

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Polaris Realtors India Limited(CIN:U45200MP2012PLC028419; PAN:AAGCP6749N) and its Directors, viz. Shri Jafar Ali Molla (DIN:03361024; PAN:AZQPM4641Q), Shri KartickChandar Das (DIN:03595398; PAN:AZTPD6449C) and Shri GopalNayek (DIN:05273770; PAN:AEMP1456K)and its Debenture Trustee, viz. Polaris Debenture Trust (represented by Mrs. Dipanwita Das)

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a reference dated October 29, 2013 from the Registrar of Companies (RoC), Madhya Pradesh & Chhattisgarh, Gwalior stating therein that certain companies including Polaris Realtors India Limited (hereinafter referred to as “PRIL”/ or “the company”) have issued secured debentures on private placement basis to more than 49 subscribers.
- 2.1 As a matter of preliminary inquiry, SEBI, vide letters dated December 06, 2013 advised PRIL and its three Directors, viz. Shri Jafar Ali Molla, Shri Kartick Chander Das and Shri Gopal Nayek to furnish *inter alia* the following information in respect of collection of funds through the issue of debentures, viz.–
 - a. Details of the past and present directors of the company, including details of name, address, PAN and contact numbers;
 - b. Nature of activities being conducted;
 - c. Date of opening and closing of the issue;
 - d. Copy of minutes of EGM and board meeting approving allotment of debentures;
 - e. Brochures/advertisement pertaining to debenture issued made available to the public;
 - f. Copies of duly filled application forms received from investors/applicants;
 - g. Name, address of each investor, date of receipt of payment, amount received for issuance of debentures and date of allotment;
 - h. Details of assets acquired from money raised from said debenture issue;
 - i. Address of all the branches operating in India;
 - j. If brokers were employed, details and brokerage paid;

- k. Certified copies of audited financial statements for all the financial years during which funds were raised till 2012-2013;
 - l. Copies of Income Tax return filed for the years referred at k above;
 - m. Details of regulatory approvals obtained;
 - n. Details of fund raised from the public in form of debentures/ or any other manner by PRIL or group/associates;
 - o. Details of action initiated/taken by any other authority against PRIL.
- 2.2 SEBI vide letter dated December 10, 2013 requested RoC to provide information with regard to issuance of debentures by PRIL. In response, RoC vide letters dated December 19, 2013 and December 31, 2013 provided *inter alia* copies of Form 10 filed towards registration of charge for debentures by PRIL, the reply dated December 28, 2012 submitted by PRIL to RoC on said debenture issue along with the documents annexed thereto, viz., list of allottees (number of allottees as per list is 423) as on December 15, 2012, Debenture Trust Deed, etc.
- 2.3 The letters sent to the registered office of PRIL and to the Director, Shri Jafar Ali Molla, were returned undelivered by the postal authorities with the remarks "*Uncollected, Not Known, Not Traced*".
- 2.4 SEBI vide letters dated March 21, 2014 (sent to the registered office and to PRIL's Kolkatta office) again advised PRIL and its three Directors to submit the information sought vide letter dated December 06, 2013. The letter sent to two of the Directors, viz. Shri Jafar Ali Molla and to Shri Kartick Chandar Das were returned undelivered by the postal authorities with the remarks "*Not Claimed, Left*". As on date, no reply has been received from PRIL or the Directors of PRIL.
- 2.5 SEBI had also received a reference dated April 03, 2014 from the Sub Inspector of Police, Government of West Bengal, Criminal Investigation Department, Kolkata informing that "*a company name Polaris Realtors India Ltd has collected huge money (through the agents) from the public of Batanagar area and has issued debenture certificate to the beneficiary part. For the last 3 months there is no response from the company and the Board of Directors are not traceable...*" They had further requested for information with regard to PRIL.

3. I have perused the material available on record i.e. the reference received from RoC, Gwalior and information/documents provided by RoC, Gwalior, correspondence exchanged between SEBI, PRIL and its Directors and information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'. On an examination of the same, it is observed that—
- i. PRIL was incorporated on May 11, 2012 with the RoC, Gwalior under CIN U45200MP2012PLC028419 and is having its registered office at 214, Badridham Nagar, PO &PS: Dewas, Dewas, Madhya Pradesh-455001.
 - ii. The Directors in PRIL are Shri Jafar Ali Molla (DIN: 03361024; PAN: AZQPM4641Q), Shri Kartick Chandar Das (DIN: 03595398; PAN: AZTPD6449C) and Shri Gopal Nayek (DIN: 05273770; PAN: AEMPN1456K);
 - iii. A perusal of Form 10 indicates the registered office address of PRIL was C/o Shashank Sheorey, Sheorey Niwas 673, Tilak Bhumi Talaiya, Bhandarpara, Jabalpur, Madhya Pradesh. The address appears to have been subsequently changed to 214, Badridham Nagar, PO &PS: Dewas, Dewas, Madhya Pradesh-455001 with effect from June 28, 2012 as mentioned in the 'MCA 21 Portal'. It is also indicated that the debenture issue was of ₹100 crores. In this regard, charge of ₹100 crores was created on the properties of PRIL on May 22, 2012 and the charge holder is Polaris Debenture Trust.
 - iv. It is noted from the copy of Debenture Trust Deed found enclosed with the reply of PRIL to RoC that a Debenture Trust Deed dated May 22, 2012 was signed between PRIL and the Debenture Trustee, viz. Mrs. Dipanwita Das. In the Debenture Trust Deed, it is indicated *inter alia* “the company have decided by a resolution passed by the Board of Directors in the meetings of the Board held on May 22, 2012 to raise a sum of Rs.100 crores by issue of Debentures of Rs.100/- each, bearing interest as specified in Schedule I framed in accordance with the forms set forth in the Schedule II hereto and secures the same by mortgaging with the trustees the properties described in the Schedule III hereto.”

- v. As per the Schedule I of Debenture Trust Deed, the plans offered by PRIL were as below:-

Scheme I – MULTIPLIER NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE

Plan	RD-1	RD-2	RD-3	RD-4
<i>Redemption period</i>	16 months+ 1 day	27 months + 1 day	39 months + 1 day	63 months + 1 day
<i>Amount per Debenture of Rs.100 (Minimum 10 Debentures to be applied)</i>	1200/-	2400/-	3600/-	6000/-
	Minimum 38 nos.	Minimum 48 nos.	Minimum 38 nos.	Minimum 60 nos.
<i>Redemption Value</i>	1370	2900	4700	9000

Scheme II- MULTIPLIER NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE (CUMULATIVE)

Plan	FD-1	FD-2	FD-3	FD-4	FD-5	FD-6	FD-7
<i>Redemption period</i>	1 year	3 years	5 years	8 years	10 years	12 years	16 years
<i>Amount per Debenture of Rs.100 (Minimum 10 Debentures to be applied)</i>	1000/-	1000/-	1000/-	1000/-	1000/-	1000/-	1000/-
<i>Redemption Value</i>	1100	1500	2000	4000	6000	10000	14000

Scheme III- REGULAR INCOME NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE

Plan	MIS-1	MIS-2	MIS-3
<i>Redemption period</i>	2 year	5 years	8 years
<i>Invested Amount</i>	25000/-	25000/-	25000/-
<i>Redemption value</i>	25500/-	25250/-	25250/-
<i>Rate of Interest (p.a.)</i>	12% (2% mature benefits)	16% (2% mature benefits)	20% (2% mature benefits)

In Schedule III of the Debenture Trust Deed, a property along with all the present and future movable and immovable properties wherever situated of the company valuing Rupees One Hundred Crores has been mortgaged to secure the debentures. The location of the property is at Mouza-Tagachi Mamudpur, J.L. No.-22, Paragana-Madonmolla, R.S. & LR Dag No. 307 under LR Khaitan No. 474/1596/197/1 under A.D.S.R.O. & P.S-Baruipur, District- South 24 Parganas.

- vi. As per PRIL's reply to RoC vide letter dated December 18, 2012, PRIL *inter alia* informed as under:

“Modus Operandi of Collection of Funds:

The Debenture has been placed within closely held groups without any contravention of any relevant Sections and no offer has been made to more than 49 persons at any point of time, neither the Debenture has been offered to public.

List of Allottees:

List of allottees till 15/12/2012 has been attached as “Annexure-A”.

Funds Collected:

Total Collection of Funds from 01/04/2012 to 15/12/2012 is Rs.10,29,400.00”

- vii. As per the List of Allottees submitted by PRIL, the number of allottees till December 15, 2012 were as follows:

Date of application and allotment	Number of applicants & allottees
August 26, 2012	5
August 27, 2012	27
August 28, 2012	78
August 29, 2012	39
August 30, 2012	131
August 31, 2012	1
September 27, 2012	6
September 28, 2012	1
September 29, 2012	5
September 30, 2012	15
October 10, 2012	2
October 11, 2012	4
October 12, 2012	1
October 13, 2012	3
October 15, 2012	2
October 16, 2012	3
October 18, 2012	3
October 19, 2012	4
October 20, 2012	1
October 25, 2012	1
November 30, 2012	77
December 01, 2012	12
December 07, 2012	1
December 14, 2012	1
Total allottees	423

viii. As per the details mentioned above, PRIL had allotted *Non-Convertible Redeemable Secured Debentures* ("*Offer of NCDs*") amounting to approximately ₹10.29 Lakhs during the financial year 2012-13 to 423 investors.

4. 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 PRIL 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.

5. I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, when they issue and transfer securities at the relevant time flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)* (hereinafter referred to as the "*Sahara Case*"), had observed 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."

6. In this regard –

i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced as under:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to

invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

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

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

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

...

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

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

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

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

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

Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. ...

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

- iii. In the instant matter, for ascertaining whether the *Offer of 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. Although the *Offer of NCDs* is stated to have been placed within closely held groups and not to the public, it is observed from the details submitted by PRIL vide letter dated December 28, 2012 to RoC that PRIL had allotted *Non-Convertible Redeemable Secured Debentures* amounting to of ₹10.29 Lakhs during the financial year 2012-13 to 423 investors. It is noted that PRIL had made frequent allotments (six allotments in the month of August 2012, four allotments in the month of September 2012, ten allotments in the month of October 2012, one allotment in the month of November 2012 and three allotments in the month of December 2012). It is also pertinent to note that on three dates, viz. August 28, 2012, August 30, 2012 and November 30, 2012, allotments were made to more than 49 persons (78, 131 and 77 investors respectively), which clearly contradicts PRIL submission that “*no offer has been made to more than 49 persons at any point of time, neither the Debenture has been offered to public*”. Further, the manner in which many allotments were made by PRIL as stated above (six allotments in the month of August 2012, four allotments in the month of September 2012, ten allotments in the month of October 2012 and three allotments in the month of December 2012) clearly indicates that these multiple allotments were essentially made in that manner only to camouflage the issuance of *Non-Convertible Redeemable Secured Debentures* as a private placement and circumvent the provisions of Section 67 of the Companies Act.

- b. In view of the above stated facts, the *Offer of NCDs* by PRIL, *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 *Sabara Case*.
- c. In addition, PRIL is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act and therefore, is not covered under the *second proviso* to Section 67(3).
- d. 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.

7. I note that –

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

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

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

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred

under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

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

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

- ii. In the *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* is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956 and also compliance with provisions of Sections 73(2) and 73(3) of that Act.
 - iv. In the facts of the instant case, it *prima facie* appears that PRIL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.
8. Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the RoC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, since the *Offer of NCDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, PRIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. In the instant case, there is no evidence on record to indicate whether or not PRIL has filed a prospectus. In view of the same, I find that *prima facie*, PRIL has not complied with the provisions of Section 60 of Companies Act, 1956.

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

10. 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 PRIL has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

11. 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 PRIL, 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(3) – *Appointment of Merchant Banker*

- vi. Regulation 4(4) – *Appointment of Debenture Trustee*
 - vii. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
 - viii. Regulation 6 – *Filing of draft Offer Document*
 - ix. Regulation 7 – *Mode of disclosure of Offer Document*
 - x. Regulation 8 – *Advertisements for Public Issues*
 - xi. Regulation 9 – *Abridged Prospectus and application forms*
 - xii. Regulation 12 – *Minimum subscription*
 - xiii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
 - xiv. Regulation 15- *Trust Deed*
 - xv. Regulation 16- *Debenture Redemption Reserve*
 - xvi. Regulation 17 – *Creation of security*
 - xvii. Regulation 19 – *Mandatory Listing*
 - xviii. Regulation 26 – *Obligations of the Issuer, etc.*
12. Upon a consideration of the aforementioned paragraphs, I am of the view that PRIL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCDs* and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Section 117B, Section 117C) and the Debt Securities Regulations.
- 13.1 From the material available on record, it is observed that PRIL created a charge of ₹100 Crores on May 22, 2012 and appointed *Polaris Debenture Trust (represented by its Trustee, viz. Mrs. Dipanwita Das)* as the Debenture Trustee for the *Offer of NCDs* by that company.
- 13.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations"), provides that: "*no person should act as a debenture trustee unless he is either –*
- i. a scheduled bank carrying on commercial activity; or*
 - ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
 - iii. an insurance company; or*
 - iv. body corporate."*

- 13.3 Based on the material available on record, I find that *Polaris Debenture Trust (represented by its Trustee, viz. Mrs. Dipanwita Das)* has acted as unregistered Debenture Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.
14. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956 administrative authority on the subjects relating to public issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 over companies who issue *Non-Convertible Redeemable Secured Debentures* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts and the Debt Securities Regulations. Steps therefore, have to be taken in the instant matter to ensure that only legitimate fund raising activities are carried on by PRIL and investors are not defrauded. This is especially so because of the non-cooperation on the part of PRIL and its Directors to provide the information sought by SEBI. It is also important to note PRIL's intention to raise an amount of ₹100 Crores through issue of *Non-Convertible Redeemable Secured Debentures* as indicated in the copy of the Debenture Trust Deed. In the light of the same, I find there is no other alternative but to take recourse through an interim action against PRIL and its Directors along with its Debenture Trustee, viz. *Polaris Debenture Trust (represented by its Trustee, viz. Mrs. Dipanwita Das)* for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.
15. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustees Regulations, hereby issue the following directions –
- i. PRIL shall forthwith cease to mobilize any fresh funds from investors through the *Offer of NCDs* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;

- ii. PRIL(CIN:U45200MP2012PLC028419; PAN: AAGCP6749N) and its Directors, viz. Shri Jafar Ali Molla (DIN:03361024; PAN:AZQPM4641Q), Shri Kartick Chandar Das (DIN:03595398; PAN:AZTPD6449C) and Shri Gopal Nayek (DIN: 05273770; PAN:AEMPN1456K)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. PRIL 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. PRILshall provide a full inventory of all its assets and properties;
- v. PRIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. PRIL 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. PRIL 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 PRIL;
- viii. PRIL shall provide to SEBI all information regarding repayments made to the holders of *Non-Convertible Redeemable Secured Debentures*,includingname of the debenture holder, address, amount mobilized, number of *Non-Convertible Redeemable Secured Debentures* issued, promised maturity amount with date of maturity, amount refunded and date thereof;
- ix. PRIL shall furnish complete and relevant information within 21 days from the date of receipt of this Order, including in particular the list of subscribers, their addresses, telephone numbers, amount collected from each subscriber, etc;

- x. The Debenture Trustee, viz. *Polaris Debenture Trust (represented by its Trustee, viz. Mrs. Dipanwita Das)*, is prohibited from continuing with its present assignment as a debenture trustee in respect of the *Offer of NCDs* of PRIL 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.
16. The above directions shall take effect immediately and shall be in force until further orders.
17. The *prima facie* observations contained in Order are made on the basis of the material available on record i.e. the reference received from RoC, Gwalior and information/documents provided by RoC, Gwalior, correspondence exchanged between SEBI, PRIL and its Directors and information/documents obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*'. In this context, PRIL and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:
 - i. Directing them jointly and severally to refund money collected through the *Offer of Non-Convertible Redeemable Secured Debentures* 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.
18. PRIL 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.

19. Similarly, the Debenture Trustee, viz. *Polaris Debenture Trust (represented by its Trustee, viz. Mrs. Dipanwita Das)*, 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.
20. The Debenture Trustee, viz. *Polaris Debenture Trust (represented by its Trustee, viz. Mrs. Dipanwita Das)* 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.
21. 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 PRIL and its abovementioned Directors; its Debenture Trustee, viz. *Polaris Debenture Trust (represented by its Trustee, viz. Mrs. Dipanwita Das)* in accordance with law.

Place: Mumbai
Date: June 15, 2015

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