

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

Under sections 11 (1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 28 of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, in respect of:

1. Equinox Infratech Limited
2. Mr. Prabir Chakraborty
3. Mr. Prasanta Chakraborty
4. Mr. Sandeep Chatterjee
5. Mr. Rahul Kumar Shahi
6. Mr. Nandalal Balti and
7. Equinox Debenture Trust (represented by its trustee, Mrs. Arpita Chakraborty)

**In the matter of issuance of Non-Convertible Redeemable Secured Debentures by Equinox Infratech Limited**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted a preliminary examination into the issuance of Non-Convertible Redeemable Secured Debentures (hereinafter referred to as “NCRSDs”) by Equinox Infratech Limited (hereinafter referred to as “the company” or “Equinox”) with a view to ascertain the possible violations of the public issue norms stipulated under the Companies Act, 1956 and other applicable laws pertaining to SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as “the ILDS Regulations”) and the SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as “the Debenture Trustees Regulations”).
2. Pursuant to the examination, SEBI passed an *interim* order dated March 30, 2015 (hereinafter referred to as “*interim order*”) against Equinox and its Directors, Mr. Prabir Chakraborty, Mr. Prasanta Chakraborty, Mr. Sandeep Chatterjee, Mr. Rahul Kumar Shahi and Mr. Nandalal Balti and Equinox Debenture Trust (represented by its trustee, Mrs. Arpita Chakraborty) {collectively referred to as “the noticees” and individually by their respective names}, in view of the following reasons:
  - (i) “.....Equinox issued NCRSDs to 1,02,844 allottees and mobilized Rs.12.47 Crores during FY 2013-14. NCRSDs have thus been issued and subscribed several times over the threshold for a private placement i.e. 49 persons..... Based on the facts available in this case, including in particular the number of persons to whom the NCRSDs have been issued by Equinox, the only conclusion can be that this issue was nothing but a public issue of securities in terms of provisions of Section 67(3) of the Companies Act, 1956.”

- (ii) “..Equinox is *prima facie* engaged in fund mobilising activity from the public, through the Offer of NCRSDs and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Section 117B, Section 117C) and the Debt Securities Regulations.”
- (iii) “... Equinox Debenture Trust (represented by its trustee viz. Mrs. Arpita Chakraborty) has *prima facie*, failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.”

3. In view of the alleged contraventions and the reasons stated in the *interim order*, the following directions were issued in the interests of investors and the securities market:

- i. “Equinox shall forthwith cease to mobilize any fresh funds from investors through the Offer of NCRSDs 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. Equinox and its Directors, viz. Mr. Prabir Chakraborty (DIN: 02554575, PAN: AGUPC5743L), Mr. Prasanta Chakraborty (DIN: 02635832, PAN: AFSPC3088H), Mr. Sandeep Chatterjee (DIN: 06638175, PAN: ADQPC6260P), Mr. Rahul Kumar Shahi (DIN: 06581058, PAN: BQEPS6886B) and Mr. Nandalal Balti (DIN: 03281227, PAN: ASEP1952G), 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. Equinox and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
- iv. Equinox shall provide a full inventory of all its assets and properties;
- v. Equinox's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. Equinox and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of NCRSDs, without prior permission from SEBI;
- vii. Equinox and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of NCRSDs, which are kept in bank account(s) and/or in the custody of Equinox;
- viii. Equinox shall furnish complete and relevant information within 21 days from the date of receipt of this Order.
- ix. The Debenture Trustee, viz. Equinox Debenture Trust (represented by its trustee viz. Mrs. Arpita Chakraborty), is prohibited from continuing with his present assignment as a debenture trustee in respect of the

*Offer of NCRSDs of Equinox 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.”*

