WTM/MPB/EFD-1-DRA-IV/28 /2019

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 read with Companies Act, 2013

In the matter of The Canning Industries Cochin Limited

In re Deemed Public Issue

In respect of

Serial no.	**Entity Name**	**PAN**	**CIN/DIN**
1.	The Canning Industries Cochin Limited	AAACC9788Q	U01122KL1947PLC000257
2.	Mr. Chiriankandath Palu Jose	ACPPJ8027R	00764405
3.	Mr. Parappilly Varunny Davis	ABSPD2248Q	01204901
4.	Mr. Paul Thalokaren Timothy	AENPP6875K	00668710
5.	Mr. Mazhuvancheriparambath Kuriakose Aelias	ACPPA1949P	00896687
6.	Mr. Chiriyankandath George Joy	ABSPJ1073H	01205014
7.	Ms. Jessy Pavoo	ALXPP7358N	06670178
8.	Mr. Vadakken Raphael	ABRPV9567B	02028276
9.	Mr. Paul Ovungal Raphael	AEAPP2327R	07407137

10.	Mr. Ovungal Pyloth Rappai	ACKPR9190A	00870144
11.	Mr. Joseph Chiramel (Debenture Trustee)	AQXPJ4232C	Not applicable

Background of the Case:

1. The Canning Industries Cochin Ltd. (hereinafter referred to as "**CAICO**"/ "**the Company**") is a Public company incorporated on March 25, 1947 and registered with Registrar of Companies–Ernakulam (RoC) with CIN: U01122KL1947PLC000257. Its registered office is at Caico Road, Trichur, Kerala - 680006.

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received complaints against CAICO in respect of its issue of Fully Convertible Debentures (hereinafter referred to as "**FCDs**") and undertook an enquiry to ascertain whether CAICO had made any public issue of securities without complying with the provisions of the Companies Act, 2013; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations, 2009 (hereinafter referred to as "**ICDR Regulations**").

3. Further, RoC-Kerala & Lakshadweep vide letter dated March 15, 2016, *inter alia*, informed SEBI that CAICO filed a Form – GNL2 in the MCA Portal for registration of Prospectus for issue of 1,92,900 FCDs aggregating to Rs. 4,82,25,000/- to the existing members by passing a special resolution under Section 62(3) read with Section 71of the Companies Act, 2013 read with Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014.

4. On enquiry by SEBI, it was observed that CAICO had made an *offer of FCDs* in the financial year 2015-2016 (hereinafter referred to as **"Offer of FCDs"**) and raised an amount of Rs. 2,83,50,000 from 335 allottees. It was also observed that CAICO appointed Mr. Joseph Chiramel as Debenture Trustee for the *Offer of FCDs*.

5. The above *Offer of FCDs* and pursuant allotment were deemed public issue of securities under Section 42 of the Companies Act, 2013 read with Rule 14 (2) (b) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The resultant requirement under section 40 of the Companies Act, 2013 and the relevant provisions of the SEBI Act and the ICDR Regulations were not complied with by CAICO in respect of the *Offer of FCDs*. Further, the Debenture Trustee viz. Mr. Joseph Chiramel has *prima facie* violated section 12(1) of the SEBI Act and regulation 7 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as *"* **Debenture Trustees Regulations*"*).

6. As the above said *Offer of FCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 2013 and the ICDR Regulations, SEBI passed an interim order dated August 9, 2017 (hereinafter referred to as "**interim order**") and issued the following directions:

   i. "CAICO shall forthwith cease to mobilize fresh funds from investors through the Offer of FCDs 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. CAICO (PAN: AAACC9788Q), its present directors viz. Mr. Chiriankandath Palu Jose (PAN: ACPPJ8027R), Mr. Parappilly Varunny Davis (PAN: ABSPD2248Q), Mr. Paul Thalokaren Timothy (PAN: AENPP6875K), Mr. Mazhuvancheriparambath Kuriakose Aelias (PAN: ACPPA1949P), Mr. Chiriyankandath George Joy (PAN: ABSPJ1073H), Ms. Jessy Pavoo (PAN: ALXPP7358N), Mr. Vadakken Raphael (PAN: ABRPV9569B) and Mr. Paul Ovungal Raphael (PAN: AEAPP2327R) and the past Director viz., Mr. Ovungal Pyloth Rappai (PAN: ACKPR9190A) are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public/investors for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;

iii. *CAICO and its abovementioned Directors shall provide a full inventory of all their assets and properties;*

iv. *CAICO and its present Directors, viz. Mr. Chiriankandath Palu Jose (PAN: ACPPJ8027R), Mr. Parappilly Varunny Davis (PAN: ABSPD2248Q), Mr. Paul Thalokaren Timothy (PAN: AENPP6875K), Mr. Mazhuvancheriparambath Kuriakose Aelias (PAN: ACPPA1949P), Mr. Chiriyankandath George Joy (PAN: ABSPJ1073H), Ms. Jessy Pavoo (PAN: ALXPP7358N), Mr. Vadakken Raphael (PAN: ABRPV9569B) and Mr. Paul Ovungal Raphael (PAN: AEAPP2327R) shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by the company, without prior permission from SEBI;*

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

vi. *CAICO and its abovementioned Directors shall co-operate with SEBI and shall furnish all information/documents sought by SEBI;*

vii. *The Debenture Trustee, viz. Mr. Joseph Chiramel (PAN: AQXPJ4232C) is prohibited from continuing with its assignment as debenture trustee in respect of the Offer of FCDs of CAICO 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 the Order till further directions."*

7. The interim order also directed CAICO, its past and present Directors, and its debenture trustee viz., Mr. Joseph Chiramel to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, read with ICDR Regulations, including the following, should not be passed against them:

   i. *"Directing CAICO and its past and present Directors to jointly and severally refund*

money collected from investors through the issue of FCDs that are impugned in this Order, along with interest of 15% per annum;

ii. *Directing CAICO, its past and present Directors 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. *Restraining CAICO, its past and present Directors and debenture trustee, viz. Mr. Joseph Chiramel from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period."*

8. Vide the said interim order, CAICO, its past and present Directors along with its Debenture Trustee (hereinafter collectively referred to as "**the Noticees**") were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated that the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

9. The copy of the said interim order was sent to the Noticees vide letter dated August 14, 2017 which were delivered to all the Noticees. Vide letter dated September 22, 2017, CAICO submitted its reply to the interim order cum show cause notice. After affording an opportunity of hearing to the Noticees and considering the material available on records, SEBI vide final order dated July 12, 2018 revoked the interim directions issued in respect of CAICO and its past and present directors, viz. Mr. Chiriankandath Palu Jose, Mr. Parappilly Varunny Davis, Mr. Paul Thalokaren Timothy, Mr. Mazhuvancheriparambath Kuriakose Aelias, Mr. Chiriyankandath George Joy, Ms. Jessy Pavoo, Mr. Vadakken Raphael, Mr. Paul Ovungal Raphael and Mr. Ovungal Pyloth Rappai and Mr. Joseph Chiramel, Debenture Trustee.

10. The said order was challenged before the Hon'ble Securities Appellate Tribunal ("SAT") *inter alia,* on the ground that SEBI wrongly interpreted the proviso to Rule 13 of the

Companies (Share Capital and Debentures) Rules, 2014 and the Hon'ble SAT vide order dated December 18, 2018 disposed of the appeal and remanded the matter to SEBI with a direction to pass a fresh order in accordance with law within a period of three months from the date of the order.

11. In compliance with the order of the Hon'ble SAT, vide hearing notice dated January 02, 2019, the Noticees were granted an opportunity of personal hearing on January 16, 2019. The said letter was delivered to all the Noticees through speed post with acknowledgment and also served through hand delivery. In response, the Company vide letter dated January 07, 2019 sought an adjournment. In view of the same, another opportunity of hearing was granted to the Noticees on January 25, 2019. The hearing notice dated January 11, 2019 was duly served on all the Noticees through Speed Post with acknowledgement.

12. *Hearing and submissions*: Mr. Srikant Mohan, Practicing Company Secretary and Mr. Thomas P. T., General Manager of the Company, authorized representatives on behalf of the Company and other Noticees ("AR") appeared before me and made *inter alia*, the following submissions:

    i. That the complainants in the present matter alleges that the Company offered and allotted FCDs to more than 200 shareholders in violation of Section 42 of the Companies Act, 2013.

    ii. That the Company was in debt and due to operational issues, the banks were not giving loans. So only option was to raise money from the shareholders of the Company. Since the Complainants/shareholders of the Company approached various forums such as Kerala High Court/NCLT/CLB alleging oppression and mismanagement and obtained various restraint orders against the company from making any private placement, the Company issued convertible debentures on preferential basis.

    iii. That the only issue in this matter is with respect to the limit of number of persons i.e. 200 to whom offer was made and allotted the FCDs in the matter.

    iv. That this offer was made under Section 62 (3) of the Companies Act, 2013 and not under Section 42 of the Companies Act and it's a preferential allotment of Shares

to its existing shareholders.

v. No right of renunciation was given to the existing shareholders in such a manner that no additional shareholding was created.

vi. This is not equity shares issued to existing shareholder with proportionate rights hence it is not Rights Issue as well.

vii. However, the Complainants challenged the issue as public issue since it exceeded the limit of 200 persons.

viii. That it is not issued to any member of public and no public is involved. It was offered to existing promoters, directors etc. Existing members of the Company cannot be termed as "Public". They have not negotiated any rate with any of its shareholders as in the case of private placement.

ix. Under Rule 13 of Companies (Share Capital and Debentures) Rules, 2014, even though a Company is making preferential allotment, it has to comply with all the conditions laid down in Section 42. That certain exceptions are given, if it is offered to existing shareholders of the Company.

x. That the Company had complied with all the requirements for the preferential allotment and additionally, the Company filed prospectus with RoC as a matter of abundant precaution.

xi. There was no intention to list the shares of the Company and also that the Company is not in a position to comply with any of the IPO requirements. The Company was left with only this option to raise money or else the Company would have moved to BIFR.

13. Upon query as to the remaining Noticees, the AR submitted that the Company in its board meeting dated January 21, 2019, (copy submitted) resolved to do all such acts needful in the matter before SEBI, hence, no one appeared for Mr. Chiriankandath Palu Jose, Mr. Parappilly Varunny Davis, Mr. Paul Thalokaren Timothy, Mr. Mazhuvancheriparambath Kuriakose Aelias, Mr. Chiriyankandath George Joy, Mr. Jessy Pavoo, Mr. Vadakken Raphael, Mr. Paul Ovungal Raphael and Mr. Ovungal Pyloth Rappai and the Debenture Trustee, Mr. Joseph Chiramel. The ARs were given one weeks' time to file additional

written submissions.

