**WTM/RKA/EFD-DRA-IV/189/2016**

**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 SEBI (Issue and Listing of Debt Securities) Regulations, 2008.**

**In respect of:**

1. **Cemendia Infrastructures Limited**
2. **Mr. Rabishankar Basu,**
3. **Mr. Byomkesh Das,**
4. **Mr. Rahul Chatterjee,**
5. **Mr. Pranesh Debnath,**
6. **Mr. Sanjay Das,**
7. **Mr. Radhashyam Manna,**
8. **Mr. Amitava Koley,**
9. **Mr. Dhananjay Chakraborty,**
10. **Mr. Ashok Maji,**
11. **Mr. Tapas Dey,**
12. **Ms. Anita Ghosh Chowdhury,**
13. **Mr. Subrata Samanta,**
14. **Mr. Gora Chand Sarkar,**
15. **Ms. Sunipa Das,**
16. **Mr. Sanjal Kanti Das,**
17. **Mr. Laxman Chandra Ghosh,**
18. **Mr. Goutam Mukherjee and**
19. **Cemendia Debenture Trust (represented by Ms. Aparajita Dey)**

**In the matter of issuance of Non-convertible Redeemable Secured Debentures by Cemendia Infrastructures Limited**

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted a preliminary examination into the issuances of Non-Convertible Redeemable Secured Debentures (hereinafter referred to as "NCDs") by Cemendia Infrastructures Limited (hereinafter referred to as 'Cemendia' or 'the company') with a view to ascertain the possible

non-compliances with the public issue norms stipulated under the provisions of the Companies Act, 1956, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as "the ILDS Regulations"), SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as 'Debenture Trustees Regulations') and other applicable laws including the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and the SEBI Regulations/ Guidelines.

2. Pursuant to the examination, SEBI passed an *ad interim* order dated May 29, 2015 (hereinafter referred to as "*interim order*") in respect of Cemendia and its directors, namely, Mr. Rabishankar Basu, Mr. Byomkesh Das, Mr. Rahul Chatterjee, Mr. Pranesh Debnath, Mr. Sanjay Das, Mr. Radhashyam Manna, Mr. Amitava Koley, Mr. Dhananjay Chakraborty, Mr. Ashok Maji, Mr. Tapas Dey, Ms. Anita Ghosh Chowdhury, Mr. Subrata Samanta, Mr. Gora Chand Sarkar, Ms. Sunipa Das, Mr. Sanjal Kanti Das, Mr. Laxman Chandra Ghosh and Mr. Goutam Mukherjee and the Debenture Trustee namely Cemendia Debenture Trust (represented by Ms. Aparajita Dey) (hereinafter collectively referred to as "the noticees" and individually by their respective names), *inter alia,* in view of the following:

"*6.iii. …*

*a. …Cemendia had allotted Non-Convertible Redeemable Secured Debentures ("Offer of NCDs") amounting to approximately ₹1.31 Crores during the financial year 2011-12 to 1665 investors. It is noted that Cemendia had made frequent allotments (ten allotments in the month of April 2011, eight allotments in the month of May 2011, nine allotments in the month of June 2011, seven allotments in the month of July 2011 etc.) and all allotments were made to less than 49 investors. Allotments were made twice on the same day on April 30, 2011, May 07, 2011 and June 30, 2011. The manner in which the allotments were made by Cemendia clearly indicates that these multiple allotments were made only to camouflage the issuance of Non-Convertible Redeemable Secured Debentures as a private placement. The fact, however, remains that prima facie this was a single issue of debentures by Cemendia."*

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

*"i. Cemendia shall forthwith cease to mobilize any fresh funds from investors through the Offer of NCDs or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*

*ii. Cemendia (CIN: U45200MP2011PLC026270; PAN: AAECC5229J) and its Directors, viz. Shri Rabishankar Basu (DIN: 02888553; PAN: AIXPB3056C)), Shri Byomkesh Das (DIN: 06684342; PAN: AGVPD9209K), Shri Rahul Chatterjee (DIN: 07102240; PAN: AZMPC2370A), Shri Pranesh Debnath (DIN: 06567065; PAN: AQLPD9139L), Shri*

*Sanjay Das (DIN: 06567078; PAN: BEYPD4346D), Shri Radhashyam Manna (DIN: 06695890; PAN: BAAPM8405Q), Shri Amitava Koley (DIN: 06684338; PAN: BDQPK1075F), Shri Dhananjay Chakraborty (DIN: 06684824,PAN: AODPC0097C), Shri Ashok Maji (DIN: 06691471; PAN: BADPM1727J), Shri Tapas Dey (DIN: 06691481; PAN: ASPPD7921E), Smt Anita Ghosh Chowdhury (DIN: 01944916; PAN: AFNPC5967Q), Shri Subrata Samanta (DIN: 01945150; PAN: BAZPS4721C), Shri Gora Chand Sarkar (DIN: 01945219; PAN: BFOPS6023M), Shri Sunipa Das (DIN: 06567079; PAN: AVQPD8818E), Shri Sanjal Kanti Das (DIN: 06567074; PAN: AVLPD3177H), Shri Laxman Chandra Ghosh (DIN: 03567767; PAN: AJZPG9480E) and Shri Goutam Mukherjee (DIN: 05191808; PAN: BBGPM6355J), 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. *Cemendia and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*

iv. *Cemendia shall provide a full inventory of all its assets and properties;*

v. *Cemendia's abovementioned Directors shall provide a full inventory of all their assets and properties;*

vi. *Cemendia and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of NCDs, without prior permission from SEBI;*

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

viii. *Cemendia shall provide to SEBI all information regarding repayments made to the holders of Non-Convertible Redeemable Secured Debentures including name of the debenture holder, address, amount mobilized, number of Non-Convertible Redeemable Secured Debentures issued, promised maturity amount with date of maturity, amount refunded and date thereof;*

ix. *Cemendia shall furnish complete and relevant information within 21 days from the date of receipt of this Order;*

x. *The Debenture Trustee, viz. Cemendia Debenture Trust (represented by its Trustee, viz. Smt Aparajita Dey), is prohibited from continuing with its present assignment as a debenture trustee in respect of the Offer of NCDs of Cemendia 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."*

4. 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 Non-Convertible Redeemable Secured Debentures along with interest, if any, promised to investors therein;

ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;

iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

5. The Debenture Trustee, viz. Cemendia Debenture Trust (represented by its Trustee, viz. Ms. Aparajita Dey) was advised to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining from accessing the securities market and further restraining from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.

6. The noticees were advised to file their response within 21 days of receipt of the *interim order* and indicate whether they wish to avail a personal hearing. The *interim order* was forwarded to the noticees vide SEBI letters dated June 02, 2015.

7. Mr. Tapas Dey, Mr. Ashok Majhi, Mr. Dhananjay Chakraborty and Ms. Amitava Koley vide letters dated June 17, 2015, June 15, 2015, June 19, 2015 and June 19, 2015 respectively made similar submissions that during their respective directorship they were not aware of the debentures and 'Cozum Analystics Limited', a consultant, was looking after the debenture related matters on behalf of the company.

8. Ms. Sunipa Das vide his letter dated June 30, 2015 submitted as under:

   a. She is a very poor lady. One Mr. Goutam Mukherjee, on an assurance of employment in Cemendia had taken her Voter ID, PAN card, Bio-data and signatures on certain papers. He also got her signature on the consent letter and appointed her as a director of Cemendia on June 12, 2013.

   b. After 3-4 months when she came to know about her directorship, she raised objections and submitted her resignation on October 07, 2013. During the said 3-4 months she had not acted as a director of the company.

c. She is unaware about the activities of the company and is unable to submit documents as required in the *interim order*.

9. Mr. Radhashyam Manna through his advocate, Mr. Rupak Ganguly vide letter dated June 22, 2015, replied as under:
   a. He was the commission agent of Cemendia and had no knowledge of being appointed as a director of the company. He has no educational eligibility to hold and/or appointed as a director of a company. He has been cheated by the director of the company as he signed on some blank paper on faith and belief of getting refund of money he invested as an investor in the company.
   b. He was appointed as a 'faculty agent' by issuing an appointment letter by Mr. G.C. Sarkar, director on October 01, 2010. The said letter also mentioned his emoluments as ₹10,000 which was treated as commission.

10. Mr. Pranesh Debnath vide his letter dated June 18, 2015, replied as under:
   a. He had neither given his consent nor signed any papers of the company for his appointment as a director of the company.
   b. He has verified the forms relating to his appointment and resignation filed by the company on MCA-21 portal. He has been shown as a director of the Company for the period from June 12, 2013 to April 25, 2014. In his appointment, he has been indicated as a promoter director of the company. However, the same is false as he had never subscribed to the shares of the company. Further, the signature in the Consent Form attached to Form-32/ DIR-12 are forged.
   c. He is a poor person, earning his livelihood by doing small work in local offices and agricultural activities.

11. Mr. Bomkesh Das vide his letter dated June 30, 2015 replied to the *interim order* and *inter alia* stated the following-
   a. He has been the director of the company since March 20, 2015. The new Board had started functioning only from May 2015 and they could not go through all the required documents.
   b. On June 20, 2015, they sent a notice to Mr. R.S. Manna (ex. Managing Director) to hand over all the necessary documents for sending reply along with all required data.
   c. As to his knowledge, the allotted debentures have already been refunded. He will try his best to provide the documents.

12. SEBI then proceeded further and granted an opportunity of personal hearing to the noticees on September 20, 2016. The noticees were informed of the date of hearing vide SEBI letters dated August 07, 2016. As the *interim order* could not be delivered on certain noticees at their last known address, SEBI made a public notice in the newspapers on August 28, 2016 (*in Times of India and Dainik Bhaskar*) intimating the noticees about the *interim order* and the personal hearing fixed on September 20, 2016. The noticees were also advised in the public notice to file their replies before the date of personal hearing.

13. On the date of personal hearing i.e. September 20, 2016, the noticee namely Ms. Sunipa Das appeared along with Mr. Prakash Kumar Bachchawat, Advocate and made submissions. She requested for one weeks' time for filing the written submissions. The request was acceded to. The remaining noticees failed to appear for the personal hearing. Accordingly, the personal hearing proceedings were concluded and the matter was proceeded further.

14. Thereafter, vide letter dated September 20, 2016, Ms. Sunipa Das filed the written submission. The same in brief, are as under:

a. She was introduced to Mr. Goutam Mukherjee by some reliable sources sometime in the month of January, 2013. She met him in his office for the job of office clerk, for which he agreed and offered her a salary of ₹6,000 per month. He had also advised her to join w.e.f. from February 01, 2013.
b. Based on the confidence shown by Mr. Goutam Mukherjee, she in good faith provided her PAN card, Voter-ID card, Bio data and affixed her signatures on the lower middle part of few blank sheets for getting the job and for sustaining her daily livelihood.
c. Thereafter, she received a notice from the Chief Judicial Magistrate, Gwalior (M.P.) for personal appearance, wherein, she was released on bail. She then discovered that she was appointed as a director of Cemendia for the period of June 12, 2013 to October 07, 2013. Till then she was kept in dark regarding her directorship.
d. On contacting Mr. Goutam Mukherjee, he refused to disclose the information pertaining to her directorship in the company. Mr. Goutam Mukherjee had duped her into getting her signatures on the blank sheets and misused the same for appointing her as a director in his Company.
e. Mr. Goutam Mukherjee had provided her two blank cheques issued by one Ritam Industries Limited wherein he was a director towards her salary for the month of February 2013 and March 2013 and asked her to deposit the same in the bank account upon getting further confirmation from him. Since April 2013 and onwards, there has been no intimation for depositing the said cheques.

f. She has no connection with Mr. Goutam Mukherjee and/ or his associates thereafter and she has discontinued the relationship of employment with him. On becoming unemployed she applied for the post of 'office assistant' in one Equinox Infratech Limited on June 28, 2013. The period of her employment at Equinox Infratech Limited overlaps the period of her so discovered directorship in Cemendia.

g. She has filed a criminal complaint against Mr. Goutam Mukherjee before the Beliaghata Police Station at Kolkata.

15. I have considered the *interim order*, the allegations levelled against the noticees therein, the replies/ submissions of the noticees namely Mr. Tapas Dey, Mr. Ashok Majhi, Mr. Dhananjay Chakraborty, Ms. Amitava Koley, Ms. Sunipa Das, Mr. Bomkesh Das, Mr. Pranesh Debnath and Mr. Radhashyam Manna and the material available on record. The *prima facie* findings made in the *interim order* in respect of offer and issuance of NCDs are undisputed. Therefore, I do not deem it necessary to burden this order again with all the elaborate facts and observations made 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 during the financial year 2011-12 to 1,665 allottees and mobilized funds amounting to ₹1.31 crore. The *interim order* has also mentioned the various plans/schemes floated by the company in respect of its offer and issue of the impugned debentures.

16. The *interim order* has mentioned that "… *Cemendia had made frequent allotments (ten allotments in the month of April 2011, eight allotments in the month of May 2011, nine allotments in the month of June 2011, seven allotments in the month of July 2011 etc.) and all allotments were made to less than 49 investors. Allotments were made twice on the same day on April 30, 2011, May 07, 2011 and June 30, 2011. The manner in which the allotments were made by Cemendia clearly indicates that these multiple allotments were made only to camouflage the issuance of Non-Convertible Redeemable Secured Debentures as a private placement. The fact, however, remains that prima facie this was a single issue of debentures by Cemendia*." The noticees have not disputed the said allegation.

17. The *interim order* had specifically directed the company to furnish complete and relevant information. However, the concerned noticees have failed to provide the relevant information, till date. Considering the said conduct of the company and their non-participation in the proceedings despite a public notice, leads to the conclusion that they deliberately concealed information regarding their money mobilizing activities through offer and issue of NCDs to the public.

18. Considering the discussion above, 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(3), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 16, 17, 19 and 26 of the ILDS Regulations. Accordingly, I find the company guilty of violating the aforesaid provisions of law.

19. The *interim order* was issued against the directors of the company, namely, Mr. Rabishankar Basu, Mr. Byomkesh Das, Mr. Rahul Chatterjee, Mr. Pranesh Debnath, Mr. Sanjay Das, Mr. Radhashyam Manna, Mr. Amitava Koley, Mr. Dhananjay Chakraborty, Mr. Ashok Maji, Mr. Tapas Dey, Ms. Anita Ghosh Chowdhury, Mr. Subrata Samanta, Mr. Gora Chand Sarkar, Mr. Sunipa Das, Mr. Sanjal Kanti Das, Mr. Laxman Chandra Ghosh and Mr. Goutam Mukherjee. The details of appointment and resignation of the said directors are as under:

Table A

| S.No. | Name | Date of Appointment | Date of Cessation |
|---|---|---|---|
| 1. | Mr. Rabishankar Basu | 20/03/2015 | Continuing as director |
| 2. | Mr. Byomkesh Das | 20/03/2015 | Continuing as director |
| 3. | Mr. Rahul Chatterjee | 20/03/2015 | Continuing as director |
| 4. | Mr. Pranesh Debnath | 12/06/2013 | 25/04/2014 |
| 5. | Mr. Sanjay Das | 12/06/2013 | 25/04/2014 |
| 6. | Mr. Radhashyam Manna | 01/10/2013 | 25/04/2014 |
| 7. | Mr. Amitava Koley | 01/10/2013 | 16/12/2013 |
| 8. | Mr. Dhananjay Chakraborty | 01/10/2013 | 16/12/2013 |
| 9. | Mr. Ashok Maji | 01/10/2013 | 02/12/2013 |
| 10. | Mr. Tapas Dey | 01/10/2013 | 02/12/2013 |
| 11. | Ms. Anita Ghosh Chowdhury | 28/06/2011 | 11/04/2015 |
| 12. | Mr. Subrata Samanta | 28/06/2011 | 11/04/2015 |
| 13. | Mr. Gora Chand Sarkar | 28/06/2011 | 11/04/2015 |
| 14. | Mr. Sunipa Das | 12/06/2013 | 07/10/2013 |
| 15. | Mr. Sanjal Kanti Das | 12/06/2013 | 07/10/2013 |
| 16. | Mr. Laxman Chandra Ghosh | 12/06/2013 | 07/10/2013 |
| 17. | Mr. Goutam Mukherjee | 12/06/2013 | 26/11/2013 |

20. It has been concluded above that Cemendia made a public issue of NCDs during the financial year 2011-12. The directors namely Ms. Anita Ghosh Chowdhury, Mr. Subrata Samanta, Mr. Gora Chand Sarkar were part of the board of directors of Cemendia during the period when the company had mobilized public funds without complying with the public issue norms. Further, the noticees namely Mr. Rabishankar Basu, Mr. Byomkesh Das, Mr. Rahul Chatterjee, Mr. Pranesh Debnath, Mr. Sanjay Das, Mr. Radhashyam Manna, Mr. Amitava Koley, Mr. Dhananjay Chakraborty, Mr. Ashok Maji, Mr. Tapas Dey, Mr. Sunipa Das, Mr. Sanjal Kanti Das, Mr. Laxman Chandra Ghosh and Mr. Goutam Mukherjee were appointed on the board of the company after the available dates of issuance of NCDs. Of these, as per the MCA-21 portal, Mr. Rabishankar Basu, Mr. Byomkesh Das and Mr. Rahul Chatterjee continue to act as the directors of Cemendia.

21. 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. The liability of the company and its 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. Further, the persons who join the company's Board as directors pursuant to the offer and allotment of securities shall also be liable if the company/ concerned directors fail to make refunds as mandated under sections 73(2) of the Companies Act, 1956. With respect to the breach of law and duty by a director of 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. …. 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."*

22. As noted above, there is no dispute as to the fact that Ms. Anita Ghosh Chowdhury, Mr. Subrata Samanta, Mr. Gora Chand Sarkar were the directors of Cemendia at the time when the company had authorized the issuances of NCDs to atleast 1665 investors in violation of the public issue norms. The board of directors of Cemendia at the relevant time, being in control of the affairs, was under an obligation to ensure that such issuances were in compliance with all the applicable provisions of the Companies Act, 1956 and SEBI Act/ Regulations/ Guidelines. In view of the same, Ms. Anita Ghosh Chowdhury, Mr. Subrata Samanta, Mr. Gora Chand Sarkar shall be liable for violations and refunds.

23. Mr. Bomkesh Das in his submissions has submitted that he joined the company on March 20, 2015 and as per his knowledge, the money mobilized under the debentures have already been refunded. The other directors, namely, Mr. Tapas Dey, Mr. Ashok Majhi, Mr. Dhananjay Chakraborty and Ms. Amitava Koley have submitted that they are not aware of the issue of debentures and one 'Cozum Analystics Limited' was looking after the debenture related matters on behalf of the company. The noticees namely Ms. Sunipa Das, Mr. Pranesh Debnath and Mr. Radhashyam Manna in respective replies/ submissions have argued that hat they were appointed as director of Cemendia without their knowledge and consent. Ms. Sunipa Das has also submitted that she has filed a criminal complaint against Mr. Goutam Mukherjee. Having considered the submission, I note that it is not in dispute that they were the directors of the company. From the available records, it is noted that Ms. Sunipa Das, Mr. Pranesh Debnath and Mr. Radhashyam Manna became the directors of the company after the available dates of offer of NCDs. As the subscription amounts are not refunded in terms of Section 73(2) of the Companies Act, 1956, they would also become jointly and severally liable to make such payments to investors and also liable for action for default. As the liability of making refunds is a statutory liability, the same cannot be waived off by merely alleging fraud. Considering the same, it is difficult to grant any relief to Ms. Sunipa Das, Mr. Pranesh Debnath and Mr. Radhashyam Manna. These noticees have not been able to offer any plausible explanation or

supporting documents including orders of the Hon'ble Courts in connection with their complaints, in support of their submissions except for the *ipse dixit* of a mere denial that they were never directors in Cemendia. Considering the same, it is difficult to grant any relief to these, at this stage. However, they are at liberty to take recourse to the remedies available under law. Further, it goes without saying that if the company/ other noticees refund the subscription amounts along with applicable interest, then these noticees would be automatically discharged of the liability to make refunds to the investors.

24. Considering the above, the directors namely Ms. Anita Ghosh Chowdhury, Mr. Subrata Samanta and Mr. Gora Chand Sarkar are responsible for the violations committed by the company as found in the order including default in making refunds of the subscription money to the allottees/ investors under section 73(2) of the Companies Act, 1956 and the ILDS Regulations. The other directors of Cemendia namely Mr. Rabishankar Basu, Mr. Byomkesh Das, Mr. Rahul Chatterjee, Mr. Pranesh Debnath, Mr. Sanjay Das, Mr. Radhashyam Manna, Mr. Amitava Koley, Mr. Dhananjay Chakraborty, Mr. Ashok Maji, Mr. Tapas Dey, Mr. Sunipa Das, Mr. Sanjal Kanti Das, Mr. Laxman Chandra Ghosh and Mr. Goutam Mukherjee are held responsible for the default in making refunds to the investors. All the aforesaid persons are '*officers in default*' in terms of section 5 of the Companies Act, 1956. Therefore, the company and the aforesaid persons are liable for the consequences including making 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.

25. The *interim order* has observed that Cemendia, had created a charge for an amount of ₹10 crores on July 04, 2011 and appointed Cemendia Debenture Trust (represented by its Trustee, viz. Ms. Aparajita Dey) as the Debenture Trustee for the Offer of NCDs in violation of section 12(1) of the SEBI Act and regulation 7 of the Debenture Trustees Regulations. 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 Cemendia Debenture Trust and Ms. Aparajita Dey were never registered with SEBI as 'debenture trustees'. In terms of regulation 7 of the Debenture Trustees Regulations, a person can act as a debenture trustee only if he is either a scheduled bank or a public financial institution or an insurance company or a body corporate. The said persons are therefore not eligible under regulation 7 to be engaged as a debenture trustees. Accordingly, I find Cemendia Debenture Trust and Ms. Aparajita Dey guilty of contravening section 12(1) of the SEBI Act and regulation 7 of the Debenture Trustee Regulations.

26. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11, 11(4), 11A and 11B read with section 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) Cemendia Infrastructures Limited [PAN: AAECC5229J] and its Directors, viz. Mr. Rabishankar Basu [PAN: AIXPB3056C], Mr. Byomkesh Das [PAN: AGVPD9209K], Mr. Rahul Chatterjee [PAN: AZMPC2370A], Mr. Pranesh Debnath [PAN: AQLPD9139L], Mr. Sanjay Das [PAN: BEYPD4346D], Mr. Radhashyam Manna [PAN: BAAPM8405Q], Mr. Amitava Koley [PAN: BDQPK1075F], Mr. Dhananjay Chakraborty [PAN: AODPC0097C], Mr. Ashok Maji [PAN: BADPM1727J], Mr. Tapas Dey [PAN: ASPPD7921E], Ms. Anita Ghosh Chowdhury [PAN: AFNPC5967Q], Mr. Subrata Samanta [PAN: BAZPS4721C], Mr. Gora Chand Sarkar [PAN: BFOPS6023M], Ms. Sunipa Das [PAN: AVQPD8818E], Mr. Sanjal Kanti Das [PAN: AVLPD3177H], Mr. Laxman Chandra Ghosh [PAN: AJZPG9480E] and Mr. Goutam Mukherjee [PAN: BBGPM6355J], 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 redeemable secured 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) Cemendia Infrastructures 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) Cemendia Infrastructures 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/ investors of non-convertible redeemable secured debentures till the full refund/ repayment as directed above is made.

(v) Cemendia Infrastructures 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, Cemendia Infrastructures 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) Cemendia Infrastructures Limited, Mr. Rabishankar Basu, Mr. Byomkesh Das, Mr. Rahul Chatterjee, Mr. Pranesh Debnath, Mr. Sanjay Das, Mr. Radhashyam Manna, Mr. Amitava Koley, Mr. Dhananjay Chakraborty, Mr. Ashok Maji, Mr. Tapas Dey, Ms. Anita Ghosh Chowdhury, Mr. Subrata Samanta, Mr. Gora Chand Sarkar, Ms. Sunipa Das, Mr. Sanjal Kanti Das, Mr. Laxman Chandra Ghosh and Mr. Goutam Mukherjee 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. Rabishankar Basu, Mr. Byomkesh Das, Mr. Rahul Chatterjee, Mr. Pranesh Debnath, Mr. Sanjay Das, Mr. Radhashyam Manna, Mr. Amitava Koley, Mr. Dhananjay Chakraborty, Mr. Ashok Maji, Mr. Tapas Dey, Ms. Anita Ghosh Chowdhury, Mr. Subrata Samanta, Mr. Gora Chand Sarkar, Ms. Sunipa Das, Mr. Sanjal Kanti Das, Mr. Laxman Chandra Ghosh and Mr. Goutam Mukherjee 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) Cemendia Debenture Trust and Ms. Aparajita Dey are 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*.

27. The *interim order* dated May 29, 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.

28. This Order shall come into force with immediate effect. A copy of this Order shall be forwarded to the recognized 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.

**DATE: NOVEMBER 1st, 2016**
**PLACE: MUMBAI**

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