

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

ORDER

Under sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Vaibhav Pariwar India Projects Limited

In respect of:

1. Vaibhav Pariwar India Projects Limited [PAN: AACCV9807F],
2. Mr. Rajesh Kumar Rai [PAN: AOJPR4225D],
3. Mr. Manoj Kumar Rai [PAN: AQQPR5328E]
4. Mr. Binay Kumar Lall [PAN: ADGPL3888E]
5. Ms. Indrakala Rai [PAN: AOJPR4226A]
6. Mr. Ashok Kumar Banerjee and
7. Ms. Chandrima Sarkar [PAN: ARDPS1080N]

Date of Hearing: April 22, 2015 and July 30, 2015

Appearances:

For Noticees: Mr. Prem Kumar Dewan, Advocate
Mr. Subhasis Chakraborty, Advocate

For SEBI: Ms. Soma Majumdar, General Manager,
Mr. T. Vinay Rajneesh, Assistant General Manager,
Mr. N. Murugan, Assistant General Manager,
Ms. Nikki Agarwal, Assistant Manager,
Mr. Sumit Saraf, Assistant Manager.

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), vide an *ex-parte interim* Order dated December 29, 2014 (hereinafter referred to as 'the *interim* order') had observed that the company, **Vaibhav Pariwar India Projects Limited** (hereinafter referred to as 'Vaibhav' or 'the Company') is *prima facie* engaged in fund mobilising activity from the public, by making offer and issuing Secured Redeemable Non-Convertible Debentures (hereinafter referred to as 'NCD') 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 the Companies Act, 2013 and the relevant provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as 'the ILDS Regulations'). The *interim* order also alleged that the debenture trustee, Mr. Ashok Kumar Banerjee and Ms. Chandrima Sarkar had allegedly failed to meet the eligibility conditions specified under the SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as 'DT Regulations') and acted as an unregistered debenture trustee in violation of Section 12(1) of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act').

2. In order to protect the investors who have subscribed to the impugned offer and issue of NCD and to prevent the Company from further carrying on with its fund mobilizing activity under the offer of NCD, SEBI had issued the following directions:

“... ..

22. *In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustees Regulations, hereby issue the following directions –*

- i. *VPIPL 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. *VPIPL and its abovementioned Directors, viz. Shri Rajesh Kumar Rai, Shri Manoj Kumar Rai, Shri Binay Kumar Lall and Smt. Indrakala Rai and its Debenture Trustees viz. Shri Ashok Kumar Banerjee and Smt. Chandrima Sarkar, 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. *VPIPL and its 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. *VPIPL shall provide a full inventory of all its assets and properties;*
- v. *VPIPL's Directors shall provide a full inventory of all their assets and properties;*
- vi. *VPIPL and its 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. *VPIPL and its 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 VPIPL;*

- viii. *VPIPL and its Directors shall furnish complete and relevant information (as sought by SEBI vide letters dated May 16, 2014, June 10, 2014 and June 27, 2014) including the number of subscribers to the issue of Secured Redeemable Non-Convertible Debentures in the financial years 2010-11 and 2011-12, within 21 days from the date of receipt of this Order.*
 - ix. *The Debenture Trustees, viz. Shri Ashok Kumar Banerjee and Smt. Chandrima Sarkar, are prohibited from continuing with their present assignment as a debenture trustee in respect of the Offer of NCDs of VPIPL 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.*
23. *The above directions shall take effect immediately and shall be in force until further orders.*
- ...
25. *Similarly, the Debenture Trustees, viz. Shri Ashok Kumar Banerjee and Smt. Chandrima Sarkar, may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they would desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.*
26. *This Order is without prejudice to the right of SEBI to take any other action that may be initiated against VPIPL and its abovementioned Directors; its Debenture Trustees, viz. Shri Ashok Kumar Banerjee and Smt. Chandrima Sarkar, in accordance with law."*

3. The *interim* order observed that the *prima facie* observations made therein were on the basis of the information obtained from the 'MCA 21 Portal', the documents received from the complainants and the correspondence exchanged between SEBI and Vaibhav. The *interim* order advised the Company and its directors that they may file their replies within 21 days from the date of receipt of the order and also to seek an opportunity of personal hearing.
4. The *interim* order was forwarded to the Company and its directors namely Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Binay Kumar Lall and Ms. Indrakala Rai and its Debenture Trustees viz. Mr. Ashok Kumar Banerjee and Ms. Chandrima Sarkar vide letter dated December 30, 2014. The letter issued to the Company, Mr. Rajesh Kumar Rai, Ms. Indrakala Rai, Ms. Chandrima Sarkar and Mr. Manoj Kumar Rai had returned undelivered. In the meantime, one Mr. Janme Jay, Advocate, while writing on behalf of the Company, Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Binay Kumar Lall and Ms. Indrakala Rai vide letter dated January 27, 2015, denied the allegations made in the *interim* order and requested for inspection of the relied upon

documents. The request of Mr. Janme Jay, Advocate was not supported by any letter of authority. The matter was proceeded further and an opportunity of personal hearing was granted to the Company and its directors on April 22, 2015. The scheduled date was communicated vide SEBI letter dated April 02, 2015. The date of hearing was also communicated vide the public notice in the newspapers namely '*Ananda Bazar Patrika*' and '*Times of India*' dated April 14, 2015 and April 15, 2015 respectively. The Company and its directors were advised that in case they fail to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.

On the date fixed, one Mr. Prem Kumar Dewan, Advocate appeared for the Company and its directors namely Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Bijay Kumar and Ms. Indra Kala Rai and requested for an adjournment of the personal hearing on the ground that he was appointed on a short notice and was not having a vakalat/ letter of authority. As no proper vakalat/ letter of authority was there on record, his representation was not considered.

The Debenture Trustees namely Ms. Chandrima Sarkar entered appearance through Mr. Subhasis Chakraborty Advocate, who filed the written submissions dated April 22, 2015, on behalf of Ms. Chandrima Sarkar and requested for fifteen days' adjournment for making further submissions.

5. Considering the requests, another opportunity of personal hearing was granted to the Company and its directors on July 17, 2015. However, the same had to be rescheduled to July 30, 2015. On the date fixed, no one had appeared either for the Company or for its directors. Considering that reasonable opportunities to the Company and its directors had already been afforded for making submissions in the matter, the matter was proceeded further on the basis of material available on record.
6. In the meantime, Mr. Janme Jay, advocate vide his letter dated July 29, 2015, received by SEBI on August 03, 2015, intimated that the Managing Director of the Company namely Mr. Rajesh Kumar Rai is under judicial custody since May 24, 2015. Vide this

letter he reiterated his request of inspection of the relevant documents and requested for more time for replying to the *interim* order. Considering the request, SEBI vide its letter dated September 02, 2015, advised Mr. Janme Jay to submit the vakalat/ letter of authority. In reply, Mr. Janme Jay vide his letter dated September 24, 2015 submitted that the legal representative of the Company and its directors namely Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Binay Kumar Lall and Ms. Indrakala Rai had entered his appearance for the personal hearing on April 22, 2015 and had requested for supply of the documents, however, no documents were provided to the said representative.

7. In this regard, I note that one Mr. Prem Kumar Dewan had earlier appeared on April 22, 2015, for the Company and its directors namely Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Bijay Kumar and Ms. Indra Kala Rai without any vakalat/ letter of authority and he had not made any request documents. Considering the same, SEBI vide its letter dated October 01, 2015, again asked Mr. Janme Jay to submit the vakalat/ letter of authority. However, no reply was received from him.

Later, in the interests of justice, SEBI vide its another letter dated November 24, 2015, allowed the request of Mr. Janme Jay for inspection of the document and advised him to submit the vakalat/ letter of authority on the date when he turns up for the inspection. However, this time again no reply was received from the said Mr. Janme Jay. From the sequence of events, these appear to be delaying tactics on behalf of the Company and its directors namely Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Bijay Kumar and Ms. Indra Kala Rai.

I note that the documents relied upon in the present proceedings are only the records submitted by the Company to RoC and available on the MCA-21 portal. In view of the same and taking into consideration the continuing non-appearance, failure to submit the proper vakalat/ letter of authority into consideration and in order to avoid any further delay, I am inclined to proceed further with the matter, on the basis of merits of the case.

8. The submissions made by Ms. Chandrima Sarkar through Mr. Subhasis Chakraborty, Advocate vide letter dated April 22, 2015, is given below:
- a. She is a practicing advocate at Asansol Court. On the basis of her professional attachment, one Mr. Manoj Kumar Rai had contacted her and requested to act as advocate for the Company namely Vaibhav sometime in the year 2012.
 - b. During the course of such professional attachment, said Mr. Manoj Kumar Rai made a proposal to be a trustee of the Company. Accordingly, she had signed and executed a mortgage deed on March 06, 2012.
 - c. Immediately after this her senior had advised her not to be associated with the said company and to withdraw herself from the association of the said Company. Thereafter, on the same date i.e. March 06, 2012, she intimated her intention to be disassociated with the Company and the same was duly accepted by Mr. Manoj Kumar Rai vide his letter dated March 08, 2012.
 - d. During the period of her engagement with the Company, she had not taken any remuneration/ professional fee from the Company.
 - e. Further, as the Company had categorically intimated that they are not processing her application in RoC, she did not take any further steps with regard thereto.
 - f. From the *interim* order she came to know that her name was included in the list of director/ trustee of the Company.
9. I have considered the *interim* order, the submissions of Ms. Chandrima Sarkar and the material available on record. The following are the observations from the interim order:
- “... ”
- i. *VPIPL was incorporated on April 20, 2009, with the RoC, Kolkata, with CIN No. as U70200WB2009PLC134643. VPIPL has its Registered Office at A.D.D.A Colony (KSTP), Plot No-AJ-8, Post Office- South Dhadka, Asansol, West Bengal 713302.*
 - ii. *The Directors in VPIPL are Shri Rajesh Kumar Rai, Shri Manoj Kumar Rai and Shri Binay Kumar Lall.*
 - iii. *Details obtained from the 'MCA 21 Portal' indicate that Smt. Indrakala Rai, who was earlier Director in VPIPL, has since resigned.*

- iv. From the Balance Sheet for the financial years 2009-10, 2010-11, 2011-12 and 2012-13 filed by VPIPL with the RoC, obtained from MCA 21 Portal, it is observed that VPIPL issued and allotted Secured Redeemable Non-Convertible Debentures ("Offer of NCDs") as under:

Year	Security	Amount Raised (Rs.in Crores)	No. of Allottees (Approx)
2009 – 10	Secured Redeemable Non - Convertible Debenture	0.1063	1063*
2010 – 11		1.5587	Not Known
2011 – 12		4.4799	Not Known
2012 - 13		8.3264	5896**
	Total	14.4713	

*Auditor in the audit report for the year ended March 31, 2010 has mentioned that "The company has issued debenture of Rs.1063000.00 and the no's of debenture holders is 1063 during the year and from the records made available it appears that the necessary formalities have been complied with in this regard."

** As per the Annual Return of the Company filed for the year ended 2012-13

- v. It is also observed from the Balance Sheets that VPIPL has not created any Debenture Redemption Reserve and failure to create Debenture Redemption Reserve is prejudicial to the interests of the debenture holders.
- vi. Form 10 (Particulars for registration of charges for debenture filed by VPIPL with the RoC) revealed that VPIPL has created two charges for amount of Rs.10 Crore each on May 06, 2009 and March 06, 2012. It is also observed that VPIPL has attached a Charitable Trust Deed instead of Debenture Trust Deed with Form 10.
- ...

10. The *interim* order alleged that the Company had issued and allotted NCDs during the Financial Years 2009-10, 2010-11, 2011-12 and 2012-13 and had raised ₹14.47 crore from at least 6,959 (i.e. 1063 + 5869) persons/ investors, without complying the 'public issue' norms stipulated under Sections 56, 60 read with Section 2(36) and 73 of the Companies Act, 1956. The *interim* order had also alleged that the Company, by issuing shares to more than 49 persons, had made a public issue of NCDs in terms of the first proviso to Section 67(3) of the Companies Act, 1956. I note that the Company has not filed any reply to the *interim* order.
11. For ascertaining whether an issue of securities is a 'public issue' or done on 'private placement' basis it is necessary to make a reference to Section 67(3) of the Companies Act, 1956, which reads as under:

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

(2) ...

(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).”

As per 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 conclude whether an issue of shares are made for public or done on a private placement basis. In view of the same, if an offer of securities are made to fifty or more persons, it would be deemed to be a public issue.

12. The Hon'ble Supreme Court of India in the matter of *Sahara India Real Estate Corporation Limited & Others Vs. SEBI and another* (Civil Appeal Nos. 9813 and 9833 of 2011; decided on August 31, 2012) ('the *Sahara case*') had *inter alia* held that –

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

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received 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. ...”

13. It can be seen that the number of persons to whom NCDs were allotted clearly exceeded 49. Therefore, considering the number of persons from whom the monies were mobilised by the Company by issuing NCDs, which is definitely more than 49 persons, it can be concluded that the Company had made a public issue of NCDs in terms of the first *proviso* to Section 67(3) of the Companies Act, 1956.
14. By making a public issue of NCD, as discussed above, 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 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. ...”

15. In view of the above observations, by virtue of Section 55A(a) and (b), the SEBI has jurisdiction and would govern the issue of NCDs as the same was made to more than 49 persons. 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.

16. 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. 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'.

17. The *interim* order has alleged that the Company had failed to comply with Section 73 of the Companies Act, 1956, in respect of its issuance of NCD. By issuing NCD to more than 49 persons, the Company had to compulsorily list such securities in compliance with Section 73(1) of the Companies Act, 1956. 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. There is no material on record to say that the Company has filed an application with a recognised stock exchange to enable the NCD to be dealt with in such exchange. Therefore, the Company has failed to comply with this requirement.

18. Section 73(2) of the Companies Act, 1956 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 such NCDs, the Company had to forthwith repay such money collected from the investors. If such repayments are not made within 8 days after the Company becomes liable to repay, the Company and every director of the Company, become jointly and severally liable to repay with interest at such rate. There is no material on record to say that the Company has complied with such provision. 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.”

19. 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 of the Companies Act, 1956, 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 by the Company.
20. As the 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 has failed to comply with the following provisions of the ILDS Regulations.
- i. Regulation 4(2)(a) – *Application for listing of debt securities*
 - ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
 - iii. Regulation 4(2)(c) – *Credit rating has been obtained*

- iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
- v. Regulation 4(4) – *Appointment of Debenture Trustee*
- vi. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- vii. Regulation 6 – *Filing of draft Offer Document*
- viii. Regulation 7 – *Mode of disclosure of Offer Document*
- ix. Regulation 8 – *Advertisements for Public Issues*
- x. Regulation 9 – *Abridged Prospectus and application forms*
- xi. Regulation 12 – *Minimum subscription*
- xii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiii. Regulation 15 – *Trust Deed*
- xiv. Regulation 16 – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

From the foregoing, it is concluded that the Company has failed to comply with the provisions of Sections 56, 60 (read with Section 2(36), 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.

21. The *interim* order has alleged that the debenture trustee namely Mr. Ashok Kumar Banerjee and Ms. Chandrima Sarkar had acted without registration from SEBI as required under Section 12(1) of the SEBI Act. In this regard, I note that these persons 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."*

From the above, it is seen that Mr. Ashok Kumar Banerjee and Ms. Chandrima Sarkar do not satisfy the eligibility conditions stipulated under Regulation 7 of the DT Regulations. The debenture trustees have not disputed these allegations. Mr. Ashok Kumar Banerjee has not submitted any reply to the *interim* order. Ms. Chandrima Sarkar in her submissions dated April 22, 2015, has merely submitted that she had signed and executed the mortgage deed on March 06, 2012 and on the same date communicated her intention to disassociate with the Company. It has also been submitted by her that the Company had duly accepted the said request vide letter dated March 08, 2012. I have seen the copy of the letter forwarded by Ms. Chandrima Sarkar to the director of Vaibhav asking therein to stop processing the debenture application with RoC and to return of all personal document handed over to the Company. From the said letter and the copy 'deed of mortgage' available on record, it is noted that Ms. Chandrima Sarkar was aware that the 'deed of mortgage' was created on March 06, 2012 and except for writing a letter dated March 06, 2012, she has not taken any further step to prevent the Company from using her name. The same indicates a possible collusion between her, the Company and its management.

Accordingly, the debenture trustees, Mr. Ashok Kumar Banerjee and Ms. Chandrima Sarkar are 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.

22. I note that the Company had mobilized ₹14.47 crore from the public under its offer and issue of NCD and in doing so it has failed to comply with the provisions of the Companies Act, 1956. The details as discussed above are sufficient to substantiate the charges.
23. **Liability of directors:** I note that the *interim* order was issued against the directors of the Company namely Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Binay Kumar Lall and Ms. Indrakala Rai.

- a. The details of the appointment and resignations of the directors of the Company are as under:

Name	Date of Appointment	Date of Cession
Mr. Rajesh Kumar Rai	20/04/2009	-
Mr. Manoj Kumar Rai,	20/04/2009	-
Mr. Binay Kumar Lall	18/06/2013	-
Ms. Indrakala Rai	20/04/2009	18/06/2013

- b. I note that the Company had commenced the offer and issuance of NCD from 2009-2010 and continued with its money mobilization activity till the financial year 2012-13 (as per the annual return of the Company). Section 56 of the Companies Act, 1956 imposes the liability for the compliance, on the company, every director, and persons responsible for the issuance of the prospectus. The liability of the Company to repay under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act, is continuing and the same continues till all the repayments are made to the investors/public. Therefore, the directors who were present during the period when the Company had made the offer and allotted NCD shall be liable for violation of Sections 56, 60 and 73 of the Companies Act, 1956 including the default in making refunds as mandated therein. As the liability to make repayments under Section 73(2) of the Companies Act read with Section 27 of the SEBI Act is continuing, the persons who joined the Company's Board pursuant to the offer and allotment of NCD shall also be liable if the Company and the concerned directors have failed to make refunds, as mandated under the discussed provisions of law.
- c. From the table above, it is noted that the persons namely **Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai and Ms. Indrakala Rai** were the directors of the Company at the time of impugned issues and allotment of NCDs and were responsible for the affairs of the Company at the relevant point of time. Ms. Indrakala Rai has resigned from the Company on June 18, 2013. Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai and Ms. Indrakala Rai have not replied to the *interim* order and attempted to delay the proceedings by not providing proper vakalat/ letter of authority. In view of the same,

it can be concluded that the noticees namely **Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai** and **Ms. Indrakala Rai** are liable, jointly and severally, for making refunds along with interest to the investors as mandated under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act.

d. I note that **Mr. Binay Kumar Lall** was appointed as director of the Company on June 18, 2013 i.e. after the year of allotment. He is also one of the present directors of the Company. It is observed that he has not exercised necessary diligence after becoming the director in the Company. The inaction by him against the management (for violating the public issue norms as stipulated under the Companies Act, 1956 while making the offer and issuing the NCDs), leads one to conclude on a possible collusion with the Company and its management. Further, **Mr. Binay Kumar Lall** has also not taken any steps to remedy the violations committed. Accordingly, I hold **Mr. Binay Kumar Lall** to be responsible for the same.

24. I note that **Vaibhav Pariwar India Projects Limited, Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Binay Kumar Lall and Ms. Indrakala Rai** were required to provide full inventory of the assets and properties and furnish complete and relevant information in respect of the Offer of NCD for compliance with the direction in the *interim* order. However, no details have been submitted by these, till date.

25. In view of the discussion above, appropriate action in accordance with law needs to be initiated against the Company and the directors/ promoters in charge of the affairs of the Company during the relevant period.

26. In view of the foregoing, 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 and 11B thereof hereby issue the following directions:

a. The Company, **Vaibhav Pariwar India Projects Limited [PAN: AACCV9807F], Mr. Rajesh Kumar Rai [PAN: AOJPR4225D], Mr. Manoj Kumar Rai [PAN: AQQPR5328E], Mr. Binay Kumar Lall [PAN: ADGPL3888E]** and Ms.

Indrakala Rai [PAN: AOJPR4226A] jointly and severally, shall forthwith refund the money collected by the Company through the issuance of **Secured Redeemable Non-Convertible Debentures** (*which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956*), to the investors including the money collected from investors, till date, pending allotment of RPS, 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 is 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 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 on 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 report of such completion of repayment 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').
- f. **Vaibhav Pariwar India Projects Limited, Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Binay Kumar Lall and Ms. Indrakala Rai** 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 **Vaibhav Pariwar India Projects Limited, Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Binay Kumar Lall and Ms. Indrakala Rai**, to comply with the aforesaid directions SEBI, on the expiry of the three months period from the date of this order,-

- i.** shall recover such amounts in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws.
- ii.** 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.
- iii.** 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
- iv.** would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.

h. Vaibhav Pariwar India Projects 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 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 four (4) years from the date of completion of refunds to investors, made to the satisfaction of SEBI, as directed above. The Company is restrained from accessing the securities market for the purposes of raising funds with immediate effect.

i. The directors namely **Vaibhav Pariwar India Projects Limited, Mr. Rajesh Kumar Rai, Mr. Manoj Kumar Rai, Mr. Binay Kumar Lall and Ms. Indrakala Rai** are restrained from accessing the securities market and are further prohibited from buying,

selling or otherwise dealing in securities, directly or indirectly, with immediate effect. They are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, with immediate effect. This restraint shall continue to be in force for a further period of four (4) years on completion of the repayments, as directed above.

j. Mr. Ashok Kumar Banerjee and Ms. Chandrima Sarkar [PAN: ARDPS1080N] shall not offer themselves to be engaged as debenture trustees or in any capacity as an intermediary in the securities market, without obtaining a certificate of registration to undertake that assignment as required under law. Further, they are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of four (4) years.

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

- 27.** 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 and other key persons.
- 28.** Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.
- 29.** A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.

DATE : January 22nd, 2016
PLACE : Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA