

## 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 Active Rural Development India Limited

In respect of:

| Sr. No. | Entity                                                                                                                                  | PAN                                                                                           | CIN/DIN               |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|-----------------------|
| 1.      | Active Rural Development India Limited                                                                                                  | AAJCA8863D                                                                                    | U45200MP2011PLC026581 |
| 2.      | Shri Dilip Kumar Diwakar                                                                                                                | ABGPD2004E                                                                                    | 00707567              |
| 3.      | Shri Polaki Umashankar Rao                                                                                                              | ATYPR9064L                                                                                    | 03533065              |
| 4.      | Shri Ganesh Kumar Singh                                                                                                                 | BMSPS6948C                                                                                    | 03586509              |
| 5.      | Ms Vandana Saha                                                                                                                         | DFDPS3198A                                                                                    | 03586527              |
| 6.      | Debenture Trustee, viz. Active Debenture Trust (Represented by its Trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh) | PAN Not available<br>Address: Dr. Rajendra Prasad Road,<br>PO. Dt. Katihar, Bihar<br>– 854105 | Not available         |

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- Active Rural Development India Limited (hereinafter referred to as “**ARDIL**”/ “**the Company**”) is a Public company incorporated on August 12, 2011 and registered with Registrar of Companies–Gwalior (RoC) with CIN: U45200MP2011PLC026581. Its registered office was earlier at U.F.T Road, Ranjhi, Jabalpur- 482005 (Madhya Pradesh) Subsequently, the registered office address was changed from March 12, 2012 to Bardadeeh Chowk, Mukhtiyar Gang, Rama Krishna Aasram, Satna – 485001, and from December 20, 2012 it was further changed to C/o Sachin Vishwakarma, House No. 290, Satna Building, Malviya Chowk, Jabalpur,
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Madhya Pradesh – 482002.

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter from the Department of Finance (Institutional Finance), Government of Bihar requesting SEBI to examine whether the activities of Active group of companies, of which ARDIL is a part, are legal or not. The Government of Bihar also forwarded a copy of letter written by Shri D.K. Diwakar, Chairman and Managing Director of Active Group of companies addressed to District Magistrate of Purnia, Bihar, which stated, *inter alia*,
  - i. that secured debentures were issued to public to raise capital to achieve the objectives of rural development which are registered and approved by RoC.
  - ii. On account of registration with RoC, ARDIL could issue debentures upto Rs. 10 crores secured by creating a charge on the movable/immovable assets of ARDIL and the debentures were issued to people known to Active group.
  - iii. No approval from SEBI was required as funds were being raised up to Rs. 10 crores, and permission was required only for funds being raised beyond Rs. 100 crores.
3. SEBI initiated preliminary examination of the activities of ARDIL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether ARDIL 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**”).
4. On enquiry by SEBI, it was observed that ARDIL had made an offer of NCDs in the financial years 2011-2012 and 2012-2013 (hereinafter referred to as “**Offer of NCDs**”) and raised an amount of Rs. 1,35,50,000/- from at least 2500 allottees, as admitted by Shri Polaki Umashankar Rao, director of ARDIL. It was also observed that ARDIL created a charge for an amount of Rs. 10 Crores on September 05, 2011 and appointed *Active Debenture Trust (represented by its trustees, viz. Shri Abhinash*

*Kumar Jha and Shri Jagdish Kumar Singh)* as Debenture Trustee for the Offer of NCDs.

5. As the above said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an interim order dated June 25, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against ARDIL and its Directors, viz. Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao, Shri Ganesh Kumar Singh and Ms Vandana Saha, and its Debenture Trustee *Active Debenture Trust (represented by its trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* (hereinafter collectively referred to as “**Noticees**”).
6. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings were recorded. ARDIL had made an *Offer of NCDs* during the financial years 2011-2012 and 2012-2013 and raised an amount of Rs. 1,35,50,000/- as shown below:

| Year of Issue | Security Issued | Amount raised (Rs.) | Number of allottees |
|---------------|-----------------|---------------------|---------------------|
| 2011-2012     | NCDs            | 1,35,50,000         | 1494                |
| 2012-2013     |                 |                     | 30                  |
| Total         |                 | 1,35,50,000         | 1524*               |

*\*As per the reply of Shri Polaki Umashankar Rao dated December 4, 2013, the number of allottees is approximately 2500*

7. As per the audited financial statements for the financial year 2012-13 ARDIL had issued 130350 debentures of Rs. 100 each aggregating Rs. 1,30,35,000 as on March 31, 2012 which increased to Rs. 1,35,50,000 as on March 31, 2013.
8. As per the copy of Minutes of the Meeting of the Board of Directors of ARDIL held on August 20, 2011 it is *inter alia* stated that “*the Board of Directors be and is hereby authorized and shall be deemed to have always been so authorized to raise or*

borrow from time to time at its discretion by issue of secured redeemable non-convertible debentures of Rs.100/- each up to a limit of Rupees Ten Crores.” Further, the copy of Minutes of the Meeting of the Board of Directors of ARDIL held on September 05, 2011 *inter alia* states that “*in terms of the Board Meeting held on 20.08.2011 and in terms of approval obtained from the shareholders in the Extra Ordinary General Meeting held on 05.09.2011 at 10.00 am, the Board is hereby issuing Secured Redeemable Non-convertible Debentures with the terms and condition laid down before the meeting...*”.

9. The terms and conditions as indicated in the Secured Debentures Certificate *inter alia* state that “*Active group’s mission is to increase computer education, healthcare awareness and general public utility products through Educational institutes and industrial units by using the received deposited capital / investments from general public in the shape of Secured Debentures, and to distribute the profits among the investors as a dividend and bonus by selling the products and services. As such deposits of general public will be 100% safe and secure. Deposited capital is invested in Agro Projects & Industries under the programme of rural development which is a glaring example of private initiative in combating challenges of climate control too. (emphasis supplied)*”
10. As per the brochure cum application form provided by ARDIL, the terms and conditions of the Non-Convertible Redeemable Secured Debentures Issue are as follows:

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| Plan                                                                 |                      | S    | E     | C     | U     | R      | E      | D      |
|----------------------------------------------------------------------|----------------------|------|-------|-------|-------|--------|--------|--------|
| AMR 115<br>Issue price<br>minimum 10<br>debentures<br>@Rs.100/- each | Redemption<br>Period | 1 yr | 3 yrs | 5 yrs | 7 yrs | 10 yrs | 12 yrs | 16 yrs |
|                                                                      | Amount<br>invested   | 1000 | 1000  | 1000  | 1000  | 1000   | 1000   | 1000   |
|                                                                      | Dividend             | 120  | 540   | 1200  | 2100  | 4200   | 9360   | 15360  |

|                 |                  |      |      |      |      |      |       |       |
|-----------------|------------------|------|------|------|------|------|-------|-------|
| i.e. Rs. 1000/- | Cumulative Value | 1120 | 1540 | 2200 | 3100 | 5200 | 10360 | 16360 |
|-----------------|------------------|------|------|------|------|------|-------|-------|

*Any member of “Active Pariwar Katihar” could purchase Active unit (s) in the shape of Secured Debentures on submission of Application form with relevant documents and stamp size colour photographs.*

*Individuals, (HUF), Corporate Bodies, Trusts, Partners Firms, Minor (Through Guardian), Institutions, Co-operative Bodies etc. can apply...”*

11. The Director of ARDIL, Shri Polaki Umashankar Rao, in his written submission had stated that ARDIL had raised Rs. 1,35,50,000 from 2500 investors (approximately) from Bihar and West Bengal and that the money was raised under secured debentures for the purpose of business operation of the company.
12. As per the list of debenture holders enclosed with Form 20B (Form for filing annual returns) for AGM dated September 30,2013 obtained from MCA 21 Portal, the total amount mobilized through debentures is Rs. 1,35,50,000/-and the number of debenture holders is 1524 at the end of the financial year 2012-13 as detailed below:

| Sr. no. | Month/Year | No. of investors |
|---------|------------|------------------|
| i.      | Nov-11     | 227              |
| ii.     | Dec-11     | 354              |
| iii.    | Jan-12     | 357              |
| iv.     | Feb-12     | 263              |
| v.      | Mar-12     | 293              |
| vi.     | Mar-13     | 30               |
|         | Total      | 1524             |

13. The terms and conditions indicated in the Secured Debenture Certificate issued by ARDIL show that deposit towards debentures are taken from general public.

Moreover, the terms and conditions indicated in the brochure-cum-application form states that "*Individuals, (HUF), Corporate Bodies, Trusts, Partners Firms, Minor (Through Guardian), Institutions, Co-operative Bodies etc. can apply...*" Such a generalized category of investor(s) cannot be said to satisfy the condition of specificity as required under Section 67(3) of the Companies Act.

14. Further, ARDIL created a charge for an amount of Rs. 10 Crores on September 05, 2011 and appointed *Active Debenture Trust (represented by its trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* as Debenture Trustee for the Offer of NCDs by the company. *Active Debenture Trust (represented by its trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* was not registered as debenture trustee for the offer of NCDs by that company.
15. The above *Offer of NCDs* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) and sections 117B and 117C of the Companies Act, 1956 read with section 27(2) of the SEBI Act and the relevant provisions of the ILDS Regulations were not complied with by ARDIL in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Active Debenture Trust (represented by its trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* 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**").
16. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated June 25, 2015 with immediate effect.
  - i. "ARDIL shall forthwith cease to 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. ARDIL (CIN: U45200MP2011PLC026581; PAN:AAJCA8863D) and its

Directors, Shri Dilip Kumar Diwakar (DIN:00707567; PAN:ABGPD2004E), Shri Polaki Umashankar Rao (DIN:03533065; PAN:ATYPR9064L), Shri Ganesh Kumar Singh (DIN:03586509; PAN:BMSPS6948C) and Ms Vandana Saha (DIN:03586527; PAN:DFDPS3198A) 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. ARDIL 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. ARDIL shall provide a full inventory of all its assets and properties;
- v. ARDIL's abovementioned Directors, shall provide a full inventory of all their assets and properties;
- vi. ARDIL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of NCDS, without prior permission from SEBI;
- vii. ARDIL and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of NCDs*, which are kept in bank account(s) and/or in the custody of ARDIL;
- viii. ARDIL shall provide to SEBI the full list of investors of Non-Convertible Redeemable Secured Debentures, their addresses, telephone numbers, amount collected from each investor, etc;
- ix. ARDIL shall provide to SEBI all information regarding repayments made to the holders of Non-Convertible Redeemable Secured Debentures including name of the debenture holder, address, amount mobilized, number of Non-Convertible Redeemable Secured Debentures issued, promised maturity amount with date of

maturity, amount refunded and date thereof

x. ARDIL shall furnish complete and relevant information within 21 days from the date of receipt of this Order

xi. The Debenture Trustees, viz. Active Debenture Trust (represented by its Trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh) are prohibited from continuing with their present assignment as debenture trustees in respect of the Offer of NCDs of ARDIL 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.”

17. The interim order also directed ARDIL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 should not be passed against them:

i. Directing them jointly and severally to refund money collected through the *Offer of NCDs* along with interest, if any, promised to investors therein;

ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;

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

18. Similarly, the Debenture Trustee, viz. Trustee of the debenture holders of Multinational Industries Limited (represented by its trustees, viz. Shri Amit Samanta and Shri Raktim Dhar), were advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining it/them from accessing the securities market and further restraining it/them from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.

19. Vide the said interim order, ARDIL, 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.
20. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated June 30, 2015 which were not delivered. Subsequently, vide notification dated August 28, 2016 published in The Times of India and vide notification dated August 29, 2016 published in Anand Bazaar Patrika, the order was delivered on ARDIL, Shri Polaki Umashankar Rao, Shri Dilip Kumar Diwakar and the Debenture Trustee, Active Debenture Trust (represented by Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh). Copy of the order was delivered by way of electronic mail to Ms. Vandana Saha and Shri Ganesh Kumar Singh on October 1, 2015.
21. Vide notification dated June 10, 2017, published in The Times of India and Anand Bazaar Patrika, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on August 8, 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.
22. *Hearing and submissions:* On August 8, 2017, Shri Karunesh Tandon, Advocate, entered appearance on behalf of Shri Dilip Kumar Diwakar, and was allowed to enter appearance on behalf of ARDIL, Shri Polaki Umashankar Rao, Shri Ganesh Kumar Singh and Ms. Vandana Saha on the assurance that the requisite authorization letters/ appropriate Board Resolution to that effect would be submitted in due course. It was submitted that the interim order in the matter and communications thereafter were not served on the Company or any of its directors because during the relevant time, the office of the Company was sealed pursuant to Court orders, and most of the directors were in judicial custody. The authorized representative also submitted that

they were informed of the interim order of SEBI only through the newspaper publication dated June 10, 2017. For the above reason, the Noticees requested for an inspection of the necessary documents in the matter and for the hearing to be adjourned. The said request for inspection and adjournment was acceded to and the next date of hearing was to be communicated to the Noticees in due course.

23. Thereafter, Shri Dilip Kumar Diwakar, director of ARDIL, inspected the requisite documents in the matter on August 9, 2017. The Noticees were granted a final opportunity of hearing on October 5, 2017.

24. Shri Karunesh Tandon, Advocate appeared for the personal hearing as the authorized representative of Shri Dilip Kumar Diwakar who was also present for the hearing. However, Shri Karunesh Tandon, Advocate failed to provide the authorization letter/Board Resolution with respect to Active Rural Development India Limited, Shri Ganesh Kumar Singh, and Ms. Vandana Saha. Shri Karunesh Tandon was already advised to provide the requisite authorization letters and appropriate Board Resolution of the Company authorizing him to enter appearance on behalf of the other entities. Due to the failure to provide the said documents during this final opportunity of personal hearing as well, Shri Karunesh Tandon was directed to submit the requisite authorization letters/Board Resolution by October 6, 2017, failing which his submissions made on behalf of the respective entities would be expunged from the record. Shri Karunesh Tandon has stated that he is not entering appearance on behalf of Shri Polaki Umashankar Rao. Active Debenture Trust (represented by Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh) had also failed to appear for the hearing. Vide email dated October 6, 2017, requisite authorization letters of Shri Ganesh Kumar Singh and Ms. Vandana Saha were received. Vide email dated October 10, 2017, the Board Resolution of ARDIL dated October 4, 2017 authorizing Shri Karunesh Tandon, Advocate, to appear before SEBI, was received.

25. Shri Karunesh Tandon, Advocate, submitted on behalf of the aforesaid Noticees, *inter alia* that:

- i. The offer of NCDs was made only to the “Active Pariwar Katihar” and not to the

public.

- ii. The intention of Active Rural Development India Limited behind raising of funds, was for social purpose.
- iii. As per the understanding of the Noticees, Active Rural Development India Limited was not bound to comply with any other legal provisions while raising funds, as long as it adhered to the limit of Rs. 10 Crores set by the Registrar of Companies.

26. Vide the written submission dated October 12, 2017, ARDIL and its directors, Shri Dilip Kumar Diwakar, Shri Ganesh Kumar Singh and Ms. Vandana Saha have made, *inter alia*, the following submissions:

- i. The amounts have been collected from investors only after creating a charge on its assets which has been disclosed to the investors. Therefore, the funds collected from the investors were secure and there was no intention of the management of the Company to misutilize it.
- ii. The Company was involved in the promotion of social cause, more particularly, in the field of production of honey, fisheries, and other agricultural/horticultural products as confirmed by the Hon'ble High Court of Patna in the Civil Writ Petition no. 15545 of 2013 (Active Group of Companies Limited v. Union of India and others). A copy of the said order is enclosed. It was submitted that in view of the above confirmation, examination by SEBI as to the activities of the Noticee Company was incorrect and against the observation of the High Court.
- iii. The intention of the Company was not to become public listed as issuance of debentures was restricted to Rs. 10 crores. Moreover, it has been specifically pointed at the top of the prospectus and the application form for that it is meant only "for private circulation within the members only", thus making it clear that the investment is sought only from the members of the Active Parivar. Hence the observation that it was intended to go public is factually incorrect. A part of the document cannot be referred to independently as it is a settled proposition of law that the entire document has to be read as a whole to get the intent of the document. Further, there is no evidence on record to

show that the Company intended for the prospectus, brochures and application form to be circulated among public at large.

- iv. Since no restriction was imposed by the RoC, the Company issued debentures to 1524 members without knowing the proviso to section 67(3) of the Companies Act, 1956 and has therefore, violated the same due to an inadvertent mistake.
- v. The Noticees requested for permission to sell its assets and to repay the investors from such sale proceeds. An unaudited list of assets has been provided by the Noticee in this regard stating that the Company owns assets worth Rs. 16 crores.

27. 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 Active Debenture Trust (represented by its trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh), as the Debenture Trustee by ARDIL is in violation of Section 117B of the Companies Act, 1956 and whether Active Debenture Trust and Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh 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.**

28. I have perused the interim order dated June 25, 2015 for the allegation of Offer of

NCDs. I note that neither the company nor the directors filed any reply disputing the same.

29. I have also perused the documents available on records. It is noted, from the Form 20B as available on MCA records, that ARDIL has issued and allotted NCDs to 1524 investors during the financial years 2011-2012 and 2012-2013 and raised an amount of Rs. 1,35,50,000/-. I note that as per the submission made by Shri Polaki Umashankar Rao vide letter dated December 4, 2013, ARDIL had raised Rs. 1,35,50,000/- from 2500 investors (approximately) from Bihar and West Bengal. I note from the reply dated October 12, 2017, the Noticees have admitted that ARDIL had raised money from investors after creating a charge on its assets.
30. Further, from the Minutes of the Board Resolution of ARDIL dated August 20, 2011 and September 5, 2011 and the terms and conditions of the brochure-cum-application form, I am of the view that the Company had raised money by issuance of NCDs.
31. I therefore conclude that ARDIL 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.**

32. 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).”

33. 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.”*

34. 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*.

35. In the instant matter, I find that NCDs were issued by ARDIL to at least 1524 investors in the financial years 2011-2012 and 2012-2013. I find that as per the submissions of Shri Polaki Umashankar Rao, the total number of investors is 2500. I find that ARDIL has mobilized an amount of Rs. 1,35,50,000/- over the financial years 2011-2012 and 2012-2013. Further, I find that ARDIL has created a charge of Rs. 10 Crores on September 05, 2011. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by ARDIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
36. I note that the Company has submitted that the intention of the Company was not to become public listed as issuance of debentures was restricted to Rs. 10 crores. Moreover, it was submitted that “the application form and the prospectus form carries a specific declaration that the alleged brochures, application form and prospectus are for private circulation within the members only.” It was also submitted that “a part of the document cannot be referred to independently as it is a settled proposition of law that the entire document has to be read as a whole to get the intent of the document.” It was further submitted that there is no evidence on record to show that the Company intended for the prospectus, brochures and application form to be circulated among public at large.
37. 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 the present issuances, the directors of ARDIL have placed the Secured Debenture Certificates to show that the offer of NCDs was intended to be made only to members of Active Parivar Katihar.
38. In this regard it is pertinent to note the scope of the term Active Parivar as has been given by ARDIL in its Secured Debenture Certificate. The current members of Active Parivar Katihar included “the general public of the towns and villages of Katihar, Purnea, Forbesganj, Kishanganj, Araria, Saharsa, Supaul, Madhepura,

Banmankhi, Bhagalpur, Munger, Khagaria, Begusarai, Mokamah, Barh, Bakhtiyarpur, and Patna ... where Active Group has been widely accepted. (emphasis supplied)". Further, during the course of the personal hearing, ARDIL was advised to submit the full list of the investors showing their membership in the Active Pariwar Group. However, no such list has been submitted by the Noticees.

39. Further, I note that the terms and conditions as indicated in the Secured Debentures Certificate *inter alia* state that "*Active group's mission is to increase computer education, healthcare awareness and general public utility products through Educational institutes and industrial units by using the received deposited capital / investments from general public in the shape of Secured Debentures, and to distribute the profits among the investors as a dividend and bonus by selling the products and services. As such deposits of general public will be 100% safe and secure* (emphasis supplied)." Further, as noted in the interim order, the terms and conditions indicated in the brochure-cum-application form allowed a generalized categorization of investors to apply, such as "Individuals, (HUF), Corporate Bodies, Trusts, Partners Firms, Minor (Through Guardian), Institutions, Co-operative Bodies etc."
40. With respect to the submission that there is no evidence to show that the Company intended for the brochure to be circulated among the public at large, I note that as per the requirements of sections 67(3)(a) and 67(3)(b), the onus is on the Company to prove that the offer of securities was not made such that it would result in subscription by investors other than the ones to whom the offer was made. I therefore, find no merit in the submission of the Company.
41. From the above, it is clear that ARDIL has not been able to satisfactorily prove that the Offer of NCDs was made in compliance with sections 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. I am of the opinion that using words such as "*For private circulation within the members only*" and "*Not for circulation*" on the brochure-cum-application form, acts only as a lip service to the requirements of sections 67(3)(a) and 67(3)(b) of the Companies Act, 1956, while the underlying intent of the said document is to offer

securities to the “general public” of a wide geographical area, and where the Company has not been able to satisfactorily prove that it had not intended for the offer of securities to be made to a wider ambit of investors other than the ones receiving the brochure. Further, the first proviso to section 67(3) of the Companies Act, 1956 makes it clear that if the offer is made to fifty or more persons, the same becomes a “public issue”, as discussed in paragraph 33 of this Order.

42. Therefore, I find that the said issuance cannot be considered as private placement.
43. 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”.
44. I find that ARDIL 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 ARDIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
45. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by ARDIL 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 ARDIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
46. 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.

47. The Company and its directors, vide their reply dated October 12, 2017 has submitted that there was no intention on the part of the Company to list the NCDs. In this context, the observation of the Hon'ble Supreme Court in the *Sahara* case is worth reproducing:

*“...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...”*

48. Therefore, the Company is obliged as per law to list its securities in case of public issue and the submission that there was no intention of the Company to list the NCDs, cannot be accepted.
49. 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 ARDIL has contravened the said provisions. ARDIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that ARDIL 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.
50. 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, ARDIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that ARDIL 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 ARDIL has not complied with the provisions of section 60 of the Companies Act, 1956.

51. 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 ARDIL 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, ARDIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
52. 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.
53. 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 ARDIL 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.

54. I find no merit in the submission of the Noticees that the violation of the relevant provisions of law is due to an inadvertent mistake, as ignorance of the law cannot be an excuse for violation of legal provisions.

55. Further, I find that the submission of the Noticees, that SEBI approval was required only if the Company had mobilized fund beyond Rs. 100 crores, is apparently on the point of whether the Noticees were involved in activities which could be called a collective investment scheme within the meaning of the provisions of the SEBI Act. I find that the said submission has no bearing on the liability of ARDIL and its

directors in the case of public issuance of NCDs.

56. I note from the reply filed by the Noticees vide letter dated October 12, 2017, that it was submitted that since the objective of the Company was promotion of social cause, more particularly, in the field of production of honey, fisheries, and other agricultural/horticultural products as confirmed by the Hon'ble High Court of Patna in the Civil Writ Petition no. 15545 of 2013 (Active Group of Companies Limited v. Union of India and others), further examination by SEBI as to the activities of the Noticee Company was incorrect and against the observation of the High Court.
57. On perusal of the said order of the Hon'ble High Court of Patna dated October 30, 2013, I find that the said order was with relation to unsealing of the premises of the Active Group of Companies Limited. However, the said order does not prohibit SEBI from taking any action within its jurisdiction against ARDIL.
58. 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"*

59. 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.
60. In view of the above findings, I am of the view that irrespective of the nature of business as per the Objects Clause of the Memorandum of Association of ARDIL, it 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 Active Debenture Trust (represented by its trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh) , as the Debenture Trustee by ARDIL is in violation of Section 117B of the Companies Act, 1956 and whether Active Debenture Trust and viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?**

61. I have perused the copy of the Debenture Trust Deeds dated September 5, 2011. I find that ARDIL had created a charge of Rs. 10 Crores for the Offer of NCDs by the Company. I further find that ARDIL had appointed *Active Debenture Trust (represented by its trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh )* as the debenture trustee. by way of trust deed dated September 5, 2011.
62. 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.*

63. *Active Debenture Trust (represented by its trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* 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 *Active Debenture Trust (represented by its trustee, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that Active Debenture Trust and Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh 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.

64. 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 ARDIL has appointed *Active Debenture Trust (represented by its trustee, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* 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, I find that ARDIL 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?**

65. I note that the Noticees have submitted that the contravention of the provisions of Companies Act, 1956 was due to an inadvertent mistake. I find no merit in such submission as ignorance of the law cannot be an excuse for violation of the legal provisions. I therefore find that the Company and its past and present directors are

liable for the relevant violations during their tenure of directorship of ARDIL. From the documents available on record, I find that the present Directors in ARDIL are Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao, Shri Ganesh Kumar Singh. I also note that, Ms. Vandana Saha, who was earlier a Director in ARDIL, has since resigned. The details of the appointment and resignation of the directors are as following:

| <b>Name of the directors</b> | <b>Date of appointment</b> | <b>Date of cessation</b> |
|------------------------------|----------------------------|--------------------------|
| Shri Dilip Kumar Diwakar     | August 12, 2011            | Continuing               |
| Shri Polaki Umashankar Rao   | August 12, 2011            | Continuing               |
| Shri Ganesh Kumar Singh      | August 12, 2011            | Continuing               |
| Ms Vandana Saha              | August 12, 2011            | April 18, 2013           |

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

67. 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%.

68. From the material available on record and the details of the appointment and resignation of the directors of ARDIL as reproduced in paragraph 65 of this Order, it is noted that Ms Vandana Saha, Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao and Shri Ganesh Kumar Singh 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 ARDIL 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 ARDIL, 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 ARDIL and its Directors, viz., Ms Vandana Saha, Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao and Shri Ganesh Kumar Singh 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.

69. I note that during the financial years 2011-2012 and 2012-2013, ARDIL through Offer of NCDs, had collected an amount of Rs. 1,35,50,000 from various allottees. I

note that Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao and Shri Ganesh Kumar Singh are directors of ARDIL since financial years 2011-2012, 2012-2013 till present date. I note that Ms Vandana Saha was director of ARDIL during financial years 2011-2012, 2012-2013. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with ARDIL and other directors are limited to the extent of amount collected during his/her tenure as director of ARDIL.

70. 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, ARDIL is liable for the violation of sections 117B and 117C of the SEBI Act.
71. As far as the liability under the relevant provisions of the ILDS Regulations, is concerned, the liability is on the Company to comply with the said provisions. Therefore, ARDIL is liable for the violations of the relevant provisions of ILDS Regulations, as stated in paragraph 53 of this Order.
72. 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 Active Debenture Trust (*represented by its trustee, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh*), Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
73. 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 ARDIL and its Directors, viz. , Ms Vandana Saha, Shri Dilip Kumar Diwakar , Shri Polaki Umashankar Rao, Shri Ganesh Kumar Singh to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors, to safeguard the interest of the investors who had

subscribed to such NCDs issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.

74. I also note that, vide the interim order dated June 25, 2015, ARDIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of ARDIL 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 the inventory of assets of the Company which has been submitted is unaudited. I further find that no such inventory has been provided with respect to the Directors of the Company, despite the intimation of the interim order vide public notification dated June 10, 2017.

75. In view of the discussion above, appropriate action in accordance with law needs to be initiated against ARDIL and its Directors, viz. Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao, Shri Ganesh Kumar Singh and Ms Vandana Saha, and debenture trustees, Active Debenture Trust (*represented by its trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh*).

76. 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) ARDIL, Ms Vandana Saha, Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao, Shri Ganesh Kumar Singh shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

(b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-

Transferable”, or any other appropriate banking channels with clear identification of beneficiaries and supporting banking documents.

- (c) Ms Vandana Saha is directed to provide a full inventory of all her assets and properties and details of all her bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (d) ARDIL and Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao and Shri Ganesh Kumar Singh are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
- (e) ARDIL, Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao, Shri Ganesh Kumar Singh are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- (f) ARDIL, Ms Vandana Saha, Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao and Shri Ganesh Kumar Singh are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- (g) ARDIL and, Ms Vandana Saha, Shri Dilip Kumar Diwakar , Shri Polaki Umashankar Rao, Shri Ganesh Kumar Singh in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.

- (h) After completing the aforesaid repayments, ARDIL, Ms Vandana Saha, Shri Dilip Kumar Diwakar , Shri Polaki Umashankar Rao and Shri Ganesh Kumar Singh shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI")
- (i) In case of failure of ARDIL, Ms Vandana Saha, Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao and Shri Ganesh Kumar Singh 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 76(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- (j) ARDIL, Ms Vandana Saha, Shri Dilip Kumar Diwakar, Shri Polaki Umashankar Rao, Shri Ganesh Kumar Singh are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.
- (k) Active Debenture Trust, and Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.

- (l) The above directions shall come into force with immediate effect.
77. Copy of this Order shall be forwarded to the recognized stock exchanges, depositories and registrar and transfer agents for information and necessary action.
78. 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.
79. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

**DATE: January 4 , 2018**  
**PLACE: Mumbai**

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