

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 in respect of interim order cum show cause notice dated May 20, 2015 in the matter of Verinder Finance Limited.

In respect of: -

Sl. No.	Name of persons	CIN/DIN/PAN
1	Verinder Finance Limited	CIN: U6120JK1985PLC000826
2	Ashish Chatterjee	PAN: AGMPC3484E
3	Ramendu Chattopadhyay	PAN: AFMPC2809L
4	Satya Ranjan Debnath	PAN: APSPD5747C
5	Tariq Nafees	PAN: AERPN9805M
6	Biswajit Chakarborty	PAN: ABWPC5031E
7	Purnendu Santra	PAN: BSSPS9845L
8	Sudhakar Panda	PAN: BBSPP5763P
9	Barun Kanti Majumder	PAN: AOSPM3860Q
10	Ranjit Kumar Basu Mullick	DIN: 00662604

The aforesaid persons are hereinafter collectively referred to as “Noticees” and individually by their respective name or serial number.

1. Securities and Exchange Board of India ("SEBI") passed an *ad interim ex-parte order* dated May 20, 2015 (hereinafter referred to as “*interim order*”) against the Noticees in view of the *prima facie* findings that Verinder Finance Limited (VFL) and its directors were engaged in fund mobilising activity from the public, through offer and issuance of Compulsorily Convertible Preference

Shares (CCPS), in contravention of the provisions of sections 56, 60 and 73 of the Companies Act, 1956 and several provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

2. In this matter, prior to passing of the interim order, SEBI had received a reference dated March 12, 2014 from Reserve Bank of India regarding collection of money by VFL by way of issuance of CCPS along with letters of VFL dated September 11, 2013 and November 9, 2013 addressed to RBI. SEBI in order to examine the aforesaid issuance of CCPS by VFL sought details about the issuance of equity shares, debentures and/or convertible securities from VFL vide letter dated July 10, 2014. The said letter returned undelivered. Thereafter, the details/information were again sought from VFL by letter dated October 29, 2014. This letter also returned undelivered with remarks “addressee left”. As the letters to VFL could not be delivered, the information/details available on MCA 21 Portal, including the Balance sheets of VFL between the period of March 31, 2004 and March 31, 2013 was examined. On an examination of the material forwarded by RBI and the details gathered from MCA 21 portal, the following facts emerge:
 - i. VFL was incorporated on October 15, 1985. It was granted a certificate of registration (No A-1100040) on December 29, 2000 from RBI as Deposit-taking Non-Banking Finance Company.
 - ii. Registrar of Companies (ROC) granted a fresh certificate of incorporation dated August 13, 2002 entering in the certificate the change of name from Verinder Finance Pvt Ltd. to Verinder Finance Ltd.
 - iii. As on March 31, 2012, VFL had a paid up capital of Rs.26,70,000, and authorised capital of Rs. 2,05,00,000 divided into 2,05,000 equity shares of Rs.100/-each.
 - iv. VFL in its Extraordinary General Meeting held on December 28, 2012 had approved increase of authorised share capital from Rs. 2,05,00,000 to 12,05,00,000 which included 10,00,000 CCPS at the face value of Rs. 100/- each. Thereafter, VFL decided to issue 10,00,000 CCPS at 14% treating the same as Tier II Capital of VFL. However, the said increase in the authorised capital and the issuance of 10,00,000 CCPS is not disclosed in

the Balance sheet of the VFL as on March 31, 2013.

- v. VFL had raised a total amount of Rs.7,05,000 from 1988 subscribers by the issuance of CCPS.
 - vi. This offer of CCPS and collection of money were done without filing Prospectus and other disclosure requirements.
 - vii. Ranjit Kumar Basu Mullick, Ashish Chatterjee, Purnendu Santra, Satya Ranjan Debnath, Sudhakar Panda, Biswajit Chakarborty, Ramendu Chattopadhyay, Tariq Nafees and Barun Kanti Majumder were directors of VFL during the relevant time.
3. Based on the above information and the apprehension that the company may continue to mobilize funds, as it had decided to increase its authorised capital by Rs. 10,00,00,000/- through issuance of CCPS, an ex-parte ad-interim order dated 20th May, 2015 was passed against the company and its directors named in this order, primarily restraining them from mobilising funds through issue of securities to the public and otherwise accessing the securities market; restraining from trading/dealing in securities; restraining them from disposing of their properties till further orders; directing them not to divert funds raised from public etc. The interim order also called upon the Noticees to show cause as to why they should not be directed jointly and severally to refund the money collected through the issue of CCPS, along with interest @15% p.a. and not be imposed with certain other restraints in their activities such as restraint on accessing the securities market, debarment from dealing in securities and disassociating the directors/promoters named above from other companies in similar capacities, for an appropriate period.
4. Replies in the matter have been received from all entities except Mr. Tariq Nafees. The replies filed by Ashish Chatterjee, Purnendu Santra, Satya Ranjan Debnath, Sudhakar Panda, Ramendu Chattopadhyay and Biswajit Chakarborty are similar and were received by SEBI between June 25, 2015 and June 30, 2015. On behalf of Ranjit Kumar Basu Mullick, it has been submitted by Gouri Basu Mullick that he died on May 12, 2013. Copy of death certificate dated May 13, 2013 issued by the Kolkata Municipal Corporation has been filed as proof of his demise. Barun Kanti Majumder has filed his reply vide letters dated June 19, 2015 and June 15, 2016. An opportunity

of hearing was granted to the Noticees on March 6, 2017 which was attended by authorized representatives of Shri Barun Kanti Majumder. Shri Majumder has also filed written submissions vide letter dated March 14, 2017. No one appeared for hearing on behalf of others. The summary of the reply and submissions of these entities are mentioned below.

A. Reply of Ashish Chatterjee, Purnendu Santra, Satya Ranjan Debnath, Sudhakar Panda, Ramendu Chattopadhyay and Biswajit Chakarborty.

- a. As regards the money mobilisation covered in the interim order dated May 20, 2015 it is stated that advances are given by the customer to book and purchase the asset (movable/immovable) in their name which is in the course of the business of the company as mentioned in the MoA of the Company.
- b. VFL is engaged in the business of asset financing in the name of customers as per their specifications.
- c. The decision which was taken in the EGM of the company held on December 28, 2012 was not executed due to some unavoidable reason.
- d. The authorised share capital of the company was increased, however, it does not include 10,00,000 CCPS of the face value of Rs.100.
- e. The company does not have 1988 subscribers; it has not done any public placement.
- f. Subscribers have not come to company office requesting for payment of maturity amount.
- g. The provisions of the Companies Act, 1956 and ICDR Regulations as mentioned in the interim order are not applicable.
- h. Ramendu Chattopadhyay has submitted that he joined the company on February 2, 2010 and resigned from the company on October 02, 2013.
- i. Biswajit Chakarborty has submitted that he joined the company on January 1, 2014 as Additional Director.
- j. Purnendu Santra has submitted that he joined the company on January 1, 2014.
- k. Satya Ranjan Debnath and Sudhakar Panda have submitted that they joined the company on October 1, 2013.
- l. Ashish Chatterjee has submitted that he joined the company on July 21, 2010 and resigned from the post of directorship of the company on July 14, 2015. As per letter

dated February 27, 2017, sent by his counsel Shri Dipak Kumar Jena, he is in judicial custody.

B. The reply and submissions of Barun Kanti Majumder are as under:

- a. He was a non-executive director of the company for the period from October 14, 2011 to April 29, 2013. He is not having any relationship with the promoters or management of the company after his resignation.
 - b. He had not attended any Board Meeting of the company including the meeting in which the board of the company approved the increase of the authorised share capital of the company. He was not involved in the fund mobilization activity of the company through offer and issuance of CCPS.
 - c. He is not an “officer in default” as defined under section 5 of the Companies Act, 1956 as he was only a non-executive director and he was not charged by the board of directors with the responsibility to comply with any obligation nor he had agreed for any. In this connection he has relied upon the order of SEBI passed in SVPCL Limited dated April 18, 2012.
 - d. It has been submitted that the company is a Non-Banking Finance Company and the second proviso to section 67(3) exempts such companies from the scope of first proviso of section 67(3) of the Companies Act, 1956.
 - e. VFL in its letter dated November 9, 2013 to RBI has stated that the CCPS are privately placed with the friends and relatives of the Directors. Therefore, the offer made by VFL is of the nature of private placement.
 - f. It has been also submitted that he is no longer a director in the company therefore it is not possible for him to do the refund.
5. I have considered the replies and submissions made by the Noticees. The Noticees have stated that the decision taken in the EGM of the company held on December 28, 2012 to issue 10,00,000 CCPS of the face value of Rs. 100/- each was not executed due to some “unavoidable reason” and that the company does not have 1988 subscribers. In the letters dated September 11, 2013 and November 9, 2013, the company VFL/directors has stated that it has not accepted any public

deposits as on 31.03.2013 and it is carrying on its business with its own funds. It further stated as below:

“4. This is to inform you that our company has increased its authorised capital from Rs. 2,05,00,000/- to Rs.12,50,00,000/- which includes 10,00,00,000/- compulsorily convertible preference shares, in the Extra Ordinary General Meeting held on 28/12/2012. Now in order to infuse fresh funds, our company has decided to issued 10,00,00,000, 14% Compulsorily Convertible Preference Shares being the unissued capital. The compulsorily convertible preference shares shall be treated as Tier II Capital of the Company. Since most of the Directors of the company are from the state of West Bengal, therefore the compulsorily convertible preference shares shall be privately placed with the relatives and friends of the Directors who are residing in the state of West Bengal. The same shall be issued in accordance with Unlisted Public Companies (Preferential allotment) Rules, 2011. The provision of section 67(3) of the company’s act are not applicable to the Company being a NBFC. Further, the term ‘deposit’ is defined under section 45 I (bb) of the RBI Act, 1934. ‘Deposit’ includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form but does not include amount raised by way of share capital, or contributed as capital by partners of a firm. According to provisions of RBI, the definition of ‘owned fund’ includes preference shares which are compulsorily convertible into equity. Therefore, the issue of compulsorily convertible preference shares is not barred under the provisions of RBI. Till date the company has received total amount of Rs. 7,05,000 and number of subscribers is 1988.”

6. It is observed from the above that the company has categorically stated in its letters to RBI that pursuant to the meeting held on December 28, 2012 it has raised capital by issuing CCPS to 1988 subscribers so as to infuse capital from friends and relatives of the directors. The specification of the exact number of allottees to whom the allotment has been made read with the decision taken in the EOGM held on 28/12/2012 confirms the fact of the issue of CCPS. It appears that the issue of CCPS has taken place between September 2013 to November 2013. It is relevant to state that the Reserve Bank of India had issued the circular no. DNBD(PD) CC No.330/03.10.001/2012-13 dated June 27, 2013 stipulating that the maximum number of subscribers that an NBFC can have in an issue of debt or capital securities is 49. In view of this, the exemption that is sought to be claimed by the company and or its directors under section 67(3)

of the Companies Act, will not be available to them. I do not find it necessary therefore to examine whether the issue was made by way of private circulation or as part of a domestic concern. In other words, once the number of allottees of CCPS exceeds 49, then no exemption is available to VFL and its directors under section 67(3), even though it is a NBFC. The applicability of provisions of section 67(3) and the fulfilment of its ingredients have been elaborately brought out in paras 6 to 13 of the interim order. Reliance was also inter alia placed on the verdict of the Hon'ble Supreme Court in the matter of Sahara India Real Estate Corporation [(2013) 1 SCC 1] in the interim order to substantiate as to how the same is a violation of the provisions related to issue of capital. Thus, VFL has contravened the provisions of sections 56, 60 and 73 of the Companies Act, 1956 and regulations 4(2)(d), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

7. Ashish Chatterjee, Ramendu Chattopadhyay, Tariq Nafees, Satya Ranjan Debnath, Sudhakar Panda, Biswajit Chakarborty, Purnendu Santra (i.e. Noticees Nos 2 to 8) being directors of VFL during the time when money was mobilized in an unlawful manner are the 'officers in default' and are responsible for the alleged contraventions committed by VFL. The Company and the aforesaid persons, have failed to make repayments to the persons (from whom monies were mobilized through issue of CCPS) in accordance with section 73(2) of the Companies Act, 1956. As regards Barun Kanti Majumder, I note that he has resigned on April 23, 2013 which is prior to the mobilization of funds by way of public issue. Hence, I am inclined to drop the charges contained in the interim order against Noticee No. 9, i.e. Shri Barun Kanti Majumder and revoke the directions contained in the interim order against him. I also note that Shri Ranjit Kumar Basu Mullick expired on May 12, 2013 and therefore the proceedings against him shall stand abated.
8. In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 and sections 11(1), 11(4), 11A and 11B thereof read with regulations 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue, with immediate effect, the following directions:-

- i. Verinder Finance Limited and its Directors namely, Ashish Chatterjee (PAN: AGMPC3484E; DIN: 02250317), Ramendu Chattopadhyay (PAN:AFMPC2809L; DIN: 00596380), Satya Ranjan Debnath (PAN:APSPD5747C; DIN: 06646616), Tariq Nafees (PAN:AERPN9805M; DIN: 00589721), Biswajit Chakarborty (PAN:ABWPC5031E; DIN: 06786036), Purnendu Santra (PAN:BSSPS9845L; DIN: 03120414) and Sudhakar Panda (PAN:BSPP5763P; DIN: 06648198) shall jointly and severally refund the money collected through the offer and allotment of CCPS, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment) within a period of 90 days from the date of receipt of this Order;
- ii. The refund as directed hereinabove shall be made through banking channels such as demand draft or electronic mode of transfer and a trail of such refunds shall be maintained by the Noticees for verification, if necessitated at a later date;
- iii. Within seven days of completion of refund as directed hereinabove, the Noticees shall file a certificate of such completion with SEBI from two independent Chartered Accountants after proper verification of the details of such refunds from records including bank accounts of the Noticees and after being satisfied that the refund has actually been made.
- iv. The Noticees Nos. 1- 8 are hereby—
 - (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

All the above restrictions will continue to be in force for a period of 4 years commencing from the date of interim order or till the repayment as directed above is effected, whichever is later.

9. This order is in continuation of the order passed in the said matter on March 30, 2017. Copy of this Order shall be forwarded to the RBI, recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to

MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

Date: July 21, 2017

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER