

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 Mass Infra Realty Limited and its Directors, viz. Shri Ashok Halder (DIN: 03382051; PAN: AEDPH4898E), Shri Tapan Kumar Samanta (DIN: 03382135; PAN: BCVPS0411F), Shri Bidesh Basu (DIN: 03534617; PAN: AWKPB6801G), Shri Pratap Kumar Biswal (DIN: 00608810; PAN: AITPB3875F), Shri Samir Kumar Mandal (DIN: 06980776; PAN: AZXPM4025B), Shri Dilip Kumar Chakraborty (DIN: 06368719; PAN: AFNPC6695P), Shri Kundal Manna (DIN: 05250026; PAN: AVKPM2947F), Shri Subodh Mondal (DIN: 06956650), Shri Sumeet Kumar Bhagat (DIN: 03294268; PAN: AGRPB6998B) and Shri Swadesh Basu (DIN: 03535561; PAN: ANMPB7097H); its Promoters/Directors, viz. Shri Mahfuza Khatun (DIN: 03083865; PAN: ARDPK4799A), Shri Ajay Kumar Mahapatra (DIN: 00664668; PAN: AEZPM0434K) and Shri Mukhaleshur Ali Mir (DIN: 03150015; PAN: BEMPM2216M) and its Debenture Trustees, viz. Debenture Trust Suraksha and Mass Debenture Trust.

1. Securities and Exchange Board of India ("**SEBI**") received a complaint dated January 5, 2014, alleging illegal mobilization of funds by Mass Infra Realty Limited ("**MIRL**").
- 2.1 Vide letter dated February 13, 2014, SEBI advised MIRL to furnish *inter alia* the following information within 15 days from the date of receipt of the aforesaid letter, viz.
—
 - i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Copy of Audited Annual Accounts of the company for the last 3 years;
 - iii. Name, addresses and occupation of all the Promoters/Directors of the company;
 - iv. Names and details of the Key Managerial Personnel of the company;
 - v. Other information in respect of issue of shares/debentures by the company, viz. —
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("**ROC**");
 - b. Date of opening and closing of the subscription list;

- c. Details regarding the number of application forms circulated inviting subscription;
- d. Details regarding the number of applications received;
- e. Details regarding the number of allottees and list of such allottees, etc.;
- f. Number of shares/debentures allotted and value of such allotment against each allottee's name.
- g. Details regarding subscription amount raised;
- h. Date of allotment of shares/debentures;
- i. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
- j. Date of dispatch of shares/debentures Certificates;
- k. Details of the total number of applicants for each of MIRL's scheme besides the list of final allottee;
- l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/debentures;
- m. Terms and conditions of the issue of shares/debentures;
- n. Details of application for listing, if any, filed with stock exchanges;
- o. Copy of Form 2 and Form 10 filed with ROC;
- p. Details of Debenture Trustee.

2.2 Since no reply was forthcoming, SEBI vide letters each dated March 3, 2014, once again sought the information (sought vide abovementioned letter dated February 13, 2014) from MIRL and its Directors. SEBI also forwarded a letter dated March 5, 2014, to MIRL at that company's alternate address.

2.3.1 MIRL replied vide letters dated March 10, 2014 and April 10, 2014, whereby it sought extension of time from SEBI for submission of information. Thereafter, vide letter dated May 26, 2014, MIRL submitted the following information to SEBI, viz. –

- i. Copy of the Memorandum and Articles of Association;
- ii. Copy of Audited Annual Accounts for the Financial Year 2011 – 12 and 2012 – 13;
- iii. Name, addresses, etc. of all the Promoters/Directors/ Key Managerial Personnel of the company;
- iv. Other information in respect of issue of debentures by the company, viz. –
 - a. Details regarding the number of applications received, allotment, etc.;

- b. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
- c. Date of dispatch of shares/debentures Certificates;
- d. Copy of Form 10 filed with ROC;
- e. Details of Debenture Trustee.

2.3.2 In addition to the above, MIRL made the following submissions –

- i. *"The Company has created charge for the purpose of issuing Secured redeemable non-convertible debentures ("NCDs") and it issued and/or offered debentures from 6th September, 2011.*
- ii. *No Prospectus/Red Herring Prospectus/SLP/Information Memorandum (was) filed with ROC for issuance of Debenture as the company issued its Debenture on strictly Private Placement basis to its associates only.*
- iii. *Date of opening of the issuance of Debenture is 6th September, 2011 and then the charge was modified on 23rd August, 2011 and the issue is still open.*
- iv. *No application forms circulated, invited, subscribed to any general public for issue of debentures.*
- v. *Except on private placement basis to Debenture holders, no applications received for allotment of secured Debentures.*
- vi. *The Company is into the business of dealing and acquiring land, building, shops, etc. Many associates who work on a commission basis.*
- vii. *No application forms, pamphlets, advertisement and other promotional materials circulated to general public for issuance of shares/Debentures except allotment of Preference shares on private placement basis to associates.*
- viii. *The company has not applied for listing on any stock exchange and neither has the intention to list its securities in any stock exchange."*

3. The material available on record i.e. correspondences exchanged between SEBI and MIRL alongwith the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal' alongwith the abovementioned complaint dated January 5, 2014, have been perused. On an examination of the same, it is observed that –

- i. MIRL was incorporated on September 1, 2010, with the ROC, Kolkata, West Bengal with CIN No. as U45400WB2010PLC152714. MIRL has its Registered Office at 113 Park Street, 3rd Floor, Kolkata–700016, West Bengal, India.

- ii. The present Directors in MIRL are Shri Ashok Halder, Shri Tapan Kumar Samanta, Shri Samir Kumar Mandal, Shri Dilip Kumar Chakraborty, Shri Kundal Manna and Shri Subodh Mondal.
- iii. Details obtained from the *MCA 21 Portal* indicate that Shri Pratap Kumar Biswal, Shri Swadesh Basu, Shri Bidesh Basu, Shri Sumeet Kumar Bhagat, Shri Mahfuza Khatun, Shri Ajay Kumar Mahapatra and Shri Mukhaleshur Ali Mir, who were earlier Directors in MIRL, have since resigned.
- iv. Further, MIRL has submitted that Shri Mahfuza Khatun, Shri Ajay Kumar Mahapatra and Shri Mukhaleshur Ali Mir were also its Promoters.
- v. From the material available on record, it is observed that MIRL issued *Secured Non-Convertible Redeemable Debentures ("NCDs")* in accordance with the following terms and conditions contained in the brochure i.e. *"Offer of NCDs"*:
 - a. *"The applicant who is an Indian citizen over the age of 18 years will be eligible for subscription.*
 - b. *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.*
 - c. *Use different application forms for different schemes.*
 - d. *Size of the Issue: ₹205 Crore, with an option to retain oversubscription to be decided by Board of Directors.*
 - e. *Authority of the Issue: The debentures are being issued pursuant to the meeting of Board of Directors of the Company held on 23-08-2011.*
 - f. *Allotment of NCDs will be made within 60 days from the date of receipt of application.*
 - g. *Security: The NCDs is being secured by equitable mortgage of assets (Movable and Immovable)."*

SCHEME – I: CUMULATIVE DEPOSIT						
PLAN	A	B	C	D	E	F
Issue Price (₹) Min. 10 NCDs	1000	1000	1000	1000	1000	1000
Redemption Period	12 Months	36 Months	60 Months	90 Months	132 Months	180 Months
Redemption Value	1150	1500	2000	3500	5500	10000

SCHEME – II: NON-CUMULATIVE DEPOSIT				
PLAN	G	H	I	J
Issue Price (₹) Min. 250 NCDs	25000	25000	25000	25000
Redemption Period	18 Months	36 Months	72 Months	108 Months
Monthly Redemption Benefit	250	300	344	406
Redemption %	12	14.4	16.5	19.5
#Bonus %	NIL	Nil	2	4
#Bonus will be given after maturity on Principal Amount only.				

vi. As per information submitted by MIRL, details of NCDs issued are provided below

Year	Security	Amount Raised (₹ in Crores)	No. of Allottees (Approx)
2011 – 12	Non – Convertible Secured Redeemable Debenture	4.34	2016
2012 – 13		14.20	7536
2013 – 14		19.36	4704
	Total	37.90	14256

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

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

- iii. In the instant matter, for ascertaining whether the *Offer of 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, yet, it is observed that through the same, MIRL issued and allotted NCDs to 14256 investors during the Financial Years 2011–12; 2012–13 and 2013–14. It is also observed that through the *Offer of NCDs*, MIRL has mobilized approximately ₹37.90 Crores as on March 31, 2014. 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.

- b. From the brochure circulated by MIRL for the *Offer of NCDs*, it is observed that any "*applicant who is an Indian citizen over the age of 18 years will be eligible for subscription*". Such a generalized eligibility condition for being an investor(s) to the *Offer of NCDs* cannot be said to satisfy the condition of specificity as required under Section 67(3) of the Companies Act.
- c. In addition, MIRL 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).
- d. 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, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised 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 1 [until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2)]; and if default is made in complying with this sub- section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.”

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

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act.

Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

- iii. In the facts of the instant case, since the *Offer of 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 MIRL 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 MIRL. In this regard, there is no evidence on record to indicate whether or not MIRL has paid 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* MIRL 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* has been kept in separate bank account by MIRL. In view of the same, I find that *prima facie* MIRL 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* was made to fifty persons or more, it has to be

construed as a public offer. Having made a public offer, MIRL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. In the instant case, vide letter dated May 26, 2014, MIRL has submitted that: "*No Prospectus/Red Herring Prospectus/SLP/Information Memorandum (was) filed with ROC for issuance of Debenture*". In view of the same, I find that MIRL 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 MIRL has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore *prima facie*, has 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, I find that MIRL has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
- 4.8 It is pertinent to note that though the Companies Act, 1956, has been repealed by the Companies Act, 2013, anything done or any action taken or purported to have been done or taken under the Companies Act, 1956, is deemed to have been done or taken under the corresponding provisions of the Companies Act, 2013, by virtue of Section 465(2) of the Companies Act, 2013, and is therefore saved regardless of the repeal of the Companies Act, 1956. Section 465(2)(a) 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 MIRL, 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(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 – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

- 4.10 Upon a consideration of the aforementioned paragraphs, I am of the view that MIRL 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 From the material available on record, it is observed that MIRL created a charge for an amount of ₹200 Crores on August 1, 2011 and appointed *Debenture Trust Suraksha* as Debenture Trustee for the *Offer of NCDs* by that company. However, the aforesaid charge was modified and increased to ₹205 Crores on August 23, 2011, with a corresponding change in the Debenture Trustee from *Debenture Trust Suraksha* to *Mass Debenture Trust*.
- 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*".
- 5.3 Based on the material available on record, I find that *Debenture Trust Suraksha* and *Mass Debenture Trust* 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. The following facts may also be noted –
- i. From the information available on the '*MCA 21 Portal*', it is observed that MIRL has not filed its Balance Sheet for the Financial Years 2012–13 and 2013–14.
 - ii. As per the balance sheet of MIRL for the year ended March 31, 2012, it is noted that MIRL accepted *Share Application Money Pending Allotment* for an amount of ₹10.59 Crores for preference shares.
 - iii. Form 10 (filed by MIRL with the ROC in accordance with the provisions of the Companies Act, 1956), reveals that MIRL created Charge for ₹200 Crores on August 1, 2011, which was modified to ₹205 Crores on August 23, 2011, in respect

of the *Offer of NCDs*. However, from the Balance Sheet for the year ended March 31, 2012, it is seen that the value of all Fixed Assets i.e. was ₹40.12 Lakhs only.

- iv. From a copy of the first *Debenture Trust Deed* executed by the company on July 22, 2011, attached with Form 10 filed with the ROC, mentioning August 1, 2011 as date of creation of charge, it is observed that Directors of MIRL were also Trustees for the Debenture Trustee, *Debenture Trust Suraksha* –

Particulars	Company	Trust
Name	<i>Mass Infra Realty Limited</i>	<i>Debenture Trust Suraksha</i>
Director/Trustee	<i>Mr. Pratap Kumar Biswal</i>	<i>Mr. Pratap Kumar Biswal</i>
	<i>Mr. Ajay Kumar Mahapatra</i>	<i>Mr. Ajay Kumar Mahapatra</i>
	<i>Mr. Ashok Halder</i>	<i>Mr. Ashok Halder</i>
	-	<i>Mr. Tapan Kumar Samanta**</i>
Address	<i>EP Block, Y- 5, Salt Lake, Sector – 5, Kolkata – 700091</i>	<i>EP Block, Y- 5, Salt Lake, Sector – 5, Kolkata – 700091</i>
<i>** Mr. Tapan Kumar Samanta was only appointed as a Director in MIRL with effect from ...</i>		

7. 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 MIRL 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 MIRL, its Promoters and Directors alongwith its Debenture Trustees, viz. *Debenture Trust*

Suraksha and *Mass Debenture Trust*, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.

8. As per information obtained from *MCA21 Portal*, Shri Pratap Kumar Biswal, Shri Swadesh Basu, Shri Bidesh Basu, Shri Sumeet Kumar Bhagat, Shri Mahfuza Khatun, Shri Ajay Kumar Mahapatra and Shri Mukhaleshur Ali Mir, who were earlier Directors/Promoters in MIRL, have since resigned. In this regard, it is *prima facie* observed that the aforementioned former Directors were also involved in the fund mobilizing activity under the *Offer of NCDs* carried out by MIRL during the period they were Directors/Promoters in that company.
9. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions –
 - i. MIRL shall not mobilize 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. MIRL and its present Directors, viz. Shri Ashok Halder (DIN: 03382051; PAN: AEDPH4898E), Shri Tapan Kumar Samanta (DIN: 03382135; PAN: BCVPS0411F), Shri Samir Kumar Mandal (DIN: 06980776; PAN: AZXPM4025B), Shri Dilip Kumar Chakraborty (DIN: 06368719; PAN: AFNPC6695P), Shri Kundal Manna (DIN: 05250026; PAN: AVKPM2947F) and Shri Subodh Mondal (DIN: 06956650), 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. The past Directors of MIRL, viz. Shri Pratap Kumar Biswal (DIN: 00608810; PAN: AITPB3875F), Shri Swadesh Basu (DIN: 03535561; PAN: ANMPB7097H), Shri Bidesh Basu (DIN: 03534617; PAN: AWKPB6801G) and Shri Sumeet Kumar Bhagat (DIN: 03294268; PAN: AGRPB6998B) alongwith its past Promoters/Directors, viz. Shri Mahfuza Khatun (DIN: 03083865; PAN: ARDPK4799A), Shri Ajay Kumar Mahapatra (DIN: 00664668; PAN: AEZPM0434K) and Shri Mukhaleshur Ali Mir (DIN: 03150015; PAN: BEMPM2216M), 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;
- iv. MIRL and its abovementioned past and present Directors and Promoters, 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;
 - v. MIRL shall provide a full inventory of all its assets and properties;
 - vi. MIRL's abovementioned past and present Directors and Promoters shall provide a full inventory of all their assets and properties;
 - vii. MIRL 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;
 - viii. MIRL 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 MIRL;
 - ix. MIRL and its abovementioned present Directors shall furnish complete and relevant information (as sought by SEBI letters dated March 12, 2013; March 26, 2013; May 30, 2013 and July 4, 2013), within 21 days from the date of receipt of this Order.
 - x. The Debenture Trustees, viz. *Debenture Trust Suraksha* and *Mass Debenture Trust*, are prohibited from continuing with their assignment as debenture trustees in respect of the *Offer of NCDs* of MIRL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.
10. The above directions shall take effect immediately and shall be in force until further orders.
- 9.1 The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondences exchanged between SEBI and MIRL alongwith the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*' alongwith complaint dated January 5, 2014. In this context, MIRL and its abovementioned past and present Directors and Promoters 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, viz. *Debenture Trust Suraksha* and *Mass Debenture Trust*, 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.
10. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against MIRL and its abovementioned past and present Directors and Promoters; its Debenture Trustees, viz. *Debenture Trust Suraksha* and *Mass Debenture Trust*, in accordance with law.

Place: Mumbai

Date: December 4, 2014

S. RAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA