharuka and Shri Hemanta Banerjee were appointed as the Debenture Trustees for series of debentures issued on September 21, 2010 (later, vide trust deed dated November 26,

2011, the charge was modified and Shri Abhishek Loharuka was made the only trustee for the series of issue dated September 21, 2010) and Shri Abhishek Loharuka was appointed as the Debenture Trustee for series of debentures issued on September 28, 2011. However, the Debenture Trustees are neither registered with SEBI nor do they qualify to be a Debenture Trustee.

- 4.1 In the context of the abovementioned details of the *Offer of NCDs*, the issue for determination in the instant matter is whether the mobilization of funds by PIL through the aforesaid, 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.
- 4.2 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, 1956. 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) 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 invitations 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 other 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 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, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving 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 NCDs* 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. Although the *Offer of NCDs* is stated to have been made on a private placement basis, it is observed from the documents available on record that PIL issued *NCDs* to more than 21378 investors thereby mobilizing ₹59.37 Crores during the years 2009-10 to 2012-13. The exact number of allottees during the year 2012-13 is not available as the same has not been provided by PIL. The *NCDs* have thus been issued and subscribed several times over the threshold for a private placement, i.e., 49 persons. I therefore, find that the *Offer of NCDs* was nothing but a public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956 and the company camouflaged the issuance of *NCDs* to public as private placement.
 - b. PIL 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).
 - c. In view of the aforesaid, the *Offer of NCDs* 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 *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* 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) Where a prospectus, whether issued generally or not, state that an application under subsection (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognized stock exchanges, such prospectus, shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists: Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(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 *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 NCDs* is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, 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. Hence, it *prima facie*, appears that PIL 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 *Offer of NCDs* with a recognised 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 *Offer of NCDs* is mandatory on PIL. There is no evidence on record to indicate whether or not PIL

has paid money with interest to the investors within 8 days under the *Offer of NCDs*, as per the aforesaid Section. In view of the same, I find that *prima facie*, PIL 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 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 *Offer of NCDs* have been kept in separate bank account by PIL. In view of the same, I find that *prima facie*, PIL 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 NCD* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, PIL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. In the instant case, there is no evidence on record to indicate whether or not PIL has filed a prospectus. In view of the same, I find that *prima facie*, PIL 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 PIL 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. Further, under Section 117C of the aforesaid Act, where a company issues debentures, it shall create a debenture redemption reserve 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. Based on the material available on record, there is no evidence on record to indicate that PIL has complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

4.8 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;"

4.9 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 PIL, through the *Offer of NCDs*, which is a public issue of debt securities, has *prima facie* 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(3) – *Appointment of Merchant Banker*
- vi. Regulation 4(4) – *Appointment of Debenture Trustee*
- vii. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- viii. Regulation 6 – *Filing of draft Offer Document*
- ix. Regulation 7 – *Mode of disclosure of Offer Document*
- x. Regulation 8 – *Advertisements for Public Issues*
- xi. Regulation 9 – *Abridged Prospectus and application forms*
- xii. Regulation 12 – *Minimum subscription*
- xiii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiv. Regulation 15 – *Trust Deed*
- xv. Regulation 16 – *Debenture Redemption Reserve*
- xvi. Regulation 17 – *Creation of security*
- xvii. Regulation 19 – *Mandatory Listing*
- xviii. Regulation 26 – *Obligations of the Issuer, etc.*

4.10 Upon a consideration of the aforementioned paragraphs, I am of the view that PIL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCDs* 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, Section 117B, Section 117C) read with Companies Act, 2013 and the Debt Securities Regulations.

5.1 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."*

- 5.2 Based on the material available on record, I find that Shri Tapas Kumar Dey, Shri Hemanta Banerjee and Shri Abhishek Loharuka have *prima facie*, failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations as only a body corporate and institutions mentioned above can act as a debenture trustee. Therefore, in the instant case, Shri Tapas Kumar Dey, Shri Hemanta Banerjee and Shri Abhishek Loharuka 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* 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 4.1–4.10 above). Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by PIL and no investors are defrauded. This is especially so because of the refusal on the part of the company and its directors, viz., Shri Rajesh Kumar Agarwal, Shri Koushik Ghosh and Shri Navin Pratap Singh, to reply to the letters sent by SEBI seeking explanation in this matter. In light of the same, I find there is no other alternative but to take recourse through an interim action against PIL and its Directors alongwith its Debenture Trustees, viz. Shri Tapas Kumar Dey, Shri Hemanta Banerjee and Shri Abhishek Loharuka, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.
7. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 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. PIL shall not mobilize any fresh funds from investors through the *Offer of NCDs* 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. PIL and its present and past Directors, viz. Shri Rajesh Kumar Agarwal (DIN: 00403730; PAN: AFAPA9440H), Shri Koushik Ghosh (DIN: 02635333; PAN: AHLPG4351N), Shri Navin Pratap Singh (DIN: 02683191; PAN: AVUPS8738C), 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. PIL 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. PIL shall provide a full inventory of all its assets and properties;
 - v. PIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. PIL 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*, without prior permission from SEBI;
 - vii. PIL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of NCDs*, which are kept in bank account(s) and/or in the custody of PIL;
 - viii. PIL shall furnish complete and relevant information (as sought by SEBI letters dated December 06, 2013 and March 21, 2014), within 21 days from the date of receipt of this Order.
 - ix. The Debenture Trustees, viz. Shri Tapas Kumar Dey, Shri Hemanta Banerjee and Shri Abhishek Loharuka, are prohibited from continuing with their present assignment as debenture trustees in respect of the *Offer of NCDs* of PIL 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. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. information/documents obtained from the complainant and the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'. In this context, PIL 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 of an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
10. Similarly, the Debenture Trustees, viz. Shri Tapas Kumar Dey, Shri Hemanta Banerjee and Shri Abhishek Loharuka, 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 an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
11. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against PIL and its abovementioned Directors in accordance with law.

Place: Mumbai
Date: November 24, 2014

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