

**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 Chakra Infrastructure Limited (PAN- AADCC6855H) and its present and past Directors, viz. Shri Swapan Majumdar (DIN- 06405352, PAN- AKJPM4426D), Shri Pranab Kumar Roy (DIN- 06623130, PAN- ACDPR4876J), Shri Subhas Bose (DIN- 06623134, PAN- BLEPB3468F), Shri Partha Chakraborti (DIN- 01274437, PAN- ADQPC5578E), Smt Soma Chakraborti (DIN-01274477, PAN- AEKPC9920P), Shri Swapan Kumar Sen (DIN- 02704406, PAN- CILPS3142L), Shri Prithwis Kumar Das (DIN- 05268472, PAN- AFCPD3788F), Shri Litan Chandra Sen (DIN- 05268471, PAN- CEDPS4072K), Shri Biplab Halder (DIN- 05268469, PAN- AHGPH6624N), Shri Santosh Kumar (DIN- 06710209, PAN- ALUPK5400F) and Shri Bijoy Das (DIN- 03155078, PAN- ALRPD5933D) ; its Debenture Trustee, viz. Chakra Debenture Trust (represented by its trustee viz. Shri Sunil Kumar Saha).

1. Securities and Exchange Board of India ("**SEBI**") received a communication dated August 27, 2013 from Reserve Bank of India ("**RBI**"), Guwahati forwarding a copy of Show Cause Notice dated August 02, 2013 issued by Sub Divisional Magistrate, Sadar, West Tripura to 'Chakra Group' and Chakra Group's reply to the Show Cause Notice. In their reply dated August 02, 2013 to the Show Cause Notice, Chakra Group *inter alia* stated that Chakra Infrastructure Limited (hereinafter referred to as '**CIL**' or '**the company**') was issuing Non-Convertible Secured Redeemable Debentures ('**NCDs**') on private placement basis.
- 2.1 SEBI also received a letter dated August 23, 2013 from the Registrar of Companies ('**RoC**'), Kolkata which *inter alia* informed following with respect to the investment activities of CIL:
 - i. "On 13/10/2011, the company filed one Form-10 vide SRN B22716807 (Date of creation of charge 07/10/2011) in regard to issue of Secured Debentures of Rs. 10,00,00,000/- and Charge ID is 10317724. During correspondence, it is observed that the company had issued

debentures of Rs. 5,57,49,100/- (total number of Debentures 5,57,491 and the face value of each debenture is Rs. 100/-), Date of opening of the issue and date of closing of issue were 31/03/2012 and 30/06/2012 respectively.

- ii. Share Application Money of Rs. 30,00,000/- shown in the Balance sheet as at 31/03/2011. No list of applicants from whom such money was received has been furnished by the company."*

2.2 As a part of preliminary inquiry, SEBI vide letter dated September 12, 2013 advised CIL to furnish *inter alia* the following information in respect of the *Offer of NCDs*, viz. –

- i. Copy of the Memorandum and Articles of Association of the company.
- ii. Copy of audited annual accounts of the company for last 3 years.
- iii. Names, addresses and occupation of all the promoters/ directors of the company .
- iv. Names and details of the key managerial personnel of the company.
- v. Other information in respect of NCDs issued by the Company:
 - a. Copy of Prospectus/ Red Herring Prospectus/ Statement in lieu of prospectus/ information memorandum filed with Registrar of Companies ("**RoC**") for issuance of debentures.
 - b. whether the company has applied for listing of its securities with any of the stock exchanges.
 - c. Copy of Form 2 and Form 10 filed with RoC.
 - d. Date of opening and closing of the subscription for the said debentures
 - e. Details regarding the number of application forms circulated inviting subscription for debentures.
 - f. Details regarding the number of applications received.
 - g. Details regarding the number of allottees and list of such allottees.
 - h. Number of debentures allotted and value of such allotment against each allottee's name.
 - i. Details regarding subscription amount raised.
 - j. Date of allotment of the debenture.
 - k. Copies of the minutes of Board/ committee meeting in which the resolution was passed for allotment.

- l. Date of dispatch of debenture certificates etc.
- m. Details of the total number of applicants for each of its schemes besides the list of final allottees.
- n. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of debentures
- o. Terms and conditions of the issue of debentures.

2.3 CIL vide its letter dated October 9, 2013 provided *inter alia* the following documents/information, viz.:

- i. Copy of the Memorandum and Articles of Association of the company;
- ii. Copies of Balance Sheet and Profit & Loss account of the company for FY 2009-10, 2010-11 and 2011-12;
- iii. Names, addresses and occupation of Directors/promoters;
- iv. Names, addresses and occupation of the key managerial personnel of the company;
- v. Copy of Form 10 filed with RoC;
- vi. Copy of application form which also mentions terms and condition of the issue of debentures.
- vii. List of 48 allottees and their details such as date of allotment of debentures, names of allottees, Number of debentures allotted and amount received thereon;
- viii. Copies of the minutes of Board/ committee meeting in which the resolution was passed for allotment.

It was also *inter alia* stated in the aforesaid letter dated October 9, 2013 that-

- i. *"The company till date has not applied for listing its securities with any of the stock exchanges ever.*
- ii. *Date of opening of the issue: 31/03/2012*
Date of closing of the issue: 30/06/2012
- iii. *Since the company has issued debentures strictly on private placement basis so the company has never circulated any application forms inviting subscription for non-convertible secured redeemable debentures ever.*

- iv. *The company received 48 application forms to whom the company issued non-convertible secured redeemable debentures.*
- v. *Details of total no. of applicants for each of the schemes are the same as per the list of final allottees.*
- vi. *The company has issued non-convertible secured redeemable debentures strictly on private placement basis without issuing pamphlets, advertisements and other promotional materials in circulations for issuance of such debentures."*

CIL vide aforesaid letter dated October 09, 2013 has also submitted that it has issued 10,00,000 debentures amounting to Rs. 10,00,00,000/- to only 48 investors.

- 2.4 However, SEBI received complaints dated February 27, 2014 and March 06, 2014 from investors whose names were not mentioned in the list of 48 investors submitted by the company. The said complainants also submitted a copy of brochure cum application form and copies of certificates of allotment of NCDs issued by CIL. In view of the same, SEBI vide letter dated February 03, 2014 sought additional information from CIL viz. PAN details of the debenture holders, contact number of the debenture holders, copy of bank statement showing amount received from debenture holders, etc. However, SEBI did not receive any information from CIL. Thereafter, SEBI vide letters dated March 03, 2014 brought the discrepancy observed in the list of debenture holders provided by CIL to the notice of its present directors viz. Mr. Swapan Majumdar, Mr. Pranab Kumar Roy, Mr. Subhas Bose and advised them to provide correct and complete list of debenture holders along with the information sought vide letter dated February 03, 2014. The letter sent to Mr. Swapan Majumdar and Mr. Subhas Bose were returned undelivered by postal authorities. SEBI did not receive any reply to letter sent to Mr. Pranab Kumar Roy. SEBI also sent a letter dated April 11, 2014 to CIL at its Head Office address at Debaloy Building, 193/1, Ultadanga Main road, Kolkata- 700067. This letter was also returned undelivered.
- 2.5 Meanwhile, SEBI received more complaints on December 02, 2013, March 06, 2014 and March 27, 2014 from investors and 'All Bengal Non-Govt. Financial Investment and Associated Companies' Workers & Agents Union ' wherein the complainants enclosed copies of debenture certificates issued by CIL to investors whose names are not mentioned in the list of the investors submitted by CIL.

- 2.6 Simultaneously, efforts were made to obtain information from MCA21 Portal like number of debenture holders, etc. However such details were not available on the MCA21 portal.
3. The material available on record i.e. correspondence exchanged between SEBI and CIL along with the documents contained therein; information/documents obtained from the RoC, Kolkata; information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'; complaints received and the documents enclosed therein have been perused. On an examination of the same, it is observed that –
- i. CIL was incorporated on December 12, 2008 with the RoC, Kolkata with CIN No. as U45400WB2008PLC131200 and its Registered Office is situated at Chakra Madhumati, 40/B North Purbachal, P.O- Haltu, Kalitala Link Road (P.No-28,Purbachal Main Road, Kolkata - 700078.
 - ii. The present directors of CIL are Shri Swapan Majumdar, Shri Pranab Kumar Roy and Shri Subhas Bose. Shri Partha Chakraborti (till 03/07/2013), Smt Soma Chakraborti (till 21/04/2012), Shri Swapan Kumar Sen (till 21/04/2012), Shri Prithwis Kumar Das (till 08/08/2012), Shri Litan Chandra Sen (till 01/07/2012), Shri Biplab Halder (till 03/07/2013), Shri Santosh Kumar (till 26/02/2014) and Shri Bijoy Das (till 26/02/2014) who were earlier directors in the company have since resigned. It is observed from the copy of the brochure of Chakra Group that Shri Partha Chakraborti is also a Founder and Group Chairman of Chakra Group.
 - iii. It is observed from the E-Form 10 filed by CIL with RoC that CIL passed a resolution on October 07, 2011 to issue debentures amounting to Rs. 10 Crores. The name of debenture trust is “Chakra Debenture Trust” managed by trustee Shri Sunil Kumar Saha and the office of the trust is situated at Chakra Madhumati, 28 Purbanchal Main road, Kolkata, West Bengal-700078. It is also observed from E-Form 10 that CIL offered 18% rate of interest on debentures.

The copy of the brochure cum application form submitted by CIL for the said issue of debentures *inter alia* mentions that CIL is privately placing offer of NCDs on following terms and conditions:

Scheme I: Non-Convertible Secured Redeemable Debenture

Particulars	Plan A		Plan B	
Period (Year)	3	5	7	10
Min. App. Value per 10 debentures (Rs.)	1000	1000	1000	1000
Simple rate of interest payable	12.5%	12.5%	12.5%	12.5%
Bonus	4.5%	2.5%	4.5%	7%

Scheme II: Regular Income Non-Convertible Secured Redeemable debenture

Particulars	Plan C		Plan D	
Period (Year)	3	5	7	10
Min. App. Value (Rs.)	50000	50000	50000	50000
Monthly income per Lakh (Rs.)	1250	1250	1300	1300
Bonus	2%	3%	4%	5%

- iv. CIL vide its letter dated October 09, 2013 provided the details of 48 allottees to whom it issued NCDs of face value Rs. 100/-each and mobilised funds aggregating to Rs. 10 Crores during FY 2012-13. It is noted from the list of 48 allottees provided by CIL that all the allottees except Chakra Wealth Management Advisory Limited and Chakra Welfare Society are individuals.
- v. It is observed from the Copies of the debenture certificates enclosed with the complaints received by SEBI on December 02, 2013, February 27, 2014, March 06, 2014 and March 27, 2014 that CIL issued debentures during FY 2012-13 to the investors whose names are not mentioned in the list provided by CIL.

- vi. The details of the NCDs issued by CIL, as observed from the material available on record i.e. information provided by CIL; complaints received and the information and documents enclosed therein are summarised as below:

Year	Source of information	Amount Raised (in Rs.)	No. of Allottees
2012-13	Information provided by CIL	10,00,00,000	48
	Complaints received and the copies of debenture certificates enclosed therein	24,18,000	24
Total		10,24,18,000	72

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 CIL 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") and the Companies Act, 1956.
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 :

"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. CIL stated that the *Offer of NCDs* has been made on a private placement basis and provided a list of 48 investors to whom NCDs aggregating to Rs.10 Crores were issued during FY 2012-13. However, SEBI received several more complaints wherein the complainants enclosed copies of debenture certificates issued to a total of 24 investors. On verification, we find that none of these 24 investors is mentioned in the list of 48 investors provided by CIL. This indicates that CIL issued NCDs to at least 72 (48+24) investors during FY 2012-13. The NCDs have thus been issued to more than 49 persons. SEBI also did not receive any reply from CIL and its directors to our letters seeking clarifications (further information), despite several reminders. Considering the above mentioned facts and considering the fact that CIL failed to provide the clarifications sought by SEBI with regard to the discrepancy in the total number of investors, I am left with no alternative but to prima facie conclude that the *Offer of NCDs* was nothing but a public issue of securities under Section 67(3) of the Companies Act, 1956. It is clear that CIL has deliberately submitted a truncated list of 48

investors, a mere one less than the threshold of 49, with the sole intention to depict the issue as a private placement.

- b. CIL 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 *Sabara Case*. 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.

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

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons.

...

Section 73(2) says that every company and every director of the company who is an officer in default, shall 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. The scope of the above mentioned provisions came up for consideration before this Court in Raymond Synthetics Ltd. & Ors. V. Union of India (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since Saharas had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."

- iii. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, 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 and also compliance with provisions of Sections 73(2) and 73(3) of that Act.
 - iv. In the facts of the instant case, it *prima facie* appears that CIL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.
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, CIL 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 CIL has filed a prospectus. In view of the same, I find that *prima facie*, CIL 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 CIL 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 CIL has not complied with the provisions of Sections 117B of the Companies Act, 1956.
- 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*". 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 Chakra Debenture Trust (represented by its trustee Mr. Sunil Kumar Saha) has *prima facie*, failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations. Chakra Debenture Trust and its trustee Mr. Sunil Kumar Saha are not registered with SEBI 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 Companies Act, 1956, 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. There is no evidence on record to indicate that CIL has created a debenture reserve as per the aforesaid provision for NCDs issued during FY 2012-13. Therefore, I find that CIL has not complied with the provisions of Sections 117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
12. 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 CIL, 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.*

13. Upon a consideration of the aforementioned paragraphs, I am of the view that CIL 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) and the Debt Securities Regulations.
14. 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, the 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 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. Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by CIL and no investors are defrauded. This is especially warranted in the wake of large number of complaints from the investors against CIL. In light of the same, I find there is no other alternative but to take recourse through an interim action against CIL and its Directors alongwith its Debenture Trustee, viz. Chakra Debenture Trust (represented by its trustee Mr. Sunil Kumar Saha), for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.
15. 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. CIL 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. CIL and its present and past Directors, viz. Shri Swapan Majumdar (DIN-06405352, PAN- AKJPM4426D), Shri Pranab Kumar Roy (DIN- 06623130, PAN-

- ACDPR4876J), Shri Subhas Bose (DIN- 06623134, PAN- BLEPB3468F), Shri Partha Chakraborti (DIN- 01274437, PAN- ADQPC5578E), Smt Soma Chakraborti (DIN-01274477, PAN- AEKPC9920P), Shri Swapan Kumar Sen (DIN- 02704406, PAN- CILPS3142L), Shri Prithwis Kumar Das (DIN- 05268472, PAN- AFCPD3788F), Shri Litan Chandra Sen (DIN- 05268471, PAN- CEDPS4072K), Shri Biplab Halder (DIN- 05268469, PAN- AHGPH6624N), Shri Santosh Kumar (DIN- 06710209, PAN- ALUPK5400F) and Shri Bijoy Das (DIN- 03155078, PAN- ALRPD5933D) 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. CIL 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. CIL shall provide a full inventory of all its assets and properties;
 - v. CIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. CIL 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. CIL and its abovementioned 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 CIL;
 - viii. CIL and its abovementioned Directors shall furnish complete and relevant information within 21 days from the date of receipt of this Order.
 - ix. The Debenture Trustee, viz. Chakra Debenture Trust (represented by its trustee Mr. Sunil Kumar Saha), is prohibited from continuing with his present assignment as a debenture trustee in respect of the *Offer of NCDs* of CIL 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.
16. The above directions shall take effect immediately and shall be in force until further orders.
17. 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 CIL along with

the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*'; communication received from RoC, Kolkata; complaints received and documents contained therein. In this context, CIL 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.

18. Similarly, the Debenture Trustee, viz. Chakra Debenture Trust (represented by its trustee Mr. Sunil Kumar Saha), 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 desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
19. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against CIL and its abovementioned Directors; its Debenture Trustee, viz. Chakra Debenture Trust (represented by its trustee Mr. Sunil Kumar Saha), in accordance with law.

Place: Mumbai
Date: January 29, 2015

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