BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4),11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Siyaram Development and Construction Limited

In re Deemed Public Issue Norms

In respect of:

S.No.	Name of the Entity	PAN	CIN / DIN / Address
1.	Siyaram Development and Construction Limited	AAKCS3313H	U45201KA2006PLC040995
2.	Prasanta Bera	AHZPB9748G	02264907
3.	Biraja Bera	-	03032589
4.	Paromita Dey	APXPD1588E	03371096
5.	Biswajit Roy	-	05358111
6.	Arun Sardar	-	06558359
7.	Aravinda Mondal	CBDPM8120M	06799473
8.	Sridhar Mukherjee	BGVPM9717L	06817533
9.	Abdul Mandal	-	06825845
10.	Kalpana Guha.	-	Village- Krishnanagar, P0-RC Thakurani, PS- Thakurpur, Kolkata- 700104

Background

1. Siyaram Development and Construction Limited (hereinafter referred to as "**SDCL**"/ "**company**") is a Public Limited Company incorporated on November 21, 2006 and registered with Registrar of Companies–Bangalore. Its registered office is at 2-D, Sudaamini Residency, Flat No. -18, 5th Floor, Chelekere, Kalyannagar Post, P.S-

Hennur, Bangalore- 560043.

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint from an investor regarding non-payment of maturity amount of his investment in debentures issued by the company. Along with the said complaint, the complainant forwarded copies of two letters of allotment of Secured Redeemable Debentures (hereinafter referred to as "**SRDs"**) issued by SDCL.

3. SEBI initiated an enquiry to ascertain whether SDCL had made any public issue of securities without complying with the provisions of the Companies Act, 1956, (hereinafter referred to as "**Companies Act**"), Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and the Rules and Regulations framed thereunder.

4. In the interim, SEBI received a letter dated January 12, 2015 from Jannat Legal Poly-Clinic (hereinafter referred to as "**JLP"**), Nalanda, Bihar forwarding several complaints received from Bihar based investors along with copies of letters of allotment of SRDs and copies of *"principal & dividend warrants"* issued to these investors by SDCL. These investors alleged that SDCL failed to repay the money invested by them in the company. SEBI also received letter dated March 20, 2015 from Reserve bank of India (hereinafter referred to as "**RBI'**) forwarding a copy of the aforesaid complaint dated January 12, 2015 received from JLP against SDCL. RBI mentioned that SDCL is not registered with them as an NBFC and hence is not authorized to accept deposits or undertake any NBFC activity such as lending or investment.

5. SEBI also received a letter dated February 18, 2015 from the Bureau of Investigation (Economic Offences) (hereinafter referred to as "**BIEO**"), Guwahati, Assam forwarding *inter alia* copies of letters of allotment of SRDs received by them from investors, details of the Directors of the company, copies of brochure cum application forms and a copy of certificate of incorporation of the company. BIEO has also informed that during the course of their investigation it was found that SDCL sold

debentures to the investors by floating various types of schemes and collected huge amounts of money. They also stated that the postdated cheques issued by the company to the investors have bounced as there is no money in the accounts of the company. It is also stated that the directors of the company closed their offices in various districts of Assam and thereby cheated the investors and misappropriated the collected money.

6. On an enquiry by SEBI, it was observed that SDCL had allotted SRDs in the financial years 2010-2011 and 2012-2013 and raised at least an amount of ₹ 6,04,000/- from at least 63 allottees. The aforesaid figures are based on the complaints received by SEBI. It is important to note that the number of allottees and amount raised under the Offer of SRDs have been arrived at by merely collating data from the complaints received. Therefore, though the exact number of investors is not available, it is most certain that the number of investors who invested in the SRDs as also the amount raised would be more than what has only been collated from the complaints received. As noted from the Auditor's Report, the amount raised as on March 31, 2012 as ₹ 4.22 crore. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than 63 and ₹ 6,04,000/- respectively.

7. As the above Offer of SRDs was found *prima facie* in violation of respective provisions of the SEBI Act read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 (hereinafter referred to as "**ILDS Regulations**") and the Companies Act, SEBI passed an interim order dated July 17, 2015 (hereinafter referred to as "**interim order**") and issued directions mentioned therein against SDCL and its Directors, viz. Mr. Prasanta Bera, Mr. Biraja Bera, Ms. Paromita Dey, Mr. Biswajit Roy, Mr. Arun Sardar, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal.

8. ***Prima facie findings/allegations*:** In the said interim order, the following *prima facie* findings were recorded:

   - It is observed from Form 10, a copy of Board Resolution dated April 15, 2008 and

a copy of Trust Deed filed by SDCL with RoC that the company has been authorized to issue debentures amounting to ₹ 20 crore and a charge of ₹ 20 crore was created on November 18, 2010 to secure the issuance of debentures in favour of Ms. Kalpana Guha as a Debenture Trustee.

- It is further observed that the company was authorized to issue and allot the debentures aggregating to a nominal value not exceeding ₹ 50 crore in terms of resolutions dated March 12, 2012.
- It is mentioned in the Auditor's Report for the year ended March 31, 2012 that "*The company had issued Secured Non-Convertible Redeemable Debentures at different Coupon rate for different tenure. The closing balance of debenture as on 31.03.2012 is ₹4,22,16,926/- on private placement basis*." It is observed that the same amount i.e. ₹ 4,22,16,926/- has been mentioned under the heading 'Long Term Borrowing' in 'Notes on Financial Statements for the year ended March 31, 2012 of the company. The corresponding amount as on March 31, 2010 has been stated as ₹ 4,08,78,400/- and ₹ 3,84,55,100/- as on March 31, 2011.
- Moreover, a simple collation of data from the copies of letters of allotment and copies of "*principal & dividend warrants*" provided by complainants indicates that SDCL allotted SRDs to at least 63 allottees. It is evident from the copies of the letters of allotment that the debentures were allotted during FY 2010-11 to 2012-13 and an amount of at least ₹ 6,04,000/- was mobilised from these investors.

9. The above Offer of SRDs and pursuant allotment were deemed public issue of securities under the first proviso to Section 67(3) of the Companies Act. Accordingly, the resultant requirement under Section 60 read with Section 2(36), Section 56, Sections 73(1), 73(2) and 73(3) of Companies Act were not complied with by SDCL and its Directors in respect of the Offer of SRDs. Further, it was found that SDCL has also not complied with Sections 117B and 117C of the Companies Act and relevant provisions of ILDS Regulations for public issue and listing of debt securities. Moreover, Ms. Kalpana Guha was *prima facie* found to be in non-compliance with

Section 12(1) of the SEBI Act read with Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "**Debenture Trustees Regulations**").

10. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order with immediate effect.

- *SDCL shall forthwith cease to mobilize any fresh funds from investors through the Offer of SRDs 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;*
- *SDCL (PAN: AAKCS3313H) and its Directors, viz. Mr. Prasanta Bera (DIN: 02264907, PAN: AHZPB9748G), Mr. Biraja Bera (DIN: 03032589), Ms. Paromita Dey (DIN: 03371096), Mr. Biswajit Roy (DIN: 05358111), Mr. Arun Sardar (DIN: 06558359), Mr. Aravinda Mondal (DIN: 06799473), Mr. Sridhar Mukherjee (DIN: 06817533), Mr. Abdul Mandal (DIN: 06825845), 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;*
- *SDCL 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;*
- *SDCL shall provide –*
  - *i. Full particulars of debenture holders such as names, addresses and contact details (i.e. telephone numbers, e-mail IDs).*
  - *ii. Total amount mobilized, number of debentures issued and dates of allotment of debentures.*
  - *iii. Full particulars of the debentures redeemed, if any.*
- *SDCL shall provide a full inventory of all its assets and properties;*
- *SDCL's abovementioned Directors shall provide a full inventory of all their assets and properties;*

- *SDCL 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 without prior permission from SEBI;*
- *SDCL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of SRDs, which are kept in bank account(s) and/or in the custody of SDCL;*
- *SDCL shall furnish within 21 days from the date of receipt of this Order complete information as sought by SEBI vide letters dated February 25, 2014, March 06, 2014 and July 09, 2014 including details of investors and balance sheets of the company for FY 2007-08 to 2014-15.*
- *The Debenture Trustee viz. Ms. Kalpana Guha, is prohibited from continuing the present assignment as a debenture trustee in respect of the Offer of SRDs of SDCL 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.*

11. Vide the said interim order, SDCL and the above named Directors were called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, namely:-

- *Directing them jointly and severally to refund the money collected through the Offer of SRDs along with interest, if any, promised to investors therein;*
- *Directing them not to issue prospectus or any offer document or any advertisement for soliciting money from the public by issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;*
- *Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.*

12. SDCL and its abovementioned Directors, were given the opportunity to file their replies, if any, within 21 days from the date of receipt of the said interim order and may also indicate whether they desire to avail themselves of an opportunity of

personal hearing on a date and time to be fixed on a specific request made in that regard. Similarly, it was directed that the Debenture Trustee, viz. Ms. Kalpana Guha, may, within 21 days from the date of receipt of the Order, file her reply, if any, to the Order and may also indicate whether she desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

13. *Service of interim order*: The copy of the aforesaid interim order was sent to the Noticees vide letter dated July 20, 2015. The interim order was served on Ms. Paromita Dey, Mr. Shridhar Mukherjee, Mr. Arvind Mondal and Ms. Kalpana Guha. For the remaining Noticees, the interim order was served through affixture (September 8-9, 2015)/ newspaper publication (December 8, 2016 in Times of India and Vijay Karnataka).

Reply and Hearing

14. In response to the interim order, following Directors of the company submitted their replies:

    a. Mr. Aravinda Mondal vide his letters dated August 24, 2015 and November 23, 2015 replied to the interim order as follows:
        - He is not the Director of the company. He has been made the Director of the company without his knowledge. A similar reply dated October 30, 2015 has also been forwarded to RoC against the notice of default under Section 12 of the Companies Act.
        - He will file a petition before the concerned Company Law Board under Sections 397 and 398 of the Companies Act to delete his name as the Director of the company. He requested for sometime (as required to file petition with concerned Company Law Board and obtaining order) to submit evidence to prove that he is not the Director of the company.
        - He has not signed the consent letter attached with Form-32 which was filed with RoC. His signature in the said consent letter is different from his original signature as appearing in his PAN card. Therefore, it is a case of forgery.

- Mr. Prasanta Bera had approached him to help him in getting a loan from a nationalized bank and took photocopy of some documents from him in that regard. When he came to know that the loan would be given to him through a company, he refused to take such a loan.
- A similar complaint has been lodged by Mr. Sridhar Mukherjee before Dy. Superintendent of Police, North 24 Parganas, West Bengal. An investigation has already been initiated in the matter and he had appeared before SI, for cooperation in the enquiry.

b. Mr. Sridhar Mukherjee vide his letters dated August 24, 2015 and November 23, 2015 replied to the interim order as follows:
   - He is not the Director of the company. He has been made the Director of the company without his knowledge. A similar reply dated October 30, 2015 has also been forwarded to RoC against the notice of default under Section 12 of the Companies Act.
   - He will file a petition before the concerned Company Law Board under Sections 397 and 398 of the Companies Act to delete his name as the Director of the company. He requested for sometime (as required to file petition with concerned Company Law Board and obtaining order) to submit evidence to prove that he is not the Director of the company.
   - He has not signed the consent letter attached with Form-32 which was filed with RoC. His signature in the said consent letter is different from his original signature as appearing in his PAN card. Therefore, it is a case of forgery.
   - A similar complaint has been lodged by him before Dy. Superintendent of Police, North 24 Parganas, West Bengal. An investigation has already been initiated in the matter and he had appeared before SI, for cooperation in the enquiry.

15. Before proceeding further in the matter, an opportunity of personal hearing was granted to all the Noticees in the matter on November 1, 2017. However, none of the entities appeared for the scheduled hearing or sought adjournment of the hearing.

Therefore, hearing in the matter was concluded.

16. Mr. Sridhar Mukherjee and Mr. Aravinda Mondal vide their letters dated September 30, 2018 reiterated their earlier submissions.

Findings and Consideration

17. I have perused the interim order, written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration.

    i. *Whether the company came out with the Offer of SRDs as stated in the interim order?*

    ii. *If so, whether the said offer was in violation of Section 56, Section 60, and Section 73 of the Companies Act and Section 117C of the Companies Act and other provisions mentioned in the interim order pertaining to ILDS Regulations.?*

    iii. *Whether appointment of Ms. Kalpana Guha as the Debenture Trustee by the company was in violation of Section 117B of the Companies Act and whether Ms. Kalpana Guha has violated Section 12(1) of SEBI Act and Regulation 7 of the Debenture Trustees Regulations?*

    iv. *If the findings on issue Nos. (ii) and (iii) are found in the affirmative, who are liable for the violations committed?*

Issue No. 1**-** *Whether the company came out with the Offer of SRDs as stated in the interim order?*

18. I have perused the interim order for the allegation of Offer of SRDs. I note that neither the company nor the Directors have filed any reply disputing the same.

19. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is observed from Form 10, a copy of Board Resolution dated April 15, 2008 and a copy of Trust Deed filed by SDCL with RoC that the company has been authorized to issue debentures amounting to ₹ 20 crore and a charge of ₹ 20 crore was created on November 18, 2010 to secure the issuance of debentures in favour of Ms. Kalpana Guha as a Debenture Trustee. It is

further observed from MCA website that copies of two different resolutions of EGMs of SDCL dated March 12, 2012 have been filed with RoC. As per one copy of extract of minutes of EGM of SDCL held on March 12, 2012 at 11:00 am, the company is authorized to issue and allot the debentures aggregating to a nominal value not exceeding ₹ 30 crore and as per another copy of the extract of minutes of EGM held on the same date and time date, the company has been authorized to issue and allot the debentures aggregating to a nominal value not exceeding ₹ 50 crore. This indicates the discrepancy in filing of information with RoC by SDCL. It was further observed that the company filed another Form 10 with RoC for modification of charge on October 05, 2012 to *"Increase issue of Non-Convertible Debentures to ₹50 crore …"* in terms of Board Resolution dated February 10, 2012 and resolution passed in EGM of members dated March 12, 2012. This indicates that the issue size of the debentures was increased to ₹ 50 crore from initial ₹ 30 crore in terms of resolutions dated March 12, 2012.

20. It is noted from the Auditor's Report for the year ended March 31, 2012 that "*The Company had issued Secured Non-Convertible Redeemable Debentures at different Coupon rate for different tenure. The closing balance of debenture as on 31.03.2012 is ₹ 4,22,16,926/- on private placement basis*." It is observed that the same amount i.e. ₹ 4,22,16,926/- has been mentioned under the heading 'Long Term Borrowing' in 'Notes on Financial Statements for the year ended March 31, 2012 of the company. The corresponding amount as on March 31, 2010 has been stated as ₹ 4,08,78,400/- and ₹ 3,84,55,100/- as on March 31, 2011.

21. It is observed from the copies of letters of allotment and copies of brochure cum application form that SDCL issued SRDs in Series- I, II and III. It is mentioned in a copy of the brochure cum application form (Series-II) forwarded by BIEO that SDCL is offering SRDs of ₹ 100/-each aggregating to ₹ 10 crore on a private placement basis under the following terms and conditions:

Scheme - I Multiplier Secured Redeemable Debentures

Plan	A	B	C	D	E	F	G
Issue Price (Minimum 10 debentures) ₹	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-	1,000/-
Maturity value ₹	1,130/-	1,500/-	2,000/-	3,000/-	5,000/-	10,000/-	15,000/-
Redemption Period	1 Year	3 Years	5 Years	8 Years	10 Years	13 Years 6 months	16 Years 6 Months

Scheme - II Regular Income Secured Redeemable Debentures

Plan	*Redemption Period*	*Issue Price (Minimum 300 Debentures) ₹*	*Rate of Dividend*	*Maturity Value ₹*
				Principal + Bonus
P	*3 Years*	*30000/-*	*13.50%*	*30000/- + Nil*
Q	*5 Years*	*30000/-*	*13.50%*	*30000/- + 6% of Principal*
R	*8 Years*	*30000/-*	*13.50%*	*30000/- + 10% of Principle*

Issue opening date has been mentioned as February 01, 2010. It is also stated in the said brochure cum application form that the debentures are being issued pursuant to the resolution passed in the meeting of the Board of Directors of the company held on January 14, 2010.

22. Similarly, it is mentioned in a copy of the brochure cum application form (Series-III) forwarded by BIEO that SDCL is offering SRDs of ₹ 100/-each aggregating to ₹ 30 crore on a private placement basis under the following terms and conditions:

Scheme - I Multiplier Secured Redeemable Debentures

Plan	*A*	*B*	*C*	*D*	*E*	*F*	*G*
Issue Price (Minimum 10 debentures) ₹	*1,000/-*	*1,000/-*	*1,000/-*	*1,000/-*	*1,000/-*	*1,000/-*	*1,000/-*
Maturity value ₹	*1,130/-*	*1,500/-*	*2,000/-*	*3,000/-*	*5,000/-*	*10,000/-*	*15,000/-*
Redemption Period	*1 Year*	*3 Years*	*5 Years*	*8 Years*	*10 Years*	*13 Years*	*15 Years*

Scheme - II Regular Income Secured Redeemable Debentures

Plan	***Redemption Period***	***Issue Price (Minimum 300 Debentures) ₹***	***Rate of Dividend***	***Maturity Value Rs.***
				Principal + Bonus
P	*3 Years*	*30,000/-*	*13.50%*	*30000/- + 3% of Principal*
Q	*5 Years*	*30,000/-*	*13.50%*	*30000/- + 6% of Principal*
R	*8 Years*	*30,000/-*	*13.50%*	*30000/- + 10% of Principal*

Issue opening date has been mentioned as April 16, 2012. It is also stated in the said brochure cum application form that the debentures are being issued pursuant to the resolution passed at the meeting of the Board of Directors of the company held on February 10, 2012.

23. Thus, from the above and material available on record including the interim order following is observed with respect to number of allottees and the amount of money collected by the company:

- As per Board resolutions, minutes of EGM and copy of Trust Deeds, the company has been authorized to issue debentures amounting to ₹ 70 crore and a charge of ₹ 70 crore was created to secure the issuance of debentures.
- As per Auditor's report mentions that the amount raised as on March 31, 2012 was ₹ 4.22 crore. In this regard, I note that an Auditor's certificate, unless proven otherwise, indicates that the Auditor before issuing the certificate has exercised due care and caution to verify the balance sheet of the company for its substantial accuracy so as to contain a true and correct representation of the state of the company's affairs. In the extant matter, there is no evidence to the contrary to demonstrate that the company has not raised an amount of ₹ 42,216,926/- by issuing SRDs at different coupon rate as on March 31, 2012.
- The interim order based on the copies of letters of allotment and copies of "*principal & dividend warrants*" provided by complainants indicates that SDCL allotted SRDs to at least 63 allottees during the financial years 2010-11 to 2012-13 and an amount of at least ₹ 6,04,000/- was mobilised from these investors.
- It is noted from one of the complaints available on record that SDCL had issued

2 debenture certificates to one of its allottees worth ₹ 7 lakh during the financial year 2012-13.

24. Based on the above and in the circumstances of the case, it is concluded that the actual number of allottees could be more than forty nine and amount mobilized could be more than ₹ 42,216,926.

25. I therefore conclude that SDCL came out with an Offer of SRDs during the financial years 2010-11 to 2012-13 as outlined above.

Issue No. 2- *If so, whether the said offer was in violation of Section 56, Section 60, and Section 73 of the Companies Act and Section 117C of the Companies Act and other provisions mentioned in the interim order pertaining to ILDS Regulations.?*

26. The provisions alleged to have been violated and mentioned in issue No. 2 are applicable to the Offer of SRDs made to the public. Therefore the primary question that arises for consideration is whether the issue of SRDs is a 'public issue'. At this juncture, reference may be made to Sections 67(1) and 67(3) of the Companies Act, 1956:

> *"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
>
> *(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders*

of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub- section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

***Provided** that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*

***Provided further** that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."*

27. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the ***"Sahara Case"***), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

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

calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more… Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation."

28. Section 67(3) of Companies Act provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not 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, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

29. In the instant matter, for ascertaining whether the offer of SRDs is a public issue or

an issue on private placement basis in accordance with Section 67 of the Companies Act, a conclusive finding in respect of the number of investors to whom SRDs were issued by SDCL under such offer could not be made, as no information to that effect has been provided by SDCL or its Directors in spite of letters issued by SEBI on February 25, 2014 and March 6, 2014 sent to the company, letters dated July 9, 2014 issued to the 8 Directors (3 letters were served) and letter dated February 26, 2014 served on Debenture Trustee, requesting for the information. Further, a physical verification of the registered office September 25 2014, revealed the said premises is a home address. When attempts were made to enquire in the house, the door was not opened. Neither the security personnel nor the local post office were aware of the company.

30. From the above, I am of the opinion that this deliberate non-cooperation on the part of the Directors and Debenture Trustee is an attempt to conceal the true nature of the fund mobilization. Further, the raising of ₹ 6,04,000 by way of offering SRDs during the financial years 2010-11 to 2012-13 from atleast 63 allottees, creation of a charge of ₹ 70 crore and the Auditor report for the year ended March 31, 2012 stating that *"The Company had issued Secured Non-Convertible Redeemable Debentures at different Coupon rate for different tenure. The closing balance of debenture as on 31.03.2012 is ₹4,22,16,926/- on private placement basis"* leads to the reasonable conclusion that the number of persons investing during the financial years 2010-11 to 2012-13, would be much more than 49. Therefore, I find that the offer of SRDs by SDCL falls within the first proviso of Section 67(3) of Companies Act. Neither the company nor the Directors filed any reply contending that the offer and issuance of SRDs does not fall within the ambit of first proviso of Section 67(3) of Companies Act. Such issues are deemed to be public issues and SDCL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act.

31. It is noted from the Auditor's report and the brochure cum application form that SRDs were claimed to have been offered on a private placement basis. In this regard, I note that that as per the first proviso to Section 67(3) (inserted by the Companies

(Amendment) Act, 2000 w.e.f. 13.12.2000), "*any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation*". Also, reliance is placed on the observations made by the Hon'ble Supreme Court of India in *Sahara Case* wherein the Hon'ble Supreme Court observed: "*101. …… Section 81(1A), it may be noted, is only an* exception *to the said rule, that the further shares may be offered to any persons subject to passing a special resolution by the company in their general meeting. Section 81(1A) cannot, in any view, have an overriding effect on the provisions relating to public issue. Even if armed with a special resolution for any further issue of capital to person other than shareholders, it can only be subjected to the provisions of Section 67 of the Company Act, that is if the offer is made to fifty persons or more, then it will have to be treated as public issue and not a private placement. A public issue of securities will not become a preferential allotment on description of label. Proviso to Section 67(3) does not make any distinction between listed and unlisted public companies or between preferential or ordinary allotment."*

32. Even for a moment, if the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, the "*Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged."* In respect of the issuances, the Directors have not placed any material that the allotment was in satisfaction of Section 67(3)(a) or 67(3)(b) of Companies Act i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the extant issuance cannot be considered as a private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble SAT in *Neesa Technologies Limited* Vs. *SEBI* (Appeal No. 311 of 2016) which lays down that "*In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter*

the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".

33. Since, SDCL has allotted SRDs to more than forty nine allottees, I find that the Offer of SRDs by SDCL is a "public issue" within the meaning of the first proviso to Section 67(3) of the Companies Act.

34. I find that the Directors of SDCL have not claimed it to be a Non–Banking Financial Company or Public Financial Institution within the meaning of Section 4A of the Companies Act, 1956. In view of the same, I, therefore, find that there is no case that SDCL is covered under the second proviso to Section 67(3) of the Companies Act.

35. Therefore, in view of the material available on record, I find that the Offer of SRDs by SDCL falls within the first proviso of Section 67(3) of Companies Act. Hence, the Offer of SRDs are deemed to be public issues and SDCL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act.

36. Further, since the Offer of SRDs is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act. As per Sections 73(1) and (2) of the Companies Act, 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 and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

37. I find that no records have been submitted to indicate that the company has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Moreover, the allegations of non-compliance of the above provisions are not denied by the Directors of the company. Therefore, I find that SDCL has contravened the provisions of Sections 73(1) and (2) of the Companies Act.

38. Moreover, no material is available on record or submitted by the Directors of SDCL to show that the amount collected by the company was kept in a separate bank

account. Therefore, I find that SDCL has also not complied with the provisions of Section 73(3) of the Companies Act which mandates that the amounts received from investors shall be kept in a separate bank account.

39. Section 2(36) read with Section 60 of the Companies Act thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of SRDs was a deemed public issue of securities, SDCL was required to register a prospectus with the RoC under Section 60 of the Companies Act. I find that SDCL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the Offer of SRDs. I, therefore, find that SDCL has not complied with the provisions of Section 60 of the Companies Act.

40. In terms of Section 56(1) of the Companies Act, 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, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Neither SDCL nor its Directors produced any record to show that it has issued prospectus containing the disclosures mentioned in Section 56(1) of the Companies Act or issued application forms accompanying the abridged prospectus. Therefore, I find that, SDCL has not complied with Sections 56(1) and 56(3) of the Companies Act.

41. As regards the allegation of Section 117C of the Companies Act, it may be seen that the said provision mandates the company to create a debenture redemption reserve for the redemption of such debentures, to which every year, adequate amounts should be credited out of its profits, until such debentures are redeemed. None of the

Noticees have denied this allegation. There is no material on record to show that such debenture reserve was created. Therefore, I hold that the company has violated Section 117C of the Companies Act.

42. ILDS Regulations are applicable to the public issue and listing of debt securities. Regulation 2(e) of the ILDS Regulations defines debt securities to mean non-convertible debt securities which create or acknowledge indebtedness, and include debentures. In view of the finding that SDCL has made a public issue of debt securities, the ILDS Regulations is also applicable to the instant offer of SRDs. Therefore, I find that the company has violated the following provisions of the ILDS Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

    i. Regulation 4(2)(a) – *Application for listing of debt securities*
    ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
    iii. Regulation 4(2)(c) – *Credit rating has been obtained*
    iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
    v. Regulation 4(4) – *Appointment of Debenture 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.*

43. I note that the jurisdiction of SEBI over various provisions of the Companies Act including the above mentioned, in the case of public companies, whether listed or

unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act. While examining the scope of Section 55A of the Companies Act, 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".*

44. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, SEBI has to administer Section 67 of the Companies Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase "intend to get listed" in the context of deemed public issue the Hon'ble Supreme Court in *Sahara Case* observed-

> *"…But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, "intent" has its limitations also, confining it within the confines of lawfulness…"*
>
> *"…Listing of securities depends not upon one's volition, but on statutory mandate…"*
>
> *"…The appellant-companies must be deemed to have "intended" to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be*

presumed that the appellant companies could have "intended", what was contrary to the mandatory requirement of law…"

45. In view of the above findings, I am of the view that SDCL engaged in fund mobilizing activity from the public, through the Offer of SRDs and has contravened the provisions of Sections 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act and above mentioned provisions pertaining to ILDS Regulations during the financial years 2010-2011 to 2012-2013.

***Issue No. 3**- Whether appointment of Ms. Kalpana Guha as the Debenture Trustee by the company was in violation of Section 117B of the Companies Act and whether Ms. Kalpana Guha has violated Section 12(1) of SEBI Act and Regulation 7 of the Debenture Trustees Regulations?*

46. I have perused the copy of the Debenture Trust Deeds dated November 18, 2010 and October 5, 2012. I find that SDCL had created a charge of ₹ 70 crore for the Offer of SRDs by the company. I further find that Ms. Kalpana Guha is the Trustee as per the aforesaid Trust Deeds and Form-10.

47. Section 12(1) of the SEBI Act states that: "*No… trustee of trust deed … shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Regulation 7 of the Debenture Trustees Regulations, states that *only a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body corporate alone are eligible to get a certificate of registration as Debenture Trustee.* Ms. Kalpana Guha does not satisfy the eligibility criteria mentioned in Regulation 7 of the Debenture Trustees Regulations. In view of the same, I find that Ms. Kalpana Guha dealt in the impugned SRDs as debenture trustee, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act.

48. Under Section 117B of the Companies Act, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company 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. Since SDCL has appointed Ms. Kalpana Guha who does not have a certificate of registration, the appointment of the same is in violation of Section 117B of the Companies Act. Further, I find that SDCL has not issued a prospectus with the relevant information and therefore, the requirement of stating the consent of the debenture trustee to be so appointed on the face of the prospectus has also not been complied with.

Issue No. 4*- If the findings on issue Nos. (ii) and (iii) are found in the affirmative, who are liable for the violations committed?*

49. I note from the MCA records, the following details of the appointment and resignation of the Directors:

Sl. No.	Name of the Director	Date of appointment	Date of cessation
1	Prasanta Bera	21/11/2006	Continuing
2	Biraja Bera	21/11/2006	Continuing
3	Paromita Dey	15/10/2011	Continuing
4	Biswajit Roy	1/1/2014	Continuing
5	Arun Sardar	1/1/2014	19/3/2016
6	Aravinda Mondal	1/1/2014	Continuing
7	Sridhar Mukherjee	18/1/2014	Continuing
8	Abdul Mandal	1/2/2014	Continuing

50. Mr. Aravinda Mondal and Mr. Sridhar Mukherjee have submitted that their signatures were forged to associate them with the company in the capacity of a Director. It is noted from their submissions that they had requested time to approach the Company Law Board to delete their name from the records of the company. However, they have not submitted anything with respect to it / status of the petition, if filed, subsequent to making their submission. Further, Mr. Sridhar Mukherjee has also not submitted the status of the police complaint filed by him. As per MCA records, the Noticees are shown as the Directors of the company. Noticees have not submitted any supporting documents to show that they have taken steps to remove their name from the records of the company viz., status of police complaint, correspondence with the company, steps taken pursuant to informing RoC , petition, if filed with Company Law Board etc. Thus, the submission of the Noticees is untenable. However, Mr. Aravinda Mondal and Mr. Sridhar Mukherjee have claimed that their signature was forged. In light of the same, the burden of proof is on them to prove that their signature was forged and they were made the Director of the company without their knowledge. The said principle has also been recognised by various Courts in catena of cases. In this regard, I note the following observations of the Hon'ble Securities Appellate Tribunal in the matter of *Kalidas Dutta* vs. *SEBI* decided on January 23, 2018:

"…we are of the considered opinion that this appeal can be disposed of with a direction to the appellant to obtain appropriate documents/orders from the competent authority to the effect that he was fraudulently appointed as director of the company in question on 10th February, 2015. For this purpose, the appellant is granted time up to one year to do the needful and submit the same to SEBI. In the eventuality of appellant producing the documents to the satisfaction of SEBI that he was fraudulently inducted as one of the directors of the company, SEBI will pass appropriate orders as per law."

51. Therefore, I am of the considered view that Mr. Aravinda Mondal and Mr. Sridhar Mukherjee may be granted 365 days' time to obtain appropriate order from the

competent authority with respect to their allegation of forgery. The said order, if any, shall reach SEBI within 365 days from the date of this order. Till that time the directions against Mr. Aravinda Mondal and Mr. Sridhar Mukherjee passed in this order shall not take effect. Pending such determination, I am compelled to accept the MCA records in respect of their tenure.

52. From the documents available on record, the details of the appointment and resignation of the Noticees as Directors based on MCA records, I find that Mr. Prasanta Bera, Mr. Biraja Bera and Ms. Paromita Dey were the Directors of SDCL when the company had issued SRDs i.e., during the financial years 2010-2011 to 2012-2013. The rest of the Noticees became the Directors of SDCL, subsequent to the issuance of SRDs. As per records, Mr. Arun Sardar has ceased to be the Director of the company.

53. Sections 56(1) and 56(3) read with Section 56(4) of the Companies Act imposes the liability on the company, every Director, and other persons responsible for the prospectus for the compliance of the said provisions. 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 provision. Therefore, SDCL, Mr. Prasanta Bera, Mr. Biraja Bera and Ms. Paromita Dey are held liable for the violation of Sections 56(1), 56(3) and 60 of the Companies Act.

54. As far as the liability for non-compliance of Section 73 of Companies Act is concerned, as stipulated in Section 73(2) of the said Act, the company and every Director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per Section 73 (2) of the Companies Act, the company and every Director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D

of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.

55. From the material available on record and the details of the appointment and resignation of the Directors of SDCL as reproduced in table above, it is noted that Mr. Prasanta Bera, Mr. Biraja Bera and Ms. Paromita Dey were the Directors at the time of the issuance of SRDs. Hon'ble Securities Appellate Tribunal in the matter of *Pritha Bag* vs. *SEBI* decided on February 14, 2019 had observed as follows:

"Unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) cannot be invoked against the appellant. In the instant case, the appellant has annexed documents to indicate that the company had a managing director, namely, Mr. Indranath Daw and, therefore, as per the provisions of Section 5 the managing director would be an officer in default. We also find that there is no finding given by the WTM that the appellant was the managing director or whole time director or was a person charged by the Board with the responsibility of compliance with the provisions of the Companies Act and, consequently, could not be made responsible for refunding the amount under Section 73(2)."

56. In the present case, no material has been brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act or any specified Director of SDCL was entrusted to discharge the obligation contained in Section 73 of the Companies Act. Therefore, as per Section 5(g) of the Companies Act all the Directors of SDCL at the time of the issuance of SRDs, are officers in default and are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under Section 73(2) of the Companies Act for the non-compliance of the above mentioned provisions. Since, the liability of the company to repay under Section 73(2) of the Companies Act is continuing and such liability continues till all the repayments are made, the above said Directors are co-extensively responsible along with the company for making refunds along with interest under Section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and Section 27(2) of the SEBI Act.

Therefore, I find that SDCL, Mr. Prasanta Bera, Mr. Biraja Bera and Ms. Paromita Dey are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

57. I note that during the financial years 2010-2011 to 2012-2013, SDCL through Offer of SRDs, had collected at least an amount of ₹ 42,216,926/- from various allottees. I note that Mr. Prasanta Bera, Mr. Biraja Bera and Ms. Paromita Dey were Directors at the relevant time. Therefore, in view of Hon'ble Securities Appellate Tribunal Order dated July 14, 2017 in the matter of *Manoj Agarwal* vs*. SEBI*, I am of the view that the obligation of the aforesaid Directors to refund the amount with interest jointly and severally with SDCL to the extent of amount collected during their tenure as Director of SDCL.

58. Further, I note that, Mr. Biswajit Roy, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal were appointed Directors of the company after the period of issuance of SRDs. The aforesaid Directors are still continuing as a Director of SDCL. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the Mr. Biswajit Roy, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal are not liable for refund of money jointly and severally with SDCL and other Directors as they were not the Directors during the relevant time of fund mobilization. However, I note that the company has a continuing liability to refund the money collected from the public through issuance of SRDs pursuant to its failure to comply with public issue norms for said issuance. The fact that Mr. Biswajit Roy, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal are the present and continuing Directors of SDCL, I find that Mr. Biswajit Roy, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal are indeed responsible to ensure that SDCL makes refund of money to the allottees as prescribed in law.

59. I also note that Mr. Arun Sardar was appointed after the issuance of SRDs but had resigned from the company as the Director on March 19, 2016. Therefore, though he

is not liable to refund the money collected from the issuance of SRDs, he was liable to ensure that the company refunded the money to its investors during his period of directorship with the company.

60. 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 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. "*

61. 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. The Noticees cannot therefore wriggle out from liability. A Director who is part of a company's Board shall be responsible and liable for all acts carried out by a company. Accordingly, I note that Mr. Biswajit Roy, Mr. Arun Sardar, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal are responsible for all the deeds/acts of the company during the period of their directorship and are obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act. In view of the failure to discharge the said liability of ensuring refund Mr. Biswajit Roy, Mr. Arun Sardar, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal are liable to be

debarred for an appropriate period of time.

62. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under Section 73(2) of the Companies Act, is to direct Directors of SDCL, viz. Mr. Prasanta Bera, Mr. Biraja Bera and Ms. Paromita Dey to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the company and its Directors, in order to safeguard the interest of the investors who had subscribed to such SRDs issued by the company, to safeguard their investments and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the other Noticees.

63. In view of the discussion above, appropriate action in accordance with law needs to be initiated against Noticees, viz. SDCL, Mr. Prasanta Bera, Mr. Biraja Bera, Ms. Paromita Dey, Mr. Biswajit Roy, Mr. Arun Sardar, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal.

64. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:

a. SDCL, Mr. Prasanta Bera, Mr. Biraja Bera and Ms. Paromita Dey shall forthwith refund the money collected by the company, during their respective period of directorship, through the issuance of SRDs including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable".

c. SDCL and its present Directors, Mr. Prasanta Bera, Mr. Biraja Bera, Ms. Paromita

Dey in their personal capacity as well on behalf of the company are directed to provide an updated full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form of the company and their own.

d. Mr. Biswajit Roy, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal are directed to provide an updated full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form of the company.

e. SDCL and its present Directors, Mr. Prasanta Bera, Mr. Biraja Bera, Ms. Paromita Dey, Mr. Biswajit Roy, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal are permitted to sell the assets of the company for the sole purpose of making the refunds as directed above and deposit the 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 investors till the full refund/repayment as directed above is made.

f. Mr. Prasanta Bera, Mr. Biraja Bera and Ms. Paromita Dey are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the 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 investors till the full refund/repayment as directed above is made.

g. SDCL and its present Directors, Mr. Prasanta Bera, Mr. Biraja Bera, Ms. Paromita Dey all in their personal capacity and on behalf of the company, Mr. Biswajit Roy, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal all on behalf of the company, shall issue public notice, in all editions of two National Dailies

(one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.

h. After completing the aforesaid repayments, SDCL and its present Directors, Mr. Prasanta Bera, Mr. Biraja Bera, Ms. Paromita Dey on behalf of the company and in their personal capacity while Mr. Biswajit Roy, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal on behalf of the company shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India holding such certificate.

i. In case of failure of SDCL, Mr. Prasanta Bera, Mr. Biraja Bera and Ms. Paromita Dey to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from the company and the Directors liable to refund as specified in paragraph 60 (a) of this Order, in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws.

j. SDCL, Mr. Prasanta Bera, Mr. Biraja Bera and Ms. Paromita Dey are directed not to, directly or indirectly, access the securities 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 (four) years from the date of completion of refunds to investors as directed above. The above said Directors are also restrained from 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 from the date of this Order till the expiry of 4 (four) years from the date of

completion of refunds to investors.

k. Mr. Biswajit Roy, Mr. Arun Sardar, Mr. Aravinda Mondal, Mr. Sridhar Mukherjee and Mr. Abdul Mandal are directed not to, directly or indirectly, access the securities 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 for a period of 4 (four) years from the date of this Order. The above said Directors are also restrained from 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 for a period of 4 (four) years from the date of this order.

l. Ms. Kalpana Guha is restrained from accessing the securities market and is further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.

m. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the Noticees shall remain frozen.

65. This order will come into effect with respect to Mr. Aravinda Mondal and Mr. Sridhar Mukherjee on the expiry of three hundred and sixty fifth (365) day of this order, if the order of the Competent Authority is not produced by Mr. Aravinda Mondal and Mr. Sridhar Mukherjee within such 365 days, or, if produced within such period, the same is not in favour of Mr. Aravinda Mondal and Mr. Sridhar Mukherjee. This direction shall not take effect if the order of the Competent Authority is produced within such period and the same is in favour of Mr. Aravinda Mondal and Mr. Sridhar Mukherjee. For the rest of the Noticees, the directions shall come into force with immediate effect.

66. This order is without prejudice to any action that SEBI may initiate under securities laws, as deemed appropriate in respect of the above violations committed by SDCL and its Directors and other key persons.

67. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.

68. 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.

69. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

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DATE: April 16, 2019
PLACE: Mumbai

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA