WTM/PS/32/IMD/ERO/MAY/2016

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under sections 11, 11A and 11B of the Securities and Exchange Board of India Act, 1992

In respect of –

1. **Cell Industries Limited (PAN: AAECC2069A) and its Directors,**
2. **Mr. Kumar Kanti Bhattacharya (PAN: ADXPB7335B; DIN: 01576626),**
3. **Mr. Debi Prasad Mookherji (PAN: AEWPM1966K; DIN: 03182022),**
4. **Mr. Sourav Bardhan (PAN: AIZPB6070C; DIN: 03381343),**
5. **Mr. Ashim Gupta (PAN: AEAPG0932R; DIN: 06475840),**
6. **Mr. Asraf Ali Shaikh (PAN: AFPPA5703C; DIN: 01010226),**
7. **Mr. Shaikh Ajgar Ali (DIN: 01111139),**
8. **Mr. Saik Majaffar (PAN: AFAPM0879A; DIN: 01111089),**
9. **Mr. Rajesh Jaiswal (PAN: AAPPJ0891B; DIN: 01675141),**
10. **Mr. Sekh Rezaul Karim (PAN: AKOPK3769L; DIN: 03410690) and**
11. **Mr. Koushik Mukherjee (PAN: AQJPM5450D; DIN: 03287588)**

12. **Debenture Trustees, viz. Mr. Ashish Kumar De Sarkar, Mr. Samrat Sinha and Mr. Abdul Basad Molla.**

Date of personal hearing: September 04, 2015

Appearance-

1. Noticee, **Rajesh Jaiswal** was represented by his Advocates M/s. N. K. Mohanty and B. K. Mohanty.
2. Noticees, **Saik Mujaffar**, **Shaikh Ajgar Ali** and **Asraf Ali Shaikh** were represented by Mr. S. V. Ramani, Advocate.

3. Noticee, **Ashish Kumar De Sarkar** was represented by his Advocates M/s. Ashish Shah and Sarosij Dasgupta.
4. Noticee, **Debi Prasad Mookherji** appeared along with his representative, Mr, Ashok Kumar Daga, Practicing Company Secretary.

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

Date of personal hearing: March 09, 2016

Appearance-

(a) Mr. Sekh Rezaul Karim was represented by his Advocate, Mr. Touseef Ahmed Khan.
(b) Mr. Kumar Kanti Bhattarcharya appeared alongwith his Advocate Mr. Saikat Roy Chowdhury.
(c) Mr. Rajesh Jaiswal was represented by his Advocate Mr. ER. N.K. Mohanty.
(d) Mr. Sourav Bardhan was represented by his Advocate Mr. Amitava Kundu.

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

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1. Securities and Exchange Board of India ("SEBI"), vide an ex-parte interim Order dated March 17, 2015 ("the interim order") alleged that the company, Cell Industries Limited ("CIL" or "Company") was engaged in fund mobilizing activity from the public through the offer and issuance of Redeemable Preference Shares ("RPS") and Non-Convertible Debentures ("NCDs") and had contravened the provisions of sections 56, 60, 73, 117B and 117C of the Companies Act, 1956 and the provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008. The interim order also observed that the Company created a charge on July 06, 2011 and appointed Mr. Ashish Kumar De Sarkar, Mr. Samrat Sinha and Mr. Abdul Basad Molla, as Debenture Trustees in respect of its offer and issuance of NCDs and that such trustees did not satisfy the eligibility

conditions under regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993 ("the DT Regulations") and acted as unregistered debenture trustees in violation of section 12(1) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act").

2. In order to the protect the interest of investors and to ensure that the Company does not continue with its unauthorized fund mobilization through its offer and issue of RPS and NCDs, SEBI issued the following directions vide the interim order:

i. "*CIL (PAN: AAECC2069A) shall forthwith cease to mobilize funds from investors through the Offer of Redeemable Preference Shares and 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. *CIL and its present Directors, viz. Shri Kumar Kanti Bhattacharya (PAN: ADXPB7335B; DIN: 01576626), Shri Debi Prasad Mookherji (PAN: AEWPM1966K; DIN: 03182022), Shri Sourav Bardhan (PAN: AIZPB6070C; DIN: 03381343), Shri Ashim Gupta (PAN: AEAPG0932R; DIN: 06475840), 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 CIL, viz. Shri Asraf Ali Shaikh (PAN: AFPPA5703C; DIN: 01010226), Shri Shaikh Ajgar Ali (DIN: 01111139), Shri Saik Majaffar (PAN: AFAPM0879A; DIN: 01111089), Shri Rajesh Jaiswal (PAN: AAPPJ0891B; DIN: 01675141), Shri Sekh Rezaul Karim (DIN: 03410690) and Shri Koushik Mukherjee (PAN: AQJPM5450D; DIN: 03287588), 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. *CIL and its abovementioned past and present 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;*

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

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

vii. *CIL 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 Redeemable Preference Shares and Offer of NCDs, without prior permission from SEBI;*

viii. *CIL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares and Offer of NCDs, which are kept in bank account(s) and/or in the custody of CIL;*

ix. *CIL and its abovementioned present Directors shall furnish complete and relevant information (as sought by SEBI letters dated June 17, 2014; June 19, 2014 and July 31, 2014), within 14 days from the date of receipt of this Order;*

x. *CIL shall, within 14 days from the date of receipt of this Order, provide SEBI with information regarding refund made to the holders of NCDs [as claimed by the company in its letter dated August 20, 2014, which is reproduced at paragraph 2.3.1 of page 2] such as name of the NCD holder, address, amount mobilized, number of NCDs issued, promised maturity amount with date of maturity, amount refunded and date thereof;*

xi. *The Debenture Trustees, viz. Shri Ashish Kumar De Sarkar, Shri Samrat Sinha and Shri Abdul Basad Molla, are prohibited from continuing with their assignment as debenture trustee in respect of the Offer of NCDs of CIL 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*".

3. The interim order had advised the Company and its directors (present and past, as named in the interim order) {collectively referred to as "noticees"} to show cause as to why suitable directions under sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following directions should not be passed against them:

i. Directing them jointly and severally to refund money collected through the Offer of NCDs and RPSs alongwith interest, if any, promised to investors therein;

ii. Directing them to not 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.

4. The interim order advised the noticees to file their replies and to inform whether they desired to avail an opportunity of personal hearing in the matter. The interim order was forwarded vide SEBI's letters dated March 18, 2015 to the noticees. The interim order could not be served on Mr. Koushik Mukherjee as it returned undelivered with the reason "*insufficient address* ….".

5. **Mr. Debi Prasad Mookherji**, vide letter dated April 14, 2015, made the following submissions:

(a) He was appointed during October 2012 as Technical Adviser by the Directors of the Company to provide technical advice for their project of solar power and LED lights.
(b) The management asked him to indicate his consent to act as a director of the Company. He had accordingly consented for being appointed as a director on the presumption that the same might be a condition for being appointed as a Technical Adviser.
(c) He was unaware of legal implication of rights and duties of a director as per the Companies Act, 1956/2013 and other corporate laws.
(d) As the board of directors knew that he was not part of commercial, corporate and legal compliance, they did not issue any notice regarding board meetings, general meetings to this noticee. He had not attended any meeting of the Company and was unaware of any decision for issue of any securities to the public as alleged in the interim order.
(e) After the project was shelved in the end of 2013, he had tendered his resignation as a director. His resignation was not acknowledged and necessary forms under the provisions of the Companies Act, 1956/2013 were not filed with MCA.
(f) He is not acquainted with the facts relating to the violations alleged in the interim order as he had not signed any relevant document, financial statement and Balance Sheet of the Company.
(g) He requested SEBI to relieve him of the liability considering the fact that he had acted honestly and reasonably with the duties assigned to him. The negligence, default, breach of duty, misfeasance or breach of trust had occurred without his knowledge and belief.
(h) He also requested for an opportunity of personal hearing.

6. **Mr. Asis Kumar De Sarkar**, vide letter dated April 08, 2015 made the following submissions:

(a) He had retired from a public sector general insurance company on December 31, 2010.

(b) After his retirement, he had joined as debenture trustee along with two other persons by a Deed of Trust registered on July 06, 2011.

(c) Thereafter, he found that the Company was not professionally managed and therefore resigned from the board of trustees with effect from May 16, 2012. Vide his letter, he had requested the board of directors of the Company to comply with all necessary formalities with respect to his resignation and to inform the competent authorities.

(d) His resignation was accepted w.e.f May 16, 2012 and the same was informed to him vide Company's letter dated March 21, 2013.

(e) His tenure as a Trustee was for about 10 months and his involvement was confined to signing of the trust deed only.

(f) The Company had not informed SEBI about his resignation when SEBI had sought details regarding trustees vide letters dated June 17 and 19, 2014.

(g) As he is no more a trustee, the directions issued to him vide the interim order would not be applicable to him.

7. **Mr. Samrat Sinha,** vide letter dated April 06, 2015 made the following submissions:

(a) After serving for over 38 years in a public sector general insurance company, he had retired in 2010 and thereafter during the first half of 2011 was associated with the Company.

(b) In order to pass his time after retirement, he agreed to work with the Company purely on a part time basis without knowing the details about the Company.

(c) In his service career, he is familiar only with insurance laws and therefore when the charge was created in July 2011, he was not familiar with the subject at all.

(d) Except for his signature in the Trust Deed, he had not signed in any other document as a trustee.

(e) Gradually he understood that he should not be associated with the Company and tendered his resignation vide letter dated March 07, 2012. His earlier letter of resignation in January 2012 could not be traced.

(f) After much persuasion, his resignation was accepted with effect from May 16, 2012 as communicated vide Company's letter dated March 21, 2013.

(g) His name was associated as trustee for less than 10 months and it is revealed from the interim order that his name is still appearing as a trustee even after acceptance of his resignation.

(h) In view of the above facts and circumstances, the directions issued vide the interim order were not applicable to him.

8. **Mr. Ashim Gupta**, vide letter dated March 31, 2015, made the following submissions:

(a) He had no knowledge about the financial dealings of the Company in issuing RPSs and NCDs till he received the interim order.

(b) The Company during 2013 initiated to develop business of LED lamps in northern India and he was given the responsibility of market development of LED lamps only. He desired to be a consultant. However, Mr. Rajesh Jaiswal and Mr. Kumar Bhattacharya forcibly inducted him to be a director in the Company. Due to certain reasons beyond his control, the LED lamp project was shelved by Mr. Rajesh Jaiswal.

(c) He had resigned as a director of the Company vide letter dated April 10, 2014. He had also informed the Company to take appropriate action in deleting his name from the directorship. However, to his surprise no action in that regard was taken.

(d) He is a permanent resident of Delhi having good academic background and never indulged in any financial activities contrary to law at any point of time. He did not even know the financial status of the persons who are in-charge of the affairs of the Company.

(e) He reiterated that the Company had no business connection in New Delhi except for the proposed marketing of LED lamps which project had been shelved.

(f) He is not aware of the debenture trustee mentioned in the interim order.

(g) He requested SEBI to remove his name from the proceedings.

This noticee enclosed copies of his resignation letter dated April 10, 2014 and letter dated April 03, 2015 to the RoC and letter dated April 11, 2015 to the Serious Frauds Investigation Office (requesting the agency to inquire into the affairs of the Company).

9. **Mr. Rajesh Jaiswal**, vide letter dated April 24, 2015, made the following submissions:

(a) He had submitted his resignation on June 05, 2012 which was accepted on May 15, 2013. He submitted copies of his resignation letter and its acceptance letter.

(b) He was shocked to see from the interim order about the mobilization of Rs.0.92 crore through RPS and Rs.14.69 crore through NCDs. As he is no more a director, he is not aware of the working of the Company.

(c) As a past director, he would abide by directions at para 8(iii) and (iv) of the interim order.

(d) He is working sincerely to provide full inventory of his assets and properties as directed in the interim order.

As per Form-32 enclosed with the reply, this noticee had resigned w.e.f from May 15, 2013. As per share transfer form, the noticee has sold 40,000 equity shares/RPS to Mr. Kumar Kanti Bhattarcharya for Rs.4,00,000/-.

10. **Mr. Sk. Ajgar Ali (Shaikh Ajgar Ali)**, vide letter dated April 27, 2015 made the following submissions:

(a) He was named as one of the directors in the interim order. However, he was not a director at all and his name and DIN were used by one of his consultants Mr. Chandan Roy.

(b) Mr. Chandan Roy was their financial and business advisor and consultant between 2010 and 2013. He was entrusted with all the documents and filing matters. He had delegated the documentation responsibilities to him on good faith.

(c) On conducting a search in the RoC, he came to know that his name was used as a director and was eventually shown to have left the Company. He is not aware of the said appointment.

(d) He was cheated by Mr. Chandan Roy and had defrauded him using his credentials and forged papers without his consent. As a precautionary measure, the noticee has lodged a complaint with the Bhabanipur Police Station, Purva Mednipur. The same is on record in the said Police Station.

(e) He was not aware that he was made a director as he did not receive any notices nor any intimation from the Company.

(f) The noticee requested SEBI to delete his name from the order as he was not a party to any misdeeds by the Company.

(g) The noticee also requested an opportunity of personal hearing.

11. Mr. **SK. Majaffar** (Saik Majaffar) and Mr. **Asraf Ali Shaikh** made the same submissions as that of Mr. Shaikh Ajgar Ali.

12. The noticees were afforded an opportunity of personal hearing on September 04, 2015. The said schedule was informed to the noticees vide SEBI letters dated June 24, 2015. In response to the hearing notice, Mr. Samrat Sinha stated that he would not be able to attend the hearing as he had recently fractured his leg. He stated that he had already made detailed submissions in his letter dated April 06, 2015. Mr. Ashim Gupta, vide his letter dated August 27, 2015, reiterated his earlier submissions.

13. As one of the noticees could not be served with the interim order, SEBI also made a public notice in newspapers (Anandbazar Patrika and Time of India both dated September 03, 2015) about the instant proceedings initiated vide the interim order and the personal hearing held on September 04, 2015.

14. In the personal hearing held on September 04, 2015 –

1. Noticee, **Rajesh Jaiswal** was represented by his Advocates M/s. N. K. Mohanty and B. K. Mohanty. Reply/written submissions dated September 02, 2015 was filed. Oral submissions was made on the lines of the above reply. The submissions were *inter alia* the following:
   (a) The noticee was one of the directors of the Company from incorporation till June 05, 2012. His resignation was accepted on May 15, 2013.
   (b) While he was a director, the Company had 'floated' debentures and preferential shares to customers. The Company had sought permission from RoC for issue of debentures for Rs. 5 crore.

(c) Because of personal difficulties, he had resigned from the Company and sold his shares in the Company to Mr. Kumar Kanti Bhattarcharya for Rs.4,00,000/-.

(d) After his resignation, Sourav Bardhan and Kumar Kanti Bhattarcharya gave a unilateral undertaking dated May 22, 2013 that they would honour all maturity amounts to the investors on due dates.

(e) The noticee is therefore not liable or responsible for the liabilities of the Company.

(f) The Company and present directors are therefore liable to pay the maturity amounts to investors.

(g) The noticee has not taken any benefit or misappropriated the investments made by the investors. He believes that the present directors have started to refund the monies to investors and that 55.15% of genuine deposits (NCDs of Rs.14.69 crore and RPS of Rs.6.60 crore) have been returned.

(h) From the information gathered from the Company, the balance outstanding as on March 31, 2013 is Rs. 65.24 lakh for RPS and Rs.885.65 lakh towards debentures.

2. Noticees, **Saik Mujaffar**, **Shaikh Ajgar Ali** and **Asraf Ali Shaikh** were represented by Mr. S. V. Ramani, Advocate. Reply/written submissions were filed which reiterated the earlier submissions of these persons.

3. Noticee, **Ashish Kumar De Sarkar** was represented by his Advocates M/s. Ashish Shah and Sarosij Dasgupta. The Advocates stated that the noticee already filed his reply and made oral submissions. As requested, liberty was granted to file written submissions along with documents, if any, within a period of one week.

4. Noticee, **Debi Prasad Mookherji** appeared along with his representative, Mr, Ashok Kumar Daga, Practicing Company Secretary. The noticee stated that he had already filed his reply in the matter. Oral submissions was made.

5. The other noticees failed to appear despite public notice made in newspapers regarding the proceedings and the hearing date.

15. **Mr. Kumar Kanti Bhattarcharya**, vide letter dated September 04, 2015, *inter alia* made the following submissions:

(a) He is a simple salaried person having worked in various companies in different capacities without having much business acumen.

(b) During 2007, he had met Mr. Rajesh Jaiswal who claimed to be a mine owner from Odisha and having various other businesses.

(c) Over a period of time, the noticee and Mr. Rajesh Jaiswal became good friends. During 2009-2010, Mr. Rajesh Jaiswal was facing financial troubles and decided to venture out into a new business. Because of their relationship and as the noticee was involved in socio-cultural activities in Kolkata, the noticee was offered a job in the venture and was also asked to arrange for employees and office space to start business.

(d) Mr. Rajesh Jaiswal also informed that the new business (Cell Industries) would be operated from Kolkata and the role of the noticee would be restricted to administration. Mr. Rajesh Jaiswal would be looking into other issues.

(e) Mr. Rajesh Jaiswal had mortgaged one of his properties (owned through his company City Scape Infrastructure Pvt. Ltd.) located in Kolkata (opp. to Shankar Netralaya, near EM by-pass). The property was valued at Rs.16.5 crore. Mr. Rajesh Jaiswal decided to take deposit from people. He showed his other business and companies (*Samaleswari Ferro Metals, Lall Minerals, Rupal Infrastructure, RJ Trade Combine, RJ Logistics* etc) to the agents and associates to gain their confidence.

(f) The noticee was not involved in any fund raising activities and was also not in-charge of the finance department. The finance and accounts department was directly controlled by Rajesh Jaiswal. The noticee was a signatory to the bank account and used to sign as per the instructions of Rajesh Jaiswal. The noticee was a mere salaried director and was provided Form-16 by the Company.

(g) The business was that of Rajesh Jaiswal. The noticee and few other persons were mere puppets in the organization working for salary. Although the noticee had shares and designated as a director, he was a mere employee and had lent his name as a shareholder and director.

(h) The Company operated and lots of money was collected and all the money was taken by Mr. Rajesh Jaiswal to his other business with a promise to grow the funds and return the same in time to meet the liability towards investors.

(i) After being questioned by few agents and associates about the transfer of funds, Rajesh Jaiswal had opened few more companies – Cell Mines and Minerals, Cell Media, Cell Super Specialties and had also purchased few properties in the names of such companies.

(j) During 2012, Rajesh Jaiswal stated that he is willing to take a bank loan and for that he needs to resign from the Company and suggested to incorporate another company – Cell Realcon Corporation. In such circumstances, the noticee could have also resigned. However, he did not resign in order to protect the interest of investors. Rajesh Jaiswal assured all agents that Cell Realcon and all other Cell group companies are his own and he would honour the maturity payments of both the companies.

(k) The noticee submitted that everything was going on fine. However, during April 2013, immediately after the Sarada scam, the fund collection from the market stopped and Rajesh Jaiswal started facing problems in honouring the claims of investors. He had till April 2015 continued to pay the investors phase-wise, but stopped paying from May 2015.

(l) The noticee further stated-

i. Although his name is in the Company as a shareholder, he had not earned any amount other than his salary. He is also not paid since August 2013.

ii. He has not taken or enjoyed any money raised through the Company and Cell Realcon and does not have any personal wealth or capacity to pay the investors.

iii. The money raised through the said companies were for the purpose of business of Rajesh Jaiswal and all money was utilized by him. The land in the name of City Scape Infrastructure Limited could be sold to pay the entire liability of both the companies.

iv. He is still a director for the purpose of protecting the interest of the investors and is ready to co-operate with SEBI.

(m) The noticee requested SEBI to liquidate the properties of the companies along with the property of City Scape. He further stated that he came to know that Rajesh Jaiswal is trying to alienate the property of City Scape.

16. **Mr. Sekh Rezaul Karim**, vide letter dated September 04, 2015, submitted his reply and *inter alia* stated the following:

(a) He was involved in 'education business' in various capacities and wanted to venture out for opening new training courses. Rajesh Jaiswal expressed his desire to venture into education business and asked the noticee to join his company as a director and shareholder. The noticee accepted the offer in anticipation that Rajesh Jaiswal would start education business.

(b) Though he was a director and shareholder in the Company, the same was run like a proprietorship concern by Rajesh Jaiswal. The noticee neither attended any board meetings nor had information regarding the day to day affairs of the Company. He was also not aware of the financials of the Company.

(c) As the new venture was not started, the noticee lost interest in the organization.

(d) Thereafter, in 2012, Rajesh Jaiswal came up with another proposal of starting education business in a new company and offered the noticee to become a director and shareholder in Cell Realcon Corporation Limited.

(e) The noticee became a director and shareholder in Cell Realcon and waited for almost a year. However, Rajesh Jaiswal did not take any initiative to start the business.

(f) The noticee resigned from both the companies in June 2013.

(g) He did not know the amount of funds collected by the Company and Cell Realcon or other companies of Rajesh Jaiswal.

(h) The noticee requested SEBI to remove him from the proceedings and discharge him from the proceedings.

17. **Mr. Abdul Basad Molla,** vide letter dated September 04, 2015 filed his reply and *inter alia* submitted the following:

(a) He was appointed as one of the debenture trustees along with two persons namely Asis De Sarkar and Samrat Sinha for the purpose of issue of debentures by the Company.

(b) The joint responsibility of the debenture trustees was to hold the charge created against the property of City Scape Infrastructures Pvt. Ltd. (company of Rajesh Jaiswal) and secure the interest of the investors. However, after creation of the charge, Rajesh Jaiswal started ignoring all his queries regarding collection of funds and did not allow the noticee to step into his office premises. Rajesh Jaiwsal had also assured that he was not collecting any money against the charge and would submit the 'satisfaction of the charge' soon to close the issue.

(c) However, the noticee came to know that Rajesh Jaiswal had collected good amount of money and was also trying to dispose of the property which was charged against the issue of debentures.

(d) The noticee also came to know that Rajesh Jaiswal had resigned from the Company and not honouring the claims of the investors. The noticee has requested SEBI to take appropriate action to safeguard the interest of investors.

(e) The noticee also submitted that he did not receive any remuneration (though promised) to act as debenture trustee. As he had no scope to inspect the document of the Company, the noticee was not in a position to give details regarding the financial transactions related to the Company.

18. **Mr. Ashim Gupta,** vide letter dated September 04, 2015, reiterated his earlier submissions and stated that during his tenure (March 2013 to April 2014) he was not shown the MoA or AoA of the Company and did not attend any meetings of the Company's board. He also stated that Rajesh Jaiswal was running the Company like a proprietorship concern.

19. Pursuant to the personal hearing, **Mr. Asis Kumar De Sarkar**, vide his written submissions dated September 11, 2015 *inter alia* submitted the following:

(a) He was made to understand that the debentures were issued in a private placement. Further, the trust deed did not give any special powers to the debenture trustees with respect to the issuance of debentures.

(b) Due to his health issues, he was not able to efficiently perform his duties as a member of the board of trustees.

(c) Despite his resignation in May 2012, his name was still shown as a member of the board of trustees in the portal of RoC. Though he sent emails dated May 12, 2014 and May 27, 2014 to one of the directors of the Company, he did not receive any response.

(d) He was neither connected with the affairs of the Company nor aware of raising of funds.

(e) He was not aware of the laws governing the issuance of debentures as he was wrongly advised by his ex-colleagues that any person having experience in an insurance company would be eligible to become a debenture trustee.

(f) He acted as an unregistered debenture trustee without knowing the result of such action and requested SEBI to consider his case with a sympathetic view.

20. In the meanwhile, Mr. Kumar Kanti Bhattacharya had filed a writ petition [Kumar Kanti Bhattacharya vs. Union of India and others (W.P. 29850 (W) of 2015)] before the Hon'ble High Court at Calcutta. The Hon'ble High Court vide Order dated January 05, 2016 had directed SEBI as follows:

> *".…….It is evident from page 271 of the writ petition that the petitioner responded to the show cause notice by his reply dated 04.09.2015 and sought for a personal hearing.*
>
> *It has been admitted at the bar that personal hearing is yet to be accorded to the petitioner.*
>
> *In view thereof, I direct the Whole Time Member of the SEBI to proceed in accordance with law and to take the investigation commenced by the said order dated 17.03.2015 to its logical conclusion upon granting opportunity of hearing to all concerned including the petitioner, as early as possible*……".

21. In compliance with the directions of the Hon'ble High Court, the noticees were afforded an opportunity of personal hearing on March 09, 2016. The noticees were informed of the schedule vide SEBI letters dated February 10, 2016. In the said personal hearing –

(a) **Mr. Sekh Rezaul Karim** was represented by his Advocate, Mr. Touseef Ahmed Khan, who filed written submissions and reiterated the submissions made therein. Summary of submissions of Sekh Rezaul Karim are as follows:

i. He is not responsible for any violations alleged in the interim order.

ii. He was previously involved in education filed and wanted to venture out for opening training courses, when the Mr. Rajesh Jaiswal had offered him to join the Company as a director and shareholder. He accepted the offer in anticipation that he would start the venture.

iii. Though he was a director and shareholder, the Company was operated by Rajesh Jaiswal.

iv. He did not attend any board meeting or aware of the transactions of the Company.

v. He also accepted the offer of Rajesh Jaiswal and became a director and shareholder in Cell Realcon. As Rajesh Jaiswal did not take any steps to start the venture, he had resigned from both companies in June 2013.

vi. Form-32 evidencing his resignation from June 01, 2013 was enclosed.

vii. He had no role in the issue of shares/debentures. He did not receive any money from the companies or from Rajesh Jaiswal.

viii. Noticee requested SEBI to remove his name from the proceedings.

(b) Mr. Kumar Kanti Bhattarcharya appeared alongwith his Advocate Mr. Saikat Roy Chowdhury. The Advocate submitted that the noticee filed his reply dated September 04, 2015. He also filed two applications. One was seeking an injunction restraining the respondents (as named in the application) from alienating the assets and the other application was for impleading few entities said to be forming part of Cell group of Companies.

(c) Mr. Rajesh Jaiswal was represented by his Advocate Mr. N.K. Mohanty. The learned advocate stated that he had filed his defence in the previous hearing and also stated that the noticee is willing to repay the investors within a period of six months.

(d) Mr. Sourav Bardhan was represented by his Advocate Mr. Amitava Kundu. The director was afforded time of ten days for filing written submissions.

(e) Mr. Asis Kumar De Sarkar had forwarded a letter dated March 05, 2015 wherein he referred to his reply/written submissions already filed in the matter and also his appearance on September 04, 2015 and stated that he has nothing further to submit.

22. On the date of hearing, one Sonel Sinha vide letter dated March 09, 2016 submitted that her father Mr. Samrat Sinha (noticee) had passed away on February 10, 2016 and enclosed a copy of the Death Certificate issued by the Bidhannagar Municipal Corporation and requested SEBI to take the same on record.

23. Pursuant to the aforesaid personal hearing, Mr. Sourav Bardhan, vide letter dated March 17, 2016 stated that on February 15, 2016, Rajesh Jaiswal, promoter and ex-director of the Company had accepted the claims of the investors and confirmed in the "Terms of settlement" that the entire claim of the investors will be paid through sole arbitrator within 6 months. A copy of such document was enclosed. He further assured that he would co-operate with SEBI and intimate the investors to submit the claims before the arbitrator so that payments are made within the stipulated period. In his submissions dated September 04, 2015 that was enclosed with the said letter, this noticee had stated–

(a) He was working as an agent in the Company as per the request of Mr. Rajesh Jaiswal.
(b) Rajesh Jaiswal also asked the noticee to become a marketing director of the Company.
(c) His role was restricted to marketing and managing his team of agents for which he had received commission.
(d) He did not have access to other departments in the Company and did not attend any board meetings or shareholder meetings.
(e) He was not a signatory to any of the accounts of the Company.
(f) All monies collected were taken by Rajesh Jaiswal. On questioning, Rajesh Jaiswal used to say that all monies belonged to him and therefore the liability was also on him.
(g) During 2012, Rajesh Jaiswal suggested that the noticee should collect money through Cell Realcon as he was facing problems from bankers. Although Rajesh Jaiswal was paying

investors, but he stopped suddenly by saying that he was no more a director or shareholder and therefore not liable to make payments.

(h) The noticee requested SEBI to take appropriate action in the interest of investors.

I note here that noticee, **Mr. Koushik Mukherjee** has neither filed any reply nor participated in the proceedings despite the public notice made in newspapers regarding the instant proceedings.

24. I have considered the interim order, the submissions of the concerned noticees, material submitted by the noticees and other material available on record. The interim order has observed the following:

i. "*CIL was incorporated on November 22, 2010, with the ROC, Kolkata with CIN No. as U52190WB2010PLC154842. Its Registered Office is at 30, Jawaharlal Nehru Road, Chowringhee Mansion, Gate No.–1, 2nd Floor, Room No–4, Kolkata–700017, West Bengal, India.*

ii. *The present Directors in CIL are Shri Kumar Kanti Bhattacharya, Shri Debi Prasad Mookherji, Shri Sourav Bardhan and Shri Ashim Gupta.*

iii. *Shri Asraf Ali Shaikh, Shri Shaikh Ajgar Ali, Shri Saik Majaffar, Shri Rajesh Jaiswal, Shri Sekh Rezaul Karim and Shri Koushik Mukherjee, who were earlier Directors in CIL, have since resigned.*

iv. *From the filings available on the MCA21 Portal, it is observed that CIL issued "Redeemable Preference Shares" ("**Offer of Redeemable Preference Shares**") to investors for the Financial Year 2011–12, details of which are provided below –*

Type of Security	**Year**	**No. of persons to whom preference shares were allotted**	**Total Amount (₹in Crores)**
Redeemable Preference Shares	2011–12	213	0.92

v. *From CIL's Balance Sheet for the Financial Year 2012–13, it is observed that share application money is reflected as ₹6.60 Crores, which also included the amount of ₹0.92 Crores (raised through allotment of Redeemable Preference Shares) in the Financial Year 2011–12.*

vi. *From the material available on record, it is noted that CIL also issued Secured Redeemable Non – Convertible Debentures ("**Offer of NCDs**"), details of which are provided below –*

Year	Type of Security	Amount Raised (₹ in Crores)	Number of Allottees
2010 – 11	*Secured Redeemable Non – Convertible Debentures*	0.44	Details not available
2011 – 12		9.58	
2012 – 13		4.67	
Total		**14.69**	

……..”

25. In order to ascertain whether an issue is a public issue or not, reference needs to be made to section 67(3) of the Companies Act. This provision, as amended by the *Companies (Amendment) Act, 2000, with effect from December 13, 2000*, states that 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 judge whether an issue of shares are for public or on a private placement basis, in the light of the above said provision. Therefore, if an offer of securities are made to fifty or more persons, it would be deemed to be a public issue. NBFCs or PFIs are exempted only from the first *proviso* to section 67(3). Therefore, NBFC or PFI do not have any restriction on the number of allottees as imposed on a company which is not an NBFC or PFI. However, such companies also need to prove that its offer falls either under clause (a) or (b) of section 67(3) to claim such issuance to be a private placement.

26. In the present matter, the Company had offered and allotted –

(a) RPS to 213 persons during FY 2011-2012 and mobilized Rs.0.92 crore.
As per the Balance Sheet for the FY 2012-2013, the Company has mentioned that Rs.6.60 crore is mobilized and retained as 'share application money'. The same included Rs.0.92 crore raised through allotment of RPS in the FY 2011-2012.

(b) NCDs during FYs 2010-2011, 2011-2012 and 2012-2013 and raised Rs.14.69 crore. The numbers of persons to whom the NCDs were allotted is not available. The Company has not provided the same till date though it was specifically advised to do so vide the interim order.

I also refer to the following observation made in the interim order "*From the application form circulated by CIL for the Offer of NCDs (annexed with complaint dated June 9, 2014), it is observed that the invitation for subscription to such Offer extended to "Resident Individuals, Scheduled Commercial Banks, Financial Institution, Insurance Companies, Mutual Funds, Bodies Corporate, Others, etc." Such a generalized category of investor(s) cannot be said to satisfy the condition of specificity as required under Section 67(3) of the Companies Act, 1956".*

Considering the number of persons to whom the RPS were offered and issued along with the quantum of amount collected thereby and the amount mobilized through the offer and issuance of NCDs and also the generalized category to whom the offer of NCDs were made, I conclude that the Company made a public issue of RPS and NCDs during the relevant period in terms of the first proviso to section 67(3) of the Companies Act, 1956.

27. 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*".

28. 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. By making a public issue of NCDs, 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 India Real Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the '*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. …".

29. Accordingly, sections 56, 60 and 73 of the Companies Act, 1956 are required to be complied with by a company making a public issue of securities. In addition to the above, the Company was mandated to comply with sections 117B and 117C of the Companies Act, 1956 and the provisions of the ILDS Regulations in respect of its public offer and issuance of NCDs. These provisions have been allegedly not adhered to by the Company. I observe the following in respect of the alleged violations:

(i) 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'. There is no record to suggest that the Company has complied with the above provisions. Accordingly, I hold that the Company has not adhered with the provisions of sections 56 and 60 of the Companies Act, 1956 in respect of its offer and issue of NCDs and RPSs.

(ii) By making a public issue of RPSs and NCDs, the Company had to compulsorily list such securities in compliance with section 73(1) of the Companies Act, 1956. A Company making a public issue of securities cannot choose whether to list its securities or not as listing is a mandatory requirement under law. 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. Further, there is no material to say that the Company has filed an application with a recognized stock exchange to enable the securities to be dealt with in such stock exchange. Therefore, the Company has failed to comply with this requirement.

Section 73(2) 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 of such securities, the Company had to forthwith repay such money collected from investors. If such repayments are not made within 8 days after the Company becomes liable to repay, the Company and every director is liable to repay with interest at such rate. The liability of the Company to refund the public funds collected through offer and allotment of the impugned securities is continuing and such liability would continue till repayments are made. There is no record to suggest that the Company made the refunds as per law. 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."*

As the amounts mobilized through the issue of RPS and NCD have not been refunded within the time period as mandated under law, it would therefore be appropriate to levy an interest @ 15% p.a. as provided for under the above section read with rule 4D (*which prescribes that the rates of interest, for the purposes of sub-sections (2) and (2A) of section 73, shall be 15 per cent per annum*) of the Companies (Central Government's) General Rules and Forms, 1956 on the amounts mobilized by the Company through its offer and

issue of NCDs and RPSs, from the date when the same was liable to be repaid till the date of actual payment to the investors.

I note that Mr. Sourav Bardhan, a present director, while referring to the 'settlement' signed by Rajesh Jaiswal has stated that Rajesh Jaiswal has taken over all the liabilities and would repay the investors through the arbitrator. However, I note that this settlement is extraneous to the present proceeding.

Mr. Kumar Kanti Bhattacharya, in his application, requested that the group companies of the Company may also be impleaded in the proceedings and also requested that they be restrained from alienating their assets. It is his submission that Mr. Rajesh Jaiswal had diverted the funds collected through the Company to his other business/ventures. In this regard, I refer to the following directions issued in respect of the Company and its directors:

i. *CIL shall provide a full inventory of all its assets and properties;*
ii. *CIL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;*
iii. *CIL 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 Redeemable Preference Shares and Offer of NCDs, without prior permission from SEBI;*
iv. *CIL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares and Offer of NCDs, which are kept in bank account(s) and/or in the custody of CIL;*

I am of the view that the directions in the interim order are wide enough to cover any alienation or diversion of funds collected by the Company through offer and issue of securities. They are therefore already under restraint from diverting the proceedings or alienating the assets purchased through the funds of the investors collected in the name of the Company. **SEBI is at liberty to take action in case such directions are found to have been breached by the noticees/entities concerned**.

(iii) 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 is found to have not filed its Prospectus with respect to the impugned offer and issue of NCDs. Therefore, the said provision has not been fully complied with. Further, appointment of debenture trustee shall be in terms of all applicable law.

(iv) Section 117C 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 the Company had created a debenture redemption reserve and has therefore violated section 117C of the Companies Act, 1956.

(v) As 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 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.*

30. From the foregoing, I conclude that the Company failed to comply with the provisions of sections 56, 60, 73 of the Companies Act, 1956 in respect of its offer and issuance of RPS and NCDs and also sections 117B and 117C of the Companies Act, 1956 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 including action for default under section 73(2) of the Companies Act, 1956.

31. The interim order has issued certain directions on the present and past directors of the Company. The details regarding their appointment and resignation, if any available from the RoC is mentioned below:

Name of director	**Date of appointment**	**Date of resignation, if any**
Mr. Kumar Kanti Bhattacharya	25/11/2010	Continues as director
Mr. Debi Prasad Mookherji	15/01/2013	Continues as director
Mr. Sourav Bardhan	01/03/2011	Continues as director
Mr. Ashim Gupta	17/01/2013	Continues as director

Mr. Asraf Ali Shaikh	22/11/2010	10/10/2011
Mr. Shaikh Ajgar Ali	22/11/2010	10/10/2011
Mr. Saik Majaffar	22/11/2010	10/10/2011
Mr. Rajesh Jaiswal	25/11/2010	15/05/2013
Mr. Sekh Rezaul Karim	01/03/2011	01/06/2013
Mr. Koushik Mukherjee	01/03/2011	01/06/2013

Regarding their responsibility and liability, I make the following observations:

(a) In terms of 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 shall be and liable for any non-compliance of law and such liability shall be upon the individual directors also.

(b) With respect to the culpability of a director for breach of law by a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs Registrar Of Companies* (2002 108 Comp Cas 1 Mad):

"13. It may be that the petitioner may not be a whole-time director, but that does not mean he is exonerated of the statutory obligations which are imposed under the Act and the rules and he cannot contend that he is an ex officio director and, therefore, he cannot be held responsible. There is substance in the contention advanced by Mr. Sridhar, learned counsel since the petitioner a member of the Indian Administrative Service and in the cadre of Secretary to Government when appointed as a director on the orders of the Government to a Government company or a joint venture company, he is expected not only to discharge his usual functions, but also take such diligent care as a director of the company as it is expected of him not only to take care of the interest of the Government, but also to see that the company complies with the provisions of the Companies Act and the rules framed thereunder. Therefore, the second contention that the petitioner cannot be

proceeded against at all as he is only a nominee or appointed director by the State Government, cannot be sustained in law. 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.

15. Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision ; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.

16. Section 29 of the Companies Act provides the general power of the board and ……... Therefore it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be answered against the petitioner.

17. As regards the first contention, it is contended by Mr. Arvind P. Datar, learned senior counsel appearing for the petitioner that the company or its board had resolved that Thiagaraj S. Chettiar shall be the director in charge of the company of all its day-to-day affairs and, therefore, the petitioner, an ex officio chairman and director, cannot be expected to attend to the affairs on a day-to-day basis. This contention though attractive cannot be sustained as a whole. There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible."

{Emphasis supplied}

(c) A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof.

(d) In this Order, the Company is found to have contravened the provisions of sections 56, 60, 73, 117B and 117C of the Companies Act, 1956 and the ILDS Regulations in respect of its offer and issuance of RPSs and NCDs.

(e) Section 56(1) and 56(3) read with section 56(4) imposes the liability for the compliance of the said provisions, on the company, every director, and other 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. Further, the directors of a company would also be responsible for complying with sections 117B and 117C of the Companies Act, 1956 and the provisions of the ILDS Regulations.

(f) 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. Therefore, the directors (*irrespective of whether they continue or resign*) who were present during the period when the Company made the offer and allotted NCDs shall be liable for violation of sections 56, 60 and 73 of the Companies Act, including the default in making refunds as mandated therein. As the liability to make repayments under sections 73(2) of the Companies Act read with section 27 of the SEBI Act is a continuing liability, the persons who join the Company's Board pursuant to the offer and allotment of NCDs shall also be liable if the Company and the concerned directors have failed to make refunds as mandated under law.

(g) In view of the above observations, the submissions made by the directors (past and present) that they were not involved in the affairs of the Company or has resigned from the Company do not absolve them of their liability. Debi Prasad Mookherjee and Ashim Gupta have submitted that they have tendered their resignations during 2013 and 2014 respectively. However, as per the records of the MCA/RoC as mentioned above, they are shown as present directors of the Company.

Further, Shaikh Ajgar Ali, Saik Majaffar and Asraf Ali Shaikh have claimed that they were made directors without their consent and that there credentials were misused by their financial adviser. They have attached a copy of their complaint dated July 30, 2014 made to the Bhawanipur Police Station (Haldia) requesting action against their financial adviser.

However, they have not mentioned the outcome of their complaint. Further, it is noted that their complaint to the Police is pursuant to the SEBI notices dated June 17 and 19, 2014 seeking information from the Company regarding the offer and issuance of impugned securities. As per the MCA/RoC, these persons were directors in the Company from 22.11.2010 to 10.10.2011. Considering the above, I find them also to be liable for the violations. However, they are at liberty to take recourse to remedies available under law. I also note that their appeal (Appeal no. 280/2015) filed before the Hon'ble Securities Appellate Tribunal challenging the interim order, was dismissed vide Order dated December 15, 2015 for want of prosecution as they did not appear before the Hon'ble Tribunal.

(h) As all the above persons were/are directors in the Company during the period (i.e. April 2010 to March 2013), they shall be liable for the violations as found against the Company in this Order as well as for default in making refunds to the investors with applicable interest. They shall also be liable for necessary enforcement action.

32. The interim order has also alleged that the debenture trustees, Mr. Ashish Kumar De Sarkar, Mr. Samrat Sinha and Mr. Abdul Basad Molla allegedly failed to meet the eligibility conditions specified under regulation 7 of the DT Regulations and acted as an unregistered debenture trustee in violation of section 12(1) of the SEBI Act. I note that these noticees are not registered with SEBI to perform the functions of a 'debenture trustee' in the securities market. Further, they do 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."*

I also note that Mr. Samrat Sinha had passed away and a death certificate is present in the records. Accordingly, this proceeding against him would abate.

Mr. Abdul Basad Molla has admitted being a debenture trustee. He has not made any submissions regarding the charges against him. Mr. Asish Kumar De Sarkar has *inter alia* submitted that he was not aware of the laws governing appointment of debenture trustees and requested SEBI to consider his case sympathetically. He has submitted that he joined as a debenture trustee with two other persons and a Trust Deed was registered on July 06, 2011. He has stated that he had tendered his resignation on May 16, 2012 and the same was also accepted by the Company vide letter dated March 21, 2013. It becomes clear that these persons are not eligible to act as debenture trustees and do not possess a certificate of registration from SEBI. Further, ignorance of law is no excuse. Accordingly, Mr. Ashish Kumar De Sarkar and Mr. Abdul Basad Molla are found to have violated section 12(1) of the SEBI Act and regulation 7 of the DT Regulations for which they are liable for necessary enforcement action. Further, in view of these observations, it can also be said that the provisions of section 117B of the Companies Act, 1956 have not been completely complied with.

33. For the above reasons, 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(1), 11(4), 11A and 11B thereof and regulation 28 of the SEBI (Issue and Listing of Debt Securities) Regulation, 2008 hereby issue the following directions:

(a) Cell Industries Limited, Mr. Kumar Kanti Bhattacharya, Mr. Debi Prasad Mookherji, Mr. Sourav Bardhan, Mr. Ashim Gupta, Mr. Asraf Ali Shaikh, Mr. Shaikh Ajgar Ali, Mr. Saik Majaffar, Mr. Rajesh Jaiswal, Mr. Sekh Rezaul Karim and Mr. Koushik Mukherjee, jointly and severally, shall forthwith refund the money collected by the Company through the issuance of Non-Convertible Debentures and Redeemable Preference Shares (*which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956 and the ILDS Regulations*), to the investors including the money collected from investors, till date, pending allotment of securities, 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/its present management are 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 and others named above shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) with wide circulation, detailing the modalities for refund, including details of 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 certificate of such completion with SEBI, within a period of three months from the date of this Order, from 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) Cell Industries Limited, Mr. Kumar Kanti Bhattacharya, Mr. Debi Prasad Mookherji, Mr. Sourav Bardhan, Mr. Ashim Gupta, Mr. Asraf Ali Shaikh, Mr. Shaikh Ajgar Ali, Mr. Saik Majaffar, Mr. Rajesh Jaiswal, Mr. Sekh Rezaul Karim and Mr. Koushik Mukherjee are 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 the company, Cell Industries Limited, Mr. Kumar Kanti Bhattacharya, Mr. Debi Prasad Mookherji, Mr. Sourav Bardhan, Mr. Ashim Gupta, Mr. Asraf Ali Shaikh, Mr. Shaikh Ajgar Ali, Mr. Saik Majaffar, Mr. Rajesh Jaiswal, Mr. Sekh Rezaul Karim and

Mr. Koushik Mukherjee, in complying with the aforesaid directions, SEBI, on the expiry of the three months period from the date of this order, -

a) shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
b) 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.
c) 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
d) would also make a reference to the Ministry of Corporate Affairs to initiate appropriate action as deemed fit.
e) would also make a reference to the Ministry of Corporate Affairs to flag the names of noticee directors in its database so that information may be perused by RoC or any other regulatory authority.

(h) Cell Industries Limited is directed not to, directly or indirectly, access the capital market by issuing prospectus, offer document or advertisement soliciting money from the public and are 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 of 4 years from the date of completion of refunds to investors as directed above.

(i) Mr. Kumar Kanti Bhattacharya, Mr. Debi Prasad Mookherji, Mr. Sourav Bardhan, Mr. Ashim Gupta, Mr. Asraf Ali Shaikh, Mr. Shaikh Ajgar Ali, Mr. Saik Majaffar, Mr. Rajesh Jaiswal, Mr. Sekh Rezaul Karim and Mr. Koushik Mukherjee are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, with immediate effect. They are also restrained from issuing prospectus, offer document or advertisement

soliciting money from the public and associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI. The above directions shall come into force with immediate effect and shall continue to be in force from the date of this Order till the expiry of 4 years from the date of completion of refunds to investors, as directed above.

(j) For the violations committed by **Mr. Ashish Kumar De Sarkar** and **Mr. Abdul Basad Molla**, they are hereby restrained from acting as an intermediary, accessing the securities market and further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 years.

(k) For the reasons stated above, the proceedings in respect of Late Shri **Samrat Sinha** stands abated.

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

34. This Order is without prejudice 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 including former directors and other key persons.

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

36. 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.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: May 12th, 2016
Place: Mumbai