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SPEED POST WITH ACK DUE**भारतीय प्रतिभूति
और विनिमय बोर्ड****DEPUTY GENERAL MANAGER
NORTHERN REGIONAL OFFICE****Securities and Exchange
Board of India****SEBI/NRO/NRO/NRO/OW/P/2023/ 38890/1-14****September 15, 2023**

Basil International Limited (Noticee no. 1) Address 1: Gupta Enclave, Shop No. 6, Gali No. 6, Vikas Nagar, New Delhi 110059. Address 2: 79 A, P.C.Sarkari, Sarni, (Ekdalia Road), Kolkata- 700019 Address 3: Unit No. 213, 2 nd Floor, Vardhman Times Plaza, Plot No. 13, Road No. 44, Pitampura Delhi-110034	Mr. Susanta Kumar Jana (Noticee no. 2) Address 1: Jalakhnabar J L No.-310 Kanthi, Medinipur-721401 Address 2: Unit No. 213, 2 nd Floor Vardhman Times Plaza, Plot no. 13, Road no. 44, Pitampura, Delhi-110034.	Mr. Jayanta Kumar Basu (Noticee no. 3) 6D, Latafath Hossain Lane, Beliaghata, Block – 4, Fla – D Kolkata, West Bengal- 700085
Mr. Mohammed Afaque Ahmad (Noticee no. 4) Address 1: 43, Jangalpur, Dhanbad – 828109, Jharkhand Address 2: Unit No. 213, 2 nd Floor, Vardhman Times Plaza, Plot No. 13, Road No. 44, Pitampura, Delhi-110034	Mr. Vivek Kumar (Noticee no. 5) South 24 Parganas, West Bengal, India	Mr. Pintu Roy (Noticee no. 6) Taherpur, D Block, Mouja Taherpur Ranaghat, Nadia Ranaghat West Bengal India 741201

SCN in the matter of Basil International Limited**“हम हिन्दी पत्राचार का स्वागत करते हैं।”****उत्तरी प्रादेशिक कार्यालय : प्लेट-बी, आठवीं मंजिल, ऑफिस टॉवर-1, एन बी सी सी कॉम्प्लेक्स, पूर्व किदवई नगर, नई दिल्ली - 110023****Northern Regional Office : Plate-B, 8th Floor, Office Tower-1, NBCC Complex, East Kidwai Nagar, New Delhi-110023 दूरभाष (Phone) : 011 - 69012998****प्रधान कार्यालय : सेबी भवन, प्लॉट सं. सी-4 'अ', जी-ब्लॉक, बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व) मुंबई - 400051 दूरभाष (Phone) : 022 - 26449000****Head Office : SEBI Bhavan, Plot No. C-4A, G-Block, Bandra Kurla Complex, Bandra (E) Mumbai - 400051 Web. : www.sebi.gov.in**



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Mr. Santanu Chakraborty (Noticee no. 7) S/o Subodh Chandra Chakraborty, 46, Mahednra Banerjee Road, Ward -129, Jogoroni Kali Bari, Kolkata, West Bengal – 700060	Mr. Monami Basu (Noticee no. 8) D/o Shri Manindra Kumar Basu, 5B Fern Road, 2 nd Floor Kolkata 700019	Mr. Susanto Chatterjee (Noticee no. 9) S/o Shri Amresh Chatterjee, Guru Nanak Pally, Ismalee, PO: Asansol, Dist. Burdwan, West Bengal - 713301
Mr. Biplab Talukdar (Noticee no. 10) S/o Shri Late Bijan kumar Talukdar, P- 196, Santoshpur avenue, 7 th Road, Kolkata - 700075	Mr. Dinkar Sonaji Karkhele (Noticee no. 11) c/o Unique Safeguards and Faculty Services Private Limited, 201, 612b, E Ward, Opp. Bank of india, Anandi Chambers, 2n Floor, 2 nd Lane, Shahupuri Kolhapur 416001	Mr. Nirmalendu Bhowmik (Noticee no. 12) Address 1: 79 A, P.C.Sarkari, Sarni, (Ekdalia Road), Kolkata- 700019 Address 2: Unit No. 213, 2 nd Floor, Vardhman Times Plaza, Plot No. 13, Road No. 44, Pitampura, Delhi-110034

Sub- Show Cause Notice (SCN) under Section 11(1), 11(4), 11(A) and 11(B) of the Securities and Exchange Board of India Act, 1992 in the matter of M/s Basil International Limited

- 1) The Securities and Exchange Board of India (hereinafter, referred to as "SEBI") had conducted an examination on the alleged act of issuing/allotting of redeemable preference share (akin to public issue) without complying with the applicable provisions of law by the aforesaid entities, hereinafter individually referred to by their respective names/Noticee numbers and collectively referred to as "**the Noticees**" unless the context specifies otherwise. This is in violation of Non-compliance of provisions of Section 67 (1), (2) and (3) of Companies Act, 1956 including Sections 56, 60 r/w section 2 (36), 69, 73 (1), (2), (3), etc. of the Companies Act, 1956 and Regulation 16(1) of the SEBI (Issue And Listing of Non-Convertible Redeemable Preference Shares) Regulations. 2013 (hereinafter referred to as "**SEBI (NCRPS) Regulations, 2013**").

Background of the case

- 2) SEBI had passed an ex-parte interim Order dated May 16, 2013 ("the interim order") against the Company and its promoters and directors for engaging in the business of taking deposits under the garb of redeemable preference shares from rural people.





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promising them returns and was utilizing such proceeds in paying huge commission to its agents, investing in its business assets, fixed deposits and siphoning off the funds as cash. Vide the said order, SEBI had directed them not to collect any money from investors and also restrained the Company from (i) disposing off its properties and assets without prior permission of SEBI and (ii) diverting the funds raised from public at large kept in its bank account and/or kept in its custody. (copy of interim order placed at F/A).

- 3) Thereafter, a final Order no. WTM/PS/70/NRO/FEB/2015 dated February 6, 2015 was passed by SEBI against the Company and its directors u/s 11(1), 11(4), 11A and 11B of SEBI Act, 1992 for illegal mobilisation of funds by way of issuance of Redeemable Cumulative Preference Shares (RCPs) (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956) (copy of final order placed at F/B). The details of the promoters and directors against whom the Order dated February 6, 2015 was passed are listed below and the directions issued with regards to each of them are as under:

Table-1

Directors/Promoter	Nature of directions
1. Basil International Limited 2. Mr. Manindra Kumar Basu 3. Mr. Jayanta Kumar Basu 4. Mr. Susanta Kumar Jana 5. Mr. Mohammed Afaq Ahmed 6. Mr. Nirmalendu Bhowmik	Directions for refund (Refer para 36 (a) of WTM Order dated February 6, 2015)
1. Mr. Satya Narayan Karmakar 2. Mr. Sourindra Nath Mukherjee 3. Mr. Biplab Talukdar 4. Mr. Susanto Chatterjee 5. Ms. Monami Basu 6. Mr. Sadhan Kumar Nandi 7. Ms. Sarmistha Sengupta Saikia 8. Ms. Korobi Sengupta 9. Mr. Kaushik Chattopadhyay 10. Mr. Promothesh Banerjee	Restrained from accessing securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 4 years (Refer para 36 (g) of WTM Order dated February 6, 2015)
1. Manindra Kumar Basu 2. Mr. Jayanta Kumar Basu	Restrained from accessing securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 4 years on completion





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	of the repayments (Refer para 36 (h) of WTM Order dated February 6, 2015)
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- 4) Subsequently, Adjudication proceedings were initiated against the Company and its promoters and directors. The details of the penalty levied vis à vis the Company and its promoters and directors vide AO Order dated May 16, 2019 are below (F/C):

Table-2

Name of Noticee	Violations	Penalty amount
Basil International Limited	For non-compliance of SEBI Interim Order No. WTM/SR/NRO-CIS/05/05/2013 dated May 16, 2013	Rs. 10,00,000/- jointly and severally
Mr. Susanta Kumar Jana		
Mr. Mohammed Afaque Ahmed		
Mr. Nirmalendu Bhowmik		
Basil International Limited	For non-compliance of SEBI Order No. WTM/PS/70/NRO/FEB/2015 dated February 06, 2015	Rs. 1,00,00,000/- jointly and severally
Mr. Susanta Kumar Jana		
Mr. Nirmalendu Bhowmik		

- 5) Further, prosecution proceedings and recovery proceedings were also initiated against the company and the following promoters and directors of BIL. Recovery Proceedings against the company and its promoters and directors were initiated vide recovery notices issued on May 20, 2016. (copy of Notice is placed at F/D)

- Mr. Manindra Kumar Basu (withdrawn on death)
- Mr. Susanta Kumar Jana
- Mr. Mohammed Afaque Ahmed
- Mr. Nirmalendu Bhowmik
- Mr. Satya Narayan Karmakar
- Mr. Biplab Talukdar
- Mr. Susanto Chatterjee
- Ms. Monami Basu
- Mr. Sadhan Kumar Nandi
- Ms. Sarmistha Sengupta Saikia
- Ms. Korobi Sengupta
- Mr. Promothesh Banerjee
- Mr. Sourindra Nath Mukherjee





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xiv. Mr. Kaushik Chattopadhyay

6) With regards to Mr. Sourindra Nath Mukherjee and Mr. Kaushik Chattopadhyay, mentioned at S. No. 4 (xiii) and 4 (xiv) above, recovery proceedings were withdrawn vide order dated 24.08.2017. (copy of release order is placed at F/E)

7) Vide Order dated 06.02.2015, the WTM SEBI inter-alia directed the following:

It is observed that Mr. Shantanu Chakraborty and Mr. Pintu Roy were the previous directors of the company. It may be required to ascertain whether they had any role or were liable in the illegal mobilization of public funds through issue of preference shares/securities by the company. Therefore, SEBI may examine the roles of these former directors and others, if any, in the matter and take appropriate action against them, if warranted". (refer to Para 39 of SEBI Order)

8) In this regard, while examining the role of Mr. Santanu Chakraborty and Mr. Pintu Roy, in terms of para 39 of the aforesaid WTM Order dated February 6, 2015, it was observed from the available records that SEBI was in receipt of a letter/ representation from Shri Saikat Ray Chowdhury, advocate, High Court of Calcutta, on behalf of his client Shri Nitya Gopal Halder in the matter of Basil International Limited. In the said letter, the advocate had stated that during the investigation, SEBI has not taken into consideration the relevant records in the matter relating to the funds raised to the tune of Rs.500 Cr. by issuing Redeemable Preference Shares and Non-Convertible Secured and Unsecured Debentures which was siphoned off to its group companies. In this regard, SEBI requested the Shri Saikat Ray Chowdhury/ Shri Nitya Gopal Halder to submit the documents as available with him with regard to the aforesaid fund raising by Basil International Limited and subsequently siphoning off the same to its group companies.

9) In view of the above, inventory of original certificates and other documents received from Nitya Gopal Halder were examined to ascertain the number of allottees and amount mobilised by the Company. The details so captured are placed at (F/F).

A summary of allotments made by the company is as follows:

Table-3

Financial Year	No. of investors	Amount mobilized (in Rs.) Approx.
2006-07	558	0.67 crore





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2007-08	813	0.97 crore
2008-09	1995	2.3 crore
2009-10	3266	5.2 crore
2010-11	1995	2.7 crore
2011-12	3087	5.1 crore
2012-13	3917	7.4 crore
2013-14	1263	1.95 crore
2014-15	2	26500
2015-16	5	77000
2016-17	5	42000
2017-18	8	166000
2018-19	16	261000
2019-20	3	63000
2020-21	1	10000
2021-22	6	96000
2022-23	1	10000
Blank	19	481000

10) The allotment made by the company up to 31/03/2012 have already been taken into account by SEBI in its order dated 06/02/2015. However, the analysis with regard to the company's allotments made after March 31, 2012, is as under:

- On examination of the company's allotments made after March 31, 2012, it has been observed that during the FY 2012-13, Redeemable Preference Share (RPS) worth of approximately Rs.7.4 crore were allotted to total 3917 unique persons and during the FY 2013-14, RPS worth of approx.Rs.1.95 crore were allotted to total 1263 unique persons. It is therefore concluded that the BIL appears to have issued RPS to public with varying redemption periods and indicative yields.
- However, the above said facts did not reflect in the copies of annual returns for FY 2012-13 and 2013-14 submitted by Mr. Prithi Paul Singh (Former Director of BIL) vide his letter dated June 6, 2019. Hence, it appears that information submitted by BIL to MCA was false and fabricated. Further, in addition, data of original FD receipts as submitted by Nitya Gopal Haldar indicates that BIL was involved in raising deposits from public under various schemes.





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iii. The list of Directors as per MCA 21 filings is as follows:

Table-4

Sl. No	Name	Designation	Appointment w.e.f.	Cessation w.e.f.
1	Biplab Talukdar	Director	01.08.2011	21.03.2013
2	Jayanta Kumar Basu	Director	01.08.2011	NA
3	Kaushik Chattopadhyay	Director	18.04.2011	19.04.2013
4	Mr. Manindra Kumar Basu (Deceased)	Director	31.08.2009	23.09.2013
5	Monami Basu	Director	31.08.2009	11.06.2011
6	Pintu Roy	Addl. Dir	26.10.2012	21.03.2013
7	Santanu Chakraborty	Addl. Dir	20.03.2012	21.03.2013
8	Susanto Chatterjee	Director	07.07.2009	21.03.2013
9	Susanto Kumar Jana	Addl. Director	31.10.2011	NA
10	Md. Afaque Ahmed	Addl. Dir	10.07.2013	27.05.2014
11	Vivek Kumar	Director	15.09.2013	NA
12	Mr. Dinkar Sonaji Karkhele	Director	27.07.2011	21.03.2013
13	Mr. Nirmaledu Bhowmik	Managing Director	10.01.2014	NA

11) Observations:

- a) In terms of first proviso to Section 67(3), inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, 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. Consequently, 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.
- b) In the instant case, neither has the company filed the prospectus with the RoC, nor it or any of its directors responded to the queries sought by SEBI. Therefore, a common letter dated May 30, 2023 (copy at F/G) was sent to the Company (Noticee No.1) and to its directors served during the periods 2012-13 and 2013-14 viz, Noticee No. 2 & 12 asking for information with respect to the allotments made by BIL for the





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aforesaid period. While the letters sent to Noticee No.1, 7 & 8 have returned undelivered, the letters sent to Noticee No. 2, 4, 12, 6, 10 & 5 were duly delivered, however no response has been received from any of them till date. Further, responses received from few of the directors are as follows:

i. **Mr. Kaushik Chattopadhyay:** Vide letter dated 10.06.2023 (F/H), Mr. Kaushik Chattopadhyay stated that his appointment as director in the company was based on forged documents for which he has also filed an FIR (attached with the reply). He also stated that the Hon'ble Securities Appellate Tribunal (SAT) vide an Order dated 18.08.2017, had set aside the order of attachment passed by Recovery Officer. He further stated that as per the directions of WTM Order dated February 6, 2015, the Noticee was restrained for accessing the securities market and prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 4 years.

ii. **Shri. Susanto Chatterjee (Noticee No.9):** In response to the SEBI letter, Noticee No.9 has replied vide his letter dated June 13, 2023 (F/I). In his reply, he has *inter alia* stated the following:

"I was under the employment of BIL and its other associated company. During my period of service, I deposited photocopy of my PAN, Voter Cards with the Company. Subsequently, it came to my knowledge that my name was inducted by the management as a director of the Company. I am not holding any share of the Company. I never consented for appointment as a director of the Company. As an employee, I was compelled to follow the direction of the then management of the Company. Prithi Paul Singh Sethi, Arun Madan were the main key persons of the Company and one Bikash Chandra Roy Chaudhary was the organizer of the Company. Subsequently, one Manindra Kumar Basu, CA joined in the management of the Company. Due to mismanagement in the Company, I left job on January 17, 2013 and tendered my resignation (Form 32 dated March 21, 2013). Mr. Prithi Paul Singh Sethi mischievously prepared DIN DSC in my name and kept the same in his custody and the same as per his choice and dictum. I have not signed in any document of the company after March 21, 2013.

iii. **Jayanta Kumar Basu (Noticee No.3):** Noticee No.3 had replied to SEBI's letter vide his letter dated June 14, 2023 (F/J). In his reply, he has *inter alia* stated the following:





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"I state that I am wrongly shown to be appointed a director of BIL w.e.f. August 1, 2011. I did not sign on the consent form/ letter attached to Form 32 filed by BIL with ROC. My purported signature on the consent form is forged/fabricated. I categorically state that at all material times I am or was no way connected in any manner with the alleged activities of the persons as depicted in your said letter. I also state that I have already filed appropriate civil suit before Ld. District Judge at Alipore South 24- Parganas, west Bengal which is now pending as Title Appeal no. 176/2019 (Jayanta Kumar Basu Vs. ROC and others)."

In view of the above, as the Noticee No.3 and 9 have not submitted any documentary evidence in support of their claim that they were appointed as director without their knowledge, the role played by them in mobilization of money, in the matter, cannot be ruled out.

- c) **With respect to Para 4 above, wherein WTM in its Order has mentioned that role of Noticee No. 6 & 7 in the illegal mobilization of public funds by the company needs to be examined, it is hereby stated that Noticee No.6 and 7 were directors of BIL during the FYs 2012-13 and 2013-14 and their names are mentioned in the list of directors given at Table-3 above and their roles have been examined with respect to allotments made by BIL during the FYs 2012-13 and 2013-14.**

12) Regulatory Requirements and Violations:

a) Section 67 of Companies Act, 1956:

Since the *offer and allotment of RPS* had taken place during prior to April 01, 2014, the provisions of the Companies Act, 1956 were applicable to such offer and allotment of RPS. Section 67 of the Companies Act, 1956, which was applicable at the relevant time, dealt with the conditions or circumstances under which an offer of shares / debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced below:

"Construction of reference to offering shares or debentures to the public, etc.

67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected or not.





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members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

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

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

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

*(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation. **Provided** that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*

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

In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more constituted an offer to the public. In this regard, it is observed that the BIL has issued RPS to 3917 investors during 2012-13 and to 1263 investors during 2013-14, as detailed in the Table -3. Therefore, the number of investors to whom RPS was issued exceeded 49 during FYs 2012-13 and 2013-14. Since, BIL is not a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956, it is not covered under the second proviso to Section 67(3) of the Companies Act, 1956. Therefore, the offer and allotment of RPS by BIL *prima facie* is qualified to be construed as an offer made to the public in terms of Section 67(3) of the Companies Act, 1956.

b) Section 73 of Companies Act, 1956:

Since the issuance of RPS by BIL was a public issue of securities, such securities were required to be listed on a recognized stock exchange, as mandated under relevant provisions of Section 73 of the Companies Act, 1956, which is reproduced as under:

"73. (1) Every company intending to offer shares or debentures to the public





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subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognized stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) ...

(2) *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.*

(3) *All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1 [until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2)];"*

.....

c) **Section 60 read with Sec 2(36) of the Companies Act, 1956**

60. REGISTRATION OF PROSPECTUS

(1) *No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto –*

(a) *any consent to the issue of the prospectus required by section 58 from any person as an expert ; and*

(b) *in the case of a prospectus issued generally, also –*

(i) *a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and*





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(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) Every prospectus to which sub-section (1) applies shall, on the face of it, - (a) state that a copy has been delivered for registration as required by this section ; and (b) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.

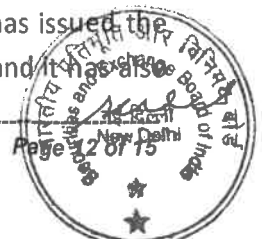
(3) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and subsections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity. (4) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration ; and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.

(5) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to 1 [fifty] thousand rupees. sign the prospectus depending on the circumstances of each case [Circular No. 5(59)-CLVI/65, dated 1st December, 1965].

Section 2(36) of the Companies Act, 1956 reads as "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 per Section 60 of the Companies Act, 1956 read with Section 2 (36) of the Companies Act, 1956, a company needs to register its prospectus with the Registrar of Companies, before making a public offer/issuing the prospectus.

In this matter, since the allotment is made to fifty or more persons, it may be construed as public offer and having made an offer to fifty or more persons, the company should have registered its prospectus with Registrar of Companies under Section 60 of the Companies Act, 1956. However, despite the directions of the Interim order dated May 16, 2013, to not collect any money from the investors, the company has issued the debentures to the public at large under the garb of private placement and it has also





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not filed its prospectus with the RoC. Therefore, by not filing the prospectus, Section 60 read with Section 2(36) of the Companies Act, 1956, has been violated.

d) **Section 56 of the Companies Act, 1956:**

Section 56 (1) of the Companies Act, 1956, requires every prospectus issued by or on behalf of a company, to state the matters specified in Part I and set out the reports specified in Part II of Schedule II. Further, as per section 56 (3) of the Companies Act, 1956, no one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified.

The company has not complied with the said provisions and thus violated the provisions of Section 56(1) and 56 (3) of the Companies Act, 1956.

e) **Section 69 of the Companies Act, 1956:**

69. Prohibition of allotment unless minimum subscription received.

(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount which, in the opinion of the Board of directors, must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of Schedule II has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company, whether in cash or by a cheque or other instrument which has been paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money, and is in this Act referred to as "the minimum subscription".

(3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share.

(4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank- (a) until the certificate to commence business is obtained under section 149, or (b) where such certificate has already been obtained, until the entire amount payable on applications for shares in respect of the minimum subscription has been received by the company, and where such amount has not been received by the company within the time on the expiry of which the moneys received from the applicants for shares are required to be repaid without interest under sub-section (5), all moneys received from applicants for shares shall be returned in accordance with the provisions of that sub-section. In the event of any contravention of the provisions of this sub-section, every promoter, director or other person who is knowingly responsible for such contravention shall be punishable with fine which may extend to 1 [fifty] thousand rupees.





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(5) If the conditions aforesaid have not been complied with on the expiry of one hundred and twenty days after the first issue of the prospectus, all moneys received from applicants for shares shall be forthwith repaid to them without interest ; and if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent per annum from the expiry of the one hundred and thirtieth day : Provided that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition purporting to require or bind any applicant for shares to waive compliance with any requirement of this section shall be void.

(7) This section, except sub-section (3) thereof, shall not apply in relation to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

f) Regulation 16 (1) of SEBI (NCRPS) Regulations, 2013:

An issuer desirous of making an offer of non-convertible redeemable preference shares to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956.

13) In view of the foregoing, the Noticees are hereby called upon to show cause as to why suitable directions under Sections 11(1), 11(4), 11(A) and 11(B) of SEBI Act, 1992 should not be issued against them for the alleged non-compliance with the provisions of Section 67 (1), (2) and (3) of Companies Act, 1956 including Sections 56, 60 r/w Section 2 (36), 69, 73 (1), (2), (3), etc. of the Companies Act, 1956 and Regulation 16(1) of the SEBI (NCRPS) Regulations, 2013, including but not limited to restrain the Noticees from accessing the capital market for a period deemed appropriate.

14) This show cause notice is without prejudice to the rights of SEBI to issue a supplementary notice and to initiate any other proceedings/actions of the aforesaid violations in terms of the SEBI Act and rules or regulations made thereunder.

15) The reply of the Noticee, if any, should reach the undersigned, at the address given below, as well as through email at virsahabs@sebi.gov.in and deepshikhaL@sebi.gov.in (in MS-Word format), within 21 days from the date of receipt of this notice, failing which it shall be construed that the Noticee have no reply to submit and the matter shall be proceeded on the basis of the material available on record.

Securities and Exchange Board of India
Northern Regional Office,
8th floor, Plate B, Tower 1,





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**Securities and Exchange
Board of India**

NBCC Complex
East Kidwai Nagar, New Delhi - 110023.

- 16) If you are desirous of a personal hearing before the Quasi-Judicial Authority, SEBI, the same may be intimated accordingly.
- 17) You are advised to keep SEBI informed about the change in your correspondence address, if any, and provide updated email-id and phone numbers, till the proceedings are complete.
- 18) You are also advised to submit a photocopy of your Income Tax Permanent Account Number card (PAN Card) for our records.
- 19) Documents relied upon in the notice have been annexed as per the list of enclosures.
- 20) You may also note that a settlement mechanism is provided under the SEBI (Settlement Proceedings) Regulations, 2018. If you wish to opt for the settlement process, you may apply for the same in the manner given in the aforesaid regulations under intimation to the undersigned.



Enclosures – Flag A to Flag J (in CD)