

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 Rahul Inn Hospitality Limited

In respect of:

- 1. Rahul Inn Hospitality Limited (PAN:AAFRCR6421E)**
- 2. Shri Abhijit Majumdar (PAN: AJCPM9999F; DIN:03619374)**
- 3. Shri Dipankar Gupta (DIN: 02408609)**
- 4. Shri Mrinmoy Bose (PAN: AMOPB0512G; DIN:03619376)**
- 5. Shri Rahul Banerjee (PAN: AIKPB8188N; DIN:02315957)**
- 6. Debenture Trustees, viz. Shri Chapal Biswas R/o 111/3, Swamiji Sarak, Kolkatta 700034 and Shri Chinmoy Ghatak R/o 107, Shripal Apartment, Ground Floor, N.S.C Bose Road, Kolkata-700040.)**

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1. Rahul Inn Hospitality Limited (hereinafter referred to as “**RIHL**”/ “**the Company**”) is a Public company incorporated on November 14, 2011 and registered with Registrar of Companies–Patna with CIN: U55102BR2011PLC017706. Its registered office is at Rahul Group, Beside Bijli Office, Siwan Chhapra Road, Siwan–841226, Bihar, India.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons against RIHL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether RIHL had made any public issue of securities

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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 RIHL had made an offer of NCDs in the financial years 2011-2012, 2012-2013 and 2013-2014 (hereinafter referred to as “**Offer of NCDs**”) and raised an amount of at least Rs.24.67 Lakh from at least 147 allottees. 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 RIHL created a charge for an amount of Rs. 15.00 Crores on December 01, 2011, which was further increased to Rs.65.00 Crores on January 27, 2012 and appointed *Shri Chapal Biswas and Shri Chinmoy Ghatak* as Debenture Trustees 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 August 06, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against RIHL and its Directors viz. Shri Abhijit Majumdar, Shri Dipankar Gupta, Shri Mrinmoy Bose and Shri Rahul Banerjee and its Debenture Trustees viz. *Shri Chapal Biswas and Shri Chinmoy Ghatak*. (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. RIHL had made an *Offer of NCDs* during the financial years 2011-

2012 , 2012-2013 and 2013-2014 and raised at least an amount of Rs.24.67 Lakh as shown below:

Type of Security	Year	No. of persons to whom NCDs were allotted	Total Amount (Rs.in Lakhs)
NCDs	2011-12	24	4.55
	2012-13	102	17.67
	2013-14	21	2.45
Total		147*	24.67[^]

^{*^} 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, RIHL created a charge for an amount of Rs. 15.00 Crores on December 01, 2011 and Rs.65.00 Crores on January 27, 2012 and appointed *Shri Chapal Biswas and Shri Chinmoy Ghatak* as Debenture Trustees for the Offer of NCDs by the company. *Shri Chapal Biswas and Shri Chinmoy Ghatak* were not registered as debenture trustee for the offer of NCDs by the 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 read with section 27(2) of the SEBI Act and the relevant provisions of the ILDS Regulations were not complied with by RIHL in respect of the *Offer of NCDs*. Further, the Debenture Trustees viz. *Shri Chapal Biswas and Shri Chinmoy Ghatak* 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, 1993).

Regulations").

8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated August 06, 2015 with immediate effect:
- i. *“RIHL (PAN: AAFCR6421E) 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. *RIHL and its present Directors, viz. Shri Abhijit Majumdar (PAN: AJCPM9999F; DIN: 03619374), Shri Dipankar Gupta (DIN: 02408609) and Shri Mrinmoy Bose (PAN: AMOPB0512G; DIN: 03619376), 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 RIHL, viz. Shri Rahul Banerjee, 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. *RIHL 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. *RIHL shall provide a full inventory of all its assets and properties;*
 - vi. *RIHL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;*
 - vii. *RIHL 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. *RIHL 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 RIHL;*
 - ix. *RIHL and its abovementioned past and present Directors shall co-operate with SEBI and shall furnish all information/documents sought vide letter dated December 26, 2014;*
 - x. *The Debenture Trustees, viz. Shri Chapal Biswas and Shri Chinmoy Ghatak, are prohibited from continuing with their assignment as debenture trustee in respect of the Offer of NCDs of RIHL 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 Noticees to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act 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 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.”*
10. Similarly, the Debenture Trustees, viz. Shri Chapal Biswas and Shri Chinmoy Ghatak, were 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 them from accessing the securities market and further restraining them 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, RIHL and 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 interim order further stated that the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
12. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated August 07, 2015. Further, a press release was also issued by SEBI and the same was placed on SEBI website.
13. *Replies:* RIHL vide letter dated August 26, 2015 submitted the following reply to the interim order:
 - i. *“It was incorporated on 14/11/11 with ROC, Patna for the purpose of hospitality business. However, business did not work out and the operations of RIHL was stopped on January 2012. It was never in any manner whatsoever in fund mobilizing business from market.*
 - ii. *It did issue NCDs which were strictly in “Private Placement Basis” and that's also for their companies personnel and their relatives.*
 - iii. *The NCDs issued were within the specific norms of below 49 Nos.*
 - iv. *The data provided in the interim order regarding debentures issued to 147 investors amounting to Rs.24.67 lakhs are not in the records of RIHL and if at all those 147 people have approached SEBI then it is categorically and emphatically denied and disputed as the same investors have never approached RIHL for their refunds or any other disputes whatsoever.”*

- 13.1 Mr. Chinmoy Ghatak, Debenture trustee of RIHL vide his letter dated August 31, 2015 submitted that he is not related to RIHL and did not sign any documents pertaining to the company. He has denied the fact that he was Trustee of the related Debenture Deed and alleged fraud and forgery in the matter.
- 13.2 However, no reply from the remaining Noticees viz., Mr. Mrinmoy Bose, Mr. Dipankar Gupta, Mr. Abhijit Majumdar and Mr. Rahul Banerjee has been received till date.
14. *Opportunity of Hearing and Post hearing Submissions:* Vide hearing notices dated August 31, 2016, the Noticees were given an opportunity of personal hearing on October 13, 2016. The hearing notices sent to Shri Mrinmoy Bose, Shri Dipankar Gupta and Shri Rahul Banerjee got delivered and acknowledgement received. However, the hearing notices sent to RIHL, Shri Abhijit Majumdar and Shri Chapal Biswas were returned undelivered. Vide notification dated June 10, 2017 published in newspaper *Anand Bazar Patrika* and notification dated June 10, 2017 published in newspaper *Times of India*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on July 13, 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. None of the Noticees asked for the copy of interim order.
15. Noticees did not avail the opportunity of personal hearing granted on July 13, 2017. Subsequently, SEBI vide letter dated September 08, 2017 granted another opportunity to the Noticees who had replied to the interim order for submission of additional documentary evidence if any, in support of their earlier submissions. In response, Mr. Chinmoy Ghatak vide letter dated August 31, 2016 reiterated his earlier submissions. Further, Mr. Chapal Biswas vide e-mail dated September 04, 2016 submitted *inter alia* as

under:

- i. *“I was an employee of the company from 2008 to 31.12.2012. I was posted there as marketing manager. As an employee of a private company, I was forced to sign on several documents. The management has forced me to sign on different types of papers on several times on blank papers also.*
- ii. *On several occasions without knowing the consequences of such signatures only to save my livelihood I have put my signatures, but after some time when I realized that they are misusing my signatures I protested, as a result they have terminated me from the service on and from 31st December, 2012.”*

The letter issued to Mr. Chinmoy Ghatak was delivered to him on September 21, 2017 as per the acknowledgment receipt obtained from India post website. However, no additional information/documentary evidence has been received by SEBI from Mr. Chinmoy Ghatak till date. In view of the same, I am constrained to proceed the matter with material available on record.

16. I have considered the allegations and materials available on record. On perusal of the materials available on record, the following issues arise for consideration. Each question is dealt with separately under different headings.

- (1) Whether the company came out with the Offer of NCDs as stated in the interim order.*
- (2) If so, whether the said issues are in violation of 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 Shri Chapal Biswas and Shri Chinmoy Ghatak as the*

Debenture Trustee by RIHL is in violation of Section 117B of the Companies Act, 1956 and whether Shri Chapal Biswas and Shri Chinmoy Ghatak 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 August 06, 2015 for the allegation of offer of NCDs.

I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records including the replies. It is noted, from the investors' complaints received by SEBI in the matter that RIHL has issued and allotted NCDs to at least 147 investors during the financial years 2011-2012, 2012-2013 and 2013-2014 and raised at least an amount of Rs.24.67 Lakh. 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 147 allottees and Rs. 24.67 Lakh respectively.

18. I have perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records including the replies. It is noted from the MCA21 Portal that RIHL had filed Form 10 dated December 23, 2011 and January 01, 2012, Extract of Board Meeting. From the perusal of the same, the following are noted:

- i. As per the resolution passed by the Board of Directors of RIHL on November 30, 2011, it was decided to raise a sum of Rs. 15,00,00,000/- (Fifteen Crores) by the issue of 1,50,000 debentures of Rs.1000/- each redeemable at par on or before

November 30th, 2016 bearing interest at the rate of eighteen percent per annum payable half yearly.

- ii. As per Form 10 dated January 01, 2012, it is noted that earlier resolution was modified by way of enhancement of the amount to be raised from Rs.15 crores to Rs.65 crores by additional issue of 5,00,000 debentures of Rs.1000/- each redeemable at par on or before January 24, 2017 bearing interest at the rate of eighteen percent per annum payable half yearly.
- iii. A Certificate in respect of modification of mortgage from Rs.15 crores to Rs.65 crores is also available on MCA 21 portal.

19. I have also noted the submissions/objections of RIHL. I note that none of the directors have filed any reply disputing the allegations in the interim order. Though the Company has denied the allegations in the interim order, I note that it has not submitted any documentary evidence to prove the same. For instance, SEBI vide letters dated December 26, 2014 and reminder dated January 29, 2015 sought details from the company such as total number of Debentures issued, total number of debenture holders and value of such allotment against each allottees name. However, the company has not provided such details though it merely denies the allegations made in the interim order. Further, the company claims that the entire issue was a private placement with allotment to less than 49 persons. However, based on the copies of certificates of allotment submitted by the Complainants, I note that RIHL had allotted NCDs to at least 147 persons including 102 in the FY 2012-13 itself.

20. *I therefore conclude that RIHL 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 Debt Securities Regulations.

21. 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).”

22. 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.”

23. 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*.

24. In the instant matter, I find that NCDs were issued by RIHL to at least 147 investors in the financial years 2011-2012, 2012-2013 and 2013-2014 and raised at least an amount of Rs.24.67 Lakh. 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 147. I find that RIHL has mobilized at least an amount of Rs. 24.67 Lakh over the financial years 2011-2012 , 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 RIHL has created a charge of Rs. 15.00 Crores on December 01, 2011 and further increased the same to Rs.65.00 Crores on January 27, 2012. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by RIHL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
25. I find that RIHL 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 RIHL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
26. RIHL vide its reply dated August 26, 2015 argued that the offer was not made to more than 49 persons at any point of time. Further, RIHL has submitted that no Offer of NCDs was made to public and it was strictly private placement to the company personnel and their relatives. However, the company has not provided any details of its allottees despite SEBI’s letters dated December 26, 2014 and reminder dated January 29, 2015. Neither did the company submit any proof of relationship between the company and the allottees nor its Directors placed any material to show that the allotment from 2011 to 2014 were 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. Further, reference may also 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."* Therefore, I find that the said issuance cannot be considered as private placement. From the details provided by the complainants to SEBI which is tabulated at paragraph 5 above it is noted that allotments were made to more than 49 persons during the FY 2012-13. Even instances where allotment is made in tranches to less than 49 persons reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in the matter of *Neesa Technologies Limited vs. SEBI* (Appeal No. 311 of 2016) wherein it was observed *"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"*.

27. Therefore, in view of the material available on record, I find that the Offer of NCDs by RIHL 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 RIHL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
28. 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.

29. The allegations of non-compliance of the above provisions were not denied by RIHL 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 RIHL has contravened the said provisions. RIHL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that RIHL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. 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, RIHL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that RIHL 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 RIHL 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 RIHL 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, RIHL 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 RIHL 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. The company vide its reply dated August 26, 2015 submitted 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 RIHL, through the Offer of NCDs, which is a public issue of debt securities, has violated the aforesaid provisions of the Debt Securities Regulations.

35. 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"

36. 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...”

37. In view of the above findings, I am of the view that RIHL 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 Shri Chapal Biswas and Shri Chinmoy Ghatak as the Debenture Trustees by RIHL is in violation of Section 117B of the Companies Act, 1956 and whether. Shri Chapal Biswas and Shri Chinmoy Ghatak have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

38. I have perused the copy of the Deed of Equitable Mortgage' and the 'Declaration of Consent' filed with RoC by RIHL. I find that RIHL had created a charge of Rs.15.00 Crores which was further increased to Rs.65 Crores on January 27, 2012 for the Offer of NCDs by the Company. Though Shri Chapal Biswas contended that he was an employee of a group company and his signatures were obtained by force by the company and were misused. However, I find that his signature is in the Deed of Equitable Mortgage. SEBI also gave another opportunity vide letter dated September 08, 2017 to Shri Chapal Biswas to submit additional evidence. However, neither did he submit any evidence to substantiate his claim that he was an employee of a group company nor did he provide any evidence to substantiate his claim of misuse of signatures, for instance, by producing any copy of complaint in this regard to any authority. Further, Shri Chinmoy Ghatak contended that he was not a trustee of RIHL and alleged forgery and fraud in the matter. The Noticee was given additional opportunity vide letter dated September 08, 2017 to submit evidence in support of his claim. However, the Noticee failed to submit any evidence till date. Further,

I note that Shri Chinmoy Ghatak has acted as Auditor of the Company and certified the Balance sheet as on December 31, 2012. In view of this, I find it difficult to accept the claim of forgery of his signature. In view of his association as Auditor of the Company his claim that he is not associated with the company in any capacity does not lend any credence. On the contrary, I find from 'Declaration of Consent' that Mr. Chapal Biswas and Mr. Chinmoy Ghatak agreed to act as trustees for the debenture holders. Further, a Deed of Equitable Mortgage was also executed between the company and the said trustees on December 01, 2011. As per 'Declaration of Consent', Mr. Chapal Biswas and Mr. Chinmoy Ghatak agreed to act as trustees for the additional issue of debentures also. Further, a Deed of Equitable Mortgage was also executed between the company and the said trustees on January 27, 2012. I therefore, find that RIHL had appointed Mr. Chapal Biswas and Mr. Chinmoy Ghatak, as the debenture trustees.

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. Shri Chapal Biswas and Shri Chinmoy Ghatak are not eligible to obtain a certificate of registration since they do not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993.
40. As per the material available on record, I find that Shri Chapal Biswas and Shri Chinmoy Ghatak acted as Debenture Trustees for the impugned offer of NCDs without obtaining

the certificate of registration in violation of Section 12(1) of the SEBI Act.

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 RIHL has appointed *Shri Chapal Biswas and Shri Chinmoy Ghatak* 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 RIHL 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. From the documents available on record, I find that the present Directors in RIHL are Shri Abhijit Majumdar , Shri Dipankar Gupta , Shri Mrinmoy Bose. I also note that, Shri Rahul Banerjee, who was earlier Director in RIHL, have since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Abhijit Majumdar	November 14, 2011	Continuing

Shri Dipankar Gupta	January 03, 2013	Continuing
Shri Mrinmoy Bose	November 14, 2011	Continuing
Shri Rahul Banerjee	November 14, 2011	January 03, 2013

42.1 It is noted from the material available on record that Mr.Rahul Banerjee who was director of RIHL had resigned from the directorship of RIHL on January 03, 2013. However, I note that he was nonetheless director of RIHL during the period when NCDs were issued by RIHL.

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

44. 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%.

45. From the material available on record and the details of the appointment and resignation of the directors of RIHL as reproduced in paragraph 42 of this Order, it is noted that Shri Rahul Banerjee, Shri Abhijit Majumdar , Shri Dipankar Gupta and Shri Mrinmoy Bose 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 RIHL 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 RIHL, 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 RIHL and its Directors, viz. Shri Rahul Banerjee, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose 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.

46. I note that during the financial years 2011-2012, 2012-2013 and 2013-2014 RIHL through Offer of NCDs, had collected at least an amount of Rs.24.67 Lakh from at least 147 allottees. I note that Shri Abhijit Majumdar has been director of RIHL since financial years 2011-2012, 2012-2013, 2013-2014 till present date. I note that Shri Dipankar Gupta has been director of RIHL since financial years 2012-2013, 2013-2014 till present date. I note that Shri Mrinmoy Bose has been director of RIHL since financial years 2011-2012, 2012-2013, 2013-2014 till present date. I note that Shri Rahul Banerjee was director of RIHL during financial years 2011-2012 and 2012-2013. 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 RIHL and other directors are limited to the extent of amount collected during his/her tenure as director of RIHL.
47. 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, RIHL 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 act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that both *Shri Chapal Biswas and Shri Chinmoy Ghatak* are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
48. 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.

49. 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 RIHL and its Directors, viz. Shri Rahul Banerjee, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose 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.
50. I also note that, vide the interim order dated August 06, 2015, RIHL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of RIHL 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/up-to-date inventory has been provided either by RIHL till date.
51. In view of the discussion above, appropriate action in accordance with law needs to be initiated against RIHL and its Directors, viz. Mr. Abhijit Majumdar, Mr. Dipankar Gupta, Mr. Mrinmoy Bose and Mr. Rahul Banerjee and its Debenture Trustees viz., Mr. Chapal Biswas and Mr. Chinmoy Ghatak.
52. 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) RIHL, Shri Rahul Banerjee, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri

Mrinmoy Bose 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) 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) Shri Rahul Banerjee 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.
- d) RIHL and Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose 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.
- e) RIHL, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose 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.
- f) RIHL, Shri Rahul Banerjee, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose 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.

- g) RIHL and Shri Rahul Banerjee, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose 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.
- h) After completing the aforesaid repayments, RIHL, Shri Rahul Banerjee, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose 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**")
- i) In case of failure of RIHL, Shri Rahul Banerjee, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose to comply with the aforesaid directions, SEBI, on the expiry of three months period from the date of this Order:
 - a) 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.
 - b) 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.

- c) 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;
- j) RIHL, Shri Rahul Banerjee, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose 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.
- k) Shri Chapal Biswas and Shri Chinmoy Ghatak 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.
- l) The above directions shall come into force with immediate effect.

53. 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.

54. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.
55. 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 09, 2017

PLACE: MUMBAI

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