

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 Rahul Hi Rise Limited (PAN: AAECA8578L) and its Directors, viz. Shri Abhijit Majumdar (PAN: AJCPM9999F; DIN: 03619374), Shri Dipankar Gupta (DIN: 02408609), Shri Mrinmoy Bose (PAN: AMOPB0512G; DIN: 03619376) alongwith its Debenture Trustees, viz. Shri Dinendra Nath Bandopadhyay and Well Being Trust (represented by Shri Chapal Biswas and Shri Dinendra Nath Bandopadhyay).

1. Securities and Exchange Board of India ("SEBI") received a reference dated September 6, 2011, containing brochures evidencing issue of Secured Redeemable Debentures ("NCDs") by Rahul Hi Rise Limited ("RHRL").
- 2.1 Thereafter, vide letters dated January 19, 2012 and January 31, 2012, SEBI sought *inter alia* the following information from RHRL, viz. –
 - i. Certificate from the company's Statutory Auditor certifying the size of the issue, amount collected and number of investors alongwith the name of the debenture trustee;
 - ii. Details of the issue including date of allotment, name of investor, number of debentures allotted and amount collected against the debentures;
 - iii. Certified copy of the Board resolution authorizing the said issue;
 - iv. Return of allotment filed with the Registrar of Companies ("ROC") with regard to the said issue;
 - v. Copy of the Company's latest Audited Annual Report;
 - vi. Certificate from the Company Secretary of the company certifying that the issue was not in violation of Section 67(3) of the Companies Act, 1956.
- 2.2.1 Vide letter dated February 6, 2012, RHRL replied to SEBI stating – "*... we have not issued any offer documents to the public for issue of said secured redeemable debentures. However, we have issued the said debentures aggregating to ₹14,44,10,000 (Rupees Fourteen Crore Forty Four Lakhs Ten*

Thousand only) to our associates and members during the year 2010–11 exclusively on private placement basis.”

2.2.2 Vide the abovementioned reply, RHRL also submitted the following documents –

- i. Certificate from Statutory Auditors;
- ii. List of investors;
- iii. Certified copy of Board Resolution;
- iv. Returns filed with the ROC;
- v. Copy of Audited Annual Report.

2.3 Thereafter, SEBI received a complaint on April 23, 2013, against RHRL, alleging non-repayment of amounts in respect of *NCDs* issued by that company.

2.4 SEBI also received a reference dated September 23, 2013, from the Assistant ROC, West Bengal, wherein *inter alia* the following observations were made against RHRL, –

- i. *“The company was incorporated on 13/08/2004 as a Private Limited Company and subsequently changed its name into Rahul Hi Rise Private Limited.*
- ii. *The company created charge on the assets of the company on 10/03/2009 to provide security in respect of issue of debentures although the Balance Sheet of the company for the year ended 31/03/2009 shows no Immovable Properties at all as on that date. Thereby, as apparent, the company (was) falsely showing security while creating charge on its Assets in regard to issue of debentures.*
- iii. *It is observed that as on 31/03/2012, the company issued debentures of ₹2944.10 Lac and Interest Accrued on debenture but not due ₹949.59 Lac. The company made allotment of debentures to many more than 49 persons as per Annual Return of the company filed with this office for the year ended 31/03/2011. ...*
- iv. *In Annual Return for the year ended 31/03/2011, the company attached two list of Debenture holders to whom debentures were issued during the period 2009–10 and 2010–11. In one list in which names of 45 Debenture holders to whom debentures issued during 2009–10 were stated, most of those debenture holders belong to the same and similar address. In another list in which names of 49 debenture holders (no address and other details given) to whom debentures were allotted during the period 2010–11, average amount of debenture issued to each of those persons were about ₹30,00,000 with a minimum ₹10,00,000 to one persons. Moreover, in the list of debenture holders issued during*

2009–10, M/s D.B. & Co. (₹20 Lac), M/s Alfin Associates and M/s Powerhouse (₹45 Lac), all belong to the same address, were stated as debenture holders, no other information and details in respect of those debenture holders were furnished by the company. Therefore, by furnishing such incomplete information and other required details in respect of each debenture holders, the company may have suppressed facts about the investments and their genuinity. ...”.

- 2.5 An on-site visit of the RHRL’s Registered Office i.e. 30H/1, B. B. Sengupta Sarani, Kolkata–700034, West Bengal, India, was conducted by SEBI officials on April 10, 2014. During the aforesaid visit, it was discovered that no banner bearing the name of the company was found at that address. Further, no employees of RHRL were available at that address.
- 2.6 Vide letters dated May 23, 2014 (issued to RHRL), May 26, 2014 (issued to RHRL’s Directors, viz. Shri Abhijit Majumdar, Shri Mrinmoy Bose and Shri Dipankar Gupta) and June 4, 2014 (issued to RHRL and its aforementioned Directors), SEBI sought the following information –
- i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Copy of Audited Annual Accounts of the company for the last 5 years;
 - iii. Name, addresses and occupation of all the Promoters/Directors of the company;
 - iv. Names and details of the Key Managerial Personnel of the company;
 - v. Other information in respect of every series of shares/debentures issued by the company, viz. –
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies (“**ROC**”) for issuance of shares/debentures.
 - 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;
 - f. Number of shares/debentures allotted and value of such allotment against each allottee's name.
 - g. Details regarding subscription amount raised;
 - h. Date of allotment of shares/debentures;

- i. Copies of the minutes of Board/Committee meeting in which the resolution was passed for allotment;
 - j. Date of dispatch of shares/debentures certificates, etc.;
 - k. Details of the total number of applicants for each of RHRL's scheme besides the list of final allottees;
 - l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/debentures;
 - m. Terms and conditions of the issue of shares/debentures;
 - n. Details of listing of shares/debentures;
 - o. Copy of Form 2 and Form 10 filed with the ROC;
 - p. Details of Debenture Trustee.
- 2.7 As no information was forthcoming, reminders dated June 4, 2014, were sent to RHRL and its Directors. Further, a letter dated August 13, 2014 was sent to RHRL and its Directors advising them to submit Audited Annual Accounts and Annual Return of the company for the year ended March 31, 2013 and March 31, 2014 and all the Form 20 or list of Investors who were allotted debentures.
- 2.8 In its reply dated August 16, 2014, RHRL *inter alia* submitted –
- i. *“The company has issued debentures to its associates, relatives and friends of Directors on private placement basis during 2009–10 and 2010–11 of ₹14 Cr. and ₹15 Cr. respectively.*
 - ii. *The company has issued Redeemable debentures on private placement basis to its associates and not to the public.*
 - iii. *Audited Annual accounts for the year ended 31.03.2013. However, Annual Accounts for the year ended 31.03.2014 is under audit, therefore unable to provide the same.”*
- 2.9 No further information has been received from either RHRL or any of its Directors.
- 2.10 Subsequently, SEBI received another complaint dated December 5, 2014, against RHRL, *inter alia* alleging illegal mobilization of funds through issue of NCDs.
- 2.11 SEBI received an Order of the Hon’ble Calcutta High Court dated December 22, 2014, in *W.P. 32131 (W) of 2014, Mr. Arindam Das & Others vs. Rabul Group*. In its aforesaid Order, the High Court had *inter alia* observed –

“... SEBI has also filed its response wherefrom it appears that certain violation has been alleged in respect of which steps will be taken.

... As investigation is ongoing, no interference is called for at this stage and the State respondent and SEBI so also Central Government are directed to conduct the investigation diligently and expeditiously without being influenced by any quarter and submit final report on the basis of such investigation.”

3. The material available on record i.e. correspondences exchanged between SEBI and RHRL alongwith the documents contained therein; complaints received against RHRL alongwith the documents contained therein and information obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*, have been perused. On examination of the same, it is observed that –

i. RHRL was incorporated on August 13, 2004, with the ROC, Kolkata with CIN as U51909WB2004PLC099458. Its Registered Office is at 30H/1, B. B. Sengupta Sarani, Kolkata–700034, West Bengal, India.

ii. The Directors in RHRL are Shri Abhijit Majumdar, Shri Mrinmoy Bose and Shri Dipankar Gupta.

iii. From the documents annexed with the complaints received against RHRL and also from information obtained from the *MCA21 Portal*, it is observed that –

a. RHRL issued *NCDs ("Offer of NCDs")* in accordance with the following terms and conditions contained in the brochure –

SCHEME: SECURED REDEEMABLE DEBENTURES						
Series	A	B	C	D	E	F
Issue Price 10 Debentures	1000	1000	1000	1000	1000	1000
Maturity Value	1600	2200	3500	6500	11000	15000
Redemption Period	3 Years	5 Years	7 Years	10 Years	13 Years	15 Years

- i. *“Who can invest: Individual, Trusts, Corporate Bodies, Mutual Funds, Partnership Firms, HUF, etc.*
- ii. *The offer is being made on a private placement basis and cannot be accepted by any person other than to whom it has been offered, this offer cannot be transferred or rendered in anyone's favour.”*

- b. RHRL issued NCDs during the Financial Years 2009–10 and 2010–11, details of which are provided below –

Type of Security	Year	No. of persons to whom NCDs were allotted	Total Amount (₹ in Crores)
<i>Secured Redeemable Debentures</i>	2009–10	50	14.44
	2010–11	50	15.00
Total		*100	^29.44

**^No. of allottees and amount raised have been collated from the documents obtained from MCA21 Portal and also those submitted with the complaints received by SEBI. However, actual no. of allottees and amount mobilized could be much more than the above indicated figures.*

- c. For the *Offer of NCDs* during the Financial Year 2009–10, RHRL created a charge for an amount of ₹15 Crores, on March 10, 2009 and appointed *Shri Dinendra Nath Bandopadhyay* as Debenture Trustee.
- d. For the *Offer of NCDs* during the Financial Year 2010–11, RHRL created another charge on March 15, 2010, for an amount of ₹15 Crores and appointed *Well Being Trust (represented by Shri Chapal Biswas and Shri Dinendra Nath Bandopadhyay)*, as Debenture Trustee.

4.1 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 RHRL 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.

4.2 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."

4.3 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:

"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 and 2010–11, RHRL allotted *NCDs* to at least 100 individuals/investors and mobilized an amount of ₹29.44 Crores (Table at paragraph 3(iii)(b) of page 6). The number of investors to whom allotments were made under the *Offer of NCDs* during the aforesaid Financial Years alongwith the amount mobilized therein, would *prima facie* indicate that the number of persons to whom such *Offer* was made, was above the limit of forty–nine persons as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956.
- b. However, it is important to note that the number of allottees and amount raised under the *Offer of NCDs* for the Financial Years 2009–10 and 2010–11, have only been taken from the documents obtained from *MCA21 Portal* and also those submitted with the complaints received by SEBI. Therefore, the actual number of allottees and amount mobilized by RHRL could be much more than the figures indicated in the Table at paragraph 3(iii)(b) of page 6.
- c. RHRL 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 RHRL 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 RHRL, would *prima facie* qualify as public issues 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, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

4.4 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 recognized stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:

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

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

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1 [until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2)]; and if default is made in complying with this sub- section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees."

- ii. In the *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. 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 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 RHRL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.

4.5 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, the *Offer of NCDs* was a public issue of securities. Having made a public issue, RHRL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. I find that there is no evidence on record to indicate whether or not RHRL has complied with the provisions of Section 60 of Companies Act, 1956, in respect of the *Offer of NCDs*. In view of the same, I find that RHRL has *prima facie* not complied with the provisions of Section 60 of Companies Act, 1956.

- 4.6 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 RHRL 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.
- 4.7 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 RHRL 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*.
- 4.8 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 RHRL, through the *Offer of NCDs*, which is a public issue of debt securities, has *prima facie* violated the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- i. Regulation 4(2)(a) – *Application for listing of debt securities*
- ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
- iii. Regulation 4(2)(c) – *Credit rating has been obtained*
- iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
- v. Regulation 4(4) – *Appointment of Debenture Trustees*
- 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(1) – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

4.9 Upon a consideration of the aforementioned paragraphs, I am of the view that RHRL 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, Sections 117B–117C) read with the Debt Securities Regulations.

5.1 For the *Offer of NCDs* during the Financial Year 2009–10, RHRL created a charge for an amount of ₹15 Crores on March 10, 2009 and appointed *Shri Dinendra Nath Bandopadhyay* as Debenture Trustee.

- 5.2 Thereafter, for the *Offer of NCDs* during the Financial Year 2010–11, RHRL created another charge on March 15, 2010, for an amount of ₹15 Crores and appointed *Well Being Trust (represented by Shri Chapal Biswas and Shri Dinendra Nath Bandopadhyay)*, as Debenture Trustee.
- 5.3 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*".
- 5.4 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."*
- 5.5 Based on the material available on record, I find that *Shri Dinendra Nath Bandopadhyay* and *Well Being Trust (represented by Shri Chapal Biswas and Shri Dinendra Nath Bandopadhyay)*, have acted as unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.
6. I note that RHRL allotted *NCDs* to the public during the Financial Years 2009–10 and 2010–11. The Directors of RHRL are Shri Abhijit Majumdar, Shri Mrinmoy Bose and Shri Dipankar Gupta. It is alleged that the aforementioned Directors being the persons in-charge of and responsible to the Company for the conduct of business, are responsible under Section 27(2) of the SEBI Act, for the *prima facie* contraventions committed by RHRL through the *Offer of NCDs*.
7. RHIL and its Directors were advised to respond to the examination conducted by SEBI through several letters dated May 23, 2014, May 26, 2014 and June 4, 2014. However, on these occasions, RHIL and its Directors failed to fully cooperate with SEBI. I am of the view that non-cooperation on the part of RHIL and its Directors with the examination conducted by SEBI when considered in the light of the abovementioned *prima facie*

findings, lead to the inescapable conclusion that such refusal to furnish information sought by SEBI has only been to conceal the true nature and operation of their fund mobilizing activity.

8. 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 4.1–4.9 above). Steps therefore, have to be taken in the instant matter to ensure that only legitimate fund raising activities are carried on by RHRL 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 RHRL and its Directors, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.
9. 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 Regulation 28 of SEBI (Issue and Listing of Debt Securities), Regulations, 2008, hereby issue the following directions –
 - i. RHRL (PAN: AAECA8578L) shall forthwith cease to mobilize 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. RHRL and its Directors, viz. Shri Abhijit Majumdar (PAN: AJCPM9999F; DIN: 03619374), Shri Dipankar Gupta (DIN: 02408609) and Shri Mrinmoy Bose (PAN: AMOPB0512G; DIN: 03619376), 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. RHRL 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. RHRL shall provide a full inventory of all its assets and properties;
 - v. RHRL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. RHRL 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. RHRL 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 RHRL;
 - viii. RHRL and its abovementioned Directors shall co-operate with SEBI and shall furnish all information/documents sought vide letters dated May 23, 2014, May 26, 2014 and June 4, 2014;
 - ix. The Debenture Trustees, viz. *Shri Dinendra Nath Bandopadhyay* and *Well Being Trust (represented by Shri Chapal Biswas and Shri Dinendra Nath Bandopadhyay)*, are prohibited from continuing with their assignment as debenture trustee in respect of the *Offer of NCDs* of RHRL 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.
10. The above directions shall take effect immediately and shall be in force until further orders.
- 11.1 The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondences exchanged between SEBI and RHRL alongwith the documents contained therein; complaints received against RHRL alongwith the documents contained therein and information obtained from *MCA 21 Portal*. In this context, RHRL and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with 73(2) of the Companies Act, 1956 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.
- 11.2 RHRL 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.
- 11.3 Similarly, the Debenture Trustees, viz. *Shri Dinendra Nath Bandopadhyay* and *Well Being Trust (represented by Shri Chapal Biswas and Shri Dinendra Nath Bandopadhyay)*, 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 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.
- 11.4 The Debenture Trustees, viz. *Shri Dinendra Nath Bandopadhyay* and *Well Being Trust (represented by Shri Chapal Biswas and Shri Dinendra Nath Bandopadhyay)*, 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.
11. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against RHRL and its abovementioned Directors; its Debenture Trustees, viz. *Shri Dinendra Nath Bandopadhyay* and *Well Being Trust (represented by Shri Chapal Biswas and Shri Dinendra Nath Bandopadhyay)*, in accordance with law.

Place: Mumbai
Date: October 1, 2015

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