

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Nirmal Infrahome Corporation Limited

In respect of:

- 1. Nirmal Infrahome Corporation Limited (PAN: AAECN1024A)**
- 2. Shri Phool Singh Choudhary (PAN: AIKPC8055F; DIN: 02568846)**
- 3. Shri Harish Sharma (PAN: N.A; DIN: 02929076)**
- 4. Shri Abhishek S. Chauhan (PAN: AGOPC3742P; DIN: 02942287)**
- 5. Shri Prabal Pratap Singh Yadav (PAN: ABHPY2100M; DIN: 01907205)**
- 6. Debenture Trustee, viz. Nirmal Debenture Trust (Represented by its Trustee, viz. Shri Jeetendra Rajput) - address – Nirmal Debenture Trustee, Shop no. 1, Chhajed Complex Saket Nagar Sanjogitaganj, Indore - 452001**

1. Nirmal Infrahome Corporation Limited (hereinafter referred to as “**Nirmal Infrahome**”/ “**the Company**”) is a Public company incorporated on May-18-2012 and registered with Registrar of Companies–Chattisgarh with CIN: U70102CT2012PLC000352. Its registered office is at 1st Floor, Bhatiya Complex, Near Shyam Petrol Pump, Ring Road No.1, Kushalpur Chawk, Raipur, Chattisgarh-492001.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) came across a news report published in a newspaper against Nirmal Infrahome in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether Nirmal Infrahome had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and

Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).

3. On enquiry by SEBI, it was observed that Nirmal Infracore had made an offer of NCDs in the financial year 2012-2013 (hereinafter referred to as “**Offer of NCDs**”) and raised at least an amount of Rs. 1,85,12,790 from at least 3309 allottees. The number of allottees and funds mobilized has been collated from the reply made by Nirmal Infracore. 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 Nirmal Infracore created a charge for an amount of Rs. 50 Crores on May 19, 2012 and appointed *Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput)* as Debenture Trustee for the Offer of NCDs by that company.
4. As the above said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an interim order dated February 20, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against Nirmal Infracore and its Directors, viz. Shri Phool Singh Choudhary, Shri Harish Sharma, Shri Abhishek S. Chauhan, Shri Prabal Pratap Singh Yadav and its Debenture Trustee, *Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput)*. (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. Nirmal Infracore had made an *Offer of NCDs* during the financial year 2012-2013 and raised at least an amount of Rs. 1,85,12,790 as shown below:

Year of Issue	Security Issued	Amount raised (Rs.)	Number of allottees
2012-2013	NCDs	1,85,12,790	3309

Total	1,85,12,790.00 [^]	3309*
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[^]*^ No. of allottees and funds mobilized has been collated from the reply made by Nirmal Infrahome. However, actual no. of allottees and amount mobilized could be more than the above indicated figures.

6. Further, Nirmal Infrahome created a charge for an amount of Rs. 50 Crores on May 19, 2012 and appointed *Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput)* as Debenture Trustee for the Offer of NCDs by the company. *Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput)* was not registered as debenture trustee for the offer of NCDs by that company.
7. The above *Offer of NCDs* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) and sections 117B and 117C of the Companies Act, 1956 and the relevant provisions of the ILDS Regulations were not complied with by Nirmal Infrahome in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput)* 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**").
8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated February 20, 2015 with immediate effect.
 - i. "Nirmal Infrahome shall not mobilize any 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. Nirmal Infrahome and its Directors viz. Shri Phool Singh Choudhary (PAN: AIKPC8055F), Shri Harish Sharma (PAN: N.A.), Shri Abhishek S. Chauhan (PAN:

