

**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 Mondal Construction Company Limited (PAN:AAECM1125F) and its Directors, viz. Shri Samarjit Mondal (DIN - 00320539; PAN: AEOPM6302D), Shri Swapan Kumaar Mondal (DIN - 00320633; PAN:AEDPM6336A), Shri Sachi Dulal Mondal (DIN- 03501833; PAN: AVSPM3542L), Shri Sanjiv Jain (DIN- 00376008; PAN: ACSPJ9999H) and Shri Indranil Chattopadhyay (DIN- 03068256; PAN: AEEPC5718H).

1. Securities and Exchange Board of India ("**SEBI**") received a communication dated February 21, 2014 from Office of the Sub-Divisional Magistrate (SDM), Sadar, West Tripura enclosing certain complaints forwarded by SDM, Khowai, Khowai Tripura regarding *Redeemable Preference Shares* ("*RPS*") issued by Mondal Construction Company Limited (hereinafter referred to as "MCCL" or "the company").
- 2.1 As a part preliminary inquiry, SEBI vide letter dated June 17, 2014 to MCCL and vide letters each dated June 18, 2014 to its directors advised them to furnish the following information within 15 days from the date of receipt of the aforesaid letters, viz. –
 - a. Copy of the Memorandum and Articles of Association of the company.
 - b. Copy of audited annual accounts of the company for last 3 years (Including accounts for the year 2012-13)
 - c. Copy of annual returns 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. Information in respect of issue of preference shares/ Debentures:
 - i. Copy of Prospectus / Red Herring Prospectus/ Statement in lieu of prospectus/ Information memorandum filed with RoC for issuance of preference shares /Debentures.

- ii. Date of opening and closing of the subscription list for the said preference shares/debentures
- iii. Details regarding the number of application forms circulated inviting subscription for preference shares/debentures.
- iv. Details regarding the number of applications received.
- v. Details regarding the number of allottees and list of such allottees.
- vi. Number of preference shares/debentures allotted and value of such allotment against each allottee's name.
- vii. Details regarding subscription amount raised.
- viii. Date of allotment of the preference shares/debentures.
- ix. Copies of the minutes of Board/committee meeting in which the resolution has been passed for allotment.
- x. Date of dispatch of preference shares/ debentures certificates etc.
- xi. Details of the total number of applicants for each of its scheme besides the list of final allottees.
- xii. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of preference shares/ debentures.
- xiii. Terms and conditions of the issue of preference shares/debentures.
- xiv. Whether the company has applied for listing of its securities with any of the stock exchanges.
- xv. Copy of Form 2 and Form 10 filed with the RoC.
- xvi. Details of debenture trustee viz. name, address, board resolution authorizing their appointment etc.

3 MCCL vide letter dated July 04, 2014 sought for fifteen days time to submit information/documents. Thereafter, MCCL replied vide letter dated July 24, 2014 and submitted the following information/documents vide its aforesaid reply, viz. –

- a. Copy of the Memorandum and Articles of Association of the company;
- b. Copy of Audit report and Statement of Accounts for the last 4 years Viz. FY2010-11, FY 2011-12, FY 2012-13 and FY 2013-14;
- c. Names, addresses and occupation of present directors of the company;

- d. Names and details of the Key Managerial Personnel of the company;
- e. Copy of Annual Income Tax Returns filed by the Company for the assessment years 2011-12, 2012-13 and 2013-14;
- f. Details of allotment of preference shares which include date of the allotment, number of preference shares allotted on each allotment date and date of filing of the Form-2.

Vide aforementioned letter July 24, 2014 MCCL has further, *inter alia* submitted:

"We state that we have raised preference share capital in our Company to the extent to Rs. 2,51,94,100/-.

The Company has altered its Memorandum of Association after complying with necessary formalities for increase in authorized capital to the extent of Rs. 600 lacs in the form of preference share capital and has filed Form-5 with the Registrar of Companies, West Bengal.

The Company has allotted preference shares from time to time aggregating to 2,51,941 shares and has filled Form- 2 with Registrar of Companies, West Bengal relating to such allotments.

No prospectus or offer document was filled with the Registrar of Companies as the preference shares allotted were not to be listed in any stock exchange.

That we never raised any money from public either by issue of Debenture, Fixed deposits, selling any products having colour/ characteristic of 'Collective Investment Scheme'.

The Company has stopped collecting money against allotment of preference shares. It has as sum Rs. 20,26,800/- which is due for redemption. The Board of Directors of the company have decided to transfer the said to a ESCROW account opened in the name of the company with ICICI Bank, Chandannagore Branch. The amount claimed subsequently will be paid out of the ESCROW account.

The necessary steps are being taken on our part to redeem the balance amount in preference share as early as possible.

That as on 31.03.2014 our Net Worth is Rs. 5,56,59,513/- including preference Share amounting of Rs. 90,79,400/- whereas as on date Preference outstanding amount Rs. 20,26,800/-.

That paid capital of the Company as on 31.03.2014 is Rs. 2,72,77,400/- consisting of 1819800 equity share capital of Rs. 10 each and 90794 preference share capital of Rs. 100/- each.

That from 1.04.2014 to till date the Company has redeemed preference amounting to Rs. 70,52,600/- therein reducing the preference share outstanding to Rs. 20,26,800/-.

Since the issue was preference shares and not debenture no Form No.- 10 was required to be filled and no debenture trustee was required to be appointed."

It has been mentioned in the aforesaid letter that Directors of the company Shri Samarjit Mondal and Shri Swapan Kumaar Mondal look after the day to day affairs of the company and can be called as the Key managerial Personnel.

MCCL has also stated in the aforesaid letter dated July 24, 2014 that the company has never launched any schemes nor has it made any promises to the investors about the returns.

MCCL had not submitted the details of the number of allottees. SEBI sent reminder letter dated November 19, 2014 to the company and advised it to submit details of the number of allottees and other documents/information sought but not yet furnished to SEBI. MCCL in its reply vide letter dated November 26, 2014 sought further extension of ten days to furnish the information. Subsequently, MCCL vide letter dated December 05, 2014 submitted certain information/documents in this regard.

SEBI vide letters dated November 19, 2014 and November 27, 2014 to ICICI Bank, Chandannagore Branch sought an information with respect to Escrow account of MCCL. ICICI Bank in its reply vide letters dated November 24, 2014 and November 29, 2014 has stated that MCCL do not have any Escrow account with their bank.

In the meanwhile, SEBI collected certain information from the Ministry of Corporate Affairs (hereinafter referred to as '*MCA21 Portal*') website.

3. The material available on record i.e. correspondences exchanged between SEBI and MCCL along with the documents contained therein; information obtained from 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. MCCL was incorporated on July 01, 2004, with the RoC, Kolkata, West Bengal with CIN No. as U45203WB2004PLC099007. MCCL's Registered Office is Uttarayan,

Chinsurah Station Road, P. O. - Chinsurah (RS), P. S. - Chinsurah, Chinsurah, West Bengal- 712102.

- ii. The present directors in MCCL are Shri Samarjit Mondal, Shri Swapan Kumaar Mondal and Shri Sachi Dulal Mondal. The past directors of MCCL are Shri Sanjiv Jain (till July 23, 2010) and Shri Indranil Chattopadhyay (till September 07, 2012).
- iii. As per the copy of the application form for debentures enclosed by MCCL along with its letter dated December 05, 2014, MCCL issued RPS *inter alia* in terms of following terms and conditions:-

<i>Plan</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>
<i>Issue Price minimum 100 preference shares</i>	1000	1000	1000	1000	1000
<i>Redemption Period</i>	3 yrs.	6 yrs.	9 yrs.	13.5 yrs.	15.5 yrs
<i>Redemption Premium</i>	310	1000	2000	7000	9000
<i>Maturity value</i>	1310	2000	3000	8000	10000
<i>Annualised yield on Investment</i>	9.45%	12.25%	12.96%	16.65%	16%

- iv. As per the details provided by MCCL vide letters dated July 24, 2014 and December 05, 2014, it is observed that MCCL issued 251941 *Redeemable Preference Shares* ("RPS") of face value Rs. 100/- each aggregating to Rs. 2,51,94,100/- to 3981 investors during the Financial Years 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13, details of which are provided below -

Year	No. of Securities	Series of allotments (tranches)	Amount Per Share (Rs.)	No. of persons to whom RPS issued	Total Amount Raised (in Rs.)
2005-06	9035	2	100	364	9,03,500
2006-07	24450	6	100	585	24,45,000
2007-08	30347	6	100	586	30,34,700
2008-09	40466	8	100	649	40,46,600
2009-10	59156	12	100	883	59,15,600
2010-11	37721	12	100	407	37,72,100
2011-12	28448	12	100	296	28,44,800
2012-13	22318	11	100	211	22,31,800
Total	251941	69	100	3981	2,51,94,100

- v. MCCL vide letter dated December 05, 2014 has also submitted that out of Rs.2,51,94,100/-preference share capital it has redeemed preference share capital of Rs. 2,40,05,400/- and Rs. 11,88,700/- in pending redemption as on date. MCCL has also enclosed copy of Form No. SH-7 filed with RoC in this regard.

4.1 In the context of the abovementioned details of the *Offer of RPS*, the issue for determination in the instant matter is whether the mobilization of funds by MCCL through the aforesaid, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**"); the Companies Act, 1956 read with the Companies Act, 2013; the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("**DIP Guidelines**") read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**").

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, at the relevant point of time 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:

"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 *Sabara 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, 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 there under, the Companies Act, pertaining to the public issue. ..."

- iii. In the instant matter, for ascertaining whether the *Offer 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. Under the *Offer of RPS*, it is observed that during the Financial Years 2005–06 to 2012-13, MCCL allotted *RPS* of Rs.100/- each to 3981 individuals/investors in series of allotments in each of these years. For the aforesaid allotments, MCCL mobilized funds amounting to Rs.2,51,94,100/-. These facts *prima facie* indicate that the *Offer of RPS* was a public issue of securities since the number of persons to whom such *Offer* was made, were above the limit of forty–nine persons as prescribed under Section 67(3) of the Companies Act, 1956 and the method adopted by MCCL for mobilization of funds is nothing but a device to circumvent the provisions of section 67(3) of the Companies Act, 1956.
 - b. MCCL is not stated to be registered with the RBI as a non-banking financial company nor is it stated to be a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and therefore, is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.
 - c. In view of the above, the *Offer of RPS* by MCCL, 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, 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 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) 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 recognised 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 *Sahara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed:

"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 RPS* was made to fifty persons or more by MCCL, 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 MCCL has violated the provisions of Section 73(1) of the Companies Act, 1956, since it has failed to ensure listing with a recognised stock exchange of the securities issued under the *Offer of RPS*.
- 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 RPS* is mandatory on MCCL. In this regard, there is no evidence on record to indicate whether or not MCCL has paid money with interest to the investors where such *RPS* are not allotted within 8 days, as per the aforesaid Section. In view of the same, I find that *prima facie*, MCCL 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 RPS* has been kept in separate bank account by MCCL. In view of the same, I find that *prima facie*, MCCL 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 RPS* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, MCCL 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 MCCL 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 MCCL 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 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;"

4.8 I also note that SEBI framed the DIP Guidelines, in exercise of the powers conferred under the SEBI Act. In the words of the Hon'ble Supreme Court in the *Sahara Case*, *"DIP Guidelines had statutory force since they were framed by SEBI in exercise of its powers conferred on it under Sections 11 and 11A of the SEBI Act. Powers have been conferred on SEBI to protect the interests of the investors in securities and regulate the issue of prospectus, offer documents or advertisement soliciting money through the issue of prospectus. Section 11 of the Act, it may be noted has been incorporated, evidently to protect the interests of investors whose securities are legally required to be listed. DIP Guidelines were implemented by SEBI with regard to the listed and unlisted companies, which made public offer, until it was replaced by ICDR 2009"*. In this regard, I observe *prima facie* that the Company has not complied with the provisions of the DIP Guidelines including the following clauses:

- a. Clause 2.1.1. – (*Filing of offer document*)
- b. Clause 2.1.4 – (*Application for listing*)
- c. Clause 2.1.5 – (*Issue of securities in dematerialized form*),
- d. Clause 2.8 – (*Means of finance*),
- e. Clause 4.1 – (*Promoters' contribution in a public issue by unlisted companies*),
- f. Clause 4.11 – (*Lock-in of minimum specified promoters' contribution in public issues*),
- g. Clause 4.14 – (*Lock-In of pre-issue share capital of an unlisted company*)
- h. Clause 5.3.1 – (*Memorandum of understanding*),
- i. Clause 5.3.3 – (*Due Diligence Certificate*)
- j. Clause 5.3.5 – (*Undertaking*),
- k. Clause 5.3.6 – (*List Of Promoters' Group And Other Details*),
- l. Clause 5.4 – (*Appointment of intermediaries*)
- m. Clause 5.6 – (*Offer document to be made public*)
- n. Clause 5.6A – (*Pre-issue Advertisement*)

- o. Clause 5.7 – (*Despatch of issue material*)
- p. Clause 5.8 – (*No complaints certificate*)
- q. Clause 5.9 – (*Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)*)
- r. Clause 5.10 – (*Authorised Collection Agents*)
- s. Clause 5.12.1 – (*Appointment of compliance officer*)
- t. Clause 5.13 – (*Abridged prospectus*)
- u. Clause 6.0 – (*Contents of offer documents*)
- v. Clause 8.3 – (*Rule 19(2)(b) of SC(R) Rules, 1957*)
- w. Clause 8.8.1 – (*Opening & closing date of subscription of securities*)
- x. Clause 9 – (*Guidelines on advertisements by the Issuer Company*)
- y. Clause 10.1 – (*Requirement of credit rating*)
- z. Clause 10.5 – (*Redemption*)

4.9 As per Regulation 111(1) of the ICDR Regulations, the DIP Guidelines, "*shall stand rescinded*". However, Regulation 111(2) of the ICDR Regulations, 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 observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations."

4.10 Upon consideration of the aforementioned paragraphs, I am of the view that MCCL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of RPS* and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73,) read with Section 465 of the Companies Act, 2013; the DIP Guidelines read with ICDR Regulations.

5. 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 *preference shares* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts; the DIP Guidelines read with ICDR Regulations (as mentioned in paragraphs 4.1–4.11 above). Steps, therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by MCCL 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 MCCL and its Directors, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of RPS*.
6. 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 and Clause 17 of the DIP Guidelines read with Regulation 111 of the ICDR Regulations, hereby issue the following directions –
- i. MCCL shall not mobilize funds from investors through the *Offer of RPS* 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. MCCL and its present Directors, viz. Shri Samarjit Mondal (DIN-00320539; PAN: AEOPM6302D), Shri Swapan Kumar Mondal (DIN-00320633; PAN:AEDPM6336A) and Shri Sachi Dulal Mondal (DIN-03501833; PAN: AVSPM3542L) along with its past Directors viz. Shri Sanjiv Jain (DIN- 00376008; PAN: ACSPJ9999H) and Shri Indranil Chattopadhyay (DIN- 03068256; PAN: AEETPC5718H) 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. MCCL 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;

- iv. MCCL shall provide a full inventory of all its assets and properties;
 - v. The abovementioned Directors of MCCL shall provide a full inventory of all their assets and properties;
 - vi. MCCL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of RPS*, without prior permission from SEBI;
 - vii. MCCL and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of RPS*, which are kept in bank account(s) and/or in the custody of MCCL. However, this direction shall not prohibit the company from redeeming the securities issued to the investors in view of the declaration by them that they have redeemed securities worth Rs. 2.40 Cr. and that only Rs. 11.89 Lacs is still remaining to be redeemed (paragraph 3(v)). The company shall also file a report regarding all such redemptions along with their reply.
7. The above directions shall take effect immediately and shall be in force until further orders.
8. 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 MCCL along with the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*' alongwith complaints forwarded by SDM, Sadar, West Tripura. In this context, MCCL and its abovementioned Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
9. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against MCCL and its abovementioned Directors in accordance with law.

Place: Mumbai
Date: December 15, 2014

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