4. The *interim order* advised the company and the aforesaid directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:
  - i. Directing them jointly and severally to refund money collected through the Offer of NCRSDs along with interest, if any, promised to investors therein;
  - ii. Directing them to not issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
  - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
5. The noticees were advised to file their response within 21 days of receipt of the *interim order* and indicate whether they wish to avail a personal hearing. The *interim order* was sent to the noticees vide SEBI letters dated April 01, 2015. The company vide letters dated May 25, 2015 and June 27, 2015 through Mr. Prasanta Chakraborty (Managing Director) has submitted as follows:
  - (a) The alleged complaints are vague, fabricated and done with ulterior motive to defraud the company.
  - (b) It did not make any public issue of NCRSDs and did not violate the law.
  - (c) The debentures were issued within closed circle of friends, relatives and associates of promoters, directors, employees and associates of the company.
  - (d) The company had decided not to make further issuance of debentures and all redemptions shall be made on date or earlier if possible depending on the liquidity available with it.
  - (e) The company and its directors would comply with the directions issued in the *interim order*.
  - (f) The debenture trustee has already discontinued the present assignment as a debenture trustee in respect of the impugned securities.
  - (g) The company requested SEBI to vacate the restraint order.
6. Mr. Sandeep Chatterjee, director, vide his letters dated May 03, 2015 and May 28, 2015 submitted that the company was incorporated on September 13, 2011 and Board Resolution was passed on December 05, 2011 to issue NCRSDs. The Board already had a Managing Director and vested all authorization and compliance with respect to the NCRSDs on him. He joined the company as Regional Manager on April 16, 2013 and was based in Varanasi. He was later included in the Board as an Independent and Non-Executive Director without any powers with respect to financial matters. His association with the company was purely on professional basis and limited to Branch

Administration, Investor Relation and Business Process functions. He is neither a promoter nor an equity share holder and does not have any pecuniary relationship with the Board/company. He did not attend AGM or EGM of the company. He contended that the contemplated direction to make refunds does not apply to him as the same pertained to 'officers in default'. With respect to the restraint imposed in respect of dealing in securities, he submitted that he made some investments prior to his joining the company and the same were present in his demat account. He therefore contended that his personal investments are not connected to the company.

7. Thereafter, Mr. Sandeep Chatterjee, vide letter dated February 22, 2016, while referring to his previous submissions, *inter alia* submitted the following:
- (a) A director is not responsible for an offence committed before his appointment. *For offences committed prior to appointment of petitioner as managing director, he cannot be held as officer in default u/s 5. [Siva Prasad (C.V.) v Registrar of Companies (1997) 88 Comp Cas 420 (AP)].*
  - (b) Only those officers who are knowingly and intentionally guilty of the offence can be punished. *[Consolidated Pneumatic Tool Co. (I) Ltd. v Addl. Registrar of Companies (1989) 65 Comp Cas 259 (Bom)].* It was held by the Hon'ble Supreme Court in the case of *K.K. Abuja v V.K. Vora [(2009) 152 Comp Cas 520 (SC)]* that the liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not because on the basis of merely holding designation or office in a company.
  - (c) Where the company had accepted excess deposits in contravention of section 58A, the director, who was neither a managing or whole- time director, not even a shareholder nor involved in day-to-day affairs of the company could not be said to be 'an officer in default'. *[Nanjundiah (H.) v Govindan, Registrar of Companies (1986) 59 Comp Cas 356 (Bom)].*
  - (d) The liability of ordinary directors would arise only in respect of a company which has no managing director or whole-time director or manager and where particular directors are not specified by the company to be liable. *[Vijayalakshmi (G.) v SEBI (2000) 100 Comp Cas 726 (AP): (2000) 25 SCJ 183 (AP)].*
  - (e) He has also sent his resignation letter dated June 18, 2015 to RoC, Gwalior vide his letter dated December 28, 2015. He has taken steps towards compliance and protection of investor interest.
  - (f) He has obtained a clarification from RBI which stated that the company is not registered with RBI and that MCA has to be approached.
  - (g) He had sent an email to the Managing Director with respect to 'Delayed Maturity Payment' on March 24, 2015, which was prior to the *interim order*.
  - (h) He came to know of the preliminary enquiry since August 26, 2013 only from the *interim order*.
  - (i) He has exercised all possible diligence with respect to NCRSDs and acted in good faith. He has advised the Board/company to the best of his knowledge and understanding on the issues of

compliance/investor protection, interest/audit etc and demonstrated the skill in accordance with the standard as fixed by the regulator.

- (j) He also submitted that his demat account is under freeze for more than a year. He is facing huge losses to his investments which were built over a long period of time out of his hard earned money. He therefore requested SEBI to discharge him from the proceedings and also from the contemplated direction to refund the money and to instruct the depositories to defreeze his account.
8. The noticees were informed vide SEBI's letter dated September 26, 2016 that an opportunity of personal hearing was afforded to them on October 18, 2016. As the *interim order* could not be delivered on some of the noticees at their last known address, SEBI made a public notice in the newspapers on August 28, 2016 (*in Times of India, Dainik Jagran and Dainik Bhaskar*) intimating the noticees about the *interim order* and the personal hearing fixed on October 18, 2016. The noticees were also advised in the public notice to file their replies before the date of personal hearing.
9. In the personal hearing held on October 18, 2016, Mr. Sandeep Chatterjee appeared in person and made submissions. The other noticees neither appeared nor filed replies despite a public notice. The proceedings of personal hearing was concluded.
10. Thereafter, SEBI received a letter dated October 19, 2016 from one Nripendra Krishna Roy stating that he represents the company/other noticees and that he got indisposed during his journey from Kolkata and therefore could not appear in the personal hearing. He submitted that the noticees were committed in observing the rules/regulations of SEBI in the matter of not only the debentures but also every rupee loaned from the market. According to him, Equinox is the only group that is still surviving the apocalypse because of its credibility, honest dealings and long nurtured confidence. He requested that a date in the month of January 2017 may be fixed so that the company gets sufficient time to comply with the directives and can appear with the Managing Director and others required by SEBI. On consideration of this request, I note that the noticees were clearly indicated in the newspaper notice that the hearing opportunity on October 18, 2016 is the last opportunity to appear and make submissions. They were also advised to file their replies before the date of personal hearing held on October 18, 2016. Despite the opportunities, the company and others noticees (i.e. except Mr. Sandeep Chatterjee) failed to make submissions. In view of the same, the hearing was concluded. Further, I do not see any convincing reason or ground to re-open the matter for grant of more opportunities of personal hearing. Accordingly, the request for a hearing during January 2017 is rejected.

11. I have considered the *interim order*, submissions of the company and Mr. Sandeep Chatterjee and material available on record. As per the *interim order*, the company had allotted NCRSDs during FY 2013-14 to 1,02,844 allottees and mobilized funds amounting to ₹12.47 crores. The *interim order* has also observed that the company passed a Resolution on December 05, 2011 to raise a sum of ₹50 crores by issue of 50,00,000 fully secured debentures non-convertible of ₹100/- (or debenture of any other face/nominal value like ₹1000/- each etc. as agreed by company and Trustee such that aggregate value of all debentures issued should not excess ₹50 crores) to be issued in tranches. The *interim order* has also mentioned the various plans/schemes floated by the company in respect of its offer and issue of the impugned debentures.
12. Considering the number of persons (i.e. 1,02,844 allottees during FY 2013-14) to whom the securities were offered and issued, it can be held that the company made a public issue of RPS in terms of the first *proviso* to section 67(3) of the Companies Act, 1956. In terms of the aforesaid provision, an issue of securities becomes a ‘public issue’ if the offer to subscribe to shares or debentures is made to 50 persons or more. The jurisdiction of SEBI in respect of issuance of securities including NCDs, intention/ obligation of the issuer to list such securities, etc. have been settled by the Hon’ble Supreme Court in its judgment and order dated August 31, 2012 in the matter of *Sahara India Real Estate Corporation Limited & Ors. Vs SEBI & Anr.* - Civil Appeal No. 9813 and 9833 of 2011 [(2013) 1 SCC 1] {hereinafter referred as ‘Sahara case’}. In view of the same, the submission of the company that it allotted debentures in a private placement and the submissions of Mr. Sandeep Chatterjee that he obtained a clarification that MCA has to be approached, have no merit.
13. As the issuance of NCDs by the company was a ‘public issue’, it ought to have complied with the applicable provisions of the Companies Act, 1956 and the ILDS Regulations as alleged in the *interim order*. In the present case, the company failed to comply with sections 60 read with section 2(36), 56(1), 56(3), 73, 117B and 117C of the Companies Act, 1956 and regulations 4(2)(a), (b), (c), (d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 16, 17, 19 and 26 of the ILDS Regulations. Accordingly, I find the company guilty of violating the aforesaid provisions of law and therefore becomes liable for the consequences of such non-compliances.
14. The *interim order* was issued against the directors of the company, namely, Mr. Prabir Chakraborty, Mr. Prasanta Chakraborty, Mr. Sandeep Chatterjee, Mr. Rahul Kumar Shahi and Mr. Nandalal Balti. The details regarding their date of appointment and resignation, if any, is tabulated below:

| Name                     | Date of appointment | Date of resignation    |
|--------------------------|---------------------|------------------------|
| Mr. Prabir Chakraborty   | 12.09.2011          | 13.06.2016             |
| Mr. Prasanta Chakraborty | 12.09.2011          | Continuing as director |

|                        |            |                        |
|------------------------|------------|------------------------|
| Mr. Sandeep Chatterjee | 22.07.2013 | Continuing as director |
| Mr. Rahul Kumar Shahi  | 11.05.2013 | 22.07.2013             |
| Mr. Nandalal Balti     | 12.09.2011 | 11.03.2013             |

15. It has been observed in the *interim order* that as per the Debenture Trust Deed, the Board of Directors of the Company passed a Resolution in the meeting held on December 05, 2011 to raise a sum of Rs.50 crores by issue of debentures to be issued in tranches. Admittedly, the company has issued NCRSDs during FY 2013-14 to 1,02,844 allottees and mobilized Rs.12.47 crores. It can therefore be noticed that Mr. Prabir Chakraborty, Mr. Prasanta Chakraborty and Mr. Nandalal Balti were part of the Board of the company during the relevant period when the decision to issue debentures was made and also when the securities were issued during FY 2013-2014. Mr. Sandeep Chatterjee and Mr. Rahul Kumar Shahi are the directors when the company issued debentures during FY 2013-14.
16. In terms of section 291 of the Companies Act, 1956, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors being responsible for the conduct of the business of a company will be liable for any non-compliance of law and such liability shall be upon the individual directors also. Section 56(1) and 56(3) read with section 56(4) imposes the liability for the non-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 shall also be liable for action in case of contravention of the ILDS Regulations.
17. The liability of the company and directors to repay under section 73(2) of the Companies Act, 1956 would remain until the whole of the subscription amount along with interest is refunded to the allottees/investors. 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, 1956 and the ILDS Regulations. Further, the persons who join the company's Board as directors pursuant to the offer and allotment of securities shall also be liable to make refunds, jointly and severally with others concerned, if the company/concerned directors fail to make refunds as mandated under sections 73(2) of the Companies Act, 1956.
18. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs Registrar of Companies* (2002 108 Comp Cas 1 Mad):
- "13. .... A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.*

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

19. In the background of these observations and case-law, I proceed to consider the submissions of Mr. Sandeep Chatterjee. This noticee has contended that the Board Resolution was passed on December 05, 2011 and that the company already had a Managing Director who was vested with authorization and compliance with respect to NCRSDs. He submitted that he was inducted in the Board as an Independent and Non-Executive Director without any powers. He submitted copy of Form-32 to support his submission that he was appointed on July 22, 2013 as an Independent Director in the company. This noticee has made submissions, citing case-laws, to the effect that a director cannot be made responsible for an offence committed before his appointment and that he cannot be made liable merely for holding designation or office in a company. He has also submitted that liability of ordinary directors would arise only in respect of a company which has no Managing Director or Whole-Time Director and where directors are not specified by the company.
20. Mr. Sandeep Chatterjee has admitted that he was appointed as a director on July 22, 2013. As per MCA records, he is still a director in the company. I note that the company had resolved on December 05, 2011 to issue debentures. Further, the impugned debentures, as per the *interim order*, were issued (during FY 2013-14) when the noticee had assumed office as a director. In the above cited case of *Madhavan Nambiar vs Registrar of Companies*, the Hon'ble Court has observed that in the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. I note that independent directors do not have personal, material and pecuniary connection with the company or related to persons/entities/promoters. They are appointed for their expertise in a given field for constructive role in meetings/policies of a company, report unethical and oppressive activities, if any, noticed in the conduct of the company and also to report violation of law. Therefore, even if it is presumed that the noticee was an 'independent director', he ought to have ensured that the Company carried on its business in full compliance with the applicable law including the Companies Act, 1956. Further, he should have ensured that refunds were made in compliance with Companies Act, 1956 and the ILDS Regulations.
21. Mr. Sandeep Chatterjee has contended that he is not an 'officer in default' in view of the existence of Managing Director in the company. I note that in cases of financial fraud, the role of directors in prevention of the same is of utmost importance. Therefore, they are required to take diligent measures

in preventing the same. They are also required not to be neglectful in the affairs of the company which results in the violation of various laws including the statutory norms prescribed for public issues. In a deemed public issue made in violation of law, money is collected from innocent, ill-informed and gullible public, without the company giving any statutory protection available to those investors under the law such as, full and necessary disclosures about the company, exit opportunity by way of listing of the shares in a recognized stock exchange, etc. The purpose of refund mandated under section 73 of the Companies Act, 1956 is to protect the investors who have parted their money without having any opportunity of exit and without full disclosures about the company which deprives them of their informed consent. If the argument of the noticee that only Managing Director is responsible as 'officer in default', the same will go against the collective responsibility of the Board of Directors imposed under law. Reference to section 291 of the Companies Act, 1956 is again made here. Otherwise, those directors despite their complicity in an act constituting violation of Companies Act, 1956 can go scot free. Companies which intend to defraud the investing public would then not have the names of any of the directors in their resolutions/meetings and documents and would hood-wink the ill-informed and gullible public investors and the regulator. The due process of law cannot be interpreted to result in such a consequence of violators acting without legal accountability. SEBI having the statutory mandate to protect the interests of investors in the securities market is obligated not to create such a dangerous situation. In this respect the following observations made by the Hon'ble Supreme Court in *SEBI vs. Ajay Agarwal* (Order dated February 25, 2010) may be referred to:

*"39. If we look at the legislative intent for enacting the said Act, it transpires that the same was enacted to achieve the twin purposes of promoting orderly and healthy growth of securities market and for protecting the interest of the investors. The requirement of such an enactment was felt in view of substantial growth in the capital market by increasing participation of the investors. In fact such enactment was necessary in order to ensure the confidence of the investors in the capital market by giving them some protection.*

*40. The said Act is pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors.*

*41. It is a well-known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it."*

22. The public interest demands that violators who have knowledge or have consented or have connived in the act or omission which constitutes violation of the provisions of the deemed public issue or who have neglected in preventing the deemed public issue or its continuance be made accountable to the investors by way of refunding the money collected from them.

23. It is further observed that the liability of the directors to refund is derived not only on the basis of section 73(2) of the Companies Act but also by virtue of SEBI's powers under SEBI Act read with regulation 28(a) of the ILDS Regulations without recourse to section 73(2) of the Companies Act. In this context the following paragraph from Hon'ble Supreme court, in the *Sahara's case* may be mentioned:

*"....Sub-section (1) of section 11 of the SEBI Act casts an obligation on the SEBI, to protect the interest of investors in securities, to promote the development of the securities market, and to regulate the securities market, "by such measures as it thinks fit". It is, therefore, apparent that the measures to be adopted by the SEBI in carrying out its obligations are couched in open-ended terms, having no pre-arranged limits. In other words the extent of the nature and the manner of measures which can be adopted by the SEBI for giving effect to the functions assigned to the SEBI, have been left to the discretion and wisdom of the SEBI. It is necessary to record here, that the aforesaid power to adopt "such measures as it thinks fit" to promote investors' interest, to promote the development of the securities market and to regulate the securities market, has not been curtailed or whittled down in any manner by any other provisions under the SEBI Act, as no provision has been given overriding effect over sub-section (1) of section 11 of the SEBI Act. Coupled with the clear vesting of the power with SEBI referred to above, sub-section (2) of section 11 of the SEBI Act illustratively records the measures which can be adopted by the SEBI....*

*"...Furthermore, sub-section (2) of section 11 of the SEBI Act, after making a reference to the measures generally referred to in sub-section (1) empowers/authorizes that SEBI "may provide for" a series of measures, which are delineated in clauses (a) to (m) thereof (of sub-section (2) of section 11 of the SEBI Act). The use of the words "may provide for" besides indicating the discretion vested in the SEBI, demonstrates that, the measures depicted in clauses (a) to (m) are illustrative and not exhaustive, more so, because sub-clause (2) of section 11 of the SEBI Act does not dilute the power vested in the SEBI under sub-section (1) thereof."*

*.. From a collective perusal of sections 11, 11A, 11B and 11C of the SEBI Act, the conclusions drawn by the SAT, that on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a stand alone enactment, and the SEBI's powers thereunder are not fettered by any other law including the Companies Act, is fully justified"*

24. Therefore, even if it is assumed that the offer and issuance of the impugned debentures was made before the appointment of Mr. Sandeep Chatterjee as a director in the company, he would be liable for the continuance of the offence (issuance of debentures made during FY 2013-14 when he assumed office as a director) and also under section 73(2) of the Companies Act, 1956 for default in making refunds to the investors as the company/others responsible have failed to do so. In view of the above discussions, I am of the considered opinion that the contentions made by Mr. Sandeep Chatterjee are without merit.

25. Mr. Sandeep Chatterjee has stated that he has taken diligent steps towards compliance and investor protection. He has referred to his e-mail to the Managing Director (sent prior to the *interim order*) with respect to delayed maturity payment. These steps shall not set right the violations committed by the company and directors of the public issue norms. However, it goes without saying that if the company/other noticees refund the subscription amounts along with applicable interest, then Mr. Sandeep Chatterjee would be automatically discharged of the liability to make refunds to the investors. This noticee has also stated that he had resigned and had sent his resignation letter dated June 18, 2015 to the RoC. However, as stated above, he is still shown as a director of the company in the MCA/RoC records. Mr. Sandeep Chatterjee is at liberty to take necessary steps available under law to inform the concerned authority regarding his resignation.
26. From the foregoing discussions and observations, I hereby find Mr. Prabir Chakraborty, Mr. Prasanta Chakraborty, Mr. Sandeep Chatterjee, Mr. Rahul Kumar Shahi and Mr. Nandalal Balti responsible for the violations committed by the company, as found above in this order, including default in making refunds of the subscription money to the allottees/investors under section 73(2) of the Companies Act, 1956 and the ILDS Regulations. Therefore, the company and the aforesaid persons are liable for the consequences including refund of the subscription money to the allottees/investors of NCRSDs along with interest at 15% p.a. as mandated under section 73(2) of the Companies Act, 1956 read with rule 3(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.
27. It is noted from the 'Signatory Details' available from the MCA-21 portal that Mr. Somnath Das and Mr. Dibakar Bhattacharya joined as directors of the company on August 28, 2015 and August 11, 2015 respectively. In case of failure of the company and above noticees to refund the public funds mobilized through the offer and issue of NCRSDs, as directed in this Order, SEBI shall examine their role and take appropriate action as deemed fit in accordance with law.
28. The *interim order* has alleged that Equinox Debenture Trust (represented by its trustee, Mrs. Arpita Chakraborty) violated section 12(1) of the SEBI Act and regulation 7 of the Debenture Trustees Regulations. The Trustee has not filed any submissions. Though the company has stated that it had discontinued the services of the said debenture trustee, it has not provided any proof for the same. It is an undisputed fact that Equinox Debenture Trust (represented by trustee Mrs. Arpita Chakraborty, wife of Mr. Prasanta Chakraborty) has been engaged by the company in respect of the debentures issued by it. In this regard, charge has been created on December 05, 2011 and relevant Form-10 has been filed with MCA/RoC.

29. Section 12(1) of the SEBI Act, 1992 mandates that a trustee shall buy, sell or deal in securities, except under and in accordance with the conditions of a certificate of registration obtained from SEBI. It is an undisputed fact that Equinox Debenture Trust and Mrs. Arpita Chakraborty were never registered with SEBI as 'debenture trustees'. In terms of regulation 7 of the Debenture Trustee Regulations, a person can act as a debenture trustee only if it is either a scheduled bank or a public financial institution or an insurance company or a body corporate. The aforesaid person is therefore not qualified to be appointed as debenture trustee. Accordingly, I find them guilty of contravening section 12(1) of the SEBI Act, 1992 and regulation 7 of the Debenture Trustees Regulations.
30. In view of the foregoing, I, in exercise of the powers conferred under sections 11(1), 11(4), 11A and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 28 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, hereby issue the following directions:
- (i) Equinox Infratech Limited (CIN: U70101MP2011PLC026741), Mr. Prabir Chakraborty (DIN: 02554575, PAN: AGUPC5743L), Mr. Prasanta Chakraborty (DIN: 02635832, PAN: AFSPC3088H), Mr. Sandeep Chatterjee (DIN: 06638175, PAN:ADQPC6260P), Mr. Rahul Kumar Shahi (DIN: 06581058, PAN: BQEPS6886B) and Mr. Nandalal Balti (DIN:03281227, PAN:ASEPB1952G) shall within a period of three months from the date of this order, jointly and severally refund the money collected through the issue of non-convertible redeemable secured debentures to the allottees/investors with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund.
  - (ii) Such refund shall be made only in cash through a Demand Draft or Pay Order.
  - (iii) Equinox Infratech Limited and its directors shall within fifteen days from the date of this Order submit to SEBI complete details of their assets (along with proofs thereof) certified by a peer reviewed Chartered Accountant.
  - (iv) Equinox Infratech Limited and its directors are permitted to sell assets of the company and deposit the sale proceeds in an Escrow Account opened with a nationalized bank. Such proceeds shall be utilized for the sole purpose of making refund/ repayment to the allottees/investors till the full refund/ repayment as directed above is made.
  - (v) Equinox Infratech Limited and its directors shall issue a public notice, in all editions of one English national daily and one vernacular daily 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.

- (vi) Within seven days of completion of refund/ repayment as directed hereinabove, Equinox Infratech Limited and its directors shall file a certificate of such completion with SEBI from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. Such certificate shall be issued by the Chartered Accountants after verifying the relevant documents including bank accounts of the noticees and satisfying themselves that the refund has actually been made.
- (vii) 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.
- (viii) Equinox Infratech Limited, Mr. Prabir Chakraborty, Mr. Prasanta Chakraborty, Mr. Sandeep Chatterjee, Mr. Rahul Kumar Shahi and Mr. Nandalal Balti are restrained from, directly or indirectly, accessing the capital market by issuing prospectus, any offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in whatsoever manner for a period of four years or till the date of refund of money to the allottees, whichever is later.
- (ix) Mr. Prabir Chakraborty, Mr. Prasanta Chakraborty, Mr. Sandeep Chatterjee, Mr. Rahul Kumar Shahi and Mr. Nandalal Balti are also restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, for a period of four years or till the date of refund of money to the allottees, whichever is later.
- (x) Equinox Debenture Trust and Mrs. Arpita Chakraborty (PAN: AOVPC0295E) are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in whatsoever manner for a period of four years.
- (xi) For the purposes of sub-paragraphs (viii) and (ix) above, the period of restraint shall be counted from the date of the *interim order*.

31. The *interim order* cum show cause notice dated March 30, 2015 is disposed off accordingly. The above directions are without prejudice to the right of SEBI to take any other appropriate action for the violations found in this case or to initiate any action in case of failure to comply with the above directions, in accordance with the provisions of applicable laws including the proceedings under the provisions of section 28A of the SEBI Act.

32. This Order shall come into force with immediate effect. A copy of the Order shall be served on the noticees to ensure compliance with the above directions. A copy of this Order shall also be forwarded to the recognized stock exchanges and depositories for information and necessary action.
33. 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.

**Date : November 1<sup>st</sup>, 2016**  
**Place : Mumbai**

**RAJEEV KUMAR AGARWAL**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**