

**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 Cemendia Infrastructures Limited (CIN: U45200MP2011PLC026270; PAN: AAEECC5229J) and its Directors, viz. Shri Rabishankar Basu (DIN: 02888553; PAN: AIXPB3056C), Shri Byomkesh Das (DIN: 06684342; PAN: AGVPD9209K), Shri Rahul Chatterjee (DIN: 07102240; PAN: AZMPC2370A), Shri Pranesh Debnath (DIN: 06567065; PAN: AQLPD9139L), Shri Sanjay Das (DIN: 06567078; PAN: BEYPD4346D), Shri Radhashyam Manna (DIN: 06695890; PAN: BAAPM8405Q), Shri Amitava Koley (DIN: 06684338; PAN: BDQPK1075F), Shri Dhananjay Chakraborty (DIN: 06684824; PAN: AODPC0097C), Shri Ashok Maji (DIN: 06691471; PAN: BADPM1727J), Shri Tapas Dey (DIN: 06691481; PAN: ASPPD7921E), Smt Anita Ghosh Chowdhury (DIN: 01944916; PAN: AFNPC5967Q), Shri Subrata Samanta (DIN: 01945150; PAN: BAZPS4721C), Shri Gora Chand Sarkar (DIN: 01945219; PAN: BFOPS6023M), Shri Sunipa Das (DIN: 06567079; PAN: AVQPD8818E), Shri Sanjal Kanti Das (DIN: 06567074; PAN: AVLPD3177H), Shri Laxman Chandra Ghosh (DIN: 03567767; PAN: AJZPG9480E), Shri Goutam Mukherjee (DIN: 05191808; PAN: BBGPM6355J) and its Debenture Trustee, viz. Cemendia Debenture Trust (represented by Smt Aparajita Dey)

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a reference vide letter No. 5938 dated October 29, 2013 from the Registrar of Companies (RoC), Madhya Pradesh & Chhattisgarh, Gwalior, stating therein that certain companies including Cemendia Infrastructures Limited (hereinafter referred to as “Cemendia”/ or “the company”) had issued secured debentures on “private placement” basis to more than 49 subscribers. RoC also indicated that prosecution had been filed on September 20, 2013 at the Hon’ble CJM Court at Gwalior.
- 2.1 As a matter of preliminary inquiry, SEBI, vide letters dated December 06, 2013 advised Cemendia and its Directors, viz. Shri Pranesh Debnath, Shri Sanjay Das, Shri Radhashyam Manna, Shri Amitava Koley, Shri Dhananjay Chakraborty, Shri Ashok Maji and Shri Tapas Dey to furnish *inter alia* the following information in respect of collection of funds through issue of debentures, viz.—

- a. Details of the past and present directors of the company, including details of name, address, PAN and contact numbers;
 - b. Nature of activities being conducted;
 - c. Date of opening and closing of the issue;
 - d. Copy of minutes of EGM and board meeting approving allotment of debentures;
 - e. Brochures/advertisement pertaining to debenture issued made available to the public;
 - f. Copies of duly filled application forms received from investors/applicants;
 - g. Name, address of each investor, date of receipt of payment, amount received for 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. If brokers were employed, details and brokerage paid;
 - k. Certified copies of audited financial statements for all the financial years during which funds were raised till 2012-2013 and trial balance for 2013-14;
 - l. Copies of Income Tax return filed for the years referred at k above;
 - m. Details of regulatory approvals obtained;
 - n. Details of fund raising from public in form of debentures/ or any other manner by Cemendia or group/associates;
 - o. Details of action initiated/taken by any other authority against Cemendia.
- 2.2 Acknowledgements were received from two of the Directors, viz. Shri Sanjay Das and Shri Dhananjay Chakraborty. The letters sent to Cemendia's registered office and to other Directors (except Shri Radhashyam Manna) were returned undelivered by the postal authorities.
- 2.3 SEBI vide letter dated December 10, 2013 requested RoC to provide information with regard to issuance of debentures by Cemendia. In response, RoC vide letters dated December 19, 2013 and December 31, 2013 provided *inter alia* copies of Form 10 filed towards registration of charges for debentures by Cemendia, the reply dated December 28, 2012 submitted by Cemendia to RoC on said debenture issue along with the documents annexed thereto, viz., list of allottees as on March 31, 2012, Trust Deed, bank account statements, etc.

- 2.4 SEBI vide letters dated March 20, 2014 again advised Cemendia (letters sent to Cemendia's registered office and office in Kolkatta) and its Directors to submit the information sought vide letter dated December 06, 2013. The letters sent to Cemendia, Shri Tapas Dey and Shri Amitava Koley were returned undelivered by the postal authorities.
- 2.5 Thereafter, SEBI received letters from four of the Directors, viz. Shri Ashok Maji, Shri Amitava Koley, Shri Dhananjay Chakraborty and Shri Tapas Dey in March 2014, wherein it was informed as follows:
- a. They have resigned from directorship of the company.
 - b. They were directors from October to December 2013.
 - c. During their directorship period, the company did not collect any fund by issuing Debentures.
 - d. Due to unavailability of records, they are not able to give any information and documentary evidence regarding SEBI's queries.
 - e. All Debentures were issued prior to 31.03.2012 during the directorship of their ex-promoter directors (i) Smt Anita Ghosh Chowdhury, A-2/1, Diamond Park, Kolkatta (ii) Shri Subrata Samanta, 15A, Nabalia Para Road, Kolkatta (iii) Shri Gora Chand Sarkar, Samudragarh, Purbasthali, District Burdwan, West Bengal.
- As on date no reply has been received from the company or any of the other Directors.
- 2.6 SEBI also received letter dated April 01, 2014 from Shri Pranesh Debnath wherein *inter alia* he stated that he had not signed any paper of Cemendia and does not know how he had been indicated as Director of Cemendia.
3. I have perused the material available on record i.e. the reference received from RoC, Gwalior and information/documents provided by RoC, Gwalior, correspondence exchanged between SEBI, Cemendia and its Directors and information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'. On an examination of the same, it is observed that—

- i. Cemendia was incorporated on June 28, 2011 with the RoC, Gwalior under CIN U45200MP2011PLC026270 and is having its registered office at C/o Shashank Sheorey, Sheorey Niwas, 673, Tilak Bhumi, Talaiya, Bhandarpara, Jabalpur, Madhya Pradesh 482002.
- ii. The present Directors in Cemendia w.e.f. March 20, 2015 are Shri Rabishankar Basu (DIN: 02888553; PAN: AIXPB3056C), Shri Byomkesh Das (DIN: 06684342; PAN: AGVPD9209K) and Shri Rahul Chatterjee ((DIN: 07102240; PAN: AZMPC2370A).
- iii. The past Directors in Cemendia as obtained from 'MCA 21 Portal' are as under:

Name of Director	DIN	PAN
Shri Pranesh Debnath	06567065	AQLPD9139L
Shir Sanjay Das	06567078	BEYPD4346D
Shir Radhashyam Manna	06695890	BAAPM8405Q
Shri Ashok Maji	06691471	BADPM1727J
Shri Amitava Koley	06684338	BDQPK1075F
Shri Dhananjay Chokroborty	06684824	AODPC0097C
Shri Tapas Dey	06691481	ASPPD7921E
Shri Goutam Mukherjee	05191808	BBGPM6355J
Shri Sunipa Das	06567079	AVQPD8818E
Shri Sajal Kanti Das	06567074	AVLPD3177H
Shri Laxman Chandra Ghosh	03567767	AJZPG9480E
Smt Anita Ghosh Chowdhury	01944916	AFNPC5967Q
Shri Subrata Samanta	01945150	BAZPS4721C
Shri Gora Chand Sarkar	01945219	BFOPS6023M

- iv. A perusal of Form 10 shows that the debenture issue was of ₹10 crores. In this regard, a charge of ₹10 crores was created on the properties of Cemendia on July 04, 2011 and the charge holder is Cemendia Debenture Trust. The Form 10 was signed by Smt Aparajita Dey, as Debenture Trustee and Shri Gora Chand Sarkar, Director of Cemendia. The e-filing of form was on July 11, 2011 and registered with the RoC on July 12, 2011.

- v. It is noted from the copy of Trust Deed enclosed with the reply of Cemendia to RoC that a Debenture Trust Deed dated July 04, 2011 was signed between Cemendia and the Debenture Trustee. As per the Trust Deed, it is indicated *inter alia* “the company have decided by a resolution passed by the Board of Directors in the meetings of the Board held on July 01, 2011 and July 04, 2011 to raise a sum of Rs.10 crores by issue of Debentures of Rs.100/- each, bearing interest as specified in Schedule I framed in accordance with the forms set forth in the Schedule II hereto and secures the same by mortgaging with the trustees the properties described in the Schedule III hereto.”
- vi. As per the Schedule I of Debenture Trust Deed, the plans offered by Cemendia were as below:-

Scheme I NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE

Plan	CFD-1	CFD-2	CFD-3	CFD-4	CFD-7	CFD-10	CFD-14
Redemption period	15 months + 1 day	2 years	3 years	4 years + 10 months	7 years	10 years	14 years
No.of Debenture applied							
Amount Per Debenture of Rs.100 (Minimum number of Debentures to be applied 10 Nos.)							

Scheme II NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE

Plan	CMID 2	CMID 3	CMID 4
Redemption period	2 years	3 years	4 years + 10 months
No.of Debenture applied			
Amount Per Debenture of Rs.100/- (Minimum no. of Debentures to be applied 100 Nos.)			

Scheme III NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE

Plan	CID 1	CID 2	CID 3	CID 5
Redemption period	15 months + 1 day	27 months + 1 day	39 months + 1 day	63 months + 1 day
No.of Debenture applied				
Amount Per Debenture of Rs.100/- (Minimum no. of Debentures to be applied 12 Nos.)				

- vii. In Schedule III of the Debenture Trust Deed, all the present and future assets wherever situated of the company were mortgaged to secure the Debenture.

- viii. As per Cemendia's reply to RoC vide letter dated December 28, 2012, Cemendia has *inter alia* informed that :

“

Modus Operandi of Collection of Funds:

The Debenture has been placed within closely held groups without any contravention of any relevant Sections and no offer has been made to more than 49 persons at any point of time, neither the Debenture has been offered to public.

List of Allottees:

List of allottees till 31/03/2012 has been attached as “Annexure-A”.

Funds Collected:

Total Collection of Funds till 31/03/2012 is Rs.1,30,96,105.00”

- ix. Cemendia had provided its bank account statement with Indusind Bank, Burra Bazar Branch, Tagore Street, Kolkatta. It is noted from the bank statement that address of Cemendia is 8E, James Hickey, Sarani, 1st Floor, Kolkatta-700069.
- x. As per the List of Allottees submitted by Cemendia, the details of allotment were as follows:

Sr.No.	Date of allotment	No.of allottees	Value of allotment (₹)
1	April 01, 2011	44	266400
2	April 03, 2011	42	480000
3	April 06, 2011	34	293600
4	April 07, 2011	28	525600
5	April 15, 2011	34	290800
6	April 19, 2011	41	204000
7	April 27, 2011	36	187400
8	April 28, 2011	48	405600
9	April 30, 2011	44	222400
10	April 30, 2011	46	309600
11	May 07, 2011	45	331000
12	May 07, 2011	44	218400
13	May 16, 2011	33	272900
14	May 20, 2011	48	325000

15	May 24, 2011	42	259200
16	May 27, 2011	46	275080
17	May 30, 2011	48	301200
18	May 31, 2011	41	176400
19	June 6, 2011	45	221800
20	June 14, 2011	35	204600
21	June 20, 2011	36	326000
22	June 23, 2011	40	214800
23	June 25, 2011	30	256800
24	June 28, 2011	45	242600
25	June 29, 2011	43	225600
26	June 30, 2011	45	268800
27	June 30, 2011	36	477600
28	July 07, 2011	44	320200
29	July 16, 2011	44	288000
30	July 20, 2011	49	211200
31	July 23, 2011	48	232800
32	July 27, 2011	46	256600
33	July 28, 2011	43	366000
34	July 29, 2011	30	314550
35	August 27, 2011	45	324400
36	September 14, 2011	46	375800
37	October 31, 2011	22	341400
38	November 06, 2011	46	319200
39	November 30, 2011	23	159400
40	December 31, 2011	33	466800
41	March 31, 2012	47	1336575
	Total	1665	13096105

xi. As per the details mentioned above, Cemendia had allotted *Non-Convertible Redeemable Secured Debentures* ("*Offer of NCDs*") amounting to approximately ₹1.31 Crores during the financial year 2011-12 to 1665 investors.

4. In the context of the abovementioned details of the *Offer of NCDs*, the issue for determination in the instant matter is whether the mobilization of funds by Cemendia through the aforesaid, 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. I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, 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 *Sahara Case* observed that:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. ...

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

- iii. In the instant matter, for ascertaining whether the *Offer of NCDs* is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.
- a. Although the *Offer of NCDs* is stated to have been placed within close group and not to the public, it is observed from the details submitted by Cemendia vide letter dated December 28, 2012 that Cemendia had allotted *Non-Convertible Redeemable Secured Debentures* amounting to ₹1.31 Crores during the financial year 2011-12 to 1665 investors. It is noted that Cemendia had made frequent allotments (ten allotments in the month of April 2011, eight allotments in the month of May 2011, nine allotments in the month of June 2011, seven allotments in the month of July 2011 etc.) and all allotments were made to less than 49 investors. Allotments were made twice on the same day on April 30, 2011, May 07, 2011 and June 30, 2011. The manner in which the allotments were made by Cemendia clearly indicates that these multiple allotments were made only to camouflage the issuance of *Non-Convertible Redeemable Secured Debentures* as a private placement. The fact, however, remains that *prima facie* this was a single issue of debentures by Cemendia.
- b. It is also noted from the names and addresses of allottees provided by Cemendia that 118 allottees are from the state of Assam, Tripura, Bihar and Odissa and rest of the allottees are from West Bengal. It is further noted that out of total allottees, 884 allottees are from various villages of West Bengal and Assam. There is no evidence to suggest that such a large number of allottees are part of a close group as contended by Cemendia.
- c. Cemendia had indicated in the Debenture Trust Deed, that its Board had in its meeting held on July 01, 2011 and July 04, 2011 decided to raise ₹10 crores by issue of Debentures. Further, Form 10 (Particulars for registration of charges for debentures) was registered with RoC on July 12, 2011. However as per the date of allotment indicated in the List of Allottees submitted by Cemendia vide letter dated December 28, 2012 to RoC, it is observed that Cemendia had started raising money towards Debentures under *Offer of NCDs* from April 01, 2011 onwards, when its own Board was yet to decide of fund raising by issue of Debentures. This implies that allotments made during April to June 2011 were

not pursuant to any resolution passed by Cemendia's Board and were without any proper authorization.

- d. In view of the above stated facts, the *Offer of NCDs* by Cemendia *prima facie* qualifies as a public issue of securities 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*.
- e. In addition, Cemendia 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).
- f. 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.

7. I note that –

- i. From the abovementioned para, 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 recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.*

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

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 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 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 Cemendia has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.
8. Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the RoC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, since the *Offer of NCDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, Cemendia 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 Cemendia has filed a prospectus. In view of the same, I find that *prima facie*, Cemendia 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 Cemendia 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. 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 Cemendia has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
11. 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 Cemendia, 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(3) – *Appointment of Merchant Banker*
- vi. Regulation 4(4) – *Appointment of Debenture Trustee*
- vii. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- viii. Regulation 6 – *Filing of draft Offer Document*
- ix. Regulation 7 – *Mode of disclosure of Offer Document*
- x. Regulation 8 – *Advertisements for Public Issues*
- xi. Regulation 9 – *Abridged Prospectus and application forms*
- xii. Regulation 12 – *Minimum subscription*
- xiii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiv. Regulation 15- *Trust Deed*
- xv. Regulation 16- *Debenture Redemption Reserve*
- xvi. Regulation 17 – *Creation of security*
- xvii. Regulation 19 – *Mandatory Listing*
- xviii. Regulation 26 – *Obligations of the Issuer, etc.*

12. Upon a consideration of the aforementioned paragraphs, I am of the view that Cemendia 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.

13.1 From the material available on record, it is observed that Cemendia created a charge of ₹10 Crores on July 04, 2011 and appointed *Cemendia Debenture Trust (represented by its Trustee, viz. Smt Aparajita Dey)* as the Debenture Trustee for the *Offer of NCDs* by that company.

13.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations"), provides that: "*no person should act as a debenture trustee unless he is either –*

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

iv. *body corporate.*"

- 13.3 Based on the material available on record, I find that *Cemendia Debenture Trust (represented by its Trustee, viz. Smt Aparajita Dey)* has acted as unregistered Debenture Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee 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 Secured 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 that only legitimate fund raising activities are carried on by Cemendia and investors are not defrauded. This is especially so because of the non-cooperation on the part of Cemendia and its Directors to provide the information sought by SEBI despite granting several opportunities to do so. In the light of the same, I find there is no other alternative but to take recourse through an interim action against Cemendia and its Directors along with its Debenture Trustee, viz. *Cemendia Debenture Trust (represented by its Trustee, viz. Smt Aparajita Dey)* for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.
15. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustees Regulations, hereby issue the following directions –
- i. Cemendia shall forthwith cease to 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. Cemendia (CIN: U45200MP2011PLC026270; PAN: AA ECC5229J) and its Directors, viz. Shri Rabishankar Basu (DIN: 02888553; PAN: AIXPB3056C), Shri Byomkesh Das (DIN: 06684342; PAN: AGVPD9209K), Shri Rahul Chatterjee (DIN: 07102240; PAN: AZMPC2370A), Shri Pranesh Debnath (DIN: 06567065; PAN: AQLPD9139L), Shri Sanjay Das (DIN: 06567078; PAN: BEYPD4346D), Shri Radhashyam Manna (DIN: 06695890; PAN: BAAPM8405Q), Shri Amitava Koley (DIN: 06684338; PAN: BDQPK1075F), Shri Dhananjay Chakraborty (DIN: 06684824; PAN: AODPC0097C), Shri Ashok Maji (DIN: 06691471; PAN: BADPM1727J), Shri Tapas Dey (DIN: 06691481; PAN: ASPPD7921E), Smt Anita Ghosh Chowdhury (DIN: 01944916; PAN: AFNPC5967Q), Shri Subrata Samanta (DIN: 01945150; PAN: BAZPS4721C), Shri Gora Chand Sarkar (DIN: 01945219; PAN: BFOPS6023M), Shri Sunipa Das (DIN: 06567079; PAN: AVQPD8818E), Shri Sanjal Kanti Das (DIN: 06567074; PAN: AVLPD3177H), Shri Laxman Chandra Ghosh (DIN: 03567767; PAN: AJZPG9480E) and Shri Goutam Mukherjee (DIN: 05191808; PAN: BBGPM6355J), 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. Cemendia 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. Cemendia shall provide a full inventory of all its assets and properties;
- v. Cemendia's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. Cemendia 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. Cemendia 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 Cemendia;

- viii. Cemendia shall provide to SEBI all information regarding repayments made to the holders of *Non-Convertible Redeemable Secured Debentures* including name of the debenture holder, address, amount mobilized, number of *Non-Convertible Redeemable Secured Debentures* issued, promised maturity amount with date of maturity, amount refunded and date thereof;
 - ix. Cemendia shall furnish complete and relevant information within 21 days from the date of receipt of this Order;
 - x. The Debenture Trustee, viz. *Cemendia Debenture Trust (represented by its Trustee, viz. Smt Aparajita Dey)*, is prohibited from continuing with its present assignment as a debenture trustee in respect of the *Offer of NCDs* of Cemendia 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 Order are made on the basis of the material available on record i.e. the reference received from RoC, Gwalior and information/documents provided by RoC, Gwalior, correspondence exchanged between SEBI, Cemendia and its Directors and information/documents obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*'. In this context, Cemendia 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 Non-Convertible Redeemable Secured Debentures* along with interest, if any, promised to investors therein;
 - ii. Directing them not to 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. Cemendia and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their replies, 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. *Cemendia Debenture Trust (represented by its Trustee, viz. Smt Aparajita Dey)*, is advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining it from accessing the securities market and further restraining it from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
20. The Debenture Trustee, viz. *Cemendia Debenture Trust (represented by its Trustee, viz. Smt Aparajita Dey)* may, within 21 days from the date of receipt of this Order, file its reply, if any, to this Order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
21. This interim order cum show cause notice is without prejudice to the right of SEBI to take any other action that may be initiated against Cemendia and its abovementioned Directors; its Debenture Trustee, viz. *Cemendia Debenture Trust (represented by its Trustee, viz. Smt Aparajita Dey)* in accordance with law.

Place: Mumbai
Date: May 29, 2015

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