

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

**UNDER SECTIONS 11, 11(4), 11A AND 11B OF THE SECURITIES AND
EXCHANGE BOARD OF INDIA ACT, 1992**

IN THE MATTER OF VASUNDHARA REALCON LIMITED

IN RESPECT OF:

1. **VASUNDHARA REALCON LIMITED (CIN NO: U74999WB2010PLC151866; PAN: AADCV3799B).**
2. **MR. SANDIP PARUI (PAN: AYUPP6220B),**
3. **MR. ASHIS SARKAR (PAN: ALAPS2173D),**
4. **MR. SAHAB UDDIN KHAN (PAN: AWGPK0821R),**
5. **MR. GAURANGA ROY (PAN: BFDPR1288E),**
6. **DEBENTURE TRUSTEE, VIZ., VASUNDHARA REALCON DEBENTURE TRUST (THROUGH ITS TRUSTEES VIZ., MR.CHINMOY GHATAK AND MR. PRIYABRATA ROY)**

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1. Vasundhara Realcon Limited (hereinafter referred to as “**VRL**” or “**Company**”), having its registered office at “362B, New Panchanantala Road, Paschim Putiary, Korunamoyee, Tollygunge, West Bengal-700041”, was incorporated on July 30, 2010, with the Registrar of Companies (hereinafter referred to as “**ROC**”), West Bengal with CIN No. as U74999WB2010PLC151866.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a reference dated July 29, 2015 from office of ROC, West Bengal, against VRL, alleging collection of money from people through various scheme and investment plans *inter alia*, in respect of *Non-Convertible Secured Redeemable Debentures* (hereinafter referred to as “**NCDs**”).

3. On enquiry by SEBI, it was observed that VRL had made an offer of NCDs in the year 2010-11, 2011-12, 2012-13 and 2013-14 (hereafter referred to as **“Offer of NCDs”**) and raised an amount of Rs. 2,23,67,200/- during the financial years 2010-11, 2011-12, 2012-13 and 2013-14.
4. As the above said Offer of NCDs was found prima facie in violation of respective provisions of the SEBI Act, 1992 (hereinafter referred to as **“SEBI Act”**), the Companies Act, 1956 and Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as **“ILDS Regulations”**), SEBI passed an interim order dated November 10, 2015 (hereinafter referred to as **“Interim Order”**) and issued directions mentioned therein against VRL and its directors, Mr. Sandip Parui, Mr. Ashis Sarkar, Mr. Sahab Uddin Khan and Mr. Gauranga Roy and Debenture Trustee viz., Vasundhara Realcon Debenture Trust (represented by Mr. Chinmoy Ghatak and Mr. Priyabrata Roy) (hereinafter collectively referred to as **“Noticees”**).
5. *Prima facie findings/allegations:* In the said interim order, the following prima facie findings/allegation were recorded.

(a) VRL had made an offer of NCDs during the Financial Years 2010–11, 2011–12, 2012–13 and 2013–14 and raised an amount of Rs. 2,23,67,200/- as shown below:

Year of Issue	Security Issued	Amount raised (Rs.)	Number of Allottees
2010 - 2011	<i>Non-convertible Redeemable Debentures of Rs. 100</i>	24,02,500	65
2011 - 2012		81,03,000	189
2012 - 2013		1,04,15,700	196
2013 - 2014		14,46,000	18
Total		^2,23,67,200	*468

**^ No. of allottees and amount raised have been collated from the documents obtained from MCA21 Portal and also the information in the complaints received by SEBI. It is possible that the actual no. of allottees and amount mobilized could be much more than the above indicated figures*

(b) The terms and condition of one of the Offer of NCDs *inter alia*, was, as under:

“Terms and Conditions of the Debenture Issue

- VRL is offering Secured Redeemable Debenture on private placement basis

Scheme 1: Multiplier Income

Plan	A	B	C	D	E
Issue Price (Minimum 10 Debenture)	1000	1000	1000	1000	1000
Maturity Value	1600	2200	3500	6000	10000
Redemption Period	3 Years	5 years	7 Years	10 Years	13 Years

Scheme 2: Regular Income

Minimum acceptable amount is Rs. 25,000/- Interest payable monthly		
Plan	Redemption Period	Rate of Interest
F	2 Years	14.40 %
G	4 Years	17.00%

- The application shall be made for a minimum amount of Rs. 1000/- for scheme I and Rs. 25,000/- for Scheme-II
- The applicant must be an Indian Citizen, with minimum age limit of 18 years, will be eligible for subscription
- **Allotment:** The debenture Certificates will be issued to every Secured Debenture (SD) holder and shall be posted at the address of the SD holder registered with the company within 45 days from the date of receiving application
- **Transfer:** Debenture holders can transfer the SD to any persons subject to the terms and conditions and approval by the company....

- **Purpose of the Issue:** *The funds raised through the investment will be invested for expansion of asset building of existing projects and upcoming projects and other purposes mentioned in the MoA of the company... ”.*

(c) VRL created a charge of Rs. 10 Crores on August 16, 2010 and Rs. 50 Crores on August 16, 2011 on its immovable properties and appointed *Vasundhara Realcon Debenture Trust* (represented by its Trustees Viz. Mr. Chinmoy Ghatak and Priyabrata Roy), as Debenture Trustee for the Offer of NCDs by the company. *Vasundhara Realcon Debenture Trust (represented by its Trustees Viz. Mr. Chinmoy Ghatak and Priyabrata Roy)* was not registered as debenture trustee for the Offer of NCDs by the company.

6. The above offer of NCDs and pursuant allotment were deemed public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under Section 60, Section 56(1) and 56(3), Sections 73(1), (2) and (3), Section 117-B, Section 117-C of the Companies Act, 1956 and the relevant provisions of ILDS Regulations were not complied with by VRL in respect of the offer of NCDs. *Vasundhara Realcon Debenture Trust (represented by its Trustees Viz. Mr. Chinmoy Ghatak and Priyabrata Roy)* appointed as debenture trustee has violated Section 12(1) of SEBI Act read with regulation 7 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as “**Debenture Trustees Regulations**”).
7. In view of the prima facie findings on the violations, the following directions were issued in the said interim order dated November 10, 2015 with immediate effect.
 - i. “VRL (Vasundhara Realcon Ltd.) (PAN: AADCV3799B) shall cease to mobilize any fresh funds from investors through the Offer of Non-convertible Secured Redeemable Debentures 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. VRL and its Directors, viz., Mr. Sandip Parui (PAN: AYUPP6220B), Mr. Ashis Sarkar (PAN: ALAPS2173D), Mr. Sahab Uddin Khan (PAN: AWGPK0821R) and Mr. Gauranga Roy (PAN: BFDPR1288E) are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
- iii. VRL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
- iv. VRL shall provide a full inventory of all its assets and properties;
- v. The abovementioned Directors of VRL shall provide a full inventory of all their assets and properties;
- vi. VRL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of NCDs, without prior permission from SEBI;
- vii. VRL and its abovementioned Directors shall not divert any funds raised from public at large through the Offer of NCDs, which are kept in bank account(s) and/or in the custody of VRL;
- viii. VRL and its abovementioned Directors shall furnish complete and relevant information in respect of the Offer of NCDs (as sought by SEBI vide letter dated December 12, 2013), within 14 days from the date of receipt of this Order.
- ix. VRL shall provide to SEBI all information regarding repayments made to the holders of Secured and Unsecured Redeemable Non-Convertible Debentures including name of the debenture holder, address, amount mobilized, number of Secured Redeemable Non-Convertible Debentures issued, promised maturity amount with date of maturity, amount refunded and date thereof;

- x. The Debenture Trustee, viz. “Vasundhara Realcon Debenture Trust” represented by trustees, Mr. Chinmoy Ghatak and Priyabrata Roy is prohibited from continuing with its present assignment as a debenture trustee in respect of the Offer of NCDs of VRL 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”.
8. The interim order also directed the VRL and its directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 should not be passed against them:
- i. Directing them jointly and severally to refund money collected through the *Offer of NCDs* along with interest, if any, promised to investors therein;
 - ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
 - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
9. The interim order also directed the Debenture Trustee, viz., *Vasundhara Realcon Debenture Trust (through Mr.Chinmoy Ghatak and Mr. Priyabrata Roy)*, to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining it from accessing the securities market and further restraining it from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
10. Vide the said interim order, VRL and its abovementioned directors and the Debenture Trustee, viz. *Vasundhara Realcon Debenture Trust (through Mr. Chinmoy Ghatak and Mr. Priyabrata Roy)* 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 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. However, no reply was received by SEBI from any of the entities.

11. *Service of interim order:* The copy of the said interim order was sent to the Noticees by letter dated November 16, 2015 through speed post acknowledgement due. The copy of the interim order sent to VRL, Shri Ashis Sarkar and Vasundhara Realcon Debenture Trust was returned undelivered. The proof of delivery is not received from Mr. Sandip Parui, Mr. Sahab Uddin Khan and Mr. Gauranga Roy, Mr. Chinmoy Ghatak and Mr. Priyabrata Roy. Subsequently, vide notification dated November 08, 2016 published in newspaper *Ananda Bazar Patrika*, and notification dated November 09, 2016 published in newspaper *Times of India*, Noticees were notified by SEBI, that interim order dated November 10, 2015 was issued against VRL and its directors, Mr. Sandip Parui, Mr. Ashis Sarkar, Mr. Sahab Uddin Khan and Mr. Gauranga Roy and Debenture Trustee viz., Vasundhara Realcon Debenture Trust (represented by Mr. Chinmoy Ghatak and Mr. Priyabrata Roy) and they had been given final opportunity to submit their reply in the matter.
12. Subsequently, vide notification dated June 10, 2017 published in newspaper *Ananda Bazar Patrika*, and notification dated June 10, 2017 published in newspaper *Times of India*, the Noticees were notified by SEBI, that they will be given the final opportunity of being heard on July 20, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they fail to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.
13. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on July 20, 2017. No submissions were made by any of the Noticees.
14. I have considered the allegations and materials available on record including documents

downloaded from MCA 21 Portal. On perusal of the materials available on record, 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 NCDs as stated in the interim order?*
- (2) If so, whether the said issues are in violation of 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act, 1956, and other provisions mentioned in the interim order pertaining ILDS Regulations?*
- (3) Whether appointment of Vasundhara Realcon Debenture Trust (represented by its Trustee Mr. Chinmoy Ghatak and Mr. Priyabrata Roy) by VRL is in violation of Section 117B of the Companies Act, 1956 and whether Vasundhara Realcon Debenture Trust and Mr. Chinmoy Ghatak and Mr. Priyabrata Roy have violated 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?*

ISSUE No. 1 - Whether the company came out with the Offer of NCDs as stated in the interim order?

15. I have perused the interim order dated November 10, 2015 for the allegation of offer of NCDs. I note that neither the company nor the directors filed any reply disputing the same.
16. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted that VRL has issued NCDs during the financial years 2010-11, 2011-12, 2012-13 and 2013-14 and raised a total amount of Rs. 2,23,67,200/- from at least 468 allottees. The number of allottees and amount raised have been collated from the documents obtained from MCA21 Portal and also the information

in the complaints received by SEBI. It is possible that the actual no. of allottees and amount mobilized could be much more than the above indicated figures

ISSUE No. 2- If so, whether the said issues are in violation of 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act, 1956, and other provisions mentioned in the interim order pertaining ILDS Regulations?

17. The provisions alleged to have been violated and mentioned in Issue No.2 are applicable to the offer of NCDs made to the public. Therefore the primary question that arises for consideration is whether the issue of NCDs is 'public issues'. At this juncture, reference may be made to section 67(1) & (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).”

18. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. Vs. 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.”

19. Section 67(3) of the Companies Act, 1956 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) of the Companies Act, 1956, 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 the Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.
20. In the instant matter, I find that NCDs were issued by VRL to 468 investors in the financial years 2010-11, 2011-12, 2012-13 and 2013-14 (65 investors, 189 investors, 196 investors and 18 investors respectively), which indicates that the Offer of NCDs was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies

Act, 1956. Neither VRL nor the directors did file any reply contending that the offer and issuance of NCDs does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956. Therefore, in view of the material available on record, I am of the opinion that the Offer of NCDs by VRL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the Offer of NCDs are deemed to be public issues and VRL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

21. Even if all the individual allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, 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 those 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, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal 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 appellants 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"*.
22. Further, since the offer of NCDs 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, 1956. As per section 73(1) and (2) of the Companies Act, 1956, 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.

23. The allegations of non-compliance of the above provisions were not denied by VRL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that VRL has contravened the said provisions. VRL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that VRL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account and failed to repay the same in accordance with section 73(2) of Companies Act, 1956 as observed above. Therefore, I find that section 73(2) of the Companies Act, 1956 has not been complied with.

24. Section 2(36) of the Companies Act, 1956 read with section 60 of the Companies Act, 1956 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) of the Companies Act, 1956, "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 NCDs was a deemed public issue of securities, VRL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that VRL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of NCDs. I, therefore, find that VRL has not complied with the provisions of section 60 of the Companies Act, 1956.

25. In terms of section 56(1) of the Companies Act, 1956, 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, 1956, 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 VRL 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, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, VRL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

26. As regards the allegation of section 117C of the Companies Act, 1956, 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 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, 1956.
27. 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 VRL has made a public issue of debt securities, the ILDS Regulations is also applicable to the instant offer of NCDs. Therefore, I find that the Company has violated the following provisions of the aforesaid 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
 - iv. 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 Trustees

- 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 17 – Creation of security
- xv. Regulation 19 – Mandatory Listing
- xvi. Regulation 26 – Obligations of the Issuer, etc.

28. I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 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, 1956. While examining the scope of Section 55A of the Companies Act, 1956, 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"

29. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that 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...”

30. In view of the above findings, I am of the view that VRL was engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act, 1956, and above mentioned provisions pertaining to the ILDS Regulations.

ISSUE No. 3- Whether appointment of Vasundhara Realcon Debenture Trust (through its trustees viz., Mr. Chinmoy Ghatak and Mr. Priyabrata Roy) by VRL is in violation of Section 117B of the Companies Act, 1956 and

whether Vasundhara Realcon Debenture Trust and Mr. Chinmoy Ghatak and Mr. Priyabrata Roy have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

31. I have perused the Form 10 as filed with the RoC by VRL. I note that VRL had created a charge of Rs. 10 crore on August 16, 2010 and Rs. 50 crores on August 16, 2011 for the Offer of NCDs by the Company. I further find that VRL had appointed *Vasundhara Realcon Debenture Trust (through its trustees viz., Mr. Chinmoy Ghatak and Mr. Priyabrata Roy)* as Debenture Trustee for the offer of NCDs by VRL. The said charge was created on immovable properties.
32. 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 SEBI (Debenture Trustees) Regulations, 1993, stated 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.*
33. *Vasundhara Realcon Debenture Trust (through its trustees viz., Mr. Chinmoy Ghatak and Mr. Priyabrata Roy)* are 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. None of the Noticees claimed that *Vasundhara Realcon Debenture Trust* represented by its trustees namely Mr. Chinmoy Ghatak and Mr. Priyabrata Roy had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that *Vasundhara Realcon Debenture Trust* and Mr. Chinmoy Ghatak and Mr. Priyabrata Roy have dealt in the impugned NCDs as debenture trustee, without having a certificate of registration as Debenture Trustee in violation of

Section 12(1) of the SEBI Act, 1992.

34. Under section 117B of the Companies Act, 1956 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 VRL has appointed *Vasundhara Realcon Debenture Trust (through its trustees viz., Mr. Chinmoy Ghatak and Mr. Priyabrata Roy)* who do not have a certificate of registration, the appointment of the same is in violation of section 117B of the Companies Act, 1956. Further, I find that VRL 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 No.2 and 3 are found in the affirmative, who are liable for the violation committed?

35. From the documents available on record, I find that the present Directors in VRL are Shri Sandip Parui, Shri Ashis Sarkar and Shri Sahab Uddin Khan. I also note that Shri Gauranga Roy who was an earlier Director in VRL, has since resigned. The details of the appointment and resignation of the directors are as following:

Sr. no.	Name of Directors	Date of appointment	Date of cessation
1	Shri Sandip Parui	30/07/2010	-
2	Shri Ashis Sarkar	30/07/2010	-
3	Shri Sahab Uddin Khan	30/07/2010	-
4	Shri Gauranga Roy	02/07/2012	15/05/2013

36. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 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, 1956 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, VRL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
37. As far as the liability for non-compliance of section 73 of Companies Act, 1956 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, 1956, 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 Government's) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.
38. From the material available on record and the details of the appointment and resignation of the directors of VRL as reproduced in paragraph 35 of this Order, it is noted that Shri Sandip Parui, Shri Ashis Sarkar, Shri Sahab Uddin Khan and Shri Gauranga Roy, were directors at the time of the issuance of NCDs. Since these persons were acting as directors during the period of issuance of NCDs, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of VRL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the past and present directors of VRL, as

officers in default, 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, 1956 for the non-compliance of the above mentioned provisions. None of the Noticees disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) 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 VRL and its Directors, viz. Shri Sandip Parui, Shri Ashis Sarkar, Shri Sahab Uddin Khan and Shri Gauranga Khan, 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.

39. I note that during the financial years 2011-2012, 2012-2013 and 2013-2014, VRL through Offer of NCDs, had collected at the least an amount of Rs. 2,23,67,200/- from various allottees. I note that Shri Gauranga Roy was director of VRL during financial years 2012-2013 and 2013-2014. I note that Shri Sandip Parui, Shri Ashis Sarkar and Shri Sahab Uddin Khan were directors of VRL during financial years 2010-2011, 2011-2012, 2012-2013 and 2013-2014 till present date. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the directors to refund the amount with interest jointly and severally with VRL and other directors are limited to the extent of amount collected during his/her tenure as director of VRL.
40. As far as the liability under sections 117B and 117C of the Companies Act, 1956, is concerned, the liability is on the company to comply with the said provisions. Therefore, VRL is liable for the violation of sections 117B and 117C of the SEBI Act. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the Trustee who acts as the debenture trustee without the Certificate of Registration from SEBI as debenture

trustee. In view of the above, I find that *Vasundhara Realcon Debenture Trust* and its trustees namely Shri Chinmoy Ghatak and Shri Priyabrata Roy are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.

41. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 27 of this order, the liability is on the Company to comply with the requirements therein.
42. 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, 1956, is to direct the Company and its directors Shri Sandip Parui, Shri Ashis Sarkar, Shri Sahab Uddin Khan and Shri Gauranga Roy, to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its directors and unregistered debenture trustee, to safeguard the interest of the investors who had subscribed to such NCDs 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 Company and the other Noticees.
43. I also note that, vide the interim order dated November 10, 2015, VRL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the directors of VRL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided either by VRL or its directors despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 11 of this order.
44. In view of the discussion above, appropriate action in accordance with law needs to be initiated against VRL and its directors and the unregistered debenture trustee.
45. 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) VRL, Shri Sandip Parui, Shri Ashis Sarkar, Shri Sahab Uddin Khan and Shri Gauranga Roy shall forthwith refund the money collected by the Company through the issuance of NCDs, including the money collected from investors, 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) VRL, Shri Sandip Parui, Shri Ashis Sarkar, Shri Sahab Uddin Khan and Shri Gauranga Roy, are directed to provide a 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.
- (d) VRL, Shri Sandip Parui, Shri Ashis Sarkar and Shri Sahab Uddin Khan 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.
- (e) Shri Sandip Parui, Shri Ashis Sarkar, Shri Sahab Uddin Khan and Shri Gauranga Roy 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.

- (f) VRL, Shri Sandip Parui, Shri Ashis Sarkar, Shri Sahab Uddin Khan and Shri Gauranga Roy, 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.
- (g) After completing the aforesaid repayments, VRL, Shri Sandip Parui, Shri Ashis Sarkar, Shri Sahab Uddin Khan and Shri Gauranga Roy 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").
- (h) In case of failure of VRL, Shri Sandip Parui, Shri Ashis Sarkar, Shri Sahab Uddin Khan and Shri Gauranga Roy, to comply with the aforesaid directions, SEBI, on the expiry of three months period from the date of this Order:
 - i. may recover such amounts from the Company and its directors liable to refund as specified in paragraph 45(a) of this order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.
 - iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of

fraud, cheating, criminal breach of trust and misappropriation of public funds;
and

- (i) VRL, Shri Sandip Parui, Shri Ashis Sarkar, Shri Sahab Uddin Khan and Shri Gauranga Roy 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.
- (j) *Vasundhara Realcon Debenture Trust* and its trustees namely Shri Chinmoy Ghatak and Shri Priyabrata Roy are restrained from accessing the securities market and are 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.
- (k) The above directions shall come into force with immediate effect.

46. This Order is without prejudice to any action, including adjudication and prosecution proceedings that might be taken by SEBI in respect of the above violations committed by VRL and its promoters, directors and other key persons.

47. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

48. 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 with respect to the directions/ restraint imposed above against the Company and the individuals.

DATE: SEPTEMBER 12, 2017

PLACE: MUMBAI

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA