

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER cum SHOW CAUSE NOTICE

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF R N POLYMER INDUSTRIES LTD.

| Sr. No. | Noticees | PAN | DIN/CIN |
|--------------------------|-------------------------------|------------|-----------------------|
| Company | | | |
| 1. | R. N. Polymer Industries Ltd. | N.A | U25209WB2008PLC124698 |
| Directors | | | |
| 2. | Bandana Basak | AJVPB7908C | 02076728 |
| 3. | Amal Kumar Basak | AJUPB7121N | 02076723 |
| 4. | Chanchal Basak | AITPB6799G | 02076695 |
| Debenture Trustee | | | |
| 5. | Pathik Bandhu Lohar | N.A. | |

The aforesaid entities are hereinafter referred to by their respective names or collectively as “the Noticees”.

1. Securities and Exchange Board of India ("SEBI") was in receipt of complaints in relation to money mobilization by R. N. Polymer Industries Ltd. ("**RNPIL**"). Based on the complaints received, SEBI sought information pertaining to the collection of money by RNPIL. Details of the correspondence and replies with the Noticees are as under:

(TABLE 1)

| Name of Entity/ Director | Designation | Letter Date | Letter Status (Returned/ Delivered) | Reminder Letter sent date (if any) | Letter Status (Returned/ Delivered) |
|---------------------------------|--------------------|--------------------|--|---|---|
| R. N. Polymer Industries Ltd. | Company | 05.01.2016 | Status unknown, however no reply received till date. | - | - |
| Bandana Basak | Director | 05.01.2016 | Status unknown, however no reply received till date. | 21.11.2016 | Delivered, however no reply received till date. |
| Amal Kumar Basak | Director | 05.01.2016 | Status unknown, however no reply received till date. | 21.11.2016 | Delivered, however no reply received till date. |
| Chanchal Basak | Managing Director | 05.01.2016 | Status unknown, however no reply received till date. | 21.11.2016 | Delivered, however no reply received till date. |

2. Details pertaining to RNPIL were sought to be procured from the MCA21 portal. The following relevant information was taken note of :

- (i) Date of Incorporation : 01.04.2008
- (ii) Type of the company : Public & Unlisted
- (iii) CIN: U25209WB2008PLC124698
- (iv) PAN: Not available
- (v) Registered Office Address : School More, Bankadaha, Dist. Bankura, Bankura, West Bengal- 722164, India
- (vi) Correspondence Office: same as above.
- (vii) Date of filing of the last Annual Accounts & Annual Report : **31.03.2012**
- (viii) Return of allotment –

Issue capital(As on 31.03.2012, as per Balance Sheet filed by RNPIL):

(a) Equity Capital: **51,67,900**

(b) Preference Capital : **57,94,900**

(ix) Details of relevant board meeting:

(TABLE 2)

| Date of Board meeting | Date of passing resolution | Amount proposed to raise (Rs.) | Type of issue |
|------------------------------|-----------------------------------|--|---|
| 30.01.2009 | 30.01.2009 | The subject matter of the resolution was to increase authorized capital from Rs.1 crore to Rs.6 crores by addition of 5,00,000 preference shares of Rs.100/- each. | |
| 20.04.2009 | 20.04.2009 | The subject matter of the resolution was to authorize Board of the company to borrow funds upto a limit of Rs.50 crores, including by way of issue of debentures. | |
| 30.09.2010 | 30.09.2010 | Upto an amount of Rs.5 crores | Equity shares/ preference shares / securities convertible into equity / preference shares |

3. A site visit to the registered office address of RNPIL was conducted on May 30, 2016 but the company was not traceable. The fact of the company not having filed annual report on the MCA21 portal and the company not being available at its registered office was brought to the notice of the Registrar of Companies ("RoC") by letter dated August 08, 2016.
4. From a perusal of the records available on MCA21 portal, it was apparent that RNPIL had issued and allotted redeemable preference shares (RPS) and non-convertible debentures (NCD). Details regarding such allotment as available on the said portal are discussed separately in the following paragraphs.

ISSUE OF RPS

5. Allotment details of RPS as per Form 2 on the MCA21 portal are as follows:

(TABLE 3)

| Year | Date of allotment | No. of allottees | Amount (Rs.) |
|--------------|--------------------------|-------------------------|---------------------|
| 2008-2009 | 18.03.2009 | 74 | 4,56,000 |
| 2009-2010 | 20.04.2009 | 303 | 19,08,700 |
| 2009-2010 | 17.08.2009 | 153 | 12,47,800 |
| 2009-2010 | 17.08.2009 | 240 | 5,44,500 |
| 2009-2010 | 21.01.2010 | 118 | 8,09,900 |
| 2009-2010 | 18.03.2010 | 131 | 12,24,000 |
| TOTAL | | 1019 | 61,90,900 |

Therefore, from the above table, it is noted that RNPIL has allotted RPS to 1019 persons amounting to Rs, 61,90,900 during the financial years 2008-09 and 2009-10, each instance of allotment being made to more than 49 persons,. For the purpose of this Order, the aforesaid allotment shall hereinafter be referred to as **“offer and allotment of preference shares”**.

ISSUE OF NCD

6. As per the Annual Returns filed and available on the MCA21 portal, the details of outstanding NCDs issued by RNPIL is given as under:

(TABLE 4)

| Annual Return for the year ended | Amount of debentures issued (Rs.) | Details of debenture holders available as on | Number of debenture holders |
|---|--|---|------------------------------------|
| 31.03.2010 | 4,27,33,600 | 30.09.2010 | 6244 |
| 31.03.2011 | 5,34,27,200 | 30.09.2011 | 7209 |

However, as per the Annual Accounts filed and available on the MCA21 portal, the details of outstanding NCDs issued by RNPIL is given as under:

(TABLE 5)

| Annual Account for the year ended | Amount of debentures issued (Rs.) | Number of debenture holders |
|--|--|------------------------------------|
| 31.03.2009 | Nil | - |
| 31.03.2010 | 2,94,12,900 | Not available |
| 31.03.2011 | 5,33,27,200 | Not available |
| 31.03.2012 | 4,77,15,800 | Not available |

7. From Tables 4 and 5 above, it is noted that there is a discrepancy in respect of data/ information filed by the company with RoC, since as per Form 20B (Annual Returns), the total amount of debentures issued for the year ended 31.03.2010 is Rs.4,27,33,600/-, whereas as per Form 23AC (Annual Accounts), the said amount is Rs.2,94,12,900/-. Such discrepancy was also noted in respect of total amount of debentures issued for the year ended 31.03.2011. The figures quoted in the Annual Return with respect to outstanding debentures, as reproduced in Table 4 are higher than those stated in the Annual Accounts, as reproduced in Table 5. Therefore, the outstanding debentures stated in Table 4 have been used to arrive at an approximate number of persons to whom debentures were allotted in the financial years 2009-10 and 2010-11 and are depicted in the Table below:

(TABLE 6)

| Financial year | Amount of debentures issued (Rs.) | Number of persons to whom debentures have been issued |
|-----------------------|--|--|
| 2009-10 | 4,27,33,600 | 6244 |
| 2010-11 | 1,06,93,600 | 965 |

From the above table, it is noted that RNPIL has allotted NCDs to 6244 persons amounting to Rs, 4,27,33,600 during the financial year 2009-10 and to 965 persons amounting to Rs. 1,06,93,600 in the financial year 2010-11, each instance of allotment therefore being made to more than 49 persons. For the purpose of this Order, the aforesaid allotment shall hereinafter be referred to as **“offer and allotment of debentures ”**.

8. As per Form 10 (regarding charge created for the purpose of issue of debentures) the following details are noted:

8.1 The charge was created initially on April 21, 2009 and amounted to Rs. 5 crore. The charge was created on land at Radhanagar, Bankura District with the following listed details:

(TABLE 7)

| Deed No. | Date | Area | Location | Dag No. |
|----------|------------|-----------------|---------------------------------|----------------|
| 584 | 30.03.2009 | 285 Satak | Mouza Layekbandh, Dist. Bankura | 1845 |
| 585 | 30.03.2009 | 142.5 Satak | Mouza Layekbandh, Dist. Bankura | 1845 |
| 586 | 30.03.2009 | 142.5 Satak | Mouza Layekbandh, Dist. Bankura | 1845 |
| 587 | 30.03.2009 | 2 Acre 85 Satak | Mouza Layekbandh, Dist. Bankura | 1845 |
| 588 | 30.03.2009 | 161 Satak | Mouza Bashkopa, Dist. Bankura | 3/390 3/391 |

The initial charge of Rs.5 crore was increased to Rs.10 crore by RNPIL on December 15, 2009. The additional charge created appears to have been against the same property as that used for initial charge creation.

8.2 RNPIL appointed Pathik Bandhu Lohar to be Trustee to the issue of debentures by the company, first by Debenture Trust Deed dated April 21, 2009 and later by Deed dated December 15, 2009. The trustee's address was recorded as

follows- Bishnupur Forest Office, P.O. Bishnupur, Dist. Bankura, Bishnupur, West Bengal- 722122.

ISSUES FOR DETERMINATION

9. In the context of the details of the offer and allotment of preference shares mentioned in paragraph 5 above and the offer and allotment of debentures mentioned in paragraph 7 above, the issue for determination in the instant matter is whether or not such mobilization of funds by RNPIL is in accordance with the provisions of the Companies Act, 1956 read with the provisions of the SEBI Act, 1992 and regulations issued thereunder.

RELEVANT PROVISIONS OF LAW AND PRIMA FACIE FINDINGS

10. Section 67 of the Companies Act, 1956 deals 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 as under:

"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 as 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)."*

11. For ascertaining whether the *offer and allotment of preference shares and offer and allotment of debentures* by RNPIL would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the Company is important. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. From the MCA21 portal, it is clear that in each of the six instances of allotment of preference shares listed in Table 3, the offer and allotment of RPS had taken place to more than 49 persons. Similarly in the case of NCDs, Table 6 makes it apparent that RNPIL has allotted NCDs to 6244 persons amounting to Rs. 4,27,33,600 during the financial year 2009-10 and to 965 persons amounting to Rs. 1,06,93,600 in the financial year 2010-11. While the specific dates of allotment are not available, it is clear that on each instance of offer and allotment, RNPIL had allotted NCDs to more than 49 persons. Therefore on the basis of complaints received, and available information recorded above, the *offer and allotment of preference shares and offer and allotment of debentures* by RNPIL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

12. From the above, it will follow that such a public issue makes it imperative for RNPIL to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act, 1956 is reproduced as under:

"Allotment of shares and debentures to be dealt in on stock exchange.

73. (1) *Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised 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.*

...." (emphasis supplied)

13. As the offer and allotment of preference shares and offer and allotment of debentures is, *prima facie*, a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement for such shares to be dealt on a recognised stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. I find that RNPIL is *prima facie* in breach of the provisions of Section 73 as well.

14. Further, in connection with the public issue, Section 56 of the Companies Act, 1956 mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that RNPIL has complied with the provisions of Sections 56 and

60 of Companies Act, 1956, in respect of the *offer and allotment of Preference Shares* and *offer and allotment of debentures*. In view of the same, I find that RNPIL is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the subject offer and allotment of preference shares and debentures.

15. I note that four allotments of RPS were made while the SEBI (Disclosure and Investment Protection) Guidelines, 2000 ("**DIP Guidelines**") were in force. In terms of clause 1.4 thereof, the DIP Guidelines *inter alia* applies to all 'public issues' by listed or unlisted companies. 'Public issue' is defined in clause 1.2(xxiii) to mean "*an invitation by a company to public to subscribe to the securities offered through a prospectus*". This definition read with the provisions of the Companies Act, 1956 cited earlier in this Order, makes it clear that DIP Guidelines would apply to a public offer of RPS as well. The applicability of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 which came into force on August 26, 2009 and which repealed the DIP Guidelines is limited to equity shares and convertible securities. Therefore allotments of RPS till August 26, 2009 would be subject to the provisions of DIP Guidelines. For the present matter, the relevant provisions of the DIP Guidelines are listed as under:

- (i) Clause 2.1.1. – (Filing of offer document)
- (ii) Clause 2.1.4 – (Application for listing)
- (iii) Clause 2.1.5 – (Issue of securities in dematerialized form),
- (iv) Clause 2.8 – (Means of finance),
- (v) Clause 4.1 – (Promoters contribution in a public issue by unlisted companies),
- (vi) Clause 4.11 – (Lock-in of minimum specified promoters contribution in public issues),
- (vii) Clause 4.14 – (Lock-In of pre-issue share capital of an unlisted company)
- (viii) Clause 5.3.1 – (Memorandum of understanding),
- (ix) Clause 5.3.3 – (Due Diligence Certificate)
- (x) Clause 5.3.5 – (Undertaking),
- (xi) Clause 5.3.6 – (List Of Promoters Group And Other Details),
- (xii) Clause 5.4 – (Appointment of intermediaries)

- (xiii) Clause 5.6 – (Offer document to be made public)
- (xiv) Clause 5.6A – (Pre-issue Advertisement)
- (xv) Clause 5.7 – (Despatch of issue material)
- (xvi) Clause 5.8 – (No complaints certificate)
- (xvii) Clause 5.9 – (Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres))
- (xviii) Clause 5.10 – (Authorised Collection Agents)
- (xix) Clause 5.12.1 – (Appointment of compliance officer)
- (xx) Clause 5.13 – (Abridged prospectus)
- (xxi) Clause 6.0 – (Contents of offer documents)
- (xxii) Clause 8.3 – (Rule 19(2)(b) of SC(R) Rules, 1957)
- (xxiii) Clause 8.8.1 – (Opening & closing date of subscription of securities)
- (xxiv) Clause 9 – (Guidelines on advertisements by Issuer Company)
- (xxv) Clause 10.1 – (Requirement of credit rating)
- (xxvi) Clause 10.5 – (Redemption)

I find that there is no evidence on record to indicate that RNPIL has complied with the aforesaid provisions of the DIP Guidelines in the context of the offer and allotment of preference shares . I therefore find RNPIL to be in *prima facie* breach of the aforesaid clauses of the DIP Guidelines.

16. Further, public issue of debentures requires compliance with the norms issued by SEBI. The relevant provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("**ILDS Regulations**") are listed as under:

"General Conditions.

4.

...

(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations,

(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:

Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange:

Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange;

Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation;

(b) it has obtained in-principle approval for listing of its debt securities on the recognized stock exchanges where the application for listing has been made;

(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document:

Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

(d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the debt securities that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder.

Disclosures in the offer document

5. *(1) The offer document shall contain all material disclosures which are necessary for the subscribers of the debt securities to take an informed investment decision.*

(2) Without prejudice to the generality of sub-regulation (1), the issuer and the lead merchant banker shall ensure that the offer document contains the following:

(a) the disclosures specified in Schedule II of the Companies Act, 1956;

(b) disclosure specified in Schedule I of these regulations;

(c) additional disclosures as may be specified by the Board.

Explanation: For the purpose of this regulation, “material” means anything which is likely to impact an investors’ investment decision.

Filing of draft offer document

6. *(1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.*

(2) The draft offer document filed with the designated stock exchange shall be made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange.

(3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed.

(4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.

(5) The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.

(6) A copy of draft and final offer document shall also be forwarded to the Board for its records, [along with regulatory fees as specified in Schedule V] simultaneously with filing of these documents with designated stock exchange.

(7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations.

(8) The debenture trustee shall, prior to the opening of the public issue, furnish to the Board a due diligence certificate as per Schedule III of these regulations.

Mode of Disclosure of Offer Document

7. (1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats.

(2) The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue.

(3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

Advertisements for Public issues

8. (1) The issuer shall make a advertisement in an national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV.

(2) No issuer shall issue an advertisement which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive.

(3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.

(4) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document.

(5) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document.

(6) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of debt securities or be used for solicitation.

Abridged Prospectus and application forms

9. (1) The issuer and lead merchant banker shall ensure that:

(a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus;

(b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus;

(c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.

(2) The issuer may provide the facility for subscription of application in electronic mode.

Minimum subscription.

12. (1) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document.

(2) In the event of non receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.

Prohibitions of mis-statements in the offer document.

14. *(1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading.*

(2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement.

Trust Deed

15. *(1) A trust deed for securing the issue of debt securities shall be executed by the issuer in favour of the debenture trustee within three months of the closure of the issue.*

(2) The trust deed shall contain such clauses as may be prescribed under section 117A of the Companies Act, 1956 and those mentioned in Schedule IV of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

(3) The trust deed shall not contain a clause which has the effect of –

(i) limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors;

(ii) limiting or restricting or waiving the provisions of the Act , these regulations and circulars or guidelines issued by the Board;

(iii) indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

Debenture Redemption Reserve

16. *(1) For the redemption of the debt securities issued by a company, the issuer shall create debenture redemption reserve in accordance with the provisions of the Companies Act, 1956 and circulars issued by Central Government in this regard.*

(2) Where the issuer has defaulted in payment of interest on debt securities or redemption thereof or in creation of security as per the terms of the issue of debt securities, any distribution of dividend shall require approval of the debenture trustees.

Creation of security

17. *(1) The proposal to create a charge or security , if any, in respect of secured debt securities shall be disclosed in the offer document along with its implications.*

(2) The issuer shall give an undertaking in the offer document that the assets on which charge is created are free from any encumbrances and if the assets are already charged to secure a debt, the permissions or consent to create second or pari passu charge on the assets of the issuer have been obtained from the earlier creditor.

(3) The issue proceeds shall be kept in an escrow account until the documents for creation of security as stated in the offer document, are executed.

Mandatory listing.

19. (1) An issuer desirous of making an offer of debt securities 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 (1 of 1956).

(2) The issuer shall comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed.

(3) Where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such debt securities.

Obligations of the Issuer , Lead Merchant Banker, etc.

26. (1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no misleading or untrue statements or mis-statement in the offer document.

(2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and Schedule II of the Companies Act, 1956.

(3) The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board.

(4) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.

(5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange.

(6) The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities."

I find that there is no evidence on record to indicate that RNPIL has complied with the aforesaid provisions of the ILDS Regulations in the context of the offer and allotment of debentures. I therefore find RNPIL to be in *prima facie* breach of regulations 4(2) (a)-(d), 4(4), 5(2)(b), 6-9, 12, 14, 15, 16(1), 17, 19 and 26 of the ILDS Regulations.

17. Section 12(1) of the SEBI Act states that: "No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the

regulations made under this Act". Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("**DT Regulations**"), provides that: "*no person should act as a debenture trustee unless he is either –*

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

In the instant case, Form 10 records Pathik Bandhu Lohar to be debenture trustee. The said person is not registered in accordance with the mandate of section 12(1) of the SEBI Act nor is he eligible to seek registration under the DT Regulations. In view of the above, I find Pathik Bandhu Lohar to be *prima facie* in breach of section 12(1) of the SEBI Act, 1992.

18. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 55A of the Companies Act, 1956, confers the jurisdiction on SEBI *inter alia* to administer provisions specified therein, in relation to public issue of securities. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, sub-section (4) of section 11 lists measures that SEBI may take, by an order in writing, either pending or on completion of investigation or inquiry, in the interest of investors in the securities market. Section 11B empowers SEBI to issue such directions as may be appropriate, in the interest of investors in securities and the securities market, *inter alia*, to any company in respect of issue of capital, transfer of securities etc.

19. In terms of Section 73(2), the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). Further, in terms of Section 62 of the Companies Act, every person who *inter alia* is a director of the company at the time of the issue of the prospectus and every person who is a promoter of the company, are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason

of any untrue statement included therein. As per the information available on the MCA Portal, the details of the directors and promoters of RNPIL, including the dates of appointment/cessation as directors, are as under:

| Name of the Directors | Date of Appointment | Date of Cessation |
|------------------------------|----------------------------|--------------------------|
| Bandana Basak | 01.04.2008 | - |
| Amal Kumar Basak | 01.04.2008 | - |
| Chanchal Basak | 01.04.2008 | - |

20. From the above table, it is noted that Bandana Basak, Amal Kumar Basak and Chanchal Basak were the directors of RNPIL at the time of the issue and allotment of preference shares and debentures and are also presently responsible for the affairs of RNPIL.

DIRECTIONS

21. Given that the information provided to SEBI and conveyed to RoC appears incomplete and contradictory in some cases, it can be reasonably inferred that the money mobilization on the part of RNPIL is a continuing affair potentially placing investors at risk. In light of the facts in the instant matter, I find this to be a fit case to pass interim directions against RNPIL and its abovenamed Directors and the Debenture Trustee- Pathik Bandhu Lohar. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-

- i. RNPIL (PAN: N.A.) and the abovenamed directors namely, Bandana Basak (PAN: AJVPB7908C), Amal Kumar Basak (PAN: AJUPB7121N) and Chanchal Basak (PAN: AITPB6799G) and Pathik Bandhu Lohar (PAN: N.A.) shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;

- ii. RNPIL and the abovenamed Directors shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through *the offer and allotment of preference shares* and *offer and allotment of debentures*;
- iii. RNPIL and the abovenamed Directors shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* and *offer and allotment of debentures* sought vide letter dated January 05, 2016 and reminder letter dated November 21, 2016.
- iv. Pathik Bandhu Lohar shall not henceforth act as debenture trustee in respect of debentures of RNPIL and shall not take up any new assignment or involvement in any new issue of securities in a similar capacity.

22. The preliminary findings contained in paragraphs 11 to 17 of this Order are made on the basis of the complaints received and information obtained from RoC. RNPIL and the abovenamed Directors and Pathik Bandhu Lohar (hereinafter collectively referred to as "**Noticees**") are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, namely:-

- i. RNPIL and the abovenamed Directors to jointly and severally refund money collected through the *offer and allotment of preference shares* and *offer and allotment of debentures* with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment), supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI; and
- ii. The Noticees to be refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.

23. The Noticees may, within 21 days from the date of receipt of this interim order -cum- show cause notice, file their respective replies. RNPIL and the abovenamed Directors are directed to furnish an inventory of their assets in their reply. In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. In the event of the respective Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paras 11 to 16 of this Order and directions at para 21 (i) and (ii) above shall become final and absolute against the RNPIL and the abovenamed Directors automatically; and the preliminary findings at para 17 of this Order and directions at para 21(iv) shall become final and absolute against Pathik Bandhu Lohar automatically, without any further orders. Upon the expiry of a period of 90 days from the date of this Order being deemed final against the respective Noticees, SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution in addition to making a suitable reference to State Government / Local Police.
24. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
25. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

Place: Mumbai

Date: June 19, 2017

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA