

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI**CORAM: G. MAHALINGAM, WHOLE TIME MEMBER****ORDER**

UNDER SECTIONS 11(1), 11(4) and 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF MORAL GROUP OF COMPANIES

IN RESPECT OF:

SL. NO.	NOTICEES	PAN	DIN/CIN
1	Moral Devcon Limited	AAHCM3170B	U45400UP2011PLC045251
2	Moral Health & Personal Care Limited	AAHCM3158P	U51900MP2011PLC026128
3	Moral Commotrade Limited	AAGCM8052P	U51909WB2010PLC152841
4	Moral Infrastructures Corporation Limited	AAGCM4867L	U45300WB2010PLC145291
5	Moral Capital Services Limited	AAFCM3135Q	U67110UP2007PLC034163
6	Arun Kumar	AGZPK5596J	02000610
7	Ajay Kumar Sharma	ANQPS0753F	02356951
8	Gyaneshwar Sharma	BQHPS9902F	01881854
9	Moral Debenture Trust (Trustee : Santu Kumari)	NA	NA

BACKGROUND

- 1) Based on a reference received regarding alleged issuance of debentures by certain companies belonging to the Moral Group of Companies, the Securities and Exchange Board of India ("SEBI") conducted an investigation which revealed that four companies belonging to the Moral Group, namely Moral Devcon Limited ("MDL"), Moral Health and Personal Care Limited ("MHPCL"), Moral Commotrade Limited ("MCL") and Moral Infrastructure Corporation Limited ("MICL"), had mobilized funds from public by way of issuing 'Non -

Convertible Debentures' ("NCDs") without complying with the provisions of Companies Act, 1956 and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS Regulations). Investigation also revealed that Moral Capital Services Limited ("MCSL"), which is one of the companies belonging to the Moral Group, had falsely claimed to be a sub-broker, Depository Participant (DP) and Portfolio Manager (PM), without getting registered with SEBI as such. Investigation further revealed that Moral Debenture Trust was the debenture trustee for all the NCDs issued by the abovementioned companies, wherein Mrs. Santu Kumari was acting as its sole trustee, without obtaining registration from SEBI.

- 2) In the course of investigation, SEBI vide letter dated March 27, 2012 and April 24, 2012 had sought details of all the NCDs issued by any company belonging to Moral Group. Details such as value of debentures, interest rate at which debentures were issued, maturity, number of subscribers company plans to seek, total number of subscribers till date, total money proposed to be raised, total money raised till date and important dates related to debenture issues were sought from the Group.
- 3) MCSL vide letter dated May 6, 2012 provided the details of all the NCDs issued by MDL, MHPCL, MCL and MICL which are as below:

Particulars	Moral Infrastructure Corporation Ltd.	Moral Commotrade Ltd.	Moral Devcon Ltd.	Moral Healthcare and Personal Care Ltd.
Value of Debentures	Rs 9,56,39,400	Rs 92,51,500	Rs 96,79,000	Rs 4, 24,31,000
Interest rate	12%	12%	12%	12%
No. of subscribers company plans to seek	As much as required	As much as required	As much as required	As much as required
No. of subscribers till date	12077	14528	2303	4940
Total Money Proposed to be raised	Rs 10,00,00,000	Rs 20,00,00,000	Rs 50,00,00,000	Rs 50,00,00,000

- 4) Based on the replies provided by Moral Group, SEBI vide letters dated August 17, 2012 and September 11, 2012 sought further information regarding NCDs issued by each of the companies, such as type of debentures and its term, minimum application value, face value,

redemption value, number of applications received, number of debentures issued and the issue price. MCSL vide its letter dated November 11, 2012 provided the details in a CD format. It was noted that all the four companies had issued NCDs having face value and issue price of Rs. 100 each. Following tables show the various types of debenture plans which were issued by each of the four group companies, as per the replies submitted by the said companies.

Moral Devcon Limited (MDL)

Sr. No.	Type of debenture and term	Min application value	Min Redemption Value	No of Applications Received	No of debentures issued
1	3years FD	1000	1500	42	5580
2	7years RD	14000	25000	1147	19830
3	15years FD	1000	7000	204	16350
4	5 years RD	5000	7500	51	1550
5	7 years FD	1000	2350	27	1710
6	4years RD	2000	3000	6	270
7	11years FD	1000	4000	50	5610
8	8years RD	4000	8000	776	45890

Moral Healthcare and Personal Care Ltd. (MHPL)

Sr. No.	Type of debenture and term	Min application value	Min Redemption Value	No of Applications Received	No of debentures issued
1	3 year 6 month FD	1000	1500	9	750
2	5year 6 month FD	1000	2000	526	82900
3	8year 6 months FD	1000	2500	204	24720
4	12 year FD	1000	4000	1771	186570
5	7year RD	2000	4000	59	3800
6	8year 4 month RD	3000	6000	2370	122570
7	6years MIS	50000	80600	1	3000

Moral Infrastructure Corporation Ltd. (MICL)

Sr. No.	Type of debenture and term	Min application value	Min Redemption Value	No of Applications Received	No of debentures issued
1	3year FD	1000	1400	706	74750
2	6year FD	1000	2000	2504	241110
3	10 year FD	1000	3500	921	88570
4	14 year FD	1000	6000	568	51650

Sr. No.	Type of debenture and term	Min application value	Min Redemption Value	No of Applications Received	No of debentures issued
5	18 year FD	1000	10000	3792	319770
6	8 year RD	4000	8000	3339	144744
7	12 year MIS	50000	150800	106	17500
8	9 year MIS	50000	114800	74	8100
9	4 Year MIS	50000	74000	67	10200

Moral Commotrade Ltd. (MCL)

Sr. No.	Type of debenture and term	Min application value	Min Redemption Value	No of Applications Received	No of debentures issued
1	3 Year RD	3600	4240	6420	43005.8
2	5 Year RD	6000	8400	6175	38212.2
3	7 Year RD	8400	13440	437	3332
4	10 Year RD	12000	21600	1496	7965

- 5) From the replies filed by the Moral Group, it was observed that the various types of debentures were named as 'xx' years FD/RD/ MIS. It was observed that though the said nomenclatures were used by the Moral Group in the replies given to SEBI, the application forms issued by the companies clearly stated that the applications were for Secured Redeemable Non-Convertible Debentures and there was no mention of such nomenclatures (i.e. FD/RD/ MIS) in the application forms. It was noted from the details provided by the Moral Group that MICL had started issuing NCDs from June 10, 2010 onwards. MDL and MHPL had started issuing NCDs from August 10, 2011 onwards and MCL did so from October 25, 2010 onwards. The NCDs issued by the abovementioned four companies had tenures ranging from 3 to 18 years with cumulative returns in the range of 61.2 % to 900%, depending upon the tenure of the investments.
- 6) SEBI had also sought information regarding the investors (name & address), type of NCDs allotted, amount of such allotment and date of dispatch of debenture certificate. The same were provided to SEBI without the type of NCDs allotted. It was noted from the replies that the abovementioned four noticee companies have together raised Rs 15,70,00,900/- from 33,848

investors through issuance of NCDs. While the issue of debentures by a company to more than 49 persons is construed as a public offer, the abovementioned four noticee companies of Moral Group have not complied with the provisions of Sections 67 and 73 the Companies Act, 1956 and regulations 4(2), 4(3), 4(4), 6(1), and 6(6), 16(1), 19(1) of ILDS Regulations.

- 7) Further, the debenture trustee for all the NCDs issued by the abovementioned four companies was Moral Debenture Trust, having Mrs. Santu Kumari as its sole trustee, without having registration from SEBI. The same is in violation of Section 12(1) of the SEBI Act.
- 8) The Moral Group of companies vide their letter dated April 18, 2013 had confirmed that the abovementioned four companies had neither taken any debenture application nor allotted any debentures with effect from December 19, 2012. Further, while seeking updated data on new investors for the FY 2012-13, it was observed that the companies had purportedly started the process of refunding the money to the investors. Details of rate of interest for refund to investors along with specific details were sought from the companies. The companies vide their letters dated May 30, 2013 provided the following details, which also included the rate of interest at which the refunds were effected. It was observed that the rate of interest upon the refunds varied from company to company, within the same group and was mostly in the range of 8 % to 14.85 %, as seen from the table below.

Particulars	Moral Infrastructure Corporation Ltd.	Moral Commotrade Ltd.	Moral Devcon Ltd.	Moral Healthcare and Personal Care Ltd.
Value of Debentures	Rs 9,56,39,400	Rs.92,90,900	Rs 1,00,66,000	Rs4,28,40,000
Interest rate	0-13.9%	9.25-14.85%	9.25-14.85%	8.35-13.44%
No. of subscribers till date	12,077	5,844	2,311	4,981
No. of debenture holders Refunded	2,071	7	2,311	54
Amount Refunded (Interest)	2,40,09,535 (51,15,135)	55,265 (9,265)	1,16,09,062 (15,43,062)	3,75,610 (41,610)

(As on May 30, 2013)

- 9) The companies had provided undertakings dated 21/12/2012 to the effect that they no longer accept money for issuance of debentures and shall not issue debentures. Further, the companies

had claimed that they, on their own, decided to redeem the debentures and had already begun the process of refund with varying rate of interest as shown in the table above. The companies had further stated that the mode of refund was cash and that the companies had sent letters to debentures holders through registered post and debenture holders were made to sign vouchers on receipt of redemption payment. In this regard, it was noted that Clause (2) of Section 73 of the Companies Act, 1956 provides that where a company intending to offer shares or debentures to the public for subscription by issue of a prospectus has not applied for prior permission, for such shares or debentures to be dealt with in a stock exchange or where such permission has been applied for but has not been granted, the company shall forthwith repay without interest all moneys received from applicants within eight days. The said Clause further provides that if such money is not so repaid then the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay the money with interest at such rate, being not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

- 10) It was noted that the abovementioned four companies of the Moral Group had been receiving money from investors from as early as June 2010 onwards. Thus, it was observed that there was a considerable delay beyond the time limit of eight days from the date of receipt of money from applicants of NCDs, as mentioned under Section 73(2) of the Companies Act, 1956, till the purported initiation of process of refund by the said companies. I also note from the reply of the Moral group of companies that the refunds were not fully effected as per the provisions of section 73 (2) of the Companies Act, 1956.
- 11) Further, during the course of investigation, Moral Capital Services Limited ("MCSL"), one of the Moral Group companies, vide its letter dated May 6, 2012 to SEBI, had claimed to be a sub-broker affiliated with Ms/ Fairwealth Securities Ltd ("Fairwealth"). It also provided a letter dated January 27, 2011 from Fairwealth appointing it as sub-broker. It was observed from SEBI data base that neither MCSL was registered with SEBI as a sub-broker nor had it sought registration with SEBI. Further, it was observed from certain pamphlets provided by the complainant and from the information available on the website of MCSL that MCSL had

claimed to provide Portfolio Management Services and Demat Account Opening Services. SEBI database did not show MCSL as registered DP or Portfolio Management Service Provider. Thus, MCSL has falsely claimed to be a sub-broker, DP and PM without having certificates of registration from SEBI in such capacities.

- 12) It was observed that Shri Ajay Kumar Sharma, Shri Gyaneshwar Sharma and Shri Arun Kumar were the common directors of MDL, MCL, MICL, MHPCL and MCSL.
- 13) In view of the above, a common Show-Cause-Notice (SCN) dated 29th February, 2016 was issued to the above named noticees, calling upon them to show cause as to why suitable directions under Section 11(1), 11(4) and 11B of the SEBI Act should not be passed against them for the violation of the abovementioned provisions of the SEBI Act and ILDS Regulations.
- 14) MDL, MCL, MICL, MHPCL, MCSL, Mr. Ajay Kumar Sharma, Mr. Gyaneswar Sharma and Arun Kumar, vide separate letters dated 26/03/2016 acknowledged receipt of the SCN and sought extension of time for submission of reply. Thereafter, MDL, MICL, MHPCL and MCL vide their letters dated 21st April, 2016 submitted, *inter-alia*, the following:
- After receipt of SEBI's letter dated 27th March, 2012 terming the debentures issued by the companies as public issue, the companies had immediately stopped accepting debenture monies and submitted all the details sought by SEBI. The companies cooperated fully with SEBI and volunteered to refund the amount collected through debentures, although no refund notices were issued by SEBI to the companies. As on March 31, 2014, all the monies collected by way of debentures were refunded by the companies to demonstrate voluntary compliance. Their intentions in letter and spirit are to comply fully with the laws of the land.
 - They had fully cooperated with SEBI by providing all the records pertaining to the issue, receipt, redemption and repayment of monies collected through debentures, during inspection of their office by SEBI during December 17-18, 2012.
 - The SCN was highly unanticipated as they were assuming this matter as closed after making all the payments and voluntary compliances.

- The amounts collected by way of issuing debentures are considerably low. Their primary business interests are FMCG, Real Estate and Pharmaceuticals and they are not a deposit mobilization focused company. They have also provided an undertaking that they shall not issue any debentures.

15) An opportunity of personal hearing was granted to all the noticees by scheduling the same on May 16, 2017. The notice of hearing was served on all the noticees, except Ms. Santu Kumari, by registered post. Notice of hearing was served on Ms. Santu Kumari by way of newspaper publication on 25/02/2017 in Punjab Tribune (Punjabi), Dainik Jagran (Hindi) and Gujarat Samachar (Gujarati). In response to this, Ms. Santu Kumari, vide letter received by SEBI on March 06, 2017 requested for a copy of SCN. Accordingly, the same was forwarded to her vide letter dated March 27, 2017. The personal hearing on May 16, 2017 was attended by all the noticees through their authorized representative. The authorized representative submitted authorization letter from MDL, MCL, MICL, MHPCL and MCSL and undertook to provide authorization from the remaining four entities within 7 days. However, no such authorization was received subsequently. The following submissions were made by the noticees during the personal hearing:

- Moral Capital Services Limited had acted as unregistered sub-broker as they had no knowledge that they needed to have a SEBI registration for the same. Initially, they introduced their own employees for opening demat account and for trade through the broker Fairwealth.
- After SEBI's letter dated March 27, 2012, the noticee nos. 1 to 4 have refunded all the monies collected by way of debenture to the investors and the process of refund was completed by March 31, 2014.
- As regards the documentary evidence of refund made, approximately 30% of the refund was given in cash for which only vouchers are available with them and remaining 70% refund was through normal banking channel / mode.

16) The noticees during the personal hearing undertook to submit the documentary proof of the refunds within a period of 7 days. Thereafter, the Moral Group of Companies, vide letter dated May 28, 2017 submitted *inter alia* the following:

- (a) As regards acting as a sub-broker of Fairwealth without SEBI authorization, MCSL has submitted a letter dated January 27, 2011 from Fairwealth to MCSL, which substantiates its association with Fairwealth. MCSL had referred only 49 people (its employees) and it did not charge any fee towards the reference and there was no financial implication in the activity. Despite the fact that Fairwealth was a senior partner and being aware of SEBI regulations, it had to guide MCSL in getting registration with SEBI as a sub-broker, MCSL did not act full-fledged as a sub-broker and had merely referred 49 persons without any fee.
- (b) As soon as the noticee companies came to know that the issuance of NCDs was in violation of SEBI norms, they started the refund process. As maximum investments were in cash from remote areas, the noticee companies resorted to cash payment process as per choice of NCD holders, and hence, the refund was done in cash after withdrawal from bank accounts.
- (c) The noticee companies had raised funds through private placement basis. However, since SEBI's notice concluded that private placement beyond 49 persons becomes public issue, the companies immediately started refunding the money without waiting for SEBI refund order.
- (d) Major chunk of money has been refunded in cash due to NCD holders' requirement as more than 90% money was invested through cash. To substantiate the payments and as per SEBI's requirement, the noticees are submitting their bank statements in support of the same along with payment vouchers and bond hardcopies.
- (e) The noticees' intention is not to violate the law at any point of time and to ensure that NCD holders are safely refunded. As refund proof was emphasized during the personal hearing on May 16, 2017, the noticees are providing random sampling of the payment vouchers and bonds considering the volume of the same. However, bank statements are being attached in whole for verification. Payment Vouchers and bonds, if desired in original (total) shall also be made available at SEBI office.

- 17) The Moral Group of Companies have submitted a copy of Fairwealth's letter dated January 27, 2011 address to MCSL, copies of the bank statements of the abovementioned four companies and sample copies of Letter of Allotment and Maturity Payment Voucher pertaining to 16 NCD holders of the abovementioned four companies (4 bondholders from each company).
- 18) I observe that sufficient opportunities have been granted to all the noticees to file their replies and submissions in respect of the SCN. In view of these facts and circumstances, I deem it appropriate to decide the matter on the basis of material available on record.
- 19) I find that the basic allegation against the noticee nos. 1-4 and 6-8 is that they were involved in unauthorized mobilization of money from public through issuance of NCDs without complying with the provisions of Sections 67 and 73 the Companies Act, 1956 and regulations 4(2), 4(3), 4(4), 6(1), and 6(6), 16(1), 19(1) of ILDS Regulations.
- 20) Section 67 of the Companies Act, 1956 deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

"Construction of reference to offering shares or debentures to the public, etc.

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) For ascertaining whether the issuance of NCDs by noticee nos. 1-4 would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the Companies is crucial. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. In this regard, it is observed that each of the said four companies has admitted to having allotted NCDs to more than 49 persons, as per the details provided in the tables under para 4 above. Therefore, it is beyond doubt that the issuance of NCDs qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

22) From the above, it will follow that such a public issue makes it imperative for the noticee nos 1-4 to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act, 1956 is reproduced as under:

"Allotment of shares and debentures to be dealt in on stock exchange.

73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) ...

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, 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, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

...." (emphasis supplied)

23) As the issuance of NCDs by the noticee nos. 1-4 are deemed to be public issues in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement for such NCDs to be dealt on a recognized stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. I note that the noticee nos. 1-4 have not denied the charge that they have not adhered to the provisions of Section 73 of the Companies Act during the issuance of NCDs. In terms of Section 73(2), the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). I observe that Shri Arun Kumar, Shri Ajay Kumar Sharma and Shri Gyaneshwar Sharma are the directors of the said four companies and thus are accountable for the acts and omissions of the said companies.

24) I observe that the noticees ought to have followed the provisions of regulations 4(2), 4(3), 4(4), 6(1), and 6(6), 16(1), 19(1) of ILDS Regulations in respect of the issuance of the NCDs by them. There is nothing on record to show that they did so. Further, the noticee nos. 1-4 have also not denied the charge of violation of the said provisions, as stated in the SCN. In view of the same, I conclude that the noticee nos. 1-4 have violated the abovementioned provisions of the Companies Act and ILDR Regulations. Consequently, the noticee nos. 6-8, who are the directors of the said companies, are accountable for such defaults. The said provisions are reproduced below:

4. (1)

(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations

(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein.

Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange: Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange; Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation;

(b) it has obtained in-principle approval for listing of its debt securities on the recognized stock exchanges where the application for listing has been made;

(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document: Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document; (d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the debt securities that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder.

(3) The issuer shall appoint one or more merchant bankers registered with the Board at least one of whom shall be a lead merchant banker.

(4) The issuer shall appoint one or more debenture trustees in accordance with the provisions of Section 117B of the Companies Act, 1956 (1 of 1956) and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

6. (1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.

(6) A copy of draft and final offer document shall also be forwarded to the Board for its records, [along with regulatory fees as specified in Schedule V] simultaneously with filing of these documents with designated stock exchange.

16. (1) For the redemption of the debt securities issued by a company, the issuer shall create debenture redemption reserve in accordance with the provisions of the Companies Act, 1956 and circulars issued by Central Government in this regard.

19. (1) An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956 (1 of 1956).

25) Having decided as above, I now proceed to decide the next issue which pertains to refund of the money mobilized by the abovementioned four companies from investors. I observe that as per the provisions of Section 73 (2) of the Companies Act, in case of company not having

applied for permission for listing of shares or debentures on a stock exchange, the amount mobilized from the applicants for issuance of such shares or debentures has to be refunded to the applicants within eight days. Further, the said clause provides that in case of any delay in refund beyond eight days, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate being not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money. The SCN has alleged, as stated in above paragraphs, that even though the abovementioned four companies have received money from investors as early as June 2010, there has been considerable delay beyond eight days, in initiation of refund process. It has been further noted in the SCN that the refunds were effected at varying rates of interest extending upon 14.85% despite the considerable delay, in terms of Section 73(2) of the Companies Act, 1956.

- 26) I observe from the records that the abovementioned four companies, which have mobilized funds from investors through issuance of NCDs, have claimed to have started the process of refund to investors and have further claimed to have refunded amounts, as on May 30, 2013, as per details provided in the table under para 8 above. I further note from the said table that the rate of interest purportedly being provided by the companies to investors on such refunds is in the range of 0% to 14.85%.
- 27) It is beyond doubt that there has been inordinate delay, beyond the limit of 8 days provided under Section 73(2) of the Companies Act, in refund of money illegally mobilized from investors, as the defaulter companies had started receiving money from investors as early as June 2010. The defaulter companies have failed to offer any justification for the delay except that the illegal mobilization of funds through NCDs had happened due to ignorance of law. I find no reason as to why the maximum rate of interest prescribed under the provisions of Section 73(2) of the Companies Act, should not accrue to investors for the inordinate delay on part of the company in making refunds. I am of the view that it would be in the interest of justice and equity that the investors are provided interest at the rate of 15% per annum on the principal amount, calculated from the date of payment of the principal amount to the

companies in respect of the issuance of NCDs, till date of refund. Thus, I hold that in terms of the provisions of Section 73(2), the noticee nos. 1-4 and their directors (noticee nos. 6-8) are jointly and severally liable to refund the principal amount along with 15% interest per annum calculated from the date of deposit with company till the date of refund to holders of NCDs.

- 28) I note that MICL, MCL, MHPCL and MDL vide their letters dated April 21, 2016 have submitted to SEBI that they have already paid a total amount of Rs. 19,97,47,747/-(with interest) to 25213 NCD holders, as stated in the table below, as on 31st March, 2014.

Sl.No.	Name of the Company	No. of investors	Amount collected during 2010-2014	Paid with interest as 31-03-2014.
1	MICL	12077	95639400	124442259
2	MCL	5844	9290900	12000302
3	MHPCL	4981	42840000	51696124
4	MDL	2311	10066000	11609062
		25213	157836300	199747747

- 29) I note that during the course of the investigation, the Moral Group of Companies vide letter dated January 22, 2014 had submitted to SEBI that the redemptions by the four companies to some of the debenture holders, as reported in their letter dated May 30, 2013 (details provided in para 8 above), were done in cash and the companies were in possession of (i) Proof of letters sent to debentures holders through registered post (ii) debenture bonds returned by the debenture holders, and (iii) vouchers duly signed by the debenture holders for receipt of the redemption payment, as proof of redemption in respect of such debenture holders. I further note that the Moral Group of Companies, vide emails dated January 29, 2014 submitted copies of letters of allotment, notices of redemption to debenture holders, postal receipts and Maturity Payment Vouchers in respect of a total of 12 debenture holders of MICL, MCL, MDL and MHPCL (3 debenture holders of each), as proof of redemption.

- 30) The abovementioned four companies, vide letters dated April 21, 2016 as well as during the personal hearing on May 16, 2017, have submitted that they have refunded all the monies collected by way of the debentures to the investors and that the process of refund was completed by March 31, 2014. During the personal hearing, they also submitted that 30% of

the refund was given in cash for which only vouchers are available with them and that 70% of the refund was done through normal banking channel / mode. In this regard, during the personal hearing, the noticee companies were asked to furnish the documentary evidence in support of their claim. Subsequent to the same, the said four noticee companies, vide letter dated May 28, 2017 have submitted copies of their bank statements FYs 2011-12, 2012-13 and 2013-14, Letters of Allotment and Maturity Payment Vouchers as the documentary proof of the refund.

- 31) I observe that from the debit entries and the narrations mentioned against them in the bank statements, it is not possible to ascertain the real identity of the person to whom the payment has been made, the exact purpose of the debit transactions or the way the money has been utilized after withdrawal. Further, it is observed that the sample copies of the Maturity Payment Vouchers, as provided by the said four companies, contain purported signatures across revenue stamps affixed thereon, of the NCD holders named therein. However, no corroborative document establishing the proof of identity of the concerned NCD holder has been enclosed therewith. The payment vouchers cannot be relied upon as being authentic in the absence of sufficient corroborative evidence. I am of the opinion that in the absence of sufficient, credible and verifiable documentary evidence in support of the noticees' claim regarding completion of refund, the same cannot be accepted. Thus, I observe that MICL, MCL, MHPCL and MDL have failed to establish that they have made refund to all the NCD holders, as claimed by them.
- 32) The SCN has also alleged that MCSL has falsely claimed to be a sub-broker, DP and PM without having certificates of registration from SEBI in such capacities. I find that MCSL has not offered any satisfactory explanation for making such claims. I note from records available with SEBI that MCSL is not registered with SEBI as a sub-broker or DP or Portfolio Manager. Thus, I hold MCSL and its directors guilty of making false claims of being a sub-broker or DP or Portfolio manager, as alleged in the SCN. However, I note from the findings of investigation that there was no evidence to indicate that MCSL had actually undertaken any activity / transaction as a sub-broker or DP or Portfolio Manager. I am, therefore, inclined to caution and issue a stern warning to MCSL and its directors for refraining from making such false claims of MCSL being a sub-broker, or DP or Portfolio Manager.

33) I note that the SCN has further alleged that the debenture trustees for all the NCDs issued by the abovementioned four companies was Moral Debenture Trust, having Mrs. Santu Kumari as its sole trustee, without having registration from SEBI, thereby violating Section 12(1) of the SEBI Act. I note that none of the noticees including Mrs. Santu Kumari has responded to the said allegation and has offered any explanation in this regard. In this regard, I further note that Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993 specifically provides that no person shall act as a debenture trustee unless he is either a scheduled commercial bank or a public financial institution within the meaning of section 4A of the Companies Act, 1956; or an insurance company; or a body corporate. I, thus, find that Ms. Santu Kumari was not eligible even to apply for registration as a debenture trustee. I thus find that Mrs. Santu Kumari, the trustee of Moral Debenture Trust, has violated the provisions of Section 12(1) of the SEBI Act by acting as a debenture trustee without holding a valid certificate of registration as such.

Directions:

34) In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, hereby issue, with immediate effect, the following directions:-

- (a) The Noticee nos. 1 to 4 and 6 to 8 i.e. Moral Devcon Limited, Moral Health & Personal Care Limited, Moral Commotrade Limited and Moral Infrastructure Limited and their directors, namely Shri Arun Kumar, Shri Ajay Kumar Sharma, Shri Gyaneshwar Sharma, shall jointly and severally refund the money collected through the offer and allotment of NCDs by the Noticee nos. 1 to 4, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment) within a period of 90 days from the date of receipt of this Order;
- (b) The refund as directed hereinabove shall be made through banking channels such as demand draft or electronic mode of transfer and a trail of such refunds shall be maintained by the Noticee nos. 1 to 4 and 6 to 8 for verification, if necessitated at a later date;

- (c) Within seven days of completion of refund as directed hereinabove, the Noticee nos. 1 to 4 and 6 to 8 shall file a certificate of such completion with SEBI from two independent Chartered Accountants after proper verification of the details of all such refunds from records including bank accounts of the Noticee nos. 1 to 4 and 6 to 8 and after being satisfied that the refund to all the debenture holders has actually been made.
- (d) Till the refund, as directed above, is complete, the Noticee nos. 1 to 4 and 6 to 8 are hereby—
- (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.
- 35) For a period of four years from the date of completion of the refund, as directed in para 34 above, the Noticees nos. 1 to 4 and 6 to 8 are hereby—
- (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.
- 36) In the event of the Noticees failing to comply with the directions of refund stated in para 34 above, SEBI shall initiate recovery proceedings in accordance with the provisions of the SEBI Act, 1992.
- 37) The Noticee nos. 5 to 8, i.e. Moral Capital Services Limited and its directors, namely Shri Arun Kumar, Shri Ajay Kumar Sharma, Shri Gyaneshwar Sharma, are hereby cautioned and advised to refrain from representing the Noticee no. 5 as a sub-broker or portfolio manager or depository participant in any manner whatsoever as long as it does not hold valid certificate(s) of registration in such capacities.

38) The Noticee no. 9, namely Mrs. Santu Kumari (debenture trustee of Moral Debenture Trust), shall refrain from acting as a debenture trustee of Moral Debenture Trust and shall not take up any new assignment in a similar capacity, involving issues of securities, in future. Further, Ms. Santu Kumari, for a period of one year, is hereby:

- (a) restrained from accessing the securities market;
- (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
- (c) restrained from associating herself, with any listed public company or any public company which intends to raise money from the public.

39) This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.

40) Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on the companies and directors.

Place: Mumbai

Date: October 31, 2017

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA