

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 Polaris Realtors India Limited (PAN: AAGCP6749N)

In respect of:

- a. Polaris Realtors India Limited (PAN: AAGCP6749N)**
- b. Shri Jafar Ali Molla (DIN: 03361024; PAN: AZQPM4641Q).**
- c. Shri Kartick Chandar Das (DIN: 03595398; PAN: AZTPD6449C).**
- d. Shri Gopal Nayek (DIN: 05273770; PAN: AEMPNI456K).**

And its Debenture Trustee, viz. Polaris Debenture Trust (represented by Ms. Dipanwita Das)

1. Polaris Realtors India Limited (hereinafter referred to as “**PRIL**”/ “**the Company**”) is a Public company incorporated on May11, 2012 and registered with Registrar of Companies–Gwalior (RoC) with CIN U45200MP2012PLC028419. Its registered office is at 214, Badridham Nagar, Dewas, Madhya Pradesh - 455001. From Form 10 as filed with RoC it is noted that the earlier address of the Company was “C/o. Shashank Sheorey, Sheorey Niwas, 673 Tilak Bhumi Talaiya, Bhandarpara, Jabalpur, Madhya Pradesh – 482002. The address appears to have been changed with effect from June 28, 2012 as mentioned in the 'MCA 21 Portal'.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a reference dated October 29, 2013 from the RoC, stating therein that certain companies including PRIL had issued secured debentures on private placement basis to more than 49 subscribers. SEBI, in order to ascertain whether any provisions of the Companies

Act, 1956; Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 (“**Debt Securities Regulations**”) were violated, vide letter dated December 10, 2013 requested RoC to provide information with regard to issuance of debentures by PRIL. In response, RoC vide letters dated December 19, 2013 and December 31, 2013 provided *inter alia* copies of Form 10 filed towards registration of charge for debentures by PRIL, the reply dated December 28, 2012 submitted by PRIL to RoC on said debenture issue along with the documents annexed thereto, viz., list of allottees (number of allottees as per list is 423) as on December 15, 2012, Debenture Trust Deed, etc. SEBI also received a reference dated April 3, 2014 from the Sub Inspector of Police, Government of West Bengal, Criminal Investigation Department, Kolkata, informing that PRIL had collected money through its agents from the public and had issued debenture certificates to the beneficiaries. The Company and its Board of Directors were not traceable and SEBI was requested for further information in this regard.

3. On examination by SEBI, it was observed that PRIL had allotted *Non-Convertible Redeemable Secured Debentures* (hereinafter referred to as “**Offer of NCDs**”) and raised an amount of Rs. 10.29 lakh approximately in the financial year 2012-2013 from 423 investors. I note that the number of allottees and funds mobilized has been collated from the documents submitted by PRIL to the RoC vide letter dated December 28, 2012. It was also observed from Form 10 filed with RoC that PRIL created a charge on its properties for an amount of Rs. 100 Crores on May 22, 2012 and appointed *Polaris Debenture Trust* represented by Ms. Dipanwita Das as Debenture Trustee for the *Offer of NCDs* by that company.
4. As the above said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the Debt Securities Regulations, SEBI passed an interim order dated June 15, 2015 (hereinafter referred to

as “**interim order**”) and issued directions mentioned therein against PRIL and its Directors viz. Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek, and its Debenture Trustee viz. *Polaris Debenture Trust*, represented by Ms. Dipanwita Das.

5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded.
6. A Debenture Trust Deed dated May 22, 2012 was signed between PRIL and *Polaris Debenture Trust*, represented by Ms. Dipanwita Das, wherein it was indicated *inter alia*, that pursuant to a resolution passed by the Board of Directors of the Company on May 22, 2012, it was decided to raise a sum of Rs.100 crores by issue of Debentures of Rs.100/- each, bearing interest as specified in Schedule I framed in accordance with the forms set forth in the Schedule II of the Deed, and to secure the same by mortgaging the properties described in the Schedule III with the Debenture Trustee. As per the Schedule I of Debenture Trust Deed, the plans offered by PRIL were as below:-

Scheme I – MULTIPLIER NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE

<i>Plan</i>	<i>RD-I</i>	<i>RD-2</i>	<i>RD-3</i>	<i>RD-4</i>
<i>Redemption period</i>	<i>16 months+ 1 Day</i>	<i>27 months + 1 day</i>	<i>39 months + 1 day</i>	<i>63 months + 1 day</i>
<i>Amount per Debenture of Rs.100 (Minimum 10 Debentures to be applied)</i>	<i>1200/-</i>	<i>2400/-</i>	<i>3600/-</i>	<i>6000/-</i>
	<i>Minimum 38 nos.</i>	<i>Minimum 48 nos.</i>	<i>Minimum 38 nos.</i>	<i>Minimum 60 nos.</i>
<i>Redemption Value</i>	<i>1370</i>	<i>2900</i>	<i>4700</i>	<i>9000</i>

Scheme II- MULTIPLIER NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE (CUMULATIVE)

<i>Plan</i>	<i>FD-I</i>	<i>FD-2</i>	<i>FD-3</i>	<i>FD-4</i>	<i>FD-5</i>	<i>FD-6</i>	<i>FD-7</i>
<i>Redemption period</i>	<i>1 year</i>	<i>3 years</i>	<i>5 years</i>	<i>8 years</i>	<i>10 years</i>	<i>12 years</i>	<i>16 years</i>
<i>Amount per Debenture of Rs.100 (Minimum 10 Debentures to be applied)</i>	<i>1000/-</i>	<i>1000/-</i>	<i>1000/-</i>	<i>1000/-</i>	<i>1000/-</i>	<i>1000/-</i>	<i>1000/-</i>

<i>Redemption Value</i>	1100	1500	2000	4000	6000	10000	14000
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Scheme III- REGULAR INCOME NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE

<i>Plan</i>	<i>MIS-I</i>	<i>MIS-2</i>	<i>MIS-3</i>
<i>Redemption period</i>	<i>2 year</i>	<i>5 years</i>	<i>8 years</i>
<i>Invested Amount</i>	25000/-	25000/-	25000/-
<i>Redemption value</i>	25500/-	25250/-	25250/-
<i>Rate of Interest (p.a.)</i>	12% (2% mature benefits)	16% (2% mature benefits)	20% (2% mature benefits)

Schedule III of the Debenture Trust Deed stated that a property along with all the present and future movable and immovable properties wherever situated of the Company valuing Rs. 100 crores was to be mortgaged to secure the debentures. The location of the property is at Mouza-Tagachi Mamudpur, J.L. No.-22, Paragana-Madonmolla, R.S. & LR Dag No. 307 under LR Khatian No. 474/1596/197/1 under A.D.S.R.O. & P.S-Baruipur, District-South 24 Parganas.

7. From April 1, 2012 to December 15, 2012, PRIL collected an amount of Rs. 10, 29,400/- from 423 investors.
8. 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 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) and sections 117B and 117C of the Companies Act, 1956 read with section 27(2) of the SEBI Act and the relevant provisions of the Debt Securities Regulations were not complied with by PRIL in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Polaris Debenture Trust*, represented by Ms. Dipanwita Das 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**”).

9. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated June 15, 2015 with immediate effect:
- i. “PRIL shall forthwith cease to mobilize fresh funds from investors through the *Offer of NCDs* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - ii. PRIL (CIN:U45200MP2012PLC028419; PAN: AAGCP6749N) and its Directors, viz. Shri Jafar Ali Molla (DIN:03361024; PAN:AZQPM4641Q), Shri Kartick Chandar Das (DIN:03595398; PAN:AZTPD6449C) and Shri Gopal Nayek (DIN: 05273770; PAN:AEMPN1456K) 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. PRIL 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. PRIL shall provide a full inventory of all its assets and properties;
 - v. PRIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. PRIL 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. PRIL 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 PRIL;

- viii. PRIL shall provide to SEBI all information regarding repayments made to the holders of *Non-Convertible Redeemable Secured Debentures* including name of the debenture holder, address, amount mobilized, number of *Non-Convertible Redeemable Secured Debentures* issued, promised maturity amount with date of maturity, amount refunded and date thereof;
- ix. PRIL shall furnish complete and relevant information within 21 days from the date of receipt of this Order, including in particular the list of subscribers, their addresses, telephone numbers, amount collected from each subscriber, etc.
- x. The Debenture Trustee, viz. *Polaris Debenture Trust (represented by its Trustee, viz. Mrs. Dipanwita Das)*, is prohibited from continuing with its present assignment as a debenture trustee in respect of the *Offer of NCDs* of PRIL 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.”
10. The interim order also directed the PRIL 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 read with section 27(2) of the SEBI Act should not be passed against them:
- i. Directing them jointly and severally to refund money collected through the *Offer of Non-Convertible Redeemable Secured Debentures* along with interest, if any, promised to investors therein;
- ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner

whatsoever, either directly or indirectly, for an appropriate period;

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

11. Similarly, the Debenture Trustee, viz. *Polaris Debenture Trust*, represented by Ms. Dipanwita Das was advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining it/them from accessing the securities market and further restraining it/them from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
12. Vide the said interim order, PRIL, its abovementioned Directors along with its Debenture Trustee (hereinafter referred to as “**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 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.
13. *Service of interim order:* The copy of the said interim order dated June 15, 2015 was sent to the Noticees vide letters dated June 17, 2015 which were delivered on the Company and its Director, Shri Gopal Nayek and the Debenture Trustee, Ms. Dipanwita Das. The said interim order could not be delivered to Shri Kartick Chandar Das and Shri Jafar Ali Molla. The said interim order was also delivered to the email address of the Company and Shri Jafar Ali Molla and Shri Kartick Chandar Das, as reflected from Form 32 submitted to the RoC on September 24, 2015. Hearing notices dated August 24, 2016 were issued to the Noticees, intimating that an opportunity of personal hearing was being granted to the Noticees on September 20, 2016 at the place and time mentioned in the said hearing notice. Vide letter dated September 15, 2016, Shri Jafar Ali Molla, on behalf of the Company stated that the Company was closed since April 2013 and

requested for an adjournment of the personal hearing.

14. Subsequently, vide notification dated June 10, 2017 published in the newspapers *Dainik Bhaskar* and *Times of India*, the Noticees were given a final opportunity of being heard on August 24, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed 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.
15. *Hearing and submissions*: Noticees did not avail the opportunity of hearing held on August 24, 2017. None of the Noticees have filed any replies as on date pursuant to the interim order.
16. I have considered the allegations and materials available on record. 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 NCDs as stated in the interim order.*
 - (2) *If so, whether the said issues are in violation of Section 56, Section 60 read with sections 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the Debt Securities Regulations.*
 - (3) *Whether appointment of Polaris Debenture Trust, represented by Ms. Dipanwita Das as the Debenture Trustee by PRIL is in violation of Section 117B of the Companies Act, 1956 and whether Ms. Dipanwita Das has violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations.*
 - (4) *If the findings on Issue Nos.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.

17. I have perused the interim order for the allegation of *Offer of NCDs*. I note that neither the company nor the directors filed any reply disputing the same.
18. I have also perused the documents/ information obtained from the 'MCA 21 Portal', the documents sent by RoC, including the reply dated December 28, 2012 filed by PRIL with the RoC, and other documents available on records. It is noted from the letter dated December 28, 2012, that a Debenture Trust Deed dated May 22, 2012 was signed between PRIL and the Debenture Trustee, Ms. Dipanwita Das, wherein it was indicated *inter alia*, that pursuant to a resolution passed by the Board of Directors of the Company on May 22, 2012, it was decided to raise a sum of Rs. 100 crores by issue of Debentures of Rs. 100/- each, bearing interest as specified in the said deed and as brought out in paragraph 6 of this Order. Copy of the extract of the minutes of the said Board Meeting dated May 22, 2012 was also provided. I find, on the basis of submission made by PRIL in the said letter December 28, 2012, that from April 1, 2012 to December 15, 2012, an amount of Rs. 10,29,400/- was collected from 423 investors.

ISSUE No. 2- *If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the Debt Securities Regulations.*

19. 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 issue'. At this juncture, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4),

be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

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

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

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

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

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

20. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI* (Civil Appeal no. 9813 and 9833 of

2011)(hereinafter referred to as the “**Sahara Case**”), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

“Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the “section of the public”. Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

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

21. Section 67(3) of 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) 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 Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.
22. I find that NCDs were issued by PRIL to at least 423 investors in the financial year 2012-2013. I find that PRIL has mobilized an amount of Rs. 10,29,400/- over the financial year 2012-2013. Further, I find that PRIL has created a charge of Rs. 100 Crores on May 22, 2012, which indicates that the *Offer of NCDs* by PRIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956. PRIL in its reply dated December 28, 2012 to the RoC has argued that the offer was not made to more than 49 persons at any point of time. Further, PRIL has submitted that no *Offer of NCDs* was made to the public. From the details provided by PRIL in the said reply to RoC, the following details have been tabulated for the number of allottees from April 1, 2012 to December 15, 2012:

Date of application and allotment	Number of applicants & allottees
August 26, 2012	5
August 27, 2012	27
August 28, 2012	78
August 29, 2012	39
August 30, 2012	131

August 31, 2012	1
September 27, 2012	6
September 28, 2012	1
September 29, 2012	5
September 30, 2012	15
October 10, 2012	2
October 11, 2012	4
October 12, 2012	1
October 13, 2012	3
October 15, 2012	2
October 16, 2012	3
October 18, 2012	3
October 19, 2012	4
October 20, 2012	1
October 25, 2012	1
November 30, 2012	77
December 01, 2012	12
December 07, 2012	1
December 14, 2012	1
Total allottees	423

From the above, I note that allotments were made to more than 49 persons on three occasions in the given timeline. 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, I note that neither the Company nor its Directors have placed any material to show 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 appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning". Therefore, in view of the material available on record, I find that the *Offer of NCDs* by PRIL 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 PRIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

23. I find that PRIL is not stated to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that PRIL is not covered under the second proviso to Section 67(3) of the Companies Act, 1956 and is therefore, not exempted from the 'public issue' norms as prescribed under the Companies Act, 1956.
24. 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.
25. The allegations of non-compliance of the above provisions were not denied by PRIL 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 PRIL has contravened the said provisions. PRIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that PRIL has also not complied with the provisions of section 73(3) of Companies Act, 1956 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.

26. Section 2(36) of the Companies Act 1956 read with section 60 of 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 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, PRIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that PRIL 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 PRIL has not complied with the provisions of section 60 of the Companies Act, 1956.
27. 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. The allegation of non-compliance of the above provisions was not denied by the company or Directors/promoters. Neither PRIL 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, PRIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
28. Under section 117C of the Companies Act, 1956, it is provided that the Company has 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. Neither PRIL nor its Directors/promoters produced any record to show that such debenture redemption reserve was created. Based on the material available on record, I find that PRIL has not complied with section 117C of the Companies Act, 1956.

29. Further, reference may be made to the Debt Securities Regulations, which are applicable to the public issue and listing of debt securities. Under the aforesaid Regulations, 'debt securities' have been defined as 'nonconvertible debt securities which create or acknowledge indebtedness, and include debenture...' In this context, the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, are applicable:

- i. Regulation 4(2)(a) – *Application for listing of debt securities*
- ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
- iii. Regulation 4(2)(c) – *Credit rating has been obtained*
- iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
- v. Regulation 4(4) – *Appointment of Debenture 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 16(1) – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

The Noticees have submitted vide their letter dated December 28, 2012 that the issue of NCDs were not public issue *ab initio*. However, as noted above, I have found the said issue of NCDs to be deemed public issue. Therefore, I find that PRIL, through the *Offer*

of NCDs, which is a public issue of debt securities, has violated the aforesaid provisions of the Debt Securities Regulations.

30. 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"

31. 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...”

32. In view of the above findings, I am of the view that PRIL was engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of sections 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) and 117C of the Companies Act, 1956 read with the relevant provisions of the Debt Securities Regulations.

ISSUE No. 3-Whether appointment of Polaris Debenture Trust, represented by Ms. Dipanwita Das as the Debenture Trustee by PRIL is in violation of Section 117B of the Companies Act, 1956 and whether Ms. Dipanwita Das has violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations.

33. I have perused the copy of the Debenture Trust Deeds dated May 22, 2011. I find that PRIL had created a charge of Rs. 100 crores for the Offer of NCDs by the Company. I further find that PRIL had appointed *Polaris Debenture Trust*, represented by Ms. Dipanwita Das as the debenture trustee.

34. 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, states that only a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body corporate alone are eligible to get a certificate of registration as Debenture Trustee.

35. *Polaris Debenture Trust*, represented by Ms. Dipanwita Das 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. None of the Noticees claimed that Ms. Dipanwita Das had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that Ms. Dipanwita Das has dealt in the impugned Offer of NCDs as debenture trustee, without having a certificate of registration as a Debenture Trustee, in violation of Section 12(1) of the SEBI Act, 1992.
36. 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. I find that PRIL has appointed *Polaris Debenture Trust*, represented by Ms. Dipanwita Das who does not have a certificate of registration. Therefore, the appointment of the same is in violation of section 117B of the Companies Act, 1956. Further, since PRIL has not issued a prospectus with the relevant information, therefore, the requirement of stating the consent of the debenture trustee to be so appointed on the face of the prospectus has 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?

37. From the documents available on record, I find that the present Directors in PRIL are Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek. The details of the appointment of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Jafar Ali Molla	May 11, 2012	-
Shri Kartick Chandar Das	May 11, 2012	-
Shri Gopal Nayek	May 11, 2012	-

38. 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, PRIL and its Directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

39. 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%.

40. From the material available on record and the details of the appointment of the directors of PRIL as reproduced in paragraph 37 of this Order, it is noted that Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek, 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 PRIL 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 the present directors of PRIL, 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 PRIL and its Directors, viz. Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek, 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.

41. I note that all the Directors of PRIL were appointed on May 11, 2012. 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 director to refund the amount with interest jointly and severally with PRIL and other directors are limited to the extent of amount collected during his/her tenure as director of PRIL.

42. 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, PRIL 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 *Polaris Debenture Trust* and its trustee namely Ms. Dipanwita Das are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
43. With respect to the provisions of the respective regulations of the Debt Securities Regulations enumerated on paragraph 29 of this order, the liability is on the Company to comply with the requirements therein.
44. 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 PRIL and its Directors, viz. Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Noticees, 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.
45. I also note that, vide the interim order dated June 15, 2015, PRIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of PRIL 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 PRIL or the other Noticees despite the delivery of the order as stated in paragraph 13 of this Order.

46. In view of the discussion above, appropriate action in accordance with law needs to be initiated against PRIL and its Directors, viz. Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek and *Polaris Debenture Trust* and Ms. Dipanwita Das.
47. 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. PRIL, Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek 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. PRIL, Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek, 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. PRIL, Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek 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 Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek 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. PRIL, Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek, 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. Since, it is noted from the list of investors provided by PRIL that most of the investors belong to West Bengal, publication shall also be made in a local daily of West Bengal (in Bengali).

g. After completing the aforesaid repayments, PRIL, Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek 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 PRIL, Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek 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 the directors liable to refund as specified in paragraph 47(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;
- i. PRIL, Shri Jafar Ali Molla, Shri Kartick Chandar Das and Shri Gopal Nayek 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. *Polaris Debenture Trust* and Ms. Dipanwita Das 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.

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

49. Copy of this Order shall be forwarded to the recognised stock exchanges, registrar and

transfer agents and depositories for information and necessary action.

50. 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 18, 2017

PLACE: MUMBAI

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA