

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Vasundhara Realcon Limited (PAN: AADCV3799B) and its Directors *viz.* Mr. Sandip Parui (PAN: AYUPP6220B), Mr. Ashis Sarkar (PAN: ALAPS2173D), Mr. Sahab Uddin Khan (PAN: AWGPK0821R) and Mr. Gauranga Roy (PAN: BFDPR1288E); its Debenture Trustee, *viz.*, Vasundhara Realcon Debenture Trust (through its trustees *viz.*, Mr. Chinmoy Ghatak and Mr. Priyabrata Roy).

1. SEBI received a reference dated July 29 2015 from the Office of the Registrar of Companies, West Bengal, wherein it was alleged that M/s. Vasundhara Realcon Limited (hereinafter referred to as "VRL") was collecting money from people through various schemes and investment plans. The Office of the Registrar of Companies *inter alia* provided the following information:
 - VRL issued non-convertible debentures for a sum of Rs.10,00,00,000/- on August 20, 2010,
 - Thereafter, on August 16, 2011, VRL again issued non-convertible debentures for a sum of Rs.50,00,00,000/-
 - Balance Sheet of the company for the year ended March 31, 2011 and March 31, 2012.
2. As a matter of preliminary inquiry, SEBI vide letter dated December 12, 2013, sought the following information from VRL in respect of its business activity:
 - i. Copy of the Memorandum and Articles of Association,
 - ii. Copy of Audited Annual Accounts and Annual Returns for the last 3 years;
 - iii. Name, addresses and occupation of all the Promoters/Directors and Key Managerial of the company;
 - iv. Nature of business;
 - v. Other information in respect of issue of shares/debentures by VRL, *viz.* –

- a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("**ROC**") for issuance of secured non-convertible debentures;
 - b. Copies of Form 10 filed with RoC along with all attachments of the form,
 - c. Details regarding the number of application forms circulated inviting subscription;
 - d. Details regarding the number of application forms received;
 - e. Details regarding the number of allottees and list of such allottees.;
 - f. Details regarding number of secured non-convertible debentures allotted and value of such allotment against each allottees' name;
 - g. Details regarding subscription amount raised;
 - h. Date of allotment of the secured non-convertible debentures,
 - i. Copies of the minutes of Board/Committee meeting in which the resolution was passed for allotment;
 - j. Date of dispatch of secured non-convertible debenture certificates, etc.;
 - k. Details of the total number of applicants for each of its scheme besides the list of final allottees,
 - l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of secured non-convertible debentures;
 - m. Terms and conditions of the issue of shares/debentures;
3. Thereafter, SEBI vide separate letters dated April 11, 2014 sought the aforesaid information/documents from the directors of VRL, *viz.* Mr. Sandip Parui, Mr. Ashis Sarkar and Mr. Sahab Uddin Khan. All the letters sent to the directors and the company were delivered . However, till date no reply has been received.
4. In the meanwhile, SEBI received several complaints against VRL, alleging that the company is raising funds from public by issuing securities. The complainants also forwarded copies of debenture certificates issued by VRL.

5. Thereafter, information regarding VRL was obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*.
6. As VRL failed to cooperate with the preliminary inquiry by SEBI, the material available on record *i.e.* the reference received by SEBI from RoC, information obtained from the *MCA 21 Portal*, complaints received by SEBI along with the documents contained therein, copies debenture certificate forwarded by the complainants, etc. have been perused. On an examination of the same, it is observed that:
- VRL (Vasundhara Realcon Ltd.) (CIN:U74999WB2010PLC151866) was incorporated on July 30, 2010. Its registered office is at 362B, New Panchanantala Road, Paschim Putiary, Korunamoyee, Tollygunge, West Bengal-700041.
 - The details of the directors of the company are as follows:-

Full Name	DIN	Present residential address	Designation	Date of Appointment	Date of cessation
Sandip Parui	03140146	3 No. Nityanandapur Belsingha, 2 No.Falta, South 24 Parganas, West Bengal-743504.	Managing Director	30/07/2010	--
Ashis Sarkar	03140202	Vaishnavi Gardens, Flat No. 2B, Block D, James Long Sarani, Kolkata, West Bengal-700104	Director	30/07/2010	--
Sahab Uddin Khan	03143030	Vill- Kanaigachi, PO- Nausha, Dist. South 24 Parganas, West Bengal-743368.	Director	30/07/2010	--
Gauranga Roy	05262977	Deko Para, Nurpur, Diamond Harbour, South 24 Parganas, West Bengal-743331.	Past Director	02/07/2012	15/05/2013

- iii. On an examination of the brochure/application form issued by VRL, it is observed that VRL came out with issue of *Non-convertible secured redeemable debentures* ("NCDs") of Rs.10Cr. and Rs. 50 Cr. on August 16, 2010 and August 16, 2011 respectively. The terms and conditions of one of the issue of NCDs *inter alia* reads as under:

"Terms and Conditions of the Debenture Issue"

- VRL is offering Secured Redeemable Debenture on private placement basis

Scheme 1: Multiplier Income

Plan	A	B	C	D	E
<i>Issue Price (Minimum 10 Debenture)</i>	1000	1000	1000	1000	1000
<i>Maturity Value</i>	1600	2200	3500	6000	10000
<i>Redemption Period</i>	3 Years	5 years	7 Years	10 Years	13 Years

Scheme 2: Regular Income

Minimum acceptable amount is Rs. 25,000/- Interest payable monthly		
Plan	Redemption Period	Rate of Interest
F	2 Years	14.40 %
G	4 Years	17.00%

- The application shall be made for a minimum amount of Rs. 1000/- for scheme I and Rs. 25,000/- for Scheme-II
- The applicant must be an Indian Citizen, with minimum age limit of 18 years, will be eligible for subscription
- **Allotment:** The debenture Certificates will be issued to every Secured Debenture (SD) holder and shall be posted at the address of the SD holder registered with the company within 45 days from the date of receiving application
- **Transfer:** Debenture holders can transfer the SD to any persons subject to the terms and conditions and approval by the company....

- **Purpose of the Issue:** *The funds raised through the investment will be invested for expansion of asset building of existing projects and upcoming projects and other purposes mentioned in the MoA of the company..."*

iv. On an examination of the various complaints received by SEBI and the copies of debenture certificates issued by VRL (forwarded by the complainants along with the complaints) and the data obtained from MCA Website, it is observed that the details of minimum fund mobilization of the company through issue of debentures are as under:

Year	Type of Security	No. of persons to whom debentures issued*	Amount (Rs.)
2010-11	Non-Convertible Redeemable Debentures of Rs. 100	65	24,02,500
2011-12	-do-	189	81,03,000
2012-13	-do-	196	1,04,15,700
2013-14	-do-	18	14,46,000
Total (Approximate)		*468	^2,23,67,200

*^No. of allottees and amount raised have been collated from the documents obtained from MCA21 Portal and also the information in the complaints received by SEBI. It is possible that the actual no. of allottees and amount mobilized could be much more than the above indicated figures.

- v. From the copy of Form 10 filed with the RoC filed by VRL, it is observed that VRL has created a charge for an amount of Rs. 50 Cr. on August 16, 2011 and Rs. 10 Cr. on August 16, 2010 for issue of debentures. The said charge has been created on the immovable properties. For this, VRL appointed “*Vasundhara Realcon Debenture Trust*” (through its Trustees viz. Mr.Chinmoy Ghatak and Priyabrata Roy), (an entity not registered with SEBI) as debenture trustee for the offer of the NCDs.
- vi. As per the details above and also from the details of the complaints received by SEBI, it is observed that during the Financial Years 2010-11, 2011-12, 2012-13 and 2013-2014, VRL allotted *Non-convertible secured redeemable debentures (NCDs)* to atleast 468 individuals/investors and mobilized funds amounting to approximately Rs. 2.24 Cr.. It is important to note that the

number of allottees and amount raised under the *Offer of NCDs* for the Financial Years 2010-11, 2011-12, 2012-13 and 2013-14 have only been taken from the documents obtained from *MCA21 Portal* and also the information in the complaints received by SEBI. It is likely that the actual number of allottees and amount mobilized by VRL could be much more than the figures indicated in the Table at paragraph 6(iv) above.

7. In the context of the abovementioned observations, the issue for determination in the instant matter is whether the mobilization of funds by VRL through the aforesaid issuance of *NCDs*, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**") read with the Companies Act, 1956.

7.1 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:

"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."

7.2 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. Construction of reference to offering shares or debentures to the public, etc.

67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether

selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

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

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

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

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

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

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

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sahara Case* observed:

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

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

Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of 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. ...

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. ..."

7.2.1 In the instant matter, for ascertaining whether the issue of *Non-Convertible Redeemable Debentures* is a public issue or issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.

- i. Even though the *Offer of NCDs* is stated to have been made on a private placement basis, it is observed from the details of the complaints received by SEBI, that during the Financial Years 2010-11, 2011-12, 2012-13 and 2013-2014, VRL allotted *NCDs* to atleast 468 individuals/investors and mobilized funds amounting to approximately Rs. 2.24 Cr.. The number of investors to whom allotments were made under the *Offer of Secured Redeemable Debentures* during the Financial Years 2010-11, 2011-12 and 2012-13 (as detailed in the Table at Paragraph No. 7(iv) above) was way beyond the prescribed limit of forty nine persons. Although, it is mentioned in the brochure issued by VRL, that the company was making an Offer of NCDs on a private placement basis, from the number of investors to whom allotments were made along with the amount mobilized, it is abundantly clear that the issue was offered to the general public. Merely stating that the issue is a private placement shall not make it as such.

In view of the above stated facts, the Offer of NCDs by VRL *prima facie* qualifies as a public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the Sahara Case.

- ii. It may be noted that the number of allottees/investors and the amount mobilized under the *Offer of NCDs* have been arrived at merely by collating the details available in the complaints received by SEBI and also from the data obtained from *MCA21 Portal*. It is most likely that the actual number of allottees and amount mobilized by VRL would be much more than the figures indicated in the Table at Paragraph No. 6 (iv) above.

- iii. In addition, VRL is not stated to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956 and therefore, is not covered under the second proviso of Section 67 (3) of the Companies Act, 1956 (quoted in Paragraph No. 9.2 (i) above). In view of the aforesaid, I, therefore, *prima facie* find that VRL is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.
- iv. In view of the above, the *Offer of NCDs* by VRL, particularly during the Financial Year 2010–11, 2011-12 and 2012-13, will *prima facie* qualify as a public issue under the *first proviso* to Section 67(3) of the Companies Act, 1956. In this regard, 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.

7.3 I note that:

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

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

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

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

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

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1 [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 five thousand rupees.”

- ii. In the *Sahara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that –

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section

73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons.

... Section 73(2) says that every company and every director of the company who is an officer in default, shall be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed. The scope of the above mentioned provisions came up for consideration before this Court in *Raymond Synthetics Ltd. & Ors. V. Union of India* (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since Saharas had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."

- iii. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, since the *Offer of NCDs* by VRL 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 the provisions of Sections 73(2) and 73(3) of that Act.
- iv. In the facts of the instant case, it *prima facie* appears that VRL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.

7.4 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, the *Offer of NCDs* was a public issue of securities. Having made a public issue, VRL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. I find that there is no evidence on record to

indicate whether or not VRL has complied with the provisions of Section 60 of Companies Act, 1956. In view of the same, I find that VRL has *prima facie* not complied with the provisions of Section 60 of Companies Act, 1956.

7.5 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 VRL has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

7.6 Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. Further, under Section 117C of the aforesaid Act, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. Based on the material available on record, I find that VRL has not complied with the provisions of Sections 117B-C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

7.7 In addition to the above, reference may be made to the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as "**Debt Securities Regulations**") which 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 VRL, through the Offer of NCDs which is a public issue of debt securities, has *prima*

facie violated the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, *viz.*

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

8. Upon a consideration of the aforementioned paragraphs, I am of the view that VRL is *prima facie* engaged in fund mobilizing activity from the public, through the Offer of NCDs and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Section 117-B, Section 117-C and the Debt Securities Regulations. The present Directors of VRL are Mr. Sandip Parui, Mr. Ashis Sarkar and Mr. Shab Uddin Khan. Mr. Gauranga Roy is the past Director. It is alleged that the aforementioned Directors being the persons in-charge of and responsible to the Company for the conduct of business, are responsible under Section 27(2) of the SEBI Act, for the *prima facie* contraventions committed by VRL through the *Offer of NCDs*.

9. It is further noted that VRL created a charge of Rs. 50 Cr. on August 16, 2011 and Rs. 10 Cr. on August 16, 2010 for issue of debentures. The said charge has been created on the immovable

properties. For this VRL has appointed the trustee viz., “*Vasundhara Realcon Debenture Trust*” (through its trustees Mr.Chinmoy Ghatak and Mr. Priyabrata Roy).

9.1 Section 12(1) of the SEBI Act states that: "No trustee of trust deed... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act". Further, SEBI (Debenture Trustees) Regulations, 1993 ("**Debenture Trustees Regulations**") specifies the eligibility criteria for being a debenture trustee. In the instant case, there is no evidence on record to indicate whether or not “*Vasundhara Realcon Debenture Trust*” satisfies the specified eligibility criteria.

9.2 Based on the material available on record, I find that “*Vasundhara Realcon Debenture Trust*” represented by Mr.Chinmoy Ghatak and Priyabrata Roy has acted as unregistered Debenture Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustees Regulations.

10. 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 deems 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 Secured and Unsecured Redeemable Non Convertible Debentures to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Act and the Debt Securities Regulations. It may also be noted that VRL had created a charge for an amount of Rs. 10 Cr. on August 16, 2010 and Rs. 50 Cr. on August 16, 2011 for issue of debentures and appointed “*Vasundhara Realcon Debenture Trust*” an unregistered entity represented by Mr. Chinmoy Ghatak and Priyabrata Roy as trustees to the *Offer of NCDs*. Hence there is a clear possibility of much larger funds being raised through such offers. It is also

noted that VRL and its directors failed to cooperate with the preliminary inquiry conducted by SEBI. Failure on the part of VRL, to furnish the information/documents sought by SEBI when considered in the light of the abovementioned *prima facie* findings, lead to the inescapable conclusion that such refusal to furnish information sought by SEBI has only been to conceal the true nature and operation of its fund mobilizing activity.

Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by VRL and no investors are defrauded. In light of the facts in the instant matter, I find that there is no other alternative but to take recourse through an interim action against VRL and its Directors along with its Debenture Trustee, *viz.*, “*Vasundhara Realcon Debenture Trust*” represented by trustees, Mr.Chinmoy Ghatak and Priyabrata Roy, for preventing them from further carrying on with its fund mobilising activity under the *Offer of NCDs*.

11. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act read with Section 19 of the SEBI Act read with the SEBI Debt Securities Regulations and the SEBI Debenture Trustees Regulations, thereof, hereby issue the following directions –

- i. *VRL (Vasundhara Realcon Ltd.) (PAN: AADCV3799B) shall cease to mobilize any fresh funds from investors through the Offer of Non-convertible Secured Redeemable Debentures 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. *VRL and its Directors, viz., Mr. Sandip Parui (PAN: AYUPP6220B), Mr. Ashis Sarkar (PAN: ALAPS2173D), Mr. Sabab Uddin Khan (PAN: AWGPK0821R) and Mr. Gauranga Roy (PAN: BFDPR1288E) 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. *VRL 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. *VRL shall provide a full inventory of all its assets and properties;*
- v. *The abovementioned Directors of VRL shall provide a full inventory of all their assets and properties;*
- vi. *VRL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of NCDs, without prior permission from SEBI;*
- vii. *VRL and its abovementioned Directors shall not divert any funds raised from public at large through the Offer of NCDs, which are kept in bank account(s) and/or in the custody of VRL;*
- viii. *VRL and its abovementioned Directors shall furnish complete and relevant information in respect of the Offer of NCDs (as sought by SEBI vide letter dated December 12, 2013), within 14 days from the date of receipt of this Order.*
- ix. *VRL shall provide to SEBI all information regarding repayments made to the holders of Secured and Unsecured Redeemable Non-Convertible Debentures including name of the debenture holder, address, amount mobilized, number of Secured Redeemable Non-Convertible Debentures issued, promised maturity amount with date of maturity, amount refunded and date thereof;*
- x. *The Debenture Trustee, viz. "Vasundhara Realcon Debenture Trust" represented by trustees, Mr.Chinmoy Ghatak and Priyabrata Roy is prohibited from continuing with its present assignment as a debenture trustee in respect of the Offer of NCDs of VRL 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*

12. The above directions shall take effect immediately and shall be in force until further orders.

13. The *prima facie* observations contained in this Order are made on the basis of the material available on record such as complaints received by SEBI, information obtained from the *MCA 21 Portal*, etc.. In this context, VRL 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 read with Section 73(2) of the Companies Act, 1956, including the following, should not be taken/imposed against them:

- i. Directing them jointly and severally to refund money collected through the *Offer of NCDs* along with interest, if any, promised to investors therein;
- ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

14. VRL and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their replies, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

15. Similarly, the Debenture Trustee, *viz.* “*Vasundhara Realcon Debenture Trust*” (through Mr. Chinmoy Ghatak and Mr. Priyabrata Roy), is advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining it from accessing the securities market and further restraining it from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.

16. The Debenture Trustee, *viz.* “*Vasundhara Realcon Debenture Trust*”, may, within 21 days from the date of receipt of this Order, file its reply, if any, to this Order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific

request made in that regard.

17. This interim order cum show cause notice is without prejudice to the right of SEBI to take any other action that may be initiated against VRL and its abovementioned Directors; its Debenture Trustee, *viz.* “*Vasundhara Realcon Debenture Trust*”, in accordance with law.

Place: Mumbai
Date: November 10, 2015

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