AGOPC3742P) and Shri Prabal Pratap Singh Yadav (DIN: 01907205) 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. Nirmal Infracore and its abovementioned Directors are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
- iv. Nirmal Infracore shall provide a full inventory of all its assets and properties;
- v. Nirmal Infracore and its Directors shall provide full inventory of all their assets and properties;
- vi. Nirmal Infracore and its Directors , shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of NCDs, without prior permission from SEBI;
- vii. Nirmal Infracore and its 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 Nirmal Infracore;
- viii. Nirmal Infracore and its Directors shall furnish complete and relevant information (as sought by SEBI letters dated January 28, 2014 and June 3, 2014), within 21 days from the date of receipt of this Order;
- ix. The Debenture Trustee viz., *Shri Jeetendra Rajput* is prohibited from continuing with his assignment as debenture trustee in respect of the Offer of NCDs of Nirmal Infracore 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. Vide the said interim order, Nirmal Infrahome, its abovementioned Directors along with its Debenture Trustee were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
10. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated February 21, 2015 which were not delivered.
11. Vide notification dated June 10, 2017 published in newspaper *Haribhoomi*, *Dainik Bhaskar*, Times of India (Bhopal and Indore edition), the Noticees were notified by SEBI that they will be given the opportunity of being heard on June 27, 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.
12. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on June 27, 2017. None of the Noticees except for the Company/Nirmal Infrahome have filed any replies as on date. Nirmal Infrahome has exchanges several correspondences with SEBI, however, they have not made any comprehensive submissions on merits to the allegations stated in the Interim Order. Though emails were received by SEBI in respect of authorisation of an advocate on behalf of few directors of the Company, no reply on merits have been filed by them. The submissions in brief made by Nirmal Infrahome through the aforesaid correspondences are given below:
 - a) It has stopped mobilizing fresh funds from investors through the Offer of NCDs and is in the process to comply with Interim Order. It is making pre maturity payment.
 - b) Company and directors are preparing list of inventory assets and sought time to

submit complete details.

- c) Details about opening and closing of Debenture Issue (Oct 1, 2012 to May 1, 2014) and amount mobilized (Rs. 49.50 crore).
- d) It requested for investigation report, evidences etc.

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

- (1) Whether the company came out with the Offer of NCDs as stated in the interim order.*
- (2) If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.*
- (3) Whether appointment of Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput) as the Debenture Trustee by Nirmal Infracore is in violation of Section 117B of the Companies Act, 1956 and whether Nirmal Debenture Trust and Shri Jeetendra Rajput 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.

14. I have perused the interim order dated February 20, 2015 for the allegation of *Offer of NCDs*. I note that neither the company nor the directors have disputed the same.

15. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted, from the reply made by Nirmal Infracore in the matter (also stated in Interim Order) that Nirmal Infracore has issued

and allotted NCDs to at least 3309 investors during the financial year 2012-2013 and raised at least an amount of Rs. 1,85,12,790. However, subsequent to Interim Order, Nirmal Infrahome vide letter dated June 3, 2015 gave details about opening and closing of Debenture Issue (i.e. Oct 1, 2012 to May 1, 2014) and amount mobilized (Rs. 49.50 crore). I also note from SEBI letter dated April 10, 2015 to Nirmal Infrahome that debenture certificates dated April 30, 2014 had been received by SEBI. Therefore, I find that Nirmal Infrahome has collected at least Rs. 49.50 crore under the Offer of NCDs at least from FY 2012-2013 till May 1, 2014. I note that the number of allottees and funds mobilized has been collated from the reply made by Nirmal Infrahome. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 3309 allottees and Rs. 49.50 crore respectively.

16. *I therefore conclude that Nirmal Infrahome came out with an offer of NCDs as outlined above.*

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

17. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of NCDs* made to the public. Therefore the primary question that arises for consideration is whether the issue of NCDs is 'public 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).”

18. 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.”

19. 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*.

20. In the instant matter, I find that NCDs were issued by Nirmal Infracore to at least 3309 investors from the financial year 2012-2013 till May 1, 2014. However, this number is not conclusive as it is based on the reply made by Nirmal Infracore and the actual number of investors could be more than 3309. I find that Nirmal Infracore has mobilized at least an amount of Rs. 49.50 crore over the financial year 2012-2013 till May 1, 2014 which is not a conclusive value as it is based on the reply made by Nirmal Infracore . Further, I find that Nirmal Infracore has created a charge of Rs. 50 Crores on May 19, 2012. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by Nirmal Infracore was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
21. Neither Nirmal Infracore nor its directors have contended that the *Offer of NCDs* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
22. I find that Nirmal Infracore 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 Nirmal Infracore is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
23. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956,

the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that "In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning". The Company vide letter dated June 16, 2014 had claimed that it had offered the NCDs in private placement, however, I do not find the said submissions tenable in view of the Company's own reply that it has allotted NCDs to 3309 investors.

24. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by Nirmal Infracore 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 Nirmal Infracore was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
25. 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.

26. The allegations of non-compliance of the above provisions were not denied by Nirmal Infrahome 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 Nirmal Infrahome has contravened the said provisions. Nirmal Infrahome has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that Nirmal Infrahome 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.
27. 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, Nirmal Infrahome was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that Nirmal Infrahome 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 Nirmal Infrahome has not complied with the provisions of section 60 of the Companies Act, 1956.
28. 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 Nirmal Infrahome 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, Nirmal Infrahome has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

29. 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.
30. 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 Nirmal Infrahome 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.

31. 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"

32. 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...”

33. In view of the above findings, I am of the view that Nirmal Infracore 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 Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput) as the Debenture Trustee by Nirmal Infracore is in violation of Section 117B of the Companies Act, 1956 and whether Nirmal Debenture Trust and Shri Jeetendra Rajput have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

34. I have perused the Form 10 and copy of Debenture Trust Deed dated May 19, 2012. I find that Nirmal Infracore had created a charge of Rs. 50 Crores for the Offer of NCDs by the Company. I further find that Nirmal Infracore had appointed Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput) as the debenture trustee by

way of trust deed dated May 19, 2012

35. 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.*
36. *Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput)* are not eligible to obtain a certificate of registration since it does not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. None of the Noticees claimed that *Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput)* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that Nirmal Debenture Trust and Shri Jeetendra Rajput have dealt in the impugned Offer of NCDs as debenture trustees, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992.
37. 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 Nirmal Infrahome has appointed *Nirmal Debenture Trust (represented by its trustee, viz. Shri Jeetendra Rajput)* 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 Nirmal Infrahome 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?

38. Nirmal Infrahome vide letter dated March 20, 2015 submitted, *inter-alia*, that it has stopped mobilizing fresh funds from investors through the Offer of NCDs, etc. and is in the process to comply with Interim Order and the Company and its directors are preparing list of inventory of assets and sought about 4 months time to submit complete details. SEBI vide letter dated April 10, 2015 referred to Nirmal Infrahome's letter dated March 31, 2014 (wherein Nirmal Infrahome contended that it had closed its schemes from March 27, 2014) and informed about the receipt of debenture certificates showing averments made by Nirmal Infrahome about stopping raising of funds from public to be false. Nirmal Infrahome was also given time till May 31, 2015 to submit the complete information vide SEBI letter dated April 23, 2015.
39. Nirmal Infrahome vide letter dated June 3, 2015 requested for time till August 2015 to submit all information and also stated that collection of money under NCDs have been completely stopped. Nirmal Infrahome also gave details about opening and closing of Debenture Issue (Oct 1, 2012 to May 1, 2014) and amount mobilized (Rs. 49.50 crore) and certain other details. Accordingly, SEBI extended time till June 30, 2015 for submission of information by Nirmal Infrahome. Nirmal Infrahome vide letters dated August 13, 2015 and October 8, 2015 submitted that it has closed all schemes, stopped collecting money and is making pre maturity payment and sought more time to submit details to SEBI and also requested for personal hearing. SEBI granted 7 days to Nirmal Infrahome to submit all details. Nirmal Infrahome vide letter (received on January 27, 2016) stated that it had given effect to restrictions and directions issued under the Interim Order and requested for investigation report, evidence etc. SEBI vide letter dated September 29, 2016 forwarded to Nirmal Infrahome, the documents relied upon by SEBI while passing the Interim Order and also gave time till October 12, 2016 to Nirmal Infrahome to submit documents/compliance report of the Interim Order.

40. From the aforesaid, I find that Nirmal Infrahome has not made a comprehensive reply on merits to the allegations made in the Interim Order and despite being given several extensions has not provided all the details as required by SEBI. I also find that Nirmal Infrahome claims to have made refund to most of its investors, but it has not provided proof of the same, therefore, I am unable to accept its submissions.
41. From the documents available on record, I find that the present Directors in Nirmal Infrahome are Shri Harish Sharma, Shri Abhishek S. Chauhan and Shri Prabal Pratap Singh Yadav. I also note that Shri Phool Singh Choudhary who was earlier Director in Nirmal Infrahome has 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 Phool Singh Choudhary	May 18, 2012	August 12, 2014
Shri Harish Sharma	May 18, 2012	Continuing
Shri Abhishek S. Chauhan	May 18, 2012	Continuing
Shri Prabal Pratap Singh Yadav	August 02, 2014	Continuing

Note: Funds were collected during the financial year 2012-2013 and till May 1, 2014.

42. I find that Shri Phool Singh Choudhary, Shri Harish Sharma and Shri Abhishek S. Chauhan are directors as well as promoters of Nirmal Infrahome.
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, Nirmal

Infrahome 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 Nirmal Infrahome as reproduced in paragraph 41 of this Order, it is noted that Shri Phool Singh Choudhary, Shri Harish Sharma and Shri Abhishek S. Chauhan 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 Nirmal Infrahome 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 Nirmal Infrahome, 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 Nirmal Infrahome and its Directors, viz., Shri Phool Singh Choudhary, Shri Harish Sharma and Shri Abhishek S. Chauhan 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 year 2012-2013 and upto May 1, 2014, Nirmal Infrahome through Offer of NCDs, had collected at least an amount of Rs. 49.50 crore from various allottees. I note that Shri Phool Singh Choudhary was director of Nirmal Infrahome during financial years 2012-2013 till August 12, 2014. I note that Shri Harish Sharma has been director of Nirmal Infrahome since financial year 2012-2013 till present date. I note that Shri Abhishek S. Chauhan has been director of Nirmal Infrahome since financial year 2012-2013 till present date. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with Nirmal Infrahome and other directors are limited to the extent of amount collected during his/her tenure as director of Nirmal Infrahome.
47. In this regard, I note that Shri Prabal Pratap Singh Yadav was appointed as director of Nirmal Infrahome only on August 2, 2014 i.e. after the period of issuance of NCDs. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that Shri Prabal Pratap Singh Yadav is not liable for refund of money as he was not a director during the relevant time of fund mobilization. Further, Shri Prabal Pratap Singh Yadav had the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a

director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

" 13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956. "

48. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The noticee cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Prabal Pratap Singh Yadav was also responsible for all the deeds/acts of the Company during the period of his directorship and was obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Prabal Pratap Singh Yadav is liable to be debarred for an appropriate period of time.
49. As far as the liability under sections 117B and 117C of the Companies Act, 1956, is concerned, the liability is on the company to comply with the said provisions. Therefore, Nirmal Infracore 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 Nirmal Debenture Trust (*represented by its trustee, viz. Shri Jeetendra Rajput*) and Shri Jeetendra Rajput are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.

50. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 30 of this order, the liability is on the Company to comply with the requirements therein.
51. I find that Shri Phool Singh Choudhary, Shri Harish Sharma, Shri Abhishek S. Chauhan are directors as well as promoters of Nirmal Infrahome and therefore, are also liable as promoters for the *Offer of NCDs* against the norms of deemed public issue. The said Noticees have not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue and public interest requires that the persons who had such knowledge/connivance/consent be made accountable to the investors. Therefore, the said Noticees are liable to be debarred for an appropriate period of time.
52. 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 Nirmal Infrahome and its Directors, viz., Shri Phool Singh Choudhary, Shri Harish Sharma and Shri Abhishek S. Chauhan to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors and promoters, 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.
53. I also note that, vide the interim order dated February 20, 2015, Nirmal Infrahome was directed to provide a full inventory of all the assets and properties belonging to the

Company. Similarly, the Directors of Nirmal Infrahome 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 up to date inventory has been provided either by Nirmal Infrahome or the other Noticees.

54. In view of the discussion above, appropriate action in accordance with law needs to be initiated against Nirmal Infrahome and its Directors/promoters and debenture trustees viz. Shri Phool Singh Choudhary, Shri Harish Sharma, Shri Abhishek S. Chauhan, Shri Prabal Pratap Singh Yadav and Nirmal Debenture Trust and Shri Jeetendra Rajput.

55. 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) Nirmal Infrahome, Shri Phool Singh Choudhary, Shri Harish Sharma and Shri Abhishek S. Chauhan shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

(b) If Nirmal Infrahome and its Directors, viz., Shri Phool Singh Choudhary, Shri Harish Sharma and Shri Abhishek S. Chauhan had repaid/redeemed the NCDs to its investors, as submitted in its replies, as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions from paragraphs 55(c) to 55(n), shall be applicable for the amounts still due to be returned to the investors. However, such prior repayments/redemption should have been made by the Company as per the requirement laid down in paragraph 55(c) below, with clear

identification of the beneficiaries, and the same shall be certified by Chartered Accountants, as directed in paragraph 55(j) below.

- (c) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.
- (d) Shri Phool Singh Choudhary is directed to provide a full inventory of all his assets and properties and details of all his bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (e) Nirmal Infrahome, Shri Harish Sharma and Shri Abhishek S. Chauhan are directed to provide a full inventory of all the assets and properties and details of all the bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
- (f) Shri Prabal Pratap Singh Yadav (on behalf of the Company) is directed to provide full inventory of all the assets and properties and details of all the bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company.
- (g) Nirmal Infrahome, Shri Prabal Pratap Singh Yadav, Shri Harish Sharma, Shri Abhishek S. Chauhan 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.
- (h) Nirmal Infrahome, Shri Phool Singh Choudhary, Shri Harish Sharma, Shri Abhishek S. Chauhan 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.

- (i) Nirmal Infrahome and on its behalf the present director who joined subsequent to the issues (Shri Prabal Pratap Singh Yadav) and Shri Phool Singh Choudhary, Shri Harish Sharma, Shri Abhishek S. Chauhan 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.
- (j) After completing the aforesaid repayments, Nirmal Infrahome and on its behalf the present director who joined subsequent to the issues (Shri Prabal Pratap Singh Yadav) and Shri Phool Singh Choudhary, Shri Harish Sharma, Shri Abhishek S. Chauhan in their personal capacity 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")
- (k) In case of failure of Nirmal Infrahome, Shri Phool Singh Choudhary, Shri Harish Sharma and Shri Abhishek S. Chauhan to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may recover such amounts, from the company and the directors liable to refund as specified in paragraph 55(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- (l) Nirmal Infrahome, Shri Phool Singh Choudhary, Shri Harish Sharma and Shri Abhishek S. Chauhan 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.

(m) Shri Prabal Pratap Singh Yadav is 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 for a period of 4 (four) years from the date of this Order. The above said person is 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 for a period of 4 (four) years from the date of this order.

(n) Nirmal Debenture Trust and Shri Jeetendra Rajput 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.

(o) I find that Interim order dated February 20, 2015 has not provided for the directions listed herein. In view of this, this order will take effect as final order against each Noticee on the expiry of 30 days from the date of service of this order against the respective Noticee, unless any of the Noticees, within such period of 30 days from the date of service of this order files his objections. If no objections are filed, the interim directions vide Interim order dated February 20, 2015 shall continue against the

Noticees till the time of said thirty days period, after which this order will come into effect. If objections are filed by any of the Noticees, the interim directions vide Interim order dated February 20, 2015 shall continue qua that Noticee till disposal of the said objections qua that Noticee and the directions passed herein against that Noticee shall be made applicable subject to the determination on the objections.

56. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.
57. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.
58. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

-Sd-

DATE: November 21, 2017

PLACE: Mumbai

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