

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11(1), 11(4), 11A(1)(b) and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 107 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009

In the matter of Kerala Housing Finance Limited

In respect of

1. Kerala Housing Finance Limited (CIN: U65992KL1992PLC006417 / PAN: AACCK2183P)
2. Mr. G. Unnikrishnan Nair [DIN : 01402695 / PAN: AKHPP5583E], Director and Promoter
3. Mr. N. Krishnan Nair [DIN : 02566976 / PAN : BQYPK5654D], Director
4. Smt. Komala Unnikrishnan [DIN : 03163184 / PAN : AATPU6479N], Director
5. Mr. G. Sureshkumar [DIN : 03550007 / PAN : AVXPG2603H], Director and Promoter
6. Mr. P. Parameshwaran [DIN : 03315007 / PAN : AANPP01364], Director
7. Mr. B Ajithkumar (PAN not available), Promoter
8. Mr. Shajan P.G. (PAN not available), Promoter
9. Mr. R. Sukumaran (PAN not available), Promoter
10. Adv. B Manmadhan (PAN not available), Promoter
11. Mr. S. Sureshkumar (PAN not available), Promoter

1. The Securities and Exchange Board of India ("SEBI") received a reference dated May 29, 2014 from the National Housing Bank ("NHB") *inter alia* stating that -

- a) Kerala Housing Finance Limited ("KHFL" or "the Company") is a housing finance company having a valid certificate of registration without permission to accept public deposits, issued under section 29A of the National Housing Bank Act, 1987.
- b) The Company Identification Number (CIN) of the Company is U65992KL1992PLC006417 and the registered office of the Company is situated at IInd Floor, Africa Plaza, Pulimood Junction, Thiruvananthapuram - 695001.
- c) KHFL's resources *inter alia* include amount mobilized through issuance of equity shares and non-convertible debentures/bonds, reportedly on private placement basis, at different dates. An

Inspection of the Company by NHB with reference to its position as on March 31, 2013 *inter alia* revealed the following:

- (i) the Company raised the share capital in the form of equity, mainly through its branches 'on tap', without issuing any prospectus or letter of invitation, without filing any prospectus or letter of invitation and not adhering to Unlisted Public Companies (Preferential Allotment) Amendment Rules, 2011.
- (ii) The Company had displayed the offer on its website as "KHFL Shares & Non-convertible Secured debentures on private placement only'. KHFL also accepted the subscription amount in cash in many cases from the subscribers, without adhering to KYC compliances and had allotted shares, in many cases after sixty days and in some cases even after six months.
- (iii) The Company had also raised money through non-convertible debentures/bonds, mainly through branches.

NHB requested SEBI to examine the matter further.

2. On the basis of this reference, SEBI initiated a preliminary examination into the money mobilisation activities of the Company through the issue of equity shares and debentures. In pursuance of such enquiry, SEBI vide letter dated October 31, 2014 informed the Company that SEBI was in receipt of information that the Company was illegally soliciting funds from the public and advised it to furnish the following information/details :

- i. details of the Board of Directors of the Company including details regarding their names, address, DIN and PAN
- ii. details of the promoters of the company - their names, addresses, PAN, number of shares held etc.
- iii. details of the Group companies (that are controlled directly or indirectly by the promoters), subsidiaries and associates
- iv. details of the shareholders of the Company as on date
- v. details of issuance of equity shares, debentures, convertible and other securities (from date of incorporation till date)
- vi. details regarding each applicant (name, complete address and PAN), who have applied in aforesaid issuances, date of application, amount of money received from each applicant, type of security (share/debenture/convertible debenture), number of securities applied , number of

securities allotted, value of such allotment against each allottee's name, date of allotment, date of dispatch, value of such allotment against each allottee's name, date of allotment, date of dispatch of share/debenture certificate etc

- vii. Details regarding how the money solicited in the said issues were utilized/invested
- viii. Copies of Prospectus/Red-herring Prospectus filed with ROC, if any
- ix. Copies of Board resolution and General meeting resolution authorising such issuance
- x. Copies of the minutes of Board/committee meeting in which the resolution has been passed for allotment, filed with RoC, if any, regarding issuance
- xi. Copy of the application forms, Prospectus, Pamphlets, advertisements and other promotional materials circulated for issuance of such securities.
- xii. Details regarding number of application forms circulated inviting subscription for said issuance.
- xiii. Date of opening and closing of the subscription list for the particular issue.
- xiv. Copy of Form 2 under Companies Act, 1956 or its equivalent under Companies Act, 2013) which deals with Return of Allotment (name and address of the shareholders, number of shares allotted to each person) if any filed with RoC
- xv. Copies of any trust deed concerning this debenture issuance
- xvi. If any debenture trustee is appointed in the said debenture issuance, details of the names, address, copies of their consent to act as debenture trustee, etc.
- xvii. Details of any securities created for issuance of these debentures, Copies of form 8 and form 10 (under Companies Act, 1956 or its equivalent under Companies Act, 2013) filed with ROC shall be provided in this regard;
- xviii. Copies of the Annual Reports filed with Registrar of Companies for the immediately preceding three financial years. If incorporated within three years before the date of the letter, Annual Reports since incorporation.
- xix. Date of dispatch of debenture certificate etc.
- xx. Complete details of the assets held by the company as on date

KHFL was further advised to provide the above required information and the documents within 10 days from the date of receipt of the SEBI letter.

3. KHFL vide its reply dated November 17, 2014 sought additional time to furnish the information. Subsequently, vide its letter dated December 04, 2014, the Company *inter alia* provided details (in a Compact Disc) with respect to -

- a) its directors;
- b) its promoters and their shareholding;
- c) shareholding pattern as on March 31, 2014;
- d) debentures that were issued;

The Company provided sample copies of application forms; annual reports for the years 2012, 2013 and 2014 and a break-up of assets as per Balance Sheet as on March 31, 2014. The Company stated that 'Kerala Hospitality Limited' is its group company.

4. Thereafter, vide letter dated December 19, 2014, the Company stated that it was incorporated in the year 1992 and that for the last twenty two years it has forayed into the building up of 'shelter in the rural and semi urban areas'. The Company further submitted that -

- (a) it is mainly focused on small borrowers who deserve financial inclusion and that it caters to the people from the fringe micro-sectors who are largely left out of mainstream housing lenders.
- (b) its business objective was to enable access to affordable housing finance to the lower and middle income groups in India.
- (c) Its credit policies are conducive in helping people with affordable housing finance.
- (d) it is regulated by the National Housing Bank and the company is regular in submission of various returns by NHB from time to time.

5. The Company vide letter dated December 29, 2014 also made the following submissions as clarification and to support its earlier letters :

- a) The shares are issued at par at Rs.10/- per share. Its main thrust was to achieve a critical mass of share capital as its regulator was harping on the size of capital for refinance eligibility, for inclusion under the SARFAESI Act. The Company was also certain that a large base of capital would have brought large volume of profit.
- b) The Company has been contacting only the local customers who are the loan beneficiaries or debenture holders. Its regulator had observed that the source of NCDs may be curtailed in future because of RBI restrictions and was encouraging the company to 'rating' and 'public issue' so that larger control may be possible with more disclosures.
- c) the Company has already launched the exercise of rating through CARE and it would take some time to launch the public issue. The Company will also go for listing through special window for small companies in future. *"Banking on this we have put in a request to our regulator for relaxation from directions on NCD front. It is pending for decision after arguments".*

- d) 'The funding by the Company is geographically limited to the State of Kerala and among well known customers/friends/contacts who even agreed to 'subordinate their lending earlier to boost' its tier II capital. Many NRI families who have known it for two decades have supported it in the capital infusion on hearing its plans for augmenting sources for growing big.
- e) 'The Company can never be categorized as 'scheme launchers' as generally seen in other parts of country. Its main sources of fund are equity, NCD only.
- f) In its entire history of two decades, the company did not have any complaint against it. The promoters are known for their honesty though they do not belong to any established group. The Company has regularly serviced its commitments under the NCDs.
- g) While exploring various options for funds, the Company approached its regulator for refinance. During the meeting with NHB on April 23, 2010, the Company assured that it would attain Net Owned Fund (NOF) of Rs.10.00 crore by March 2011 which is one of the stipulation for availing refinance. Under such situation, the Company requested debenture holders to invest in the shares, hence their numbers are large in the years 2010 and 2011. The Company so far has not defaulted in repayment of debenture on maturity and the interest payments. The Company could fulfill the interest of depositors and take care of the various stakeholders, workforce etc. The Company also submitted that it was a tough time for small housing financial companies like itself with moderate size of operations and geographical concentration of the loan portfolio. The Company requested SEBI to consider the above factors and its continued existence for the past 23 years in the business.

6. The Company also submitted, vide its email dated January 20, 2015, the copies of minutes of Board meetings from February 22, 2005 till March 31, 2014. However majority of the minutes prior to 2012 were provided without the respective list of allottees mentioned in the minutes.

7. Though the Company had provided some details and information, it is noted that the Board minutes have not been provided pertaining to all equity allotments. Even where Board minutes have been provided, in several cases, such minutes are not accompanied with the list of allottees as mentioned in the minutes.

8. SEBI examined the matter on the basis of the material available on record, the information/documents submitted by the Company to SEBI and the information available in the filings

made by the Company with the Registrar of Companies (RoC), as available in the 'MCA - 21' portal maintained by Ministry of Corporate Affairs ("MCA"), Government of India. The following are the observations/*prima facie* findings made by SEBI in its examination with respect to the money mobilization activities by the Company through the issue of equity shares:

a. Background of the Company:

- (i) KHFL {CIN - U65992KL1992PLC006417} was incorporated on March 05, 1992, having its office at 34/413, Old Post Office Building, Beach P.O, Trivandrum - 695007. The address of the Company was subsequently changed to IIInd Floor, African Plaza, Pulimoodu, Trivandrum - 695001 on January 02, 2006.
- (ii) The Company is a Housing Finance Company and has obtained a Certificate of Registration issued by the National Housing Bank but without permission to accept public deposits, issued under Section 29A of the National Housing Bank Act 1987.
- (iii) The Company is not listed in any of the recognized stock exchanges in India or abroad.

b. Main Objects as per the Company's Memorandum of Association:

- i. provide long term finance for the construction or purchase of house, flats for residential purposes and promotion of residential complex in India.
- ii. To aid, assist finance by way of grant of loans to individuals, co-operative societies, companies, association of persons for the construction of houses for residential purposes in India.
- iii. To advance, deposit, or lend money, securities and properties to any individual person, cooperative society or association of persons on such terms and conditions as may be determined from time to time, to acquire by purchase or lease, exchange, hire or otherwise, house, flats lands and property of any tenure or any interest in the same.
- iv. To take loans from financial institutions, state/central government and or other for giving housing loans for residential purpose or hire purchase or otherwise.

As per the Company's Directors' Report for the Financial Year (FY) 2014, the Company was focused on issuing housing loans to lower and middle income segment in semi-urban and rural areas in the State of Kerala. The Directors' Report states that equity was raised to the extent of Rs.18.49 lakhs during the said financial year. This Report -

- (i) acknowledged that Rs.34.74 crore was raised through the issuance of Non-Convertible Debentures ("NCDs") as against Rs.27.39 crore during the previous year ended March 2013.

(ii) stated that the Company had paid off Rs.14.22 crore of previously issued NCDs during the year and that the number of outstanding debenture holders as on the end of financial year was 6893.

(iii) also stated that the loans disbursed during the year ended 31st March 2014 was to the extent of Rs. 41.24 crore as against Rs.32.06 crore disbursed for the year ended March 2013.

c. Company's capital structure:

As per the Balance Sheet of the Company for year ended March 31, 2014 -

- a) the Company's authorized share capital comprised of 1,20,00,000 of Rs.10/- aggregating Rs.12,00,00,000/-. The Issued, Subscribed and Paid-up capital of the Company comprised of 1,13,06,727 equity shares of Rs.10/- aggregating Rs.11,30,67,270/-. and
- b) the outstanding NCDs are mentioned as Rs.72,27,02,000/- as against Rs.51,74,90,000/- for the previous year.

d. Other financials:

- a) The Company's current liabilities aggregate to Rs.6.13 crore including Rs.5.47 crore as interest payable on debentures.
- b) It has Rs. 4.74 crore as cash and cash equivalents.
- c) The Balance Sheet indicated that as on March 31, 2014, it had disbursement of Rs.27.63 Crores as housing loans, and Rs.21.67 Crores as housing loan maintenance, Rs.30.273 Crores as personal loans. Rs.74.05 lakh is shown as interest receivable on personal loans and Rs.13.46 lakh against housing loans.
- d) Its revenue from operations for FY 2014 was Rs.12.41 crore as against Rs.7.37 crore in the previous year.
- e) KHFL made a net profit of Rs.13.37 lakh in FY 2014 as against Rs.47.21 lakh in the previous year.
- f) Expenses for advertisement are Rs.23.08 lakh for FY 2014 and Rs.11.64 lakh for FY 2013. In addition, under business development expenses, a sum of Rs.1.32 lakh and Rs.1.09 lakh is shown for FY 2014 and 2013 respectively.

- e. Promoters and Directors:** According to the Company's submissions made vide letter dated December 04, 2014, the following are its promoters and directors:

Promoters

S.No.	Name
1	Mr. B Ajithkumar
2	Mr.Shajan P.G
3	Mr.Sureshkumar
4	Mr. R. Sukumaran
5	Adv. B Manmadhan
6	Mr. S. Sureshkumar
7	Mr.G.Unnikrishnan Nair

Directors

S.No.	Name	DIN	PAN	Designation
1	Mr.G.Unnikrishnan Nair	01402695	AKHPP5583E	Managing Director
2	Mr. N. Krishnan Nair	02566976	BQYPK5654D	Director
3	Smt. KomalaUnnikrishnan	03163184	AATPU6479N	Director
4	Mr. G Sureshkumar	03550007	AVXPG2603H	Director
5	Mr. P Parameshwaran	03315007	AANPP01364	Director

f. Shareholding Pattern in the Company as on March 31, 2014:

The shareholding pattern, as per the Company's submissions dated December 04, 2014 is as follows:

Category of Shareholder	Resident/Non-Resident	Amount (paid up capital)Rs.	% of shareholding to Company's paid up capital
Directors	Resident	34,00,000	3%
Directors Relatives, Friends	Resident	9,51,61,610	84.16%
Public	Resident	1,05,22,160	9.31%
Others	Resident	39,83,000	3.53%
TOTAL		11,30,66,770	100%

It is noted that the summary of shareholding pattern, as submitted by the Company vide its letter dated December 4, 2014 mentions the total issued equity shares as 1,13,06,677, whereas the Balance Sheet for March 2014 mentions the same as 1,13,06,727 shares. It is for the Company to reconcile this discrepancy.

9. **Fund raising by the Company through the issue of equity shares.**

- a) There is limited information available on MCA-21 portal with respect to the issue and allotment of securities by the Company. The Company had merely furnished a list of its equity share allottees vide its reply dated December 04, 2014. The issue price (i.e., Rs.10/- per share) was clarified only vide the Company's letter dated December 29, 2014.
- b) From the information furnished by KHFL in its replies, the following table is compiled regarding its allotment of equity shares:

Sr. No.	Shareholder resolution approving allotment	Date of Allotment	No of Allottees	No. of Shares
1	Nil	05-Mar-92	7	19,000
2	Nil	21-Feb-94	5	27,350
3	Nil	06-Apr-94	73	24,650
4	Nil	29-Jul-94	151@	162,470
5	Nil	20-Sep-94	30	14,900
6	Nil	20-Sep-96	1	15,150
7	Nil	27-Dec-96	13#	57,680#
8	Nil	31-Aug-97	11	1,950
9	Nil	31-Aug-98	47	14,150
10	Nil	31-Mar-99	264	168,050
11	Nil	24-Apr-99	1	350
12	Nil	30-Sep-99	3	3,850
13	Nil	31-Mar-00	648	224,215
14	Nil	30-Jun-00	2	710
15	Nil	30-Sep-00	1	700
16	Nil	31-Mar-01	51	24,950
17	Nil	27-Mar-02	193	109,475
18	Nil	31-Mar-03	58	126,287
19	Nil	31-Mar-04	562	646,389
20	Nil	30-Jun-04	68	241,450
21	Nil	30-Sep-04	41	22,496
22	Nil	31-Dec-04	34	18,900
23	Nil	22-Feb-05	104	121,935
24	Nil	31-Mar-05	2	1,275
25	Nil	30-Sep-05	62	43,700
26	Nil	31-Mar-06	138	1,05,215*
27	Nil	30-Sep-06	3	80,000
28	Nil	19-Mar-07	35	69,175

29	Nil	21-Mar-07	44	99,050
30	Nil	24-Mar-07	37	66,525
31	Nil	26-Mar-07	41	56,300
32	Nil	30-Mar-07	34	66,625
33	Nil	30-Sep-07	39	26,625
34	Nil	03-Oct-07	21	20,500
35	Nil	22-Oct-07	45	162,400
36	Nil	30-Oct-07	47	74,850
37	Nil	14-Nov-07	28	44,150
38	Nil	07-Jan-08	37	219,700
39	Nil	21-Jan-08	26	170,700
40	Nil	21-Feb-08	39	197,550
41	Nil	18-Mar-08	48	52,325
42	Nil	24-Mar-08	42	254,200
43	Nil	27-Mar-08	22	138,800
44	Nil	29-Mar-08	47	280,000
45	Nil	31-Mar-08	39	160,850
46	Nil	02-Aug-08	30	133,300
47	Nil	30-Aug-08	30	218,500
48	Nil	30-Sep-08	44	219,775
49	Nil	11-Dec-08	37	296,050
50	Nil	20-Jan-09	44	297,275
51	Nil	23-Jan-09	45	140,650
52	Nil	20-Mar-09	41	243,925
53	Nil	28-Mar-09	44	274,550
54	Nil	31-Mar-09	48	171,800
55	Nil	01-Jun-09	45	145,325
56	Nil	30-Jun-09	48	187,900
57	Nil	31-Aug-09	34	129,250
58	Nil	26-Sep-09	36	212,200
59	Nil	29-Sep-09	32	288,325
60	Nil	12-Oct-09	49	235,400
61	Nil	31-Oct-09	48	256,975
62	Nil	06-Nov-09	49	266,000
63	Nil	10-Dec-09	49	290,600
64	Nil	20-Jan-10	29	126,600
65	Nil	23-Mar-10	46	186,825
66	Nil	31-Mar-10	36	68,000
67	Nil	25-Jun-10	45	239,850
68	Nil	06-Aug-10	35	268,000
69	Nil	15-Sep-10	45	369,450
70	20-Sep-10	27-Sep-10	26	312,750
71	Nil	28-Sep-10	43	411,550

72	Nil	30-Sep-10	23	149,450
73	Nil	31-Oct-10	26	150,000
74	Nil	30-Mar-11	38	62,055
75	Nil	30-Sep-11	38	68,050
76	31-Mar-12	31-Mar-12	39	69,675
77	29-Sep-12	29-Sep-12	32	66,025
78	31-Jan-13	31-Jan-13	18	50,000
79	31-Mar-13	31-Mar-13	29	77,525
80	30-Sep-13	30-Sep-13	36	93,250
81	31-Mar-14	31-Mar-14	41	91,700
TOTAL			4622	11,306,127

@ - on scrutiny of the minutes, it appears that certain pages are missing in the copy of minutes submitted by the company. As per the detailed list submitted by the company 151 allottees are seen against July 29 1994.

- As per the minutes of the Board meeting held on December 27,1996, it is observed that 85,330 equity shares were allotted to 15 persons on that date. However, as per the information submitted by the Company, it has allotted 57,680 equity shares to 13 persons.

**As per the copy of the minutes of Board Meeting held on March 31, 2006, the Company had allotted 1,06,490 equity shares. However, as per the information provided by the Company, it had allotted 1,05,215 shares to 138 persons.*

- c) It is observed that there are certain conflicting entries with respect to the number of allottees/equity shares mentioned by the company and no. of allottees/equity shares allotted as mentioned in the copies of the minutes provided. Examples of such discrepancies are mentioned at foot-notes at # and * in the table below sub-paragraph (b) above.
- d) In addition to the above, from the data furnished by KHFL, it is also noticed that it had allotted 600 shares to two investors on two occasions. However the dates are unclear and is printed as '08-Jan-943' and '20 March 198' thus totaling 4624 allottees to whom 11,306,727 shares were issued till March 31, 2014 and mobilizing a total of Rs.11.30 Crores.
- e) As per the available material and also as per the details collated in the table presented above, it can be seen that the Company was issuing equity shares, thereby mobilizing funds, in a regular and sustained manner. These funds appear to have been used as capital for managing its lending activities.

10. While complete data prior to 2006 for KHFL is not available on the MCA-21 portal, it appears that KHFL has been taking periodic approvals from its shareholders to increase its authorised capital as shown below:

Date of shareholder resolution	Authorized capital increased	
	From	To
20 th Nov 2007	03 Crore (Cr)	04 Cr
25 Mar 2008	04 Cr	05 Cr
08 Aug 2008	05 Cr	06 Cr
20 Mar 2009	06 Cr	07 Cr
25 Aug 2009	07 Cr	09 Cr
14 May 2010	09 Cr	10 Cr
20 Sept 2010	10 Cr	11 Cr
19 Nov 2012	11 Cr	12 Cr

a) **Absence of Shareholder approvals for Issuance of equity shares.**

- i. From the records available, it appears that the Company did not obtain specific approvals from its shareholders when it issued equity shares to investors, irrespective of whether it was issued to more than 49 persons or less.
- ii. It is observed that while the shareholders' resolution dated September 20, 2010, authorized the increase in share capital from Rs. 10 crore to Rs.11 crore, it also included an approval under section 81(1A), authorizing the board of directors to allot "*balance equity shares amounting to Rs 1 Cr by private placement to any person or persons*". It is noted that the other shareholder resolutions dated November 20, 2007, March 25, 2008, August 08, 2008, March 20, 2009 and August 25, 2009 which had authorised the increase of Authorized Capital did not even have such general sanction for preferential allotment/public issues. It is noted that allotments were made on 6 instances between September 20, 2010 and March 31, 2012, raising a sum of Rs.1.15 crore.
- iii. The company appears to have started obtaining specific approval under section 81(1A) of the Companies Act, 1956 for issuance of shares only from March 31, 2012. However, it is noted that even the shareholder approvals obtained on March 31, 2012 and September 29, 2012 are invalid as the Minutes indicate that the resolutions were ordinary resolutions, while as per Section 81(1A) of Companies Act, 1956, special resolution is required. While there is a provision to obtain approval of the Central Government in case of ordinary resolutions, available records indicate that KHFL has not obtained any such approval.

iv. Considering that the Company had not obtained requisite specific approvals from its shareholders for allotment of equity shares, which it claims as private placement, such issuances prior to January 31, 2013 may not be valid on that account too.

b) **Advertisements in the website of the Company soliciting applications for its 'Private Placement'**: On a perusal of the Company's website, it is seen that a 'GIF image' is displayed prominently on the Home page of the website promoting its shares and debentures. The image reads "*KHFL Shares and Non-Convertible Secured Debentures on private placement only*". Though the Company claims the same to be a private placement, the Company by placing such a prominent advertisement in its home page appears to have invited subscriptions to its securities from the public at large.

c) While the Company claims to lend funds for residential purposes as its primary activity, it is seen from its financials that personal loan issuances are larger in value as compared to its housing loans disbursements. As mentioned above, the Balance Sheet indicated that as on March 31, 2014, the Company had disbursed Rs.27.63 crore as housing loans and Rs.30.273 crore as personal loans.

11. Having considered the above, it is to be seen whether the offer and issuance of equity shares made by the Company, as mentioned above, was on 'private placement' or a 'public issue'. The provisions of section 67(3) of the Companies Act, 1956 provide guidance as to how to determine whether an offer and issue of securities is made to the public or done on a private placement. Therefore, I refer to the provisions of section 67 of the Companies Act, 1956 and section 42 of the Companies Act, 2013:

Section 67 of the Companies Act, 1956:

"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) ...

(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)."

(a) In terms of section 67(3), as amended by the *Companies (Amendment) Act, 2000, with effect from December 13, 2000*, no offer or invitation shall be treated as made to the public by virtue of sub-sections (1) or (2), as the case may be, if the offer or invitation can properly be regarded, in all 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. The Company in its submissions has stated that NRIs have participated in the capital infusion exercise and that debenture holders have subscribed to the equity shares. It can be inferred from these submissions that it was not a domestic concern of persons making and receiving the offer.

(b) More importantly, in terms of the *proviso* to the aforesaid section, the provisions of section 67(3) shall **not** apply in a case where the **offer or invitation to subscribe for shares or debentures** is made to **fifty persons or more**. Therefore, the number of subscribers becomes relevant to judge whether an issue of shares are for public or on a private placement basis, in the light of the above said provision. Therefore, if an offer of securities are made to fifty or more persons, it would be deemed to be a public issue, even if it pertains to a domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation.

(c) In the instant matter, it is noted that the Company has allotted equity shares to more than 50 allottees in a single allotment on 12 occasions since its incorporation, out of which 8 instances were post December 13, 2000 (i.e., date of notification of amendment to section 67 (3) of the Companies Act), starting from March 31, 2001. The instances of allotments made by the Company to more than 49 allottees are mentioned below:

Sr. no.	Date	Number of Allottees	Total Shares Issued
1	31-Mar-01	51	24,950
2	27-Mar-02	193	109,475
3	31-Mar-03	58	126,287
4	31-Mar-04	562	646,389
5	30-Jun-04	68	241,450
6	22-Feb-05	104	121,935
7	30-Sep-05	62	43,700
8	31-Mar-06	138	1,05,215

(d) Further, from the details of allotment of equity shares made by KHFL over the period, it is also observed that though on certain dates KHFL has made allotments to less than 49 persons, it appears that such allotments were made pursuant to a single offer and done in order to circumvent the provisions of first proviso to section 67(3) of the Companies Act, 1956. Further, these allotments are made in short intervals as can be seen from the table below and that the aggregate number of investors to whom such offer and subsequent allotment was made exceeds 49.

Period between	No. of allottees	No. of shares issued
March 19, 2007 - March 30, 2007	191	3,57,675
September 30, 2007 - November 14, 2007	180	3,28,525
January 07, 2008- March 31, 2008	300	14,74,125
August 02, 2008- September 30, 2008	104	5,71,575
December 11, 2008 - March 31, 2009	259	14,24,250
June 01, 2009 - June 30, 2009	93	3,33,225
August 31, 2009- November 06, 2009	248	13,88,150
December 10, 2009-March 31, 2010	160	6,72,025
August 06, 2010- October 31, 2010	211	16,61,200
Total	1746	82,10,750

Therefore, between March, 2007 and October 2010, KHFL has allotted equity shares to a total of 1746 persons. From the series of allotment made and the forms filed with the RoC, it is observed that equity

shares have been allotted to upto 49 persons, over several weeks continuously by KHFL merely to circumvent the provisions of section 67(3) of the Companies Act, 1956.

(e) Further, with respect to the offer and issue of equity shares (i.e. from March 05, 1992 to March 31, 2014), as mentioned in paragraph 9(b) above, there is no record to ascertain, at this stage, as to whether the Company satisfied the provisions of clauses (a) or (b) of section 67(3) of the Companies Act, 1956 to claim that such offer and allotments were made on 'private placement'. As already mentioned in sub-paragraphs (c) and (d) of this paragraph, the Company had, post December 2000, allotted equity shares on 8 instances to more than 49 persons, triggering the provisions of the first *proviso* to section 67(3). In view of the same, considering the facts and circumstances of the case and the Company's submission that it wanted to increase its capital, it is alleged that the offers made by the Company were public in nature, thereby making such offer and subsequent issuance a 'public issue' of equity shares.

It is also noted that the Company had allotted equity shares to a single allottee on September 20, 1996, April 24, 1999 and September 30, 2000. However, there is no record provided by the Company at this stage to conclude that the offer of equity shares was made only to that allottee. It needs to be appreciated that section 67 of the Companies Act mentions 'offer or invitation' and not of 'allotment' to determine whether the issue is made to public or not.

(f) Considering the frequency and regular occurrence of such series of equity share allotments it *prima facie* indicates that the method adopted by KHFL (issuing the equity shares through multiple allotments) is a device intended to give a picture that each allotment was done pursuant to a separate offer and purportedly done on private placement. Hence, the aforesaid offer of equity shares made by KHFL has to be construed as a single offer. In view of the same, it is alleged that KHFL has made public issue of equity shares between March 1992 and March 2014. During this period, the Company has issued 1,13,06,127 equity shares to 4624 investors and mobilized around Rs.11.30 crore. As stated above, this data is compiled by SEBI at this stage with the limited information available in the MCA-21 portal and the submissions/material furnished by the Company.

(g) Though KHFL is registered as a Housing Finance Company with NHB, it 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. In view of the foregoing, it could be *prima facie* observed that the aforesaid issue of equity shares made by KHFL are deemed public issues.

12. Having *prima facie* arrived at an observation that the Company had made a public issue of equity shares during the period March 2001-March 2014, the Company was under an obligation to comply with the Companies Act, 1956 read with Companies Act, 2013, SEBI Act, and the rules, regulations and guidelines framed thereunder which regulate the public issue of equity shares. In this regard, I find it necessary to refer to the judgment of the Hon'ble Supreme Court of India made in the matter of ***Sahara India Real Estate Corporation Limited & Others vs. SEBI and another*** (Civil Appeal Nos. 9813 and 9833 of 2011 ; decided on August 31, 2012) ("the Saharas case"):

"..... 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."

"90. 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."

13. I note that 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, 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."

In terms of the relevant provisions of the section 55A of the Companies Act, 1956, the provisions contained in sections 55 to 58, 59 to 81 (including Sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207 of the Companies Act, 1956 read with section 24 of the Companies Act, 2013 so far as they relate to the issue and transfer of securities shall be in the case of listed public companies and in the case of those public companies which intend to get their securities

listed on any recognised stock exchange in India, be administered by SEBI. 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 in the case of companies who intend to get their securities listed. In view of the above observations, by virtue of section 55A(a) and (b), SEBI has jurisdiction and would govern the alleged public issue of equity shares made by the Company during the period March 2001-March 2014, as discussed above.

(a) In case of any public issue of securities, the provisions of the Companies Act, 1956 *inter alia* sections 56(1), 56(3) [*corresponding provision is section 33(1) of the Companies Act, 2013, notified on September 12, 2013*], 60 read with section 2(36) [*corresponding provision is section 2(70) of the Companies Act, 2013, notified on September 12, 2013*] and 73 [*corresponding provision is section 40 of the Companies Act, 2013*] thereof needs to be complied with.

(b) Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per section 2(36) of the Companies Act, 1956 '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. Section 2(70) of the Companies Act, 2013, also defines 'prospectus' in similar terms. As per the information available in the MCA-21 portal, the Company has not filed any prospectus with respect to the said issues. Further in its reply dated December 04, 2014, the Company has admitted that it did not issue prospectus/offer documents issued in case of the debentures issued by it.

(c) In terms of 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 a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Section 26 of the Companies Act, 2013 (which came into force on April 01, 2014) stipulates the matters to be stated in a Prospectus. Further, section 33 (1) of the Companies Act, 2013 stipulates that no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus. As KHFL *prima facie* failed to file a Prospectus, it has consequentially not complied with the above stated provisions.

(d) By offering and issuing equity shares to the public, the Company should have applied to stock exchanges for listing such securities in compliance with section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognised stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. Section 40 of the Companies Act, 2013 (provision corresponding to section 73 of the Companies Act, 1956 (since repealed)), applicable with effect from September 12, 2013, states that every company making public offer shall, before making such offer, make an application to one or more recognized stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

(e) From the material available on record, KHFL appears to have not applied for listing of the equity shares issued by it. KHFL has also *prima facie* not complied with the provisions of section 73(3) as it has not kept the amounts received from investors in a separate bank account and failed to repay the same in accordance with section 73(2) of the Companies Act, 1956.

(f) I observe that sections 56, 60, 67 and 73 of the Companies Act, 1956 are included in the list of sections as mentioned in section 55A of the Companies Act, 1956, and therefore, such sections are to be administered by SEBI. The corresponding section to Section 55A of the Companies Act, 1956 is section 24 of the Companies Act, 2013 which *inter alia* states that the provisions contained in Chapter III and Chapter IV (of the Companies Act, 2013) relating to issue and transfer of securities by listed companies or those companies which intend to get their securities listed on any recognised Stock Exchange in India shall be administered by SEBI.

In view of the above observations, it is alleged that KHFL has contravened the provisions of sections 56(1), 56(3), 60 and 73 of the Companies Act, 1956 read with sections 2(70), 33(1) and 40 of the Companies Act, 2013, in respect of its offer and issue of equity shares, as discussed above.

14. It may also be noted that in terms of section 11A of the SEBI Act, SEBI is empowered to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities. The said provision is reproduced below:

"11A. (1) Without prejudice to the provisions of the Companies Act, 1956 (1 of 1956), the Board may, for the protection of investors,—

(a) specify, by regulations—

(i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto;
and

(ii) the manner in which such matters shall be disclosed by the companies;

(b) by general or special orders—

(i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;

(ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto."

15. SEBI had notified the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ('ICDR Regulations') with effect from August 28, 2009 and all the public issues are now required to comply also with the ICDR Regulations which lays down the eligibility norms, disclosure norms and other procedural requirements, for ensuring investor protection in case of issue of securities. The ICDR Regulations operates as reasonable safeguards for the investors who subscribe or intended to subscribe in the public issues of securities. Prior to the ICDR Regulations, such issues were governed by the SEBI (Disclosure and Investor Protection) Guidelines ("DIP Guidelines") from 2000 till August 28, 2009. Thus, with respect to the equity issuances of KHFL, it may be noted that DIP Guidelines are applicable to the issuances made between March 2001- August 26, 2009 and ICDR Regulations are applicable to the issuances made from August 26, 2009 - March 2014. In this regard, it is alleged that the Company did not adhere with the following norms stipulated under the ICDR Regulations:

- Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)),
- Appointment of merchant banker and other intermediaries (Regulation 5),
- Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),
- Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),
- Satisfy the conditions of initial public offer (Regulation 25 and 26),
- Minimum Contribution by Promoters (Regulation 32);
- Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)

- *Keeping the public issue open for the specified period (Regulation 46),*
- *Pre issue advertisement for public issue (Regulation 47)*
- *Manner of disclosures in the offer documents and abridged prospectus (Regulation 57, 58);*

The corresponding provisions pertaining to the DIP Guidelines are Clauses 2.1.4,2.1.5,2.8, 5.3.1,2.1.1,5.6.2, 2.2,4.1,4.11,4.14,8.8.1,5.6A, and 6.0 to 6.33.

16. Thus, from the information available on record, KHFL has *prima facie* violated the provisions of sections 56(1), 56(3), 60 and 73 of the Companies Act, 1956 read with section 465s 26, 33 (1) and 40 of the Companies Act, 2013 and regulations4, 5, 6, 7, 25, 26, 32, 36, 37, 46, 47, 57, 58of the ICDR Regulations and clauses2.1.1,2.1.4,2.1.5, 2.2.,2.8, 4.1, 4.11, 4.14, 5.3.1, 5.6.2, 5.6A and 6.0 to 6.33 of DIP Guidelines.

17. It is seen from the RoC filings made by KHFL as available on MCA 21 portal that the Ministry of Corporate Affairs during an inspection had spotted three instances where equity share allotments were made to more than 50 people and pointed out that the same is in violation of Sec 67 of Companies Act vide their letter dated 30 May, 2007. However, this appears to have been compounded vide Company Law Board order dated December 31, 2009. However, it may be noted that only offences pertaining to Companies Act may be compounded by Company Law Board and not with respect to violations of SEBI Regulations/Guidelines. There are more than three instances in which the Company has issued shares to more than 50 persons.Further, it may be noted as mentioned above, as per the provisions of section 55A of Companies Act, 1956, SEBI is entrusted with the power to administer provisions concerning sections 56, 60 and 73 of the Companies Act, 1956.

18. Further, I note that KHFL is a company registered as a Housing Finance Company with NHB. It continued to violate the public issue requirements in the issuances of its equity shares since the year 2000. Further, as observed from the replies given by the company and the documents made available to SEBI, it is strange to observe that the company could not even provide some basic details relating to their equity issuances and some of the data provided by it are contradictory and incomplete.

19. Considering the above violations committed by the Company, the fact that the Company has mobilised funds through offer and issue of equity shares and may still be mobilizing public funds through its offer and issue of equity shares, it becomes necessary for SEBI to intervene in order to

prevent the Company from further mobilization of funds from the public under the garb of issuing equity shares or any other form of security and also in the interest of the securities market.

20. The promoters of the Company, as informed by it, are Mr. B.Ajithkumar, Mr.Shajan P.G, Mr.Sureshkumar (who is also a director), Mr. R. Sukumaran, Adv. B Manmadhan, Mr. S. Sureshkumar and Mr. G.Unnikrishnan Nair (who is also a director).Including Mr.G Sureshkumar and Mr.G.Unnikrishnan Nair, who are promoter directors as mentioned above, the other directors of the Company are Mr. N. Krishnan Nair, Smt. KomalaUnnikrishnan,and Mr. P Parameshwaran. In terms of regulation 2(1)(za) of the ICDR Regulations, the term 'promoter' includes; 'the person or persons who are instrumental in the formulation of a plan or program pursuant to which specified securities are offered'. Accordingly, it is alleged that the above said promoters and directors of the Company are responsible in the offer and issue of equity shares done allegedly in contravention of the applicable law as discussed in this Order. In the light of the same, I find that there is no other alternative but to take recourse through an *ex-parte interim* action against KHFL and its directors, for preventing them from further carrying on with its fund mobilizing activity under the 'offer of equity shares' or any other securities.Further, the interest of the investors also need to be protected to ensure that public funds are not diverted and misappropriated. In the absence of such preventive action, irreparable loss and damage could be caused to shareholders and investors at large.

21. Accordingly, I, in exercise of the powers conferred under Sections 11(1), 11(4), 11A(1)(b) and 11B of the Securities and Exchange Board of India Act, 1992 read with section 19 thereof and regulation 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions :

a. The Company, namely, **Kerala Housing Finance Limited**(CIN: U65992KL1992PLC006417 / PAN:AACCK 2183P), **Mr.G.Unnikrishnan Nair**[DIN : 01402695/PAN: AKHPP5583E], Director and Promoter, **Mr. N. Krishnan Nair** [DIN : 02566976/PAN : BQYPK5654D], Director, **Smt. KomalaUnnikrishnan** [DIN : 03163184/ PAN : AATPU6479N], Director, **Mr.G.Sureshkumar** [DIN : 03550007 /PAN : AVXPG2603H], Director and Promoter, **Mr.P.Parameshwaran** [DIN : 03315007/PAN : AANPP01364], Director, **Mr. B Ajithkumar** (PAN not available), Promoter, **Mr.Shajan P.G.** (PAN not available), Promoter, **Mr. R. Sukumaran**, (PAN not available), Promoter, **Adv. B Manmadhan**, (PAN not available), Promoter and **Mr. S. Sureshkumar** (PAN not available), Promoter, are restrained from mobilizing funds through the issue of equity shares or through any other

form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.

b. The above Company, its promoters and directors 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.

c. The Company, its promoters and directors shall not dispose of any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.

d. The Company, its promoters and directors shall not divert any funds raised from public at large through the issuance of the impugned Equity shares, kept in its bank accounts and/or in the custody of the company without prior permission of SEBI until further orders.

e. The Company, its promoters and directors are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.

f. The Company, its promoter and directors shall co-operate with SEBI and shall furnish documents, as required by SEBI.

g. The Company, its promoters and directors are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

h. The above directions shall come into force with immediate effect and continue till further directions.

22. Kerala Housing Finance Limited, Mr.G.Unnikrishnan Nair, Mr. N. Krishnan Nair, Smt. KomalaUnnikrishnan, Mr.G.Sureshkumar, Mr.P.Parameshwaran, Mr. B Ajithkumar, Mr.Shajan P.G., Mr. R. Sukumaran, Adv. B Manmadhanand Mr. S. Sureshkumar are advised to show cause as to why suitable directions/prohibitions, under the sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, including the following, should not be taken/imposed against them :

- a) directing them jointly and severally to refund the money collected through the issue of Equity shares that are impugned in this Order, along with interest that is promised to the investors ;
- b) directing them to 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;
- c) directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;
- d) directing them and other companies in which their directors hold substantial or controlling interest, to not to access the capital market for an appropriate period.

23. The above Company, its promoters and directors may file their replies/submissions within a period of 21 days from the date of receipt of this Order and may also indicate whether they desire to avail an opportunity of personal hearing in the matter.

24. This Order is without prejudice to the right of SEBI to take any other action including prosecution proceedings under section 24 of the SEBI Act and section 621 of the Companies Act, 1956 read with the relevant provisions of the Companies Act, 2013 and adjudication proceedings under the SEBI Act, against Kerala Housing Finance Limited, its promoters and directors including former directors/personnel who may be 'officers in default', in accordance with law.

25. A copy of this order shall be furnished to the National Housing Bank for their information and necessary action at their end.

**PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

**Date: JULY 31, 2015
Place: Mumbai**