

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 Bhabiswajyoti Infrastructure India Limited (PAN: AAFCB0288F); its present/past Directors, viz. Mr. Pradipta Chakraborty (DIN:03092487, PAN:AJOPC7527K), Mr. Srikumar Chakraborty (DIN:06597492, PAN:AKGPC1755Q), Mr. Gopal Sharma (DIN:06475853, PAN:BAPPS0138H), Mr. Prashant Sharma (DIN:79474030, PAN:ARWPS6298R), Ms. Soma Sharma (DIN:79474719, PAN:BCVPS0290L), Mr. Arindam Mukherjee (DIN:79474032, PAN:AKAPM7973N), Mr. Mahindra Nath Chowdhury (DIN:06446998; PAN:AIXPC9631Q), Mr. Mahesh Shaw (DIN:05261332; PAN:DZHPS9150J) and its Debenture Trustee, viz. Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri).

1. Securities and Exchange Board of India ("**SEBI**") received complaints dated February 27, 2014 and March 03, 2014 from investors alleging non-repayment of their invested money in Secured Non-Convertible Redeemable Debentures ("**NCRDs**") issued by Bhabiswajyoti Infrastructure India Limited (hereinafter referred to as '**BIIL**' or '**the company**'). The complainants have also provided the brochure cum application form and sample copies of certificates of NCRDs issued by the company. One of the complainants also provided a list of some of the investors who have invested their money in NCRDs issued by the company.
2. SEBI had also received a reference dated October 29 2013 from the Registrar of Companies ("**RoC**"), Gwalior regarding BIIL stating that "*The company has failed to furnish information regarding Form-10 therefore it appears that the company has issued debentures to more than 50 persons.*" It was also stated that the RoC has issued show cause notice under sections 56(3), 60B, 67(1) & (3) and 68 of the Companies Act, 1956 to the company on September 24, 2013.
3. As part of preliminary inquiry, SEBI vide letter dated March 14, 2014 advised BIIL and its directors to furnish *inter alia* the following information, viz. –

- a. Details of past and present Directors of the company such as names, addresses, PAN and contact details.
- b. Nature of activities being conducted by the company.
- c. Date of opening and closing of the issue.
- d. Copies of minutes of EGM and minutes of Board Meeting of the company approving allotment of debentures.
- e. Brochures/advertisements 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 and address of each person to whom debentures were allotted , with details including face value of debenture, number of debentures allotted, date of receipt of payment, date of allotment.
- h. Amount mobilized by issue of debentures till date and amount refunded to investors.
- i. Details of debentures transferred by allottees.
- j. Name and address of debenture trustees and whether these trustees are registered with SEBI.
- k. Details of properties secured for said issue of debenture.
- l. Details of properties acquired from money raised from said debenture issue.
- m. Addresses of all the branches of the company operating in India.
- n. If any broker/agent employed for the said issue, name and amount of brokerage/commission paid.
- o. Certified copies of audited financial statements for all the financial years during which funds were raised by the company.
- p. Copy of Income Tax Return filed by the company for financial year 2012-13.
- q. Details of the regulatory approvals obtained by the company, if any, for said debenture issue.
- r. Details of fund raising from public in the form of debentures or any other manner by the company or its group/associate companies.

- s. Details of action initiated/taken by any other authority against the company or any other group entity in respect of money raised from public.

The letters sent to the company and to its director Mr. Pradipta Chakraborty were returned undelivered by postal authorities. SEBI did not receive any reply from Mr. Gopal Sharma and Mr. Srikumar Chakraborty.

- 4. SEBI also sent reminder letters dated July 18, 2014 to the company and its directors. However, SEBI did not receive any reply from the company or its directors. Thereafter, SEBI once again sent reminder letters dated August 19, 2014 to the company and its directors. These letters sent to the company and its directors were returned undelivered by postal authorities with remarks “Addressee moved”, “Left” etc.
- 5. SEBI officials also conducted physical verification at the registered office address and corporate office address of the company on October 17, 2014 and January 16, 2015 respectively. It was found that the company was not existing at the given addresses.
- 6. SEBI vide letters dated December 09, 2014 advised the complainants to provide details of all investors available with them and copies of certificates of NCRDs issued by the company to them. The complainants vide e-mails dated January 20, 2015 and February 13, 2015 provided the copies of certificates of NCRDs and money receipts issued by the company to several investors.
- 7. Efforts were also made to obtain the information from Ministry of Corporate Affairs' Website i.e. MCA21 portal.
- 8. The material available on record i.e. information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'; complaints received and the documents enclosed therewith have been perused. On an examination of the same, it is observed that –
 - i. The company (CIN:U45200MP2012PLC028320, PAN:AAFCEB0288F) was incorporated on May 01, 2012 with the RoC, Gwalior having its registered office at Bardadeeh Chowk, Mukhtiyar Gang, Rama Krishna Aasram, Satna, Madhya Pradesh,

India- 485001. The corporate office address of the company as mentioned in brochure cum application form issued by the company is 154, Lenin Sarani, 5th floor, Kolkata- 700013.

- ii. The current Directors of the company are Mr. Pradipta Chakraborty, Mr. Gopal Sharma and Mr. Srikumar Chakraborty. Mr. Prashant Sharma, Ms. Soma Sharma, Mr. Arindam Mukherjee, Mr. Mahindra Nath Chowdhury and Mr. Mahesh Shaw were past directors of the company.
- iii. It is observed from Form 10 filed by the company with RoC that the company created a charge of Rs.100 Crores on May 07, 2012 in favour of Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri) having its address at 91, Deodar Rahman Road, Ground Floor, Kolkata, West Bengal-700033. During visit of the SEBI officials no address bearing the description “91, Deodar Rahman Road, Kolkata” could be located. It is a fair conclusion that this is a fictitious address.
- iv. It is mentioned in the brochure cum application form provided by the complainant that the company is offering NCRDs of face value Rs.100/- each aggregating to Rs. 100 Crores by way of private placement under the following terms and conditions:

Issue size	Rs. 100.00 Crores
Nature of Instrument	Secured Redeemable Non-Convertible Debentures
Instrument Form	Physical/Demat
Face value	Rs.100/- (Rupees One Hundred) per debenture
Issue Price	Rs.100/- (Rupees One Hundred) per debenture
Minimum Subscription	10 debentures and in multiples of 10 debentures thereafter
Put & Call Option	None
Redemption/Maturity	At par

Regular Plan	12	24	36	60	84	120	144	168
Issue Price	1000	1000	1000	1000	1000	1000	1000	1000
Redemption Amount	1200	1325	1565	2200	3380	7500	10000	12000

T.D.	2 Years		3 Years		5 Years		7 Years	
Minimum 200 Debentures	20000		20000		20000		20000	
Redemption Amount	5280	5040	9360	9000	19,200	18,600	31,920	31,080
Category	Sr. Citizen	General	Sr. Citizen	General	Sr. Citizen	General	Sr. Citizen	General
Redemption Bonus	0.50%		0.75%		1.00%		1.25%	

Issue opening date has been mentioned as May 21, 2012.

- v. It is also observed from the copies of certificates of NCRDs provided by the complainants that BIIL allotted NCRDs to at least 53 investors and mobilised funds amounting to Rs.7,55,500/- from them. The Details of the same are as under-

Financial Year	Number of investors	Amount Deposited (in Rs.)
2012-13	50	7,34,500
2013-14	3	21,000
Total	53	7,55,500

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

11. In this regard –

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

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

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

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

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

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

...

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

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

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *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 NCRDs 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 the utmost importance.
 - a. It is observed from the copies of certificates of NCRDs issued by BIIL which have been forwarded by the complainants that the company issued NCRDs to at least 53 investors and mobilized Rs.7,55,500/- from them during FY 2012-13 and 2013-14. In FY 2012-13 alone, NCRDs were issued to at least 50 investors. NCRDs have thus been issued and subscribed by more than forty nine persons. Considering the fact that a charge has been created for Rs.100 Crores, it is most likely that the number of investors who invested in the NCRDs issued by the company could be many times more. However, BIIL and its directors have failed to submit necessary details to SEBI. The assessment is merely on the basis of

copies of certificates of NCRDs forwarded by the complainants. In the brochure cum application form and certificates of NCRDs issued by BIIL, it has been mentioned that NCRDs were being issued on a private placement basis. However, the company has not provided any documents to substantiate their claim that the said issue of debentures was a private placement. Merely mentioning that an issue is on a private placement basis does not make it such. The company was also found to be not existing at its registered office address given by the company in regulatory filings. Based on the facts available in this case, including in particular the minimum number of persons to whom the NCRDs have been issued by BIIL, 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.

- b. BIIL is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act and therefore, is not covered under the second proviso to Section 67(3).
- c. It is pertinent to note that by virtue of Section 55A of the Companies Act 1956, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

12. I note that –

- i. From the abovementioned, it will follow that since the *Offer of NCRDs* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard, reference is made to Sections 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which is reproduced as under:

"73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in

one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

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

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

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

- ii. In the *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 NCRDs* 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 BIIL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCRDs*.
13. Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the RoC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As

mentioned above, since the *Offer of NCRDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, BIIL 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 BIIL has filed a prospectus. In view of the same, I find that *prima facie*, BIIL has not complied with the provisions of Section 60 of Companies Act, 1956.

14. Under Section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that BIIL has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore *prima facie*, has violated the aforesaid provisions.

15. Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. Based on the material available on record, I find that BIIL 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*". Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri) is 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 Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri) 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 Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustees Regulations.

16. 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 BIIL has not complied with the provisions of Sections 117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
17. In addition to the above, reference may be made to the Debt Securities Regulations, which were framed by SEBI in exercise of its powers under Section 30 of the SEBI Act and are applicable to the public issue and listing of debt securities. It may be relevant to note that under the aforesaid Regulations, '*debt securities*' have been defined as '*non-convertible debt securities which create or acknowledge indebtedness, and include debenture...*' In this context, I find that BIIL, through the *Offer of NCRDs*, 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*

- xiii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiii. Regulation 15 – *Trust Deed*
- xiv. Regulation 16 – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

18. Upon a consideration of the aforementioned paragraphs, I am of the view that BIIL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCRDs* and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Section 117B, Section 117C) and the Debt Securities Regulations.

19. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956, 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 Act 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 BIIL and no investors are defrauded. BIIL and its directors also failed to submit the requisite information sought by SEBI. The company was also not found to be existing at its registered office address given by the company in regulatory filings. In light of the same, I find that there is no other alternative but to take recourse through an interim action against BIIL and its present/past Directors along with its Debenture Trustee, viz. Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri), for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCRDs*. Considering all the factors in the instant case, it is felt that urgent intervention by SEBI is warranted as otherwise there could be every possibility of irreparable damage to investors.

20. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions –
- i. BIIL shall forthwith cease to mobilize any fresh funds from investors through the *Offer of NCRDs* 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. BIIL and its present/past Directors, viz. Mr. Pradipta Chakraborty (DIN:03092487, PAN:AJOPC7527K), Mr. Srikumar Chakraborty (DIN:06597492, PAN:AKGPC1755Q), Mr. Gopal Sharma (DIN:06475853, PAN:BAPPS0138H), Mr. Prashant Sharma (DIN:79474030, PAN:ARWPS6298R), Ms. Soma Sharma (DIN:79474719, PAN:BCVPS0290L), Mr. Arindam Mukherjee (DIN:79474032, PAN:AKAPM7973N), Mr. Mahindra Nath Chowdhury (DIN:06446998; PAN:AIXPC9631Q) and Mr. Mahesh Shaw (DIN:05261332; PAN:DZHPS9150J), 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. BIIL 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. BIIL shall provide a full inventory of all its assets and properties;
 - v. BIIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. BIIL 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 NCRDs*, without prior permission from SEBI;
 - vii. BIIL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of NCRDs*, which are kept in bank account(s) and/or in the custody of BIIL;
 - viii. BIIL shall furnish complete information sought by SEBI vide letters dated March 14, 2014, July 18, 2014 and August 19, 2014 including the balance sheets of the company for FY 2012-13 to 2014-15 within 21 days from the date of receipt of this Order.

- ix. The Debenture Trustee, viz. Bhabiswajyoti Debenture Trust and its trustee, viz. Mr. Sanjoy Chaudhuri are prohibited from continuing with its present assignment as a debenture trustee in respect of the *Offer of NCRDs* of BIIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.
21. The above directions shall take effect immediately and shall be in force until further orders.
22. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'; complaints received and the documents enclosed there with. In this context, BIIL and its abovementioned past and present 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 the money collected through the Offer of NCRDs 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.
23. BIIL 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.
24. Similarly, the Debenture Trustee, viz. Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri), may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

25. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against BIIIL; its abovementioned Directors and its Debenture Trustee, viz. Bhabiswajyoti Debenture Trust (represented by its trustee, viz. Mr. Sanjoy Chaudhuri), in accordance with law.

Place: Mumbai
Date: June 17, 2015

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