SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 (1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 28 of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, in respect of:

1. **Waris Healthcare Limited**
2. **Mr. Iftekhar Ahmed**
3. **Mr. Aziz Ahmed**
4. **Mr. Imtiaz Khan Warsi**
5. **Mr. Shane Ahmed Warsi**
6. **Ms. Quraisha Khatoon**
7. **Ms. Ruhi Ghazala Warsi**
8. **Ms. Chhaya Bahadur.**

In the matter of issuance of non-convertible redeemable debentures by Waris Healthcare Limited

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1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted a preliminary examination into the issuance of Non-Convertible Redeemable Debentures (hereinafter referred to as "NCDs") by Waris Healthcare Limited (hereinafter referred to as "the company" or "WHL") with a view to ascertain the possible violations of the public issue norms stipulated under the Companies Act, 1956 and other applicable laws pertaining to SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as "the ILDS Regulations"). Pursuant to the examination, SEBI passed an *interim* order dated May 07, 2015 (hereinafter referred to as "*interim order*") against WHL, its present and past directors, namely, Mr. Iftekhar Ahmed, Mr. Aziz Ahmed, Mr. Imtiaz Khan Warsi, Mr. Shane Ahmed Warsi, Ms. Quraisha Khatoon and Ms. Ruhi Ghazala Warsi, and the person acting as the Debenture Trustee, Ms. Chhaya Bahadur {collectively referred to as "the noticees' and individually by their respective names}, in view of the following reasons:

(i) *"…….. WHL is prima facie engaged in fund mobilising activity from the public, through the Offer of NCDs and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Sections 117B–117C) read with the Debt Securities Regulations".*

(ii) *"…….Smt. Chhaya Bahadur, has acted as an unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations".*

2. In view of the alleged contraventions and the reasons stated in the *interim order,* the following directions were issued:

i. "*WHL (PAN: AAACW9315R) shall forthwith cease to 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. *WHL and its present Directors, viz. Shri Iftekhar Ahmed (PAN: AJMPA3089L; DIN: 02437708), Shri Aziz Ahmed (PAN: AIOPA9561E; DIN: 03526225) and Shri Imtiaz Khan Warsi (PAN: ABQPW7759R; DIN: 05150133), 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 WHL, viz. Shri Shane Ahmed Warsi (PAN: AAWPW7456Q; DIN: 01652477), Quraisha Khatoon (PAN: AKDPK3211E; DIN: 02437707) and Ruhi Ghazala Warsi (PAN: ABYPW7604D; DIN: 03506131), 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. *WHL 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. *WHL shall provide a full inventory of all its assets and properties;*

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

vii. *WHL and its 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. *WHL 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 WHL;*

ix. *WHL and its abovementioned past and present Directors shall furnish complete and relevant information (as sought by SEBI letters dated March 14, 2014; March 28, 2014 and on May 16, 2014), within 14 days from the date of receipt of this Order;*

x. *The Debenture Trustee, viz. Smt. Chhaya Bahadur, is prohibited from continuing with her assignment as debenture trustee in respect of the Offer of NCDs of WHL 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* advised the company and the aforesaid directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:

i. Directing them jointly and severally to refund money collected through the Offer of NCDs along with 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. Ms. Chhaya Bahadur (*the person engaged as debenture trustee by the company*) was advised to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, 1992 including restraining her from accessing the securities market and further restraining her from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.

5. The noticees were afforded opportunity to file their response within 21 days of receipt of the *interim order*. They were advised to indicate whether they desired to avail a personal hearing. The noticees were also informed vide SEBI's letter dated August 16, 2016 that an opportunity of personal hearing was scheduled on September 07, 2016. As the *interim order* could not be delivered on some of the noticees at their last known address, SEBI made a public notice in the newspapers (*in Times of India-Kolkata Edition on August 28, 2016 and in Anand Bazaar Patrika on August 29, 2016*) intimating the noticees about the *interim order* and the personal hearing fixed on September 07, 2016. The noticees were also advised to file their replies before the date of personal hearing. Despite the above steps, the noticees neither filed their replies nor appeared in the personal hearing.

6. I have considered the *interim order* and material available on record. The *prima facie* findings made in the *interim order* are undisputed as none of the noticees have filed their response. Therefore, I do not wish to repeat the entire facts and observations mentioned in the *interim order*. The company is alleged to have made a public offer and issued NCDs without complying with the public issue norms mandated under the Companies Act, 1956 and the ILDS Regulations. As per the *interim order,* the company had issued NCDs to 70 allottees during FY 2011-12 and raised `0.12 crore. During FY 2012-13, the company has mobilized `0.01 crore from 3 investors. The *interim order* has observed that the company and directors have not responded to the letters sent by SEBI

seeking information regarding its offer of NCDs. The *interim order* has categorically stated that the number of allottees and the amount mobilized as noted therein were only from the complaints received and that such number and the amount mobilized would be much more than the indicated figures. Till date, the company/its directors failed to furnish the information (sought vide SEBI letters dated March 14, 2014, March 28, 2014 and May 16, 2014), though they were specifically directed to do so in the *interim order*.

7. Considering the available facts and the conduct of the company and its directors in not providing the information regarding the NCDs, I find no reason to differ with the observation made in the *interim order* that the company made a 'public issue' of NCDs in terms of first *proviso* to section 67(3) of the Companies Act, 1956. As the issuance of NCDs by the company was a 'public issue', it ought to have complied with the applicable provisions of the Companies Act, 1956 and the ILDS Regulations as alleged in the *interim order*. In the present case, there is no dispute to the fact that the company failed to comply with sections 60 read with section 2(36), 56(1), 56(3), 73, 117B and 117C of the Companies Act, 1956 and regulations 4(2)(a), (b), (c), (d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 17, 19 and 26 of the ILDS Regulations. Accordingly, I find the company liable for violating the aforesaid provisions of law.

8. The *interim order* was issued against the present and past directors of the company, namely, Mr. Iftekhar Ahmed, Mr. Aziz Ahmed, Mr. Imtiaz Khan Warsi, Mr. Shane Ahmed Warsi, Ms. Quraisha Khatoon and Ms. Ruhi Ghazala Warsi. The details of their appointment and resignation, if any, are given in the table below:

S. No.	Name	Date of appointment	Date of cessation
1	Iftekhar Ahmed	08.02.2010	Continuing as director
2	Aziz Ahmed	20.01.2012	Continuing as director
3	Imtiaz Khan Warsi	28.12.2012	Continuing as director
4	Shane Ahmed Warsi	08.02.2010	03.01.2013
5	Quraisha Khatoon	08.02.2010	15.02.2012
6	Ruhi Ghazala Warsi	20.01.2012	30.11.2012

9. From the details given in the table above, it can be noticed that the present directors as well as the past directors were part of the Board of Directors of the company, when the company had mobilized public funds (during FY 2011-12 and 2012-13) without complying with the public issue norms. 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 will be liable for any non-compliance of law and such

liability shall be upon the individual directors also. Section 56(1) and 56(3) read with section 56(4) imposes the liability for the non-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 shall be liable for action in case of contravention of the ILDS Regulations.

10. The liability of the company and directors to repay under section 73(2) of the Companies Act, 1956 would remain until the whole of the subscription amount along with interest is refunded to the allottees/investors. 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, 1956 and the ILDS Regulations. In this regard, I refer to 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. …. 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.*
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> *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."*

Mr. Iftekhar Ahmed, Mr. Aziz Ahmed, Mr. Imtiaz Khan Warsi, Mr. Shane Ahmed Warsi, Ms. Quraisha Khatoon and Ms. Ruhi Ghazala Warsi being '*officers in default*' in terms of section 5 of the Companies Act, 1956, are held responsible for the violations committed by the company as found above in this order. Therefore, the company and the aforesaid persons are liable for the consequences including refund of the subscription money to the allottees along with interest at 15% p.a. as mandated under section 73(2) of the Companies Act, 1956 read with rule 3(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

11. The *interim order* has observed that the company created a charge of `100 crores and also appointed Ms. Chhaya Bahadur as the debenture trustee. Form-10 (*particulars for registration of charges for debentures*), filed by the company, mentioned that charge was creation on August 02, 2010. The said Form was signed digitally by Mr. Shane Ahmed Warsi (noticee and former director of company) and Ms. Chhaya Bahadur as the debenture trustee. Section 12(1) of the SEBI Act, 1992 mandates that a trustee shall buy, sell or deal in securities, except under and in accordance with

the conditions of a certificate of registration obtained from SEBI. It is an undisputed fact that Ms. Chhaya Bahadur was never registered with SEBI as a 'debenture trustee'. In terms of regulation 7 of the Debenture Trustee Regulations, a person can act as a debenture trustee only if it is either a scheduled bank or a public financial institution or an insurance company or a body corporate. Ms. Chhaya Bahadur, being a natural person, is therefore not qualified to be appointed. Accordingly, I find her guilty of contravening section 12(1) of the SEBI Act, 1992 and regulation 7 of the Debenture Trustee Regulations.

12. In view of the foregoing, I, in exercise of the powers conferred under sections 11(1), 11(4), 11A and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 28 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, hereby issue the following directions:

(i) Waris Healthcare Limited (PAN: AAACW9315R), Mr. Iftekhar Ahmed (PAN: AJMPA3089L; DIN: 02437708), Mr. Aziz Ahmed (PAN: AIOPA9561E; DIN: 03526225), Mr. Imtiaz Khan Warsi (PAN: ABQPW7759R; DIN: 05150133), Mr. Shane Ahmed Warsi (PAN: AAWPW7456Q; DIN: 01652477), Ms. Quraisha Khatoon (PAN: AKDPK3211E; DIN: 02437707) and Ms. Ruhi Ghazala Warsi (PAN: ABYPW7604D; DIN: 03506131), shall within a period of three months from the date of this order, jointly and severally refund the money collected through the issue of non-convertible debentures to the allottees with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund.

(ii) Such refund shall be made only in cash through a Demand Draft or Pay Order.

(iii) Waris Healthcare Limited and its directors shall within fifteen days from the date of this Order submit to SEBI complete details of their assets (along with proofs thereof) certified by a peer reviewed Chartered Accountant.

(iv) Waris Healthcare Limited and its directors are permitted to sell assets of the company and deposit the sale proceeds in an Escrow Account opened with a nationalized bank. Such proceeds shall be utilized for the sole purpose of making refund/ repayment to the allottees of non-convertible debentures till the full refund/ repayment as directed above is made.

(v) Waris Healthcare Limited and its directors shall issue a public notice, in all editions of one English national daily and one vernacular daily 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.

(vi) Within seven days of completion of refund/ repayment as directed hereinabove, Waris Healthcare Limited and its directors shall file a certificate of such completion with SEBI from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. Such certificate shall be issued by the Chartered Accountants after verifying the relevant documents including bank accounts of the noticees and satisfying themselves that the refund has actually been made.

(vii) 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.

(viii) Waris Healthcare Limited, Mr. Iftekhar Ahmed, Mr. Aziz Ahmed, Mr. Imtiaz Khan Warsi, Mr. Shane Ahmed Warsi, Ms. Quraisha Khatoon and Ms. Ruhi Ghazala Warsi are restrained from, directly or indirectly, accessing the capital market by issuing prospectus, any offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in whatsoever manner for a period of four years or till the date of refund of money to the allottees, whichever is later.

(ix) Mr. Iftekhar Ahmed, Mr. Aziz Ahmed, Mr. Imtiaz Khan Warsi, Mr. Shane Ahmed Warsi, Ms. Quraisha Khatoon and Ms. Ruhi Ghazala Warsi are also restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, for a period of four years or till the date of refund of money to the allottees, whichever is later.

(x) Ms. Chhaya Bahadur is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in whatsoever manner for a period of four years.

(xi) For the purposes of sub-paragraphs (viii) and (ix) above, the period of restraint shall be counted from the date of the *interim order*.

13. The *interim order* cum show cause notice dated May 07, 2015, is disposed off accordingly. The above directions are without prejudice to the right of SEBI to take any other appropriate action for the violations found in this case or to initiate any action in case of failure to comply with the

above directions, in accordance with the provisions of applicable laws including the proceedings under the provisions of section 28A of the SEBI Act.

14. The order shall come into force with immediate effect. A copy of the order shall be served on the Noticees to ensure compliance with the above directions. A copy of this Order shall also be forwarded to the recognized stock exchanges and depositories for information and necessary action.

15. 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.

Date : September 21st, 2016
Place : Mumbai

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA