

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 107 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 in respect of:

- 1) Madurai Rural Development Benefit Fund (India) Limited,
- 2) Madurai Rural Development Transformation India Limited,
- 3) Mr. Mohammed Yusuff Suresh Batcha,
- 4) Mr. Gopalarathinam Ramarathinam,
- 5) Mr. Srinivasan Srikumar,
- 6) Mr. Vasudevan Balaji,
- 7) Mr. Kasiviswanathan Venkataraman,
- 8) Mr. Nagasubramanian Rajalakshmi,
- 9) Mr. Sudhakaran Lataji,
- 10) Ms. Mumtaj Begam Baba,
- 11) Mr. Sithikbasha Mohamed Yusuf and
- 12) Ms. Lilun Nihar Yousuff

In the matter of issuance of equity shares by Madurai Rural Development Benefit Fund (India) Limited and Madurai Rural Development Transformation India Limited

1. Securities and Exchange Board of India (“SEBI”) conducted a preliminary inquiry into the issuances of equity shares by Madurai Rural Development Benefit Fund (India) Limited (hereinafter referred to as “MRDF”) and Madurai Rural Development Transformation India Limited (hereinafter referred to as “MRDT”) with a view to ascertain the possible non-compliances with the public issue norms stipulated under the provisions of the Companies Act, 1956 including sections 56, 60 and 73 thereof, Companies Act, 2013 and other applicable laws including the SEBI Regulations/Guidelines. Pursuant to the inquiry, SEBI passed an *ad interim ex parte* order dated October 27, 2014 (hereinafter referred to as “the *interim order*”) against MRDF, MRDT and their promoters and directors namely, Mr. Mohammed Yusuff Suresh Batcha, Mr. Gopalarathinam Ramarathinam, Mr. Srinivasan Srikumar, Mr. Vasudevan Balaji, Mr. Kasiviswanathan Venkataraman, Mr. Nagasubramanian Rajalakshmi, Mr. Sudhakaran Lataji, Ms. Mumtaj Begam Baba, Mr. Sithikbasha Mohamed Yusuf and Ms. Lilun Nihar Yousuff (hereinafter collectively referred to as “the Noticees” and individually by their respective names) directing the following::

- (i) *The Companies, namely, Madurai Rural Development Benefit Fund (India) Limited and Madurai Rural Development Transformation India Limited are restrained from mobilizing funds through the issue of equity shares, debentures, preference shares or through issuance of any kind of security to the public and/ or invite subscription or deposit, in any manner whatsoever, either directly or indirectly, till further directions.*
- (ii) *The Companies and their respective promoters and directors including Mr. Mohammed Yusuff Suresh Batcha (DIN: 02443876), Mr. Gopalarathinam Ramarathinam (DIN: 06555632), Mr. Srinivasan Srikumar (DIN: 06555637), Mr. Vasudevan Balaji (DIN: 06860167), Mr. Kasiviswanathan Venkataraman (DIN: 06860187), Mr. Nagasubramanian Rajalakshmi (DIN: 06861472), Mr. Sudhakaran Lataji (DIN: 06861823), Ms. Mumtaj Begam Baba (DIN: 02703379), Mr. Sithikbasha Mohamed Yusuf (DIN: 02703420) and Ms. Lilun Nihar Yousuff (DIN: 02712182) 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) *The Companies and their respective promoters and directors including the above named persons shall not dispose off any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.*
- (iv) *The Companies and their respective promoters and directors including the above named persons shall not divert any funds raised from public at large through the allotment of shares, kept in its bank accounts and/ or in the custody of the company without prior permission of SEBI, until further orders.*
- (v) *The above named Companies and their respective directors and promoters including Mr. Mohammed Yusuff Suresh Batcha, Mr. Gopalarathinam Ramarathinam, Mr. Srinivasan Srikumar, Mr. Vasudevan Balaji, Mr. Kasiviswanathan Venkataraman, Mr. Nagasubramanian Rajalakshmi, Mr. Sudhakaran Lataji, Ms. Mumtaj Begam Baba, Mr. Sithikbasha Mohamed Yusuf and Ms. Lilun Nihar Yousuff 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.*
- (vi) *The above named Companies and their respective promoters and directors including the above named persons shall co-operate with SEBI and shall furnish documents, that are in their possession, which may be required by SEBI in the course of its examination. The Companies, its promoters and directors shall provide a full inventory of all their assets and properties;*
- (vii) *The Companies and their respective promoters and directors including the above named persons shall, within 21 days from the date of receipt of this Order, provide SEBI with all relevant and necessary information including details of equity shares or other securities issued by it, as sought vide SEBI letters dated July 14, 2014 and August 08, 2014.*

2. I note that the above directions were issued vide the *interim order, inter alia*, in view of the following observations:

- i. MRDT and MRDF are group companies having common Managing Director, common Directors and common Promoters.
- ii. MRDT had allotted the equity shares in various tranches and mobilized ₹4,99,22,400 from 1,464 investors from April 07, 2013 till September 30, 2013. The relevant details as per the forms filed with the RoC are as under:

Table - 1

S.No. as per list of allottees filed by MRDT with RoC	Date of Board Resolution for Allotment	No. of allottees	No. of equity shares (₹100 each)	Amount (₹)	Remarks
1-48	April 07, 2013	48	16,368	16,36,800	341 Shares per person
49-97	April 14, 2013	49	16,709	16,70,900	„
98-146	April 21, 2013	49	16,709	16,70,900	„
147-195	April 28, 2013	49	16,709	16,70,900	„
196-244	April 30, 2013	49	16,709	16,70,900	„
245-293	*	*	*	*	*
294-341	May 07, 2013	48	16,368	16,36,800	„
342-390	May 14, 2013	49	16,709	16,70,900	„
391-439	May 21, 2013	49	16,709	16,70,900	„
440-488	May 28, 2013	49	16,709	16,70,900	„
489-537	May 31, 2013	49	16,709	16,70,900	„
538-585	June 07, 2013	48	16,368	16,36,800	„
586-633	June 14, 2013	48	16,368	16,36,800	„
634-682	June 21, 2013	49	16,709	16,70,900	„
683-731	June 28, 2013	49	16,709	16,70,900	„
732-780	June 30, 2013	49	16,709	16,70,900	„
781-828	July 07, 2013	48	16,368	16,36,800	„
829-877	July 14, 2013	49	16,709	16,70,900	„
878-926	July 21, 2013	49	16,709	16,70,900	„
927-975	July 28, 2013	49	16,709	16,70,900	„
976-1024	July 31, 2013	49	16,709	16,70,900	„
1025-1073	August 07, 2013	49	16,709	16,70,900	„

1074-1122	August 14, 2013	49	16,709	16,70,900	„
1123-1171	August 21, 2013	49	16,709	16,70,900	„
1172-1220	August 28, 2013	49	16,709	16,70,900	„
1221-1269	August 31, 2013	49	16,709	16,70,900	„
1270-1318	September 07, 2013	49	16,709	16,70,900	„
1319-1367	September 14, 2013	49	16,709	16,70,900	„
1368-1416	September 21, 2013	49	16,709	16,70,900	„
1417-1464	September 28, 2013	48	16,368	16,36,800	„
1-49	September 30, 2013	49	16,709	16,70,900	„
	Total	1,464	4,99,224	4,99,22,400	

* MRDT has filed no return for allotment of equity shares as regards the serial number 245-293 above

- iii. MRDF had allotted equity shares in various tranches and a total of ₹33,12,000 had been mobilized from 1,104 investors from August 05, 2013 to December 30, 2013. The relevant details as per the forms filed with the RoC are as under:

Table - 2

S.No.	Date of Board Resolution for Allotment	No. of allottees	No. of equity shares (of ₹10 each)	Amount in ₹	Remarks
1	August 05, 2013	48	14,400	1,44,000	300 Shares per person
2	August 12, 2013	48	14,400	1,44,000	„
3	August 19, 2013	48	14,400	1,44,000	„
4	August 26, 2013	48	14,400	1,44,000	„
5	August 30, 2013	48	14,400	1,44,000	„
6	September 04, 2013	48	14,400	1,44,000	„
7	September 11, 2013	48	14,400	1,44,000	„
8	September 18, 2013	48	14,400	1,44,000	„
9	September 25, 2013	48	14,400	1,44,000	„
10	October 04, 2013	48	14,400	1,44,000	„
11	October 11, 2013	48	14,400	1,44,000	„
12	October 18, 2013	48	14,400	1,44,000	„
13	October 25, 2013	48	14,400	1,44,000	„
14	October 30, 2013	48	14,400	1,44,000	„
15	November 04, 2013	48	14,400	1,44,000	„
16	November 11, 2013	48	14,400	1,44,000	„

17	November 18, 2013	48	14,400	1,44,000	„
18	November 25, 2013	48	14,400	1,44,000	„
19	December 04, 2013	48	14,400	1,44,000	„
20	December 11, 2013	48	14,400	1,44,000	„
21	December 18, 2013	48	14,400	1,44,000	„
22	December 25, 2013	48	14,400	1,44,000	„
23	December 30, 2013	48	14,400	1,44,000	„
	Total	1104	3,31,200	33,12,000	

- iv. The total money mobilized by the MRDT and MRDF through the issue of equity shares for the relevant months, as noted above, is as follows:

Table - 3

Year	No. of securities	No. of persons to whom issued (approx.)	Total Amount (₹) mobilized
MRDT	4,99,224	1,464	4,99,22,400
MRDF	3,31,200	1,104	33,12,000
Total	8,30,424	2,568	5,32,34,400

3. Vide the *interim* order, the Noticees were also called upon to show cause as to why appropriate action under section 11(1), 11(4), 11A(1)(b) and 11B of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) read with regulation 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations”) including the following actions should not be taken against them:
- directing them jointly and severally to refund the money collected under the above issues to the investors with interest;*
 - directing them to not to 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 a particular period;*
 - directing them and other companies in which their directors and ex-directors hold substantial or controlling interest, to not to access the capital market for a particular period as well as initiating prosecution proceedings under section 621 of the Companies Act, 1956 and Section 24 of SEBI Act, 1992 read with the relevant sections of the Companies Act, 1956.*
4. The Noticees filed their combined replies vide letters dated November 05, 2014 and December 10, 2014, *inter alia*, submitting the following:
- They had collected the investments from various investors and offered to pay them the amount with interest/incentive/profit/dividend, etc. They are continuously

repaying the committed amount to all the investors and not failed to pay any single investor. There are no complaints to any authority regarding default in repayment. They have invested the money collected in lawful business activities only. The investments are not diverted, mis-managed or misappropriated.

- b. They were not aware of the provisions of SEBI Act and extent of compliances required on this issue, till they received the order of SEBI and that non-compliances happened without any intention and quiet inadvertently.
- c. Even though majority of the directors of MRDF and MRDT are common the two companies have to be treated differently as they are covered under different laws.
- d. Though MRDF is not a Mutual Benefit /Nidhi Company which is notified under section 620A of the Companies Act, 1956, it has to be treated at par with recognised Mutual Benefit /Nidhi Company, as it is registered with the objectives of Benefit Fund Company, and is on the path to file application for recognition and fulfils the criteria of Net Owned Fund and number of members. Further, even RBI Master Circulars refer to Potential Nidhi/Benefit Companies.
- e. Since MRDF, for the reasons mentioned above is a “special company” SEBI cannot pass a consolidated order against MRDT and MRDF even though both the companies are having same Managing Director, Promoters and Directors.
- f. They were not running any schemes and have only issued share capital. Since the application form for registration as CIS is withdrawn by MRDT, SEBI cannot rely on the same.
- g. They intended to bring in friends and relatives into their business. The brochures and pamphlets etc. were intended for them and not for “public”. They are no violations in issuing shares to members and then soliciting fixed deposits from them.
- h. Since they were dealing with “false” complaints made with EOW and in media, they could not provide details sought by SEBI.
- i. With respect to the meaningless sentences on the backside of the application form, they stated that it is only for internal purpose not meant to be circulated to public or mislead them. They further stated that the terms and conditions were designed by their Directors, who have no in-depth knowledge in the statutes. Further, their promoters emanated from very rural areas and are novice in understanding regulatory aspects of relevant laws.
- j. The term “Shareholders Bond” is an internal terminology and should not be viewed under the general parlance of public issues. Issuances of sign-up copy cum receipts were the brain child of certain promoters. On review of the Company, the same is found to be an aberration and it is rectifiable.
- k. There are certain conceptual flaws notified in their financial statements due to oversight of Board and they have appointed a committee to look into the matter for revising of accounts and audit reports. Further, lot of amount mentioned in the

freelancer's commission are of capital nature and they will rectify their financial statements sooner of its major flaws, which was prepared with mistaken belief of accounting concepts.

- l. The amount collected as Share capital were utilised in the business of Share trading from which earned handsome income and were able to give back the profit to shareholders on instalment basis.
 - m. They are the closely held companies, for which simplified regulatory regime is applicable. Hence, the offers made by them are private placements and the provisions concerning public issue requirements in Companies Act (including dematerialisation) and ICDR Regulations are not applicable to the closely held companies like them.
 - n. They have filed necessary records before ROC and though there are delays, it falls under the purview of ROC and not SEBI. Violations found are only procedural and are rectifiable by the authorities of MCA and can be never being regarded as non-compliances by SEBI.
 - o. They had requested SEBI to regularize their company's activities and give them opportunity to run the business in accordance with law and thereby they continue to serve the investors.
 - p. They further stated that they prefer to return all the money due to the investors and will start the business only after approval of SEBI, RBI and other authorities.
 - q. Stating the above, they have made payers to SEBI to (i) pass separate order for each company enabling them to file before Appellate Authorities, (ii) omit MRDF from the consolidated order, (iii) to allow MRDT to comply with procedures enshrined in Companies Act, with monitoring mechanisms of SEBI, (iv) to permit them to represent MRDT and MRDF and fix two separate hearings (v) permit the company to run the businesses, (vi) defreeze Bank Accounts and lift all attachments on fixed assets of the company, so that they can run affairs, etc.
5. An opportunity of personal hearing was granted to the Noticees on March 17, 2015 when their common authorized representative appeared and made submissions on their behalf. Subsequent to the hearing, MRDF and MRDT filed separate written submissions vide their respective letters dated March 23, 2015, *inter alia*, submitting the following:

Submissions of MRDT

- a. The company has accepted the fact of allotment of equity shares and stated that in the meantime, certain amount of shares were transferred from the existing shareholders to Promoters in order to strengthen the Promoters holding, by executing regular instruments of transfer. The company is undertaking to repay the entire money standing to the credit of Equity Share Capital (except the promoters share) in consonance with the observations of Madurai bench of Hon'ble High Court of Chennai.

- b. As per the master data collected from the website of MCA, the paid up capital of MRDT is ₹ 5,13,39,400. As on the date of the reply, the promoters' shares are pegged at ₹3,14,15,200 and the rest of the amount is payable to public. MRDT has undertaken to repay the amount (i.e. ₹ 1,99,24,200) to the public once the amount is de-freezed by the Hon'ble Madras High Court, Madurai Bench.
- c. They have further stated that the company and its Directors have committed procedural violations of not observing the provisions of sections relating to issue of shares under SEBI Act, since they are under the factual belief that the shares issued under private placement would not attract SEBI Act and but not had any ulterior motive to cheat public.
- d. The Board of Directors are working out operating methods to rejuvenate the company, by way of proper compliances with SEBI Act. Further, it is stated that the company would not involve in any kinds of practices to mobilize funds through equity shares, debentures, deposits, etc., until they are justified in present proceedings.
- e. Since the company's and Directors properties are attached, there will be no possible transfer/sales envisaged.
- f. A sum of ₹21.50 Crore was frozen by the Economic Offices Wing of Madurai District and monitored by a committee formed by the Hon'ble Bench of Madras High Court for safeguarding the investor's money.
- g. The directors will not be accessing the capital markets till their action is justified and undertaken to co-operate with SEBI on a transparent basis and submit relevant details for examination.
- h. With respect to the allegation that they are issuing receipts of Roots India Realty Private Limited in collection of original documents of MRDT Group of companies, it is stated that group of aggrieved agents of the company formed the said company without their knowledge. The same fact was brought before the Hon'ble Court of Madras by them.
- i. Stating the above, MRDT has mentioned that though the company has violated the procedures, under the impression that shares issued to closer relatives and friends would not attract SEBI Act, 1992, it can be redressed by the way of directing the company to observe the regulations of SEBI, while issuing shares to public within a specified period, as per the directions of SEBI. MRDT also requested SEBI to determine the quantum of repayments to public after dropping the Promoters/Directors holdings and requested to drop the coercive proceedings against the company and its directors.

Submissions of MRDF

- a. The provisions of Section 11 (1), 11(4), 11A (1) (b) and 11B of SEBI Act and Regulation 107 of ICDR Regulations categorically would not be applicable to Nidhi/Mutual benefit Company, since the entire activities of such company are governed by Ministry of Corporate Affairs.

- b. Once a company is registered with Nidhi/Benefit Funds objectives, it should be treated as such from inception and the company's approval is complete in all respects and shall be abided by Ministry of Corporate Affairs and will not come under the jurisdiction of SEBI.
- c. The Nidhi/Mutual benefit companies are formed to enhance saving habits among people, who are not able to transact through banking channels and they are entitled to issue shares to those who are willing to take membership in their companies and can accept deposits. They are considered as para-banking entity and are required to comply with the directions of MCA only.
- d. These companies are required to obtain exclusive recognition under Section 620A of Companies Act, 1956 to be declared as Nidhi/Benefit Fund Companies. There were also clauses recognizing the concept of Potential Nidhi/Benefit Fund Companies. Where the companies did not apply for the said recognition and satisfies the Net Owned Funds and No. of Members criteria, then it should be considered as a potential Nidhi/mutual benefit company and none of the provisions of SEBI Act would prevail upon the companies, while issuing shares to its members.
- e. MCA considers both regulated/potential Nidhi/Benefit Fund Companies at par, subject to fulfilment of the above said criteria. Thus, if a potential Nidhi/mutual fund company has not applied for recognition under Section 620A of the erstwhile Companies Act, 1956, it cannot be termed as a violation of SEBI Act, since the benefit fund objectives of the company would holds its identity, which cannot be treated at par with other Public Limited Companies under SEBI Act.
- f. To boon to such unregistered Nidhi/Benefit Fund Companies, the new Companies Act, 2013 gives a thrust by way of Nidhi Rules, 2014, which have been notified by MCA on March 31, 2014, where it is affirmed by Clause 2 of the said Rules that it is applicable to existing registered Nidhi/Benefit Fund Companies and also for those who have not applied for recognition under Section 620A of Companies Act, 1956.
- g. Thus, whether these companies applied for registration or not, they still hold the status of Nidhi/Benefit Fund Companies and would under full jurisdiction of MCA and SEBI / RBI would not have jurisdiction in respect of issue of capital and collection of FDs by these companies.
- h. Thus the company can issue Equity Share Capital to its prospective members, without observing the provisions of SEBI Act and without limits in term of volumes and membership. Getting into the hands of SEBI, would clash with the original jurisdiction of MCA.
- i. Since, on the date of interim order, Nidhi Rues, 2014 were there, it gives immunity to the company for raising equity shares or deposits and hence they would not fall under the administration of SEBI or RBI, if there is no violation in any respect. The measure of 49 or above will not be applicable to Nidhi Companies.

- j. They are free to issue Share Capital without limit, as per Nidhi Rules and steps taken by SEBI to control by SEBI Act, is an extra-jurisdictional move by SEBI.
 - k. Thus, their company never gave deceptive look to the public to lure their interest towards the company in any manner and whatever done was within the controlling mechanisms of MCA. MCA has found nothing against the company even after submission of details.
 - l. SEBI has sent notices to ten persons, whereas only three directors are in the board of the company as MCA master database and except those directors who are named in the MCA database (i.e. Mr. Mohammed Yusuff Suresh Batcha, Mr. Gopalarathinam Ramarathinam, Mr. Srinivasan Srikumar), others are to be eliminated as they have no connectivity to the companies.
 - m. With respect to the allegation that they are issuing receipts of Roots India Realty Private Limited in collection of original documents of MRDT Group of companies, it is stated that group of aggrieved agents of the company formed the said company without their knowledge. The same fact was brought before the Hon'ble Court of Madras by them.
 - n. Considering the above, MRDF has requested SEBI to exonerate it from the charges in the interim order, as it has not violated the provisions of SEBI Act and is governed by MCA. They have also requested SEBI to drop the coercive proceedings against the Companies and its Directors
6. I have considered the reply, written submissions of the Noticees and other material available on record. As noted above, MRDT and MRDF, vide letters dated November 05, 2014 and December 10, 2014, have filed combined replies and subsequent to the hearing they have filed separate replies. Thus, the combined and separate submissions of MRDT and MRDF are accordingly dealt with in the following paragraphs.
 7. MRDT, has submitted that it is not running any schemes and it only issued equity share capital. It also submitted that since it had a withdrawn its application for registration as a collective investment scheme with SEBI, the same cannot be relied upon by SEBI. In this regard, I note that the *prima facie* violations found in the *interim order* against MRDT pertain to public issue requirements stipulated in the Companies Act, 1956 and the SEBI Act / Regulations. The *interim order* does not refer to any violation of the provisions of law related to collective investment schemes. Further, nothing contained in or submitted along with the application of MRDF seeking registration as a collective investment scheme has been relied upon in the *interim order*. In view of the above, I do not find any merit in the submission of MRDT in this regard and reject the same.
 8. The Noticees have collectively submitted that the amount collected as share capital was utilised in the business of share trading which generated handsome returns and therefore they were able to distribute the profits to their members without any lapses. They also

submitted that they have kept all the promises made to their shareholders / members. In this regard, I note that these facts, even if they are assumed to be true, have no bearing upon the nature of violations found to have been committed by the Noticees in the present case. Admittedly, in the present case, the Noticees have not complied with any of the public issue norms specified under the Companies Act, 1956 and the ICDR Regulations. Moreover, it is also noted that MRDT and MRDF are not registered with SEBI in any manner. Further, the Noticees have also not submitted any evidence to show how they have “utilised the money in share trading” and how much profit have they earned by investing the money collected from the shareholders. In view of the above, I find that the submissions of the Noticees in this regard are without any basis.

9. In the present case, there is no dispute as to the fact that both MRDF and MRDT have issued equity shares to more than 49 persons. However, MRDF has sought to distinguish itself from MRDT by contending that it a potential *Nidhi*/Mutual Benefit Company as its objectives, net worth, etc. are same as that of a *Nidhi* Company which has been given a distinct status under the Companies Act, 1956 by virtue of section 620A thereof. On that basis, MRDF has contended that the provisions of SEBI Act and the Companies Act, 1956 are not applicable to it. MRDF has also submitted that the Companies Act, 2013 and the Nidhi Rules, 2014 notified thereunder recognize potential *Nidhi* Companies (which are not notified as such by the Government) and grant them a special status, as a consequence whereof the provisions applicable to public issues will not apply to issuances of shares by such potential *Nidhi* Companies. In this regard, I note that as per Section 620A of the Companies Act, 1956, “*Nidhi*” or “*Mutual Benefit Society*” means a company, which the Central Government may by notification in the Official Gazette, declare to be a *Nidhi* or *Mutual Benefit Society*. In the present case, it is undisputed that MRDF has not been notified as a *Nidhi* Company or a *Mutual Benefit Society* by the Central Government. Therefore, it is clear that MRDF cannot be considered as a *Nidhi Company* under section 620A of the Companies Act, 1956. Further, it is important to note that section 406 of the Companies Act, 2013 (corresponding provision of section 620A of the Companies Act, 1956) and the Nidhi Rules, 2014 framed thereunder, which came into effect from April 1, 2014, are not applicable to the issuances of equity shares by MRDF under consideration as the same pertain to the period August, 2013 to December 2013. Thus, the issues such as whether MRDF is incorporated with similar objectives as, or fulfils criteria for, *Nidhi* Companies or whether it is a potential *Nidhi* Company or is in the process of making an application for obtaining *Nidhi* status, etc. are not relevant for the purpose of issuances of equity shares in question and do not require any further consideration. In view of the above, I find that MRDF is to be treated at par with other public limited companies, and is not exempt from the public issue norms stipulated under the Companies Act, 1956 including sections 56, 60

and 73 thereof and the SEBI Act and the Regulations made thereunder including the ICDR Regulations. I, therefore, reject the contentions of MRDF in this regard.

10. The Noticees have further contended that SEBI does not have the jurisdiction in respect of the issuance of equity shares by MRDF as it was a potential *Nidhi* Company. Further, the issuance of equity shares by MRDF was to be administered only by the Ministry of Corporate Affairs and not by SEBI. In this regard, I note that the Hon'ble Supreme Court in its judgement and order dated August 31, 2012 *in matter of Sahara India Real Estate Corporations Limited & Ors. Vs SEBI & Anr.* [(2013) 1 SCC 1] (hereinafter referred to as the "*Sahara Order*") has conclusively held that SEBI has the power to administer the provisions referred to in section 55A which relate to issue and transfer of securities and non-payment of dividend by public companies, which have issued securities to fifty persons or more, though not listed on a recognized stock exchange and whether they intend to list their securities or not. The following observations of Hon'ble Supreme Court in this regard are worth noting:

"The main part of Section 55A confers jurisdiction on SEBI with regard to three categories i.e. issue of securities, transfer of securities and non-payment of dividend. The expression "all other matters" mentioned in the explanation would refer to powers other than the above mentioned categories. Further, it may also be remembered that the explanation does not take away the powers conferred on SEBI by other sections of the Companies Act. At the same time, matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares be exercised by the Central Government, Tribunal, Company Law Board, Registrars of Companies, as the case may be. Further, Section 60B(9) clearly indicates that upon closing of the offer of securities, a final 'prospectus' has to be filed in the case of listed company with SEBI and Registrar, hence the explanation to Section 55A can never be constructed or interpreted to mean that SEBI has no power in relation to the prospectus and the issue of securities by an unlisted public company, if the securities are offered to more than forty nine persons."

11. Admittedly, in the present case, MRDF issued equity shares to more than 50 persons. Also, as found above, MRDF was not a *Nidhi* company recognized under section 620A of the Companies Act, 1956 and is not exempt from the applicability of the public issue norms under the Companies Act, 1956, SEBI Act and other applicable laws. Further, as held by the Hon'ble Supreme Court in the *Sahara Order*, SEBI has the jurisdiction over the issuance of equity shares by MRDF since the number of allottees exceeded 49 in number. I therefore, reject the contentions of the Noticees in this regard.
12. The Noticees have also contended that two separate orders should have been passed by SEBI in respect of MRDF and MRDT as MRDF (as a purported "*Nidhi* company") would be under the jurisdiction of Ministry of Corporate Affairs and therefore, the laws applicable

in respect of MRDF and MRDT would be different. As found above, since MRDF is not a notified *Nidhi* Company and does not have the special status conferred under section 620A of the Companies Act, 1956, the provisions of the Companies Act, 1956 and the ICDR Regulations applicable to any public issue made by a public limited company would apply to MRDF. Thus, the issuances of equity shares by both MRDF and MRDT would attract the provisions of Companies Act, 1956, SEBI Act and ICDR Regulations as observed in the *interim order*. Further, the promoters and directors of both MRDF and MRDT are also common. Considering the above, I do not find any infirmity in the consolidated order passed by SEBI in respect of MRDF and MRDT.

13. The Noticees have admitted the fact that MRDT allotted 4,99,224 equity shares to 1,464 allottees during the period April 07, 2013 to September 30, 2013 and MRDF allotted 3,31,200 equity shares to 1,104 allottees during the period August 05, 2013 to December 30, 2013. As per the *interim order*, these allotments were pursuant to offer of equity shares made by MRDT and MRDF to the allottees. The Noticees have disputed the same and have contended that MRDT and MRDF never intended to make a public issue and did not make any offer or invitation to 50 or more persons for subscription of their shares. In this backdrop, the key question for consideration is whether the allotments made by MRDF and MRDT during the aforesaid periods can be construed as public offers.
14. In order to deal with the above question, *prima facie* findings against the Noticees in the *interim order* and their contentions in respect thereof, I deem it necessary to refer to the provisions of section 67 of the Companies Act, 1956 as it applied at the relevant time and provided as under:-

“Construction of references 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-section (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members of 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 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:

....."

15. I note that section 67 of the Companies Act provides for rule of construction for treating an issue of shares or debentures as public issue. From the language of section 67, it is very clear that construction of public issue under sub-sections (1) and (2) thereof is subject to provisions of section 67(3). Section 67(3) exempts an offer or invitation from the purview of the construction laid down in section 67(1) and 67(2), if such offer or invitation can properly be regarded, in all the circumstances:-
 - i. 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
 - ii. otherwise as being a domestic concern of the persons making and receiving the offer or invitation.
16. I note that the first proviso to section 67(3) states 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. Thus, in terms of the first proviso to section 67(3), any offer or invitation to fifty or more persons to subscribe for shares or debentures is a public issue even if a case satisfies the conditions under section 67(3)(a) or (b). In other words, an offer or invitation to 50 or more persons is a public issue even if it is shown that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. In this regard it is also to be kept in mind that the first proviso was inserted in section 67(3) vide the Companies (Amendment) Act, 2000, with effect from December 13, 2000, in order to curb the companies from offering shares and debentures to a wider group of people by disguising it as "domestic concern". In my view, the intention of the Legislature, as envisaged in the said Amendment Act is that any mobilization of funds from a group of investors, fifty or more in number, should be classified as a "public issue".
17. The Noticees have contended that MRDF and MRDT were "closely held public companies" and they had made private placements to the allottees. Further, they intended to bring in only friends and relatives into their business and the brochures and pamphlets, etc. of MRDF and MRDT were intended for them only and not for "public". In this regard, I note that as held by the Hon'ble Supreme Court in *Sahara Order*, by virtue of the first proviso to section 67(3) of the Companies Act, 1956 the issuance of shares to more than 49 persons would become an offer to the public. Further, even the issue which satisfies the requirements of sections 67(3)(a) and (b) would be treated as an issue to the public if it is made to fifty or more persons. It is

pertinent to note that the questions of law with regard to number of allottees exceeding 49 in an issue of securities, interpretation of section 67(3) of the Companies Act, applicability of SEBI's Regulations/Guidelines, jurisdiction of SEBI over such issuances, etc. have been settled by the Hon'ble Supreme Court of India in the *Sahara Order*. The following observations of the Hon'ble Supreme Court made in the *Sahara Order* in this regard are noteworthy

".....Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange."

*".... after the amendment to the Companies Act, 1956 on 13.12.2000, **every private placement made to fifty or more persons becomes an offer intended for the public** and attracts the listing requirements under Section 73(1). Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1), an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that **any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities** on a recognized stock exchange."*

18. Accordingly, even if MRDF and MRDT circulated the brochures and pamphlets to their friends and relatives, the issuances of shares by them would be treated as "public issue" since the number of allottees exceeded 49. I note that Hon'ble Supreme Court in the *Sahara Order* has observed that *"every private placement made to fifty or more persons becomes an offer intended for the public"*. In the present case, MRDF and MRDT circulated application forms for subscription of equity shares without any name and serial number signifying that they were meant for general members of the public. In fact, equity shares were allotted to 48/49 persons over several weeks continuously by MRDT on 31 instances [during the period from April 07, 2013 and September 30, 2013] and MRDF on 23 instances [during the period from August 05, 2013 and December 30, 2013]. The above facts clearly show that it was never the intention of MRDF and MRDT to limit the subscription of its shares to friends and relatives. In view of the above, I reject the contentions of the Noticees in this regard and find that the allotments of equity shares by MRDF and MRDT mentioned in Table 1 and Table 2 above were public issues.
19. I note that since the issuances of equity shares by MRDT, during the period April 07, 2013 to September 30, 2013 and MRDF, during the period August 05, 2013 to December 30, 2013 were public issues, they ought to have complied with the applicable provisions of the Companies Act, 1956 and ICDR Regulations as found in the *interim order*. In the present case,

there is no dispute as to the fact that MRDT and MRDF while making the aforesaid “public issues” had not complied with the provisions of sections 56 (1), 56 (3), 60 and 73 of the Companies Act, 1956, section 29, 33 (1) and 40 of the Companies Act, 2013 and regulations 4, 5, 6, 7, 8, 9, 25, 26, 32, 36, 37, 46, 47, 49, 57, 58, 59 and 63 of the ICDR Regulations. Further, since the requirements of these applicable provisions have been clearly stipulated in the *interim order*, I do not deem it necessary to reiterate the same and burden this order with same findings.

20. I note that as per MCA-21, the board of directors of MRDT and MRDF, as on the time period of allotment of shares by MRDT and MRDF under consideration, constituted Mr. Mohammed Yusuff Suresh Batcha, Mr. Gopalarathinam Ramarathinam, Mr. Srinivasan Srikumar, Mr. Vasudevan Balaji, Mr. Kasiviswanathan Venkataraman, Mr. Nagasubramanian Rajalakshmi, Mr. Sudhakaran Lataji, Ms. Mumtaj Begam Baba, Mr. Sithikbasha Mohamed Yusuf and Ms. Lilun Nihar Yousuff. The board of directors of MRDT and MRDF, at the time of the above mentioned issuances of shares, being in control of the affairs of MRDT and MRDF, was under an obligation to ensure that these issuances were in compliance with all the applicable provisions of the Companies Act, 1956/2013 and SEBI Act/Regulations. In my view, the above named directors of MRDT and MRDF as on the date of the above mentioned issuance of shares are also "*officers in default*" as defined under section 2(60) of the Companies Act, 2013. I, therefore, find that the above named directors of MRDT and MRDF are also responsible for the acts and omissions of MRDT and MRDF in this case. The claim of the Noticees that only three persons were directors of MRDF as on the date of the *interim order* and hence other directors need to be exonerated cannot be accepted, as such other persons were directors of MRDF as on the date of the aforesaid allotments.
21. In view of the foregoing, I find that in respect of the issuances of equity shares by MRDT (for issuances during the period April 07, 2013 to September 30, 2013) and MRDF (for issuances during the period August 05, 2013 to December 30, 2013) violated the provisions of sections 56 (1), 56 (3), 60 and 73 of the Companies Act, 1956, section 29, 33 (1) and 40 of the Companies Act, 2013 and regulations 4, 5, 6, 7, 8, 9, 25, 26, 32, 36, 37, 46, 47, 49, 57, 58, 59 and 63 of the ICDR Regulations.
22. One of the consequence of the aforesaid non-compliance/violations is refund/repayment of subscription money to the allottees with interest as provided in regulation 18 of ICDR Regulations read with section 73 and section 56 of the Companies Act, 1956. With regard to liability to pay interest on the subscription money, I note that as per section 73 (2) of the Companies Act, 1956 the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard I further note that in terms of rule 4D of the Companies (Central

Government's) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%. Accordingly, the Noticees are liable to pay interest to the subscribers at such statutory rate of interest.

23. As mentioned in the *interim order*, MRDT and MRDF have been found rampantly soliciting deposits from the public and are issuing equities to such persons in order to make them “members” before “deposit holders” and soliciting “fixed deposits”/ “recurring deposits” from such members. It is noted that in a separate proceeding, Economic Offences Wing of Tamilnadu Police (EOW), based on the complaints received from various depositors regarding MRDT group of companies (including MRDF), has taken steps to freeze the accounts and land holdings of MRDT group of Companies and its directors under “The Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act – 1997”.

24. It is also important to note that while dealing with the proceedings against the MRDT group of companies, the Hon’ble High Court of Madras (Madurai Bench) has directed as under:

“Learned Additional Solicitor General and the learned Special Government Pleader assure that this matter will be discussed and an appropriate Committee constituted to monitor the process of verification and refund of investors and also to deal with the land in question. Such Committee be constituted within a period of one month from today.”

25. In pursuance of the above direction of Hon’ble High Court, a Committee has been constituted by the Government of Tamil Nadu with representatives from Registrar of Companies, Chennai (ROC), SEBI, District Revenue Officer, Virudhunagar District and In-charge Special District Revenue Officer, TNPID Court, Madurai. A few meetings of the said Committee were held, in which the committee members were apprised by EOW that EOW have frozen all the assets of the MRDT Group of Companies and its Directors including their bank accounts, land holdings, etc. SEBI had also apprised the Committee Members about the proceedings pending before SEBI. It was also proposed that amount concerning equity shareholders against which SEBI’s proceedings are pending may be kept in frozen mode. A report on the course of the action of the Committee was filed before the Hon’ble Court by officials of EOW on March 06, 2015.

26. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11(4) and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 107 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 hereby issue the following directions:

(a) The Noticees i.e. Madurai Rural Development Benefit Fund (India) Limited (CIN: U65999TN2011PLC081265) and Madurai Rural Development Transformation India

Limited (PAN: AAGCM2105D), Mr. Mohammed Yusuff Suresh Batcha (PAN: CKTPS5053C), Mr. Gopalarathinam Ramarathinam (PAN: AYGPR7970J), Mr. Srinivasan Srikumar (PAN: AVDPS7160D), Mr. Vasudevan Balaji (PAN: BVTPB1036Q), Mr. Kasiviswanathan Venkataraman (PAN: ADHPV5773D), Mr. Nagasubramanian Rajalakshmi (PAN: BJGPR0833N), Mr. Sudhakaran Lataji (PAN: DCVPS7375N), Ms. Mumtaj Begam Baba (PAN: AZJPM0974F), Mr. Sithikbasha Mohamed Yusuf (PAN: CIFPS4558G) and Ms. Lilun Nihar Yousuff (PAN: AEWPL8073L) shall, jointly and severally refund ₹ 5,32,34,400 collected pursuant to the allotment of shares (i.e. ₹4,99,22,400 collected by MRDT and ₹33,12,000 collected by MRDF) along with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund in the manner and within the time as directed by the Committee constituted pursuant to the directions of Madurai Bench of Hon'ble High Court of Madras or as per such other directions of the Hon'ble High Court.

- (b) The Noticees shall within a period of one month from the date of this order produce to the satisfaction of the aforesaid Committee, documentary evidence to show that only ₹ 1,99,24,200 are payable to the public and the balance ₹ 2,99,98,200 (i.e. ₹4,99,22,400 - ₹ 1,99,24,200) raised by MRDT from issuance of equity shares to the public have been refunded/repaid by the promoters of MRDT, as claimed by them. In the event, the Committee is satisfied with the documentary evidence so produced by the Noticees, the direction given in paragraph 26(a) above shall not apply in respect of ₹ 2,99,98,200. For the purpose of this direction, the documentary evidence shall be certified by a peer reviewed Chartered Accountant.
- (c) Within seven days of completion of refund as directed hereinabove, the Noticees 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.
- (d) 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.
- (e) The Noticees 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 three years or till the date of refund of money to the allottees whichever is later.

(f) Mr. Mohammed Yusuff Suresh Batcha, Mr. Gopalarathinam Ramarathinam, Mr. Srinivasan Srikumar, Mr. Vasudevan Balaji, Mr. Kasiviswanathan Venkataraman, Mr. Nagasubramanian Rajalakshmi, Mr. Sudhakaran Lataji, Ms. Mumtaj Begam Baba, Mr. Sithikbasha Mohamed Yusuf and Ms. Lilun Nihar Yousuff 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 three years or till the date of refund of money to the allottees whichever is later.

27. 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.

28. The order shall come into force with immediate effect. A copy of the order shall be served upon the Noticees to ensure compliance with the above directions. A copy of this Order shall also be forwarded to the Committee constituted pursuant to the directions of the Hon'ble High Court of Madras for their information and necessary action at their end.

Sd/-

DATE : July 17th, 2015

PLACE: MUMBAI

RAJEEV KUMAR AGARWAL

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA