

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 Swasata Cement Limited

In respect of:

S. No.	Name	PAN	CIN/DIN
1.	Swasata Cement Limited	AAICS5911M	U26959WB2004PLC098874
2.	Shri Prasanta Chatterjee	ADQPC5674F	06575389
3.	Shri Joydeb Biswas	AWLPB2553Q	06575389
4.	Shri Manas Kumar Dan	ACSPD7017Q	06575386
5.	Shri Satya Ranjan Chaudhuri	ACEPC5756F	00739191
6.	Smt. Swapna Chaudhuri	Not Available	00739243
7.	Smt. Chandrani Dan	AGOPD6484H	00739741
8.	Smt. Jeba Parween W/O Jamal Praween, Kanki Bazar, P.O. Bogra, Purulia-723145	Not Available	Not Available
9.	Smt. Renu Singh W/o Raj Kumar Singh, Address- Vill:Shyampur, P.O.: Anara, Purulia, West Bengal : 723126	Not Available	Not Available

1. Swasata Cement Limited (hereinafter referred to as “**SCL**”/ “**the Company**”) is a Public company incorporated on June 17, 2004 and registered with Registrar of Companies–Kolkata with CIN: U26959WB2004PLC098874. Its registered office is at Village & PO-Nanduka, P.S.- Raghunathpur, Purulia, West Bengal- 723145.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons against January 23, 2015 against SCL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether SCL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).
3. On enquiry by SEBI, it was observed that SCL had made an offer of NCDs in the financial years 2008-2009 and 2009-2010 (hereinafter referred to as “**Offer of NCDs**”) and raised an amount of at least Rs. 6,63,93,184/- from at least 11,013 investors.
4. As the above said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an interim order dated July 21, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against SCL and its Directors, viz. Shri Prasanta Chatterjee, Shri Joydeb Biswas, Shri Manas Kumar Dan, Shri Satya Ranjan Chaudhari, Smt. Swapna Chaudhuri, Smt. Chandrani Dan, Smt. Jeba Parween, Smt. Renu Singh (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. SCL had made an *Offer of NCDs* during the financial years 2008-2009 and 2009-2010 and raised an amount of at least Rs. 6,63,93,184/- as shown below:

Year of Issue	Security Issued	Amount raised (Rs.)	Number of allottees
2008-2009	NCDs	1,29,63,150	2,475
2009-2010		5,34,30,034	8,538
Total		6,63,93,184^	11,013*

*^ The number of debenture holders and amount mobilized by SCL is as per list of debenture holders submitted by SCL Steel Corporation Limited (one of its group company). However, actual no. of allottees and amount mobilized could be more than the above indicated figures.

6. The above *Offer of NCDs* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) and sections 117B and 117C of the Companies Act, 1956 and the relevant provisions of the ILDS Regulations were not complied with by SCL in respect of the *Offer of NCDs*.
7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated July 21, 2015 with immediate effect.
 - i. *SCL 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. *Swasata Cement Limited (CIN:U26959WB2004PLC098874; PAN:AAICS5911M) and its Directors, viz. Shri Prasanta Chatterjee (DIN:06575389; PAN: ADQPC5674F), Shri Joydeb Biswas (DIN:03038041; PAN: AWLPB2553Q), Shri Manas Kumar Dan (DIN:06575386; PAN: ACSPD7017Q), Shri Satya Ranjan Chaudhari (DIN: 00739191; PAN: ACEPC5756F), Smt. Swapna Chaudhuri (DIN: 00739243), Smt. Chandrani Dan (DIN: 00739741; PAN: AGOPD6484H), Smt. Jeba Parween (DIN/PAN: Not Available) and Smt. Renu Singh (DIN/PAN: Not Available) 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. *SCL 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. *SCL shall provide a full inventory of all its assets and properties;*
 - v. *SCL's abovementioned Directors shall provide a full inventory of all their assets and properties;*
 - vi. *SCL 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. *SCL 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 SCL;*
 - viii. *SCL shall provide to SEBI the full list of investors of Non-Convertible Redeemable Debentures, their addresses, telephone numbers, amount collected from each investor, etc.;*
 - ix. *SCL shall provide to SEBI all information regarding repayments made to the holders of Non-Convertible Redeemable Debentures including name of the debenture holder, address, amount mobilized, number of Non-Convertible Redeemable Debentures issued, promised maturity amount with date of maturity, amount refunded and date thereof;*
 - x. *SCL shall furnish DIN and PAN of all its Directors – both past and present.*
 - xi. *SCL shall furnish complete and relevant information within 21 days from the date of receipt of this Order.*
8. The interim order also directed the SCL 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 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.*
9. Vide the said interim order, SCL, its abovementioned Directors were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The

order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

10. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated July 31, 2015. The same was delivered to SCL, Smt. Chandrani Dan, Shri Manas Kumar Dan, Smt. Jeba Parween and Shri Prashanta Chatterjee.

Vide letter dated August 25, 2015, SCL replied to the said interim order and made interalia the following submissions-

- a. That the chief accountant of the company is on medical leave and he is suffering from typhoid disease. After rejoining of his service in company, the company will be able to file its rectification/clarifications against the aforesaid interim Order.
- b. That the company will be strictly maintained as per directions under para 10(ii) and (iii) of the interim Order.
- c. That SCL requested not to take any legal proceedings/actions against the company and its directors for the time being until the said accountant rejoins his services in the company.

Subsequently, vide notification dated January 28, 2017 published in English newspaper *The Telegraph, Calcutta*, notification dated January 28, 2017 published in Bengali newspaper *Anand Bazar Patrika, Kolkata*, notification dated January 28, 2017 published in newspaper *Manbhum Sambad* and notification dated February 03, 2017 published in *Aajkal Newspaper*, the Noticees namely Shri Joydeb Biswas, Shri Manas Kumar Dan, Shri Satya Ranjan Chaudhari, Smt. Swapna Chaudhuri, Smt. Chandrani Dan and Smt. Renu Singh were notified by SEBI, that interim order dated July 21, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.

11. Subsequently vide notification dated June 10, 2017 published in newspaper *Times of India, Kolkata* and notification dated June 10, 2017 published in Bengali newspaper *Anand Bazar Patrika, Kolkata*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on June 29, 2017 at the time and the venue mentioned therein.

The Noticees were advised that in case they failed to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.

12. *Hearing and submissions:* Noticees neither availed the opportunity of hearing held on June 29, 2017 nor sought any adjournment.
13. I have considered the allegations and materials available on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

- (1) *Whether the company came out with the Offer of NCDs as stated in the interim order.*
- (2) *If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117B & 117C of the Companies Act, 1956 read with the ILDS Regulations.*
- (3) *If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1- Whether the company came out with the Offer of NCDs as stated in the interim order.

14. I have perused the interim order dated July 21, 2015 for the allegation of *Offer of NCDs*. I note that neither the company nor the directors filed any reply disputing the same.
15. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted from details submitted by SCL Steel Corporation Limited (one of its group company) in the matter that SCL has issued and allotted NCDs to at least 11,013 investors during the financial years 2008-2009, 2009-2010 and raised at least an amount of Rs. 6,63,93,184/-. I also note that the number of allottees and funds mobilized has been collated from the details submitted by SCL's group company i.e. SCL Steel Corporation Limited. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 11,013 allottees and Rs. 6,63,93,184/- respectively.
16. *I therefore conclude that SCL 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 117B & 117C of the Companies Act, 1956 read with the ILDS Regulations.

17. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the Offer of NCDs made to the public. Therefore the primary question that arises for consideration is whether the issue of NCDs is 'public issue'. At this juncture, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

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

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”

18. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI* (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the “**Sahara Case**”), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

“Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the “section of the public”. Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/ invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”

19. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription

or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

20. In the instant matter, I find that NCDs were issued by SCL to at least 11,013 investors in the financial years 2008-2009, 2009-2010 and raised an amount of at least Rs. 6,63,93,184/-. The auditor's report in the financial statement as at March 31, 2012 mentions "*The Debentures as on balance sheet date consists of secured non-convertible redeemable debentures for private placement basis for 3 years redemption period @ 13% per annum.*" Further as per the copy of Debenture Certificate No.13347 submitted by the complainant to SEBI on January 23, 2015, the debentures were termed as "*private placement*". However, it is significant to note that the name of this investor holding Debenture Certificate No.13347 issued by SCL (deposit date- 31/03/2010; maturity date-31/03/2022) was not included in the list of debenture holders submitted to SEBI by SCL Steel Corporation Limited vide their letter dated January 19, 2015. Although the *Offer of NCDs* is stated in the Debenture Certificate as "*private placement*", it is observed from the list of debenture holders submitted by SCL Steel Corporation Limited that SCL had allotted *Non-Convertible Redeemable Debentures* amounting to at least Rs. 6,63,93,184/- during the financial years 2008-09 and 2009-10 to at least 11,013 investors. It is pertinent to mention that the number of investors to whom the *Offer of NCDs* was made by SCL in the two financial years was much beyond the prescribed limit of forty nine persons (2475 investors in the financial year 2008-09 and 8538 investors in the year 2009-10). Merely stating the issue as "private placement" in the Debenture Certificate shall not make it a private placement. In view of the above stated facts, the *Offer of NCDs* by SCL qualifies as a public issue of securities under the *first proviso* to Section 67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the *Sabara Case*. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by SCL was a "public issue" within the meaning of the first

proviso to section 67(3) of the Companies Act, 1956.

21. Neither SCL nor its directors have contended that the *Offer of NCDs* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
22. I find that SCL 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 SCL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
23. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that "In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".
24. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by SCL 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 SCL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
25. Further, since the offer of NCDs is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. As per Section 73(1) and (2) of the Companies Act, 1956, a company is required

to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

26. The allegations of non-compliance of the above provisions were not denied by SCL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that SCL has contravened the said provisions. SCL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that SCL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.
27. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of NCDs was a deemed public issue of securities, SCL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that SCL 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 SCL has not complied with the provisions of section 60 of the Companies Act, 1956.
28. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Neither SCL 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, SCL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

29. 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 note that no filings of SCL with regard to creation of charge (Form 10) before raising money through issuance of debentures or details of Debenture Trustees are available at MCA 21 Portal. Therefore, I hold that the company has violated section 117B of the Companies Act, 1956.
30. 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.
31. 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 SCL 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.
32. 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 *Sabara 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"

33. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase “intend to get listed” in the context of deemed public issue the Hon’ble Supreme Court in *Sabara Case* observed-

“...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...”

“...Listing of securities depends not upon one’s volition, but on statutory mandate...”

“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”

34. In view of the above findings, I am of the view that SCL 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 117B & 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- If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?

35. I find that Smt. Jeba Parween, Smt. Renu Singh were directors of SCL since incorporation and pursuant to Interim order dated July 21, 2015 Smt. Jeba Parween, Smt. Renu Singh have neither entered appearance nor provided evidence of their cessation from the directorship in SCL and thus I am constrained to hold them as continuing directors of SCL. In view of the same and from the documents available on record, I find that the present Directors in SCL are Shri Prasanta Chatterjee, Shri Joydeb Biswas, Shri Manas Kumar Dan, Smt. Jeba Parween, Smt. Renu Singh. I also note that, Shri Satya Ranjan Chaudhari, Smt. Swapna Chaudhuri, Smt. Chandrani Dan, who were earlier Directors in SCL, have since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Prasanta Chatterjee	March 11, 2013	Continuing
Shri Joydeb Biswas	April 29, 2014	Continuing
Shri Manas Kumar Dan	March 11, 2013	Continuing
Shri Satya Ranjan Chaudhari	June 17, 2004	April 29, 2014
Smt. Swapna Chaudhuri	June 17, 2004	March 17, 2014
Smt. Chandrani Dan	June 17, 2004	March 11, 2013
Smt. Jeba Parween	June 17, 2004	Continuing
Smt. Renu Singh	June 17, 2004	Continuing

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

37. 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%.

38. From the material available on record and the details of the appointment and resignation of the directors of SCL as reproduced in paragraph 35 of this Order, it is noted that Shri Satya Ranjan Chaudhari, Smt. Swapna Chaudhuri, Smt. Chandrani Dan, Smt. Jeba Parween, Smt. Renu 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 SCL 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 SCL, 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 SCL and its Directors, viz. Shri Satya Ranjan Chaudhari, Smt. Swapna Chaudhuri, Smt. Chandrani Dan, Smt. Jeba Parween, Smt. Renu 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.
39. I note that during the financial years 2008-2009, 2009-2010 SCL through Offer of NCDs, had collected an amount of at least Rs. 66,393,184/- from various allottees. I note that Shri Satya Ranjan Chaudhari was director of SCL during financial years 2008-2009, 2009-2010. I note that Smt. Swapna Chaudhuri was director of SCL during financial years 2008-2009, 2009-2010. I note that Smt. Chandrani Dan was director of SCL during financial years 2008-2009, 2009-2010. I note that Smt. Jeba Parween has been director of SCL since financial years 2008-2009, 2009-2010 till present date. I note that Smt. Renu Singh has been director of SCL

since financial years 2008-2009, 2009-2010 till present date. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with SCL and other directors are limited to the extent of amount collected during his/her tenure as director of SCL.

40. 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, SCL is liable for the violation of sections 117B and 117C of the SEBI Act.
41. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 31 of this order, the liability is on the Company to comply with the requirements therein.
42. In this regard, I note that Shri Prasanta Chatterjee , Shri Joydeb Biswas, Shri Manas Kumar Dan were appointed as a director of SCL only on March 11, 2013, April 29, 2014, March 11, 2013 i.e. after the period of issuance of NCDs. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that Shri Prasanta Chatterjee, Shri Joydeb Biswas, Shri Manas Kumar Dan are not liable for refund of money as they were not directors during the relevant time of fund mobilization. Further, Shri Prasanta Chatterjee , Shri Joydeb Biswas, Shri Manas Kumar Dan had the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

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

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

43. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The noticee cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Prasanta Chatterjee, Shri Joydeb Biswas, Shri Manas Kumar Dan were also responsible for all the deeds/acts of the Company during the period of their directorship and were obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Prasanta Chatterjee , Shri Joydeb Biswas, Shri Manas Kumar Dan are liable to be debarred for an appropriate period of time.
44. 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 SCL and its Directors, viz., Shri Satya Ranjan Chaudhari , Smt. Swapna Chaudhuri , Smt. Chandrani Dan , Smt. Jeba Parween, Smt. Renu 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.
45. I also note that, vide the interim order dated July 21, 2015, SCL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of SCL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided either by SCL or the other Noticees despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 10 of this Order.
46. In view of the discussion above, appropriate action in accordance with law needs to be initiated against SCL and its Directors viz. Shri Prasanta Chatterjee, Shri Joydeb Biswas, Shri

Manas Kumar Dan, Shri Satya Ranjan Chaudhari, Smt. Swapna Chaudhuri, Smt. Chandrani Dan, Smt. Jeba Parween, Smt. Renu Singh.

47. 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) SCL, Shri Satya Ranjan Chaudhari , Smt. Swapna Chaudhuri , Smt. Chandrani Dan, Smt. Jeba Parween, Smt. Renu 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 through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.
- (c) Shri Satya Ranjan Chaudhari , Smt. Swapna Chaudhuri , Smt. Chandrani Dan are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (d) SCL and Smt. Jeba Parween, Smt. Renu 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) Shri Prasanta Chatterjee , Shri Joydeb Biswas, Shri Manas Kumar Dan 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.

- (f) SCL, Shri Prasanta Chatterjee , Shri Joydeb Biswas, Shri Manas Kumar Dan, Smt. Jeba Parween, Smt. Renu 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.
- (g) Shri Satya Ranjan Chaudhari , Smt. Swapna Chaudhuri , Smt. Chandrani Dan, , Smt. Jeba Parween, Smt. Renu 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.
- (h) SCL and on its behalf the present directors who joined subsequent to the issues (Shri Prasanta Chatterjee , Shri Joydeb Biswas, Shri Manas Kumar Dan) and Shri Satya Ranjan Chaudhari , Smt. Swapna Chaudhuri , Smt. Chandrani Dan, Smt. Jeba Parween, Smt. Renu 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.
- (i) After completing the aforesaid repayments, SCL, Shri Satya Ranjan Chaudhari , Smt. Swapna Chaudhuri, Smt. Chandrani Dan, Shri Prasanta Chatterjee, Shri Joydeb Biswas, Shri Manas Kumar Dan, Smt. Jeba Parween, Smt. Renu 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 ("**TCAI**") holding such certificate.

- (j) In case of failure of SCL, Shri Satya Ranjan Chaudhari , Smt. Swapna Chaudhuri , Smt. Chandrani Dan, Smt. Jeba Parween, Smt. Renu 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 47(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- (k) SCL, Shri Satya Ranjan Chaudhari , Smt. Swapna Chaudhuri , Smt. Chandrani Dan, Smt. Jeba Parween, Smt. Renu 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.
- (l) Shri Prasanta Chatterjee, Shri Joydeb Biswas, Shri Manas Kumar Dan 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 for a period of 4 (four) years from the date of this Order. The above said persons 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 for a period of 4 (four) years from the date of this order.
- (m) I find that pursuant to Interim order dated July 21, 2015 Smt. Jeba Parween, Smt. Renu Singh have neither entered appearance nor provided evidence of their cessation from the directorship in SCL and thus I am constrained to hold them as continuing directors of SCL. In view of the same, this order will take effect as final order against Smt. Jeba Parween, Smt. Renu Singh on the expiry of 30 days from the date of service of this order

against the respective Noticees, unless any of the said Noticees, within such period of 30 days from the date of service of this order file their objections. If no objections are filed, the interim directions vide Interim order dated July 21, 2015 shall continue against the said Noticees till the time of said thirty days period, after which this order will come into effect. If objections are filed by any of the said Noticees, the interim directions vide Interim order dated July 21, 2015 shall continue qua that Noticee till disposal of the said objections qua that Noticee and the directions passed herein against that Noticee shall be made applicable subject to the determination on the objections.

(n) The above directions shall come into force with immediate effect.

(o) ***This Order shall be subject to and harmoniously read with the order passed to and to be passed by Hon'ble Calcutta High Court in WP No. 11707w of 2017 in the matter of Prafulla Kumar Bera & ors Vs Union of India & Ors.***

48. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
49. 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.
50. A copy of this Order shall also be forwarded to Local Police/ State Government for information.

DATE: February 01, 2018

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA