

**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 Siyaram Development and Construction Limited (PAN: AAKCS3313H); its Directors, Viz. Mr. Prasanta Bera (DIN: 02264907, PAN: AHZPB9748G), Mr. Biraja Bera (DIN: 03032589), Ms. Paromita Dey (DIN: 03371096), Mr. Biswajit Roy (DIN: 05358111), Mr. Arun Sardar (DIN: 06558359), Mr. Aravinda Mondal (DIN: 06799473), Mr. Sridhar Mukherjee (DIN: 06817533), Mr. Abdul Mandal (DIN: 06825845) and its Debenture Trustee viz. Ms. Kalpana Guha.

1. Securities and Exchange Board of India ("**SEBI**") received a complaint vide e-mail dated December 14, 2013 from an investor regarding non-payment of maturity amount of his investment in debentures issued by Siyaram Development and Construction Limited (hereinafter referred to as '**SDCL**' or '**the company**'). Along with the said e-mail, the complainant forwarded copies of two letters of allotment of Secured Redeemable Debentures ("**SRDs**") issued by SDCL.
2. As part of preliminary inquiry, SEBI vide letter dated February 25, 2014 forwarded a copy of aforesaid complaint to SDCL and advised the company to furnish *inter alia* the details of debenture issue including size of the issue, number of allottees, dates of allotment and names of allottees. The letter sent to the company was returned undelivered by postal authorities with remark "*Left*".
3. Subsequently, SEBI vide letter dated February 26, 2014 advised the debenture trustee viz. Ms. Kalpana Guha to furnish the similar information/documents. The letter written to debenture trustee was delivered to her by postal authorities. However, SEBI did not receive any reply from debenture trustee. SEBI also sent reminders vide letters dated April 02, 2014 and April 15, 2014 to debenture trustee. No reply has been received from debenture trustee till date.
4. As no reply was received from the company, SEBI also sent a letter dated March 06, 2014 to other office address of the company at Bengaluru found through a search on the

internet. The said letter was also returned undelivered with remark “*No such company in given address*”.

5. Thereafter, SEBI, vide letters dated July 09, 2014 advised the directors of the company to furnish the requisite information/documents with respect to the issuance of debentures by the company. Letters were delivered to the directors viz. Mr. Shridhar Mukherjee, Mr. Arvind Mondal and Mr. Biswajit Roy. However, SEBI did not receive any reply from any of them. Letters to the other directors namely Mr. Prasanta Bera, Mr. Biraja Bera, Ms. Paromita Dey, Mr. Arun Sardar were returned undelivered by postal authorities with remarks “*Addressee moved*”, “*Not known*” etc. SEBI also sent reminder letters dated July 30, 2014 to the directors of the company viz. Mr. Shridhar Mukherjee, Mr. Arvind Mondal and Mr. Biswajit Roy. However, no reply has been received from them till date.
6. SEBI vide letter dated July 30, 2014 also advised the Auditor of the company “A Gopalka & Associates” to provide the details of debentures issued by SDCL. However, no reply has been received from them too till date.
7. On September 25, 2014, SEBI Officials also visited registered office address of the company. However, it was found that the company did not exist at the given address.
8. Subsequently, SEBI received a letter dated January 12, 2015 from Jannat Legal Poly-Clinic (**JLP**), Nalanda, Bihar forwarding several complaints received from Bihar based investors along with copies of letters of allotment of SRDs and copies of “*principal & dividend warrants*” issued to these investors by SDCL. These investors alleged that SDCL failed to repay the money invested by them in the company.
9. SEBI also received letter dated March 20, 2015 from Reserve bank of India (**RBI**) forwarding a copy of the aforesaid complaint dated January 12, 2015 received from Jannat Legal Poly-Clinic, Nalanda, Bihar against SDCL. RBI also forwarded a copy of their letter dated March 06, 2015 to Superintendent of Police, Economic Offences Wing (**EOW**), Bengaluru. RBI mentioned that SDCL is not registered with them as NBFC and hence is not authorized to accept deposits or undertake any NBFC activity such as lending or investment and requested EOW to investigate the matter.

10. SEBI also received a letter dated February 18, 2015 from the Bureau of Investigation (Economic Offences) ('**BIEO**'), Guwahati, Assam forwarding *interalia* copies of letters of allotment of SRDs received by them from investors, details of directors of the company, copies of brochure cum application forms and a copy of certificate of incorporation of the company. BIEO has also informed that during the course of their investigation it was found that SDCL sold debentures to the investors by floating various types of schemes and collected huge amounts of money. They also stated that the postdated cheques issued by the company to the investors have bounced as there is no money in the accounts of the company. It is also stated that the directors of the company closed their offices in various districts of Assam and thereby cheated the investors and misappropriated the collected money.
11. Efforts were also made to obtain the information from Ministry of Corporate Affairs' Website i.e. MCA21 portal.
12. The material available on record i.e. information/documents obtained from RBI; information/documents obtained from BIEO, Guwahati; information/documents obtained from JLP, Nalanda; 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. SDCL (CIN: U45201KA2006PLC040995) was incorporated on November 21, 2006 with the RoC, Bangalore having its registered office at 2-D, Sudaamini Residency, Flat No-18, 5th Floor, Chelekere, Kalyannagar Post, P.S- Hennur, Bangalore, Karnataka, India- 560043.
 - ii. The Directors of the company are Mr. Prasanta Bera, Mr. Biraja Bera, Ms. Paromita Dey, Mr. Biswajit Roy, Mr. Arun Sardar, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal.
 - iii. It is observed from Form 10, a copy of Board Resolution dated April 15, 2008 and a copy of Trust Deed filed by SDCL with RoC that the company has been authorized to issue debentures amounting to Rs. 20 Crores and a charge of Rs. 20 Crores was created on November 18, 2010 to secure the issuance of debentures in favour of Ms. Kalpana Guha as a Debenture Trustee. The Debenture Trustee's address is Village

Krishnanagar, P.O.-R.C. Thakurani, P.S.- Thakurpukur, Kolkata, West Bengal, India – 700104.

It is further observed from MCA website that copies of two different resolutions of EGMs of SDCL dated March 12, 2012 have been filed with RoC. As per one copy of extract of minutes of EGM of SDCL held on March 12, 2012 at 11:00 AM, the company is authorized to issue and allot the debentures aggregating to a nominal value not exceeding Rs. 30 Crores and as per another copy of the extract of minutes of EGM held on the same date and time date, the company has been authorized to issue and allot the debentures aggregating to a nominal value not exceeding Rs. 50 Crores. This indicates the discrepancy in filing of information with RoC by SDCL.

It was further observed that the company filed another Form 10 with RoC for modification of charge on October 05, 2012 to “*Increase issue of Non-Convertible Debentures to Rs. 50 Crores...*” in terms of Board resolution dated February 10, 2012 and resolution passed in EGM of members dated March 12, 2012. This *prima facie*, indicates that the issue size of the debentures was increased to Rs. 50 Crores from initial Rs. 30 Crores in terms of resolutions dated March 12, 2012.

- iv. It is mentioned in the Auditor’s Report for the year ended March 31, 2012 that “*The Company had issued Secured Non-Convertible Redeemable Debentures at different Coupon rate for different tenure. The closing balance of debenture as on 31.03.2012 is Rs.4,22,16,926/- on private placement basis.*” It is observed that the same amount i.e. 4,22,16,926/- has been mentioned under the heading ‘Long Term Borrowing’ in ‘Notes on Financial Statements for the year ended March 31, 2012’ of the company. The corresponding amount as on March 31, 2010 has been stated as Rs.4,08,78,400/- and Rs. 3,84,55,100/- as on March 31, 2011.
- v. It is observed from the copies of letters of allotment and copies of brochure cum application form that SDCL issued SRDs in Series- I, II and III.
- vi. It is mentioned in a copy of the brochure cum application form (Series-II) forwarded by BIEO that SDCL is offering SRDs of Rs. 100/-each aggregating to Rs. 10 Crores on a private placement basis under the following terms and conditions:

Scheme - I Multiplier Secured Redeemable Debentures

Plan	A	B	C	D	E	F	G
<i>Issue Price (Minimum 10 debentures) Rs.</i>	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-
<i>Maturity value Rs.</i>	1,130/-	1,500/-	2,000/-	3,000/-	5,000/-	10,000/-	15,000/-
<i>Redemption Period</i>	1 Year	3 Years	5 Years	8 Years	10 Years	13 Years 6 months	16 Years 6 Months

Scheme - II Regular Income Secured Redeemable Debentures

Plan	Redemption Period	Issue Price (Minimum 300 Debentures) Rs.	Rate of Dividend	Maturity Value Rs.
				Principal + Bonus
P	3 Years	30000/-	13.50%	30000/- + Nil
Q	5 Years	30000/-	13.50%	30000/- + 6% of Principal
R	8 Years	30000/-	13.50%	30000/- + 10% of Principle

Issue opening date has been mentioned as February 01, 2010. It is also stated in the said brochure cum application form that the debentures are being issued pursuant to the resolution passed in the meeting of the Board of Directors of the company held on January 14, 2010.

- vii. Similarly, it is mentioned in a copy of the brochure cum application form (Series-III) forwarded by BIEO that SDCL is offering SRDs of Rs. 100/-each aggregating to Rs. 30 Crores on a private placement basis under the following terms and conditions:

Scheme - I Multiplier Secured Redeemable Debentures

Plan	A	B	C	D	E	F	G
<i>Issue Price (Minimum 10 debentures) Rs.</i>	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-
<i>Maturity value Rs.</i>	1,130/-	1,500/-	2,000/-	3,000/-	5,000/-	10,000/-	15,000/-
<i>Redemption Period</i>	1 Year	3 Years	5 Years	8 Years	10 Years	13 Years	15 Years

Scheme - II Regular Income Secured Redeemable Debentures

Plan	Redemption Period	Issue Price (Minimum 300 Debentures) Rs.	Rate of Dividend	Maturity Value Rs.
				Principal + Bonus
P	3 Years	30,000/-	13.50%	30000/- + 3% of Principal
Q	5 Years	30,000/-	13.50%	30000/- + 6% of Principal
R	8 Years	30,000/-	13.50%	30000/- + 10% of Principal

Issue opening date has been mentioned as April 16, 2012. It is also stated in the said brochure cum application form that the debentures are being issued pursuant to the resolution passed at the meeting of the Board of Directors of the company held on February 10, 2012.

viii. A simple collation of data from the copies of letters of allotment and copies of “*principal & dividend warrants*” provided by complainants indicates that SDCL allotted SRDs to at least 63 allottees. It is evident from the copies of the letters of allotment that the debentures were allotted during FY 2010-11 to 2012-13 and an amount of at least Rs.6,04,000/- was mobilised from these investors .

13. In the context of the abovementioned details of the Offer of SRDs, the issue for determination in the instant matter is whether the mobilization of funds by SDCL through the aforesaid Offer, is in accordance with the provisions of the SEBI Act, 1992 ("SEBI Act") read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("Debt Securities Regulations"); the Companies Act, 1956.

14. The jurisdiction of SEBI over various provisions of the Companies Act, 1956 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."

15. 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 SRDs is a public issue or not in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of the utmost importance.

- a. The following is mentioned in the Auditor's Report for the year ended March 31, 2012 :

"The Company had issued Secured Non-Convertible Redeemable Debentures at different Coupon rate for different tenure. The closing balance of debenture as on 31.03.2012 is Rs.4,22,16,926/- on private placement basis." It is also observed from the copies of resolutions passed in EGM of shareholders of the company and copies of Form 10 that the company has been authorized to issue debentures aggregating to Rs.50 Crores. It is also pertinent to note that a charge has been created for an amount of Rs.50 Crores. It is observed from the copies of letters of allotments and copies of principal & dividend warrants issued by SDCL that the company issued SRDs to at least 63 allottees and mobilized at least Rs.6,04,000/- from them. SRDs have thus been issued and subscribed by more than forty nine persons. SEBI's letters to SDCL and its directors have either been returned undelivered by postal authorities or have not been replied to. It was also found by SEBI officials during their visit to registered office address of the company that the company did not exist at the given address. It is important to note that the number of allottees (i.e.

63) and amount raised under the Offer of SRDs (i.e. Rs.6.04 Lacs) have been arrived at by merely collating data from the complaints received. Therefore, though the exact number of investors is not available, it is most certain that the number of investors who invested in the SRDs as also the amount raised would be many times more than what has only been collated from the complaints received. As already mentioned, the Auditor's Report mentions the amount raised as on 31/03/2012 as Rs. 4.22 Crores.

In the brochure issued by SDCL, it has been mentioned that SRDs were being issued on a private placement basis. However, the company and its directors have failed to provide 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.

Based on the facts available in this case, including in particular the number of persons to whom the SRDs have been issued by SDCL, 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. SDCL 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.

16. I note that –

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

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

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

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

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

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

- ii. In the *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 SRDs* 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 SDCL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of SRDs*.

17. 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 SRDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, SDCL 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 SDCL has filed a prospectus. In view of the same, I find that *prima facie*, SDCL has not complied with the provisions of Section 60 of Companies Act, 1956.
18. 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 SDCL 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.
19. 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 SDCL 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*". Debenture trustee viz. Ms. Kalpana Guha 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 Debenture trustee viz. Ms. Kalpana Guha has *prima facie*, failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.

20. 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, there is no evidence to indicate whether SDCL has complied with the provisions of Sections 117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
21. 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 SDCL, through the *Offer of SRDs*, 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.*

22. Upon a consideration of the aforementioned paragraphs, I am of the view that SDCL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of SRDs* 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.

23. 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 Secured Redeemable Debentures* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Act, 1956 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 SDCL and no investors are defrauded. SEBI's letters to SDCL and its directors have either been returned undelivered by postal authorities or have not been replied to. SEBI officials during their visit also found that the company did not exist at its registered office address. Considering the large number of complaints received from investors, I find that there is no other alternative but to take recourse through an interim action against SDCL and its Directors along with its Debenture trustee viz. Ms. Kalpana Guha, for preventing

the company from further carrying on with its fund mobilising activity under the *Offer of SRDs*. Considering all the factors in the instant case, it is felt that urgent intervention by SEBI is warranted to prevent any further damage to investors.

24. 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. SDCL shall forthwith cease to mobilize any fresh funds from investors through the *Offer of SRDs* 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. SDCL (PAN: AAKCS3313H) and its Directors, viz. Mr. Prasanta Bera (DIN: 02264907, PAN: AHZPB9748G), Mr. Biraja Bera (DIN: 03032589), Ms. Paromita Dey (DIN: 03371096), Mr. Biswajit Roy (DIN: 05358111), Mr. Arun Sardar (DIN: 06558359), Mr. Aravinda Mondal (DIN: 06799473), Mr. Sridhar Mukherjee (DIN: 06817533), Mr. Abdul Mandal (DIN: 06825845), 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. SDCL 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. SDCL shall provide –
 - Full particulars of debenture holders such as names, addresses and contact details (i.e. telephone numbers, e-mail IDs).
 - Total amount mobilized, number of debentures issued and dates of allotment of debentures.
 - Full particulars of the debentures redeemed, if any.
 - v. SDCL shall provide a full inventory of all its assets and properties;
 - vi. SDCL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vii. SDCL 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 without prior permission from SEBI;

- viii. SDCL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of SRDs*, which are kept in bank account(s) and/or in the custody of SDCL;
 - ix. SDCL shall furnish within 21 days from the date of receipt of this Order complete information as sought by SEBI vide letters dated February 25, 2014, March 06, 2014 and July 09, 2014 including details of investors and balance sheets of the company for FY 2007-08 to 2014-15.
 - x. The Debenture Trustee viz. Ms. Kalpana Guha, is prohibited from continuing the present assignment as a debenture trustee in respect of the *Offer of SRDs* of SDCL 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.
25. The above directions shall take effect immediately and shall be in force until further orders.
26. 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 RBI; information/documents obtained from BIEO, Guwahati; information/documents obtained from JLP, Nalanda; information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'; complaints received and the documents enclosed therewith. In this context, SDCL and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:
- i. Directing them jointly and severally to refund the money collected through the Offer of SRDs along with interest, if any, promised to investors therein;
 - ii. Directing them not to issue prospectus or any offer document or any advertisement for soliciting money from the public by 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.
27. SDCL 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 of an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

28. Similarly, the Debenture Trustee, viz. Ms. Kalpana Guha, may, within 21 days from the date of receipt of this Order, file her reply, if any, to this Order and may also indicate whether she desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
29. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against SDCL and its abovementioned Directors; its Debenture Trustee, viz. Ms. Kalpana Guha, in accordance with law.

Place: Mumbai
Date: July 17, 2015

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