

**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:

1. Vishwamitra International Infra Limited (CIN: U45200MP2012PLC028473; PAN:AAECV1457D) its Directors, viz. Shri Manoj Kumar Chand (DIN:02848954; PAN:ADWPC3514A), Smt Bandana Chand (DIN:03566856; PAN:AIUPC8800E), Shri Manish Kumar Chand (DIN:05149305; PAN:AICPC0615M), Shri Pankaj Kumar Chand (DIN:02848958; PAN:AFAPC4321D), Shri Hari Govind Singh (DIN:03273046; PAN: CMGPS0600A) and its Debenture Trustee, viz. Vishwamitra Debenture Trust (represented by Shri Sanjay Kumar Pandit) and,
 2. Vishwamitra India Tour & Hotels Limited (CIN:U55101WB2011PLC171053; PAN:AADCV8844K) and its Directors, viz. Shri Manoj Kumar Chand (DIN:02848954; PAN:ADWPC3514A), Smt Bandana Chand (DIN:03566856; PAN:AIUPC8800E), Shri Manish Kumar Chand (DIN:05149305; PAN:AICPC0615M), Shri Pankaj Kumar Chand (DIN:02848958; PAN:AFAPC4321D) and Shri Hari Govind Singh (DIN:03273046; PAN: CMGPS0600A)
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1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received an e-mail dated February 15, 2014 from a Chartered Financial Analyst (CFA) seeking clarifications about the business activities of Vishwamitra International Infra Limited (hereinafter referred to as “VIIL”) since many of his clients were interested in investing in VIIL. The email stated that the website of VIIL is <http://vishwamitraindiapariwar.webs.com> and that VIIL had issued debentures of ₹100 crore to more than one thousand investors. Copies of (i) a brochure of VIIL for purchase of debentures and (ii) Registrar of Companies (RoC), Gwalior’s acknowledgement of an investor complaint against VIIL were also attached with the e-mail.
 2. SEBI had also separately received an online complaint on April 1, 2013 against VIIL alleging that this company was raising money in the name of debentures.

3. The website (referred in the email) <http://vishwamitraindiapariwar.webs.com> identified one Shri Jayesh Modi, having address at C-16 Ground Floor, Radhe Shopping Mall, Nr. National Handloom, Opposite Khokhra Circle, Khokhra, Ahmedabad as the "owner" of the company.
- 4.1 As a matter of preliminary inquiry, SEBI, vide letters dated March 14, 2014 advised VIII, its Directors and Shri Jayesh Modi 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 made available to the public;
 - f. Copies of duly filled application forms received from investors/applicants;
 - g. Name, address, contact details of persons to whom debentures were issued along with details of debentures issued and charges created;
 - h. Amounts mobilized by issue of debentures and amounts refunded to investors;
 - i. Whether the allottees continue to be holders of debentures and details of transferred debentures by allottees;
 - j. Name and address of debenture trustees and SEBI registration details;
 - k. Details of properties secured for the debenture issue along with valuation report;
 - l. Details of properties acquired from money raised from the debenture issue;
 - m. Addresses of all branches operating in India;
 - n. If brokers were employed, details thereof and brokerage paid;
 - o. 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;
 - p. Copy of Income Tax return filed for 2012-13;
 - q. Details of regulatory approvals obtained;
 - r. Details of fund raising from public in the form of debentures/ or any other manner by VIII or group/associates;

- s. Details of action initiated/taken by any other authority against VIIL or any other group entity.
- 4.2 The aforesaid letters sent to VIIL's Bhopal Office and to Shri Jayesh Modi were returned undelivered. There was no response to the letters delivered at VIIL's Kolkatta Office and to VIIL's three Directors, viz. Shri Manoj Kumar Chand, Shri Bandana Chand and Shri Manish Kumar Chand.
- 4.3 In the meanwhile, SEBI received a reference from the Reserve Bank of India (RBI) dated April 07, 2014 enclosing a complaint from a resident of Kanpur, Uttar Pradesh against various entities including VIIL. The complainant had alleged that VIIL was raising money from public by issue of debentures. The complainant provided a sample brochure of Vishwamitra India Pariwar, Letter of Allotment book (in form of pass-book) of VIIL and a brochure about commission structure for agents of Vishwamitra India Pariwar.
- 4.4 SEBI also received two references from the Government of Jharkhand dated July 04, 2014 and July 14, 2014 respectively in respect of VIIL requesting SEBI to examine the activities of VIIL. Enclosed therewith were two letters dated June 18, 2014 written by VIIL to Principal Secretary, Institutional Finance and Programme Implementation Department, Jharkhand in respect of its operations in the districts of Godda and Ranchi respectively. VIIL's letters stated "*...the Company has been authorized to raise the required funds by way of issuing Secured Non-Convertible Redeemable Debentures and the Charge created has been properly registered with the Registrar of Companies, Madhya Pradesh. The Company has various branches all over India..... Authority Issuing Certificate for raising the Fund – Registrar of Companies, Madhya Pradesh.....*".
- 4.5 SEBI received yet another reference from RBI vide letter dated July 24, 2014 enclosing copy of a letter dated June 18, 2014 from RoC-Gwalior to VIIL and its directors. RoC had stated that they received a complaint against VIIL that it was accepting deposits from general public without necessary regulatory approvals and in this regard, RoC had sought an explanation from VIIL.
- 4.6 SEBI vide letters dated August 19, 2014 again advised VIIL, its directors and Shri Jayesh Modi to furnish the information sought vide letter dated March 14, 2014. In view of

non-receipt of reply, a physical verification was conducted on October 20, 2014 by SEBI officer at the registered office address of VIIL at Bhopal, Madhya Pradesh. SEBI's letter dated August 19, 2014 seeking information regarding fund mobilization by issuing non-convertible redeemable secured debentures to public was also personally delivered to the official of VIIL.

4.7 During the aforesaid visit, the SEBI official was provided the following information/documents:

- a. Sample application form cum brochure of VIIL for purchase of Non-Convertible Redeemable Secured Debentures
- b. Copy of Purchase Form for Debentures of VIIL submitted by an investor for 10 Debentures aggregating to Rs.1000/- towards plan LM-001 dated September 27, 2014.
- c. Copies of Debenture Certificates issued to 22 investors covering 23 folios for 25750 Debentures aggregating for ₹2575000/-.
- d. Sample "Letter of Allotment Book" issued to investors. It was informed that some investors are issued Debenture Certificates while others are issued "Letter of Allotment Book".
- e. Sample application form for becoming Associate of Vishwamitra India Pariwar (shown as marketed by Vishwamitra India Consultancy Services Ltd.).
- f. Sample withdrawal slip to be filled by associates of VIIL towards redemption advance, commission expenses and other type of payment. Copy of a payment of ₹2lacs made to an associate bearing code 32814726338 with Sheopur, Madhya Pradesh towards redemption /booking advance on October 18, 2014 was also provided.
- g. Copy of the magazine of Vishwamitra India Pariwar namely "VIP News" for August 2014.
- h. Copy of an e-mail of closing cash report of daily inflow and outflow in all the branches of Madhya Pradesh for week starting from October 14, 2014 to October 18, 2014.

4.8 Thereafter VIIL vide letters dated October 28, 2014 and November 11, 2014 provided the following information/documents:

- a) Shri Jayesh Modi resident of C-16, Ground Floor, Radhey Shopping Mall, Near National Handloom, Opposite Khokhra Circle, Khokhra, Ahmedabad, Gujarat has created false website using its name. A copy of complaint filed with Police on October 28, 2014 was submitted.
 - b) Copy of Memorandum and Articles of Association.
 - c) Copy of financial statement for year ended March 31, 2013.
 - d) Copy of VIIL's PAN Card bearing PAN No. AAECV1467D.
 - e) Copy of VIIL's Income Tax Return Acknowledgement for assessment year 2013-14.
 - f) Copy of brochure of Vishwamitra India Pariwar.
- 4.9 As VIIL had not provided other relevant details sought by SEBI vide various letters, SEBI vide letter dated November 20, 2014 again advised VIIL to submit their reply by December 03, 2014. Copies of the documents provided to the SEBI official during his visit to VIIL's registered office on October 20, 2014 were also enclosed with this letter.
- 4.10 In response, a letter dated December 03, 2014 was received at e-mail id of SEBI from VIIL's e-mail account (vipho25@gmail.com) wherein it was informed that they are in the process of arranging the documents and requested for additional 15 days time. Considering their request, VIIL was allowed time till December 10, 2014.
- 4.11 Thereafter, VIIL vide letter dated December 09, 2014 *inter alia* submitted as follows and provided the following information/documents:
- a. Details of Directors (other than PAN).
 - b. Copies of Minutes of Board meeting held on May 21, 2012, Notice for EGM to be held on May 23, 2012, Minutes of EGM held on May 23, 2012.
 - c. Copy of brochure cum application form for Non-Convertible Redeemable Secured Debentures.
 - d. In respect of Name/ address of other details of persons to whom debentures were allotted, it is submitted that debentures were allotted to M/s Vishwamitra India Tours & Hotels Ltd. (VITHL) and number of debentures were 41,60,805 of ₹100 each as per last balance sheet, date of charge created on 23-05-2014 and charge identification number – 10357023.

- e. It is submitted that the amount mobilized was ₹41,60,80,500/- as per balance sheet as on March 31, 2013, the balance sheet for subsequent year is under preparation and that there is no plan less than 3 years thus maturity date will come later.
- f. In respect of query whether the persons to whom debentures were allotted were still the holders of these debentures, it is submitted that these details shall be provided later.
- g. In respect of names and addresses of debenture trustees and whether these trustees are registered with SEBI, a copy of Debenture Trust Deed was submitted.
- h. In respect of query to provide details of properties secured for said issue of debenture and valuation report for these assets secured by VIIL for the issue, more time was requested to provide this information.
- i. In respect of details of properties acquired from money raised from said debenture issue, it was submitted that these details shall be provided later.
- j. In respect of address of all their branches operating in India, VIIL submitted an Annexure providing address of their 9 branches of Madhya Pradesh. The list of branches across other states of India had not been provided.
- k. In respect of details of brokers employed for said issue, VIIL informed that no broker was employed.
- l. In respect of certified copy of audited financial statement for all the financial years during which funds were raised upto March 31, 2014, VIIL informed that a copy of balance sheet upto March 2013 had already been provided and the balance sheet of March 2014 was yet to be prepared.
- m. In respect of copy of Income Tax return, VIIL had provided the first page of the return for financial year for 2012-13 without any supporting documents.
- n. In respect of regulatory approvals, VIIL had provided a copy of Form 10 and certificates for registration of mortgage issued by RoC-Gwalior.
- o. In respect of activities of Vishwamitra India Consultancy Services Ltd., VIIL informed that Vishwamitra India Consultancy Services Limited is their group company and was incorporated on 18.01.2011. The main activity of the company was acting as advisors, management consultants and business consultants to all types of business, etc.

4.12 On perusal of information submitted by VIIL, it was observed that even after nine months, VIIL had provided only partial information. SEBI vide letter dated December 12, 2014 sent to VIIL and its three Directors summarised the information sought, reply

provided by VIIL and SEBI's observations on the reply provided. VIIL was also advised to submit the complete and correct information.

4.13 SEBI vide letters dated December 15, 2014 also advised VITHL (the entity to whom the debentures were allotted as per VIIL's letter dated December 09, 2014) and its directors, viz. Shri Manoj Kumar Chand, Shri Bandana Chand and Shri Manish Kumar Chand to submit the following information/documents:

- (a) Details of the past and present directors of VITHL. Details should contain name, address, PAN and contact details (Email/fax/contact no.) of the directors.
- (b) Write-up on activities being carried out by VITHL.
- (c) Day-wise details (date of deposit of money with the company, date of allotment, number of debentures acquired, certificate number, amount invested, plan number, redemption date) of debentures of VIIL acquired by VITHL.
- (d) Source of funds for each debenture acquired by VITHL. In case these were on basis of advances taken from investors, to provide date wise details of money received along with names and addresses of investor and number of debentures for which money received.
- (e) In respect of investors referred at (d) above, to provide the date on which debentures were sold/ handed-over to respective investor.
- (f) Inform whether debentures certificates handed over by VITHL contains the name of VITHL or the investor to whom it sold/ handed over the debenture certificate.
- (g) In case, these debenture certificates contain the name of investor, inform whether (i) these certificates were issued directly in name of the investor by VIIL or (ii) VITHL got these certificates transferred from VITHL to the respective investor.
- (h) Clarifications with regard to the financial statements of VITHL for year ended March 31, 2013 obtained from *'MCA21 Portal'*.
- (i) Audited financial statements as on March 31, 2014 and VITHL's detailed trial balance duly certified by its directors from April 2013 onwards till date.
- (j) List of all the bank accounts of VITHL, copy of bank book (with narrations) and cashbook with narrations. These details to be provided from start till date.

4.14 VIIL vide letter dated December 19, 2014 *inter alia* submitted as follows:

“...

- a. *The Secured Debentures issued by the Company was subscribed by Vishwamitra India Tour & Hotels Limited (VITHL) and Debenture Certificate were issued as per instruction of VITHL*
- b. *The copy of duly filled application is that of a beneficiary of Vishwamitra India Tour and Hotels Ltd.*
- c. *As stated aforesaid, the 22 Debenture Certificates under reference 22 held by the investors covering 24 Folios for 25750 debentures were issued to the beneficiaries of Vishwamitra Tour and Hotels Limited.....*
- d. *The beneficiaries of Vishwamitra India Tour and Hotels Ltd. issued the Debentures against money paid towards subscriptions.*
- e. *The beneficiaries of the Debentures issue continue to be the same. No transfer request was received....”*

4.15 As no reply was received from VITHL, SEBI vide emails dated December 29, 2014 and January 09, 2015 advised VITHL to submit the information sought. In response, VITHL vide letter dated January 16, 2015, *inter alia* submitted that VIIL was not a group company, its present directors are Shri Manoj Kumar Chand, Smt Bandana Chand, Shri Manish Kumar Chand, its two past directors were Shri Pankaj Kumar Chand and Shri Hari Govind Singh and that Debenture Certificates were issued in the name of nominees of the Company. VITHL further sought additional three weeks to submit the information. (The Directors of VITHL are also the Directors of VIIL as indicated in para 5 (iv) of this Order.)

4.16 SEBI vide letter dated January 01, 2015 sought copies of latest balance sheet and other relevant documents from the auditors of VIIL and VITHL.

4.17 Thereafter, SEBI vide letters dated January 13, 2015 to VIIL and its Directors *inter alia* sought further clarification on VIIL's submission about the number of persons to whom debentures were issued by it. An explanation was also sought as to why it should not be construed that number of persons to whom debentures offered and allotted exceeded 49 persons.

- 4.18 SEBI vide letter dated January 27, 2015 again advised VIIL to submit the information sought. SEBI vide letter dated January 28, 2015 to VITHL *inter alia* sought an explanation as to why it should not be considered that VITHL has been apparently aiding and abetting to facilitate concealment of number of allottees of debentures of VIIL from regulatory gaze.
- 4.19 Meanwhile, a reference was received from RBI, Bhopal dated November 03, 2014 informing about news article appearing in Dainik Bhaskar, Bhopal edition dated October 17 & 21, 2014. The newspaper had reported that Vishwamitra India Pariwar, which is a West Bengal based group was raising money through debentures across various places in Madhya Pradesh from the public. Another reference dated January 19, 2015 was also received from RBI enclosing therein *inter alia* a letter from an investor requesting for details of VIIL.
- 4.20 Thereafter, e-mails dated February 02, 2015 were received from VIIL and VITHL. In their replies, they stated that they are distinct entities and *“Both VITHL and VIIL share office space at 27 N.S. Road, 6th Floor, Kolkata 700001 and also website www.vishwamitraindia.in and email used by both the entities are for effectiveness and economy of scale of the operation of the companies.”* VIIL also *inter alia* submitted *“.....the company issued Debentures to the nominees/beneficiaries of VITHL, and the Register of Debentures included all the names with their detail on transfer to them by VITHL, the principal allottee...”*. VITHL *inter alia* stated *“VITHL subscribed to the debentures issued by VIIL and distributed the debentures to intending clients of VITHL as per their preference. This was the intent of VITHL, to distribute the Debentures for participation by its client base”*. In respect of issue to 22 investors, VITHL submitted *“the same were issued to the holders as nominees of the company accordingly the certificates were in the names of the holders....”*
- 4.21 The auditor of VIIL and VITHL vide letter dated March 04, 2015 *inter alia* stated *“.. on the basis of its application for debenture Vishwamitra India Tour & Hotels Ltd received 41,60,805/- Nos. of debentures issued by Vishwamitra International Infra Ltd at a discount of 30% of its issue price...”*. The auditor (common for VIIL and VITHL) submitted copies of balance sheets of VIIL and VITHL and it is noted that secured non-convertible debenture issued by VIIL are as below:-

- (a) As on March 31, 2013 : ₹ 41,60,80,500
(b) As on March 31, 2014 : ₹106,75,04,600*

*The redemption period ranged from 24 months to 192 months.

The auditor also enclosed a CD (in PDF format) giving list of allottees and subsequent transferees for the financial year 2012-13.

4.22 VIIL vide letter dated March 02, 2015 has also provided in a CD the list of allottees of debentures and subsequent transferees who were issued debentures amounting to ₹41,60,80,500/- as on 31.03.2013. As indicated therein, during 2012-13, 4160805 debentures were allotted to VITHL (Registered Folio No. of Allottee indicated as 1) and these debentures were in turn transferred to 83109 investors (Registered Folio of the last transferee indicated as 83110).

5. I have perused the material available on record i.e. the communications, complaints, references, etc. received from RBI and Government of Jharkhand, correspondence exchanged between SEBI, VIIL, VITHL and their auditors and the information/documents contained therein, information/documents obtained during the visit to VIIL office 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. VIIL was incorporated on May 18, 2012 with the RoC, Gwalior under CIN U45200MP2012PLC028473 with registered office Maruti Nagar, Nr. Railway Pathak, Tahsil Raghuraj Nagar, Satna, Madhya Pradesh 485001 which was subsequently changed to 160, Zone First, 1st Floor, Bhopal, Madhya Pradesh 462011 from December 29, 2012 and to Plot No-165, Gayatri Complex, 2nd Floor, MP Nagar, Madhya Pradesh 462011 with effect from February 2, 2014.
- ii. VITHL was incorporated on December 22, 2011 with the RoC, Kolkata under CIN: U55101WB2011PLC171053 with registered office 27 N.S. Road, 6th Floor, Kolkata, West Bengal 700001 which was subsequently changed to 5, Mangoe Lane, 3rd Floor, Room No.-305, Kolkata, West Bengal 700001 with effect from March 13, 2013.

- iii. VIIL and VITHL have the same corporate office address of 27, NS Road, 6th floor, Kolkata, same website www.vishwamitraindia.in and also the same auditors.
- iv. The present Directors in VIIL are Shri Manoj Kumar Chand (DIN: 02848954; PAN:ADWPC3514A), Smt Bandana Chand (DIN:03566856; PAN:AIUPC8800E), Shri Manish Kumar Chand (DIN:05149305; PAN:AICPC0615M). Shri Pankaj Kumar Chand (DIN:02848958; PAN:AFAPC4321D) and Shri Hari Govind Singh (DIN:03273046; PAN:CMGPS0600A) were past directors of VIIL. The aforesaid Directors are also the Directors of VITHL.
- v. The sample brochure of Vishwamitra India Pariwar *inter alia* provides a “List of Our Companies” in which VIIL and VITHL along with other entities are indicated.
- vi. As per the sample application form cum brochure of VIIL for purchase of Non-Convertible Redeemable Secured Debentures, the plans offered are as below:-

Scheme-1 Regular Income Non-Convertible Redeemable Secured Debentures (non-cumulative)

Minimum Amount acceptable is Rs.10,000/- interest payable monthly

Table 1

Plan	Redemption Period	Principal Value	Return/month	Principal Value	Return/month	Principal Value	Return/month	Principal Value	Return/month
MIP-1	36 months	10000	104	50000	520	100000	1041	200000	2082
MIP-2	72 months	10000	115	50000	575	100000	1150	200000	2300

N.B. For Non-Cumulative Scheme for 6 years & 10 years 5%, will be added respectively as Maturity Bonus. Pre-redemption option nil.

Scheme-2 Multiplier Non-Convertible Redeemable Secured Debentures (cumulative)

Table 2

Plan	FS-1	FS-2	FS-3	FS-4	FS-5
Redemption Period	36 months	60 months	99 months	124 months	148 months
Min. application for 10 debentures Rs.	1000/-	1000/-	1000/-	1000/-	N/A
Redemption Value	1442/-	2000/-	3000/-	4000/-	N/A
Application for 50 debentures Rs.	5000/-	5000/-	5000/-	5000/-	5000/-
Redemption Value	7210/-	10000/-	15000/-	20000/-	25000/-

Scheme 3- Multiplier Non-Convertible Redeemable Secured Debentures (Installment)

Table 3

Plan	LM-001			LM-002			LM-003		
No. of debentures	60	120	180	84	168	252	120	240	360
Issue price (Rs.) 100/-	6000/-	12000/-	18000/-	8400/-	16800/-	25200/-	12000/-	24000/-	36000/-
Redemption period	63mnths + 1 day	63mnths + 1 day	63mnths + 1 day	87mnths + 1 day	87mnths + 1 day	87mnths + 1 day	123mnths + 1 day	123mnths + 1 day	123mnths + 1 day
Redemption Value (Rs.)	10577/-	21154/-	31730/-	15540/-	31080/-	46620/-	28940/-	57880/-	86820/-

In the sample application form cum brochure, these schemes offered were ostensibly “*private placement of debentures*”. The debentures issue opening date is mentioned as May 23, 2012. The said brochure was duly signed by Shri Manoj Kumar Chand as Managing Director of VIIL. It also mentions that VIIL is a unit of Vishwamitra India Parivar.

Further, the general instructions on the application form *inter alia* states “*In case of purchase under Power of Attorney or by Limited Companies or by Corporate Bodies, the relevant Power of Attorney or the relevant resolution of authority to make the purchase, as the case may be together with certified true copy thereof along with a copy of the Memorandum and Articles of Association and / or By-laws must be lodged for scrutiny quoting the reference number of the purchase form and the place of Business Association whom the application has been lodged with the company at its Head office simultaneously with the submission of the purchase form failing which the form is liable to be rejected*”.

It is apparent from the brochures that VIIL had been issuing debentures wherein the date of redemption exceeds ten years. Incidentally, as per the Companies (Share Capital and Debentures) Rules, 2014 applicable with effect from April 01, 2014, an issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue. We do not have details of moneys raised subsequent to 01-04-2014. It is possible that VIIL and VITHL are in conflict with these Rules.

- vii. Copies of debenture certificates issued to 22 investors covering 23 folios for 25750 debentures aggregating to ₹25,75,000/- were obtained from the office of VIIL during the SEBI official's visit on October 20, 2014. The details as per the certificates are as follows :

Sr. No.	Name of investor	Folio Number	Number of debentures*	Purchase Amount	Purchase date	Plan	Redemption date	Redemption Amount
1	Parvati Bal Panere	145064059	250	25000	22/11/2013	FS-2	22/11/2018	50000
2	Parvati Bal Panere	145064051	250	25000	22/11/2013	FS-2	22/11/2018	50000
3	Sonakshi Mishra	145064052	250	25000	22/11/2013	FS-2	22/11/2018	50000
4	Abhilasha Sethi	145063029	250	25000	18/11/2013	FS-2	18/11/2018	50000
5	Govind Singh	145058043	1000	100000	18/10/2013	MIP-1	18/10/2016	100000
6	Ambika Bai Chandra	145085692	10000	1000000	28/1/2014	MIP-1	28/1/2017	1000000
7	Neel Kant Mishra	145082464	100	10000	31/12/2013	FS-2	31/12/2018	20000
8	Harshita Mishra	145070136	100	10000	14/12/2013	FS-2	14/12/2018	20000
9	Paritosh Mukhopadhyay	145069412	200	20000	11/12/2013	FS-2	11/12/2018	40000
10	Santosh Kumar Awasthi	145068027	250	25000	6/12/2013	FS-2	6/12/2018	50000
11	Jyoti Bai Chandra	145130579	200	20000	30/8/2014	FS-2	30/8/2019	40000
12	Ram Kali	145131322	800	80000	4/9/2014	FS-1	4/9/2017	115360
13	Mubarik Sheikh	145132108	1000	100000	9/9/2014	MIP-3	9/9/2024	105000
14	Sumitra Kashyap	145115758	1000	100000	23/6/2014	MIP-1	23/6/2017	100000
15	Kamlesh Kumar Marko	145128551	5000	500000	27/8/2014	MIP-1	27/8/2017	500000
16	N.R. Bhatia	145121919	1500	150000	26/7/21014	MIP-1	26/7/2017	150000
17	Pandit Ganpat Sonwane	145121908	2000	200000	26/7/2014	MIP-1	26/7/2017	200000
18	Kamini Vikrampur	145119252	60	6000	10/7/2014	FS-2	10/7/2019	12000
19	Mahesh Kasliwal	145122849	30	3000	31/7/2014	FS-2	31/7/2019	6000
20	Deepesh Barjatya	145115419	210	21000	21/6/2014	FS-2	21/6/2019	42000
21	Sukiya Sarathe	145118700	100	10000	30/6/2014	FS-1	30/6/2017	14420
22	Pinki Sarkar	145117118	100	10000	30/6/2014	FS-2	30/6/2019	20000
23	Vivek Kumar Mishra	145064057	100	10000	22/11/2013	FS-2	22/11/2018	20000
			25750	2575000				2854780

* Non-convertible redeemable secured debentures of face value Rs.100 each

- viii. As per the Extracts of the Board Meeting held on 21.05.2012, a resolution was passed to issue *Secured Redeemable Non-Convertible Debentures* of Rs.100/- each upto a limit of Rupees One Thousand Crores.
- ix. As per the copy of financial statement for year ended March 31, 2013 submitted by VIIL, it is noted that VIIL had issued 41,60,805 Debentures of ₹100 each for ₹41,60,80,500/-. Further, an amount of ₹1,58,39,195 is indicated as “Debenture Application Received” and an amount of ₹58,27,680 as “Debenture issue expense written off”. It is also mentioned that period of redemption ranges from 36 months to 102 months. The auditor has noted that “*The company has created security in respect of*

debentures issued.” It is also mentioned that “Debenture Issue Expenses” is written off in proportionate of debentures outstanding and period of redemption and charged to “Statement of Profit & Loss”. The amount raised through issue of Debentures has increased to ₹106,75,04,600/- as indicated in the financial statement for the year ended March 31, 2014.

- x. It is also noted from the Cash Flow Statement of VIIL for the year ended March 31,2014 as under:

Particulars	31.03.2014 (₹)	31.03.2013 (₹)
Cash Flow from Financing Activities		
Issue of Secured Debentures	64,48,88,559.00	41,60,80,500.00
Debenture Issue Expenses	-19,60,66,230.00	-12,48,24,150.00

- xi. As per the Notes to financial statements of VITHL for the year ended March 31, 2014, it is noted as under:

Revenue from Operations:		
Particulars	31.03.2014 (₹)	31.03.2013(₹)
Sales of Securities	65,35,54,100.00	41,60,80,500.00
Less: Direct Expenses		
Purchase Cost	45,74,87,870.00	29,12,56,350.00
Promotional Expenses	10,21,38,727.00	7,33,43,926.00
Total	9,39,27,503.00	5,14,80,224.00

- xii. As apparent from the tables above and as confirmed by the auditor vide letter dated March 04, 2015, the debentures were issued to VITHL by VIIL at a discount of 30% of its issue price. It is also inferred that this amount has been indicated in VIIL’s cash book as “Debenture Issue Expenses”. Further, it is also noted that VITHL’s “Promotional Expenses” indicated is approximately 22% of the Purchase Cost of Securities for the financial year 2013-14 and 25% for the financial year 2012-13.
- xiii. As per the copies of balance sheets of VIIL provided by the auditor vide letter dated March 04, 2015, it is noted that the amounts in respect of Secured Non-Convertible Debentures issued by VIIL are as follows:

- (a) As on March 31, 2013 : ₹ 41,60,80,500
(b) As on March 31, 2014 : ₹ 106,75,04,600

- xiv. As per details available in 'MCA 21 Portal', it is observed that on May 23, 2012 a charge of ₹1000 Crores was created by VIIL and the charge holder is Vishwamitra Debenture Trust. A perusal of Trust Deed dated May 23, 2012 indicates that VIIL appointed Shri Sanjay Kumar Pandit as the Debenture Trustee.
- xv. As per the details mentioned above, VIIL had allotted 41,60,805 *Non-Convertible Redeemable Secured Debentures* ("Offer of NCDs ") amounting to of ₹41.61 Crores during the financial year 2012-13 to VITHL, which in turn transferred these debentures to 83109 investors. Further, as on March 31, 2014 the amount raised through *Offer of NCDs* is ₹ 106.75 Crores, though the exact number of investors is not available.
6. 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 VIIL 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.
7. 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:

"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."

8. 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:

"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. It is observed from the details submitted by VIIL vide letter dated March 02, 2015 and by the auditor of VIIL vide letter dated March 04, 2015 that VIIL had allotted 41,60,805 *Non-Convertible Redeemable Secured Debentures* amounting to ₹41.61 Crores during the financial year 2012-13 to VITHL, which in turn transferred these debentures to 83109 investors. Further, as per the financial statements of VIIL, the amount raised through *Offer of NCDs* as on March 31, 2014 is ₹ 106.75 Crores. Though the exact number of investors is not available, it is logical to assume that the number would have further increased substantially from 83109 investors indicated in the financial year 2012-13.

- b. VIIL has submitted that the Debentures issued by it were subscribed by VITHL and Debenture Certificate were issued as per instruction of VITHL. However, it is pertinent to note that the general instructions on the application form cum brochure that it is addressed to and available to general public. The terms are couched in general terms such as *“In case of purchase under Power of Attorney or by Limited Companies or by Corporate Bodies...”*. Such a generalized eligibility condition for being an investor(s) to the *Offer of NCDs* need not have been incorporated if the *Offer of NCDs* was intended only for VITHL as contended by VIIL.
- c. VIIL contended that VITHL and VIIL are not group companies. However, both the companies have the same Directors as submitted both by VIIL vide letter dated December 09, 2014 and VITHL vide letter dated January 16, 2015. By no stretch of imagination, can it be a coincidence that both VIIL and VITHL have
- i. the same present and past Directors viz. Shri Manoj Kumar Chand, Shri Bandana Chand, Shri Manish Kumar Chand, Shri Pankaj Kumar Chand and Shri Hari Govind Singh;
 - ii. the same corporate office address of 27, NS Road, 6th floor, Kolkata;
 - iii. the same website www.vishwamitraindia.in;
 - iv. the same e-mail from which both these companies are communicating with SEBI vipho25@gmail.com;
 - v. the same e-mail id as given by VIIL in Form 23AC for March 31, 2014 and by VITHL in Form 20B for AGM dated September 26, 2014 obtained from *MCA 21 Portal* and
 - vi. the same auditors.

On perusal of filings made by VIIL and VITHL obtained from *MCA 21 Portal*, (Form 23AC for March 31, 2014 filed by VIIL and Form 20B for AGM dated September 26, 2014 filed by VITHL), it is observed from the share holding pattern that Smt. Anita Chand (10%,14%), Smt. Bandana Chand (10%,20%), Shri Manish Kumar Chand(10%,40%), Shri Manoj Kumar Chand (25%, 12%), Shri Nand Kumar Singh(10%,4%) and Shri Pankaj Kumar Chand (25%, 10%) are collectively holding 90% in VIIL and 100% in VITHL. Further, both these companies admittedly are part of Vishwamitra India Pariwar as indicated in its brochure. In view of the same, VIIL's

contention of not being group companies is contradictory to its own statement and hence clearly not tenable.

- d. It is also pertinent to mention here about the discount of 30% at which debentures were issued to VITHL, the corresponding “Debenture Issue Expenses” indicated by VIIL and the promotional expenses indicated by VITHL for which no details are available. The correctness of the financial statements of VIIL and VITHL when seen in light of the records produced at the time of physical verification makes them suspect. It appears that VIIL’s intention to camouflage the issue as allotment made only to VITHL while in reality it was issued to a large number of investors could have been with the intention to avoid compliance with company law and securities law.
- e. The available documents (as detailed above) indicates that a deliberate artifice has been created by VIIL to camouflage the issue of debenture as a private placement by routing it through VITHL. The number of allottees of debentures of VIIL is several hundred times the threshold of 49 and hence the issue of debentures by VIIL as narrated above has to be considered as nothing but a public issue. The manner in which the public issue is ostensibly routed by VIIL through a group company, VITHL, clearly indicates that VIIL’s sole aim was to create a smokescreen to circumvent the requirements of Section 67(3) of the Companies Act, 1956. The non-co-operation on the part of VIIL and VITHL with the preliminary inquiry conducted by SEBI to submit information regarding the number of investors, when considered in the light of the abovementioned *prima facie* findings, leads to a strong suspicion that such dilatory approach to furnish the information sought by SEBI is only to conceal the true nature and operation of the fund mobilizing activity from public by VIIL acting nominally through VITHL. VITHL was aiding and abetting VIIL to facilitate concealment of number of allottees of debentures of VIIL from regulatory gaze.
- f. In view of the above stated facts, the *Offer of NCDs* by VIIL *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 *Sahara Case*.

- g. In addition, VIIL 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).
- h. 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.
- i. It is pertinent to mention that the modus operandi adopted by VIIL and VITHL is also in violation of provisions of Section 64(1) of the Companies Act, 1956 which mandates that all the requirements of prospectus shall be applicable in respect of such *Offer of NCDs* to public. Section 64(1) of the Companies Act, 1956 is reproduced as under:

Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omission from prospectuses, or otherwise relating to prospectuses, shall apply with the modifications specified in sub-sections(3), (4) and (5) , and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

9. 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 *Sabara 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 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 VIIL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.

10. 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, VIIL 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 VIIL has filed a prospectus. In view of the same, I find that *prima facie*, VIIL has not complied with the provisions of Section 60 of Companies Act, 1956.
11. 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 VIIL 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.
12. 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 VIIL has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

13. 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 VIIL, through the *Offer of NCDs*, which is a public issue of debt securities, has *prima facie* violated the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- i. Regulation 4(2)(a) – *Application for listing of debt securities*
- ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
- iii. Regulation 4(2)(c) – *Credit rating has been obtained*
- iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
- v. Regulation 4(4) – *Appointment of Debenture Trustee*
- vi. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- vii. Regulation 6 – *Filing of draft Offer Document*
- viii. Regulation 7 – *Mode of disclosure of Offer Document*
- ix. Regulation 8 – *Advertisements for Public Issues*
- x. Regulation 9 – *Abridged Prospectus and application forms*
- xi. Regulation 12 – *Minimum subscription*
- xii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiii. Regulation 15- *Trust Deed*
- xiv. Regulation 16- *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

14. Upon a consideration of the aforementioned paragraphs, I am of the view that VIIL 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.

15.1 From the material available on record, it is observed that VIIL created a charge of ₹1000 Crores on May 23, 2012 and appointed Vishwamitra Debenture Trust (represented by its

Trustee, viz. Shri Sanjay Kumar Pandit) as the Debenture Trustee for the *Offer of NCDs* by that company.

- 15.2 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."*

- 15.3 Based on the material available on record, I find that *Vishwamitra Debenture Trust* (represented by its Trustee, viz. Shri Sanjay Kumar Pandit) has acted as unregistered Debenture Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.

16. 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 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 VIIL and investors are not defrauded. This is especially so because of the deliberate artifice created by VIIL to camouflage the issue of debenture as a private placement. VIIL's contention of VITHL not being a group company is inconsistent with the various findings made, viz. same directors, same address, both being indicated in the list of companies of Vishwamitra India Pariwar, etc. and as such cannot be accepted. It is also

important to note that as per the Extracts of the Board Meeting held on 21.05.2012, VIIL had passed a resolution to issue *Secured Redeemable Non-Convertible Debentures* of Rs.100/- each upto a limit of Rupees One Thousand Crores.

In view of what all has been stated above, I find there is no other alternative but to take recourse through an interim action against VIIL, VITHL and their Directors along with VIIL's Debenture Trustee, viz. *Vishwamitra Debenture Trust (represented by its Trustee, viz. Shri Sanjay Kumar Pandit)* for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.

17. 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. VIIL and VITHL 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. VIIL (CIN: U45200MP2012PLC028473; PAN:AAECV1457D), VITHL (CIN: U55101WB2011PLC171053; PAN:AADCV8844K) and their Directors, viz. Shri Manoj Kumar Chand (DIN:02848954; PAN:ADWPC3514A), Smt Bandana Chand (DIN:03566856; PAN:AIUPC8800E), Shri Manish Kumar Chand (DIN:05149305; PAN:AICPC0615M), Shri Pankaj Kumar Chand (DIN:02848958; PAN:AFAPC4321D) and Shri Hari Govind Singh (DIN:03273046; PAN:CMGPS0600A), 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. VIIL, VITHL and their 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. VIIL and VITHL shall provide a full inventory of all their assets and properties;

- v. VIIL and VITHL's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. VIIL, VITHL and their 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. VIIL, VITHL and their 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 VIIL;
- viii. VIIL and VITHL shall provide to SEBI all information as on March 31, 2013, March 31, 2014 and March 31, 2015 regarding the date of issuance of *Non-Convertible Redeemable Secured Debentures* to VITHL, dates on which subsequent transfers were done, including number of debenture holders, name of the debenture holder, address, amount mobilized, number of debentures issued;
- ix. VIIL and VITHL shall provide to SEBI all information as on March 31, 2013, March 31, 2014, March 31, 2015 and till date 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;
- x. VIIL and VITHL shall provide to SEBI all particulars of commission paid, expenses incurred including debenture issue expenses, promotional expenses, amount written off towards issuance of debentures, etc. as of March 31, 2013, March 31, 2014 and March 31, 2015.
- xi. VIIL and VITHL shall provide to SEBI their financial statements for the years 2012-13, 2013-14 and 2014-15 audited from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution.
- xii. VIIL and VITHL shall furnish complete and relevant information within 21 days from the date of receipt of this Order;

- xiii. The Debenture Trustee, viz. *Vishwamitra Debenture Trust (represented by its Trustee, viz. Shri Sanjay Kumar Pandit)*, is prohibited from continuing with its present assignment as a debenture trustee in respect of the *Offer of NCDs* of VIIL 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.
18. The above directions shall take effect immediately and shall be in force until further orders.
19. The prima facie observations contained in Order are made on the basis of the material available on record i.e. the communications, complaints, references, etc. received from RBI and Government of Jharkhand, correspondence exchanged between SEBI, VIIL, VITHL and their auditors and the information/documents contained therein, information /documents obtained during the visit to VIIL office and information/documents obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*'. In this context, VIIL, VITHL and their 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 of Secured* 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.

20. VIIL, VITHL and their 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.
21. Similarly, the Debenture Trustee, viz. *Vishwamitra Debenture Trust (represented by its Trustee, viz. Shri Sanjay Kumar Pandit)*, 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.
22. The Debenture Trustee, viz. *Vishwamitra Debenture Trust (represented by its Trustee, viz. Shri Sanjay Kumar Pandit)* 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.
23. 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 VIIL, VITHL and their abovementioned Directors and VIIL's Debenture Trustee, viz. *Vishwamitra Debenture Trust (represented by its Trustee, viz. Shri Sanjay Kumar Pandit)* in accordance with law.

Place: Mumbai
Date: June 30, 2015

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