

**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 Life Care Infrastructures India Limited(PAN: AACCL2342M); its Directors, Viz. Mr. Pralay Kumar Saw (DIN:03020064, PAN: BBJPS6343H), Mr. Sanjoy Kumar Maiti (DIN:03020095, PAN:APQPM8659A), Mr. Sujit Mitra (DIN:03028519, PAN:AJNPM1411D), Mr. Partha Pratim Ghosh (DIN:03204655, PAN: ADPPG0695P), Mr. Ramprasad Sarkar (DIN:03204658, PAN:BDFPS5895A) and its Debenture Trustee, viz. Life Care Debenture Trust (represented by trustee Ms. Paromita Mondal)

1. Securities and Exchange Board of India ("**SEBI**") received a reference dated October 29, 2013 from the Registrar of the Companies ("**RoC**"), Gwalior stating that Life Care Infrastructures India Limited (hereinafter referred to as '**LCIIL**' or '**the company**') issued debentures to 2483 subscribers and that the RoC had filed prosecution on September 20, 2013 under section 56, 60B, 67(1) and (2) and 68 of the companies Act 1956 at the Hon'ble CJM Court at Gwalior. RoC vide letter dated December 19, 2013 provided a copy of Form 10 filed by the company. Subsequently, RoC vide letter dated December 31, 2013 also provided a copy of reply dated December 28, 2012 of the company and a list of allottees submitted by the company to them.
2. As part of preliminary inquiry, SEBI vide letter dated December 06, 2013 advised the company and its directors to furnish *inter alia* the following information, viz. –
 - a. Details of the past and present directors of the company including their names, addresses, PAN and contact details.
 - b. Nature of activities being conducted by the company.
 - c. Date of opening and closing of the issue.
 - d. Copy of minutes of Board and Minutes of EGM approving allotment of debentures.

- e. Brochures/advertisements pertaining to debenture issue, which were made available to 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 and date of allotment of debentures.
- h. Details of properties acquired from money raised from said debenture issue.
- i. Addresses of all branches of the company.
- j. Names of brokers and amount of brokerage paid, if any.
- 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 returns filed by the company for all the financial years during which funds were raised till 2012-2013.
- m. Details of regulatory approvals obtained by the company, if any, for said debenture issue.
- n. Details of fund raising from public in form of debentures/ or any other manner by the company or group/associate company.
- o. Details of action initiated/taken by any other authority against the company in respect of money raised from public.

The letters sent to the company and one of its directors viz. Mr. Pralay Kumar Saw was returned as undelivered by postal authorities. SEBI did not receive any reply from any of the other directors viz. Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra and Mr. Partha Pratim Ghosh.

3. In the meanwhile, SEBI received a complaint dated February 03, 2014 from an investor forwarding a copy brochure cum application form of Non-Convertible Redeemable Secured Debentures (**'NCRSDs'**) issued by LCIIL. It was also mentioned in the said complaint that the corporate office of the company is situated at "The Legacy", 25A, Shakespear Sarani, Kolkata-700017 and the Head Office of the company is at A.D. Apartment, Bazar Para, PO- Uluberia, Howrah, West Bengal-711316.

4. The aforesaid complainant further alleged that another company namely Infinity Realcon Limited which also issued debentures to investors was merged with Life Care Infrastructure India Ltd. It is observed from the website of MCA that the directors of LCIL viz. Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti and Mr. Sujit Mitra were also the directors of Infinity Realcon Limited.

It may be noted that SEBI has already passed an order on January 07, 2015 in the matter of Infinity Realcon Ltd. in view of its fund raising activities.

5. Thereafter, SEBI sent reminder letters dated February 21, 2014 to LCIL at its corporate office address and head office address provided by the complainant and also to the directors of LCIL. Letter to one of the directors viz. Mr. Pralay Kumar Saw was returned undelivered by postal authorities with remarks “intimation served, not claimed”. No reply was received from the company and rest of its directors. SEBI vide letters dated June 02, 2014 once again sent reminders to the company and its directors. Letters sent to the company and three of its directors viz. Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Partha Pratim Ghosh were returned undelivered by postal authorities. No reply was received from director Mr. Sujit Mitra.
6. Subsequently, SEBI vide letters dated September 18, 2014 once again advised the company and its directors to provide information sought with respect to the issuance of debentures along with the details regarding its merger with Infinity Realcon Limited. The copy of the letter was also sent to its debenture trustee. On September 18, 2014, SEBI also issued summons to the company and its directors to submit information/documents sought by SEBI by September 29, 2014 before the investigating officer. However, subsequently, the letters dated September 18, 2014 were returned as undelivered by postal authorities.
7. Meanwhile, on October 15, 2014, SEBI official visited the registered office address i.e. 89/B, Indra Nagar Colony, Thatipur, Gwalior, Madhya Pradesh. However, the said address could not be located.
8. SEBI vide letters dated December 09, 2014 to the company and its directors granted a final opportunity to the company and its directors to submit their reply. Letters to directors viz. Mr. Pralay Kumar Saw and Mr. Sanjoy Kumar Maiti and letters sent to the company at its corporate office and registered office addresses were returned undelivered

by postal authorities. However, it is noted from postal tracking that letter sent to the company at its head office address at A.D. Apartment, Bazar Para, PO- Uluberia, Howrah, West Bengal was duly delivered. Further, letters to directors viz. Mr. Sujit Mitra, Mr. Partha Pratim Ghosh and Ms. Paromita Mondal (trustee of the debenture trust) were also duly delivered. However, SEBI has not received any reply from any of them till date.

9. On January 15 & 16, 2015 SEBI officials visited Kolkata office addresses of the company at 176, 4th floor, AJC Bose Road, Kolkata and at “The Legacy”, 25A, Shakespear Sarani, Kolkata. Both the offices were found closed. On January 16, 2015, SEBI officials also visited head office of the company at A.D. Apartment, Bazar Para, PO- Uluberia, Howrah, West Bengal. This office was also found closed.
10. It is also noted that a writ petition No. 3171(W) of 2015 has been filed by Dibakar Das & Ors. before Hon’ble High Court, Kolkata. The petitioners are stated to be the agents of the company and the petitioners stated that they had been collecting money from public for NCRSDs offered by the company. The petitioners alleged that the company became irregular in paying the maturity amount to customers. It is also alleged by the petitioners that cheques issued by the company have bounced back.
11. It is submitted by the company in their reply dated December 28, 2012 to the RoC that *“The debentures have 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.”* The company also provided along with the aforesaid letter a list of 2483 allottees from whom total amount of Rs.45,79,800/- was said to have been collected till March 31, 2012 by the issuance of debentures. It is also stated that the security for the said debenture issue is *“All the present and future movable and immovable properties evaluating to Rupees One Hundred Crores.”*
12. Efforts were also made to obtain the information from Ministry of Corporate Affairs' Website i.e. MCA21 portal.
13. The material available on record i.e. information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal' and information/documents received from RoC, Gwalior; complaints received and the documents enclosed therewith have been perused. On an examination of the same, it is observed that –

- i. LCIIL (CIN: U70101MP2011PLC026822) was incorporated on September 26, 2011 with the RoC, Gwalior having its registered office at 89/B Indra Nagar Colony, Thatipur,, Gwalior, Madhya Pradesh, India- 474011.
- ii. The present directors of the company are Mr. Pralay Kumar Saw, Mr. Sanjoy Kumar Maiti, Mr. Sujit Mitra, Mr. Partha Pratim Ghosh. Mr. Ramprasad Sarkar was a past director of the company.
- iii. It is observed from a copy of Form 10 provided by RoC that the company on September 30, 2011 created a charge of Rs. 100 Crore on all its present and future assets wherever situated to secure the issuance of debentures. The name of debenture trust is “Life Care Debenture Trust” (represented by its trustee Ms. Paromita Mondal) and the office of the trust is situated at A.D. Apartment, O.D. Road, Bazar Para, P.O.- Uluberia, Howrah, West Bengal, India- 711316. Incidentally, the same address has been stated as head office address of the company in a complaint dated February 03, 2014 received from an investor.
- iv. It is mentioned in a copy of the brochure cum application form provided by a complainant that LCIIL is offering NCRSDs of Rs.100 Crores on a private placement basis under the following terms and conditions:

Scheme-1 Multiplier Non-Convertible Secure Debenture

<i>Plan</i>	<i>A2</i>	<i>A1</i>	<i>B</i>
<i>No. of debentures</i>	12	36	60
<i>Issue Price</i>	1200	3600	6000
<i>Redemption Value</i>	1300	5200	10500
<i>Bonus</i>	60	95	150
<i>Redemption Period</i>	15 months + 1 day	39 months + 1 day	63 months + 1 day

Scheme-2 Multiplier Non-Convertible Secure Debenture

<i>Plan</i>	<i>D1</i>	<i>E1</i>	<i>G1</i>
<i>Min. No. of debentures to be applied</i>	10	10	10
<i>Issue Price</i>	1000	1000	1000
<i>Redemption Value</i>	1414	2000	3175
<i>Redemption Period</i>	3 years	6 years	10 years

Scheme-3 Multiplier Non-Convertible Secure Debenture

Plan	MIS(I)	MIS (II)	MIS (III)
<i>Minimum No. of Debentures to be applied</i>	250	250	250
<i>Issue Price</i>	25000	25000	25000
<i>Interest Payable per month</i>	229	254	245
<i>Bonus (at the time of redemption)</i>	Nil	5%	7%
<i>Redemption Value</i>	25000	25000	25000
<i>Redemption Period</i>	3 Yrs.	5 Yrs.	10 Yrs.

- v. It is also mentioned in the debenture application form enclosed with Form 10 available on MCA 21 portal that the company is offering NCRSDs on a private placement on following terms and conditions:

Scheme- 1 Multiplier Non-Convertible Secure Debenture			
Plan	A	A1	B
<i>No of debentures</i>	12	36	60
<i>Issue Price</i>	1200	3600	6000
<i>Redemption Value</i>	1340	4530	9550
<i>Bonus</i>	60	95	150
<i>Redemption Period</i>	15 months + 1 day	39 months + 1 day	63 months + 1 day

Scheme- 2 Multiplier Non-Convertible Secure Debenture					
Plan	D	E	F	G	H
<i>Minimum No. of Debentures to be applied</i>	10	10	10	10	10
<i>Issue Price</i>	1000	1000	1000	1000	1000
<i>Redemption Value</i>	1500	2000	3000	5000	10000
<i>Redemption Period</i>	3 Years	5 Years	7 Years	10 Years	14 Years

Scheme -3 Multiplier Non-Convertible Secure Debenture			
Plan	MIS(I)	MIS(II)	MIS(III)
<i>Min. No. of Debentures to be applied</i>	250	250	250
<i>Issue Price</i>	25000	25000	25000
<i>Interest Payable Per Month</i>	275	337.50	400
<i>Bonus (at the time of redemption)</i>	3%	4%	6%
<i>Redemption Value</i>	25000	25000	25000
<i>Redemption Period</i>	3 Yrs	5 Yrs	10 Yrs

- vi. It is also mentioned in the brochure cum application form that company is managed by Mr. Pralay Kumar Saw (Chairman) under the superintendence, control and direction of the Board of directors of the company. It is also stated that the debentures are being issued pursuant to the resolution passed at the meeting of the Board of Directors of the company held on August 30, 2011. However, it is noted that September 30, 2011 has been mentioned as the date of resolution authorising the debenture issue in the Form 10 filed by the company with RoC.
- vii. It has been admitted by LCIL in its letter dated December 28, 2012 to the RoC that the company allotted NCRSDs to 2483 allottees and mobilised funds amounting to Rs.45,79,800/- till March 31, 2012. The company also provided a list of these allottees. However, on perusal of list of allottees attached with Form 20B (Form for filing annual return by a company) filed by the company on MCA 21 portal that the company allotted NCRSDs to 4798 allottees from them in 228 tranches till financial year ending on March 31, 2012 and mobilised Rs.4.5 Crores. Details of investors in the list of allottees forwarded by RoC, when checked on sample basis, do not match with the list of allottees filed by the company on MCA21 portal. It is also noted however that the amount mobilised through the issuance of debentures mentioned in Form 20B and the one mentioned in the list of allottees forwarded by the RoC is stated to be the same i.e. Rs.45,79,800/-. This indicates the inconsistency in the details of debentures provided by the company to RoC and that filed on the MCA website.

It is also observed from the list of allottees available on MCA website that the company had made allotment of debentures to 3803 allottees in 175 tranches even before its incorporation with RoC. It is noted that the company was incorporated with RoC on September 26, 2011. Details of the same are summarised below:

Table A:

Dates of Allotment	No. of allottees	No. of tranches
02/01/2011 to 24/09/2011 (before incorporation)	3803	175
28/09/2011 to 24/12/2011 (after incorporation)	995	53
Total	4,798	228

Table B:

Month-wise details of NCRSDs allotted are summarised below:

Sr. No.	FY	Month	No. of tranches (series of allotments)	No. of Investors	Amount mobilised (Rs.)
1	2010-11	January	20	334	2673300
2		February	18	350	2656320
3		March	20	444	5299250
4	2011-12	April	18	398	4190350
5		May	16	349	2926200
6		June	23	476	4603288
7		July	19	508	4741650
8		August	21	502	4301130
9		September	23	482	4557846
10		October	15	225	2083490
11		November	20	489	4823800
12		December	15	241	2143250
Total			228	4798	4,49,99,874

Further, the details of allotments of NCRSDs in a month of January 2011 is illustrated below:

Table C:

Sr. No.	FY	Month	Date of allotment	No. of investors	Amount mobilized (Rs.)
1	2010-11	January	02/01/2011	27	115800
2			03/01/2011	20	233500
3			04/01/2011	16	69700
4			05/01/2011	18	133600
5			06/01/2011	41	232300
6			07/01/2011	9	92400
7			09/01/2011	8	50000
8			11/01/2011	5	126600
9			15/01/2011	48	301600
10			16/01/2011	48	282000
11			17/01/2011	20	236800
12			18/01/2011	3	108600
13			19/01/2011	3	37200
14			20/01/2011	11	116400
15			21/01/2011	4	53600
16			22/01/2011	7	60000
17			28/01/2011	10	96200
18			29/01/2011	19	205800
19			30/01/2011	12	99400
20			31/01/2011	5	21800
Total				334	26,73,300

14. In the context of the abovementioned details of the Offer of NCRSDs, the issue for determination in the instant matter is whether the mobilization of funds by LCIL through the aforesaid Offer, is in accordance with the provisions of the SEBI Act, 1992 ("SEBI Act") read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("Debt Securities Regulations"); the Companies Act, 1956.
15. 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 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."

16. 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 NCRSDs 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 the utmost importance.
 - a. It is an admitted fact that LCIIL allotted NCRSDs to 2483 allottees and mobilised funds amounting to Rs.45,79,800/- till March 31, 2012. However, as per the list of allottees submitted by the company along with Form 20B filed on MCA website, LCIIL allotted NCRSDs to 4798 allottees during FY 2010-11 and 2011-12 and mobilised Rs.4.5 Crores. NCRSDs have thus been issued and subscribed by more than forty nine persons. SEBI letters to LCIIL and its directors seeking the details of investors and NCRSDs issued were either returned undelivered by postal authorities or were not being replied to. No details have been provided by either LCIIL or its Directors despite being given several opportunities to do so. The registered office address could not be located by SEBI official during physical verification. Head Office and two other offices of the company at Kolkata were also found to be closed by SEBI official during physical verification. It is also pertinent to note that a charge has been created for an amount as high as Rs.100 Crores. It is therefore most likely that the number of investors who invested in the NCRSDs as also the amount raised could be many times more than what has been submitted by the company to RoC.

In the brochure cum application form issued by LCIIL, it has been mentioned that NCRSDs were being issued on a private placement basis. However, the company and its directors have failed to provide any documents to substantiate their claim that the said issue of debentures was a private placement. Merely mentioning that an issue is on a private placement basis does not make it such.

It is observed that LCIIL allotted NCRSDs in 228 tranches during different months in the FY 2010-11 and FY 2011-12 (*please refer para 13(vii)- Table:B*). In each of these tranches, LCIIL allotted NCRSDs to less than 50 allottees, e.g. in the month of January 2011 alone, NCRSDs were allotted on twenty different dates and on each date the number of allottees were less than fifty. However, the total number of allottees in the same month were 334 (*illustrated in para 13(vii)- Table:C*). It is thus noted that LCIIL deliberately issued NCRSDs in several tranches to camouflage the issuance of NCRSDs as a private placement. However, I note that the method adopted by LCIIL for mobilization of funds is nothing but a device to circumvent the provisions of section 67(3) of the Companies Act, 1956.

Based on the facts available in this case, including in particular the number of persons to whom the NCRSDs have been issued by LCIIL, the only conclusion can be that this issue was nothing but a public issue of securities in terms of provisions of Section 67(3) of the Companies Act, 1956.

- b. LCIIL is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act and therefore, is not covered under the second proviso to Section 67(3).
- c. It is pertinent to note that by virtue of Section 55A of the Companies Act 1956, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

17. I note that –

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

"73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock

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

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

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

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

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

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

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite

subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act.

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

...

Section 73(2) says that every company and every director of the company who is an officer in default, shall be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed. The scope of the above mentioned provisions came up for consideration before this Court in Raymond Synthetics Ltd. & Ors. V. Union of India (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since 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 NCRSDs* 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 LCIL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCRSDs*.
18. 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 NCRSDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, LCIL 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 LCIL has filed a prospectus. In view of the same, I find that *prima facie*, LCIL has not complied with the provisions of Section 60 of Companies Act, 1956.

19. 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 LCIL 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.

20. Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. Based on the material available on record, I find that LCIL has not complied with the provisions of Sections 117B of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

Section 12(1) of the SEBI Act states: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Life Care Debenture Trust (represented by trustee Ms. Paromita Mondal) are not registered with SEBI. Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("**Debenture Trustees Regulations**"), provides that: "*no person should act as a debenture trustee unless he is either –*

i. a scheduled bank carrying on commercial activity; or

- ii. *a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
- iii. *an insurance company; or*
- iv. *body corporate."*

Based on the material available on record, I find that Life Care Debenture Trust (represented by trustee Ms. Paromita Mondal) has *prima facie*, failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.

21. Further, under Section 117C of the aforesaid Act, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. Based on the material available on record, there is no evidence to indicate whether LCIIL has complied with the provisions of Sections 117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

22. 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 LCIIL, through the *Offer of NCRSDs*, 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.*
23. Upon a consideration of the aforementioned paragraphs, I am of the view that LCIIIL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCRSDs* 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.
24. 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 Debentures* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Act 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 LCIIIL and no investors are defrauded. SEBI's letters to LCIIIL and its directors in this regard were either returned undelivered by postal authorities or were not being replied to. The registered office address of the company could not be located by SEBI official during physical verification. Head Office and two other offices of the company at Kolkata were also found to be closed by SEBI official during physical verification. In light of the same, I find that there is no other alternative but to take recourse through an interim action against LCIIIL and its past/present directors along with its Debenture Trustee, viz. Life Care Debenture Trust (represented by trustee Ms. Paromita Mondal), for preventing that company from further carrying on with its fund mobilising activity under the *Offer of*

NCRSDs. Considering all the factors in the instant case, it is felt that urgent intervention by SEBI is warranted as otherwise there could be every possibility of irreparable damage to investors.

25. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions –
- i. LCIL shall forthwith cease to mobilize any fresh funds from investors through the *Offer of NCRSDs* 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. LCIL (PAN:AACCL2342M) and its past/present Directors, viz. Mr. Pralay Kumar Saw (DIN:03020064, PAN:BBJPS6343H), Mr. Sanjoy Kumar Maiti (DIN:03020095, PAN:APQPM8659A), Mr. Sujit Mitra (DIN:03028519, PAN:AJNPM1411D), Mr. Partha Pratim Ghosh (DIN:03204655, PAN: ADPPG0695P) and Mr. Ramprasad Sarkar (DIN:03204658, PAN:BDFPS5895A), 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. LCIL 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. LCIL shall provide a full inventory of all its assets and properties;
 - v. LCIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. LCIL 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 NCRSDs*, without prior permission from SEBI;
 - vii. LCIL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of NCRSDs*, which are kept in bank account(s) and/or in the custody of LCIL;
 - viii. LCIL shall furnish within 21 days from the date of receipt of this Order complete information as sought by SEBI vide letters dated December 06, 2013, February 21, 2014, September 18, 2014 and December 09, 2014 including balance sheets of the

company for FY 2011-12 to 2014-15 and reconcile the debenture allotment data provided to RoC vide their letter dated December 28, 2012 and that filed along with Form 20B on MCA 21 portal.

- ix. The Debenture Trustee, viz. Life Care Debenture Trust (represented by trustee Ms. Paromita Mondal), is prohibited from continuing with their present assignment as a debenture trustee in respect of the *Offer of NCRSDs* of LCIL 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.
26. The above directions shall take effect immediately and shall be in force until further orders.
27. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'; information/documents received from RoC, Gwalior; complaint received and the documents enclosed therewith. In this context, LCIL and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:
 - i. Directing them jointly and severally to refund the money collected through the Offer of NCRSDs along with interest, if any, promised to investors therein;
 - ii. Directing them not to issue prospectus or any offer document or any advertisement for soliciting money from the public by issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
 - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
28. LCIL and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
29. Similarly, the Debenture Trustee, viz. Life Care Debenture Trust (represented by trustee Ms. Paromita Mondal), may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desires to avail an

opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

30. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against LCIL and its abovementioned Directors; its Debenture Trustee, viz. Life Care Debenture Trust (represented by trustee Ms. Paromita Mondal), in accordance with law.

Place: Mumbai
Date: June 29, 2015

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