

**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 Equinox Infratech Limited; its Directors, viz. Mr. Prabir Chakraborty (DIN: 02554575, PAN: AGUPC5743L), Mr. Prasanta Chakraborty (DIN: 02635832, PAN: AFSPC3088H), Mr. Sandeep Chatterjee (DIN: 06638175, PAN:ADQPC6260P), Mr. Rahul Kumar Shahi (DIN: 06581058, PAN: BQEPS6886B), Mr. Nandalal Balti (DIN:03281227, PAN:ASEPB1952G) and its Debenture Trustee, viz. Equinox Debenture Trust (represented by its trustee viz. Mrs. Arpita Chakraborty (PAN: AOVPC0295E)).

1. Securities and Exchange Board of India ("**SEBI**") received a complaint dated July 25, 2013 alleging that Equinox Infratech Limited (hereinafter referred to as '**Equinox**' or '**the company**') is illegally raising money from general public through the issuance of debentures. The complainant also provided a copy of brochure cum application for the said issuance of *Non-Convertible Redeemable Secured Debentures ('NCRSDs')* by Equinox.
- 2.1 SEBI vide e-mail dated August 25, 2013 received one more complaint against 'Equinox Group' alleging the illegal raising of funds by them.
- 2.2 As a part of preliminary inquiry, SEBI vide letter dated August 26, 2013 advised Equinox Group to explain the schemes operated by them. SEBI also sent a reminder letter dated October 11, 2013.
- 2.3 SEBI received a reply on October 25, 2013 from Equinox Infratech Ltd signed by its Director Mr. Prasanta Chakraborty. Equinox vide the said letter submitted that there is no such company named as Equinox Group but a few companies under the name of Equinox and sought a specific name of the company for which the information is needed. SEBI vide letter dated October 28, 2013 once again forwarded a copy of the letter dated August 26, 2013 and advised them to furnish the information at the earliest.

- 2.4 Equinox vide letter dated November 20, 2013 submitted "*We would like to bring to your attention that we have issued Debentures of the company purely on a private placement basis.*"
- 2.5 Thereafter, SEBI vide letter dated November 27, 2013 and November 28, 2013 advised Equinox to furnish *inter alia* the following information in respect of the *Offer of NCRSDs*, viz. –
- i. Copy of the Memorandum of Association of the company;
 - ii. Copy of offer document/offer letter in respect of issue of said Non-convertible Redeemable Secured Debentures (NCRSDs);
 - iii. Confirmation of compliance with the provisions of Section 117B of the Companies Act, 1956;
 - iv. Copies of all the documents filed with the Registrar of Companies ('RoC') in relation to issue of said NCRSD;
 - v. Details of NCRSD issued till date in the given format;
 - vi. Copies of annual reports of Equinox for last 5 financial Years;
 - vii. Confirmation of whether the provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 have been complied with in the issue of said NCRSD;
 - viii. Details of past and present shareholders;
 - ix. Details of past and present directors of Equinox, its group companies and associate companies in the given format.
- 2.6 Equinox vide its letter dated December 06, 2013 submitted "*the Debentures being issued by us are only to friends, associates and relatives of promoters and as such are purely on 'Private Placement' basis. We do not have a formal 'Offer Document' and the forms for debentures are issued only to 'Specific Persons' and are not transferable.*"

Equinox also provided *inter alia* the following documents/information, viz.:

- i. Details of present directors of the company
- ii. Details of present shareholders of the company
- iii. Copy of Form 10
- iv. Copy of Deed of Mortgage and copy of Debenture Trust

- 2.7 SEBI vide letter dated December 26, 2013, SEBI once again sought information (a format was also given) about NCRSDs issued by Equinox along with the point-wise reply of queries raised in earlier letter dated November 28, 2013. Equinox vide letter dated December 24, 2013 provided Memorandum and Articles of Association of the company and audited accounts of the company for the years ended March 31, 2012 and March 31, 2013. However, the company did not provide the details of NCRSDs issued by it. Thereafter, SEBI vide reminder letters dated February 13, 2014 and July 09, 2014 advised them to send the requisite information at the earliest.
- 2.8 Equinox vide its letter dated July 22, 2014 submitted *"Debentures have been issued within closed circle of friends, relatives and associates of promoters, directors and employees and associates of company purely and entirely on private placement basis. At no point of time were the Debentures offered to the public. Further we would also like to inform you that the said debentures are fully secured and are being regularly redeemed as per terms of issue of the said debentures, The company has decided that no further debentures shall be issued and all redemption shall be made on due dates or earlier, if possible, depending on the liquidity available with the company and the directors confirm that all redemptions shall be made on due dates."*
- Further, the company also submitted list of 883 investors from whom payment was received by Equinox for issuance of NCRSDs to them (Business ledger Account) during April 2013 to December 31, 2013.
- 2.9 Meanwhile, SEBI received one more complaint dated August 05, 2014 enclosing a copy of another brochure. It is noted from copies of brochures provided by complainants vide e-mail dated July 25, 2013 and vide letter dated August 05, 2014 that Equinox issued two different brochures with different schemes for issuance of NCRSDs.
- 2.10 SEBI also conducted physical verification of Equinox's registered office address at Gwalior on October 15, 2014. During the visit it was noted that the company was not existing at the given address.
- 2.11 As the information submitted by the company was incomplete, SEBI vide its letters dated October 30, 2014 sent to Equinox's addresses at Kolkata and New Delhi once

again advised the company and its directors to provide *inter alia* the following information/documents, viz.:

- a. Details of the past and present directors of the company along with PAN and contact details.
- 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 of debentures.
- 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 person(s) to whom debentures were allotted with details including face value of debenture, number of debentures allotted, date of receipt of payment, date of allotment, distinctive number, date of charge creation in RoC and charge identification number.
- h. Amount mobilized by issue of debentures till date and amount refunded to investors till date.
- i. Information about whether the persons to whom these debentures were allotted are still the holders of these debentures. Details of debentures transferred by allottees.
- j. Name and address of debenture trustees and information about whether they are registered with SEBI.
- k. Copy of debenture trust agreement.
- l. Details of properties secured for said issue along with valuation report.
- m. Details of properties/assets acquired from money raised from said debenture issue.
- n. Address of all the branches operating in India along with collections made by each branch for FY 2012-13, 2013-14 and 2014-15 (till date).
- o. As business ledger of the company reflects large number of credits from April 2013 onwards, please explain the nature of these credits.

- p. As balance sheet of the company as on March 31, 2013 reflects that noncurrent assets includes Rs. 21,52,785/- as 'Advance to Agents', provide names of agents and yearly brokerage/commission paid to them.
 - q. Audited balance sheets for FY 2013-14.
 - r. As balance sheet of the company as on March 31, 2013 reflects that current liabilities includes 'Advance against Products' of Rs. 5,02,44,316/-, provide the nature of these advances, names/addresses of investors, period of investment, quantity of products, funds invested and expected amount of maturity.
 - s. Details of the regulatory approvals obtained by the company, if any, for said debenture issue.
 - t. Details of other fund raising from public in form of debentures/ or other manner (if any) by the company or its group/associates company.
 - u. Details of any action initiated/ taken by any other authority (including any court order) against the company in respect of money raised from public.
- 2.12 Equinox vide letter dated November 07, 2014 submitted that the requisite details are under preparation and sought some more time to provide the information/documents. SEBI vide letter dated November 19, 2014 granted an additional time till December 01, 2014 to submit the requisite information. Equinox vide letter dated November 28, 2014 provided a list of 1198 investors who made payments through cheques during April 02, 2013 till February 01, 2014 towards subscription of the debentures.
- 2.13 SEBI vide letter dated December 10, 2014 informed Equinox that the details of investors submitted by them are not in the format required by SEBI. Further, the company had provided an unsigned list of investors containing day-wise details of amount received from them. Equinox was also informed that details for prior to and subsequent to the period April 01, 2013 to February 01, 2014 are not provided, names of allottees are missing at many places in the list provided by them and that the list also does not contain information about number of debentures allotted and their folio numbers. Further, as information sought by SEBI vide letter dated October 30, 2014 was not provided by Equinox, a final opportunity to submit requisite information by December 17, 2014 was given to Equinox. These letters were sent to Equinox's office

addresses at Kolkata, New Delhi and 24 Parganas (N). Letter sent to Equinox's office at 24 Parganas (N), West Bengal returned undelivered by postal authorities.

- 2.14 Subsequently, Equinox vide letter dated December 17, 2014 provided a CD containing a list of investors who made payment to the company for subscribing to its debentures by cash and by cheque. In addition, Equinox provided a list of 1218 clients to whom repayments were stated to have been made by the company through cheque during the period 2013-14, though, no evidence is provided to substantiate the refunds made by the company. The company also provided details of 25 branches of Equinox.
- 2.15 Efforts were also made to obtain the information from Ministry of Corporate Affairs' Website i.e. MCA21 portal.
3. The material available on record i.e. correspondence exchanged between SEBI and Equinox along with the documents contained therein; information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'; complaints received and the documents enclosed along with have been perused. On an examination of the same, it is observed that –
- i. Equinox was incorporated on September 12, 2011 with the RoC, Gwalior with CIN No. as U70101MP2011PLC026741 having its registered office at 44, Kailash Vihar, 13 City Centre, Gwalior, Madhya Pradesh, India- 474011.
 - ii. The current Directors of Equinox are Mr. Prabir Chakraborty, Mr. Prasanta Chakraborty, Mr. Sandeep Chatterjee. Mr. Nandalal Balti (till March 11, 2013) and Mr. Rahul Kumar Shahi (till July 15, 2013) were former directors of Equinox.
 - iii. It is observed from the copy of the Debenture Trust Deed that the Board of Directors of the company passed a resolution in the meeting of the Board held on December 05, 2011 "*to raise a sum of Rs. 50 Crores by issue of 50,00,000 fully secured debentures non-convertible of Rs.100/- (or debenture of any other face/nominal value like Rs.1000/- each etc. as agreed by Company and Trustee such that aggregate value of all debentures issued should not exceed 50 Crores), to be issued in tranches on private placement basis bearing interest at 11.5% (approx.) or more/less as decided by the Board of Directors having different redemption period between 1 year to 25 years or such years as decided in the Meeting of Board of Directors.*" The name of debenture trust is "Equinox Debenture Trust" (represented

by trustee Mrs. Arpita Chakraborty, wife of Mr. Prasanta Chakraborty) and the office of the trust is situated at 225/1, R.B.C. Road, Naihati, District 24-Pargana (North), West Bengal- 743165.

- iv. It is mentioned in a copy of the brochure cum application form provided by the complainant vide e-mail dated July 25, 2013 that Equinox is offering NCRSDs on a private placement basis under the following terms and conditions:

SCHEME -1 MULTIPLIER NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURES						
Plan	AA	AB	A	A1	B	C
No. of Debentures	12	24	36	60	84	120
Issue Price	1200	2400	3600	6000	8400	12000
Redemption Value	1350	2850	4900	9800	17000	34300
Bonus	25	50	100	300	500	700
Redemption Period	15 months + 1 day	27 months + 1 day	39 months + 1 day	63 months + 1 day	87 months + 1 day	123 months + 1 day

SCHEME -2 MULTIPLIER NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURES							
Plan	DD	DE	D	E	F	G	H
Minimum No. of Debentures to be applied	10	10	10	10	10	10	10
Issue Price	1000	1000	1000	1000	1000	1000	1000
Redemption Value	1150	1350	1500	2150	2800	4400	10000
Redemption Period	12 months	24 months	3 Years	5 Years 6 months	7 Years	10 Years	15 Years

SCHEME-3 MULTIPLIER NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURES			
Min. No. of debentures to be applied	100	100	100
Issue Price	10000	10000	10000
Interest Payable per month	100	125	150
Bonus (at the time of redemption)	7%	10%	12.5%
Bonus for Sr. Citizen (at the time of redemption)	0.15%	0.25%	0.35%
Redemption Value	10000	10000	10000
Redemption Period	36 months	66 months	120 months

- v. It is mentioned in a copy of the brochure provided by the complainant vide letter dated August 05, 2014 that Equinox is offering NCRSDs on a private placement basis under the following terms and conditions:

Scheme: Multiplier Non-convertible Redeemable Secured Debenture - RD
(Issued Price Rs. 100 each Debenture)

Plan- I

No. of Deb. Applied	Period						Redeemable Amount					
	12M	24M	36M	60M	84M	120M	12M + 3M + 1D	24M + 3M + 1D	36M + 3M + 1D	60M + 3M + 1D	84M + 3M + 1D	120M + 3M + 1D
1	1200	2400	3600	6000	8400	12000	1375	2900	4900+100	9800+300	17000+50	34300+700
2	2400	4800	7200	12000	15800	24000	2750	5800	9800+200	19800+500	34000+100	68000+1400
3	3600	7200	10800	18000	25200	36000	4125	8700	14700+300	29400+900	51000+1500	102900+2100
4	4800	9600	14400	24000	33600	48000	5500	11600	19600+400	39200+1200	68000+2000	137200+2800
5	6000	12000	18000	30000	42000	60000	6875	14500	24500+500	49000+1500	85000+2500	171500+3500
10	12000	24000	36000	60000	84000	120000	13750	29000	49000+1000	98000+3000	170000+5000	343000+7000
& Above												

Scheme: Multiplier Non-Convertible Redeemable Secured Debenture - FD
(Issued Price Rs. 100 each Debenture)

Plan- II (One Time)

No. of Debenture Applied	Amount	Redeemable Amount						
		1 Yrs	2 Yrs	3 Yrs	5 Yrs 6 months	7 Yrs	10 Yrs	15 Yrs
10	1000	1150	1350	1500	2150	2800	4400	10000
20	2000	2300	2700	3000	4300	5600	8800	20000
30	3000	3450	4050	4500	6450	8400	13200	30000
50	5000	5750	6750	7500	10750	14000	22000	50000
100	10000	11500	13500	15000	21500	28000	44000	100000
200	20000	23000	27000	30000	43000	56000	88000	200000
500	50000	57500	67500	75000	107500	140000	220000	500000
1000	100000	115000	135000	150000	215000	280000	440000	1000000
& Above								

Scheme: Multiplier Non-Convertible Redeemable Secured Debenture - MIS
(Issued Price Rs. 100 each Debenture)

Plan- III

No. of Debenture Applied	Amount	Interest Payable			Bonus		
		36M	66M	120M	36M	66M	120M
100	10000	100	125	150	7%	10%	12.50%
200	20000	200	250	300	7%	10%	12.50%
300	30000	300	375	450	7%	10%	12.50%
500	50000	500	625	750	7%	10%	12.50%
1000	100000	1000	1250	1500	7%	10%	12.50%
& Above							

- vi. It is also observed from the information provided by Equinox vide letter dated December 17, 2014 that Equinox allotted NCRSDs during FY 2013-14 to 1,02,844 allottees and mobilised funds amounting to Rs. 12.47 Crores . The Details of the same are as under-

	Payment by cash	Payment by Cheque	
	FY 2013-14		Total
Total no. of Allottees	1,01,626	1,218*	1,02,844
Amount Mobilised in FY 2013-14 (in Rs.)	10,36,36,940	2,10,37,868	12,46,74,808

* Including 89 blank entries where the amount deposited by cheque is Rs.36,04,133/- and 84 entries (Amounting to Rs.13,07,377/-) where name is mentioned as 'so many entries against same cheque number'.

4. In the context of the abovementioned details of the Offer of NCRSDs, the issue for determination in the instant matter is whether the mobilization of funds by Equinox through the aforesaid Offer, is in accordance with the provisions of the SEBI Act, 1992 ("SEBI Act") read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("Debt Securities Regulations"); the Companies Act, 1956.
5. The jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, whether listed or unlisted, when they issue and transfer securities at the relevant time flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in ***Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)*** (hereinafter referred to as the "***Sahara Case***"), had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

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

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

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

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

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

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

...

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

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

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *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 NCRSDs 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. It is noted from the table at paragraph 3 (vi) above that Equinox issued NCRSDs to 1,02,844 allottees and mobilized Rs.12.47 Crores during FY 2013-14. NCRSDs have thus been issued and subscribed several times over the threshold for a private placement i.e. 49 persons. Equinox vide letter dated December 06, 2013 that debentures were being issued on a private placement basis. The company has not provided any documents to substantiate their claim that the said issue of debentures is a private placement. Merely mentioning that an issue is on a private placement basis does not make it such. Based on the facts available in this case, including in particular the number of persons to whom the NCRSDs have been issued by Equinox, the only conclusion can be that this issue was nothing but a public issue of securities in terms of provisions of Section 67(3) of the Companies Act, 1956.

- a. Equinox 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).
- b. 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 NCRSDs* 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 subsection (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

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

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the

company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2); and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees."

- ii. In the *Sahara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed :

"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 NCRSDs* 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 Equinox has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCRSDs*.
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 NCRSDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, Equinox 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 Equinox has filed a prospectus. In view of the same, I find that *prima facie*, Equinox 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

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

Section 12(1) of the SEBI Act states : "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Equinox Debenture Trust (represented by its trustee viz. Mrs. Arpita Chakraborty) are not registered with SEBI. Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("**Debenture Trustees Regulations**"), provides that: "*no person should act as a debenture trustee unless he is either –*

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

Based on the material available on record, I find that Equinox Debenture Trust (represented by its trustee viz. Mrs. Arpita Chakraborty) has *prima facie*, failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.

11. Further, under Section 117C of the aforesaid Act, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. Based on the material available on record, I find that Equinox

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 Equinox, through the *Offer of NCRSDs*, 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 Equinox is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCRSDs* 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, 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 Regulations. Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by Equinox and no investors are defrauded. This is especially so in view of large number of investors and the amounts collected from them. In light of the same, I find there is no other alternative but to take recourse through an interim action against Equinox and its Directors alongwith its Debenture Trustee, viz. Equinox Debenture Trust (represented by its trustee viz. Mrs. Arpita Chakraborty), for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCRSDs*.
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. Equinox shall forthwith cease to mobilize any fresh funds from investors through the *Offer of NCRSDs* 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. Equinox and its Directors, viz. Mr. Prabir Chakraborty (DIN: 02554575, PAN: AGUPC5743L), Mr. Prasanta Chakraborty (DIN: 02635832, PAN: AFSPC3088H), Mr. Sandeep Chatterjee (DIN: 06638175, PAN:ADQPC6260P), Mr. Rahul Kumar Shahi (DIN: 06581058, PAN: BQEPS6886B) and Mr. Nandalal Balti (DIN:03281227, PAN:ASEPB1952G), 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. Equinox 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. Equinox shall provide a full inventory of all its assets and properties;
 - v. Equinox's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. Equinox 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 NCRSDs*, without prior permission from SEBI;
 - vii. Equinox and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of NCRSDs*, which are kept in bank account(s) and/or in the custody of Equinox;
 - viii. Equinox shall furnish complete and relevant information within 21 days from the date of receipt of this Order.
 - ix. The Debenture Trustee, viz. Equinox Debenture Trust (represented by its trustee viz. Mrs. Arpita Chakraborty), is prohibited from continuing with his present assignment as a debenture trustee in respect of the *Offer of NCRSDs* of Equinox 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 Equinox along with the documents contained therein; information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'; complaints received and the documents enclosed along with. In this context, Equinox and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:
- i. Directing them jointly and severally to refund money collected through the Offer of NCRSDs along with interest, if any, promised to investors therein;

- ii. Directing them to not issue 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, for an appropriate period;
 - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
18. Equinox and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
19. Similarly, the Debenture Trustee, viz. Equinox Debenture Trust (represented by its trustee viz. Mrs. Arpita Chakraborty), may, within 21 days from the date of receipt of this Order, file his reply, if any, to this Order and may also indicate whether she desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
20. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Equinox and its abovementioned Directors; its Debenture Trustee, viz. Equinox Debenture Trust (represented by its trustee viz. Mrs. Arpita Chakraborty), in accordance with law.

Place: Mumbai
Date: March 30, 2015

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