

**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 Silicon Projects India Limited and its Directors, viz. Mr. Jugal Kishor Gupta (DIN:02572736), Mr. Bijay Pratap Mishra (DIN:05253188; PAN: BEYPM5770A), Mr. Swarup Kumar Dutta (DIN:05306588; PAN: ALZPD5431G), Mr. Biswajit Bera (DIN:02529396), Mr. Tushar Jana (DIN:02529742), Mr. Asesh Mitra (DIN:05220340; PAN:AOHPM4366A), Mr. Debashis Dey (DIN:05255046; PAN: ALAPD5970B), Mr. Tapan Sahoo (DIN:05257691; PAN: CDGPS2983D).

1. Securities and Exchange Board of India ("SEBI") received communications dated September 10, 2012 and October 26, 2012 from the Office of the Director, Bureau of Investigation, Guwahati *inter alia* stating that Silicon Projects India Ltd. (hereinafter referred to as 'SPIL' or 'the company') is illegally raising money through issue of *Non-Convertible Redeemable Debentures (NCDs)* to a large number of people on private placement basis.
- 2.1 As a part of preliminary inquiry, SEBI vide letter dated November 06, 2012 advised SPIL to furnish *inter alia* the following information in respect of the *Offer of NCDs*, viz. –
 - i. Copy of Prospectus/ Red Herring Prospectus/ Statement in lieu of prospectus/ information memorandum filed with RoC for issuance of debentures.
 - ii. Copy of the Memorandum and Articles of Association of the company.
 - iii. Copy of audited Balance Sheet and Profit & Loss account of the company for last 3 years.
 - iv. Names, addresses and occupation of all the promoters/ directors of the company .
 - v. Names and details of the key managerial personnel of the company.
 - vi. Other information in respect of debentures issued by the Company:
 - a. Date of opening and closing of the subscription for the said debentures

- b. Details regarding the number of application forms circulated inviting subscription for debentures.
- c. Details regarding the number of applications received.
- d. Details regarding the number of allottees and list of such allottees.
- e. Number of debentures allotted and value of such allotment against each allottee's name.
- f. Details regarding subscription amount raised.
- g. Date of allotment of the debenture.
- h. Copies of the minutes of Board/ committee meeting in which the resolution has been passed for allotment.
- i. Date of dispatch of debenture certificates etc.
- j. Details of the total number of applicants for each of its scheme besides the list of final allottees.
- k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of debentures
- l. Terms and conditions of the issue of debentures.

2.2 SPIL vide its letter dated December 05, 2012, sought time of 15 days to furnish the information.

2.3 Thereafter, SPIL vide its letter dated December 18, 2012 provided *inter alia* the following documents/information, viz.:

- i. Copy of the Memorandum and Articles of Association of the company;
- ii. Copy of Annual Report for the year 2010-11;
- iii. Copy of Audit Report for the period from 5th February 2009 to March 31, 2010;
- iv. Names and addresses of Directors;
- v. Copy of Debenture Trust Deed;
- vi. Copy of Extracts of Minutes of the Meeting of Board of Directors;
- vii. Copy of Extracts of Minutes of the Extraordinary General Meeting;
- viii. List of debenture holders under Series-II;
- ix. Copy of the brochure cum application form for issue of debentures;

It was also *inter alia* mentioned in the aforesaid letter dated December 18, 2012 that-

- i. *"Mr. Tushar Jana is the key managerial person of the company.*
- ii. *Date of opening is the Registration date/Approval date from RoC/Ministry of Corporate Affairs 22.07.2011 under 2nd series and it is under private placement re 21/10/2009 under 1st series, now we have completed and repaid Rs. 5 Crores to all members from those we have collected Rs. 4,42,90,000/-. After completion the total formalities we are ready to the Form 17 u/s- 137& 138 of the Companies Act, 1956 (satisfaction of charge) in RoC/MCA within the stipulated period.*
- iii. *The circulation was completed within 38 nos. of members under II series in where we have got the Approval/Registration up to Rs. 30 Crores from MCA on 22/07/2011 initiated and the same quantity forms offered, to the members under 2nd series.*
- iv. *The total 13,60,258 nos. of debentures issued till date and Rs. 100/- is the each value per debenture.*
- v. *Date of allotment was 22nd July, 2011.*
- vi. *There are various dates to issue debenture. the debenture under 2nd series is still continue."*

2.4 SPIL did not submit all the information sought vide our letter dated November 06, 2012. Hence, SEBI vide letters dated April 30, 2013 advised SPIL to provide all the requisite information including details of the debenture holders and subscription amount raised. SPIL vide letter dated May 24, 2013 once again submitted only a part of the information/documents. SPIL also stated in the said letter that it will provide further details of the debentures for the FY 2009-10, 2011-12 and 2012-13 within a month. However, SEBI did not receive any further information. Thereafter, SEBI sent one more reminder letter dated December 20, 2013 and advised SPIL to submit the requisite information. This letter was returned undelivered to SEBI. Therefore, SEBI vide letters dated February 02, 2014 advised directors of SPIL to furnish the abovementioned information (sought vide SEBI letter dated April 30, 2013 and December 20, 2013) by February 09, 2014 . However, no information has been received till date.

2.5 SEBI also received communications dated November 11, 2013 and January 14, 2014 from Department of Non-Banking Supervision, Reserve Bank of India, Guwahati wherein it *inter alia* provided the copy of the prohibitory order issued by the Sub-Divisional Magistrate, Sadar, West Tripura to SPIL.

- 2.6 SEBI also received a letter dated January 24, 2014 from the Registrar of Companies ("**ROC**"), Kolkata stating that they have received a complaint regarding issue of debentures by SPIL. RoC, Kolkata also *inter alia* provided the following information:
- i. *"On 07/11/2009, the company filed one e-form-10 (Date of creation and execution of Trust deed on 21/10/2009) with regard to issue of NCDs of Rs.5,00,00,000/-.*
 - ii. *On 22/07/2011, the company filed another e-form-10 (Date of creation and execution of Trust deed on 19/07/2011) with regard to issue of NCDs of Rs.30,00,00,000/-.*
 - iii. *In Balance sheet of the Company as at 31/03/2012, it is shown that Long term Borrowing through issue of debentures is Rs. 17.19 Crores.*
 - iv. *It reveals from the annual return of the company filed for the year ended 31/03/2012 and 31/03/2011 that as on 30/09/2012, the amount of issued debentures is Rs. 17,19,16,700/- and as on 30/09/2011, the amount of issued debentures is Rs. 4,74,42,741/-. No list of such debenture holders are available with this office."*
- 2.7 Meanwhile, SEBI also received some more complaints dated May 25, 2014, June 26, 2014 and July 09, 2014 regarding issue of debentures by SPIL. The complainants have also enclosed copies of Certificates of Allotment of debentures.
3. The material available on record i.e. correspondence exchanged between SEBI and SPIL along with the documents contained therein; information/documents obtained from the ROC, Kolkata; information/documents obtained from the Reserve Bank of India, Guwahati; information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'; complaints received and the documents enclosed along with have been perused. On an examination of the same, it is observed that –
- i. SPIL was incorporated on February 05, 2009 with the ROC, Kolkata with CIN No. as U70102WB2009PLC132445. SPIL has its Registered Office Krishnapur, Purbapara, Bank Para Gali, PO. Krishnapur, PS. Baguiati, Kolkata, West Bengal-700102.
 - ii. The Directors in SPIL are Mr. Jugal Kishor Gupta, Mr. Bijay Pratap Mishra, Mr. Swarup Kumar Dutta, Mr. Biswajit Bera, Mr. Tushar Jana, Mr. Asesh Mitra, Mr. Debashis Dey, Mr. Tapan Sahoo.

- iii. It is observed that SPIL passed a resolution on October 15, 2009 to issue 5,00,000 debentures of face value Rs.100/- each aggregating to Rs.5,00,00,000/-. In this regard, a charge of Rs.5 crores was created on immovable properties, plant and machinery, furniture and fixtures, stock in trade and book debts of the company on October 21, 2009. The name of debenture trust is “Silicon Debenture Trust” managed by trustee Mr. Afzal Hussain and the office of the trust is situated at 91/A/2, N.S.C. Bose Road, Kolkata, West Bengal-700040.

The copy of the brochure cum application form for the said issue of debentures *inter alia* mentions that SPIL is privately placing offer of NCDs (Series-I) on following terms and conditions:

Scheme I: multiplier Secures Redeemable Debenture

Plan	A	B	C	D	E
Issue Price (Minimum 10 debentures)	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-
Maturity value	1,500/-	2,000/-	3,000/-	5,000/-	10,000/-
Redemption period	3 Years	5 Years	7 Years	10 Years	14 Years

Scheme II: Regular Income Secured Redeemable debenture

Minimum Amount Acceptable is Rs. 50,000/-

Interest payable half Yearly

Plan	Redemption Period	Rate of Interest (per year)
G	3 Years	(13.2%)
	5 Years	(14.4%)

Brochure cum application form provided by SPIL also *inter alia* mentions the following particulars:

- "Issue of Opening date: 21.10.2009
- The company is managed, superintended and controlled by the Board of Directors of the company.

- c. *The debentures are being issued pursuant to the resolutions passed in the meeting of the Board of Directors of the Company held on 7th September 2009.*
- d. *Size of issue is Rs. 500 lakhs with an option to retain additional Rs.500lakhs. While it will be the company's endeavor to allot debentures as indicated, the company has right to increase/decrease the size of the offer.*
- e. *The debentures will be secured by creation of charges the assets (movable & immovable) to RoC, Kolkata."*

iv. It is also observed that Board of Directors of the company in the meeting of the Board held on May 30, 2011 and Shareholders of the company in its Extraordinary General Meeting held on July 01, 2011 passed resolutions to issue 30,00,000, NCDs of face value of Rs. 100/- each to raise a sum of Rs. 30 Crores through private placement. In this regard, a charge of Rs.30 crores was created on immovable properties, plant and machinery, furniture and fixtures, stock in trade of the company on July 19, 2011. The name of debenture trust is "Silicon Debenture Trust" managed by trustee Mr. Afzal Hussain and the office of the trust is situated at 91/A/2, N.S.C. Bose Road, Kolkata, West Bengal-700040. The Debenture Trust Deed mentions that the debentures shall consist of a series of 30,00,000 debentures of Rs.100/- each, aggregating to Rs.30 Crores.

Copy of the brochure cum application states that SPIL is privately placing offer of NCDs (Series-II) on following terms and conditions:

Scheme I: multiplier Secures Redeemable Debenture

<i>Plan</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>
<i>Issue Price</i> <i>(Minimum 10 debentures)</i>	<i>1,000/-</i>	<i>1,000/-</i>	<i>1,000/-</i>	<i>1,000/-</i>	<i>1,000/-</i>
<i>Maturity value</i>	<i>1,500/-</i>	<i>2,000/-</i>	<i>3,000/-</i>	<i>5,000/-</i>	<i>10,000/-</i>
<i>Redemption period</i>	<i>3 Years</i>	<i>5 Years</i>	<i>7 Years</i>	<i>11 Years</i>	<i>15 Years</i>

Scheme II: Regular Income Secured Redeemable

Minimum Amount Acceptable is Rs. 50,000/-

Interest payable half Yearly

Plan	Redemption Period	Rate of Interest (per year)
G	3 Years	(13.2%)
	5 Years	(14.4%)

Brochure cum application form provided by SPIL also *inter alia* mentions as under-

- a. "Issue of opening date: 2.07.2011
 - b. The company is managed, superintended and controlled by the Board of Directors of the company.
 - c. The debentures are being issued pursuant to the resolutions passed in the meeting of the Board of Directors of the Company held on 01.07.2011.
 - d. Size of issue is Rs. 3,000 lakhs with an option to retain additional Rs.3,000 lakhs. While it will be the company's endeavor to allot debentures as indicated, the company has right to increase/decrease the size of the offer.
 - e. The debentures will be secured by creation of charges on the assets (movable & immovable) to the RoC, Kolkata."
- v. Details of the NCDs of face value Rs. 100/- each issued during FY 2010-11 which are as follows-

Sr. No.	Opening date of subscription	Closing date of subscription	Date of Allotment	No. of debentures	No. of allottees
1	01/04/2010	15/04/2010	16/04/2010	6000	10
2	22/04/2010	07/05/2010	10/05/2010	18000	23
3	12/05/2010	05/06/2010	09/06/2010	27270	41
4	14/06/2010	16/07/2010	20/07/2010	25600	39
5	21/07/2010	07/08/2010	12/08/2010	11600	18
6	16/08/2010	06/09/2010	10/09/2010	15050	23
7	14/09/2010	13/10/2010	15/10/2010	27500	41
8	18/10/2010	03/11/2010	08/11/2010	14600	20
9	10/11/2010	07/12/2010	10/12/2010	28280	39
10	14/12/2010	05/01/2011	11/01/2011	14100	27
11	15/01/2011	03/02/2011	19/02/2011	21760	43
12	11/02/2011	04/03/2011	08/03/2011	12000	24
13	10/03/2011	31/03/2011	31/03/2011	10400	20
Total				2,32,160	368

- vi. From the material available on record i.e copy of the Balance sheet of SPIL as at March 31, 2010 and information submitted by SPIL vide their letters dated December 18, 2012 and May 24, 2013, it is noted that SPIL issued NCDs during FY 2009-10, 2010-11 and 2011-12. The details of the said issuance of NCDs are as follows-

Year	No. of debentures	Face value (in Rs.)	Amount Raised (in Rs.)	No. of Allottees
2009 – 10	NA	100	2,10,74,802	NA
2010 – 11	2,32,160	100	2,32,16,000	368
2011 – 12	13,60,259	100	13,60,25,900	38
	>15,92,416		18,03,16,702	>406

4. 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 SPIL 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.
5. 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 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 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."

6. 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 noted that SPIL issued *NCDs* to more than 406 investors and mobilized approximately Rs. 18.03 Crores during FY 2009-10 to 2011-12. *NCDs* have been allotted in series of allotments during these years. *NCDs* have been issued and subscribed several times over the threshold for a private placement i.e. 49 persons. It is thus apparent from the facts available on record that the said issuance of debentures was indeed a single public issue of debentures and the method adopted by SPIL for mobilization of funds was only a device to circumvent the provisions of section 67(3) of the Companies Act, 1956. 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. SPIL vide letter dated May 24, 2013 also submitted that details of debentures for 2012-13 are work in progress and same would be submitted within one month. However, no information has been received in this regard till date. The directors of SPIL also failed to provide the information sought from them.

- b. SPIL 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.

7. 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 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 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 SPIL 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 SPIL. In this regard, there is no evidence on record to indicate whether or not SPIL 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*, SPIL 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, as per the submission by the company, funds received from the investors under the *Offer of NCDs* have not been kept in separate bank account by SPIL. In view of the same, I find that *prima facie*, SPIL has not complied with the provisions of Section 73(3) of Companies Act, 1956.
8. 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, SPIL 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 SPIL has filed a prospectus. In view of the same, I find that *prima facie*, SPIL has not complied with the provisions of Section 60 of Companies Act, 1956.

9. 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 SPIL 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.
10. 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. Based on the material available on record, I find that SPIL has not complied with the provisions of Sections 117B of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

Section 12(1) of the SEBI Act states : "*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*". Silicon Debenture Trust and its trustee Mr. Afzal Hussain are not registered with SEBI. 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."*

Based on the material available on record, I find that Mr. Afzal Hussain has *prima facie*, failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.

11. 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 SPIL has not complied with the provisions of Sections 117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
12. 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;"*
13. 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 SPIL, 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.*
14. Upon a consideration of the aforementioned paragraphs, I am of the view that SPIL 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.
15. 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. Steps therefore, have to be taken in the instant

matter to ensure only legitimate fund raising activities are carried on by SPIL 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 SPIL and its Directors alongwith its Debenture Trustee, viz. Mr. Afzal Hussain, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.

16. 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. SPIL 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. SPIL and its Directors, viz. Mr. Jugal Kishor Gupta (DIN:02572736), Mr. Bijay Pratap Mishra (DIN:05253188; PAN: BEYPM5770A), Mr. Swarup Kumar Dutta (DIN:05306588; PAN: ALZPD5431G), Mr. Biswajit Bera (DIN:02529396), Mr. Tushar Jana (DIN:02529742), Mr. Asesh Mitra (DIN:05220340; PAN:AOHPM4366A), Mr. Debashis Dey (DIN:05255046; PAN: ALAPD5970B), Mr. Tapan Sahoo (DIN:05257691; PAN: CDGPS2983D), 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. SPIL 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. SPIL shall provide a full inventory of all its assets and properties;
 - v. SPIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. SPIL 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 NCDs*, without prior permission from SEBI;
 - vii. SPIL 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 SPIL;

- viii. SPIL shall furnish complete and relevant information within 21 days from the date of receipt of this Order.
- ix. The Debenture Trustee, viz. Mr. Afzal Hussain, is prohibited from continuing with his present assignment as a debenture trustee in respect of the *Offer of NCDs* of SPIL 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.
- x. Mr. Jugal Kishor Gupta, Mr. Biswajit Bera, Mr. Tushar Jana are directed to provide their PAN details along with their reply.
17. The above directions shall take effect immediately and shall be in force until further orders.
18. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondence exchanged between SEBI and SPIL along with the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*' along with communication received from ROC, Kolkata and RBI, Guwahati. In this context, SPIL 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.
19. Similarly, the Debenture Trustee, viz. Mr. Afzal Hussain, may, within 21 days from the date of receipt of this Order, file his reply, if any, to this Order and may also indicate whether he desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
20. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against SPIL and its abovementioned Directors; its Debenture Trustee, viz. Mr. Afzal Hussain, in accordance with law.

Place: Mumbai
Date: January 06, 2015

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