

**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 Infinity Realcon Limited (PAN: AACCI0782Q) and its Directors, viz. Shri Prabir Kumar Mukherjee (DIN: 02548910; PAN: AZNPM2736R), Shri Pranab Mukherjee (DIN: 02548924; PAN: ALKPM1231A), Shri Soumen Mallick (DIN: 02548937; PAN: AEEP1985N), Shri Sanjoy Kumar Maiti (DIN: 03020095; PAN: APQPM8659A), Shri Sujit Mitra (DIN: 03028519; PAN: AJNPM1411D), Shri Pralay Kumar Saw (DIN: 03020064; PAN: BBJPS6343H), Shri Bhaskar Banerjee (DIN: 02646193; PAN: AOAPB8772N), Shri Sarbari Mukherjee (DIN: 02703365; PAN: AYVPM1890P) and Shri Partha Protim Mukherjee (DIN: 06467917; PAN: BZLPM2567D); its Debenture Trustee, viz. Infinity Realcon Debenture Trust (represented by its Trustee viz. Shri Chinmoy Guha Thakurta).

1. Securities and Exchange Board of India ("**SEBI**") received several complaints from investors alleging wrongful issue of preference shares/debentures by Infinity Realcon Limited ("**IRL**").
- 2.1 Thereafter, SEBI vide letter dated January 30, 2014, advised IRL to furnish *inter alia* the following information within 15 days from the date of receipt of the aforesaid letter, viz.
—
 - i. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("**ROC**") for issuance of shares/debentures.
 - ii. Copy of the Memorandum and Articles of Association of the company;
 - iii. Copy of Audited Annual Accounts and Annual Returns of the company for the last 3 years;
 - iv. Name, 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 every series of shares/debentures issued by the company, viz. —
 - a. Date of opening and closing of the subscription list;

- b. Details regarding the number of application forms circulated inviting subscription;
 - c. Details regarding the number of applications received;
 - d. Details regarding the number of allottees and list of such allottees;
 - e. Number of shares/debentures allotted and value of such allotment against each allottee's name.
 - f. Details regarding subscription amount raised;
 - g. Date of allotment of share/debenture certificates;
 - h. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
 - i. Date of dispatch of shares/debentures;
 - j. Details of the total number of applicants for each of IRL's schemes besides the list of final allottees;
 - k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/debentures;
 - l. Terms and conditions of the issue of shares/debentures;
 - m. Confirmation of application for listing of securities with any of the stock exchanges;
 - n. Copy of Form 2 and Form 10 filed with the ROC;
 - o. Details of debenture trustee.
- 2.2 SEBI, vide letters each dated March 11, 2014 and March 24, 2014, advised the then Directors of IRL, viz. Shri Sanjoy Kumar Maiti, Shri Sujit Mitra and Shri Pralay Kumar Saw, to submit the information sought vide the abovementioned letter dated January 30, 2014.
- 2.3 Subsequently, vide letters each dated August 4, 2014 and August 8, 2014, SEBI also advised the present Directors of IRL, viz. Shri Prabir Kumar Mukherjee, Shri Pranab Mukherjee and Shri Soumen Mallick, to submit the information sought vide the abovementioned letter dated January 30, 2014.
- 2.4 However, as on date, neither IRL nor its Directors have submitted to SEBI, the information sought vide the abovementioned letters.

3. SEBI was also in receipt of additional information from the complainants against IRL, such as copies of Debenture Certificates, etc. issued by that company.
4. During the intervening period, a *Writ Petition No. 22470 (W) of 2014 – Sambhu Nath Bera & Others vs. Union of India & Others*, was filed before the Calcutta High Court by agents and depositors of IRL. The Hon'ble Calcutta High Court disposed of the aforesaid Writ Petition with the following Order –

"From a report filed by SEBI, it appears that further action and investigation by SEBI is under consideration. The petitioner has received deeds of conveyance in respect of properties belonging to the chit fund company, let such documents be forwarded to SEBI by the petitioner for necessary action being taken in respect thereof. In view of the aforesaid, this writ petition is disposed of. Report filed by SEBI and notice dated 8th April, 2014 issued by the Central Bureau of Investigation be kept on record."

5. The material available on record i.e. information obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal' alongwith documents provided by the abovementioned complainants, have been perused. On an examination of the same, it is observed that –
 - i. IRL was incorporated on April 22, 2009, with the ROC, Kolkata, West Bengal with CIN No. as U74900WB2009PLC134683. IRL has its Office at 176, A.J.C. Bose Road, 4th Floor, Kolkata –700014, West Bengal, India.
 - ii. The present Directors in IRL are Shri Prabir Kumar Mukherjee, Shri Pranab Mukherjee and Shri Soumen Mallick.
 - iii. Shri Sanjoy Kumar Maiti, Shri Sujit Mitra, Shri Pralay Kumar Saw, Shri Bhaskar Banerjee, Shri Sarbari Mukherjee and Shri Partha Protim Mukherjee, who were earlier Directors of IRL, have since resigned.
 - iv. Shri Sanjoy Kumar Maiti, Shri Sujit Mitra and Shri Pralay Kumar Saw are also the existing Directors of Life Care Infrastructures India Limited (CIN No. – U70101MP2011PLC026822), having its registered office at Madhya Pradesh.

- v. From the material available on record, it is observed that IRL issued *Redeemable Preference Shares* to a large number of investors during the Financial Years 2009–10 to 2012–13, details of which are provided below –

Financial Year	No. of Allottees (Approximate)	Amount (₹) (Approximate)
2009 – 10	5424	36185800
2010 – 11	13436	108476950
2011 – 12	5095	41814300
2012 – 13	763	6681900
Total	24718	193158950

- vi. In addition to the above, IRL also issued *Secured Non–Convertible Redeemable Debentures ("NCDs")* in accordance with the following terms:

Private Placement of Secured Non–Convertible Redeemable Debentures of ₹ 50 Crores

Details	P	Q	R
Redemption Period	3 Years	6 Years	10 Years
Minimum 20 debentures (Value ₹ 1000 each)	₹ 20000	₹ 20000	₹ 20000
Estimated Redemption Value	₹ 20000	₹ 21400	₹ 22000

Note: The indicative /estimated return works out to be ₹ 2400/-, ₹ 2800/- and ₹ 3200/- on yearly (rests) in respect of the above categories of investment and the estimated return at the end of terms @ 7% on 6 years and 10% on 10 years only.

Details	F	A	B	C	D	E
Redemption Period (Years)	1	3	5.6	8	11	15
Debenture Value @ ₹ 1000 each	₹ 1000	₹ 1000	₹ 1000	₹ 1000	₹ 1000	₹ 1000
Appreciation Value	₹ 120	₹ 500	₹ 1000	₹ 2000	₹ 4000	₹ 9000
Estimated Redemption Value	₹ 1120	₹ 1500	₹ 2000	₹ 3000	₹ 5000	₹ 10000

4.1 The issue for determination in the instant matter is whether the mobilization of funds by IRL through the *Offer of Redeemable Preference Shares* and *Offer of NCDs*, is in accordance with –

- i. The provisions of the SEBI Act, 1992 ("**SEBI Act**") and the Companies Act, 1956;
- ii. In respect of only the *Offer of Redeemable Preference Shares*, the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("**DIP Guidelines**") read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**");
- iii. In respect of only the *Offer of NCDs*, the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("**Debt Securities Regulations**").

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; or

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 Redeemable Preference Shares* and *Offer of NCDs* are public issues or issues on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.

A. Offer of Preference Shares –

- a. Under the *Offer of Redeemable Preference Shares*, it is observed that during the Financial Years from 2009–10 to 2012–13, IRL allotted *Redeemable Preference Shares* to a total of 24718 individuals/investors and mobilized funds amounting to approximately ₹ 19.32 Crores [details provided in Table at paragraph 3(v)]. The number of investors to whom allotments were made under the *Offer of Redeemable Preference Shares* alongwith the amount mobilized therein, during the Financial Years from 2009–10 to 2012–13, would *prima facie* indicate that such *Offer* was a public issue of securities and that the number of persons to whom such *Offer* was made, was above the limit of forty–nine persons as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956.
- b. It is observed that IRL is not stated to be a Non–banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that IRL 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 Redeemable Preference Shares* by IRL, would *prima facie* qualify as a public issue under the *first proviso* to Section 67(3) of the Companies Act, 1956.

B. *Offer of NCDs* –

- a. From the '*MCA 21 Portal*', it is observed that IRL last filed its Annual Return with the ROC, Kolkata, for the Financial Year ended March 31, 2012. As per that Annual Return, it is observed that the amount raised through issue of debentures was ₹ 1 Crore.
 - b. Form 10 (filed by IRL with the ROC in accordance with the provisions of the Companies Act, 1956), reveals that IRL created Charge for an amount of ₹ 50 Crores towards the *Offer of NCDs*.
 - c. Form 10 also reveals that IRL had attached a list of 20 persons and designated them as '*proposed debenture holders*' to whom it proposed to issue *NCDs* amounting to ₹ 50 Crores on private placement basis. From the debenture certificates submitted by various complainants to SEBI, it is however, observed that the names contained therein did not match with those contained in the aforementioned proposed list of debenture holders.
 - d. It may be stated that vide letter dated August 8, 2014, SEBI sought clarification from IRL and its Directors regarding the *Offer of NCDs*; however, till date, no reply has been received from the aforesaid entities.
 - e. The abovementioned facts coupled with the refusal by IRL and its Directors to submit any information to SEBI leads me to the inescapable conclusion that the *Offer of NCDs* was also a public issue of securities under the *first proviso* to Section 67(3) of the Companies Act, 1956.
- C.** In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, 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 Redeemable Preference Shares and Offer of NCDs* were public issues 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 subsection (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognized stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 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 *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 Redeemable Preference Shares and Offer of NCDs* were public issues of securities under the *first proviso* to Section 67(3) 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. It therefore *prima facie* appears that IRL 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 Redeemable Preference Shares and Offer of NCDs*.
- 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 Redeemable Preference Shares and Offer of NCDs*, is mandatory on IRL. In this regard, there is no evidence on record to indicate whether or not IRL has paid interest within 8 days, to the investors under the *Offer of Redeemable Preference Shares and Offer of NCDs*, as per

the aforesaid Section. In view of the same, I find that *prima facie*, IRL 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 Redeemable Preference Shares and Offer of NCDs* were kept in separate bank account by IRL. In view of the same, I find that *prima facie*, IRL 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 Redeemable Preference Shares and Offer of NCDs* were public issues of securities under the *first proviso* to Section 67(3) of the Companies Act, 1956, IRL 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 *prima facie*, IRL 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 IRL 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 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 *Sabara 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 IRL has not complied with the following provisions of the DIP Guidelines as regards the *Offer of Redeemable Preference Shares, viz. –*

- 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 Issuer Company*)
- y. Clause 10.1 – (*Requirement of credit rating*)
- z. Clause 10.5 – (*Redemption*)

4.8 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."

4.9 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 ("**DRR**") 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 IRL has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

4.10 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 *prima facie*, IRL, through the *Offer of NCDs*, which is a public issue of

debt securities, has 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(1) – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of Security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

4.11 Upon a consideration of the aforementioned paragraphs, I am of the view that *prima facie*, IRL is engaged in fund mobilising activity from the public, through the *Offer of Redeemable Preference Shares and 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); in respect of the *Offer of Redeemable Preference Shares* only, the DIP Guidelines read with ICDR Regulations and in respect of the *Offer of NCDs* only, Sections 117B–C of the Companies Act, 1956 and the Debt Securities Regulations.

5.1 From information obtained by SEBI from the *MCA 21 Portal*, it is observed that IRL appointed *Infinity Realcon Debenture Trust (represented by Shri Chinmoy Guha Thakurta)*, as Debenture Trustee for the *Offer of NCDs* by that company.

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". Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("**Debenture Trustees Regulations**"), provides that: "no person should act as a debenture trustee unless he is either –*

- i. a scheduled bank carrying on commercial activity; or*
- ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
- iii. an insurance company; or*
- iv. body corporate."*

5.3 Based on the material available on record, I find that *Infinity Realcon Debenture Trust (represented by Shri Chinmoy Guba Thakurta)*, 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 Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.

6. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956, 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; the DIP Guidelines read with ICDR Regulations; the Debt Securities Regulations; over companies who issue *Non-Convertible Redeemable Debentures and Redeemable Preference Shares* 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 4.1–4.11 above). Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by IRL 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 IRL and its Directors alongwith its Debenture Trustee, viz. *Infinity Realcon Debenture Trust (represented by Shri Chinmoy Guba Thakurta)*, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of Redeemable Preference Shares and Offer of NCDs*.

7. 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; the DIP Guidelines read with the ICDR Regulations; the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions –
- i. IRL shall not mobilize any fresh funds from investors through the *Offer of Redeemable Preference Shares and 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. IRL and its present Directors, viz. Shri Prabir Kumar Mukherjee (DIN: 02548910; PAN: AZNPM2736R), Shri Pranab Mukherjee (DIN: 02548924; PAN: ALKPM1231A) and Shri Soumen Mallick (DIN: 02548937; PAN: AEPPM1985N), including its past Directors, viz. Shri Sanjoy Kumar Maiti (DIN: 03020095; PAN: APQPM8659A), Shri Sujit Mitra (DIN: 03028519; PAN: AJNPM1411D), Shri Pralay Kumar Saw (DIN: 03020064; PAN: BBJPS6343H), Shri Bhaskar Banerjee (DIN: 02646193; PAN: AOAPB8772N), Shri Sarbari Mukherjee (DIN: 02703365; PAN: AYVPM1890P) and Shri Partha Protim Mukherjee (DIN: 06467917; PAN: BZLPM2567D), 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. IRL and its abovementioned past and present 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. IRL shall provide a full inventory of all its assets and properties;
 - v. IRL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;
 - vi. IRL 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 Redeemable Preference Shares and Offer of NCDs*, without prior permission from SEBI;

- vii. IRL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of Redeemable Preference Shares and Offer of NCDs*, which are kept in bank account(s) and/or in the custody of IRL;
 - viii. IRL and its abovementioned past and present Directors, shall furnish complete and relevant information (as sought vide SEBI letters dated January 30, 2014; March 11, 2014 and March 24, 2014; August 4, 2014 and August 8, 2014), within 21 days from the date of receipt of this Order.
 - ix. *Infinity Realcon Debenture Trust (represented by Shri Chinmoy Guha Thakurta)*, is prohibited from continuing with its present assignment as a debenture trustee in respect of the *Offer of NCDs* of IRL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this Order till further directions.
8. The above directions shall take effect immediately and shall be in force until further orders.
- 9.1 The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*' alongwith provided by the complainants against IRL. In this context, IRL and its abovementioned past and present 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.
- 9.2 Similarly, the Debenture Trustee i.e. *Infinity Realcon Debenture Trust (represented by Shri Chinmoy Guha Thakurta)*, may, within 21 days from the date of receipt of this Order, file its reply, if any, to this Order and may also indicate whether it desires to avail itself 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 IRL and its abovementioned Directors; its Debenture Trustee, viz. *Infinity Realcon Debenture Trust (represented by Shri Chinmoy Guha Thakurta)*, in accordance with law.

Place: Mumbai
Date: January 7, 2015

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