

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, in the matter of Asoka Life Science Limited (PAN: AAFCA5687H) and its Directors, viz. Shri Simanta Roy (PAN: AFVPR5832F; DIN: 01512713), Shri Sourav Roy (PAN: AFBPR4794Q; DIN: 01693060), Smt. Priyanka Roy (PAN: BEJPR5386E; DIN: 05140505), Smt. Antara Mukherjee (PAN: ATFPM5403K; DIN: 01512672) and Shri Prakash Chandra Panda (PAN: AQXPP3171E) alongwith its Debenture Trustees, viz. Shri Dilip Mukherjee and Shri Soumen Chatterjee.

- 1.1 Securities and Exchange Board of India ("**SEBI**") received a complaint dated May 21, 2014, alleging mobilization of funds by Asoka Life Science Limited ("**ALSL**").
- 1.2 SEBI also received a copy of Writ Petition (*W.P. No. 11314 (W) of 2014*) in the matter of *Sukhamay Das and Others vs. Union of India and Others*, wherein SEBI was arrayed as one of the respondents. The said Writ Petition was filed by the petitioner *inter alia* alleging that ALSL had raised monies from the public through various schemes including through issue of *Secured Redeemable Non – Convertible Debentures ("**NCDs**")* and *Redeemable Preference Shares*.
- 2.1 SEBI vide letter dated June 17, 2014, sought the following information from ALSL, viz.
—
 - i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Copy of Audited Annual Accounts and Annual Returns of the company for the last 3 years;
 - iii. Name, 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 issue of shares/debentures by the company, viz. —
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("**ROC**");

- b. Date of opening and closing of the subscription list;
- c. Details regarding the number of application forms circulated inviting subscription;
- d. Details regarding the number of applications received;
- e. Details regarding the number of allottees and list of such allottees, etc.;
- f. Number of shares/debentures allotted and value of such allotment against each allottee's name.
- g. Details regarding subscription amount raised;
- h. Date of allotment of shares/debentures;
- i. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
- j. Date of dispatch of shares/debentures Certificates;
- k. Details of the total number of applicants for each of MIRL's scheme besides the list of final allottee;
- l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/debentures;
- m. Terms and conditions of the issue of shares/debentures;
- n. Details of application for listing, if any, filed with stock exchanges;
- o. Copy of Form 2 and Form 10 filed with ROC;
- p. Details of Debenture Trustee.

2.2 However, the abovementioned letter was returned as undelivered to SEBI.

2.3 Vide letters each dated June 18, 2014, SEBI also sought the information (sought vide abovementioned letter dated June 17, 2014) from all the Directors of ALSL. Two of the aforementioned letters were returned as undelivered to SEBI. Further, no reply has been received by SEBI for the remaining letter which was delivered to Smt. Priyanka Roy, a Director of ALSL.

3. The material available on record i.e. the abovementioned complaint dated May 21, 2014 and information obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*, have been perused. On an examination of the same, it is observed that –

- i. ALSL was incorporated on February 6, 2006, with the ROC, Kolkata with CIN No. as U24239WB2006PLC107733. Its Registered Office is at 401, Lake Town, Block - B, 1st Floor, Kolkata – 700089, West Bengal, India.
- ii. The present Directors in ALSL are Shri Simanta Roy, Shri Sourav Roy and Smt. Priyanka Roy.
- iii. Shri Prakash Chandra Panda and Smt. Antara Mukherjee who were earlier Directors in ALSL, have since resigned.
- iv. From the *MCA 21 Portal*, it is observed that ALSL has filed approximately 160 Form 2 (Form for Return of Allotment – filed by ALSL with the ROC in accordance with the provisions of the Companies Act, 1956) for the allotment of "*Redeemable Preference Shares*" ("*Offer of Redeemable Preference Shares*") during the Financial Years 2007–08 to 2011–12. On an examination of the aforesaid Form 2, it is observed that ALSL made the *Offer of Redeemable Preference Shares* to several investors, details of which are provided below –

Type of Security	Year	No. of persons to whom preference shares were allotted (approx.)	Total Amount (₹ in Crores)
Redeemable Preference Shares	2007-08	627	0.54
	2008-09	1707	1.68
	2009-10	1437	1.34
	2010-11	2707	2.31
	2011-12	364	0.35
TOTAL		6842	6.22

- v. From the material available on record, it is noted that ALSL also issued *Secured Redeemable Non – Convertible Debentures ("NCDs")*. As per Form 20B (filed by ALSL with the ROC in accordance with the provisions of the Companies Act, 1956) for the year ended March 31, 2011, it is observed that the company has issued *NCDs* amounting to ₹2.95 Crores to 960 investors as on September 30, 2011.

4.1 In the context of the abovementioned details of the *Offer of Redeemable Preference Shares and the Offer of NCDs*, the issue for determination in the instant matter is whether the mobilization of funds by ALSL through the aforesaid, is in accordance with the

provisions of the SEBI Act, 1992 ("**SEBI Act**"), the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("**DIP Guidelines**") read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("**Debt Securities Regulations**"); the Companies Act, 1956.

- 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. Construction of reference to offering shares or debentures to the public, etc.

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, 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.

OFFER OF REDEEMABLE PREFERENCE SHARES –

- a. Under the *Offer of Redeemable Preference Shares*, it is observed that during the Financial Years 2007–08 to 2011–12, ALSL allotted *redeemable preference shares* to 6842 individuals/investors and mobilized funds amounting to approximately ₹6.22 Crores. 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 2007–08 to 2011–12 (details provided in Table at paragraph 3(v) of page 3), would *prima facie* indicate that such *Offer* was a public issue of securities and *prima facie* indicate 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.

OFFER OF NCDs –

- b. Under the *Offer of NCDs*, it is observed from Form 20B (filed by ALSL for the year ended March 31, 2011), that the company has issued *NCDs* amounting to ₹2.95 Crores to 960 investors as on September 30, 2011. The number of investors to whom allotments were made under the such *Offer* alongwith the amount mobilized therein would *prima facie* indicate that the *Offer of NCDs* was a public issue of securities and that the number of persons to whom such *Offer* was made, was way above the limit of forty–nine persons as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956.
- c. It is observed that ALSL 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 ALSL is

not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.

- d. In view of the above, the *Offer of Redeemable Preference Shares* and *Offer of NCDs* by ALSL, would *prima facie* qualify as public issues under the *first proviso* to Section 67(3) of the Companies Act, 1956. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

4.4 I note that –

- i. From the abovementioned, it will follow that since the *Offer of Redeemable Preference Shares* and *Offer of NCDs* are 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 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 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 *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 Redeemable Preference Shares* 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 the provisions of Sections 73(2) and 73(3) of that Act.
- iv. In the facts of the instant case, it *prima facie* appears that ALSL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of Redeemable Preference Shares*.

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 *prima facie* made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, ALSL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. I find that there is no evidence on record to indicate whether or not ALSL has complied with the provisions of Section 60 of Companies Act, 1956. In view of the same, I find that ALSL has *prima facie* 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 ALSL 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 *Sahara Case*, "*DIP Guidelines had statutory force since they were framed by SEBI in exercise of its powers conferred on it under Sections 11 and 11A of the SEBI Act. Powers have been conferred on SEBI to protect the interests of the investors in securities and regulate the issue of prospectus, offer documents or advertisement soliciting money through the issue of prospectus. Section 11 of the Act, it may be noted has been incorporated, evidently to protect the interests of investors whose securities are legally required to be listed. DIP Guidelines were implemented by SEBI with regard to the listed and unlisted companies, which made public offer, until it was replaced by ICDR 2009*". In this regard, I observe *prima facie* that the ALSL has not complied with the following provisions of the DIP Guidelines in respect of the *Offer of Redeemable Preference Shares* –

- 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."

4.9.1 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 ALSL has not complied with the provisions of Section 117B of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

4.9.2 Based on the material available on record (i.e. Balance Sheet for the year ended March 31, 2011), I find that ALSL has created Debenture Redemption Reserve for the Financial Years ending March 31, 2010 and March 31, 2011.

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 ALSL, 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.*

4.11 Upon a consideration of the aforementioned paragraphs, I am of the view that ALSL is *prima facie* 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, Section 117B, Section 117C) read with the Debt Securities Regulations.

- 5.1 From the material available on record, it is observed that ALSL created a charge for an amount of ₹1.20 Crores on March 15, 2010 (which was subsequently modified to ₹3.20 Crores) and appointed *Shri Dilip Mukherjee and Shri Soumen Chatterjee* as Debenture Trustees 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*".
- 5.3 In addition, 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."*
- 5.4 Based on the material available on record, I find that *Shri Dilip Mukherjee and Shri Soumen Chatterjee* have acted as unregistered Debenture Trustees, 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 deems 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 (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 ALSL and no investors are defrauded. In light of the facts in the instant matter, I find that there is no other alternative but to take recourse through an interim action against ALSL and its

Directors, 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. Shri Prakash Chandra Panda and Smt. Antara Mukherjee who were earlier Directors in ALSL, have since resigned.
8. 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, hereby issue the following directions –
 - i. ALSL (PAN: AAFCA5687H) shall not mobilize 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. ALSL and its past and present Directors, viz. Shri Simanta Roy (PAN: AFVPR5832F; DIN: 01512713), Shri Sourav Roy (PAN: AFBPR4794Q; DIN: 01693060), Smt. Priyanka Roy (PAN: BEJPR5386E; DIN: 05140505), Smt. Antara Mukherjee (PAN: ATFPM5403K; DIN: 01512672) and Shri Prakash Chandra Panda (PAN: AQXPP3171E), 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. ALSL and its 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. ALSL shall provide a full inventory of all its assets and properties;
 - v. ALSL's past and present Directors shall provide a full inventory of all their assets and properties;
 - vi. ALSL 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. ALSL 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 ALSL;

- viii. ALSL and its abovementioned past and present Directors shall furnish complete and relevant information (as sought by SEBI letters dated June 17, 2014 and June 18, 2014), within 21 days from the date of receipt of this Order.
- ix. The Debenture Trustees, viz. *Shri Dilip Mukherjee and Shri Soumen Chatterjee*, are prohibited from continuing with their assignment as debenture trustees in respect of the *Offer of NCDs* of ALSL 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.
9. The above directions shall take effect immediately and shall be in force until further orders.
- 10.1 The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. the abovementioned complaint dated May 21, 2014 and information obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*. In this context, ALSL 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.
- 10.2 Similarly, the Debenture Trustees, viz. *Shri Dilip Mukherjee and Shri Soumen Chatterjee*, 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 of an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
11. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against ALSL and its abovementioned Directors; its Debenture Trustees, viz. *Shri Dilip Mukherjee and Shri Soumen Chatterjee*, in accordance with law.

Place: Mumbai
Date: March 11, 2015

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