

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

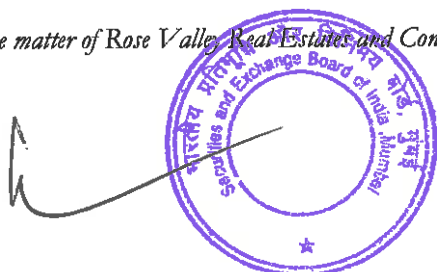
ORDER

Under sections 11, 11A, 11B and 11(4) of the SEBI Act, 1992 read with Clause 17 of SEBI (Disclosure and Investor Protection) Guidelines, Regulation 28 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and Regulation 25 of the SEBI (Debenture Trustees) Regulations, 1993 - In respect of:

S.No.	Noticees	CIN / DIN	PAN
1	Rose Valley Real Estates & Constructions Ltd	U45201WB1999PLC089311	AABCR8068D
2	Gautam Kundu (Director)	00773899	ALMPK9146L
3	Shibamoy Dutta (Director)	00774250	AHRPD6466H
4	Ramlal Goswami (Director)	01320525	AHDPG0244L
5	Abir Kundu (Director)	01517458	AQKPK1365J
6	Ashok Kumar Saha (Director)	00939075	BDCPS5827D
7	Amrita Nayak (Trustee)	NA	NA
8	Subra Dey (Trustee)	NA	NA
9	Nirmal Kundu (Trustee)	NA	NA
10	Arun Mukherjee (Trustee)	NA	NA
11	Abir Kundu (Trustee)	01517458	AQKPK1365J
12	Ratan Roy Chowdhury (Trustee)	NA	NA
13	Mritunjay Saha (Trustee)	NA	NA

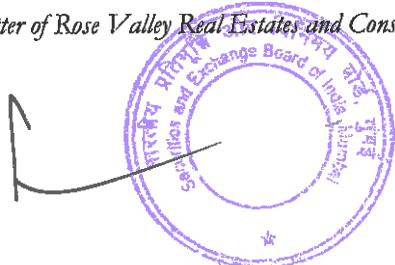
In the matter of Rose Valley Real Estates and Constructions Ltd.

1. Securities and Exchange Board of India (SEBI) received a reference from Ministry of Corporate Affairs, Office of the Registrar of Companies(RoC), West Bengal alleging that Rose Valley Real Estates & Constructions Ltd. (hereinafter referred to as 'RVRECL') had issued numerous secured debentures to the public in the years 2001-02, 2004-05, 2005-06 and 2007-08. SEBI



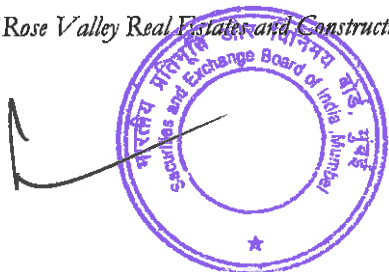
conducted investigations in the matter which *inter alia* revealed that RVRECL had raised total ₹1282.225 Lakhs by issuance of secured non-convertible debentures(NCDs) on several occasions to more than 49 persons without filing offer documents with either Registrar of Companies (RoC) or SEBI as required under law. The details are given in the following table:

Sl. No.	Year of Issue	Application received between		Amount raised (in Lakhs)	Application amount (in ₹)	No. of Allotees
1	2001 - 02	02/07/2001	01/10/2001	50	10000 to 3,00,000	98
2		25/07/2001	01/03/2002	50	10000 to 2,00,000	47
3	2004 - 05	01/09/2004	30/11/2004	34.305	1000 to 1,10,000	165
4	2005 - 06	10/06/2005	09/09/2005	50	1000 to 2,70,000	298
5		15/12/2005	13/03/2006	100	1000 to 2,00,000	872
6	2007 – 08	02/05/2007	01/08/2007	500	7000 to 6,00,000	752
7		16/08/2007	15/11/2007	497.92	4000 to 10,00,000	353
Total				1282.225		2585



2. Other details of NCDs issued during the financial year 2001-2002 to 2007-08 are as follows:

Sl. No.	Year of Issue	Resolution authorizing NCDs	Registration of trust deed	Security of the issue of NCD	Debenture Trustees
1	2001 - 02	21/08/2000	01/07/2001	(a) Building at Prasadpur, P.S. Barasat covering an area of 18 Kattahs (b) Land at Mauza-Belgachi, P.S. Baruipur covering an area of 12 Bigha 11 Kattah (c) Land at Mauza-Belgachi, P.S. Baruipur covering an area of 490 Bighas (d) Plant and machineries, furniture and fixtures, office equipment.	Amrita Nayak and Subhra Dey.
2		21/08/2000	25/07/2001	(a) Building at Prasadpur, P.S. Barasat covering an area of 18 Kattahs (b) Land at Mauza-Belgachi, P.S. Baruipur covering an area of 12 Bigha 11 Kattah (c) Land at Mauza-Belgachi, P.S. Baruipur covering an area of 490 Bighas (d) Plant and machineries, furniture and fixtures, office equipment.	Ratan Roy Chowdhury and Mrityunjay Saha.
3	2004 - 05	NA	03/12/2004	NA	Subhra Dey and Nirmal Kundu.
4	2005 - 06	NA	NA	NA	No Trustee appointed
5		NA	NA	NA	No Trustee appointed

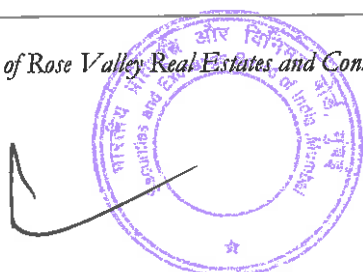


6	2007 – 08	NA	NA	Mandarmani Resort Projects near Digha on approx. 100 bighas of land in district of East Midnapore in WB	Arun Mukherjee and Abir Kundu
---	-----------	----	----	---	-------------------------------

3. The copies of Debenture Trust Deeds submitted by RVRECL for issues of NCDs during 2007-2008, revealed the following details:

Date of Trust Deed	Name of Trustees	Date of Board Resolution	Date of EGM Resolution	Particulars of Issue	Minimum nos. of debentures to be purchased
10/04/2007	Arun Mukherjee and Abir Kundu	03/04/2007	30/04/2007	₹ 5 crore (50,000 debentures of ₹ 1000/- each)	50 debentures (scheme-A) and 5 debentures (scheme-B)
10/08/2007	Arun Mukherjee and Abir Kundu	02/07/2007	31/07/2007	₹ 5 crore (50,000 debentures of ₹ 1000/- each)	50 debentures (scheme-A) and 5 debentures (scheme-B)