14. Vide letter dated February 01, 2019, the Company has filed the following additional written submissions:

    1. *"The submissions made hereunder are in addition to the two written submissions already made on 20-09-2017 and 04-04-2018 as well as the oral submissions made at the time of personal hearing on 20-03-2018 and 25-01-2019.*
    2. *The Members of the Company at their 68th Annual General Meeting, duly held on 29th September, 2015, had approved the Special Resolution pursuant to Section 62(3) and 71 of the Companies Act, 2013, proposing to issue 1,92,900 Unsecured Fully Convertible Debentures (FCDs) of Rs.250/- each to 1,929 existing Members of the Company in such manner that 100 FCDs will be offered to every shareholder holding equity shares on the Record Date to be fixed by the Board of Directors (BOD), with no right to renounce.*
    3. *To provide an opportunity to all the Members to participate in the FCD issue irrespective of their shareholding, the resolution proposed an application size of 100 FCDs per shareholder. Further, the Company wanted to ensure that in case of under subscription, the unsubscribed portion will be allotted only to Members. Many of our Members are Members for decades and through Balance Sheet and other corporate communications, they are well aware of the stressed financial position of the Company. By allotting FCDs to shareholders at the rate of 100 Debentures per member, as mentioned above, the intention of the Company was to ensure wider and full participation of its1929 shareholders investing a meagre sum of Rs. 25,000 per Member. The BOD never wanted any person other than its existing shareholders to subscribe to FCDs and the Board ensured compliance of this by passing a resolution stating therein that in case of under subscription, the FCDs shall be disposed-off by the BOD by allotting only to its existing shareholders as on the record date determined at the time of offer of the said convertible securities. Again, the shareholders were also not given any right of renunciation to ensure that none other than its existing shareholders subscribe*

to the FCDs. The Application form and prospectus were dispatched only to the Members of the Company. The copies of the postal receipts relating to the dispatch of the Application form was already submitted before you. In this connection, we wish to draw your attention to Section 62(3) of the Companies Act, 2013, which states that nothing in this Section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company, provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a Special Resolution passed by the company in General Meeting. Thus, Sub-Section 3 of Section 62 takes away the applicability of Section 62 for the increase in share capital caused by conversion of debentures, provided the conditions stipulated therein are satisfied. This was the reason why the company passed the special resolution under section 62 (3). In fact, when the debentures would be converted into equity shares, it is a preferential offer under section 62 (1) (c) as the shares were offered to the existing members of the company for cash, the conversion price of which on the basis of the valuation report and the issue also satisfies Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 and Section 42 to the extend applicable. "It is not private placement as the offer of securities is not to a "select group of persons", but to the entire existing shareholders or members of the Company.

4. *The main allegation against the company is that it has allotted FCDs to 335 persons and thus violated Section 42 (1) and Rule 14 (2) (b) of The Companies (Prospectus and Allotment of Securities) Rules, 2014. The following Submissions are made in this respect:*
    a) *The issue in Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI relates to issue of securities to lakhs of people, mostly outsiders. In our case, the issue is made to existing shareholders and no new shareholders are created consequent to the issue. Further, in the Companies Act, 2013, there is no*

parallel provision that can be drawn in comparison to Section 67 of the erstwhile Companies Act, 1956, based on which the Sahara issue was decreed. Kindly do not equate this to the offer and allotment of FCDs to 335 persons, all of whom are the shareholders of the Company. This also proves beyond doubt that the concept of "public offer" does not apply in the instant case as the present Companies Act does not identify who constitutes a "Public" which was clearly provided under erstwhile Companies Act, 1956 under Section 67. The present Act has, however, borrowed the limit of offers to be made to public (200 now and which was 50 earlier). Limit established under the law is one of the stipulations and not the only condition for determination of "public offer". If it is analysed in terms of IPO made by a company, the SEBI (ICDR) Regulation itself stipulates separate conditions for persons holding shares prior to the IPO (i.e. existing shareholders) as well as persons who will become shareholders through IPO. For instance, there is a condition that the existing shareholders' holdings are subject to lock-in-period. This again proves that the law determines an existing shareholder different from the public otherwise.

b) *The offer of FCDs was made individually to the existing shareholders of the company. A shareholder of a company, as an insider, is well aware of the happenings in the company which is not the situation when an offer is made to an outsider and of course both insider and outsider comes within the broad meaning of public. It is a preferential offer. The explanation provided to Rule 13 (1) states that preferential offer means an issue of shares or other securities by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities.*

c) *Section 42 deals with offer or invitation for subscription of securities on Private Placement. Private Placement generally envisages issue price*

negotiation with the prospective investors. In our case there is no price negotiation and the offer and allotment is made only to the existing shareholders of the company. Therefore, it is not a Private Placement requiring compliance of Section 42 of the Act per se, except to the extent of applicability derived from Rule 13 of the Companies (Share capital and Debenture) Rules, 2014.

d) *The Explanation (i) to Rule 14 (2) (b) of the Companies (Prospectus and Allotment of Securities) states that "the restriction under sub-clause (b) would be reckoned individually for each kind of security that is equity share, preference share or debenture". This means that the applicability of the provision arise only in the case of identified three securities and not otherwise. Our issue is fully Convertible Debentures which is a hybrid instrument, a convertible security as identified in the prospectus itself and therefore, on this ground, the limit of 200 persons is not applicable.*

e) *Section 42 uses the term "persons". Of course, it is true that in its widest and general meaning the term includes anybody and everybody. In our case, the offer and allotment is made only to the existing members of the company. An existing member is an insider enjoying contractual rights and privileges of the company, which is not otherwise available to the outsiders. He occupies a superior position than "outsiders". When an existing member is equated to the level of "a mere person", it is a situation where one is totally ignoring his superior status.*

f) *As the offer for the issue under challenge was made only to the existing shareholders and no new shareholders were created or intended to be created, the question of public {even for a possibility) does not arise. Therefore, the offer cannot be perceived to be a "public offer" and thus, the incidental compliance is as well, not required.*

5. *Further, the following facts which are significant, circumstantially were also placed:*

i. *In the 70 years of its existence, for the first time the Company was dragged to Court/ various legal Forums, by two of its shareholders who became shareholders only in 2008.*

ii. *The Petitioners are members of a cartel based in Thrissur, Kerala concentrating on companies having large land bank. They buy small lots of shares, enter the Company as a shareholder, muster enough support to topple the existing management and if succeed, get elected as directors and if not knock the doors of authorities and Regulators including courts, ROC, SEBI and others with petitions/ complaints to see whether they can muster enough support from the authorities to wreck the Company chosen for action. One of their members and a onetime leading stock broker, succeeded in toppling a Christian majority promoted scheduled commercial bank from South India and presently occupies 'its director position. Ever since the complainants became members of the Company, they started efforts to corner the Management of the Company but, could not succeed till the year 2013 because Rev. Father M I David (the legend who was instrumental in the promotion of CAICO during pre- independence period) was alive. Unfortunately, Rev. Father M. I. David passed away on 21.08.2013 and immediately in 2014, at the time of Annual General Meeting, they approached the then Company Law Board and were successful in stalling the proposed preferential issue or for that matter, any positive initiative adopted by the Management to revive the Company. Needless to state here the extraneous use of Shareholder democracy by the said Petitioners involved cartel, otherwise considered to be sacrosanct before the law.*

iii. *Considering the background and genuineness of the transaction, the real financial difficulties faced by the Company, the efforts made by the management to save this 1947 company a one-time leader of "Caico brand" and above all that the Company has followed the spirit of law, a request to*

take a lenient view is also expressed."

15. I have considered the allegations and materials available on record such as interim order cum show cause notice, replies of the Noticees to the same along with documents contained therein, oral submissions during the hearing, documents filed by the Company with MCA, etc. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

    (1) Whether the company came out with the Offer of FCDs as stated in the interim order.

    (2) If so, whether the said issue was in violation of section 40 of the Companies Act, 2013 read with the relevant provisions of ICDR Regulations.

    (3) Whether appointment of Mr. Joseph Chiramel as the Debenture Trustee by CAICO is in violation of Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

    (4) *If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?*

<u>ISSUE No. 1</u>- Whether the company came out with the Offer of FCDs as stated in the interim order.

16. I have perused the interim order dated August 9, 2017 for the allegation of *Offer of FCDs*.

17. I have also perused the documents/ information obtained from the 'MCA 21 Portal', other documents available on records. It is noted that CAICO has issued and allotted FCDs to 335 investors during the financial year 2015-2016 and raised an amount of Rs. 2,83,50,000. The said fact was also admitted by the Company vide its earlier replies dated September 22, 2017 and April 4 &5, 2018 and written submissions dated February 01, 2019. From the perusal of these replies/submissions, I note that the Company has admitted that on September 29, 2015, the members of the Company had approved the Special Resolution pursuant to Section 62(3) and 71 of the Companies Act, 2013, to issue 1,92,900 Unsecured Fully Convertible Debentures (FCDs) of Rs.250/- each to 1,929

existing Members of the Company in such manner that 100 FCDs will be offered to every shareholder holding equity shares on the Record Date to be fixed by the Board of Directors (BOD), with no right to renounce. Further, it is also noted that the Company admitted and acknowledged that the Board of Directors allotted 33,200 FCDs to 332 applicants, aggregating to Rs. 83,00,000/- on December 10, 2015 and allotted 80,200 FCDs to 3 persons including two Directors and a relative of one of the directors, aggregating to Rs. 2,00,50,000/- on December 16, 2015 totaling to an amount of Rs.2,83,50,000/-.

18. I, therefore, conclude that CAICO came out with an *offer of FCDs* to 1,929 persons and allotted FCDs to 335 persons as outlined above.

ISSUE No. 2- If so, whether the said issue was in violation of section 40 of the Companies Act, 2013 read with the relevant provisions of ICDR Regulations.

19. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of FCDs* made to the public. Therefore, the primary question that arises for consideration is whether the issue of FCDs was 'public issue'. I note that the parameters laid down to determine whether an issue is 'deemed public issue or not' are under Section 42 of the Companies Act, 2013 read with Rule 14(2)(b) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The relevant provisions as it stood as on the date of offer of FCDs are reproduced hereunder for reference:

Section 42 of Companies Act, 2013:

" (1) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issue of a private placement offer letter.

(2) Subject to sub-section (1), the offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees

stock option as per provisions of clause (b) of sub-section (1) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed.

Explanation I.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

Explanation II— For the purposes of this section, the expression—

(i) "qualified institutional buyer'' means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 as amended from time to time.

(ii) "private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.

(3) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

(4) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.''

Rule 14(2) (b) of the Companies (Prospectus and Allotment of Securities) Rules, 2014:

> *"(2) A company shall not make private placement of its securities unless-*
> *(b) such offer or invitation shall be made to not more than 200 persons in the aggregate in a financial year."*

20. Section 42(1) of the Companies Act, provides for the stipulations of a private placement stating that a company may make a private placement by issuing a private placement offer letter. Section 42(2) of the Companies Act, 2013 provides that such offer, to be considered a private placement, shall be made to persons not exceeding fifty, or such higher number as may be prescribed, in a financial year. The said provision provides exclusions to qualified institutional buyers and employees of the Company being offered securities under a scheme of employees stock option as per section 62(1)(b) of the Companies Act, 2013. Explanation 1 to Section 42(1) of the Companies Act, 2013 reiterates that if a company, listed or unlisted, makes an offer to allot or allots, securities to more than the prescribed number of persons, then irrespective of whether the Company has received payment for the securities or whether or not the company intends to list its securities on any recognized stock exchange in or outside India, the offer shall be deemed to be an offer to the public. Rule 14(2)(b) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, prescribes that unless a company makes an offer of securities to less than 200 persons in a financial year, the company cannot be said to have made a private placement of its securities. Under such circumstances, where a company has made an offer to allot securities to more than 200 persons in a financial year, whether the company intends to lists its securities on a recognized stock exchange, the offer of securities is deemed to be an offer to the public and is accordingly governed by the provisions of Part I of the Chapter III of Companies Act, 2013. Further, Section 42(4) of the Companies Act, 2013 states that any offer which is not in compliance with the provisions of section 42 shall be treated as a public offer and all provisions of the Companies Act, 2013, the Securities Contracts (Regulation) Act, 1956 and the SEBI Act, shall be required to be complied with by the

Company.

21. I note that admittedly, CAICO had passed a Special Resolution dated September 28, 2015 under section 62(3), section 71 and other relevant provisions of the Companies Act, 2013 for issuing FCDs. The Company contended that as per section 62(3) of the Companies Act, if the increase in the subscribed capital of a company is caused by the exercise of an option, as a term attached to debentures issued or loans raised by the company, to convert such debentures or loans into shares of the company, then the stipulations as per provisions of section 62 will not apply; provided, that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or raising of loan, by a Special Resolution. I do not find any merit in the said contention since the trigger for action in the present case is *offer of FCDs* itself and not of exercising an option to convert a debenture into shares of the Company.

22. I note that the Company has also contended that they have issued FCDs on a preferential basis and claimed it as in the nature of hybrid securities. In this regard, I note that the term *"preferential offer*" is explained in Rule 13 Explanation (i) as an issue of shares and other securities by a company to a select group of persons on a preferential basis and does not include public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts. As per Explanation (ii) to the Rule 13, the expression *"Shares or other securities*" means, *inter alia*, equity shares, fully convertible debentures (FCDs) partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date, etc. Therefore, I find that Rule 13 (1) of the Companies (Share Capital and Debentures) Rules, 2014 is applicable to fully convertible debentures (FCDs) issued by the Company as well.

23. I also note that the Company contended that the issuance of FCDs are preferential offer as per section 62(1)(c) of the Companies Act, 2013, as the securities were offered to the existing members of the Company for cash and that the offer of securities is to the entire existing shareholders or members of the Company and the issue satisfies Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 and Section 42 to the extent

applicable. It was further submitted that by the Company that when the FCDs are converted into equity shares then it would be considered as a preferential allotment as per section 62(1) (c) of the Companies Act, 2013. I am of the view that the treatment of FCDs as preferential allotment, once they are converted into equity of CAICO, does not have any bearing in the present matter which is seeking to determine whether the issuance of the FCDs *per se* is deemed to be a 'public issue' or not. Therefore, what is appropriate to determine is whether the offer of FCDs by CAICO to its existing shareholders is required to adhere to any limit of number of investors beyond which it would be deemed to be a 'public issue'. It may be mentioned here that the said issue was decided earlier vide Order dated July 12, 2018 which was challenged before the Hon'ble SAT and the same was remanded back to SEBI for fresh consideration.

24. In this regard, it is pertinent to note the relevant provisions with respect to offer on preferential basis as provided under Section 62. The same is reproduced hereunder:

62. (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer

b) to employees under a scheme of employees' stock option, subject to 2&5[special resolution] passed by company and subject to such conditions as may be prescribed; or

c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

25. I note that for the purpose of Section 62 (1) (c), the conditions are prescribed vide Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014.In this regard, it is pertinent

to peruse the provision of the said Rule. The same is reproduced hereunder for reference:

"Issue of shares on preferential basis

13. (1) For the purposes of clause (c) of sub-section (1) of section 62, if authorized by a special resolution passed in a general meeting, shares may be issued by any company in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (a) or clause (b) of sub-section (1) of section 62 and such issue on preferential basis should also comply with conditions laid down in section 42 of the Act:

Provided that in case of any preferential offer made by a company to one or more existing members only, the provisions of sub-rule (1) and proviso to sub-rule (3) of rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply:

…

Explanation.—For the purposes of this rule,

(i) the expression 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities;

(ii) the expression, "shares or other securities" means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date. …"

26. On an analysis of the provisions of section 62(1)(c) of the Companies Act, 2013 read with Rule 13 (1) of the Companies (Share Capital and Debentures) Rules, 2014, I find that a company authorized by a Special Resolution is allowed to make preferential allotment of its shares to 'any persons' and such issue on preferential basis should also 'comply with the conditions laid down in Section 42 of the Companies Act, 2013'.

27. Now the issue required to be determined here is whether the Company which issued FCDs on preferential basis under Section 62(1) (c) read with Rule 13(1) of Companies (Share Capital and Debentures) Rules, 2014 has complied with conditions laid down in Section 42 of the Companies Act. I also note that the proviso to the aforesaid Rule 13, stipulates that if such preferential offer is made by a Company to its existing members only, Rule 14 (1) and proviso to Rule 14 (3) of the Companies (prospectus and Allotment of Securities) Rules, 2014 shall not apply. The same is reproduced hereunder for reference:

Rule 14 Private Placement as it stood as on the date of offer of FCDs:

"(1) (a) For the purposes of sub-section (1) of section 42, a company may make an offer or invitation to subscribe to securities through issue of a private placement offer letter in Form PAS-4.

(b) A private placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons in accordance with sub-section (7) of section 42:

Provided that no person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.

(3) The company shall maintain a complete record of private placement offers in Form PAS-5:

Provided that a copy of such record along with the private placement offer letter in Form PAS-4 shall be filed with the Registrar with fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and where the company is listed, with the Securities and Exchange Board within a period of thirty days of circulation of the private placement offer letter."

28. On analysis of the above provisions, I note that what is exempted in case of preferential allotment to existing shareholders is (a) Rule 14(1) which specified the form of private

placement offer letter and manner of its circulation, etc. and (b) Rule 14(3) which prescribed the requirement of filing of records of private placement offers with RoC and SEBI. In view of the same, I find that Section 42 and remaining provisions of Rule 14 of the Companies (prospectus and Allotment of Securities) Rules, 2014 would be applicable to preferential offer despite the fact that offer was made to existing shareholders. Therefore, I find that condition stipulated under Section 42 of the Companies Act, 2013 read with Rule 14 (2) (b) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 which mandates that a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, securities to more than 200 persons in aggregate in a financial year, the same shall be deemed to be an offer to the public is applicable to the present case even if the offer has been made to the existing shareholders of the company.

29. I note that the Company contended that since the issue of FCDs was made to existing shareholders, who are insiders of the Company, they cannot be termed as "public" and concept of "pubic offer" as decreed in the matter of Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI has no applicability in the present case. I note that though section 67 of the Companies Act, 1956 which provides for how the references to offering shares or debentures to the public needs to be construed is not applicable in the present case, the law as to when an offer or invitation for subscription of securities on private placement is deemed as "public offer" is mentioned in section 42(4) of Companies Act, 2013. The definition of private placement as any offer of securities or invitation to subscribe securities to a "select group of persons" by a company does not exclude the existing shareholders from its definition. Therefore, the select group of persons can be the existing shareholders itself and if private placement of securities is made to them, then the same would be deemed to be "public offer" by virtue of section 42(4) of the Companies Act, 2013, if the offer is made to more than 200 persons/existing shareholders. Therefore, I do not find any merit on the contention of the Noticee that existing shareholders cannot be construed as "public".

30. Admittedly, in the instant case the Company offered FCDs to 1929 persons (members of the Company) and allotted FCDs to 335 persons during the financial year 2015-2016 and

raised an amount of Rs.2.83 Crores.

31. I find that the Company has not claimed to be a Non-Banking Financial Company or Public Financial Institution within the meaning of Section 2 (72) of the Companies Act, 2013. In view of the aforesaid, I, therefore, find that there is no case that the Company is covered under the Rule 14 (5) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 as it stood as on the date of offer of FCDs.

32. Considering the legal and factual position as detailed above, I find that the *Offer of FCDs* by the Company was a "public issue" as envisaged under Section 42(4) of the Companies Act, 2013 read with Rule 14(2) (b) of the Companies (Prospectus and Allotment of Securities) Rules 2014 as it stood as on the date of offer of FCDs. Since the *Offer of FCDs* are deemed to be public issue the Company was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 2013.

33. The provisions of section 40 of the Companies Act, 2013 which are required to be complied with in case of a 'public issue' are given below:

"***40. Securities to be dealt with in stock exchanges***.—

(1) Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

(2) Where a prospectus states that an application under sub-section (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.

(3) All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than— (a) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or (b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the

prospectus, where the company is for any other reason unable to allot securities.

(4) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

(6) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed."

34. Since, the present offer and allotment of FCDs by CAICO is a 'public issue', the Company is mandated to comply with the requirements of 'public issue' under Part I of Chapter III of the Companies Act, 2013.

35. As mentioned above, the *Offer of FCDs* is a public issue of securities. Having made a public issue, CAICO was required to make an application to one or more stock exchanges and the prospectus was required to state the name of such stock exchange under Section 40(1) and (2) of the Companies Act, 2013. I note that the Noticees have contended that these norms are not applicable to them since the offer was not made to public. As already held in the earlier paragraphs that the said *offer of FCDs* was deemed to be a public issue, I do not find any merit in the said contention. Since there is no material available on record to prove that it has made an application to any stock exchanges and obtained permission for the securities to be dealt with in such stock exchanges, I find that the Company has contravened the said provision. Further, CAICO was also required to keep the monies received on application from the public for subscription to the securities in a separate bank account under Section 40(3) of the Companies Act, 2013. Since the Company has not provided any records to show that the amount collected by it is kept in a separate bank account, I find that the Company has also not complied with the said provisions.

Accordingly, I find that CAICO has violated section 40 of the Companies Act.

36. Since the issue of FCDs made by the Company is determined to be a public issue, the Company was also mandated to comply with the applicable provisions under SEBI Rules/Regulations/Guidelines. I note that the Noticee has contended that SEBI Act, Rules and Regulations made thereunder are not applicable on them since issue of FCDs were preferential issue and they are not intended to get listed in any stock exchange. In this regard, I note that as per the provisions of Section 42 (1) of the Companies Act, 2013 (Explanation-I) and Rule 14 (2) (b) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, if a company, listed or unlisted, makes an offer to allot or invites subscription of securities to more than the prescribed number of persons i.e. more than 200 persons, whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of the Chapter III of Companies Act, 2013 which deals with the provisions in respect of Public Issue by Companies. By virtue of Section 24(1) of the Companies Act, 2013, the provisions contained in Chapter III, so far as it relates to issue and transfer of securities shall be administered by SEBI. Further, I also not that as per Section 42 (4), any offer or invitation not in compliance with the provisions of the said section shall be treated as a public offer and all provisions of the Companies Act, 2013 and the Securities Contracts (Regulation) Act, 1956 and SEBI Act shall be required to be complied with. Hence, I do not find any merit in the contention of the Noticee and find that SEBI Act and Regulations are also applicable to the instant offer of FCDs.

37. I note that SEBI had framed the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and all public issues are required to comply with the ICDR Regulations. The ICDR Regulations operate as reasonable safeguards for the investors who subscribed or intend to subscribe in the public issues of securities. I note that the Company is also required to comply with the following provisions of ICDR Regulations for the issue and allotment of FCDs during the financial year 2015-2016:

- *"Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)(d)),*
- *Agreement with a depository for dematerialisation of specified securities already issued or proposed to be issued; (Regulation 4(2)(e)),*
- *Appointment of merchant banker and other intermediaries (Regulation 5),*
- *Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),*
- *Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),*
- *Satisfy the conditions of initial public offer (Regulation 25 and 26),*
- *Requirement of Minimum promoters' contribution. (Regulation 32)*
- *Keeping the public issue open for the specified period (Regulation 46),*
- *Pre issue advertisement for public issue (Regulation 47)*
- *Minimum application value. (Regulation 49)*
- *Manner of disclosures in the offer documents (Regulation 57)*
- *Disclosures in Abridged prospectus and abridged letter of offer (Regulation 58)*
- *Refrain from offering any incentive to any person making application for allotment of specified securities (Regulation 59).*
- *Issuer to appoint compliance officer who would be responsible for monitoring the compliance of securities laws and for redressal of investors' grievances. (Regulation 63)".*

Summary:

38. In summary, I note the following:

38.1 The Company came out with an offer of FCDs to 1929 persons (members of the Company) and allotted FCDs to 335 persons during the financial year 2015-2016 and raised an amount of Rs.2.83 Crores.

38.2 FCDs are covered under the expression "Shares or other securities" as per the Explanation (ii) to Rule 13 of the Companies (Share Capital and Debentures) Rules,

2014 and hence Explanation ii to Rule 13(1) which mandates compliance of conditions stipulated in Section 42 of the Companies Act, 2013 is applicable to the said issue of FCDs on preferential basis to existing members of the Company.

38.3 As the *Offer of FCDs made* by the Company was more than 200 persons, the same is a deemed to be "public issue" as envisaged under Section 42(4) of the Companies Act, 2013 read with Rule 14(2) (b) of the Companies (Prospectus and Allotment of Securities) Rules 2014.

38.4 Since the *Offer of FCDs* is deemed to be public issue the Company was mandated to comply with the 'public issue' norms as prescribed under the SEBI Act and Companies Act, 2013 which it failed to do.

38.5 CAICO failed to make an application to one or more stock exchanges and the prospectus was required to state the name of such stock exchange under Section 40(1) and (2) of the Companies Act, 2013.

38.6CAICO has also failed to keep the monies received on application from the public for subscription to the securities in a separate bank account under Section 40(3) of the Companies Act, 2013.

38.7 CAICO has also failed to comply with the provisions of ICDR Regulations for the issue and allotment of FCDs during the financial year 2015-2016.

39. In view of the above findings, I am of the view that CAICO engaged in fund mobilizing activity from the public, through the *offer of FCDs* and contravened the provisions of Section 40 (1), (2) and (3) and Section 42(4) of the Companies Act, 2013 as it stood as on the date of *offer of FCDs* and above mentioned provisions pertaining to the SEBI ICDR Regulations.

<u>ISSUE No. 3-</u>Whether appointment of Mr. Joseph Chiramel as the Debenture Trustee by CAICO is in violation of Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

40. I have perused the Prospectus filed by the Company with the RoC-Kerala. I find that

CAICO had appointed Mr. Joseph Chiramel as the debenture trustee. The prospectus also contains a copy of the signed consent letter from Mr. Joseph Chiramel for acting as the debenture trustee. I note that Mr. Joseph has not obtained a certificate of registration from SEBI to act as a Debenture Trustee under section 12(1) of the SEBI Act.

41. In this regard, I note that 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"*. Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations"), provides:

"No person should act as a debenture trustee unless he is either -

(i) a scheduled bank carrying on commercial activity; or

(ii) a public financial institution within the meaning of section 4A of the Companies Act, 1956; or

(iii) an insurance company; or

(iv) body corporate."

42. I note that Mr. Joseph Chiramel is not eligible to obtain a certificate of registration since it does not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. There is no material on record to show that he has obtained a certificate of registration from SEBI to act as a Debenture Trustee under section 12(1) of the SEBI Act. In view of the above, I find that Mr. Joseph Chiramel has dealt in the impugned offer of FCDs as debenture trustee without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act.

<u>ISSUE No. 4</u>- If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violations committed?

43. As has been determined in Issue no. 2, CAICO has violated section 40 of the Companies Act. From the documents available on record, I find that the present Directors in CAICO are Mr. Chiriankandath Palu Jose, Mr. Paul Thalokaren Timothy, Mr.

Mazhuvancheriparambath Kuriakose Aelias, Mr. Chiriyankandath George Joy, Mr. Jessy Pavoo, and Mr. Paul Ovungal Raphael. I note that Mr. Parappilly Varunny Davis, Mr. Vadakken Raphael and Mr. Ovungal Pyloth Rappai who were earlier director in the Company have since resigned. The appointment and resignation of the directors of the Company are as under:

Serial no.	**Entity Name**	**Appointment**	**Cessation**
1	Mr. Chiriankandath Palu Jose	February 27, 1996	Continuing
2	Mr. Parappilly Varunny Davis	January 11, 1974	November 08, 2018
3	Mr. Paul Thalokaren Timothy	July 30, 2013	Continuing
4	Mr. Mazhuvancheriparambath Kuriakose Aelias	July 22, 1995	Continuing
5	Mr. Chiriyankandath George Joy	November 21, 1998	Continuing
6	Ms. Jessy Pavoo	July 30, 2013	Continuing
7	Mr. Vadakken Raphael	July 30, 2013	February 17, 2017
8	Mr. Paul Ovungal Raphael	Janaury 30, 2013	Continuing
9	Mr. Ovungal Pyloth Rappai	December 23, 1974	Janaury 28, 2016

44. In respect of deemed public issue, as per Section 42(4) of the Companies Act, 2013, all the provisions of the Companies Act, 2013, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 are required to be complied with. The consequence of such non-compliances is, *inter alia,* mentioned in Section 42 (10) and Section 42(4) of the Companies Act,2013 read with Section 24 of the Companies Act, 2013(all as it stood as on the date of deemed public issue). One of the consequences, as per section 42(10) of the Companies Act, 2013 is that if a company makes an offer or accepts monies in contravention of this section (deemed to be public issue as per section 42(4) of the Companies Act, 2013), the company, its promoters and

directors shall be liable for a penalty as mentioned therein and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty. The other consequence of such deemed public issue is mentioned in 42(4) read with Section 24 of the Companies Act, 2013 (all as it stood as on the date of deemed public issue). I note that as per the provisions of Section 24(2) of the Companies Act, 2013, SEBI can exercise its powers under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act, in respect of deemed public issue. Therefore, SEBI can exercise the said powers for non-compliances of deemed public issue norms under the SEBI Act or under the ICDR Regulations framed under the SEBI Act.

45. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Section 11B of the SEBI Act being one of the pivotal measure for the purpose of investor protection. It envisages various remedial measures. One of such remedial measures is the tool of refund. SEBI Act has also prescribed the other set of measures under section 11B of the SEBI Act. Therefore, SEBI in exercise of its mandate under Section 24(1) of the Companies Act, 2013 read with Section 11B of the SEBI Act can take various investor protection measures so far as it relates to issue and transfer of securities. The said measures can include direction to refund the money collected by the Company under its deemed public issue in violation of applicable laws under the Companies Act, 2013 read with ICDR Regulations. I note that this liability under section 11B of the SEBI Act to refund the money collected by the Company by way of issue of FCDs by the Company, flows as a consequence of violation of "deemed public issue" norms.

46. In the instant case, the Company had issued FCDs to 335 persons during the financial year 2015-2016 and raised an amount of Rs.2.83 Crores. Hence, I find that the Company is liable to make the refund of the money collected through the offer of FCDs for the non-compliance of "deemed public issue" norms with 12% interest calculated from the date of collection. From the material available on record, I find that of the 335 total allottees, there are two directors, viz., Mr. Chiriankandath Palu Jose and Mr. Vadakken Raphael who are

also allottees in the deemed public issue of FCDs. Being the directors at the time of deemed public issue, they are responsible for the said deemed public issue. Directing the payment of interest to such directors would amount to conferring an undue benefit for violation of deemed public issue norms. Therefore, these directors cannot take advantage from such interest. Therefore, though the company is liable to refund the amount to all the allottees with interest at the rate of 12% per annum, I find that Mr. Chiriankandath Palu Jose and Mr. Vadakken Raphael are not entitled to any interest. Needless to say, such refund will result in cancellation of FCDs to the extent it is not converted and if converted in part, cancellation of equivalent shares so converted and the remaining unconverted FCDs, and if converted in full, cancellation of equivalent shares so converted.

47. From the material available on record and the details of the appointment and resignation of the directors of CAICO as reproduced in paragraph 43 of this order, it is noted that Mr. Chiriankandath Palu Jose, Mr. Paul Thalokaren Timothy, Mr. Mazhuvancheriparambath Kuriakose Aelias, Mr. Chiriyankandath George Joy, Ms. Jessy Pavoo and Mr. Paul Ovungal Raphael (present directors) are directors at the time of the issuance of FCDs and continuing as directors in the Company. I am of the view that these directors are obligated to ensure refund of the money collected by the Company through the Offer of FCDs and would stand debarred till the repayment by the Company.

48. Similarly, in addition to the refund liability for the violations committed as mentioned above, I am also of the view that the Company is also liable to be debarred for an appropriate period of time.

49. Further, other directors as on date of this Order or any other incoming directors shall ensure the repayment on behalf of the Company.

50. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the Trustee who act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that Mr. Joseph Chiramel is liable to be debarred for an appropriate time for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.

51. 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. CAICO shall cancel the FCDs as mentioned in paragraph 46 of this order, and forthwith refund the money collected till date through the issuance of FCDs including the application money collected from investors, pending allotment of securities, if any, with an interest of 12% per annum from the date of collection of funds to the investors till the date of actual payment. No such interest shall be paid to Mr. Chiriankandath Palu Jose and Mr. Vadakken Raphael.

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. CAICO and its present directors viz., Mr. Chiriankandath Palu Jose, Mr. Paul Thalokaren Timothy, Mr. Mazhuvancheriparambath Kuriakose Aelias, Mr. Chiriyankandath George Joy, Mr. Jessy Pavoo, and Mr. Paul Ovungal Raphael (on behalf of the Company) are directed to provide a 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.

d. CAICO and its present directors viz., Mr. Chiriankandath Palu Jose, Mr. Paul Thalokaren Timothy, Mr. Mazhuvancheriparambath Kuriakose Aelias, Mr. Chiriyankandath George Joy, Mr. Jessy Pavoo, and Mr. Paul Ovungal Raphael (on behalf of the Company) are prevented from selling the assets of the Company 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.

e. CAICO, its present directors viz., Mr. Chiriankandath Palu Jose, Mr. Paul Thalokaren Timothy, Mr. Mazhuvancheriparambath Kuriakose Aelias, Mr. Chiriyankandath George Joy, Ms. Jessy Pavoo and Mr. Paul Ovungal Raphael, on behalf for 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.

f. After completing the aforesaid repayments, CAICO and its present directors viz., Mr. Chiriankandath Palu Jose, Mr. Paul Thalokaren Timothy, Mr. Mazhuvancheriparambath Kuriakose Aelias, Mr. Chiriyankandath George Joy, Ms. Jessy Pavoo and Mr. Paul Ovungal Raphael 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 ("**ICAI**") holding such certificate.

g. In case of failure of CAICO 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 in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

h. CAICO is 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.

i. Mr. Chiriankandath Palu Jose, Mr. Parappilly Varunny Davis, Mr. Paul Thalokaren Timothy, Mr. Mazhuvancheriparambath Kuriakose Aelias, Mr. Chiriyankandath George Joy, Mr. Jessy Pavoo, Mr. Vadakken Raphael, Mr. Paul Ovungal Raphael and Mr. Ovungal Pyloth Rappai 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 completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company or 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 completion of refunds to investors.

j. Mr. Joseph Chiramel 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. Mr. Joseph Chiramel is also restrained from associating himself with any listed public company or 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.

k. Other directors of CAICO as on the date of this Order or any other incoming directors of CAICO after the date of this order, shall ensure the repayment on behalf of the Company by taking steps as mentioned in the previous directions in paragraph 51(a) to (f), as applicable.

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

52. Copy of this Order shall be forwarded to the recognised Stock Exchanges, Depositories and Registrars and Transfer Agents for information and necessary action.

53. 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.

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

DATE: March 18, 2019 **MADHABI PURI BUCH**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA