

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Cell Realcon Corporation Limited

In respect of:

1. Cell Realcon Corporation Limited (PAN: AAEC9934A)
2. Shri Kumar Kanti Bhattacharya (PAN: ADXPB7335B; DIN: 01576626)
3. Shri Debi Prasad Mookherji (PAN: AEWPM1966K; DIN: 01576626)
4. Shri Sourav Bardhan (PAN: AIZPB6070C; DIN: 03381343 )
5. Shri Sekh Rezaul Karim (PAN: AKOPK3769L; DIN: 03410690)
6. Debenture Trustee, viz. Cell Debenture Trust (Represented by its Trustees, viz. Shri Abdul Basad Molla having address at 30, Jawahar Nehru Road, Chowringhee Mansion, Gate No. 1, 2<sup>nd</sup> Floor, Room No. 4, Kolkata- 700016)

- 
1. Cell Realcon Corporation Limited (hereinafter referred to as “**CRCL**”/ “**the Company**”) is a Public company incorporated on May 22, 2012 and registered with Registrar of Companies–Gwalior with CIN: U70101MP2012PLC28494. Its registered office is at Bagdona, Opposite Dee Pee Lodge, Tehsil–Ghoradungari, Betul–460443, Madhya Pradesh, India.
  2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a reference dated December 12, 2012 from the Ministry of Finance against CRCL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether CRCL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue and Listing of Debt

Securities), Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).

3. On enquiry by SEBI, it was observed that CRCL had made an offer of NCDs to at least 70 allottees in the financial years 2012-2013 and 2013-2014 (hereinafter referred to as “**Offer of NCDs**”) and raised an amount of at least Rs. 19.46 Lakhs. The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures. It was also observed that CRCL created a charge for an amount of Rs. 200.00 Crores on May 28, 2012 and appointed *Cell Debenture Trust (represented by its trustee, viz. Shri Abdul Basad Molla)* as Debenture Trustee for the Offer of NCDs by the 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 ILDS Regulations, SEBI passed an interim order dated June 17, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against CRCL and its Directors viz. Shri Kumar Kanti Bhattacharya, Shri Debi Prasad Mookherji, Shri Sourav Bardhan, Shri Sekh Rezaul Karim and its Debenture Trustee *Cell Debenture Trust (represented by its trustee, viz. Shri Abdul Basad Molla)* (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. CRCL had made an *Offer of NCDs* during the financial years 2012-2013 and 2013-2014 and raised an amount of at least Rs. 19.46 Lakhs as shown below:

| Year of Issue | Security Issued | Amount raised (Rs.)<br>(in lakh) | Number of allottees |
|---------------|-----------------|----------------------------------|---------------------|
| 2012-2013     | NCDs            | 2.26                             | 14                  |
| 2013-2014     |                 | 17.20                            | 56                  |
| Total         |                 | 19.46^                           | 70*                 |

\*^ No. of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. However, actual no. of allottees and amount mobilized could be more than the above indicated figures.

6. Further, CRCL created a charge for an amount of Rs. 200.00 Crores on May 28, 2012 and appointed *Cell Debenture Trust (represented by its trustees, viz. Shri Abdul Basad Molla)* as Debenture Trustee for the Offer of NCDs by the company. *Cell Debenture Trust (represented by its trustees, viz. Shri Abdul Basad Molla)* was not registered as debenture trustee for the offer of NCDs by that company.
7. 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 and the relevant provisions of the ILDS Regulations that were required to be complied with were not complied with by CRCL in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Cell Debenture Trust (represented by its trustees, viz. Shri Abdul Basad Molla)* has prima facie violated Section 12(1) of the SEBI Act, 1992 and Regulation 7 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "**Debenture Trustees Regulations**").
8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated June 17, 2015 with immediate effect.
  - i. CRCL (PAN: AAEECC9934A) shall forthwith cease to mobilize 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. CRCL and its present Directors, viz. Shri Kumar Kanti Bhattacharya (PAN: ADXPB7335B; DIN: 01576626), Shri Debi Prasad Mookherji (PAN: AEWPM1966K; DIN: 03182022), Shri Sourav Bardhan (PAN: AIZPB6070C;

DIN:03381343), 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. The past Director of CRCL, viz. Shri Sekh Rezaul Karim (DIN: 03410690), is 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;
- iv. CRCL and its abovementioned past and present 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;
- v. CRCL shall provide a full inventory of all its assets and properties;
- vi. CRCL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;
- vii. CRCL and its abovementioned present 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;
- viii. CRCL and its abovementioned present 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 CRCL;
- ix. CRCL and its abovementioned past and present Directors shall furnish complete and relevant information (as sought by SEBI letter dated March 7, 2014), within 14 days from the date of receipt of this Order;
- x. The Debenture Trustee, viz. *Cell Debenture Trust (represented by Shri Abdul Basad Molla)*, is prohibited from continuing with its assignment as debenture trustee in respect of the *Offer of NCDs* of CRCL 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.

9. The interim order also directed the CRCL and its Directors/promoters to show cause

as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, 1992 should not be passed against them:

- i.* Directing them jointly and severally to refund money collected through the Offer of NCDs alongwith interest, if any, promised to investors therein;
- ii.* Directing them to not 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.

10. Similarly, the Debenture Trustee, viz. *Cell Debenture Trust (represented by Shri Abdul Basad Molla)*, is 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 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.

11. Vide the said interim order, CRCL, its abovementioned Directors along with its Debenture Trustee 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.

12. *Service of interim order:* The copy of the said interim order was sent to all the Noticees vide letter dated June 18, 2015. The copy of interim order was delivered to Shri Sekh Rezaul Karim and Shri Kumar Kanti Bhattacharya. The proof of delivery was not received from rest of the noticees. Thereafter vide notification dated August 28, 2016 published in newspaper *Times of India*, the Noticees were notified that SEBI has

issued interim Order cum show cause notice dated June 17, 2015 against them. The orders could not be delivered to some of the entities at their last known address and the orders can be accessed on website [www.sebi.gov.in](http://www.sebi.gov.in) under “Orders & Rulings”. The entities were also intimated that they may file their replies, if any, at least four days prior to the date of hearing on October 13, 2016. Thus the Interim Order was served on the noticees.

13. *Hearing and submissions:* The noticees were given opportunity of personal hearing on October 13, 2016 vide Hearing Notice dated August 12, 2016 and notification dated August 28, 2016 published in newspaper *Times of India*. Pursuant to the same Shri Kumar Kanti Bhattacharya submitted his reply received by SEBI on October 13, 2016 wherein he inter alia submitted as follows-

- a. That he joined the company as an employee thereof after the formation and, incorporation thereof at the instance of its Chairman and Managing Director Mr. Rajesh Jaiswal. He was placed to look after the administrative sector and for the sake of true and efficient discharge of administrative duties; the petitioner was assigned the post of Director (Administrative) on a consolidated remuneration (Salary) of Rs 50,000/- per month.
- b. That at the time of joining he was given to understand that Cell Realcon Corporation Limited is a flagship company of the Cell Group of companies including Cell Industrial Limited.
- c. That he never engaged himself in the business of the said company and was more his employee than any officer of the Company and when he realized that the said Rajesh Jaiswal is making public placement by issuing Non Convertible Debentures flouting the norms enshrined in section 67 of the Companies Act, 1956 to numerous investors, he refused to perform his duties as Director (Administration) and took the vow to return the investments collected from several investors according to the law.
- d. The order had been passed without serving any notice upon him.
- e. The order had been passed without affording an opportunity of hearing to him.

- f. No post decisional hearing was given to him after passing of the interim order and it was only at the final stage that notice dated August 12, 2016 was served upon the petitioner calling upon him to appear for final hearing.
- g. That he has all along acted bonafide and did not have the intention to defraud the investors or to misappropriate the funds invested by the investors or to cheat the investors in any manner whatsoever therefore he decided to payoff and liquidate the dues of the investors by refunding to them the determined amount. That by devising suitable schemes and arrangements and upon wide publication / advertisement of such scheme for refunding / making payment of/liquidating the dues of the investors in widely circulated newspapers, he has, till date, paid off Rs. 15.86 Lakh to the investors.
- h. That he upon having made such payment as aforesaid, there is presently no substantial amount due and payable by him to any investors, save and except Rs. 3.6 Lakh which he undertakes to deposit with the SEBI, as some unscrupulous agents acting on the basis of some forged and unregistered Power of Attorney is claiming such amount which is otherwise devoid to the scheme of payment as directed in the interim order dated 17.06.2016.
- i. That he craves leave to produce proof of payment of the dues of the investors at any time upon direction being passed therefor.
- j. That he submits that since the substantial part of his determined liability towards the investors has been squared off, paid, cleared and wiped off the present proceeding may be dropped by confirming the interim order dated 17.06.2015 to the extent the same determined the liability of the applicant to the tune of Rs.19.46 Lakh and by recording that he has paid off/discharged/squred off/ wiped off its liability towards its investors, save and except Rs. 3.6 Lakh which he undertakes to deposit with the SEBI.

14. Vide the said reply Shri Kumar Kanti Bhattacharya also sought copies of documents and accordingly opportunity of inspection was granted to him on October 13, 2016

which was duly availed by him. None of the noticees availed the opportunity of hearing on October 13, 2016.

15. Subsequently vide notification dated June 10, 2017 published in newspaper Dainik Bhaskar- Bhopal and notification dated June 10, 2017 published in newspaper Times of India, the Noticees were notified by SEBI that, they will be given final opportunity of being heard on August 10, 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. Noticees did not avail the opportunity of hearing held on August 10, 2017.
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 section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.*
- (3) Whether appointment of Cell Debenture Trust (represented by its trustees, viz. Shri Abdul Basad Molla), as the Debenture Trustee by CRCL is in violation of Section 117B of the Companies Act, 1956 and whether Cell Debenture Trust and Shri Abdul Basad Molla 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.**

17. I have perused the interim order dated June 17, 2015 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' other documents available on records. It is noted, from the documents on record in the matter that CRCL has issued and allotted NCDs to at least 70 investors during the financial years 2012-2013 and 2013-2014 and raised an amount of at least Rs. 19.46 Lakhs. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than at least 70 allottees and At least Rs. 19.46 Lakhs respectively.

19. I therefore conclude that CRCL came out with an offer of NCDs as outlined above.

**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 ILDS Regulations.**

20. 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).”

21. 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.”*

22. 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*.

23. In the instant matter, I find that NCDs were issued by CRCL to at least 70 investors in the financial years 2012-2013 and 2013-2014. However, this number is not conclusive as it is based on the documents received by SEBI along with complaints and the actual number of investors could be more than 70. I find that CRCL has mobilized an amount of at least Rs. 19.46 Lakhs over the financial years 2012-2013 and 2013-2014 which is not a conclusive value as it is based on the complaints received by SEBI. Further, I find that CRCL has created a charge of Rs. 200.00 Crores on May 28, 2012. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by CRCL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
24. Neither CRCL nor its directors have contended that the *Offer of NCDs* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
25. I find that CRCL has not claimed it to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that CRCL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
26. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by CRCL 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 CRCL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
27. 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.

28. The allegations of non-compliance of the above provisions were not denied by CRCL 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.
29. Vide letter dated October 13, 2016 one of the director Shri Kumar Kanti has claimed that he has, till date, paid off Rs. 15.86 Lakh to the investors there is presently no substantial amount due and payable by him to any investors, save and except Rs. 3.6 Lakh and he craves leave to produce proof of payment of the dues of the investors at any time upon direction being passed therefor. In this regard I note that various opportunities have been provided to him to submit proof of the same including hearing opportunity on August 10, 2017, however he failed to substantiate his claim. No proof of repayments as per provisions of section 73(3) was even submitted by CRCL. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.
30. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of NCDs was a deemed public issue of securities, CRCL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that CRCL 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 CRCL has not complied with the provisions of section 60 of the Companies Act, 1956.

31. 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 CRCL 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, CRCL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
32. 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.
33. 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 CRCL 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
  - 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 17 – Creation of security
  - xv. Regulation 19 – Mandatory Listing
  - xvi. Regulation 26 – Obligations of the Issuer, etc.
34. Further, 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"*

35. 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...”*

36. Even in cases where the allotments are considered separately, reference may be made to *Sahara Case*, wherein it was held that under Section 67(3) of the Companies Act, 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 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”.

37. In view of the above findings, I am of the view that CRCL 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 Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.

**ISSUE No. 3-Whether appointment of Cell Debenture Trust (represented by its trustees, viz. Shri Abdul Basad Molla) , as the Debenture Trustee by CRCL is in violation of Section 117B of the Companies Act, 1956 and whether Cell Debenture Trust and viz. Shri Abdul Basad Molla have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?**

38. I have perused the copy of the Debenture Trust Deeds dated May 28, 2012. I find that CRCL had created a charge of Rs. 200.00 Crores for the Offer of NCDs by the Company. I further find that CRCL had appointed *Cell Debenture Trust (represented by its trustees, viz. Shri Abdul Basad Molla )* as the debenture trustee. by way of trust deed dated May 28, 2012.

39. 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.*

40. *Cell Debenture Trust (represented by its trustees, viz. Shri Abdul Basad Molla)* 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 *Cell Debenture Trust (represented by its trustee, viz. Shri Abdul Basad Molla)* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that Cell Debenture Trust and Shri Abdul Basad Molla have dealt in the impugned Offer of NCDs as debenture trustees, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992.

41. 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 CRCL has appointed *Cell Debenture Trust (represented by its trustee, viz. Shri Abdul Basad Molla)* who do 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 CRCL 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 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?***

42. I note that Shri Kumar Kanti Bhattacharya has submitted that that he joined the company as an employee at the instance of its Chairman and Managing Director Mr. Rajesh Jaiswa and was assigned the post of Director (Administrative). He also submitted that he never engaged himself in the business of the said company and

was more his employee than any officer of the Company. At this juncture I would like to rely on Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI* wherein Hon'ble SAT has observed that-

*Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956.*

43. Thus in view of SAT decision of *Manoj Agarwal vs. SEBI*, the contention of Shri Kumar Kanti Bhattacharya is not acceptable. Shri Kumar Kanti Bhattacharya has also claimed that he has, till date, paid off Rs. 15.86 Lakh to the investors there is presently no substantial amount due and payable by him to any investors, save and except Rs. 3.6 Lakh and he craves leave to produce proof of payment of the dues of the investors at any time upon direction being passed therefor. In this regard I note that various opportunities have been provided to him to submit proof of the same including hearing opportunity on August 10, 2017, however he failed to substantiate his claim. No proof of repayments was even submitted by CRCL. In light of the same, the contention of Shri Kumar Kanti Bhattacharya cannot be accepted.

44. From the documents available on record, I find that the present Directors in CRCL are Shri Kumar Kanti Bhattacharya, Shri Debi Prasad Mookherji, Shri Sourav Bardhan. I also note that Shri Sekh Rezaul Karim, who was earlier Director in CRCL has since resigned. The details of the appointment and resignation of the directors are as following:

| <b>Name of the directors</b>     | <b>Date of appointment</b> | <b>Date of cessation</b> |
|----------------------------------|----------------------------|--------------------------|
| Shri Kumar Kanti<br>Bhattacharya | May 22, 2012               | Continuing               |
| Shri Debi Prasad<br>Mookherji    | May 15, 2013               | Continuing               |
| Shri Sourav Bardhan              | May 22, 2012               | Continuing               |
| Shri Sekh Rezaul<br>Karim        | May 22, 2012               | June 01, 2013            |

45. 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, CRCL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

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

47. From the material available on record and the details of the appointment and

resignation of the directors of CRCL as reproduced in paragraph 42 of this Order, it is noted that Shri Sekh Rezaul Karim, Shri Kumar Kanti Bhattacharya, Shri Debi Prasad Mookherji , Shri Sourav Bardhan 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 CRCL 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 CRCL, 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. The submission of Shri Kumar Kanti Bhattacharya in this regard has been dealt with in paragraph 42 of this Order. 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 CRCL and its Directors, viz. Shri Sekh Rezaul Karim, Shri Kumar Kanti Bhattacharya , Shri Debi Prasad Mookherji , Shri Sourav Bardhan 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.

48. I note that during the financial years 2012-2013 and 2013-2014, CRCL through Offer of NCDs, had collected at the least an amount of Rs. 19.46 Lakhs from various allottees. I note that Shri Kumar Kanti Bhattacharya has been director of CRCL during financial years 2012-2013, 2013-2014 till present date. I note that Shri Debi Prasad Mookherji has been director of CRCL during financial years 2013-2014 till present

date. I note that Shri Sourav Bardhan has been director of CRCL during financial years 2012-2013, 2013-2014 till present date. I note that Shri Sekh Rezaul Karim was director of CRCL during financial years 2012-2013 and 2013-2014. 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 director to refund the amount with interest jointly and severally with CRCL and other directors are limited to the extent of amount collected during his/her tenure as director of CRCL.

49. 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, CRCL is liable for the violation of sections 117B and 117C of the SEBI Act, 1992. In respect of the liability under section 12(1) of the SEBI Act, 1992 the liability is on the Trustee who act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that Cell Debenture Trust (represented by Shri Abdul Basad Molla) is liable for the violation of section 12(1) of the SEBI Act, 1992 read with regulation 7 of the Debenture Trustee Regulations.
50. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 33 of this order, the liability is on the Company to comply with the requirements therein.
51. 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 CRCL and its Directors, viz, Shri Sekh Rezaul Karim, Shri Kumar Kanti Bhattacharya, Shri Debi Prasad Mookherji, Shri Sourav Bardhan to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors, 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.

52. I also note that, vide the interim order dated June 17, 2015, CRCL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of CRCL 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 CRCL or the other.
53. In view of the discussion above, appropriate action in accordance with law needs to be initiated against CRCL and its Directors viz. Shri Kumar Kanti Bhattacharya, Shri Debi Prasad Mookherji, Shri Sourav Bardhan and Shri Sekh Rezaul Karim and debenture trustee.
54. 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) CRCL, Shri Sekh Rezaul Karim, Shri Kumar Kanti Bhattacharya, Shri Debi Prasad Mookherji and Shri Sourav Bardhan shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
- (b) If the Company, CRCL had repaid NCD to its investors as per section 73(2) of the Companies Act, 1956 along with promised returns as stated in replies, the above directions and the below mentioned consequential directions from paragraphs 54(c) to 54(h), shall be applicable for the amounts due to be returned to the investors. However, such prior repayments/redemption should have been made by the Company as per the requirement laid down in paragraph 54(c) below, and the same shall be certified by Chartered Accountants, as directed in paragraph 54(i) below.

- (c) 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”.
- (d) Shri Sekh Rezaul Karim is directed to provide a full inventory of all his assets and properties and details of all his bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (e) CRCL and Shri Kumar Kanti Bhattacharya , Shri Debi Prasad Mookherji , Shri Sourav Bardhan are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
- (f) CRCL, Shri Kumar Kanti Bhattacharya , Shri Debi Prasad Mookherji , Shri Sourav Bardhan 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.
- (g) CRCL, Shri Sekh Rezaul Karim, Shri Kumar Kanti Bhattacharya , Shri Debi Prasad Mookherji, Shri Sourav Bardhan 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.
- (h) CRCL and on its behalf, the present directors who joined subsequent to the issues and Shri Sekh Rezaul Karim, Shri Kumar Kanti Bhattacharya , Shri Debi Prasad Mookherji , Shri Sourav Bardhan in their personal capacity to make refund, 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.

- (i) After completing the aforesaid repayments, CRCL, , Shri Sekh Rezaul Karim, Shri Kumar Kanti Bhattacharya , Shri Debi Prasad Mookherji , Shri Sourav Bardhan 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**")
- (j) In case of failure of CRCL, Shri Sekh Rezaul Karim, Shri Kumar Kanti Bhattacharya , Shri Debi Prasad Mookherji , Shri Sourav Bardhan to comply with the aforesaid applicable 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 52(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;
- (k) CRCL, Shri Sekh Rezaul Karim, Shri Kumar Kanti Bhattacharya , Shri Debi Prasad Mookherji and Shri Sourav Bardhan 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.

- (l) Cell Debenture Trust and Shri Abdul Basad Molla 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.

(m) The above directions shall come into force with immediate effect.

55. 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 Noticees and other key persons.
56. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
57. 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: October 04, 2017**

**PLACE: Mumbai**

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