National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/53474	Date: August 29, 2022
Circular Ref. No: 113/2022	

To All NSE Members

Sub: **SEBI Order in the matter of Dolphin Infra Powerproject Limited**

SEBI vide its order no. WTM/SM/NRO/NRO/18703/2022-23 dated August 29, 2022 has hereby directed below mentioned entities not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is 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 04 (four) years from the date of completion of refunds to investors as directed in the SEBI Order.

Sr. No.	Name of the Entity	CIN/DIN	PAN
1	Dolphin Infra Powerproject Ltd.	U40102JK2012PLC003531	Not Available
2	Debraj Mitra	06493364	Not Available
3	Koushik Dutta	05211731	AOIPD4766Q
4	Subham Bose	03224525	Not Available
5	Anindyo Paul	03377719	Not Available

Further, the following entities are 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 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 02 (two) years.

Sr. No.	Name of the Entity	CIN/DIN	PAN
1	Saugata Basu	03566418	AFUPB7369C
2	Rana Sikdar	06601772	Not Available

National Stock Exchange of India

Further, Entity Dolphin Infrapower Debenture Trust represented by its trustee Mr. Arindam Adhya is also restrained from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of 02 (two) years.

The Order shall come into force with the immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Debarred Entities".

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Apurv Garg (Extension: 24546), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

Annexure

SEBI Order in the matter of Dolphin Infra Powerproject Limited

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11A and 11B of the Securities and Exchange Board of India Act, 1992
In the matter of Dolphin Infra Powerproject Limited
In respect of –

Sr. no.	Noticee	CIN/DIN	PAN
1.	Dolphin Infra Powerproject Ltd.	U40102JK2012PLC003531	Not Available
2.	Debraj Mitra	06493364	Not Available
3.	Koushik Dutta	05211731	AOIPD4766Q
4.	Subham Bose	03224525	Not Available
5.	Anindyo Paul	03377719	Not Available
6.	Saugata Basu	03566418	AFUPB7369C
7.	Rana Sikdar	06601772	Not Available
8.	Dolphin Infrapower Debenture Trust (represented by its trustee Arindam Adhya)	-	Not Available

1. Background –

1.1. The present proceeding before me emanates from the complaints received by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") with respect to the issuance of Non-Convertible Redeemable Debentures (hereinafter referred to as "**NCRDs**") by Dolphin Infra Powerproject Ltd. (hereinafter referred to as "**DIPPL**"/ "**Company**").

1.2. Pursuant to the receipt of the complaints, an examination was undertaken by SEBI to verify the veracity of the information brought out in the complaints and ascertain whether there had been any violation of the provisions of the Companies Act, 1956 and SEBI (Issue and Listing of Debt Securities), 2008 (hereinafter referred to as "**ILDS Regulations'**) with respect to the issuance of NCRDs in the Financial Years 2012-13, 2013-14 and 2014-15. The said examination entailed the issuance of multiple letters to the *Company* and its Directors, Auditor of the *Company*, however, no response was received by SEBI from the said entities. Further, in order to examine the activities of the *Company,* SEBI had also issued letters to the complainants seeking additional information from them, out of which, a few of the complainants furnished certain information/documents. Consequent to the completion of the examination in the matter, a Show-cause Notice dated June 15, 2021 (hereinafter referred to as the "**SCN**") was issued to the *Noticees* herein, and the said SCN is the subject matter for adjudication in the present proceedings.

2. The Show-Cause Notice –

2.1. As can be noted from the SCN, the following facts have emerged from the examination of the activities of the *Company* with respect to the issuance of NCRDs:

a. The Board of Directors of the *Company* passed a resolution on May 18, 2012 to issue Secured Redeemable Non-Convertible Debentures, in terms of the meeting of the Board held on May 17, 2012; and in terms of the approval of the shareholders received in the Extraordinary General Meeting ("**EGM**") held on May 18, 2012.

b. The *Company* created a charge of INR 100 Crore in favour of Dolphin Infrapower Debenture Trustee (represented by its trustee Arindam Adhya) (*Noticee no. 8*).

c. The *Company* floated two schemes viz., (i) Monthly Income Scheme ("**MIS**") and (ii) Single Time Scheme ("**STS**"). The plans under the MIS scheme were having tenure of 15 months, 24 months, 36 months and 60 months. The plans under STS were for the tenure of 1 year, 3 years and 5 years.

d. The certificates of DIPPL stated that the issue of debentures was "Private and Confidential Placement".

e. The total number of allottees of NCRD for the FY 2012-13, FY 2013-14, FY 2013-14 and FY 2014-15, are tabulated herein below:

Table no. 1

Financial Year	**No. of Allottees**	**Amount**
2012-13	14	78, 200
2013-14	134	1,09, 63,000
2014-15	44	17,32,644

2.2. On the basis of the above findings, the SCN has alleged that DIPPL has issued NCRDs to more than 49 investors (i.e., 134 investors) during FY 2013-14 without complying with the provisions of Sections 56 (1), 56 (3), 60 and 73 read with

Section 67 of the Companies Act, 1956 and Regulations 4(2)(a), (b), (c), (d), 5(2)(b), 6,7,8,9,12,14,19 and 26 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as "**ILDS Regulations**").

2.3. Further, with respect to *Noticee nos. 2* to *7*, the SCN has alleged that they were "officers in default" as specified in Section 5 (g) of the Companies Act, 1956 for the aforesaid contraventions allegedly committed by the *Company*.

2.4. As regards, *Noticee no. 8, Dolphin Infrapower Debenture Trust (represented by its trustee, Shri Arindam Adhya)*, it has been alleged in the SCN that the said *Noticee* acted as a Debenture Trustee without being registered with SEBI and therefore acted as an Unregistered Debenture Trustee, which amounts to violation of Section 12 of the SEBI Act.

2.5. In view of the aforesaid allegations, the *Noticees* have been called upon to show cause as to why suitable directions under Section 11 and 11 B of the SEBI Act should not be passed against them for the aforesaid violations allegedly committed by the respective *Noticees.*

3. Personal Hearing, Replies and Written Submissions from the Noticees –

3.1. It is noted from the records that the copy of the SCN could be served only upon *Noticee no. 6*, and for the rest of the *Noticees*, the attempts to serve the SCN through Registered post or affixation on the last known address could not be successful, as in some instances, witnesses for affixation were not available while in some other instances, the current occupant did not permit the affixation to be made on the concerned premises. The details of such efforts made by/on behalf of SEBI are highlighted herein below:

Table no. 2

Sl. No.	Noticee	Address	SPAD	Affixture
1.	Dolphin Infra Powerproject Ltd.	46/31/1, Leela Roy Sarani, 3rd & 4th Floor, Ballygunge AC Market, Kolkata-700029 Abi Buchawara Dal Gate, Near Dal Lock Gate, Srinagar -190001, Jammu and Kashmir	Undelivered (both addresses)	Company not found. The SCN was affixed at the address. No witnesses. Date – August 12, 2021. There was a hotel by the name Dolphin, but not Dolphin Infra Powerproject Ltd. The owner did not allow affixture of the SCN.
2.	Debraj Mitra	Part No -154, North 24 Parganas, Barrackpur - 700122	Undelivered	The address could not be located for carrying out affixture. Date – August 21, 2021
3.	Koushik Dutta	B/135, Sonali Park, Bansdroni, Kolkata - 700070	Undelivered	It was informed that the Noticee had left the address. The current residents did not allow for the affixture of the SCN. Date – August 17, 2021
4.	Subham Bose	47/1, Selimpur Lane, Dhakuria Kasba, Kolkata- 700031	Undelivered	Noticee not found at the address. The SCN was affixed at the address. No witnesses. Date – August 12, 2021.
5.	Anindyo Paul	162/A, Motilal Nehru Road, Kolkata- 700029	Undelivered	Noticee not found at the address. Date – August 21, 2021.
6.	Saugata Basu	44A, Kabi Sukanta Sarani, Kolkata - 700085	Delivered	-
7.	Rana Sikdar	23/9, Anjan Garh, Bishar Para Birati, North 24 Parganas - 700051	Undelivered	It was informed that the Noticee had left the address. The current residents did not allow for the affixture of the SCN. Date – August 23, 2021
8.	Dolphin Infrapower	46/31/1, Gariahat Road, 4th Floor,	Undelivered	Noticee not found at the address. The SCN was

	Debenture Trust (represented by its Trustee Arindam Adhya)	Ballygunge AC Market, Kolkata - 700029		affixed at the address. No witnesses. Date – August 12, 2021.

3.2. As the attempts of completing service upon the *Noticees* failed with respect to the 7 seven *Noticees*, public notices were brought out in respect of such seven (7) *Noticees*, in the newspapers on March 08, 2022, namely, Bartaman (Bengali), Amar Ujala (Hindi) and Daily Excelsior (English). The said public Notices also mentioned that the personal hearing for the *Noticees* has been fixed on March 23, 2022. Incidentally, it is also noted from the records that except for 2 *Noticees,* details of PAN of other *Noticees* were not available, which also impeded SEBI in tracing out the addresses as per the PAN for the purpose of serving notices on them, and all such factors caused constraint in conducting the inquiry.

3.3. Thus, I find that the aforesaid hearing notice had to be served upon all the *Noticees* through the substituted mode of newspaper publication, however, on the scheduled date of hearing, only *Noticee no. 6, Mr. Saugata Basu* made his appearance through his authorised representative. None of the other *Noticees* appeared before me for the personal hearing nor any request for adjournment was received from any of the other *Noticees.*

3.4. Further, no reply in response to the SCN has been received from any of the *Noticees* in the matter, except for *Noticee no. 6*, who has filed his reply through a letter dated August 06, 2021 and has also made post-hearing submissions vide email dated May 10, 2022. In this reply, *Noticee no. 6* has broadly stated that –

   a. He does not fall within the purview of the expression of "Officer in default" as he was not a Managing Director, Whole Time Director, Manager, Secretary, or not even a person whose directions/instructions the Board was accustomed to act.

   b. He was an employee of Dolphin Instafood Private Limited and as he was not getting the salary, he resigned from the said job. An offer letter dated June 01, 2011 for the position of Administrative Officer has been attached by him with the letter. Also bank statements between April 01, 2011 and April 10, 2015 have been attached.

c. With respect to the query made during the personal hearing pertaining to the details of the Board Meeting with a copy of Minutes of meetings of such Board meetings, it has been stated that he was not a key person of the *Company* and was a mere employee. Every decision was taken by the MD, Subham Bose and Aninda Mukherjee jointly and he did not have any knowledge about the acts of the *Company*.

d. He had also resigned as a Director from other Dolphin group companies and has filed copies of Form 32 in support of such claim.

Issues –

4. After perusing all the records before me, including the SCN, the reply and the complaints etc., I observe that in order to adjudicate the merits of the present case, I need to address the following issues:

4.1. **Whether Dolphin Infra Powerproject Limited issued NCRDs to more than 49 investors in the Financial Year 2013-14 without complying with the provisions of the Companies Act, 1956 and SEBI (Issue and Listing of Debt Securities) Regulations 2006?**

4.2. **If the answer to Issue-I is in the affirmative then whether Noticee nos. 2 to 7, the Directors of the Company, can be held liable for the action of the Company?**

4.3. **Whether Noticee no. 8, Dolphin Infrapower Debenture Trust (represented by its trustee viz., Arindam Adhya), has acted as a Debenture Trustee without obtaining registration from SEBI?**

Consideration and Findings –

5. I shall now deal the aforesaid issues sequentially in the following paragraphs.

Whether Dolphin Infra Powerproject Limited issued NCRDs to more than 49 investors in the Financial Year 2013-14?

6. Before evaluating the merits of the present matter, I observe that there is nothing on record before me so as to factually dispute the assertion made in the SCN that the *Company* had issued its NCRDs to 134 allottees in the FY 2013-14 and mobilized an amount of INR 1,09,63,000 in the said year. Therefore, it has to be concluded that the NCRDs were indeed offered by the *Company* in the FY 2013-14 to at-least 134 entities.

7. I observe that in order to adjudge the merits of the allegations levelled against the *Company*, the moot point that needs to be addressed is whether the aforesaid offer of NCRDs made by the *Company* was a "public issue" or not.

   At this stage, I refer to and reproduce Section 67 (1) and Section 67 (3) of the Companies Act, 1956, which reads as:

   "*67. Construction of references to offering shares or debentures to the public, etc*

   (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 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)."

7.1. As can be noted from the above quoted provision, Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as an offer to the 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 is not considered as a public offer. Under such circumstances, they are considered as private placements of shares and debentures. It is noted that as per the first proviso to Section 67(3) of the 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 the Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the first proviso.

7.2. It is also relevant to mention here that the Hon'ble Supreme Court of India, while examining the scope of Section 67 of the Companies Act in the case of *Sahara India Real Estate Corporation Ltd. & Ors. Vs. SEBI & Anr. [(2013) 1 SCC 1]* has *inter alia* held that—

"*The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which dearly indicates, nothing contained in Sub-section (3) of Section 67 shall applying 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....*

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue..."

7.3. Thus, from the aforesaid observation of the Hon'ble Supreme Court, one can appreciate that if the offer/invitation to subscribe for shares or debentures is made to fifty or more persons, then the same shall be considered as an offer made to the public, and as such, all requirements for making a public offer will also get fastened to the company, unless the company qualifies to fall in either of the exceptions laid down under Section 67.

7.4. In the present case, it is gathered from the record that no Form-2 has been filed by the *Company*. Therefore, there are no details available regarding the date of allotment, number of allottees or the amount involved etc. It is, however, seen from the copies of NCRDs provided by the complainants that in the Financial Year 2013-2014, that at least one hundred and thirty-four (134) investors were made offers to subscribe to the debentures of the *Company*. Therefore, I find that the *Company* had in fact made offers for the subscription of its NCRDs to at least 134 investors, which is clearly beyond the threshold of 49 investors prescribed in Section 67 (3) of the Companies Act, 1956. Thus, all the aforesaid details coupled with the absence of any rebuttal from the *Company* to defend itself from the charges, lead to only one conclusion that the Offer of NCRDs made by the *Company* during

FY 2013-14 was indeed a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

7.5. Since the offer of NCRDs was deemed to be a public offer under the law, the concomitant obligations as applicable to public offers were also attracted which needed to be complied with by the *Company* while offering such instruments to the general public. Therefore, it has been alleged in the SCN that the *Company* has also violated the provisions of Sections 56 (1), 56 (3), 60 and 73 of the Companies Act, 1956.

7.6. It is noted that as per Section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to at least one recognised stock exchange for permission for its securities to be listed on such stock exchange, and if permission is not applied for or not granted by the Stock Exchange, the company would have to refund with interest all money so received by it from the applicants. In the present case, no reply has been received from the *Company* so as to confront the allegations of non-compliance with the above provisions nor there is anything on record to indicate that the *Company* had made any application seeking permission for the listing of its securities on a stock exchange or had made any attempt to refund the amounts to the subscribers/applicants on account of failure on its part to get the NCRDs listed on a Stock Exchange. Rather, the records before me indicate that there have been multiple instances where SEBI has been receiving complaints against the *Company* from the investors who were issued NCRDs by it, thus establishing the fact that no refunds have been made by the *Company* to the investors.

7.7. Further, Section 60 of the Companies Act, 1956 requires a company to register its prospectus with the RoC, before making a public offer or before the issuance of a prospectus. It is noted that prospectus is defined under Section 2(36) of Companies Act, 1956, which states, *"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 already stated, the issue of NCRDs was a deemed public issue of securities, and as such, the *Company* was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find nothing on record to indicate that a prospectus was ever registered with the RoC by the *Company* nor any submission has been made before me by the *Company* on this issue. I, therefore, hold that the *Company* has not complied with the provisions of Section 60 of the Companies Act, 1956.

7.8. Further, Section 56(1) of the Companies Act, 1956, requires that a prospectus issued by a company should state the matters specified in Part I and also contain the reports specified in Part II of Schedule II of the Companies Act, 1956. Furthermore, Section 56(3) of the Companies Act, 1956, requires that any form relating to the application of shares in a company should not be issued, unless the form is accompanied by the abridged prospectus, containing various disclosures as specified under the Act. As the *Company* has not filed any document in the form of a Prospectus, there does not appear to be any possibility of compliance with the aforesaid statutory requirements by it. Therefore, it is amply clear that the *Company* has not complied with Sections 56(1) and 56(3) of the Companies Act, 1956.

7.9. It has also been alleged in the SCN that the *Company* has violated certain provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008. The Regulations alleged to have been violated are: Regulation 4(2)(a), (b), (c), (d); Regulation 5(2)(b); Regulation 6; Regulation 7; Regulation 8; Regulation 9; Regulation 12; Regulation 14; Regulation 19; and Regulation 26.

7.10. It is seen from the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 that Regulation 4(2) requires that no issuer should make a public issue of debt securities unless the conditions specified in clauses (a), (b), (c) and (d) are satisfied. Clause (a) requires that the issuer has to make an application to one or more recognized stock exchanges for the listing of such securities; clause (b) mandates that the issuer has to obtain in-principle approval for listing of its debt securities on the recognised stock exchanges where the application for listing has been made; clause (c) mandates that credit rating be obtained from at least one credit rating agency registered with SEBI and is disclosed in the offer document and clause (d) warrants that the issuer should have entered into an arrangement with a depository registered with the Board for dematerialisation of the debt securities that are proposed to be issued to the public, in accordance with the Depositories Act,1996 and regulations made thereunder.

7.11. Similarly, Regulation 5 of ILDS Regulations provides the disclosures to be made in an Offer Document. Regulation 5 (2) (b) specifically mandates the disclosure of an elaborate set of details as specified in Schedule-I of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008. Illustratively, some of the details specified in Schedule-I are, relevant resolution(s) for the allotment of the debt securities; a statement containing particulars of dates and parties to all material contracts and agreements; copy of the Board / Committee Resolution authorising the borrowing and list of authorised signatories; an undertaking from the issuer stating that the necessary documents for the creation of the charge, where applicable, including the Trust Deed would be executed within the time frame prescribed in the relevant regulations/act/rules etc., and the same would be uploaded on the website of the Designated Stock exchange, where the debt securities have been listed, within five working days of execution of the same etc.

7.12. Further, certain obligations to be discharged by the issuer company are also mandated under Regulations 6, 7, 8, 9, 12, 14, 19 and 26 of ILDS Regulations. Regulation 6 deals with the filing of a draft offer document and it *inter alia* requires that no public issue of debt securities should be made unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker, the draft offer document filed should be made public by posting the same on the website of the designated stock exchange for seeking public comments, the lead merchant banker should ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers, etc. Regulation 7 deals with the mode of disclosure of an offer document. In this regard, said regulation *inter alia* requires that the draft and final offer document be displayed on the websites of stock exchanges and shall be available for download and the offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue; and any request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker. Regulation 8 deals with the advertisements for public issues by specifying that the issuer shall make an advertisement in a national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV; the advertisement should not be misleading or contain any information in a distorted manner or which is manipulative or deceptive; and the advertisement should urge the investors to invest only on the basis of information contained in the offer document. Regulation 9 *inter alia* stipulates that the issuer and lead merchant banker ensure that every application form issued by the issuer is accompanied by a copy of the abridged prospectus; and the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus. Regulation 12 enables the issuer company to decide the minimum subscription that it intends to raise and further provides that in case of non-receipt of such minimum subscription, the application moneys need to be refunded forthwith to the applicants. Regulation 14 prescribes that the offer document should not omit disclosure of any material fact which may make the statements made therein, misleading and the offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement. Regulation 19 *inter alia* requires that an issuer desirous of making an offer of debt securities to the public make an application for listing to one or more recognized stock exchanges and the issuer should comply with the conditions of listing of such debt securities as specified by the stock exchange where such debt securities are to be listed. Regulation 26 requires that the issuer shall disclose all the material facts in the offer documents issued and ensure that all the disclosures made in the offer document are true, fair and adequate; the Merchant Banker should verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and the Companies Act, 1956; and further prohibits deployment of any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange.

7.13. After enumerating the aforesaid regulatory provisions, I observe that insofar as the present case is concerned, there is nothing on record to suggest any adherence by the *Company* to any of the specific regulations mentioned above with respect to the aforestated deemed public issue of NCRDs, as carried out by the *Company*. In view of the aforesaid discussion, I observe that the *Company* has not only violated the provisions of the Companies Act, 1956 but has also violated the above-mentioned provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

7.14. Thus, to sum up my aforesaid observations, I note that the *Company* Dolphin Infra Powerproject Limited has offered and issued NCRDs to more than 49 investors in the Financial Year 2013-14, thereby rendering the said issue a deemed public issue and the acts/omissions of glaring non-compliance with the requisite provisions of the Companies Act, 1956 as well as SEBI (Issue and Listing of Debt Securities) Regulations 2006, have rendered it liable to face regulatory action.

Whether Noticee nos. 2 to 7, the Directors of the Company, can be held liable for the action of the Company?

7.15. Insofar as the *Noticee nos. 2* to *7* are concerned, it is noted that the SCN alleges that the said *Noticees*, being the Directors of the *Company* are liable for the violation of the provisions of the Companies Act, 1956 and SEBI (Issue and Listing of Debt Securities) Regulations and they were also the 'Officers in Default' in so far as the aforesaid violations of law are concerned.

7.16. In this regard, a reference can be made to Section 5 of the Companies Act, 1956, which defines an 'Officer in Default'. The said Section reads as:

"*5. For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:*

the managing director or managing directors;

the whole-time director or whole-time directors;

the manager;

the secretary;

any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;

any person charged by the Board with the responsibility of complying with that provision:

Provided that the person so charged has given his consent in this behalf to the Board;

where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form."

7.17. On the basis of the available information before me, it is observed that in the present case, there is no material to show that any of the officers enlisted in Clauses (a) to (c) of Section 5 or any specified director of the *Company* was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Considering the same, I shall examine the position of all the Directors namely, *Noticee nos. 2* to *7* so as to fix their liability for the aforesaid acts of violations committed by the *Company*.

7.18. Based on the material available on record, the period of directorship of the individual *Noticees* on the Board of the *Noticee Company* is captured in the following table:

Table no. 3

Sr. No.	Name of Director	Date of Appointment	Date of Cessation
1	Subham Bose	20.04.2012	-
2	Anindyo Paul	20.04.2012	-
3	Saugata Basu	20.04.2012	05.06.2013
4	Rana Sikdar	05.06.2013	19.08.2013
5	Koushik Dutta	16.08.2013	-
6	Debraj Mitra	16.08.2013	-

7.19. As already held in the earlier part of the present order, the *Company* has issued NCRDs to more than 49 investors in the Financial Year 2013-14 without complying with the provisions of the Companies Act, 1956 and SEBI (Issue and Listing of Debt Securities) Regulations 2006, which now leads me to decide the liability of the individual *Noticees*, in the light of their directorship, in the *Company* for different periods details of which have been indicated above.

7.20. As already stated earlier, no reply has been received from the *Noticees*, except for *Noticee no. 6* who has contended that he was merely an employee of the *Company* and had no say in the management of affairs of the *Company*.

7.21. In this regard, I see from the records that the *Noticee no. 6* was designated as an Executive Director and was also one of the Promoters in the *Company*. Further, it is also noted that the *Noticee no. 6* was also designated as a Director and a Promoter in other companies related to Dolphin Infra Powerproject Limited, namely, Dolphin Infra Tower Limited, Dolphin Instafoods Limited and Dolphin Universal Rural Development Limited, which may not have a direct bearing on the present case, but atleast would show the close association of the *Noticee* with the *Company*. Further, it is seen from the Articles of Association of the *Company* that *Noticee no. 6* along with Mr. Subham Bose and Mr. Anindyo Paul was one of the first Directors of the *Company*. Also, it appears from the record that the three individuals named above, held a 30% stake each in the shareholding of the *Company*, thereby collectively holding 90% of its total shareholding. Furthermore, the Board Resolution dated May 17, 2012 whereby the *Company* resolved to issue redeemable non-convertible debentures, was taken during the time when the directorship of *Noticee no. 6* (Mr. Saugata Basu) was continuing. I note that the *Noticee no. 6* in his letter dated August 16, 2019 *inter alia* stated that he would describe his position in detail with the observation of court pertaining to his status in the *Company* in his subsequent communication, however, no submission with respect to the observation of any court has been made on behalf of the *Noticee no. 6*.

7.22. Considering the above details, it is quite evident that *Noticee no. 6* (Mr. Saugata Basu) was closely associated with the *Company* right from its incorporation and was acting as a Director of the *Company* during the period of April 24, 2013 to June 05, 2013. Thus, the claim of the said *Noticee* that he was merely an employee and had nothing to do with the *Company* sounds an afterthought exercise as the records pertaining to the *Company* show that he was indeed a Director of the *Company* during the aforestated period. What I can observe is that the documentary evidence which is culled out from the statutory records showing his appointment as Director certainly outweighs the documents in which he has tried to project him as a "mere employee" of a group company, more so due to the fact that he himself has claimed to have resigned from the Directorship of the *Company*, without raising any plea against the *Company* for wrongly showing him as a Director. I, therefore, hold that the *Noticee no. 6* cannot escape the regulatory rigors emanating from the acts and omissions of the *Company* by claiming himself to be a mere employee of Dolphin Insafood Private Limited, a group Company whereas, the records especially the statutory records reveal that *Notice no. 6,* apart from being clearly associated with the *Company* right from its inception, was also a Director of the *Company* during April 20, 2012 to June 05, 2013.

7.23. With regard to Mr. Subham Bose (*Noticee no. 4*) and Mr. Anindyo Paul (*Noticee no. 5*), it has already been brought out that much like Mr. Saugata Basu, they were also the original directors of the *Company* and also held a substantial stake in the shareholding of the *Company*. Further, the Board Resolution dated May 17, 2012, whereby it was resolved to issue redeemable non-convertible debentures, and the subsequent Board Resolution dated May 18, 2012 whereby the *Company* issued Secured Redeemable Non-convertible Debentures, have the signature of Mr. Subham Bose (*Noticee no. 4*) as one of the Directors of the *Company*. Also, the Board Resolution of May 18, 2012 whereby the *Company* issued Secured Redeemable Non-convertible Debentures authorised Mr. Subham Bose (*Noticee no. 4*) to comply with all the formalities in relation to the creation of charge for facilitating the said issuance of debentures. Furthermore, I see that by way of a Trust Deed dated May 18, 2012, the Dolphin Infra Power Debenture Trust was created with Mr. Arindam Adhya as its trustee. It appears from the said Trust Deed that the person who signed on behalf of the *Company* was Mr. Anindyo Paul (*Noticee no. 5*). Considering the above details, it is clear as daylight that the said Directors were closely involved in the day to day running of the business of the *Company*.

7.24. From the above table, it is noted that *Noticee no. 2* (Mr. Debraj Mitra) and *Noticee no. 3* (Koushik Dutta) were appointed on the Board of the *Company* on August 16, 2013 as Non-executive Director and are still continuing to be as such. Further, the

Noticee no. 7 (Mr. Rana Sikdar) came to be appointed as an Executive Director on June 05, 2013 and continued as such till August 19, 2013.

7.25. Insofar as the liabilities of the aforesaid three Directors is concerned, I note that 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 in issuing the prospectus as per the said provision. Therefore, in view of the said provisions, the *Noticee nos. 2* to *7* being the Directors of the *Noticee Company* during the period when the aforesaid deemed public issue was made by the *Company* without any regard for the afore-discussed provisions of Companies Act, 1956 and ILDS Regulations, have to be held liable for the violation of Sections 56(1), 56(3) and 60 of the Companies Act, 1956.

7.26. With respect to the liability for non-compliance with Section 73 of the Companies Act, 1956, I observe that the Section 73(2) of the said Act stipulates that 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 refund, be jointly and severally liable to repay that money (to the subscribers) with interest at such rate, not less than four percent and not more than fifteen percent if the money is not repaid forthwith. Further, it is noted that the Rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, prescribe the rate of interest at 15%.

7.27. I may hasten to add here that the issuance of NCRDs by the *Company* during the FY 2013-14 is the central point of the present proceedings. It is also noted that Mr. Saugata Basu (*Noticee no. 6)* and Mr. Rana Sikdar (*Noticee no. 7*) had resigned from the directorship of the *Company* during the FY 2013-14 itself. In this connection, I observe that though the charges of making a deemed public issue of NCRDs have been made against the *Noticee Company* only for the FY 2103-14, however, it is also an undisputed fact that such instruments have been issued by the *Company* in FY 2012-13 also. It is seen from the Explanatory Statement annexed to the Notice convening the Extraordinary General meeting of the *Company* scheduled to be held on May 18, 2012, the following has been *inter alia* stated: "*As you know that your company is going to take up certain **Mega Project** primarily for the purpose of their part-financing, your company is proposing to issue secured non-convertible debentures….The Board of directors of your company recommends approving such borrowing **primarily upto Rs 100 Crores***". (emphasis supplied)

7.28. The aforestated Board Resolution is sufficient enough to show the real intent of the *Company* to raise a capital as huge as INR 100 Crore by issuing debentures of merely INR 100 each which would not have been possible without offering such debentures to a large number of investors. I may also add here that the aforesaid observation is fortified for the FY 2013-14, wherein the *Company* can be seen to have mobilised atleast INR 1 Crore (approx.) from 134 allottees, which constrains me to reject the claim and all such pleas made by the *Noticee no. 6* before me. I find it relevant to refer at this stage to a recent decision of the Hon'ble SAT passed in the matter of *Mr. Girishchandra Mukundram Baluni Vs. SEBI and connected matters (Appeal no. 569/2020; date of decision: June 17, 2022)*, wherein the Hon'ble SAT was confronted with the claim of one of the Directors of the concerned company that he was not having any knowledge about the issuance of the instruments by the said company nor has he attended any Board meeting of the company. The Hon'ble SAT, after considering all the submissions, rejected the defense sought to be created and *inter alia* observed as: "*17. However, in the present proceedings since all the present appellants were the directors for one period or the other of issuing OCDs, merely because part of the OCDs were issued during their period, they cannot escape liability. Issuance of OCDs had occurred on the basis of the single decision of the company and merely the formality of issuance of OCDs continued.*"

7.29. Further, as stated earlier, there is nothing on record to suggest that any of the officers enlisted in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of the *Company* 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 present directors of the *Company*, by virtue of being the officers in default, are liable to make refunds to the subscribers/investors, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the gross non-compliance on the part of the *Company* with the above mentioned provisions. I also observe that the liability of the *Company* to make refunds to the investors under section 73(2) is a continuing one and such liability continues till all the repayments are made to the investors who have subscribed to the NCRDs issued by the *Company*, and in discharging such a liability, the 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.

7.30. Under the circumstances, I observe that the *Company* and its present Directors namely Debraj Mitra, Koushik Dutta, Subham Basu, and Anindyo Paul 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. Further, as the *Noticee nos. 2* to *7*, being the persons-in-charge of the day to day affairs of the *Noticee no. 1 Company,* are also held guilty of the violations of the provisions of Regulation 4(2)(a), (b), (c), (d), Regulation 5(2)(b), Regulation 6, Regulation 7, Regulation 8, Regulation 9, Regulation 12, Regulation 14, Regulation 19 and Regulation 26 of the ILDS Regulations.

7.31. Reverting back to the plea taken by Mr. Saugata Basu once again, who has claimed to be a mere employee of a group Company (Dolphin Insafood Private Limited) and has tried to defend his case by asserting that he was not aware of the acts of the *Company*. Insofar as the said submission is concerned, I would like to rely on Hon'ble Securities Appellate Tribunal's ("**SAT**") Order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI wherein Hon'ble SAT has observed that: "*Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956*."

7.32. In this connection, I may also refer to the following observations made by the Hon'ble High Court of Madras as recorded in the matter of *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."

7.33. Thus, taking guidance from the aforesaid judgments, I may observe that the position of a 'director' in a company attracts onerous and stringent responsibilities requiring compliances to be made under various laws, failing which such natural person who has been at the steering wheel of the company has to be liable to face the consequence of any violation committed by the company.

7.34. In view of the foregoing discussion, the natural consequence for not adhering to the norms governing the issue of securities to the public and also making refunds to the investors as directed under section 73(2) of the Companies Act, 1956, would be *inter alia,* to direct the *Company (Noticee no. 1)* and its Directors, viz. *Noticee nos. 2* to *5* to refund the money collected, with interest to such investors.

Whether Dolphin Infrapower Debenture Trust (represented by its trustee viz., Arindam Adhya) acted as a Debenture Trustee without obtaining registration from SEBI?

7.35. Section 117 B of the Companies Act, 1956 requires that a company cannot seek public subscription of its debentures unless a debenture trustee for such debentures has been appointed by such company.

7.36. In the present case, it is observed from a copy of the minutes of the meeting of the Board of Directors of the *Company* held on May 18, 2012 that the board had passed a resolution to issue secured redeemable non-convertible debentures in terms of the meeting of Board of Directors previously held on May 17, 2012 and in terms of the approval of the shareholders in the EGM held on May 18, 2012.

7.37. It is further observed from the Form 10 filed by the *Company* with MCA that the *Company* had created a charge of INR 100 crore in favour of Dolphin Infrapower Debenture Trust for the "entire series of debentures". It is also seen from the said Form that the charge has been created on immovable properties of the *Company*, plant and machinery, stock in trade, floating assets, movable and immovable assets, and present and future assets. Furthermore, it is also seen that the said Form bears the signature of Mr. Arindam Adhya, who was the Trustee of Dolphin Infrapower Debenture Trust.

7.38. In this connection, it is noted that Regulation 10(bb) of the SEBI (Debenture Trustees) Regulations, 1993 defines a debenture trustee as "*a trustee appointed in respect of any issue of debentures of a body corporate*". Further , Section 12 (1) of the SEBI Act states that " *No stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with the securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.*"

7.39. Thus, from the above it flows that for a trustee to act with respect to the issue of debentures by a body corporate, it has to be registered with SEBI as a Debenture Trustee as per Section 12 of the SEBI Act. It is observed from the records that Dolphin Infrapower Debenture Trust (represented by its trustee viz., Mr. Arindam Adhya) (*Noticee no. 8*) is not registered as a Debenture Trustee with SEBI and there is no defence sought to be created by the *Noticee no. 8* to place any other fact to the contrary, before me.

7.40. As stated earlier, it is an undisputed fact that a charge was created in favour of Dolphin Infrapower Debenture Trust in respect of the issuance of debentures by the *Company*, however, no registration is found to be in place which could have enabled the *Noticee no. 8* to act as the debenture trustee in the securities market. Thus, in consideration of the facts that have emerged here, I find that Dolphin Infrapower Debenture Trust (represented by its trustee viz., Mr. Arindam Adhya) (*Noticee no. 8*) is guilty of acting as a Debenture Trustee without being registered with SEBI thereby violating Section 12 of the SEBI Act.

8. Directions –

8.1. In view of the foregoing discussion, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, hereby issue the following directions, which shall take effect immediately: –

i. Dolphin Infra Powerproject Ltd. (*Noticee no. 1*) and *Noticee nos. 2* to *5* shall jointly and severally, forthwith refund the money collected by the *Company* through the issuance of NCRDs 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.

ii. 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".

iii. The *Noticee nos. 1* to *5* 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.

iv. *Noticee no. 1* to *5* 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.

v. *Noticee nos. 1* to *5* (on behalf of the *Company)*, 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 the contact persons such as names, addresses and contact details etc., within 15 days of this Order coming into effect.

vi. After completing the refunds, the *Noticee nos. 1* to *5* (on behalf of the *Company)*, shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("**ICAI**") holding such certificate.

vii. The *Noticee no. 1* to *5* are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is 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 04 (four) years from the date of completion of refunds to investors as directed above.

viii. The *Noticee nos. 6* and *7* are 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 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 02 (two) years.

ix. *Noticee no. 8* (*Dolphin Infrapower Debenture Trust represented by its trustee Mr. Arindam Adhya*) is directed henceforth not to act as Debenture Trustee in respect of the NCRDs issued by the *Company* and shall not take up any new assignment or involve himself in any new issue of securities.

x. *Noticee no. 8* (*Dolphin Infrapower Debenture Trust represented by its trustee Mr. Arindam Adhya*) is also restrained from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of 02 (two) years.

8.2. A copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.

8.3. 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.

-Sd-

Place: Mumbai **S.K.Mohanty**

Date: August 29th, 2022 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA