

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 28 of the SEBI (Issue and Listing of Debt Securities) Regulation, 2008

In respect of –

S. No.	Name of noticee	CIN/DIN	PAN
1.	Prayas Projects India Limited	U70109WB2009PLC133033	AAFPC0276P
2.	Mr. Kaizar Biswas	02484864	AHPPB4561M
3.	Mr. Mohammad Jiyaur Rahaman	02485004	AHVPR6412M
4.	Mr. Ajijur Rahaman	02526348	AKLPR6157J
5.	Mr. Abu Sama Molla	06854875	AKKPM4156H
6.	Mr. Ashraful Hoque	06854858	AFCPH9599G
7.	Prayas Debenture Trust (represented by its Trustee, Mr. Ashraful Hoque)		

Date of hearing: April 22, 2015

Appearance

For the noticees: The Company and its directors were represented by Mr. Avijit Ghoshal, Advocate and Mr. Dilip Kumar Gupta.

For SEBI: Ms. Soma Majumder, General Manager, Mr. N. Murugan, Assistant General Manager, Ms. Sumit Saraf, Assistant Manager and Nikki Agarwal, Assistant Manager

Date of hearing: July 30, 2015

Appearance:

For the noticees: Mr. Avijit Ghoshal, Advocate and Mr. Dilip Kumar Gupta for the Company. Mr. Kaizar Biswas, Managing Director of the Company also appeared.

Advocate, Mr. Nikhil Rahul Salvi appeared on behalf of noticee, Mr. Ajijur Rahaman.

For SEBI: Dr. Anitha Anoop, Deputy General Manager, Mr. N. Murugan, Assistant General Manager, Mr. Pradeep Kumar, Assistant General Manager, Mr. Laltu Pore, Assistant General Manager and Ms. Nikki Agarwal, Assistant Manager.

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”), vide an ex-parte interim **Order dated January 30, 2015** (hereinafter referred to as the “**interim order**”) observed that the company, **Prayas Projects India Limited** (hereinafter referred to as “**PPIL**” or “the **Company**”) is *prima facie* engaged in fund mobilization activity from the public, through its offer and issue of **Secured Redeemable Non-Convertible Debentures** (hereinafter referred to as “**NCDs**”) and had allegedly violated the provisions of sections 56, 60 read with section 2(36), 73, 117B and 117C of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013 and the relevant provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“the **ILDS Regulations**”). The interim order also alleged that the debenture trustee, **Prayas Debenture Trust, represented by its trustee, Mr. Ashraful Hoque** had allegedly failed to meet the eligibility conditions specified under regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993 (“**DT Regulations**”) and acted as an unregistered debenture trustee in violation of section 12(1) of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”).

2. In order to protect the investors who have subscribed to the impugned offer and issue of NCDs and to ensure that the **Company** and present directors, **Mr. Kaizar Biswas, Mr. Mohammad Jiyaur Rahaman, Mr. Abu Sama Molla and Mr. Ashraful Hoque** and a past director, **Mr. Ajijur Rahaman** are restrained from carrying on with their fund mobilizing activity, SEBI had issued the following directions:

8. *“In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions –*
 - i. *PPIL (PAN: AAFCP0276P) shall not mobilize 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. ***PPIL** and its present Directors, viz. Shri **Kaizar Biswas** (DIN: 02484864 PAN: AHPPB4561M), Shri **Mohammad Jiyaur Rahaman** (DIN: 02485004; PAN: AHVPR6412M), Shri **Abu Sama Molla** (DIN: 06854875; PAN: AKKPM4156H) and Shri **Ashraful Hoque** (DIN: 06854858; PAN: AFCPH9599G) alongwith its past Director, viz. Shri **Ajijur Rahaman** (DIN: 02526348; PAN: AKLPR6157J), 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. *PPIL and its abovementioned past and present 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. PPIL shall provide a full inventory of all its assets and properties;
- v. PPIL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;
- vi. PPIL and its abovementioned present 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. PPIL and its abovementioned present 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 PPIL;
- viii. The **Debenture Trustee, viz. Prayas Debenture Trust (represented by its Trustee, viz. Shri Ashraful Hoque)**, is prohibited from continuing with his assignment as debenture trustee in respect of the Offer of NCDs of PPIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.

9. The above directions shall take effect immediately and shall be in force until further orders.

3. The interim order was issued without prejudice to the right of SEBI to take any other action that may be initiated against the Company and its past and present directors and Debenture Trustee (collectively referred to as “**noticees**”), in accordance with law. The interim order afforded opportunity to the noticees to file their submissions and seek an opportunity of personal hearing.

4. The interim order was forwarded to the noticees vide SEBI letters dated January 30, 2015. However, the envelopes (containing the covering letter and copy of interim order) returned with respect to the noticees, Ashraful Hoque (Trustee of Prayas Debenture Trust), the Company and Mr. Kaizar Biswas with remark “left”. In the meanwhile, Prayas Debenture Trust through its trustee Mr. Ashraful Hoque, vide letter dated February 26, 2015 *inter alia* stated as follows:

- (a) The trustee has instructed the directors of the Company to repay the full amounts raised through NCDs to the debenture holders.
- (b) The allotments were made to more than 49 persons.
- (c) The Company is repaying the amounts as per the interim order and was trying to satisfy the charges within the financial year.
- (d) Being a trustee, he was not involved in the ‘NCD activity’ directly or indirectly.

5. The Company, vide its letter dated February 26, 2015, while acknowledging the receipt of the interim order, *inter alia* made the following submissions:

- (a) The Company is into 'agro trading' and does not have any collective investment scheme, and issued shares and debentures for its upcoming project of rice mill (of 10 TPD) in Murshidabad district, West Bengal for which land was already acquired.
- (b) The Company admitted allotting securities to 154 investors (i.e. more than 49 investors) during FY 2011-12 and 2012-13. It had redeemed subscription of 27 investors and redemption is in progress for the others.
- (c) The Company submitted that the balance of Rs.81,32,000/- would be paid within March 2015.
- (d) The Company made offer for NCDs by issuing brochures clearly mentioning "Private Circulation only".
- (e) The Company is not an NBFC or a Public Financial Institution (PFI).
- (f) The Company is not mobilising funds through offer of NCDs or through issue of equity shares since April 01, 2013. (FY 2013-14).
- (g) The Company or its present directors did not issue any prospectus or offer document or advertisement for soliciting money from the public for issue of securities since April 01, 2014.
- (h) The Company does not access the securities market and does not deal in securities, directly or indirectly.
- (i) The Debenture Trustee/Ashraful Hoque is not involved in NCDs and would resign as soon as repayments are done.

6. As the interim order had returned undelivered in respect of a few noticees, SEBI made a public notice dated March 31, 2015 in the newspapers (*Times of India dated April 10, 2015 and Ananda Bazar dated April 10, 2015*) regarding the proceedings against the noticees initiated vide the interim order. The newspaper notice also mentioned that another opportunity of personal hearing was afforded to the noticees on April 22, 2015 in Kolkata. The noticees were advised that in case they fail to appear before SEBI on the aforesaid date, then the matter would be proceeded ex-parte on the basis of material on record. SEBI also sent notices informing the schedule of personal hearing to the noticees who had responded to the interim order.

7. On April 22, 2015, Mr. Avijit Ghoshal, Advocate and Mr. D.K.Gupta, Cost Accountant submitted that they appeared for Company and directors. A power of attorney from Company authorizing them to appear in the matter was filed. They submitted a list of debenture holders for the period 2011-12 and 2012-13 under Scheme 1 (Plan B) and the amount due to such holders. As the

representatives did not file authority letters for the directors, their representation was not considered and the hearing was adjourned. In the further hearing held on July 30, 2015, the above said representatives along with Kaizar Biswas (noticee and M.D. of the Company) appeared and made oral submissions. They were granted a period of one week for making written submissions. Vakalat/authority letter for the directors was not filed.

Noticee, Mr. Ajjur Rahaman appeared through his advocate Mr. Nikhil R. Salvi. The advocate requested for adjourning the hearing by 8 weeks. This request was rejected and time of one month was granted to make written submissions.

8. Thereafter, the **Company** (*through Mr. Kaizar Biswas, director*), filed its written statement dated August 14, 2015 and *inter alia* made the following submissions:

- (a) The Company obtained permission on July 29, 2011 from the RoC, Kolkata to issue debentures. Pursuant to the same, the Company raised money through debentures from more than 49 persons (i.e. to 154 persons) during FY 2011-12 and 2012-13. The Company redeemed debentures issued to 27 persons out of 154 persons/entities.
- (b) The Company has breached section 67(3) and seeks unconditional apology for the same. It is now trying to establish itself as a good entrepreneur and making several efforts so that none of its investors are prejudiced.
- (c) Resolving investors' grievances is the Company's priority.
- (d) The Company has repaid Rs.6,80,000/- as on July 27, 2015 and would clear all dues to its debenture holders.
- (e) The Company requests time of atleast one year to redeem and repay all dues to its investors.

9. Noticee, **Mr. Ajjur Rahaman** through his counsel, Mr. Subhash B. Rajora also filed written submissions vide letter dated August 31, 2015 and *inter alia* stated the following therein:

- (a) The noticee was no longer associated with the Company as he had resigned during the year 2013 and the Company had also accepted his resignation.
- (b) RoC was also intimated regarding his resignation.
- (c) He had duly received a letter from the board of directors of the Company, discharging him of all liabilities whether past, present or future.
- (d) He is inadvertently addressed as a noticee.

(e) The following documents were *inter alia* enclosed with these submissions:

- (i) Authority letter,
- (ii) Form DIR-12 – stating that the noticee resigned from the Company with effect from July 19, 2014.

No written submissions were submitted by the Company, as undertaken during the personal hearing on July 30, 2015. No replies were filed by other directors despite service of interim order and providing sufficient opportunity for the same. Accordingly, I proceed to consider the matter on its merits.

10. I have considered the interim order, the submissions made by the Company, the debenture trust and other material available on record. The interim order had *inter alia* observed/alleged the following:

(a) The Company was incorporated on February 23, 2009 with the RoC, West Bengal.

(b) The Company made offer and NCDs as per the details below:

Year	Security	Amount Raised (₹ in Lakhs)	No. of Allottees (Approx)
2011 – 12	Secured Non – Convertible Redeemable Debentures	32.00	107
2012 – 13		54.32	47
	Total	86.32	154

(c) The Company made a public issue of NCDs as per first proviso to section 67(3) of the Companies Act, 1956 during FY 2011-12.

(d) By offering securities in a public issue, the Company failed to comply with sections 56, 60 read with section 2(36), 73, 117B and 117C of the Companies Act, 1956 read with the Companies Act, 2013 and the relevant provisions of the ILDS Regulations.

(e) The interim order also alleged that the debenture trustee, Prayas Debenture Trust, represented by its trustee, Mr. Ashraful Hoque had allegedly failed to meet the eligibility conditions specified under regulation 7 of the DT Regulations and acted as an unregistered debenture trustee in violation of section 12(1) of the SEBI Act.

11. The Company has admitted issuing NCDs to more than 49 persons and has not disputed the observations and findings made in the interim order. Its submission was that it is redeeming and repaying its investors. In terms of section 67(3), as amended by the *Companies (Amendment) Act, 2000, with effect from December 13, 2000*, no offer or invitation shall be treated as made to the public by virtue of sub-sections (1) or (2), as the case may be, if the offer or invitation can properly be regarded, in all 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. More importantly, in terms of the first *proviso* to the aforesaid section, the provisions of section 67(3) shall **not** apply in a case where the **offer or invitation to subscribe for shares or debentures** is made to **fifty persons or more**. Therefore, the number of subscribers becomes relevant to judge whether an issue of shares are for public or on a private placement basis, in the light of the above said provision. Therefore, if an offer of securities are made to fifty or more persons, it would be deemed to be a public issue. NBFCs or PFIs are exempted only from the first *proviso* to section 67(3). Therefore, NBFC or PFI do not have any restriction on the number of allottees as imposed on a company which is not an NBFC or PFI. However, such companies also need to prove that its offer falls either under clause (a) or (b) of section 67(3) to claim such issuance to be a private placement.

12. The Company has stated that it is not an NBFC or a PFI. As per the brochure, the Company has solicited subscription to its NCDs from a wide range of persons/entities like - Individual, Trust, Financial Institution, Bank, Mutual Fund, Karta of HUF, Firm and Body Corporate. Therefore, by no stretch can it be inferred that the offer was for private placement. As per letter dated December 30, 2013, the Company has informed that its offer of shares/debentures was open from August 16, 2011 till March 31, 2013 and admitted that it had circulated/allotted debentures to 154 persons.

13. Though the interim order alleged that the Company made a public offer of NCDs during 2011-12, considering the admission that its issue was open from August 16, 2011 to March 31, 2013, it has to be considered that this issue was a single issue, whereby the Company mobilized Rs.86 lakh from 154 investors. Therefore, by issuing NCDs to a total of 154 investors during FY 2011-12 and 2012-13, the Company has admittedly made a public issue of such securities in terms of the first

proviso to section 67(3) of the Companies Act, 1956. By making a public issue of NCDs, the Company was mandated to comply with all the legal provisions that govern and regulate public issue of such securities, including the Companies Act, 1956 and the SEBI Act and regulations. In this context, I refer and rely on the below mentioned observation made by the Hon'ble Supreme Court of India in the matter of *Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the 'Sahara Case'):

... .. 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. ...".

14. By making a public issue of NCDs, the Company was mandated to comply with all the legal provisions that govern and regulate public issue of such securities, including the Companies Act, 1956 and the SEBI Act and regulations. In this regard, I note that in terms of section 55A of the Companies Act, 1956, SEBI shall administer various provisions (as mentioned therein) of the said Act with respect to issue and transfer of securities by listed companies, companies that intend to list and also those companies that are required to list its securities while making offer and issue of securities to the public. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in Sahara Case, had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange".

Under section 11A of the SEBI Act, SEBI is also empowered to regulate, by regulations/general or special orders, the matters pertaining to issue of capital, transfer of securities and matters related thereto. Accordingly, the Company, having made a public offer and issue of securities, as observed above, is under the jurisdiction of SEBI.

15. Sections 56, 60, 73, 117B and 117C of the Companies Act, 1956 and the provisions of the ILDS Regulations is required to be complied by a company making a public issue of securities. These provisions have been allegedly not adhered to by the Company. In this regard, I note that -

- (i) 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, contain disclosures as specified. 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'.
- (ii) By making a public issue, the Company had to compulsorily list such securities in compliance with section 73(1) of the Companies Act, 1956. A Company making a public issue of securities cannot choose whether to list its securities or not as listing is a mandatory requirement under law. As per section 73(1) 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. Further, there is no material to say that the Company has filed an application with a recognized stock exchange to enable the NCDs to be dealt with in such stock exchange. Therefore, the Company has failed to comply with this requirement.

Section 73(2) states that "Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, 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, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money".

As the Company failed to make an application for listing of such securities, the Company had to forthwith repay such money collected from investors. If such repayments are not made within 8 days after the Company becomes liable to repay, the Company and every director is liable to repay with interest at such rate. The liability of the Company to refund the public funds collected through offer and allotment of the impugned securities is continuing and such liability would continue till repayments are made. There is no record to suggest that the Company made the refunds as per law. The Hon'ble Supreme Court of India in the Sahara case has examined section 73 and made the following observations:

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

Though the Company stated that it is repaying the investors, it did not provide any verifiable proof in respect of the same. The mobilization was done during FY 2011-12 and 2012-13. The amounts mobilized through the issue of securities have not been refunded within the time period as mandated under law. It would therefore be appropriate to levy an interest @ 15% p.a. as provided for under the above section read with rule 4D (*which prescribes that the rates of interest, for the purposes of sub-sections (2) and (2A) of section 73, shall be 15 per cent per annum*) of the Companies (Central Government's) General Rules and Forms, 1956 on the amounts mobilized by the Company through its offer and issue of NCDs from the date when the same was liable to be repaid till date of actual payment to the investor. In this regard, I note that as per the Balance sheet of the Company for 2012-2013, it is mentioned that "Long Term Borrowings" is to the tune of Rs.86,32,000/-, this

figure is the amount said to be mobilized by the Company through its offer and allotment of non-convertible debentures.

- (iii) Section 117B of the Companies Act, 1956, prescribes that no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it 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. The Company has admittedly not filed any Prospectus. Therefore, the said provision has not been fully complied with. Further, appointment of debenture trustee shall be in terms of all applicable law. Further, section 117C stipulates that, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. There is no record to suggest that this provision was complied with.
- (iv) As NCDs are **'debt securities'** in terms of the ILDS Regulations, the Company was also mandated to comply with the provisions of the ILDS Regulations in respect of its public issue of NCDs. However, the Company failed to comply with the following provisions of the ILDS Regulations.
- (a) Regulation 4(2)(a) – *Application for listing of debt securities*
 - (b) Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
 - (c) Regulation 4(2)(c) – *Credit rating has been obtained*
 - (d) Regulation 4(2)(d) – *Dematerialization of debt securities*
 - (e) Regulation 4(4) – *Appointment of Debenture Trustee*
 - (f) Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
 - (g) Regulation 6 – *Filing of draft Offer Document*
 - (h) Regulation 7 – *Mode of disclosure of Offer Document*
 - (i) Regulation 8 – *Advertisements for Public Issues*
 - (j) Regulation 9 – *Abridged Prospectus and application forms*
 - (k) Regulation 12 – *Minimum subscription*
 - (l) Regulation 14 – *Prohibition of mis-statements in the Offer Document*
 - (m) Regulation 15 – *Trust Deed*
 - (n) Regulation 16 – *Debenture Redemption Reserve*

- (o) Regulation 17 – *Creation of security*
- (p) Regulation 19 – *Mandatory Listing*
- (q) Regulation 26 – *Obligations of the Issuer, etc.*

From the foregoing, I conclude that the Company failed to comply with the stipulation under sections 56, 60, 73, 117B and 117C of the Companies Act, 1956 read with Companies Act, 2013 and the aforesaid provisions of the ILDS Regulations, in respect of its offer and issuance of NCDs as discussed in this Order and liable for suitable action under the Companies Act, 1956, the SEBI Act and the ILDS Regulations.

16. The interim order was issued against **Mr. Kaizar Biswas, Mr. Mohammad Jiyaur Rahaman, Mr. Abu Sama Molla, Mr. Ashraful Hoque** and **Mr. Ajijur Rahaman**. Regarding their culpability in this matter, I observe the following:

- (a) As per the details available from the MCA website, **Mr. Kaizar Biswas, Mr. Mohammad Jiaur Rahaman** and **Mr. Abu Sama Molla** are the present directors of the Company.
- (b) **Mr. Kaizar Biswas** and **Mr. Mohammad Jiaur Rahaman** were appointed as directors on February 23, 2009. **Mr. Abu Sama Molla** was appointed on August 01, 2014.
- (c) Mr. Ashraful Hoque was appointed on August 01, 2014 and resigned on July 01, 2015. Mr. Ajijur Rahaman was appointed on February 23, 2009 and resigned on July 19, 2014.
- (d) The allotment of NCDs were made during FY 2011-12 and 2012-13. The Company is found to have contravened the provisions of sections 56, 60, 73, 117B and 117C of the Companies Act, 1956 and the ILDS Regulations. From the above details, it can be inferred that Mr. Kaizar Biswas, Mr. Mohammad Jiaur Rahaman and Mr. Ajijur Rahaman were the directors of the Company when the Company made the offer and allotment of NCDs in violation of the law.
- (e) Section 56(1) and 56(3) read with section 56(4) imposes the liability for the compliance of the said provisions, on the company, every director, and other persons responsible for the issuance of the prospectus. The liability for non-compliance of section 60 of the Companies Act is on the Company, and every person who is a party to the non-compliance of issuing the prospectus

as per the said section. Further, the directors of a company would also be responsible for complying with the provisions of the ILDS Regulations.

- (f) The liability of the company and directors to repay under section 73(2) of the Companies Act, 1956 and section 27 of the SEBI Act, is a continuing liability and the same continues till all the repayments are made. Therefore, the directors (*irrespective of whether they continue or resign*) who were present during the period when the Company made the offer and allotted NCDs shall be liable for violation of sections 56, 60 and 73 of the Companies Act, including the default in making refunds as mandated therein. As the liability to make repayments under sections 73(2) of the Companies Act read with section 27 of the SEBI Act is a continuing liability, the persons who join the Company's Board pursuant to the offer and allotment of NCDs shall also be liable if the Company and the concerned directors have failed to make refunds as mandated under law.
- (g) In view of the above observations, **Mr. Kaizar Biswas, Mr. Mohammad Jiur Rahaman** and **Mr. Ajjur Rahaman** shall be liable for the violations as found against the Company in this Order as well as for making refunds to the investors with attendant interest and for other enforcement action.
- (h) As regards **Mr. Abu Sama Molla** and **Mr. Ashraful Hoque** are concerned, it is noted that they were appointed on August 01, 2014, i.e. post the offer and issuance of securities. It appears that these persons have neither exercised necessary diligence after joining as directors nor made any attempts to report the wrongdoings of the Company to the appropriate authorities. The very inaction by these two directors against the previous/existing management (for violating the public issue norms while making the offer and issuing the securities), even after the receipt of the interim order, leads one to conclude on a possible collusion by them with the Company and its management. As discussed earlier, the liability to refund is continuous and would be discharged only when the repayments are done. These directors did not take any steps to remedy the violations committed. Accordingly, I hold **Mr. Abu Sama Molla and Mr. Ashraful Hoque** (*notwithstanding the fact that he had resigned subsequently*) responsible for the same.

17. The interim order has alleged that the debenture trustee (***Prayas Debenture Trust represented by Ashraful Hoque***) has acted as such without registration from SEBI as required under section 12(1) of the SEBI Act and has also not satisfied the eligibility condition stipulated under regulation 7 of the DT Regulations. The debenture trust/its trustee have not disputed these allegations. The trustee has merely submitted that he has instructed the Company and directors to repay the amounts mobilized under the NCDs. In this regard, I note that the Trust/Ashraful Hoque are not registered with SEBI to perform the functions of a 'debenture trustee' in the capital market. Further, they do not satisfy the following conditions under regulation 7 of the DT Regulations:

"no person should act as a debenture trustee unless he is either –

- i. a scheduled bank carrying on commercial activity; or*
- ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
- iii. an insurance company; or*
- iv. body corporate."*

Accordingly, the debenture trustee, **Prayas Debenture Trust represented by Ashraful Hoque** is found to have violated section 12(1) of the SEBI Act and regulation 7 of the DT Regulations. In view of these observations, it can be said that the provisions of section 117B of the Companies Act, 1956 have not been completely complied with.

18. For the above reasons, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1), 11(4), 11A and 11B thereof and regulation 28 of the SEBI (Issue and Listing of Debt Securities) Regulation, 2008 hereby issue the following directions:

- (a) The company, **Prayas Projects India Limited** and its directors/promoters including **Mr. Kaizar Biswas, Mr. Mohammad Jiyaur Rahaman, Mr. Abu Sama Molla, Mr. Ashraful Hoque** and **Mr. Ajijur Rahaman**, jointly and severally, shall forthwith refund the money collected by the Company through the issuance of Non-Convertible Debentures (*which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956 and the ILDS Regulations*), to the investors including the money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (*in terms of Section 73(2) of the Companies Act, 1956*) to the investors till the date of actual payment.

- (b) The repayments to investors shall be effected only in cash through Bank Demand Draft or Pay Order.
- (c) **The Company/its present management** are permitted to sell the assets of the Company only for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalised Bank.
- (d) **The Company**, its directors and other persons named above, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.
- (e) After completing the aforesaid repayments, the **Company** shall file a certificate of such completion with SEBI, within a period of three months from the date of this Order, from 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").
- (f) **Prayas Projects India Limited** and its directors/promoters including **Mr. Kaizar Biswas, Mr. Mohammad Jiyaur Rahaman, Mr. Abu Sama Molla, Mr. Ashraful Hoque** and **Mr. Ajijur Rahaman** are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.
- (g) In case of failure of the company, **Prayas Projects India Limited** and its directors/promoters including **Mr. Kaizar Biswas, Mr. Mohammad Jiyaur Rahaman, Mr. Abu Sama Molla, Mr. Ashraful Hoque** and **Mr. Ajijur Rahaman**, in complying with the aforesaid directions, SEBI, on the expiry of the three months period from the date of this order, -

- a) shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - b) may initiate appropriate action against the Company, its promoters/ directors and the persons/ officers who are in default, including adjudication proceedings against them, in accordance with law.
 - c) would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
 - d) would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.
- (h) **Prayas Projects India Limited** is directed not to, directly or indirectly, access the capital 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 years from the date of completion of refunds to investors as directed above.
- (i) **Mr. Kaizar Biswas, Mr. Mohammad Jiyaur Rahaman, Mr. Abu Sama Molla, Mr. Ashraful Hoque** and **Mr. Ajijur Rahaman** are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, with immediate effect. They are also restrained from issuing prospectus, offer document or advertisement soliciting money from the public and 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. The above directions shall come into force with immediate effect and shall continue to be in force from the date of this Order till the expiry of 4 years from the date of completion of refunds to investors, as directed above.
- (j) For the violations (i.e. *acted as debenture trustee when they were not eligible to act as debenture trustees and acted so without registration from SEBI*) committed by **Prayas Debenture Trust (represented by its trustee Ashraful Hoque)**, they are hereby restrained from acting as an intermediary,

accessing the securities market and further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 years.

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

19. This Order is without prejudice to any action, including adjudication and prosecution proceedings that might be taken by SEBI in respect of the above violations committed by the Company, its promoters, directors including former directors and other key persons.

20. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

21. 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.

**PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

Date: December 29th, 2015

Place: Mumbai