

**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 Adamant Infrastructures Limited and its Directors, viz. Shri. Indrajit Kumar Sharma (DIN:05222098 , PAN:BQNPS0657R), Shri. Jitendra Kumar Sharma (DIN:05222111 , PAN:AZGPS4457A), Shri. Anand Mohan (DIN:05225968 , PAN:AQYPM7781N); its Debenture Trustee, viz. Adamant Debenture Trust (represented by its trustee viz. Smt. Sushmita Sinha).

1. Securities and Exchange Board of India ("**SEBI**") received a communication dated October 29, 2013 from the Registrar of Companies ("**RoC**"), Gwalior, Madhya Pradesh wherein it had been mentioned that Adamant Infrastructures Limited (hereinafter referred to as '**AIL**' or '**the company**') issued debentures to 114 investors. It was also mentioned that RoC had filed prosecution on September 20, 2013 against the company under section 56, 60B, 67(1) and 67 (2) and 68 of the Companies Act, 1956 before Hon'ble CJM of Gwalior.
2. SEBI vide letter dated December 10, 2013 sought further information from RoC, Gwalior such as copy of Form 10, number of debentures issued by the company, dates of allotment and names of allottees. RoC, Gwalior vide letters dated December 19, 2013 and December 31, 2013 provided copy of form 10 filed by the company with RoC, letter dated December 12, 2012 submitted by the company to RoC in respect of queries raised and the copies of documents provided to them by the company such as list of allottees, trust deed.
3. As a part of preliminary inquiry, SEBI vide letter dated December 06 , 2013 advised AIL and its Directors to furnish *inter alia* the following information with respect to issuance of debentures, viz. –
 - a. Details of the past and present directors of the company.
 - b. Nature of activities being conducted by the company.
 - c. Date of opening and closing of the issue.

- d. Copy of minutes of EGM of the company approving allotment of debentures and board minutes approving allotment.
 - e. Brochures/advertisement pertaining to debenture issue, which were made available to the public.
 - f. Copies of duly filed application forms received from investors/applicants who applied in the debenture issue.
 - g. Name, address of each investor, date of receipt of payment, amount received from issuance of debentures and date of allotment.
 - h. Details of properties acquired from money raised from said debenture issue.
 - i. Addresses of all the branches operating in India.
 - j. Name and amount of brokerage paid to the broker employed, if any, for said issue.
 - k. Certified copy of audited financial statement for all the financial years during which funds were raised till 2012-13.
 - l. Copy of Income Tax Return filed by the company for the years referred at (k) above.
 - m. Details of the regulatory approvals obtained by the company, if any, for said debenture issue.
 - n. Details of other fund raising from public in form of debentures/ or other manner (if any) by the company or its group/associates company.
 - o. Details of any action initiated/ taken by any other authority (including any court order) against the company in respect of money raised from public.
4. The letter sent at the registered office address of the company and to its director Shri Indrajit Kumar Sharma were returned undelivered by postal authorities. However, SEBI received letter dated December 27, 2013 from AIL in response to letter addressed to its director Shri. Anand Mohan. In the said letter, the company sought 15 days to furnish the information citing that the company is currently engaged in the audit of Financial Accounts and Financial Statements for Financial Year 2012-13.
5. In view of non-receipt of any information from the company and its directors, SEBI sent a reminder vide letters dated March 20, 2014 to AIL and its directors granting final opportunity to submit the requisite information till March 28, 2014.

6. Subsequently, AIL vide letter dated May 16, 2014 *inter alia* provided the following information/documents :
- a. Names, addresses and PAN numbers of Directors
 - b. Copy of minutes of EGM of the company and copy of Board minutes approving allotment of debentures
 - c. Copy of Application Form cum brochure for offer of Non- Convertible Redeemable Secured Debentures (**'NCDs'**) of Series II
 - d. List of debenture holders
 - e. Copy of Financial Statements for FY 2012-13
 - f. Copy of Income Tax Return for FY 2013-14
 - g. Copy of Form 10 and copy of Certificate of Registration of Mortgage.

AIL vide aforesaid letter also *inter alia* submitted that :

- a. The nature of activity of the company includes business of construction of apartments, shops etc., to buy, purchase or otherwise acquire interest in any immovable property such as houses, shops etc. and to develop the plot for house by providing roads & other facilities.
 - b. Date of opening of the issue is 04th April 2012 and the issue is currently open.
 - c. No brochures/advertisement were made available to general public.
 - d. No brokers are employed for the issue of debentures of the company as the issue was made on fully private placement basis.
 - e. The company is not raising any funds from general public and no action is initiated/taken by any authorities.
7. SEBI also received a complaint vide e-mail dated January 10, 2015 stating that AIL is also raising money from investors in Varanasi, Uttar Pradesh.
8. The material available on record i.e. correspondence exchanged between SEBI and AIL along with the documents contained therein; information/documents obtained from the RoC, Gwalior; information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal' have been perused. On an examination of the same, it is observed that –

- i. AIL was incorporated on March 28, 2012 with the RoC, Gwalior with CIN No. as U70101MP2012PLC028092 and its Registered Office is situated at 214 Badridham Nagar, PO & PS: Dewas, Dewas, Madhya Pradesh- 455001.
- ii. The directors of AIL are Shri Indrajit Kumar Sharma, Shri Jitendra Kumar Sharma and Shri Anand Mohan.
- iii. It is observed from the information submitted by AIL that the board of directors of the company and shareholders of the company passed resolutions dated March 30, 2012 and April 04, 2012 respectively to issue NCDs of face value Rs. 100/- each amounting to Rs. 50 Crores. It is observed from the copy of Form 10 filed by AIL with RoC that a charge of Rs.50 Crores has been created. The name of debenture trust is “Adamant Debenture Trust” managed by trustee Sushmita Sinha and the office of the trust is situated at 627, R.M. Sarani, Baidyabati, Hooghly, West Bengal- 712222.
- iv. It is observed from the copy of brochure cum application form submitted by AIL that AIL has also issued NCDs in Series-II under following terms and conditions:

Scheme I:

Plan	RD-I	RD-2	RD-3	RD-4
<i>Redemption period</i>	<i>15 months</i>	<i>27 months</i>	<i>39 months</i>	<i>63 months</i>
	<i>+</i>	<i>+</i>	<i>+</i>	<i>+</i>
	<i>1 day</i>	<i>1 day</i>	<i>1 day</i>	<i>1 day</i>
<i>Amount per Debenture of Rs.100</i>	<i>3600/-</i>	<i>4800/-</i>	<i>3600/-</i>	<i>6000/-</i>
	<i>Minimum 36 No.</i>	<i>Minimum 48 No.</i>	<i>Minimum 36 No.</i>	<i>Minimum 60 No.</i>
<i>Rate of Interest (PA)</i>	<i>12%</i>	<i>12.5%</i>	<i>13%</i>	<i>14%</i>

Scheme II:

Plan	FD-I	FD-2	FD-3	FD-4	FD-5	FD-6
<i>Redemption period</i>	<i>3 years</i>	<i>5 ½ years</i>	<i>8 years</i>	<i>10 years</i>	<i>12 years</i>	<i>15 years</i>
<i>Amount per debenture of Rs.100</i> <i>(Minimum 10 debentures to be applied)</i>	<i>1000/-</i>	<i>1000/-</i>	<i>1000/-</i>	<i>1000/-</i>	<i>1000/-</i>	<i>1000/-</i>
<i>Redemption Value</i>	<i>1500/-</i>	<i>2000/-</i>	<i>3000/-</i>	<i>5000/-</i>	<i>8000/-</i>	<i>12000/-</i>

Scheme III:

Plan	MIS-1	MIS-2	MIS-3	MIS-4	MIS-5
<i>Redemption period</i>	<i>1 year + 1 day</i>	<i>2 years</i>	<i>4 years</i>	<i>6 years</i>	<i>8 years</i>
<i>Invested Amount</i>	<i>25000/-</i>	<i>25000/-</i>	<i>25000/-</i>	<i>25000/-</i>	<i>25000/-</i>
<i>Redemption value</i>	<i>25000/-</i>	<i>25250/-</i>	<i>25250/-</i>	<i>25250/-</i>	<i>25250/-</i>
<i>Rate of Interest (PA)</i>	<i>12%</i>	<i>12%</i> <i>(1%</i> <i>Maturity</i> <i>Bonus)</i>	<i>13%</i> <i>(1%</i> <i>Maturity</i> <i>Bonus)</i>	<i>14%</i> <i>(1%</i> <i>Maturity</i> <i>Bonus)</i>	<i>15%</i> <i>(1%</i> <i>Maturity</i> <i>Bonus)</i>

- v. AIL provided the details of NCDs to SEBI vide letter dated May 16, 2014. The RoC, Gwalior vide their letters dated December 19, 2013 & December 31, 2013 had also forwarded the details of NCDs submitted to them by AIL till December 15, 2012. The details of these NCDs issued by AIL are summarised as below:

Date of allotment	Number of allottees	Amount raised (as per the information submitted to RoC, Gwalior by AIL) (in Rs.)	Amount raised (as per the information submitted to SEBI) (in Rs.)
30/04/2012	16	3,83,400	4,13,000
30/05/2012	33	3,83,000	4,73,700
30/06/2012	41	7,02,800	7,80,200
10/07/2012	24	5,41,700	5,87,800
31/10/2012	41	-	1,05,200
6/12/2012	35	-	65,500
31/12/2012	32	-	46,400
28/2/2013	47	-	42,600
30/3/2013	37	-	14,200
Total	306	20,10,900 (till December 15, 2012)	25,28,600

As can be seen from the above, there are discrepancies between the declarations made by the company to RoC, Gwalior and SEBI in respect of the amounts raised.

- vi. It is also noted that the company has not provided details of allottees in respect of Series II of debenture issue for which issue open date is July 01, 2013 as mentioned in copy of brochure cum application form submitted by AIL.
9. 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 AIL 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.
10. 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."

11. In this regard –
- i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced as under:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to

invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation

...

Provided *that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*

Provided further *that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."*

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sabara Case* observed 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 AIL has stated that the *Offer of NCDs* has been made on a private placement basis, it is an admitted fact that NCDs aggregating to Rs. 25,28,600/- have been issued to 306 investors during FY 2012-13. The number of persons to whom the *NCDs* were issued by AIL was thus way beyond the prescribed limit of forty-nine persons and hence said issuance of NCDs is a public issue in terms of the provisions of Section 67(3) of the Companies Act, 1956. It is observed that AIL issued NCDs in several tranches during FY 2012-13 to camouflage the issuance of NCDs as a private placement. However, I note that the method adopted by AIL for mobilization of funds is nothing but a device to circumvent the provisions of section 67(3) of the Companies Act, 1956. Further, the submission by AIL that "*Date of opening of the issue is 04th April 2012 and the issue is currently open*" indicates that the company continues to raise the money through the issuance of NCDs.
 - b. AIL 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.

12. 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 *Sabaras* 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 AIL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.
13. 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, AIL 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 AIL has filed a prospectus. In view of the same, I find that *prima facie*, AIL has not complied with the provisions of Section 60 of Companies Act, 1956.
14. 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 AIL 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.

15. 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 AIL 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 Adamant Debenture Trust (represented by its trustee viz. Smt. Sushmita Sinha) has *prima facie*, failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations. Adamant Debenture Trust and its trustee Smt. Sushmita Sinha 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.

16. 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. It is observed from balance sheet of AIL as on March 31, 2013 that the company had transferred Rs. 57,495/- to debenture redemption reserve. However, this amount is not adequate even to pay the maturity claims for NCDs due in FY 2013-14. Therefore, I find that AIL has not complied with the provisions of Sections 117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

17. 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 AIL, 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.*
18. Upon a consideration of the aforementioned paragraphs, I am of the view that AIL 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.

19. 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 Companies Act 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 AIL 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 AIL and its Directors alongwith its Debenture Trustee, viz. Adamant Debenture Trust (represented by its trustee viz. Smt. Sushmita Sinha), for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.
20. 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. AIL 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. AIL and its Directors, viz. Shri. Indrajit Kumar Sharma (DIN:05222098, PAN:BQNPS0657R), Shri. Jitendra Kumar Sharma (DIN:05222111, PAN:AZGPS4457A), Shri. Anand Mohan (DIN:05225968, PAN:AQYPM7781N) 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. AIL 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. AIL shall provide a full inventory of all its assets and properties;

- v. AIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. AIL 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. AIL 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 AIL;
 - viii. AIL 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. Adamant Debenture Trust (represented by its trustee viz. Smt.Sushmita Sinha), is prohibited from continuing with their present assignment as a debenture trustee in respect of the *Offer of NCDs* of AIL 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.
21. The above directions shall take effect immediately and shall be in force until further orders.
22. 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 AIL along with the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*'; communication received from RoC, Gwalior; complaints received and documents contained therein. In this context, AIL 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.
23. Similarly, the Debenture Trustee, viz. Adamant Debenture Trust (represented by its trustee viz. Smt. Sushmita Sinha), 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.

24. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against AIL and its abovementioned Directors; its Debenture Trustee, viz. Adamant Debenture Trust (represented by its trustee viz. Smt. Sushmita Sinha), in accordance with law.

Place: Mumbai
Date: February 11, 2015

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