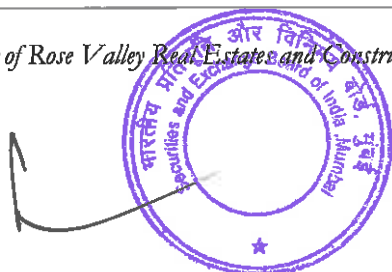
4. RoC (West Bengal) vide letter dated 30/07/2010, had informed that RVRECL had not filed any offer document with them with regard to above issuances of NCDs. It was noted that except the second issue of NCDs during 2001-02 {*application received between 25/07/2001 to 31/12/2001 which was allotted to 47 persons* }, in all other issues, NCDs were issued and allotted by RVRECL to more than 49 persons without filing offer documents with either SEBI or RoC - West Bengal as required under law. It was also revealed that the RVRECL had actually raised



₹ 1282.225 Lakhs from the above seven series of debentures, as against their claim of having raised only ₹ 9,97,92,000/-.

5. In view of the above, it was alleged in the Show Cause Notice that, in terms of provisions of section 67(3) of Companies Act, all issues of NCDs as stated above except the second series issue in 2001-2002 (period between 25/07/2001 to 31/12/2001) were public issues of NCDs made by the RVRECL. Since the offer document is deemed to be a prospectus as defined under section 2(36) of the Companies Act, 1956 and it was not filed in any of the above issues, it was alleged that, RVRECL and its directors had not complied with the provisions applicable to public issue of debentures and thereby they had violated the provisions of section 56 and section 73 of Companies Act, 1956 and the following provisions of the SEBI (Disclosure and Investor Protection) Guidelines 2000 (hereinafter referred to as the "DIP Guidelines") as applicable at the relevant time:

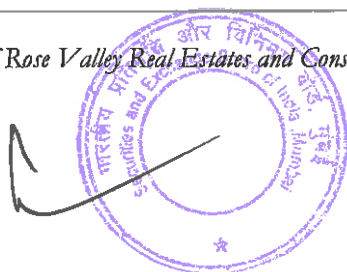
- a) Clause 2.1.1.(filing of offer document),
- b) Clause 2.1.4.(application for listing),
- c) Clause 2.1.5.(issue of securities in dematerialized form),
- d) Clause 2.5. (credit rating for debt instruments),
- e) Clause 2.8. (means of finance),
- f) Clause 4.1.(promoters contribution in a public issue by unlisted companies),
- g) Clause 4.11. (lock-in of minimum specified promoters contribution in public issues),
- h) Clause 5.3.1(memorandum of understanding),
- i) Clause 5.3.5 (undertaking),
- j) Clause 5.3.6 (list of promoters group and other details),
- k) Clause 5.6.2.(offer document to be made public),
- l) Clause 5.9.1.(minimum number of collection centres),
- m) Clause 5.12.1. (appointment of compliance officer),
- n) Clause 6.1. to Clause 6.19. (contents of the prospectus),
- o) Clause 6.20 to Clause 6.38 (contents of abridged prospectus),
- p) Clause 8.8.1.(period of subscription, public issues),
- q) Clause 10.1. (requirement of credit rating),



- r) Clause 10.2. (requirement in respect of debenture trustee),
- s) Clause 10.3. (creation of debenture redemption reserve),
- t) Clause 10.5. (redemption),
- u) Clause 10.6. (disclosure and creation of charge)
- v) Clause 10.9 (b) and (f) (additional disclosures in respect of debentures).

Alleged violations with regard to appointment of debenture trustees.

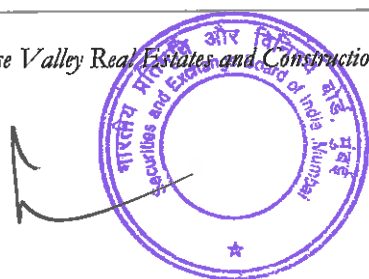
6. As brought out in paragraph 2, RVRECL had appointed Amrita Nayak (since deceased), Subhra Dey, Ratan Roy Chowdhury, Mrityunjay Saha, Arun Mukherjee, Nirmal Kundu (since deceased) and Abir Kundu as debenture trustees for the issues of NCDs during the year 2001-02 to 2007-2008. It was alleged that these individuals were not fulfilling the eligibility criteria to act as a debenture trustee for issue of debentures by RVRECL. Therefore, by appointing individuals as the debenture trustees who are not fulfilling the eligibility criteria, RVRECL and its directors had violated the provisions of regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 (Debenture Trustees Regulations) read with section 12(1) of the SEBI Act, 1992.
7. Nirmal Kundu was one of the trustees for the debentures issued during 2004-05. He had subscribed to 1000 equity shares of RVRECL out of the total 11000 equity share capital of RVRECL. Therefore, it was alleged that RVRECL has violated the provisions of Section 117B (1)(a) of Companies Act, 1956 read with Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993 by appointing a debenture trustee who beneficially holds shares in the company with regard to the issue of debentures during the year 2004-2005.
8. It was further noted that RVRECL had not appointed any debenture trustee for the issue of NCDs during the financial year 2005-2006 hence RVRECL and its directors had violated the provisions of section 117B of Companies Act, 1956 and Debenture Trustees Regulations.
9. It was also noted that Abir Kundu was a director of RVRECL from 29/09/2007 and was also one of the trustees with regard to issue of NCDs during the year 2007-2008. Therefore, by appointing Abir Kundu as a debenture trustee for the NCDs issued during the year 2007-2008,



the RVRECL and its directors had violated the provisions of section 117B (1)(b) of Companies Act, 1956 read with regulation 7 of the Debenture Trustees Regulations.

Alleged violations with regard to not creating debenture redemption reserves.

10. RVRECL had not submitted any details of creation of debenture redemption reserve for the abovementioned public issue of NCDs. From the copies of its financial accounts for the period 31/03/2004, it was observed that RVRECL had not created any debenture redemption reserve in its Balance Sheet for redemption of the NCDs issued by it. From the Profit & Loss Account of RVRECL, it was observed that it had suffered losses during the years 2003-04, 2004-05, 2005-06, 2006-07 and 2009-10. But, it had earned a Profit After Tax of ₹ 38,78,744/- in the year 2007-08 and again earned a Profit After Tax of ₹ 111,69,676/- in the year 2008-09. Though it earned profits in 2007-08 and 2008-09, still no debenture redemption reserve was created by RVRECL. Therefore, it was alleged that RVRECL and its directors had violated the provisions of section 117C of Companies Act, 1956.
11. Considering the above, SEBI issued Show Cause Notice (SCN) dated 13.09.2013 to RVRECL and its directors. It was alleged in this SCN that the issue of six series of secured NCDs by the RVRECL between 2001-02 and 2007-08 as discussed hereinabove, were public issues of debentures in terms of the first proviso to section 67(3) of the Companies Act, 1956. However, with regard to these issues of NCDs, RVRECL and its directors had not complied with the applicable provisions and thereby they had purportedly violated the provisions of section 56 and section 73 of Companies Act, 1956 and the provisions of Clause 2.1.1, Clause 2.1.4, Clause 2.1.5, Clause 2.5, Clause 2.8, Clause 4.1, Clause 4.11, Clause 5.3.1, Clause 5.3.5, Clause 5.3.6, Clause 5.6.2, Clause 5.9.1, Clause 5.12.1, Clause 6.0 to Clause 6.19, Clause 6.20 to Clause 6.38, Clause 8.8.1, Clause 10.1, Clause 10.2, Clause 10.3, Clause 10.5, Clause 10.6 and Clause 10.9 (b) and (f) of the erstwhile DIP Guidelines read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
12. It was further alleged in the SCN that with regard to creation of debenture trust deeds, appointment of debenture trustees and creation of debenture redemption reserve, RVRECL

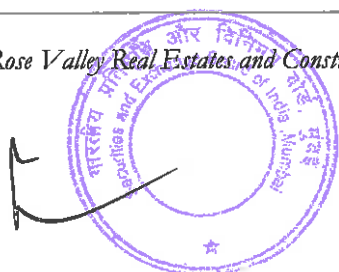


and its directors had violated the provisions of section 117A, section 117B, 117B (1)(a), 117B (1)(b) and section 117C of Companies Act, 1956 read with section 55A of the Companies Act, 1956 and provisions of regulation 7 of the Debenture Trustees Regulations read with section 12(1) of the SEBI Act, 1992.

13. Amrita Nayak, Subra Dey, Nirmai Kundu, Arun Mukherjee, Abir Kundu, Raran Roy Chowdhury and Mrityunjay Saha had acted as debenture trustees for aforesaid public issues of NCDs by RVRECL without fulfilling the eligibility criteria and thereby violated provisions of Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 read with Section 12(1) of the SEBI Act, 1992. Two SCNs were issued to these debenture trustees on October 23, 2013 and December 26, 2013.
14. The summary of violations charged in respective SCNs to RVRECL and its directors and aforesaid 7 debenture trustees is as under;

Summary of SCNs

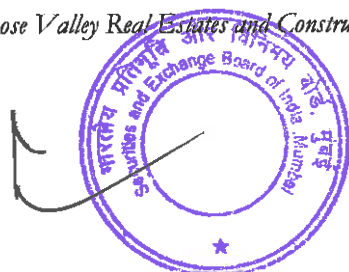
S. No.	Name of Noticees	Allegations	Violations	Date of SCN
1	Rose Valley Real Estates & Constructions Ltd	Made public issue of debentures on six instances during 2001-2002 to 2007-2008 without complying with the provisions of Companies Act, 1956 and	Section 56, 73, 117A, 117B, 117B(1)(a), 117B(1)(b) & 117C of Companies Act, 1956 and	13.09.2013
2	Gautam Kundu (Director)	erstwhile SEBI (DIP) Guidelines, 2000 and	Clause 2.1.1., 2.1.4, 2.1.5., 2.5., 2.8., 4.1., 4.11., 5.3.1,	
3	Shibamoy Dutta (Director)	appointed debenture trustees against the provisions of SEBI (Debenture Trustees) Regulations, 1993.	5.3.5, 5.3.6, 5.6.2., 5.9.1., 5.12.1., Clause 6.0 to	
4	Ramlal Goswami (Director)		Clause 6.19, Clause 6.20 to	
5	Abir Kundu (Director)		Clause 6.38, Clause 8.8.1.,	
6	Ashok Kumar Saha (Director)		10.1., 10.2., 10.3., 10.5., 10.6. & 10.9 (b) & (f) of	



			erstwhile SEBI (DIP) Guidelines, 2000 and Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993	
7	Amrita Nayak (Trustee)	Acted as debenture trustees in public issue of debentures by RVRECL during 2001-2002 to 2007-2008 without fulfilling the eligibility criteria.	Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993	23.10.2013 & 11.11.2013
8	Subra Dey (Trustee)			23.10.2013
9	Nirmal Kundu (Trustee)			23.10.2013
10	Arun Mukherjee (Trustee)			23.10.2013 & 11.11.2013
11	Abir Kundu (Trustee)			23.10.2013 & 11.11.2013
12	Ratan Roy Chowdhury (Trustee)	Acted as debenture trustees in issue of debentures by RVRECL during 2001-2002 without fulfilling the eligibility criteria.	Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993	26.12.2013
13	Mritunjay Saha (Trustee)			26.12.2013

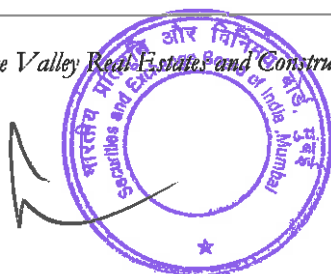
15. RVRECL, vide letter dated 31.10.2013 filed the reply on behalf of itself and its directors stating as under:-

"1) The company had come out with seven issues of private placement of debentures during 2001-2002 to 2007-2008. All the debentures have been repaid/redeemed. A certified copy of the annual financial statements for the year ended 31-3-2012 was submitted and as may be seen there from, the outstanding in respect of debentures is 'nil'. Therefore as of date, the cause of action related to alleged impugned



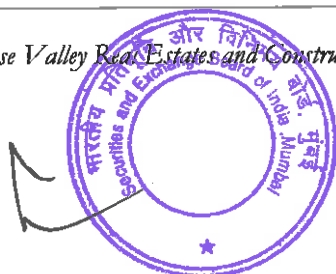
violations has ceased to exist with the redemption of the debentures. In any case, we deny that any violations of the provisions of the Companies Act, or the relevant SEBI regulations/guidelines have been committed at any time.

- 2) As may be seen from the documents submitted to SEBI, the information memorandum clearly states the issues are on private placement basis, 'for private circulation only' and the disclaimer that document is not a prospectus and is not registered with any authority are clearly mentioned.
- 3) The show cause notice is based on the allegation that the company has made a 'public offer' of debentures without following the provisions of the Companies Act, 1956 and hence violated the relevant provisions of SEBI Disclosure and Investor Protection Guidelines or the SEBI (ICDR) Regulations also.
- 4) As may be seen from the first proviso to section 67(3)], 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 50 persons or more. We submit that we have not made 'offer or invitation to subscribe' to fifty persons or more as brought out in the table attached at EXHIBIT 2 (excel sheet). We submit the provision of Section 67 (3) speak of offer or invitation and not allotment. On any particular day, no offer or invitation to subscribe to more than 49 persons. The word 'allotment' cannot be read into the legal provision in section 67(3) as it is not expressly provided therein. This interpretation is also in consonance with intention of the legislature as in the Companies Act, 2013, the provisions are different as to what is a 'public offer'.
- 6) We submit that the debentures have been redeemed in full, have been purely privately placed and hence not a public offer requiring listing on a stock exchange pursuant to Section 73. We submit that since the requirements for listing on a stock exchange was neither mandatory nor applicable to privately placed issues, the provisions of the SEBI Act, 1992 and SEBI DIP Guidelines or SEBI ICDR were not applicable to the impugned issues.
- 7) We submit that provisions of SEBI (Debenture Trustees) Regulations, 1993 are not applicable to issues that are not public issues and hence all allegations contained in the show cause notice relating violations of these Regulations are denied.
- 8) We submit that no information has been suppressed from SEBI.
- 9) As may be seen above [Section 60(5)] the maximum penalty for non-registration of prospectus is Rs.50,000 only. Assuming that SEBI is of view that applicable provision has been violated, we would like to submit that it is inadvertent and cause of action has expired with the redemption of debentures



and in view of the same SEBI may please grant us an opportunity to apply for consent order under the available consent mechanism."

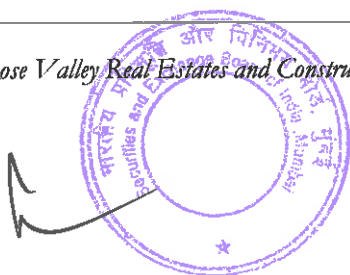
16. Further, RVRECL vide letter dated 19.11.2013 has informed that Amrita Nayak (trustee) had since expired and submitted a copy of her death certificate.
17. Vide their separate letters dated 08.11.2013 and 19.11.2013 , the debenture trustees viz; Subhra Dey, Nirmal Kundu, Arun Mukherjee and Abir Kundu filed their respective reply to the SCNs issued to them. They made similar submissions *inter alia* as indicated below:
- a) They have denied any violations of the provisions of the SEBI Act or the SEBI (Debenture Trustees) Regulations, 1993 by them.
 - b) RVRECL had come out with seven issues of private placement of debentures. As may be seen from the documents submitted to SEBI, the information memorandum clearly stated the issues were on private placement basis, '*for private circulation only*' and the disclaimer that document is not a prospectus and is not registered with any authority was clearly mentioned.
 - c) Section 67(3) of the companies Act, 1956 says 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. In this case, the company had not made '*offer or invitation to subscribe*' to fifty persons or more. The provisions of section 67(3) speak of '*offer*' or '*invitation*' and not '*allotment*'. On any particular day, no offer or invitation to subscribe was made to more than 49 persons. The word '*allotment*' cannot be read into the legal provision in Section 67 (3) as it is not expressly provided therein. This interpretation is also in consonance with the intention of the legislature as in the Companies Act, 2013, and the provisions are different as to what is a '*public offer*'.
 - d) Since the requirements for listing on a stock exchange were neither mandatory nor applicable to the private placed issues, the provisions of the SEBI Act, 1992 and the SEBI (Debenture Trustees) Regulations were not applicable to the impugned issues. The provisions of the SEBI (Debenture Trustees) Regulations, 1993 are applicable for



public offers of debentures and not private placement issues. The show cause notice is erroneous.

- e) All the debentures have been repaid/ redeemed. A certified copy of the Annual financial statements for the year ended 31-3-2012 shows that the outstanding in respect of debentures was 'nil'. Therefore, as of date, the cause of action related to the alleged violations, if any, had ceased to exist with the redemption of debentures.
18. The SCN dated 26.12.2013 issued to Mritunjay Saha vide speed post no. EW343622677IN was delivered upon him on 31.12.2013 as could be tracked in the India Post website, however, no reply was received from him. The SCN dated 26.12.2013 issued to Ratan Roy Chowdhury vide speed post no. RW450629877IN was neither received back undelivered nor reply was received from him.
19. SEBI issued notices of personal hearing to 12 entities as enumerated in the table above except to Amrita Nayak (since expired) advising them to produce all evidences and clarifications in support of their contentions for the charges levelled against them. The personal hearings were held on 06.08.2014, 18.09.2014 and 25.09.2014. All the noticees except Ratan Roy Chowdhury and Mritunjay Saha (who failed to appear despite service of notice) availed the opportunity of personal hearings.
20. On 06.08.2014, Mr. Sudipto Sarkar, Senior Advocate appearing for RVRECL and its directors requested for time to file additional reply in the matter which was granted. Mr. Hrishikesh Chavan, Advocate along with Mr. Sharan Jagtiani, Advocate appeared on behalf of Subhra Dey, Nirmal Kundu, Arun Mukherjee and Abir Kundu and requested for further time which was acceded to.
21. Vide letter no. RECL /SEBI/DEB /SS/ D2445 dated 15.09.2014, RVRECL filed additional reply wherein, the following was submitted :

"By an order dated 24.03.2013 the Adjudicating Officer of SEBI, held that the Company and its directors are liable under Section 11C(2) and 11C(3) of the SEBI Act, 1992, and penalty of Rs. 1



crore was imposed on the Company for alleged violations committed by the Company under the said provisions.

The company preferred an appeal from the above order on 7th May, 2013 before the Securities Appellate Tribunal, Mumbai being Appeal No. 106 of 2013.

After hearing the counsel, appearing for the Company and SEBI, the Securities Appellate Tribunal by an order dated 12.12.2013 was, inter alia, pleased to the following finding:-

- i. The Company has provided the requisite information/ documents as required by SEBI.
- ii. The appellant had issued debentures on private placement basis.
- iii. The question of furnishing documents related to issue of Debenture through the public does not arise in the facts of the case.
- iv. The overall conduct of the Company is conducive to reduction of the property impugned 1 crore to 10 lakh.
- v. The debenture scheme in question has been wound up and all the money collected under the said scheme have been repaid.

The Securities Appellate Tribunal was pleased to reduce the penalty from Rs. 1 crore to Rs. 10 lakh which has since been deposited by the company.

It would appear from the order dated 12.12.2013 that the Securities Appellate Tribunal has been pleased to hold that the Scheme in question has been wound up and all monies collected under the same have been repaid to the customers/clients. A copy of the order dated 12.12.2013 passed by the Securities Appellate Tribunal is annexed hereto and marked with letter "A-1".

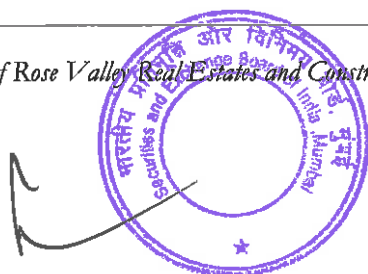
Accordingly and in reliance of the order passed by SAT, it is stated that the debentures have been issued on private placement basis only. The Company had no intention to issue any shares to the public at any point of time. The Company and its directors have acted bona fide without intending to violate any provision of the SEBI Act or otherwise.

Further the entire money received by the company has been repaid in full. Therefore, none of the investors have been prejudicially affected.

In view of the repayment of the entire money received by the Company by issues of debentures, it is prayed that no further proceeding be initiated against the Company under the impugned Notice or otherwise in any other manner howsoever.

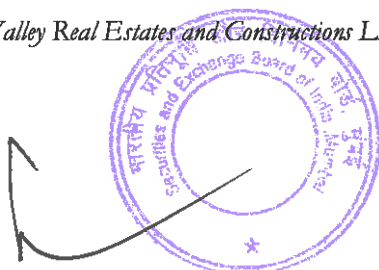
The Company state that all relevant documents in this regard to the purported Show Cause Notice dated 13th September, 2013 have already been filed before the SEBI by letters dated 29.07.2011, 30.11.2011, 25.02.2013 and 11.03.2013. Reference to the same is craved at the time of hearing."

22. On the next date of hearing on 18.09.2014, Mr. Sudipto Sarkar, Senior Advocate and Others appeared and made submissions on the lines of the written replies of RVRECL and its directors. Mr. Hrishikesh Chavan, Advocate appeared for Subra Dey, Nirmal Kundu, Arun Mukherjee and Abir Kundu and sought a short adjournment which was granted. The final opportunity of hearing was given to them on 25.09.2014 when Mr. Hrishikesh Chavan, Advocate along with Mr. Sharan Jagtiani, Advocate appeared and made submissions on the line of their reply on record.
23. While the hearing was concluded as aforesaid and orders were reserved, it was noted that the SCNs were deficient on account of charging the RVRECL and its directors with violation of SEBI (ICDR) Regulations, 2009 whereas the instrument in question being NCDs governed by SEBI (Issue and Listing of Debt Securities) Regulations, 2008. In view of the same, SEBI issued a corrigendum on 24.09.2015 to RVRECL and its directors stating that all reference to regulation 107 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 in the SCN dated 13.09.13 have to be read as regulation 33 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008. They were advised to submit a reply within 21 days of the receipt of the corrigendum. However, no further reply was received from them.
24. In this case, all the six series of public issuances of NCDs were made when the DIP Guidelines were in force. It is also relevant to mention here that SEBI Act is a special legislation to deal with the matters relating, *inter alia*, to the protection of interests of investors in securities. DIP Guidelines issued under section 11(1) and the Debt Regulations framed for the purposes of section 11(1) and section 11A lay down various disclosure and other related requirements for



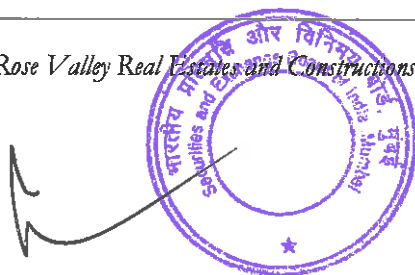
public issues of NCDs in furtherance of the objective and duties of SEBI enshrined under the SEBI Act. It is also to be kept in mind that these statutory requirements and obligations are intended to protect the interests of the investors in securities and to ensure transparency and integrity in the securities market. Accordingly, a company making a public issue of NCDs is obligated to comply with these requirements in addition to the requirements prescribed under the Companies Act, 1956. In this case, the allegation in the SCN dated 13.09. 2013 was that certain provisions of the DIP Guidelines as stated above read with regulation 107 of the ICDR Regulations were not complied with by the RVRECL and its directors while making the six series of public issuance of NCDs as described in the said SCN.

25. It is relevant to mention that when the SCN dated 13.09.2013 in this case was issued, the DIP Guidelines in so far as they applied to NCDs were rescinded by the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (Debt Regulations) which came into force on June 6, 2008. Accordingly, with effect from June 06, 2008, the issuance and listing of NCDs was governed by the Debt Regulations. In terms of regulation 33 of the Debt Regulations, notwithstanding rescission of DIP Guidelines in so far as they applied to NCDs, actions taken or things done or purported to have been taken or done under the DIP Guidelines were saved by the said Regulations. Accordingly, the SCN dated 13.09.2013 to RVRECL and its directors should have referred to DIP Guidelines and Debt Regulations. I, however, note that it is settled position of law that mentioning of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate the order if the source of such power can be traced to a different provision. In this regard, it is relevant to mention the judgement of Hon'ble Supreme Court in the matter of *Collector of Central Excise Calcutta Vs. Pradyumna Steel Ltd. 1996982) E.L.T. 441 (S.C.)*, wherein it held that '*mere mention of a wrong provision of law when the power exercised is available even though under a different provision is by itself not sufficient to invalidate the exercise of that power.*'
26. When SEBI issued corrigendum dated 24.09.2015 to aforesaid SCN to RVRECL and its directors, they did not respond. From the records, it is noted that an opportunity of hearing was granted on 25.08.2016. No one for RVRECL and its directors appeared on the said date. On



25.08.2016, Mr. Biplab Goswami, Authorised Representative of Subhra Dey appeared and requested for a copy of the SCN dated 23.10.2013. He also sought for another date of hearing. Another opportunity was granted to the Noticees in this case on 01.09.2016. No one appeared on 01.09.2016 despite service of notice of hearing on the Noticees. Mr. Biplab Goswami, Authorised Representative of Subhra Dey, vide email dated 30.08.2016 again sought for an adjournment. He has also informed that Nirmal Kundu had expired on 06.04.2015 and his death certificate dated 09.04.15 was submitted.

27. As the matter was not concluded by erstwhile WTM, in order to comply with the principles of natural justice another opportunity of hearing was granted by me on March 3, 2017. In response to the hearing notice in this matter and another matter of Rose valley group, Gautam Kundu replied that his authorized representative would appear on behalf of him as he was not aware of legal proceedings and was also not fit to travel by train for medical reasons. Hearing noticees sent to 7 entities returned undelivered. Considering the facts and circumstances of the case, another hearing opportunity was granted to all the noticees on May 15, 2017. Notices of hearing were served on all the noticees by way of newspaper publication in Times of India and Ananda Bazar patirika. In spite of publication of hearing notices, none of the noticees appeared for hearing or sought adjournment. In view of the same, I am compelled to decide the matter based on the materials available on record.
28. It has been brought on record that Amrita Nayak and Nirmal Kundu, two of the debenture trustees have passed away. It is noted that the allegations have been levelled against them in their personal capacity as debenture trustees to the alleged public issues of NCDs by RVRECL. In view of the foregoing, I am of the view that the proceedings against Amrita Nayak and Nirmal Kundu are liable to be abated without going into the merits of the case *qua* them and the SCN as against them are accordingly disposed of.
29. Coming to the merits of the case against the other Noticees, it is noted that admittedly, as described in the SCN, RVRECL had issued seven issues of NCDs during 2001-2002 to 2007-2008, out of which in six series of issuances, number of allottees was more than 49. RVRECL and its directors have, however, contended that RVRECL had come out with impugned issue

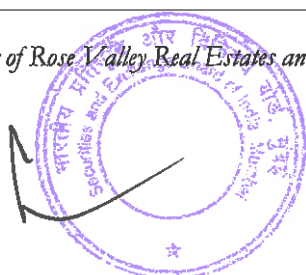


of NCDs on private placement basis. According to them, the information memorandum circulated by RVRECL clearly stated that the issues were on private placement, by including the words '*for private circulation only*' and there was a disclaimer that the said document was not a prospectus and was not registered with any authority. RVRECL and its directors have further sought to contend that the allotment of NCDs by RVRECL was not through an '*offer or invitation to subscribe*' to fifty or more persons as envisaged in the first proviso to section 67(3) of the Companies Act, 1956.

30. I note that the RVRECL and its directors have not furnished a copy of such '*information memorandum*'. Be whatever it may, the RVRECL has admittedly circulated information memorandum pursuant to which allotments of NCDs have been made by it to 49 or more persons in its six series of issue of NCDs as described in the SCN during the period 2001-02 to 2007-08. Further, from the date- wise details of number of allotment as submitted by RVRECL, it is noted that in some instances the daily allotment itself was to more than 49 persons as detailed below:

Opening date	Allotment date	No. of allottees.
15/12/2005	31/12/2005	72
10/06/2005	9/9/2005	79
02/05/2007	21/06/2007	77
	16/07/2007	51
	31/07/2007	86

31. In view of the fact that RVRECL had circulated the information memorandum to public at large pursuant to which the members of public have been allotted NCDs on several occasions as stated above, it cannot be said that the allotments were made without an offer or invitation by RVRECL to the prospective allottees to subscribe for its NCDs. In the facts and circumstances of this case, it is not possible to make allotment to public repeatedly without there being offer or invitation to large number of members of public to subscribe to the NCDs. In this connection, it is also relevant to mention the definition of '*prospectus*' as given in section 2(36) of the Companies Act, 1956. In terms of section 2(36) prospectus includes any notice,



circular, advertisement or other document inviting offers from the public for subscription of shares or debentures of a body corporate. Thus, the information memorandum as claimed by the company in this case squarely falls in the definition of prospectus under section 2(36) of the Companies Act, 1956. In my view, therefore, merely by claiming the information memorandum is 'for private circulation only' but circulating the same to more than 49 persons and offering/inviting subscription to the NCDs from them, the issue could not be termed as private placement.

32. In this connection, I deem it necessary to refer here the provisions of section 67 of the Companies Act, 1956 as it applied at the relevant time. The relevant provisions of section 67 read as under:-

“Construction of references to offering shares or debentures to the public, etc.

67 (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-section (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 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 –

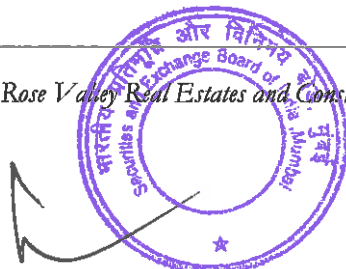
(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(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:

.....”

33. I note that the first proviso to section 67(3) states 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. Thus, in terms of the first proviso to section 67(3), any offer or



invitation to fifty or more persons to subscribe for shares or debentures is a public issue even if a case satisfies the conditions under section 67(3) (a) or (b). In other words, an offer or invitation to 50 or more persons is a public issue even if it is shown that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation or that it is of a “domestic concern” of those making and receiving the offer or invitation. In this regard, it is relevant to mention that all controversies with regard to the definition of public issue under section 67(3) of the Companies Act have been settled by the Hon'ble Supreme Court in its judgment and order dated August 31, 2012 in matter of *Sahara India Real Estate Corporations Limited & Ors. Vs SEBI & Anr. -Civil Appeal No. 9813 and 9833 of 2011 [(2013) 1 SCC 1]* (hereinafter referred to as the “*Sahara case*”) wherein Hon'ble Supreme Court has held that an offer to fifty or more persons becomes public issue by virtue of first proviso to section 67(3) of the Companies Act, 1956. In the *Sahara case*, Hon'ble Supreme Court has held that –

“.....Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange.”

34. The intention of the Legislature, as envisaged in the first proviso to section 67(3) is that any mobilization of funds from any group of investors, fifty or more in number, should be classified as a ‘public issue’. Considering the provisions of section 67(3) and aforesaid rulings of the Hon'ble Supreme Court in *Sahara Case*, I am of the view that once the number of allottees exceeds 49, it becomes a public issue and it is irrelevant whether the information memorandum was circulated to them with declaration that they are ‘for private circulation only’ and all the provisions applicable to public issues shall apply to such offer/ invitation and allotment.
35. Another contention of the RVRECL and its directors is that in the order dated December 12, 2013 (in the Appeal no. 106 of 2013), Hon'ble Securities Appellate Tribunal (SAT) has



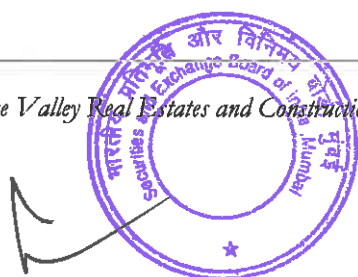
concluded that the issue of NCDs in this case was on a private placement basis. In this regard, I note that during investigation, RVRECL had not cooperated with regard to compliance of summons and furnishing of required information as and when asked for. In the adjudication proceedings in this regard, the Adjudicating Officer vide order dated 26.03.2013 had imposed a penalty of ₹ 1 Crore on RVRECL. In the appeal against the said order of the adjudicating officer, Hon'ble SAT reduced the amount of penalty to ₹10 lac since some of the information was furnished during investigation proceedings and some other during adjudication proceedings but before the order dated 26.03.2013 was passed by the Adjudicating Officer.

36. I further note that in the above appeal, Hon'ble SAT was examining the findings of the order dated 26. 03. 2013 of the Adjudicating Officer with regard to the non compliance of summons/ non-furnishing of information by the RVRECL during investigation. I note that, at para. no. 9 Hon'ble SAT has clearly declared the scope of its order in the following words:

"..... we note that the only issue which requires consideration by this Tribunal is whether or not in the facts and circumstances of the present case there was a total defiance by the applicant with respect to production of documents warranting a monetary penalty of ₹1 crore."

37. Thus, it is noted that in its order dated December 12, 2013, Hon'ble SAT was not dealing with the merits of the case as described in the SCN. Further, on the issue of refunds, RVRECL and its directors have not provided any evidence other than the Annual Financial Statement of the year ending March 31, 2012 in support of their contentions. I am of the view that entry in the Annual Financial Statement is not a sufficient evidence to establish that RVRECL has refunded all the monies collected through NCDs to the respective investors.

38. In this case, the NCDs were offered and allotted to more than 49 persons through information memorandum, which is covered in the definition of '*prospectus*' that is issued in case of public issues. In terms of section 56(1) of the Companies Act, every prospectus should state the matters/reports specified in Schedule II of the Companies Act, 1956. In terms of Schedule II of the Companies Act, while authorizing the prospectus by putting their signatures thereon, the



directors of the company are required to make following declaration in the prospectus at its end:-

"Declaration: That all the relevant provisions of the Companies Act, 1956, and the guidelines issued by the Government or the guidelines issued by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in prospectus is contrary to the provisions of the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or rules made thereunder or guidelines issued, as the case may be."

39. In this case RVRECL, and its directors had not complied with the provisions of section 56 of the Companies Act, 1956. I note that in terms of provisions of section 73 of the Companies Act, 1956, listing of securities issued pursuant to a public issue is mandatory. Thus, when shares or debentures are issued by any company including an unlisted company to 50 or more persons, it is under a legal obligation to make an application on a recognized stock exchange for listing thereof. Hon'ble Supreme Court has held in the said *Sahara Case* as following :

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act."

Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons. In view of the clear statutory mandate, the contention raised, based on Rule 19 of the SCR Rules framed under the SCR

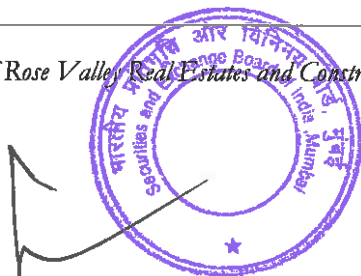


*Act, has no basis. Legal obligation flows the moment the company issues the prospectus expressing the intention to offer shares or debentures to the public, that is to make an application to the recognized stock exchange, so that it can deal with the securities. A company cannot be heard to contend that it has no such intention or idea to make an application to the stock exchange. **Company's option, choice, election, interest or design does not matter**, it is the conduct and action that matters and that is what the law demands."*

40. Hon'ble Supreme Court has further held that:

"... after the amendment to the Companies Act, 1956 on 13.12.2000, every private placement made to fifty or more persons becomes an offer intended for the public and attracts the listing requirements under Section 73(1). Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange."

41. Admittedly, in this case, the RVRECL had not applied for listing of the NCDs issued and allotted by it to more than 49 persons in its six series of issuances. In my view, the declarations that the information memorandum was not a prospectus and it was 'for private circulation only' were void by virtue of provisions of section 56(2) of the Companies Act, 1956. Further, the declaration that the information memorandum was not required to be registered with any authority was also void in view of the provisions of section 73 (4) of the Companies Act, 1956. I, therefore, find that RVRECL and its directors have contravened the provisions of sections 56 and 73 of the Companies Act, 1956 since they did not issue the prospectus by making disclosures in terms of section 56 and did not apply for listing on any recognized stock exchange, of NCDs issued to more than 49 persons in six series of issuances as described in the SCN. In this case, RVRECL repeatedly made six series of public issues of NCDs without following the applicable statutory requirements as found hereinabove.



42. I note that the Hon'ble Supreme Court in the *Sahara Order* has also conclusively held that SEBI has the power to administer the provisions referred to in section 55A which relate to issue and transfer of securities and non-payment of dividend by public companies, which have issued securities to fifty persons or more, though not listed on a recognized stock exchange and whether they intend to list their securities or not. The following observations of Hon'ble Supreme Court in this regard are worth noting:

"..... the explanation to Section 55A can never be constructed or interpreted to mean that SEBI has no power in relation to the prospectus and the issue of securities by an unlisted public company, if the securities are offered to more than forty nine persons."

43. In terms of section 12(1) of SEBI Act, no trustee of trust deed who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from SEBI in accordance with the Regulations made under the SEBI Act. Further, as per regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations"), no person should act as a debenture trustee unless he is either:

- (a) a scheduled bank carrying on commercial activity; or
- (b) a public financial institution within the meaning of section 4A of the Companies Act or
- (c) an insurance company; or
- (d) a body corporate.

44. It needs to be kept in mind that while section 12(1) of SEBI Act prohibits any persons from acting as unregistered intermediary, it is implicit that no issuer should appoint unregistered intermediaries in respect of the public issue of securities. In the present case, RVRECL appointed unregistered debenture trustees who acted as such in violation of provisions of section 12(1) of the SEBI Act. Further, RVRECL had appointed individuals as debenture



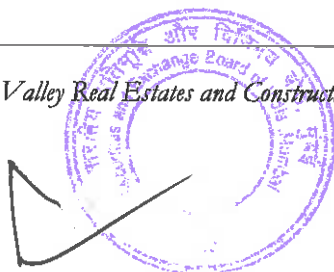
trustees for all the said public issues of NCDs in contravention of provisions of regulation 7 of the Debenture Trustee Regulations.

45. In terms of provisions of section 117B(1)(a) of the Companies Act, 1956, no person shall be appointed as a debenture trustee, if he beneficially holds shares in the company. I note that in the present matter, it is undisputed fact that Nirmal Kundu, who was beneficially holding 1000 shares of RVRECL was appointed as one of the debenture trustees to the issue of NCDs in the financial year 2007-08. I, therefore, find that RVRECL and its directors have contravened the provisions of section 117B (1)(a) of the Companies Act, 1956.
46. In terms of provisions of section 117B (1) of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to public for subscription of its debenture, unless the company has, before such issue, appointed one or more debenture trustee 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. In my view, the provisions of section 117B of the Companies Act are mandatory and appointment of debenture trustee is a pre-requisite for issuing a prospectus including any information memorandum inviting subscription to debentures. In this case, I find that RVRECL had not appointed any debenture trustees for the NCDs during the financial year 2005-06 and thereby it had contravened the provisions of section 117B(1) of the Companies Act, 1956.
47. It is noted that in terms of provisions of Section 117B (1)(b) of the Companies Act, 1956, no person shall be appointed as a debenture trustee, if he is beneficially entitled to moneys which are to be paid by the company to the debenture trustee. In this case, Abir Kundu, a director of RVRECL was appointed as one of the debenture trustees for the NCDs issued to public in the financial year 2007-08. Being a director of RVRECL during the relevant time, Abir Kundu was entitled to monies from RVRECL. In any issue of debenture, the function of debenture trustee is to protect the interest of debenture holders including the creation of securities within the stipulated time and redress their grievances effectively. In my view, if a director of the company is appointed as debenture trustee, there would be inevitable conflict of interest between his



role/position as director and his function as debenture trustee. I, therefore, find that RVRECL and its directors have contravened/violated provisions of section 117B (1)(b) of the Companies Act, 1956 both in its letter and spirit.

48. In this case, there is no dispute as to the fact that RVRECL had not created the debenture redemption reserve for the abovementioned public issue of NCDs though it earned profits in financial year 2007-08 and 2008-09. Thus, RVRECL and its directors had contravened the provisions of section 117C of Companies Act, 1956.
49. I, therefore, find that apart from non-compliance of provisions of section 56, 73, 117A, 117B, 117B(1)(a), 117B(1)(b) and 117C of Companies Act, 1956 RVRECL and its directors failed to comply with requirement relating to public issue and listing of securities contained in clause 2.1.1., 2.1.4, 2.1.5., 2.5., 2.8., 4.1., 4.11., 5.3.1, 5.3.5, 5.3.6, 5.6.2., 5.9.1., 5.12.1., Clause 6.0 to Clause 6.19, Clause 6.20 to Clause 6.38, Clause 8.8.1., 10.1., 10.2., 10.3., 10.5., 10.6. & 10.9 (b) & (f) of erstwhile DIP Guidelines and also violated provisions of section 12(1) of the SEBI Act and regulation 7 of the Debenture Trustee Regulations as alleged in the SCN.
50. In my view, the directors of RVRECL are "*officers in default*" as defined under section 5 of the Companies Act. I, therefore, find that they are also responsible for the acts and omissions of RVRECL.
51. Further, Subra Dey, Arun Mukherjee, Abir Kundu, Ratan Roy Chowdhury and Mritunjay Saha had given their consent to act as debenture trustees in respect of the issuances of NCDs by RVRECL. However, as discussed above, they failed to seek registration as required in terms of the provisions of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustees Regulations. I, therefore, find that Subra Dey, Arun Mukherjee, Abir Kundu, Ratan Roy Chowdhury and Mritunjay Saha have contravened section 12 (1) of the SEBI Act read with regulation 7 of the Debenture Trustees Regulations and such contravention is an offence under section 24 of the SEBI Act.

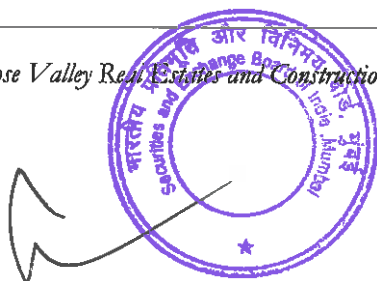


52. I have also noted the fact that, Hon'ble High court of Calcutta vide order dated December 14, 2017, in Writ Petition 275 of 2015, 27005(W) of 2016 and several Writ Petitions tagged in the aforesaid writ had reconstituted the Assets Disposal Committee of the Rose Valley Group Companies, which includes Rose Valley Real Estate & Construction Limited. In the aforesaid order Hon'ble High court has directed that:-

"We accordingly reconstitute the Assets Disposal Committee with Justice Dilip Kumar Seth (retired), chairman of the Committee, Shri Navin Singh, Deputy Director as nominee of Enforcement Directorate and Dr. Tanmoy Roy Chowdhury, IPS as nominee of the state Government. The individual claimants or investors' associations will be at liberty to approach the committee for developing a scheme for recovery and monetization of the assests of the company as well as for their disbursal."

53. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11, 11(4), 11A and 11B read with section 19 of the SEBI Act, clause 17 of the DIP Guidelines and regulation 28 of the Debt Regulations hereby issue the following directions :-

- i. Rose Valley Real Estate & Construction Limited and its directors, Gautam Kundu, Shibamoy Dutta, Ramlal Goswami, Abir Kundu and Ashok Kumar Saha and the debenture trustees appointed by it, namely, Subra Dey, Arun Mukherjee, Abir Kundu, Ratan Roy Chowdhury and Mritunjay Saha 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 any manner whatsoever, for a period of four years;
- ii. Gautam Kundu, Shibamoy Dutta, Ramlal Goswami, Abir Kundu and Ashok Kumar Saha are further 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 four years;



- iii. SEBI shall make a reference to the Assets Disposal Committee based on the above directions, so as to utilize the assets of the company for the purpose of effecting repayment to the investors covered under the scope of this order along with other depositors before them, as they deem fit and proper.
54. The order shall come into force with immediate effect.
55. Copy of this Order shall be forwarded to the recognized stock exchanges
56. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.



Date: January 9, 2018

Place: Mumbai

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA