BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, 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 Mass Infra Realty Limited

In respect of:

1. **Mass Infra Realty Limited [PAN: AAGCM7419N],**
2. **Mr. Ashok Halder [PAN: AEDPH4898E],**
3. **Mr. Tapan Kumar Samanta [PAN: BCVPS0411F],**
4. **Mr. BideshBasu [PAN: AWKPB6801G],**
5. **Mr. Pratap Kumar Biswal [PAN: AITPB3875F],**
6. **Mr. Samir Kumar Mandal [PAN: AZXPM4025B],**
7. **Mr. Dilip Kumar Chakraborty [PAN: AFNPC6695P],**
8. **Mr. Kundal Manna [PAN: AVKPM2947F],**
9. **Mr. SubodhMondal [PAN: BWXPM1173N],**
10. **Mr. Sumeet Kumar Bhagat[PAN: AGRPB6998B],**
11. **Mr.SwadeshBasu[PAN: ANMPB7097H],**
12. **Ms.MahfuzaKhatun[PAN: ARDPK4799A],**
13. **Mr. Ajay Kumar Mahapatra[PAN: AEZPM0434K],**
14. **Mr.Mukhaleshur Ali Mir [PAN: BEMPM2216M],**
15. **Debenture Trust Suraksha and**
16. **Mass Debenture Trust(represented by its trustee Mr. Bhabani Shankar Biswal).**

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Date of Hearing: **September 03, 2015**
Appearances: Mr. TriptimoyTalukder, Advocate appeared for the Company; Mr. Ajay Kumar Mahapatra, Ms. MahfuzaKhatun and Mr. Mukhaleshur Ali Mir appeared in person.

For SEBI: Mr. PrashantaMahapatra, General Manager; Mr. N. Murugan, Assistant General Manager; Mr. T. Vinay Rajneesh, Assistant General Manager and Ms. Nikki Agarwal, Assistant Manager.

Date of Hearing: **November 23, 2015**
Appearances: Mr. TriptimoyTalukder, Advocate appeared for Mr. Bhabani Shankar Biswal, trustee of Mass Debenture Trust

For SEBI: Mr. PrashantaMahapatra, General Manager; Mr. T. Vinay Rajneesh, Assistant General Manager and Ms. Nikki Agarwal, Assistant Manager.

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), vide an *ex-parteinterim* Order dated December 04, 2014 (hereinafter referred to as 'the *interim* order') had observed that the company, **Mass Infra Realty Limited** (hereinafter referred to as 'Mass' or 'the Company') is *prima facie* engaged in fund mobilising activity from the public, by making offer and issuing **Non-Convertible Redeemable Debentures** (hereinafter referred to as '**NCD**') and had allegedly violated the provisions of Sections 56, 60 [read with Section 2(36)], 73, 117B and 117C of the Companies Act, 1956 and the relevant provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as 'the ILDS Regulations'). The *interim* order also alleged that **Debenture Trust Suraksha and Mass Debenture Trust**had allegedly failed to meet the eligibility conditions specified under the SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as 'DT Regulations') and acted as an unregistered debenture trustee in violation of Section 12(1) of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act').

2. In order to protect the investors who have subscribed to the impugned offer and issue of NCDs and to prevent the Company from further carrying on with its fund mobilizing activity under the offer of NCDs, SEBI had issued the following directions:

"… …

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 the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions –

i. *MIRL shall not mobilize funds from investors through the Offer of NCDs or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*

ii. *MIRL and its present Directors, viz. Shri Ashok Halder (DIN: 03382051; PAN: AEDPH4898E), Shri Tapan Kumar Samanta (DIN: 03382135; PAN: BCVPS0411F), Shri Samir Kumar Mandal (DIN: 06980776; PAN: AZXPM4025B), Shri Dilip Kumar Chakraborty (DIN: 06368719; PAN: AFNPC6695P), Shri Kundal Manna (DIN: 05250026; PAN: AVKPM2947F) and Shri SubodhMondal (DIN: 06956650), 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. *The past Directors of MIRL, viz. Shri Pratap Kumar Biswal (DIN: 00608810; PAN: AITPB3875F), Shri SwadeshBasu (DIN: 03535561; PAN: ANMPB7097H), Shri BideshBasu (DIN: 03534617; PAN: AWKPB6801G) and Shri Sumeet Kumar Bhagat (DIN: 03294268; PAN: AGRPB6998B) alongwith its past Promoters/Directors, viz. Shri MahfuzaKhatun (DIN: 03083865; PAN: ARDPK4799A), Shri Ajay Kumar Mahapatra (DIN: 00664668; PAN: AEZPM0434K) and Shri Mukhaleshur Ali Mir (DIN: 03150015; PAN: BEMPM2216M), 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;*

iv. *MIRL and its abovementioned past and present Directors and Promoters, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*

v. *MIRL shall provide a full inventory of all its assets and properties;*

vi. *MIRL's abovementioned past and present Directors and Promoters shall provide a full inventory of all their assets and properties;*

vii. *MIRL and its abovementioned present 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;*

viii. *MIRL and its abovementioned present 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 MIRL;*

ix. *MIRL and its abovementioned present Directors shall furnish complete and relevant information (as sought by SEBI letters dated March 12, 2013; March 26, 2013; May 30, 2013 and July 4, 2013), within 21 days from the date of receipt of this Order.*

x. *The Debenture Trustees, viz. Debenture Trust Suraksha and Mass Debenture Trust, are prohibited from continuing with their assignment as debenture trustees in respect of the Offer of NCDs of MIRL 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.

… …

10. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against MIRL and its abovementioned past and present Directors and Promoters;its Debenture Trustees, viz. Debenture Trust Suraksha and Mass Debenture Trust, in accordance with law."

3. The *interim* order observed that the *prima facie* observations made therein were on the basis of the information/ documents obtained from the 'MCA-21' portal,

correspondences exchange between SEBI and the Company along with the documents contained therein and the complaint dated January 05, 2014. The *interim* order advised the Company and its directors to file their replies within 21 days from the date of its receipt and also seek an opportunity of personal hearing.

4. The copy of the *interim* order wasforwarded to the Company, its directors namelyMr. Ashok Halder, Mr. Tapan Kumar Samanta, Mr. BideshBasu, Mr. Pratap Kumar Biswal,Mr. Samir Kumar Mandal, Mr. Dilip Kumar Chakraborty, Mr. Kundal Manna, Mr. SubodhMondal, Mr. Sumeet Kumar Bhagat, Mr. SwadeshBasu,Mr. MahfuzaKhatun, Mr. Ajay Kumar Mahapatra, Mr. Mukhaleshur Ali Mirand its Debenture Trustees namely Debenture Trust Suraksha and Mass Debenture Trust(represented by its trustee Mr. Bhabani Shankar Biswal)vide letters dated December 05, 2014. The said lettersissued to Mr. Ashok Halder, Mr. Tapan Kumar Samanta, Mr. Pratap Kumar Biswal, Ms. MahfuzaKhatun,Debenture Trust Suraksha and Mass Debeture Trusthad returned undelivered. The copies of the above mentioned letters of these were forwarded to the Company for onward delivery to the respective persons.

5. Mr. Ajay Kumar Mahapatra vide his letter dated December 17, 2014 replied to the *interim* order and requested for an opportunity of personal hearing.The Company vide its letter dated December 18, 2014 while requesting for an opportunity of personal hearing replied to the *interim* order.Ms. MahfuzaKhatunand Mr. Mukhaleshur Ali Mir vide respective letter dated December 28, 2014 and February 03, 2015, replied to the *interim* order and requested for withdrawal of the directions. Ms. MahfuzaKhatun vide another letter, received by SEBI on April 08, 2015 while intimating the correct address, requested for withdrawal of all the directions and release of the demat account.

6. Thereafter, an opportunity of personal hearing was granted to the Company, its directors and debenture trustees on September 03, 2015. The scheduled date was communicated vide SEBI letter dated July 27, 2015. The date of hearing was notified in the newspapers namely *'Ananda Bazar Patrika'* and *'Times of India'* both dated September

03, 2015. The Company and its directors were advised that in case they fail to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte*on the basis of material available on record. On the date fixed, Mr. Ajay Kumar Mahapatra, Ms. MahfuzaKhatun, Mr. Mukhaleshur Ali Mir appeared in-person and made submissions. On behalf of the Company, Mr. TriptimoyTalukder, Advocate appeared and requested for a time of one week for filing the written submissions. The requested time was granted to the Company, however, till date no written submissions have been filed.

7. In the meantime, SEBI received a letter dated September 28, 2015 from one Mr.Bhabani Shankar Biswal, trustee of Mass Debenture Trust,intimating thereby his inability to appear for the personal hearing on September 03, 2015. Vide this letter he also requested for a further opportunity of personal hearing. The request of Mr.Bhabani Shankar Biswal was considered and one more opportunity of personal hearing was granted to him on November 23, 2015. On the date fixed,Mr. TriptimoyTalukder, Advocateappeared as authorised representative of Mr.Bhabani Shankar Biswal and submitted a compact disc (CD) said to be containing a list of debenture holders. However, the CD had to be returned to the representative as the same was found to be broken. The representative was granted liberty to submit another CD and details regarding the claimed refunds within fifteen days. I note that even after expiry of the time granted, Mr.Bhabani Shankar Biswal has not submitted the details.

Other entities/ persons had failed to appear for the personal hearing. Considering the reasonable opportunities to the Company, its directors and the debenture trustees already afforded for making submissions in the matter, I am inclined to proceed further with the matter, on the basis of material available on record.

8. The submissions made by the Company, its directors and the trustee of the Mass Debenture Trust, in brief, are as under:

a. **The Company** vide its letter dated December 18, 2014,has submitted as under:

- The NCDs issued by it were on private placement basisand was to its associates without publication of any advertisementand the provision of the Companies Act, 1956 and rules made thereunder, were duly complied with.
- The Company was incorporated on September 01, 2010 and a charge on immovable properties was created in favor of Registrar of Companies, West Bengal.
- On September 06, 2011 and August 23, 2011, the charge was modified and NCDs were issued.
- The Company had obtained necessary permissions from the Registrar of Companies, West Bengal to issue NCDs against the charge created.

b. The submissions of **Ms. MahfuzaKhatun and Mr. Mukhaleshur Ali Mir** made vide respective letters dated December 28, 2014 and February 03, 2015, in brief, are as under:

- Ms. MahfuzaKhatunand Mr. Mukhaleshur Ali Mir became the promoter-directors of the Company on September 01, 2010. Ms. MahfuzaKhatun is now a school teacher and Mr. Mukhaleshur Ali Mir is running a small grocery shop in a remote village.
- On request of Mr. Ajay Kumar Mahapatra, his wife and daughter, they both had agreed to form a company for carrying on the business of civil construction. On realizing his other motives behind the formation of the Company, they had resigned from the Board of Directors.
- All the documents of the Company were kept at the registered office of the Company which was the residence of Mr. Ajay Kumar Mahapatra. They had not seen the other directors as named in the *interim* order.
- Ms. MahfuzaKhatunand Mr. Mukhaleshur Ali Mir had tendered their resignations from the post of directorship on November 08, 2010and October 05, 2010 respectively. The tenure of directorship of Mr. Mukhaleshur Ali Mir in the Company was only one month and four days.
- They had not attended any board meeting of the Company. No share of the Company was ever allotted in their favour.Further, the Company had started issuance of NCDs after their resignation from the Company.

c. **Mr. Ajay Kumar Mahapatra** vide his letter dated December 17, 2014 submitted as under:

- He is not a present director of the Company. He had disassociated himself from the activities of the Company since January 2011. In view of the same, any change in the Board of Directors or the activities of the Company are being done without his consent.
- His resignation letter was forwarded to Mr. Pratap Kumar Biswal (Managing Director of the Company) through the Board of Directors of the Company. However, the same was not filed with the Registrar of Companies. As he was not able to file the resignation using his own digital signatures, a request was made by him to Mr. Pratap Kumar Biswal, in this regard. Thereafter, the resignation was updated with the Registrar of Companies.
- He was neither involved in any activity in contravention of the rules of any statutory body nor mobilized any deposit, preference share, debentures from the public or private persons on behalf of the Company. He had not given any consent for any such activity of the Company till the time he was the director of the Company.

d. **Mr. Bhabani Shankar Biwal, trustee of Mass Debenture Trust** vide his letters dated December 13, 2014 and September 28, 2015 submitted as under:

- He was assigned the job of trustee in Mass Debenture Trust.As he is the only earning member of the family, he thought it a good job for having additional salary.
- After formation of the trust, it was told by the directors of the Company that the activities of the trust had not started and once there will be any activity, he will be informed and the job will start. As he was working in a private organization and had to travel frequently, it was not possible to track the activities of the Company and Mass Debenture Trust.
- When he came to know that some money transaction activities are going on within the Company, he immediately tried to contact the directors. However, it was found that the directors had already resigned and the new directors didn't answer him.

Thereafter, he tendered his resignation and conveyed same to the Registrar of Companies on October 01, 2014.

- Except for signing the trust deed, he was never a part of the Trust or the organization. He had not received a single rupee in the capacity of a trustee. Any monetary transaction done by the Company was by the directors within their personal capacity.

9. I have considered the *interim* order, the submissions of the Company and the persons who have repliedand the material available on record. The *interim* order had observed/alleged the following:

"…

i. *MIRL was incorporated on September 1, 2010, with the ROC, Kolkata, West Bengal with CIN No. as U45400WB2010PLC152714. MIRL has its Registered Office at 113 Park Street, 3rd Floor, Kolkata–700016, West Bengal, India.*

ii. *The present Directors in MIRL are Shri Ashok Halder, Shri Tapan Kumar Samanta, Shri Samir Kumar Mandal, Shri Dilip Kumar Chakraborty, Shri Kundal Manna and Shri SubodhMondal.*

iii. *Details obtained from the MCA 21 Portal indicate thatShri Pratap Kumar Biswal, Shri SwadeshBasu, Shri BideshBasu, Shri Sumeet Kumar Bhagat, Shri MahfuzaKhatun, Shri Ajay Kumar Mahapatra and Shri Mukhaleshur Ali Mir, who were earlier Directors in MIRL, have since resigned.*

iv. *Further, MIRL has submitted that Shri MahfuzaKhatun, Shri Ajay Kumar Mahapatra and Shri Mukhaleshur Ali Mir were also its Promoters.*

v. *From the material available on record, it is observed that MIRL issued Secured Non–Convertible Redeemable Debentures ("**NCDs**")in accordance with the following terms and conditions contained in the brochure i.e. "Offer of NCDs":*

a. *"The applicant who is an Indian citizen over the age of 18 years will be eligible for subscription.*
b. *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.*
c. *Use different application forms for different schemes.*
d. *Size of the Issue: 205 Crore, with an option to retain oversubscription to be decided by Board of Directors.*
e. *Authority of the Issue: The debentures are being issued pursuant to the meeting of Board of Directors of the Company held on 23–08–2011.*
f. *Allotment of NCDs will be made within 60 days from the date of receipt of application.*
g. *Security: The NCDs is being secured by equitable mortgage of assets (Movable and Immovable)."*

SCHEME – I: CUMULATIVE DEPOSIT						
PLAN	***A***	***B***	***C***	***D***	***E***	***F***

Issue Price ( ) Min. 10 NCDs	*1000*	*1000*	*1000*	*1000*	*1000*	*1000*
Redemption Period	*12 Months*	*36 Months*	*60 Months*	*90 Months*	*132 Months*	*180 Months*
Redemption Value	*1150*	*1500*	*2000*	*3500*	*5500*	*10000*

SCHEME – II: NON–CUMULATIVE DEPOSIT				
PLAN	***G***	***H***	***I***	***J***
Issue Price ( ) Min. 250 NCDs	*25000*	*25000*	*25000*	*25000*
Redemption Period	*18 Months*	*36 Months*	*72 Months*	*108 Months*
Monthly Redemption Benefit	*250*	*300*	*344*	*406*
Redemption %	*12*	*14.4*	*16.5*	*19.5*
#Bonus %	*NIL*	*Nil*	*2*	*4*
#Bonus will be given after maturity on Principal Amount only.				

vi. *As per information submitted by MIRL, details of NCDs issued are provided below –*

Year	***Security***	***Amount Raised (in Crores)***	***No. of Allottees (Approx)***
2011 – 12	*Non – Convertible Secured Redeemable Debenture*	*4.34*	*2016*
2012 – 13		*14.20*	*7536*
2013 – 14		*19.36*	*4704*
	Total	***37.90***	***14256***

…"

10. Having considered the above, it is now necessary to determine whether the Company had made a public issue as alleged in the *interim* order and if so, whether the Company had complied with the public issue norms. The liability of the directors of the Company also needs to be determined as they have also been alleged in the *interim* order.

11. Forascertaining whether an issue of securities is a 'public issue' or done on 'private placement' basis it is necessary to make a reference to Section 67(3) of the Companies Act, 1956, which reads 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) ...
(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)."*

As perSection 67(3) (as amended by the *Companies (Amendment) Act, 2000, with effect from December 13, 2000*), no offer or invitation shall be treated as made to the public by virtue of sub-sections (1) or (2), as the case may be, if the offer or invitation can properly be regarded, in all 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. More importantly, in terms of the first*proviso* to the aforesaid section, the provisions of Section 67(3) shall **not** apply in a case where the **offer or invitation to subscribe for shares or debentures** is made to **fifty persons or more**. Therefore, the number of subscribers becomes relevant to decidewhether an issue of shares are made for public or done on a private placement basis, in the light of the above said provision. In view of the same, if an offer of securities are made to fifty or more persons, it would be deemed to be a public issue.

12. The Hon'ble Supreme Court of India in the matter of *Sahara India Real Estate Corporation Limited & Others* Vs. *SEBIand another*(Civil Appeal Nos. 9813 and 9833 of 2011; decided on August 31, 2012) ('the *Sahara* case') had *inter alia* held that –

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or

otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

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

Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. …

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

13. I note from the *interim* order that the Company had offered and allotted NCDs during the financial years2011-12, 2012-13 and 2013-14 and had raised 37.90 crore (approximately). As per the *interim* order, the Company had allotted NCDs to about 14,256 persons. Following are the details of allotment, as submitted by the Company to SEBI, along with its letter dated May 26, 2014:

S.No.	Date of allotment	No. of allottees	Amount ( )
1	05/10/2011	48	696000
2	15/10/2011	48	1234500
3	25/10/2011	48	1340500
4	31/10/2011	48	1305000
5	02/11/2011	48	2040000
6	12/11/2011	48	776000
7	18/11/2011	48	952000
8	24/11/2011	48	560000
9	30/11/2011	48	873600
10	03/12/2011	48	705000
11	12/12/2011	48	621000
12	16/12/2011	48	628000
13	20/12/2011	48	610000
14	26/12/2011	48	928600
15	29/12/2011	48	1555000
16	31/12/2011	48	802200
17	09/01/2012	48	1299000
18	10/01/2012	48	2518000
19	16/01/2012	48	758000
20	20/01/2012	48	572000
21	23/01/2012	48	2408500
22	27/01/2012	48	501000

23	**31/01/2012**	**48**	**1218200**
24	**31/01/2012**	**48**	**398000**
25	06/02/2012	48	642000
26	13/02/2012	48	658000
27	20/02/2012	48	1466500
28	23/02/2012	48	548200
29	27/02/2012	48	1300000
30	**29/02/2012**	**48**	**802000**
31	**29/02/2012**	**48**	**950500**
32	06/03/2012	48	1092000
33	12/03/2012	48	1890000
34	14/03/2012	48	1943000
35	**20/03/2012**	**48**	**1119500**
36	**21/03/2012**	**48**	**605000**
37	**23/03/2012**	**48**	**658000**
38	**24/03/2012**	**48**	**1238200**
39	29/03/2012	48	637000
40	**31/03/2012**	**48**	**1130000**
41	**31/03/2012**	**48**	**773000**
42	02/04/2012	48	610000
43	09/04/2012	48	947500
44	17/04/2012	48	619000
45	21/04/2012	48	727500
46	26/04/2012	48	514000
47	**30/04/2012**	**48**	**2319000**
48	**30/04/2012**	**48**	**519500**
49	**02/05/2012**	**48**	**916000**
50	**02/05/2012**	**48**	**1931000**
51	**04/05/2012**	**48**	**801000**
52	**04/05/2012**	**48**	**812500**
53	**05/05/2012**	**48**	**474000**
54	**05/05/2012**	**48**	**1018000**
55	07/05/2012	48	531000
56	10/05/2012	48	735400
57	**12/05/2012**	**48**	**1090500**
58	**12/05/2012**	**48**	**580000**
59	15/05/2012	48	804000
60	18/05/2012	48	628000
61	21/05/2012	48	594000
62	26/05/2012	48	1087500
63	30/05/2012	48	556000
64	31/05/2012	48	1012000
65	02/06/2012	48	1110000
66	07/06/2012	48	982000
67	12/06/2012	48	637500
68	08/06/2012	48	606000
69	21/06/2012	48	675000
70	26/06/2012	48	505500
71	28/06/2012	48	1300000
72	**30/06/2012**	**48**	**407000**
73	**30/06/2012**	**48**	**940000**

74	06/07/2012	48	682000
75	12/07/2012	48	1009000
76	16/07/2012	48	873500
77	21/07/2012	48	596000
78	25/07/2012	48	1366500
79	28/07/2012	48	524500
80	**31/07/2012**	**48**	**720500**
81	**31/07/2012**	**48**	**537000**
82	**01/08/2012**	**48**	**1157700**
83	**01/08/2012**	**48**	**566100**
84	03/08/2012	48	491600
85	03/08/2012	48	458600
86	**06/08/2012**	**48**	**343400**
87	**06/08/2012**	**48**	**340200**
88	**07/08/2012**	**48**	**413680**
89	**07/08/2012**	**48**	**324990**
90	**08/08/2012**	**48**	**331785**
91	**08/08/2012**	**48**	**463600**
92	**09/08/2012**	**48**	**375500**
93	13/08/2012	48	1003500
94	16/08/2012	48	383800
95	22/08/2012	48	864000
96	27/08/2012	48	700500
97	29/08/2012	48	449500
98	**31/08/2012**	**48**	**517500**
99	**31/08/2012**	**48**	**696500**
100	**31/08/2012**	**48**	**622000**
101	04/09/2012	48	608000
102	10/09/2012	48	922000
103	14/09/2012	48	603500
104	17/09/2012	48	949000
105	21/09/2012	48	477500
106	24/09/2012	48	894000
107	26/09/2012	48	586000
108	**28/09/2012**	**48**	**898000**
109	**29/09/2012**	**48**	**488500**
110	**29/09/2012**	**48**	**331000**
111	01/10/2012	48	906000
112	06/10/2012	48	1178600
113	10/10/2012	48	641500
114	12/10/2012	48	2069500
115	17/10/2012	48	840000
116	20/10/2012	48	478500
117	25/10/2012	48	1414500
118	27/10/2012	48	1962500
119	**30/10/2012**	**48**	**987000**
120	**31/10/2012**	**48**	**1052000**
121	**31/10/2012**	**48**	**538000**
122	03/11/2012	48	520000
123	07/11/2012	48	775000

124	09/11/2012	48	2043500
125	10/11/2012	48	760500
126	16/11/2012	48	837000
127	20/11/2012	48	899000
128	22/11/2012	48	1380000
129	24/11/2012	48	640500
130	27/11/2012	48	1514000
131	**29/11/2012**	**48**	**663000**
132	**30/11/2012**	**48**	**719000**
133	**30/11/2012**	**48**	**3918500**
134	**30/11/2012**	**48**	**898000**
135	03/12/2012	48	447500
136	07/12/2012	48	844500
137	10/12/2012	48	1184000
138	13/12/2012	48	1110000
139	17/12/2012	48	1339500
140	21/12/2012	48	576000
141	25/12/2012	48	818500
142	27/12/2012	48	2774000
143	29/12/2012	48	1190000
144	**31/12/2012**	**48**	**892500**
145	**31/12/2012**	**48**	**1070600**
146	**01/01/2013**	**48**	**452000**
147	**01/01/2013**	**48**	**487000**
148	03/01/2013	48	942000
149	08/01/2013	48	1343100
150	11/01/2013	48	998000
151	15/01/2013	48	1301500
152	17/01/2013	48	1352500
153	21/01/2013	48	901700
154	22/01/2013	48	494400
155	**24/01/2013**	**48**	**675000**
156	**24/01/2013**	**48**	**639000**
157	**28/01/2013**	**48**	**1595900**
158	**29/01/2013**	**48**	**562000**
159	**31/01/2013**	**48**	**746000**
160	**31/01/2013**	**48**	**1840500**
161	**31/01/2013**	**48**	**1360500**
162	**01/02/2013**	**48**	**392500**
163	**01/02/2013**	**48**	**509500**
164	**01/02/2013**	**48**	**440000**
165	08/02/2013	48	1812500
166	11/02/2013	48	643000
167	12/02/2013	48	1476500
168	14/02/2013	48	566000
169	18/02/2013	48	2125500
170	19/02/2013	48	894000
171	22/02/2013	48	764000
172	25/02/2013	48	853000
173	**27/02/2013**	**48**	**972000**
174	**28/02/2013**	**48**	**1291000**
175	**28/02/2013**	**48**	**1632500**

176	**01/03/2013**	**48**	**906000**
177	**01/03/2013**	**48**	**442500**
178	**02/03/2013**	**48**	**655000**
179	09/03/2013	48	1668000
180	**11/03/2013**	**48**	**1069500**
181	**12/03/2013**	**48**	**858100**
182	**13/03/2013**	**48**	**943000**
183	**14/03/2013**	**48**	**873000**
184	16/03/2013	48	1315500
185	**18/03/2013**	**48**	**788500**
186	**19/03/2013**	**48**	**894000**
187	21/03/2013	48	752000
188	23/03/2013	48	1009000
189	**25/03/2013**	**48**	**1064000**
190	**26/03/2013**	**48**	**1092500**
191	**30/03/2013**	**48**	**1498400**
192	**30/03/2013**	**48**	**1401000**
193	**01/04/2013**	**48**	**1279500**
194	**01/04/2013**	**48**	**1570000**
195	**02/04/2013**	**48**	**412500**
196	**02/04/2013**	**48**	**489200**
197	**03/04/2013**	**48**	**373000**
198	**04/04/2013**	**48**	**761000**
199	**06/04/2013**	**48**	**1034000**
200	**10/04/2013**	**48**	**1913000**
201	**11/04/2013**	**48**	**1201000**
202	13/04/2013	48	598700
203	17/04/2013	48	1505000
204	19/04/2013	48	6987500
205	23/04/2013	48	1206000
206	25/04/2013	48	841700
207	**29/04/2013**	**48**	**1369000**
208	**30/04/2013**	**48**	**2294600**
209	**30/04/2013**	**48**	**393000**
210	09/05/2013	48	1381700
211	16/05/2013	48	853500
212	22/05/2013	48	1551200
213	25/05/2013	48	1161890
214	29/05/2013	48	2125500
215	**31/05/2013**	**48**	**1542000**
216	**31/05/2013**	**48**	**1457000**
217	**01/06/2013**	**48**	**810900**
218	**01/06/2013**	**48**	**991145**
219	**03/06/2013**	**48**	**690700**
220	**03/06/2013**	**48**	**1164320**
221	08/06/2013	48	923000
222	10/06/2013	48	4363000
223	14/06/2013	48	1632000
224	19/06/2013	48	1656500
225	22/06/2013	48	1641500
226	26/06/2013	48	1487000
227	**29/06/2013**	**48**	**999700**

228	**29/06/2013**	**48**	**785200**
229	01/07/2013	48	1152900
230	08/07/2013	48	2583000
231	16/07/2013	48	1541000
232	22/07/2013	48	1714400
233	25/07/2013	48	2102500
234	**30/07/2013**	**48**	**2486750**
235	**31/07/2013**	**48**	**1462000**
236	**31/07/2013**	**48**	**566000**
237	08/08/2013	48	5528300
238	17/08/2013	48	1921000
239	23/08/2013	48	1019500
240	29/08/2013	48	954000
241	**31/08/2013**	**48**	**2771000**
242	**31/08/2013**	**48**	**1937400**
243	**03/09/2013**	**48**	**690625**
244	**03/09/2013**	**48**	**4320200**
245	09/09/2013	48	1299000
246	13/09/2013	48	1121500
247	18/09/2013	48	1774500
248	23/09/2013	48	3489500
249	25/09/2013	48	1234000
250	27/09/2013	48	2509000
251	**30/09/2013**	**48**	**1557400**
252	**30/09/2013**	**48**	**1227100**
253	**01/10/2013**	**48**	**404000**
254	**01/10/2013**	**48**	**1927000**
255	04/10/2013	48	6634500
256	10/10/2013	48	1385500
257	17/10/2013	48	967700
258	22/10/2013	48	2470150
259	25/10/2013	48	2159600
260	29/10/2013	48	2797500
261	**31/10/2013**	**48**	**3616900**
262	**31/10/2013**	**48**	**2097600**
263	**01/11/2013**	**48**	**697000**
264	**01/11/2013**	**48**	**2285000**
265	12/11/2013	48	4098650
266	18/11/2013	48	2193500
267	23/11/2013	48	2328500
268	28/11/2013	48	2921000
269	**30/11/2013**	**48**	**4411000**
270	**30/11/2013**	**48**	**794600**
271	02/12/2013	48	3730000
272	09/12/2013	48	3771090
273	14/12/2013	48	2546120
274	19/12/2013	48	1974010
275	23/12/2013	48	2536350
276	27/12/2013	48	2398000
277	**31/12/2013**	**48**	**1769000**
278	**31/12/2013**	**48**	**572600**
279	**01/01/2014**	**48**	**703800**

280	**01/01/2014**	**48**	**2745000**
281	08/01/2014	48	3369000
282	11/01/2014	48	1703500
283	16/01/2014	48	1952100
284	21/01/2014	48	2024100
285	27/01/2014	48	2415140
286	**31/01/2014**	**48**	**2353300**
287	**31/01/2014**	**48**	**729800**
288	**01/02/2014**	**48**	**1085000**
289	**01/02/2014**	**48**	**613900**
290	**03/02/2014**	**48**	**837900**
291	**03/02/2014**	**48**	**3462800**
292	05/02/2014	48	3758000
293	12/02/2014	48	1883300
294	15/02/2014	48	1893600
295	17/02/2014	48	1600150
296	18/02/2014	48	1595600
297	21/02/2014	35	1840000
		14,243	**378952545**

The Company has claimed that the NCDs were issued on private placement basis and to its associates only. From the above series of NCD allotment, it is observed that the Company in order to escape the liability had restricted the number of allottees to less than 49 persons. From the above table, it is noted that the Company had allotted NCDs to more than 48 persons on one day or on consecutive days. I note that the Company has not submitted the details to show that all the allotments were out of different offers. In the absence of 'date of resolutions for offer' and the proximity in the dates of allotment of NCDs, it can be presumed that all these tranches of allotment of NCDs were out of a single offer to more than 49 persons. Further, the Company has failed to adduce any evidence to show that the issue was a domestic concern of the members of the Company. Thus on the face of it, the issue made by the Company cannot be considered as a private placement. Considering the same, it is held that the Company had made an offer and allotted NCDs to more than 49 persons, thereby making a public issue of NCDs (in terms of the first proviso to Section 67(3) of the Companies Act, 1956) during the period alleged in the *interim* order.

14. By making a public issue of NCDs, as discussed above, the Company was mandated to comply with all the legal provisions that govern and regulate public issue of such securities, including the Companies Act, 1956 and the SEBI Act and regulations. In this

context, I refer and rely on the below mentioned observation made by the Hon'ble Supreme Court of India in the matter of *Sahara*case:

> *"... ... 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. …"*

15. In view of the above observations, by virtue of Section 55A(a) and (b), the SEBI has jurisdiction and would govern the issue of NCDs as the same was made to more than 49 persons. In terms of Section 55A of the Companies Act, 1956, SEBI shall administer various provisions (as mentioned therein) of the said Act with respect to issue and transfer of securities by listed companies, companies that intend to list and also those companies that are required to list its securities while making offer and issue of securities to the public. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *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.*"
> " *SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange*".

Under Section 11A of the SEBI Act, SEBI is also empowered to regulate, by regulations/general or special orders, the matters pertaining to issue of capital, transfer of securities and matters related thereto. Accordingly, the Company, having made a public offer and issue of securities, as observed above, is under the jurisdiction of SEBI.

16. Sections 56, 60, 73, 117B and 117C of the Companies Act, 1956 and the provisions of the ILDS Regulations are required to be complied with by a company making a public issue of securities.In terms of 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 a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Section 2(36) of the Companies Act read with Section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'.

17. The *interim* order has alleged that the Company had failed to comply with Section 73 of the Companies Act, 1956, in respect of its issuance of NCDs. By issuing NCDs to more than 49 persons, the Company had to compulsorily list such securities in compliance with Section 73(1) of the Companies Act, 1956. As per Section 73(1) Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange. There is no material on record to say that the Company has filed an application with a recognised stock exchange to enable the NCD to be dealt with in such exchange. Therefore, the Company has failed to comply with this requirement.

18. Section 73(2) of the Companies Act, 1956 states that "*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*".As the Company failed to make an application for listing such NCDs, the Company had to forthwith repay such money collected from the investors. If such repayments are not made within 8 days after the Company becomes liable to repay, the Company and every director of the Company, become jointly and severally liable to repay with interest at such rate. There is no material on record to say that the Company has complied with such provision.The Hon'ble Supreme Court of India in the *Sahara* case has examined Section 73 and made the following observations:

"*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.*"

19. Section 117B of the Companies Act, 1956, prescribes that 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. The Company has admittedly not filed any prospectus. Therefore, the said provision has not been fully complied with. Further, appointment of 'debenture trustee' shall be in terms of all applicable law. Section 117C of the Companies Act, 1956, stipulates that, 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. There is no record to suggest that this provision was complied with by the Company.

20. As the NCDs are 'debt securities'in terms of the ILDS Regulations, the Company was also mandated to comply with the provisions of the ILDS Regulations in respect of its public issue of NCDs. However, the Company has failed to comply with the following provisions of the ILDS Regulations.

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.*

From the foregoing, it is concluded that the Company has failed to comply with the provisions of Sections 56, 60 (read with Section 2(36), 73, 117B and 117C of the Companies Act, 1956 read with Companies Act, 2013 and the aforesaid provisions of the ILDS Regulations, in respect of its offer and issuance of NCDs, as discussed in this Order and liable for suitable action under the Companies Act, 1956, the SEBI Act and the ILDS Regulations.

21. The *interim*order has alleged that the Company had created a charge for an amount of 200 crore on August 01, 2011 and appointed one 'Debenture Trust Suraksha' as its 'debenture trustee'. The said charge was modified and increased to 205 crore on August 23, 2011, with a corresponding change in the 'debenture trustee' from 'Debenture Trust Suraksa'to 'Mass Debenture Trust'. The *interim* order has also alleged that the '**debenture trustees'namely Debenture Trust Suraksha and Mass Debenture Trust** had acted without registration from SEBI as required under Section 12(1) of the SEBI Act. In this regard, I note that these trusts arenot registered with SEBI to perform the functions of a 'debenture trustee' in the capital market. Further, it does not satisfy the following conditions under Regulation 7 of the DT Regulations:

"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."

From the above, it is seen that Debenture Trust Suraksha and Mass Debenture Trustdoesnot satisfy the eligibility conditions stipulated under Regulation 7 of the DT Regulations.Mr. Bhabani Shankar Biswal, trustee of Mass Debenture Trust has stated that when he came to know about the money transaction activities of the Company, he had attempted to contact the directors of the Company. Later on, he had tendered his resignation and had conveyed the same to the Registrar of Companies on October 01, 2014. It has also been said by him that except for signing the trust deed, he was never a part of the trust and had not received any money in the capacity of a trustee. I have considered the submissions of Mr. Bhabani Shankar Biwal and find no merits in the same as he also does not satisfy the eligibility conditions stipulated under Regulation 7 of the DT Regulations.

I note that the debenture trustees have not disputed the allegations on merits.In view of the same, I am inclined to conclude that **Debenture Trust Suraksha and Mass Debenture Trust**(represented by its Trustee, viz.**Bhabani Shankar Biwal)**have violated Section 12(1) of the SEBI Act and Regulation 7 of the DT Regulations. In view of these observations, it can be said that the provisions of Section 117B of the Companies Act, 1956, have not been completely complied with.

22. At this stage, I note from the *interim* order that the balance sheet of the Company for the year ended March 31, 2012 shows an amount of 10.59 crore as 'share application money pending allotment' for preference shares. Further, it is noted that the Company had created a charge of 200 crore on August 01, 2011 for its issue of NCDs. However, the balance sheet for the year ended March 31, 2012, shows the value of all fixed assets of the Company as only 40.12 lakh. I note that the Company has given no explanation to theseobservations made in the *interim* order.

23. **Liability of directors:**I note that the *interim* order was issued against the directors of the Company namely Mr. Ashok Halder, Mr. Tapan Kumar Samanta, Mr. BideshBasu, Mr. Pratap Kumar Biswal,Mr. Samir Kumar Mandal, Mr. Dilip Kumar Chakraborty, Mr. Kundal Manna, Mr. SubodhMondal, Mr. Sumeet Kumar Bhagat, Mr. SwadeshBasu, Ms. MahfuzaKhatun, Mr. Ajay Kumar Mahapatra and Mr.Mukhaleshur Ali Mir.

a. The details of the appointment and resignations of the directors of the Company are as under:

Name	**Date of Appointment**	**Date of Cessation**
Mr. Ashok Halder	29/01/2011	12/12/2014
Mr. Tapan Kumar Samanta	29/01/2011	15/12/2014
Mr. BideshBasu	04/11/2013	23/08/2014
Mr. Pratap Kumar Biswal	19/11/2010	30/11/2013
Mr. Samir Kumar Mandal	01/10/2013	12/04/2015
Mr. Dilip Kumar Chakraborty	01/10/2013	12/04/2015
Mr. Kundal Manna	01/10/2013	12/04/2015
Mr. SubodhMondal	23/08/2014	12/12/2014
Mr. Sumeet Kumar Bhagat	06/12/2010	17/10/2011
Mr. SwadeshBasu	04/11/2013	23/08/2014
Ms. MahfuzaKhatun	01/09/2010	29/01/2011
Mr. Ajay Kumar Mahapatra	01/09/2010	22/02/2013
Mr.Mukhaleshur Ali Mir	01/09/2010	05/10/2010
Mr. JanakBhagat	**08/04/2015**	17/07/2015
Mr. Pradeep Kumar Behera	**08/04/2015**	Continuing as director
Mr. Ravendra Singh	**08/04/2015**	Continuing as director

b. As per Section 291 of the Companies Act, 1956, the board of directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the board of directors being responsible for the conduct of the business of a company will be held liable for any non-compliance of law and such liability is also on the individual directors. In this regard, refer to the order of Hon'ble High Court of Madras in the matter of *MadhavanNambiar*Vs. *Registrar of Companies* [2002 108 Comp Cas 1 Mad] wherein it was observed that "*13. … A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company*.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956.".

I note that the position of a 'director' in a public company/ listed company comes along with responsibilities and compliances under law, which have to be fulfilled by such director or face the consequences for any violation or default thereof.

c. I note that the Company had commenced the issuance of NCDs from October 05, 2011 and continued with its money mobilization activity till February 21, 2014.Section 56 of the Companies Act, 1956 imposes the liability for the compliance, on the company, every director, and persons responsible for the issuance of the prospectus. The liability for non-compliance of Section 60 of the Companies Act is on the Company, and every person who is a party to the non-compliance of issuing the prospectus as per the said section.The liability of the Company and directors to repay under Section 73(2) of the Companies Act, 1956 and Section 27 of the SEBI Act, is a continuing liability and the same continues till all the repayments are made. Such liability is a joint and several liability on them. Therefore, the directors (irrespective of whether they continue or resign) who were present during the period when the Company had made the offer and allotted NCDs shall be liable for violation of Sections 56, 60 and 73 of the Companies Act, 1956, including the default in making refunds as mandated therein.

d. From the table above and as per the available records, it is noted that **Mr. Ashok Halder, Mr. Tapan Kumar Samanta, Mr. BideshBasu, Mr. Pratap Kumar Biswal,Mr. Samir Kumar Mandal, Mr. Dilip Kumar Chakraborty, Mr. Kundal Manna, Mr. Sumeet Kumar Bhagat, Mr. SwadeshBasu and Mr. Ajay Kumar Mahapatra**were the directors of the Company at the time of impugned issues and

allotment of NCDsand were responsible for the affairs of the Company, at the relevant point of time.These persons arenot acting as directors of the Company any more.

The directors namely Mr. Ajay Kumar Mahapatrain his submissions has stated that he had disassociated himself from the activities of the Company since January 2011 and he was neither involved in any activity of contravention of the rules nor mobilized any deposits from the public or private persons on behalf of the Company. In this regard, I note that he was the director of the Company during the period when the Company had offered and issued NCDs and as per the available details had resigned on February 22, 2013.

None of the other directors have replied to the *interim* order. Taking note of the reasons and observations above, it can be concluded that the directors namely **Mr. Ashok Halder, Mr. Tapan Kumar Samanta, Mr. BideshBasu, Mr. Pratap Kumar Biswal,Mr. Samir Kumar Mandal, Mr. Dilip Kumar Chakraborty, Mr. Kundal Manna, Mr. Sumeet Kumar Bhagat, Mr. SwadeshBasu and Mr. Ajay Kumar Mahapatra**are responsible for the violations committed by the Company and areliable, jointly and severally, for making refunds along with interest to the investors as mandated under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act. I also note that the directors of the Company namely Mr. Pratap Kumar Biswal, Mr. Tapan Kumar Samanta,Mr. Ajay Kumar Mahapatra and Mr. Ashok Halder were also the trustees of 'Debenture Trust Suraksha'.

e. I note that **Mr.SubodhMondal**was appointed as director of the Company on August 23, 2014 i.e. after the last available date of allotment of NCDs. He is also one of the present directors of the Company. It is observed that he has not exercised necessary diligence after becoming the director in the Company. The inaction by him against the management (for violating the public issue norms as stipulated under the Companies Act, 1956 while making the offer and issuing the NCDs), leads one to conclude on a possible collusion with the Company and its management. Further,

Mr.SubodhMondalhas also not taken any steps to remedy the violations committed. Accordingly, I hold him responsible for the same.

f. **Ms.MahfuzaKhatun and Mr.Mukhaleshur Ali Mir**had resigned from the Company on January 29, 2011 and October 05, 2010 respectively. These persons vide respective letters have submitted that they had become the directors of the Company on the request of Mr. Ajay Kumar Mahapatra, his wife and daughter. Further, on realising the other motives, they had resigned from the board of directors of the Company. It has also been said that all the documents were kept at the residence of Mr. Ajay Kumar Mahapatra and during their tenure as directors, they had not attended any board meeting of the Company. Ms.MahfuzaKhatun and Mr.Mukhaleshur Ali Mir have also said that the Company had started issuance of NCDs after their resignation from the Company.

   The details perused from 'MCA-21' portal shows that Ms.MahfuzaKhatun and Mr.Mukhaleshur Ali Mir had resigned from the Company on and January 29, 2011 andOctober 05, 2010, i.e. prior to the first date of allotment of impugned NCDs i.e. October 05, 2011.As also stated earlier, the Company has not provided the date of resolution for the offer of NCDs. In the absence of any other material to show the involvement of Ms.MahfuzaKhatun and Mr.Mukhaleshur Ali Mirin the offer and allotment of NCDs, I am inclined to give the benefit of doubt to them. In view of the same, the *interim* directions against these are liable to be revoked and they be discharged from the present proceedings.

g. **Mr. Pradeep Kumar Behera and Mr. Ravendra Singh** are the present directors of the Company having been appointed on April 08, 2015(i.e. after the last available year of impugned issue of NCDs).Further **Mr. JanakBhagat** became the director of the Company on April 08, 2015 (i.e. after the passing of the *interim* order) and has resigned from the post on July 17, 2015. Therefore, they are deemed to be aware of the proceedings against the Company.

However, they are not the noticees in the *interim* order. Being the directors of the Company, they too may be liable for making refunds in terms of Section 73(2) of the Companies Act read with Section 27 of the SEBI Act. SEBI is therefore advised to examine role of **Mr. Pradeep Kumar Behera, Mr. Ravendra Singhand Mr. JanakBhagat**, and initiate appropriate action against them, in accordance with law, including issuance of a show cause notice calling upon them to show cause as to why, suitable directions including the following should not be imposed upon them:

i. directing them jointly and severally to refund the money collected through the issue of NCDs (as found to be unauthorisedly issued in this Order), along with interest at 15% per annum from the date when the refunds became due to the investors till the date of repayment;

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. directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;

iv. directing them and other companies in which they are directors/promoters holding substantial or controlling interest, to not access the capital market for an appropriate period.

24. I note that the Company and its directors were required to provide full inventory of the assets and properties for compliance with the directions in the *interim* order. However, no details have been submitted by these, till date.

25. In view of the discussion above, appropriate action in accordance with law needs to be initiated against the Company and the directors/ promoters in charge of the affairs of the Company during the relevant period.

26. In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11 and 11B thereof hereby issue the following directions:

a. The Company,**Mass Infra Realty Limited [PAN: AAGCM7419N],Mr. Ashok Halder [PAN: AEDPH4898E], Mr.Tapan Kumar Samanta [PAN: BCVPS0411F], Mr. BideshBasu [PAN: AWKPB6801G], Mr. Pratap Kumar Biswal [PAN: AITPB3875F], Mr. Samir Kumar Mandal [PAN: AZXPM4025B], Mr. Dilip Kumar Chakraborty [PAN: AFNPC6695P], Mr. Kundal Manna [PAN: AVKPM2947F], Mr. SubodhMondal [PAN: BWXPM1173N], Mr.Sumeet Kumar Bhagat [PAN: AGRPB6998B], Mr. SwadeshBasu [PAN: ANMPB7097H] andMr. Ajay Kumar Mahapatra [PAN: AEZPM0434K]**jointly and severally, shall forthwith refund the money collected by the Company through the issuance of**Non-Convertible Redeemable Debentures**(*which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956*), to the investors including the money collected from investors, till date, pending allotment of NCD, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (*in terms of Section 73(2) of the Companies Act, 1956*) to the investors till the date of actual payment.

b. The repayments to investors shall be effected only in cash through Bank Demand Draft or Pay Order.

c. The Company and/ or its present management is permitted to sell the assets of the Company only for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalised Bank.

d. The Company shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including details on contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.

e. After completing the aforesaid repayments, the Company shall file a report of such completion of repayment with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ('ICAI').

f. Mass Infra Realty Limited,Mr. Ashok Halder, Mr.Tapan Kumar Samanta, Mr.BideshBasu, Mr.Pratap Kumar Biswal, Mr. Samir Kumar Mandal, Mr.Dilip Kumar Chakraborty, Mr.Kundal Manna, Mr.SubodhMondal, Mr.Sumeet Kumar Bhagat, Mr.SwadeshBasu andMr. Ajay Kumar Mahapatraare also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.

g. In case of failure of **Mass Infra Realty Limited,Mr. Ashok Halder, Mr.Tapan Kumar Samanta, Mr.BideshBasu, Mr.Pratap Kumar Biswal, Mr. Samir Kumar Mandal, Mr.Dilip Kumar Chakraborty, Mr.Kundal Manna, Mr.SubodhMondal, Mr.Sumeet Kumar Bhagat, Mr.SwadeshBasu andMr. Ajay Kumar Mahapatra**to comply with the aforesaid directions, SEBI, on the expiry of the three months period from the date of this order,-

i. shall recover such amounts in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws.

ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.

iii. would make a reference to the **State Government/ Local Police** to register a civil/ criminal case against **the Company**, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and

iv. would also make a reference to the Ministry of Corporate Affairs, to initiate appropriate action as deemed fit.

h. Mass Infra Realty Limitedis directed not to, directly or indirectly, access the capital market by issuing prospectus, offer document or advertisement soliciting money from the public and is further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order till the expiry offour (4)years from the date of completion of refunds to investors, made to the satisfaction of SEBI, as directed above.

i. The directors namely **Mr. Ashok Halder, Mr.Tapan Kumar Samanta, Mr.BideshBasu, Mr.Pratap Kumar Biswal, Mr. Samir Kumar Mandal, Mr.Dilip Kumar Chakraborty, Mr.Kundal Manna, Mr.SubodhMondal, Mr.Sumeet Kumar Bhagat, Mr.SwadeshBasu andMr. Ajay Kumar Mahapatra**arerestrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, with immediate effect. They are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, with immediate effect. This restraint shall continue to be in force for a further period offour (4)years on completion of the repayments, as directed above.

j. Debenture Trust Suraksha, Mass Debenture Trustand Bhabani Shankar Biswalshall not offer themselves to be engaged as debenture trustees or in any capacity as an intermediary in the securities market, without obtaining a certificate of registration to undertake that assignment as required under law. Further, they are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of four (4) years.

k. For the reasons stated above in this Order, the directions imposed on **Ms.MahfuzaKhatun [PAN: ARDPK4799A] andMr.Mukhaleshur Ali Mir [PAN: BEMPM2216M]**, vide the *interim* order dated December 04, 2014,are revoked and the proceedings against these is disposed of.

l. The above directions shall come into force with immediate effect.

27. This Order is withoutprejudice to any action, including adjudication and prosecution proceedings, that might be taken by SEBI in respect of the above violations committed by the Company, its promoters, directors and other key persons.

28. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

29. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.

30. As mentioned in **paragraphs 23(g)** of this Order, SEBI shall take appropriate action, in accordance with law, in respect of the persons concerned.

DATE :April25th, 2016
PLACE : Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA