

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 –

1. ROOFERS INFRA-PROJECTS LIMITED (PAN: AAECR6118F).
2. ITS PROMOTERS/DIRECTORS, VIZ.
 - a. SHRI SAUROVEMOY GHOSH (PAN: AIDPG1944N; DIN: 03580554).
 - b. SHRI SUKUMAR BHATTACHARYA (PAN: AHNPB5569M; DIN: 06538554).
 - c. SHRI SUDHIR CHANDRA BERA (PAN: AXAPB8554D; DIN: 06500319).
 - d. SHRI KHUDIRAM SOUNTH (PAN: AKEPS8245D; DIN: 01642426).
 - e. SHRI HIRAK NATH SOUNTH (PAN: APKPS6248B; DIN: 01642164).
 - f. SMT JAYANTI SOUNTH (PAN: AZGPS4138J; DIN: 01642127).
 - g. SHRI BHADRESHWAR PAL (PAN: ANZPP6080B; DIN: 01557670).
 - h. SHRI ANJAN BANDYOPADHYAY (PAN: ADYPB3215H; DIN: 02599213).
 - i. SHRI ANIRUDDHA GHOSAL (PAN: AHEPG6300N; DIN: 03398215).
 - j. SHRI SUKUMAR CHATTERJEE (PAN: ACFPC4630F; DIN: 03576773).
 - k. SHRI AJOY SANKAR SANYAL (PAN: DUGPS0846K; DIN: 06548210).
 - l. ROOFERS INFRASTRUCTURE INDIA PRIVATE LIMITED (PAN: AADCR8150J).
 - m. SHRI RABINDRA NATH SOUNTH (PAN: BDLPS1922A).
 - n. SHRI TARAK NATH SOUNTH (PAN: AZJPS2963G).
 - o. SHRI SUJIT KUMAR PAL (PAN: BGBPP6436M) AND
 - p. SMT KABITA RANI PAL.
3. ITS DEBENTURE TRUSTEES, VIZ.
 - a. ROOFERS DEBENTURE TRUST (REPRESENTED BY ITS TRUSTEES, VIZ. SHRI KANAI LAL BHATTACHARYA AND SHRI BIMAN KUMAR TAT) AND
 - b. DIAMOND DEBENTURE TRUST (REPRESENTED BY ITS TRUSTEE, VIZ. SHRI BIMAN KUMAR TAT).

-
1. Securities and Exchange Board of India ("SEBI") received a complaint dated November 14, 2013, alleging mobilization of funds by Roofers Infra-Projects Limited ("RIPL").

2.1 Thereafter, SEBI vide letter dated December 24, 2013, sought the following information from RIPL, viz. –

- i. Copy of Audited Annual Accounts and Annual Returns of the company for the last 3 years;
- ii. Name, addresses and occupation of all the Promoters/Directors and Key Managerial of the company;
- iii. Other information in respect of issue of shares/debentures by the company, viz. –
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("**ROC**");
 - b. Date of opening and closing of the subscription list;
 - c. Details regarding the number of application forms circulated inviting subscription;
 - d. Details regarding the number of applications received;
 - e. Details regarding the number of allottees and list of such allottees, etc.;
 - f. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for raising such additional capital and also for allotment;
 - g. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/debentures;
 - h. Terms and conditions of the issue of shares/debentures;
 - i. Details of application for listing, if any, filed with stock exchanges;
 - j. Copy of Form 2 and Form 10 filed with ROC;
 - k. Details of Debenture Trustee.

2.2 The abovementioned letter was delivered to RIPL.

2.3 As no information was forthcoming, a reminder letter dated February 12, 2014, was sent to RIPL. Further, vide letters dated February 12, 2014, SEBI also sought the abovementioned information from the Directors of RIPL, viz. Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera.

2.4 The abovementioned letters were delivered to RIPL's Directors. However, the letter addressed to RIPL was returned undelivered.

- 2.5 Since no information was provided by RIPL and its Directors, information was obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*. Accordingly, the following was observed –
- i. RIPL last filed its Balance Sheet for the Financial Year ended March 31, 2013, with the ROC. On an examination of the same, it was observed that an amount of ₹74.40 Crores was appearing under the head '*Long Term Borrowings–Secured Non-Convertible Redeemable Debentures*'. The corresponding figure for the Financial Year ended March 31, 2012 was ₹1.30 Crores.
 - ii. RIPL last filed its Annual Return for the Financial Year ended March 31, 2013, with the ROC. On an examination of the same, it was observed that its capital structure as on September 30, 2013 (i.e. the date of AGM for the Financial Year ended March 31, 2013), was as under:
 - a. The Issued Capital consisted of equity shares amounting to ₹55 Lakhs. As per the list of equity shareholders attached to the Annual Return, the total number of equity shareholders was twenty.
 - b. The total debentures of RIPL consisted of 215,00,000 *NCDs* having nominal amount of ₹100 per debenture amounting to ₹215 Crores. However, no list of debenture holders was attached to the Annual Return.
 - iii. An amount of ₹74.40 Crores was shown as indebtedness of the company i.e. secured loans including interest outstanding and accrued but not due for payment. It may be noted that this amount matched the amount of ₹74.40 Crores appearing under the head '*Long Term Borrowings–Secured Non-Convertible Redeemable Debentures*' in the Balance Sheet for the Financial Year ended March 31, 2013 (as stated in Para 2.5(i) above).
- 3.1 Vide an Order dated October 30, 2014 read with Order dated November 23, 2015, an Investigating Authority (“**IA**”) was appointed for investigating possible violations by RIPL of the SEBI Act, 1992 (“**SEBI Act**”); Securities Contracts (Regulations) Act, 1956 (“**SCRA**”); the provisions specified in Section 55A of the Companies Act, 1956 or the Rules or Regulations made or directions issued by SEBI thereunder.
- 3.2 Summons dated January 9, 2015, were issued by the IA to RIPL and all its Directors (past and present) for production of documents and to appear in person before him under Section 11C(3) & 11C(5) of the SEBI Act on January 21, 2015.

3.3 The status of compliance of summons is given as under:

- i. RIPL, Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Aniruddha Ghosal, Shri Saurovemoy Ghosh, Shri Sudhir Chandra Bera and Shri Sukumar Bhattacharya –
 - Summons (dated January 9, 2015) for production of documents and to appear before the IA on January 21, 2015, were issued to the aforementioned entities. The aforementioned entities sought adjournment vide letters dated January 20, 2015.
 - Summons (dated January 22, 2015) for production of documents and to appear before the IA on February 6, 2015, were once again issued to the aforementioned entities. The aforementioned entities again sought adjournment vide letters dated February 05, 2015.
 - Summons (dated February 13, 2015) for production of documents and to appear before the IA on February 24, 2015, were once again issued to the aforementioned entities. The aforementioned entities again sought adjournment vide letter dated February 27, 2015.
 - In view of the deliberate non-cooperation from the aforementioned entities and in light of the fact that several extensions had earlier been granted as brought out above, no further extensions were granted by the IA.
- ii. Shri Bhadreshwar Pal appeared in person before the IA. He submitted that Shri Hirak Nath Sounth had offered him employment with RIPL. He further submitted that he was never part of any day-to-day activities of RIPL.
- iii. Sukumar Chatterjee appeared in person before the IA. He submitted that he had joined as a land development advisor in RIPL on May 2, 2011. He was later informed by Shri Hirak Nath Sounth that he had been made a Director of RIPL. After becoming aware of the said fact, he tendered his resignation. He further submitted that he was never part of any day-to-day activities of RIPL. He also submitted a copy of Form 32 filed for his resignation.

- iv. Shri Ajoy Sankar Sanyal appeared in person before the IA. He submitted that he was working in the capacity of a lawyer for the civil cases of RIPL and due to his good relations with Shri Hirak Nath Sounth, he gave his consent to become an Additional Director of RIPL. He further submitted that he was never part of any day-to-day activities of RIPL. He also submitted a copy of Form 32 filed for his resignation.
 - v. Shri Anjan Bandyopadhyay – The summons issued to him was returned as undelivered with the remarks '*Addressee moved*'.
- 3.4 On completion of investigation, the IA submitted an Investigation Report.
4. SEBI was also in receipt of a letter dated August 25, 2014, from the Assistant Director, Office of the Regional Director (Eastern Region), Ministry of Corporate Affairs, forwarding the complete set of Company Petition (C.P. No. 565 of 2014; C.A. No. 67 of 2014–Calcutta High Court) ("**Company Petition**") filed by RIPL. On a perusal of the same, it was observed that '*list of debenture holders*' was attached.
5. Upon a consideration of the Investigation Report, it is observed that –
- i. RIPL was incorporated on December 17, 2009, with the ROC, Kolkata with CIN as U45400WB2009PLC140341. Its Registered Office is at Diamond Tower–1, Ground Floor, Jhapetapur, Post Office – Kharagpur, West Midnapore–721301, West Bengal, India.
 - ii. The Promoters of RIPL are Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Roofers Infrastructure India Private Limited, Shri Rabindra Nath Sounth, Shri Tarak Nath Sounth, Shri Sujit Kumar Pal and Smt Kabita Rani Pal.
 - iii. The present Directors of RIPL are Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya and Shri Sudhir Chandra Bera.
 - iv. Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Bhadrashwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar

Chatterjee and Shri Ajoy Sankar Sanyal, who were earlier Directors in RIPL, have since resigned.

- v. From the material available on record, it is observed that RIPL issued "*Non-Convertible Redeemable Debentures*" ("***Offer of NCDs***") to investors during the Financial Years 2009–10, 2010–11, 2011–12, 2012–13 and 2013–14, details of which are provided below –

Type of Security	Year	No. of persons to whom NCDs were allotted	Total Amount (₹ in Crores)
<i>Non – Convertible Redeemable Debentures</i>	2009–10	42269	74.40
	2010–11		
	2011–12		
	2012–13		
	2013–14		
Total		*42269	^74.40
<i>*The year–wise number of debenture holders is not known since RIPL has failed to provide such information to SEBI. On a scrutiny of the latest Annual Return filed by RIPL with the ROC for the Financial Year ending March 31, 2013, it is observed that details of number of debenture holders has not been provided by the company. Further, on further scrutiny of the previous Annual Returns filed by the company for the Financial Year ending March 31, 2012 and Financial Year ending March 31, 2011, it is observed that the company has shown only one noticee viz. 'Roofers Capital Management Limited' as its debenture holder for the entire amount of debentures issued by it i.e. Rs. 1.3 Crores and Rs. 6.14 Crores respectively.</i> <i>^The amount has been taken from RIPL's Balance Sheet for the Financial Year ending March 31, 2013.</i>			

- vi. Details of Charge created by the company for the *Offer of NCDs* have been obtained from the *MCA21 Portal*, which is provided as under –

DATE OF CHARGE CREATION	CHARGE AMOUNT SECURED (₹ IN CRORES)	CHARGE HOLDER
22.01.2010	15	Roofers Debenture Trust (Trustee – Shri Kanai Lal Bhattacharya)
19.04.2011	50	Roofers Debenture Trust (Trustee – Shri Biman Kumar Tat)
27.01.2012*	150	Diamond Debenture Trust (Trustee – Shri Biman Kumar Tat)
<i>*Date of modification of Charge.</i>		

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

6.2 I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act. 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."

6.3 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 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, 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. ..."

- iii. In the instant matter, for ascertaining whether the *Offer of NCDs* is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.
 - a. Under the *Offer of NCDs*, it is observed that during the Financial Years 2009–10, 2010–11, 2011–12, 2012–13 and 2013–14, RIPL allotted *NCDs* to approximately 42269 individuals/investors and mobilized an amount of at least ₹74.40 Crores (Table at paragraph 5(v) of page 6). The number of investors to whom allotments were made under the *Offer of NCDs* during the aforesaid Financial Years coupled with the amount mobilized therein *prima facie* indicate that such *Offer* was a public issue of securities, as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956.
 - b. However, it is noted that the number of allottees and amount raised under the *Offer of NCDs* for the abovementioned Financial Years, have only been taken from the documents available on the *MCA21 Portal* and the documents annexed with the aforementioned Company Petition since no details were submitted by RIPL or its Directors. Therefore, the actual number of allottees and amount mobilized by RIPL could be substantially more than the figure of 42269 individuals/investors and ₹74.40 Crores. Further, RIPL had also created charge for an amount of ₹215 Crores for the *Offer of NCDs*, which clearly indicate the intention to mobilize much more funds through such public issue.
 - c. It is observed that RIPL 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. In view of the aforesaid, I, therefore, find that RIPL is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.
 - d. In view of the above, the *Offer of NCDs* by RIPL, would *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.

6.4 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 recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

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

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

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

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 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 *Sabara 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. Vs. Union of India* (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since Sabaras had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."*

- iii. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, since the *Offer of NCDs* is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956 and also compliance with 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 RIPL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.
- 6.5 Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the ROC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, since the *Offer of NCDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public issue, RIPL 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 that RIPL has registered a prospectus with the ROC. In view of the same, I find that RIPL has *prima facie* not complied with the provisions of Section 60 of Companies Act, 1956.
- 6.6 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 RIPL 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.
- 6.7 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 Companies Act, 1956, 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 RIPL has not complied with the provisions of Sections 117B–117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions in respect of the *Offer of NCDs*.

6.8 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 RIPL, through the *Offer of NCDs* for the Financial Years 2009–10, 2010–11, 2011–12, 2012–13 and 2013–14, 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 17 – *Creation of security*
- xv. Regulation 19 – *Mandatory Listing*
- xvi. Regulation 26 – *Obligations of the Issuer, etc.*

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

7.1 From the material available on record, it is observed that RIPL created the following Charge for the *Offer of NCDs* –

DATE OF CHARGE CREATION	CHARGE AMOUNT SECURED (₹ IN CRORES)	CHARGE HOLDER
22.01.2010	15	Roofers Debenture Trust (Trustee – Shri Kanai Lal Bhattacharya)
19.04.2011	50	Roofers Debenture Trust (Trustee – Shri Biman Kumar Tat)
27.01.2012*	150	Diamond Debenture Trust (Trustee – Shri Biman Kumar Tat)
*Date of modification of Charge.		

7.2 Section 12(1) of the SEBI Act states that: "No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act".

7.3 In addition, 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."

7.4 Based on the material available on record, I find that Roofers Debenture Trust (represented by its Trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its Trustee, viz. Shri Biman Kumar Tat), have acted as unregistered Debenture

Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.

8. I note that under the *Offer of NCDs*, RIPL allotted *NCDs* to the public during the Financial Years 2009–10, 2010–11, 2011–12, 2012–13 and 2013–14. The past and present Directors and Promoters of RIPL were/are Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya, Shri Sudhir Chandra Bera, Shri Bhadreshwar Pal, Shri Anjan Bandyopadhyay, Shri Aniruddha Ghosal, Shri Sukumar Chatterjee, Shri Ajoy Sankar Sanyal, Roofers Infrastructure India Private Limited, Shri Rabindra Nath Sounth, Shri Tarak Nath Sounth, Shri Sujit Kumar Pal and Smt Kabita Rani Pal. It is alleged that the aforementioned Directors and Promoters are responsible under Section 73(2) of the Companies Act, 1956, read with Section 27(2) of the SEBI Act, for the *prima facie* contraventions committed by RIPL through the *Offer of NCDs*.
9. 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 (as mentioned in paragraphs 6.1–6.9 above). It is pertinent to note that RIPL and its Directors, viz. Shri Saurovemoy Ghosh, Shri Sukumar Bhattacharya, Shri Sudhir Chandra Bera, Shri Khudiram Sounth, Shri Hirak Nath Sounth, Smt Jayanti Sounth, Shri Aniruddha Ghosal, have failed to co-operate with the Investigation conducted by SEBI and have not appeared before the IA in compliance with the summons issued against them under Sections 11C(3) and (5) of the SEBI Act [Paragraph 3.3(i) at page 4]. Further, Shri Anjan Bandyopadhyay, was not found to be existing at the registered addresses submitted by him in regulatory filings. Although Shri Bhadreshwar Pal, Shri Sukumar Chatterjee and Shri Ajoy Sankar Sanyal have submitted that they had resigned from RIPL, it is observed from the material on record that they were Directors during the period when funds were mobilized by RIPL. Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by RIPL 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 RIPL and its Directors and Promoters, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.

10. 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 thereof and the Debt Securities Regulations, hereby issue the following directions –
- i. RIPL (PAN: AAECR6118F), shall forthwith cease to mobilize funds from investors through the *Offer of NCDs* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - ii. RIPL and its past and present Directors and Promoters, viz. Shri Saurovemoy Ghosh (PAN: AIDPG1944N; DIN: 03580554), Shri Sukumar Bhattacharya (PAN: AHNPB5569M; DIN: 06538554), Shri Sudhir Chandra Bera (PAN: AXAPB8554D; DIN: 06500319), Shri Khudiram Sounth (PAN: AKEPS8245D; DIN: 01642426), Shri Hirak Nath Sounth (PAN: APKPS6248B; DIN: 01642164), Smt Jayanti Sounth (PAN: AZGPS4138J; DIN: 01642127), Shri Bhadreshwar Pal (PAN: ANZPP6080B; DIN: 01557670), Shri Anjan Bandyopadhyay (PAN: ADYPB3215H; DIN: 02599213), Shri Aniruddha Ghosal (PAN: AHEPG6300N; DIN: 03398215), Shri Sukumar Chatterjee (PAN: ACFPC4630F; DIN: 03576773), Shri Ajoy Sankar Sanyal (PAN: DUGPS0846K; DIN: 06548210), Roofers Infrastructure India Private Limited (PAN: AADCR8150J), Shri Rabindra Nath Sounth (PAN: BDLPS1922A), Shri Tarak Nath Sounth (PAN: AZJPS2963G), Shri Sujit Kumar Pal (PAN: BGBPP6436M) and Smt Kabita Rani Pal, 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. RIPL and its abovementioned past and present Directors and Promoters, 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. RIPL shall provide a full inventory of all its assets and properties;
 - v. RIPL's abovementioned past and present Directors and Promoters, shall provide a full inventory of all their assets and properties;

- vi. RIPL and its abovementioned present Directors and Promoters, 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. RIPL and its abovementioned present Directors and Promoters, 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 RIPL;
 - viii. RIPL and its abovementioned past and present Directors and Promoters, shall co-operate with SEBI and shall furnish all information/documents sought vide letters dated December 24, 2013 and February 12, 2014;
 - ix. The *Debenture Trustees, viz. Roofers Debenture Trust (represented by its Trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its Trustee, viz. Shri Biman Kumar Tat)*, are prohibited from continuing with their assignment as debenture trustee in respect of the *Offer of NCDs* of RIPL 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.
11. The above directions shall take effect immediately and shall be in force until further orders.
- 12.1 The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. information obtained from the *MCA 21 Portal*. In this context, RIPL and its abovementioned Directors and Promoters, are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act and Section 73(2) of the Companies Act, 1956, read with Section 27(2) of the SEBI Act and the Debt Securities Regulations, 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* alongwith 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.

- 12.2 RIPL and its abovementioned Directors and Promoters, 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.
- 12.3 Similarly, the *Debenture Trustees, viz. Roofers Debenture Trust (represented by its Trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its Trustee, viz. Shri Biman Kumar Tat)*, 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 the Debenture Trustee Regulations including restraining them from accessing the securities market and further restraining them from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
- 12.4 The *Debenture Trustees, viz. Roofers Debenture Trust (represented by its Trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its Trustee, viz. Shri Biman Kumar Tat)*, 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.
13. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against RIPL and its abovementioned Directors and Promoters; its Debenture Trustee, viz. *Debenture Trustees, viz. Roofers Debenture Trust (represented by its Trustees, viz. Shri Kanai Lal Bhattacharya and Shri Biman Kumar Tat) and Diamond Debenture Trust (represented by its Trustee, viz. Shri Biman Kumar Tat)*, in accordance with law.

Place: Mumbai

Date: March 18, 2016

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