

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

**UNDER SECTIONS 11(1), 11(4), 11A AND 11B OF THE SECURITIES AND
EXCHANGE BOARD OF INDIA ACT, 1992**

In respect of:

Noticee No.	Name of the Noticee(s)	PAN/DIN
1	Shri. Diptendu Banerjee	PAN 1- AHGPB0654G PAN 2- AIYPB5950G PAN 3- ALTPB3581F DIN - 02299170
2	Shri. Rahul Banerjee	PAN – AIKPB8188N DIN - 02315957

(The aforesaid entities are hereinafter collectively referred to as the "Noticees" and individually by their respective name or the Noticee No. in the Order.)

In the matter of M/s Rahul Hi-Rise Limited

A. BACKGROUND:

1. Securities and Exchange Board of India ("**SEBI**") had passed an ex-parte interim order cum show cause notice dated October 01, 2015 ("**Interim Order**") in respect of issuance of Secured Redeemable Debentures ("**NCDs**") by company, M/s Rahul Hi-Rise Limited ("**RHRL**"/"**the Company**"). The aforesaid interim order *inter alia* observed as under:

- 1.1 The Company/RHRL was incorporated on August 13, 2004, with the ROC, Kolkata with CIN as U51909WB2004PLC099458. Its Registered Office is at 30H/1, B. B. Sengupta Sarani, Kolkata--700034, West Bengal, India.
- 1.2 During the Financial Years 2009-10 and 2010-11, RHRL issued NCDs in accordance with the following terms and conditions contained in the brochure:

SCHEME: SECURED REDEEMABLE DEBENTURES						
Series	A	B	C	D	E	F
Issue Price 10 Debtentures	1000	1000	1000	1000	1000	1000
Maturity Value	1600	2200	3500	6500	11000	15000
Redemption Period	3 Years	5 Years	7 Years	10 Years	13 Years	15 Years

- i. "Who can invest: Individual, Trusts, Corporate Bodies, Mutual Funds, Partnership Firms. HUF, etc.
- ii. The offer is being made on a private placement basis and cannot be accepted by any person other than to whom it has been offered, this offer cannot be transferred or rendered in anyone's favour."

1.3 The details of NCDs issued during the Financial Years 2009-10 and 2010-11, are as under:

Type of Security	Year	No. of persons to whom NCDs were allotted	Total Amount (₹ in Crores)
Secured Redeemable Debtentures	2009-10	50	14.44
	2010-11	50	15.00
Total		*100	^29.44
*^No. of allottees and amount raised have been collated from the documents obtained from MCA21 Portal and also those submitted with the complaints received by SEBI. However, actual no. of allottees and amount mobilized could be much more than the above indicated figures.			

1.4 It was *inter alia* observed that during the Financial Years 2009- 2010 and 2010-2011, the Company engaged in fund mobilizing activity from the public and allotted NCDs to individuals/investors and mobilized at least an amount of Rs.29.44 Crores. The number of investors to whom allotments were made under the Offer of NCDs during the aforesaid Financial Years were above the limit of the prescribed persons stipulated under the Companies Act, 1956. Thus, RHRL is prima facie engaged in fund mobilizing activity from the public, through the Offer of NCDs and as a result of the aforesaid activity has violated Section 56, 60 read with Section 2(36), 73, 117B and 117C of the Companies Act, 1956.

2. SEBI vide the aforesaid interim order issued directions as mentioned therein, and provided an opportunity to the company RHRL, its Directors Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose and the Debenture Trustees Shri

Dinendra Nath Bandopadhyay and Well Being Trust, to file their submissions, if any, to the said order.

3. Pursuant thereto, SEBI vide Final Order dated November 27, 2017 (“**Final Order**”) confirmed the observations made in the interim order and issued the following directions against the RHRL, the Directors and the Debenture Trustees:

- a) *“RHRL, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.*
- b) *The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.*
- c) *RHRL, Shri Abhijit Majumdar, Shri Dipankar Gupta and Shri Mrinmoy Bose are directed to provide a full inventory of all the assets and properties and details of all the bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.*
- d) *RHRL, Shri Abhijit Majumdar, Shri Mrinmoy Bose and Shri Dipankar Gupta are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the 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 investors till the full refund/repayment as directed above is made.*
- e) *Shri Abhijit Majumdar, Shri Mrinmoy Bose and Shri Dipankar Gupta are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the 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 investors till the full refund/repayment as directed above is made.*

- f) *RHRL and, Shri Abhijit Majumdar, Shri Mrinmoy Bose, Shri Dipankar Gupta in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.*
- g) *After completing the aforesaid repayments, RHRL, and Shri Abhijit Majumdar and Shri Mrinmoy Bose and Shri Dipankar Gupta in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI").*
- h) *In case of failure of RHRL, Shri Abhijit Majumdar, Shri Mrinmoy Bose and Shri Dipankar Gupta to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may recover such amounts, from the company and the directors liable to refund as specified in paragraph 50(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.*
- i) *RHRL, Shri Abhijit Majumdar, Shri Mrinmoy Bose and Shri Dipankar Gupta are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.*
- j) *Shri Dinendra Nath Bandopadhyay and Well Being Trust and Shri Chapal Biswas are restrained from accessing the securities market and are further restrained from*

buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.

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

4. Subsequent to Final Order, it was observed by SEBI that persons namely, Shri Diptendu Banerjee and Shri Rahul Banerjee, Noticee No.1 and 2 herein, were also directors at the time of issuance of the impugned NCDs by RHRL during Financial Years 2009- 2010 and 2010-2011. Since, Noticee No. 1 and 2 were not a part of the Interim and Final Order, the role of Noticee no.1 and 2 were examined.

5. In light thereof, an examination was conducted to look into the violation of Section 56(1) , 56(3), 60 read with 2(36), 67 (3), 73(1), 73(2), 73(3), 117B and 117C of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013 and Regulation 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 16(1), 17, 19 and 26 of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2008 (“**ILDS 2008 Regulations**”) read with Regulation 59 of Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 by Noticee No.1 and 2, being directors and persons in charge of and responsible for the affairs of RHRL.

B. SHOW CAUSE NOTICE:

6. Upon completion of examination, a Show Cause Notice (“**SCN**”) dated March 4, 2024 was issued to Noticee No. 1 and 2. The *prima facie* observations made in the SCN is categorized as under:

Director details from Registrar of Companies (“**RoC**”) – Kolkata:

6.1 As per the director details sought from the RoC– Kolkata, Noticee No.1 and 2 were observed to be directors of RHRL during the following time period:

SI.	DIN/PAN	Noticee name	Original date of appointment	Date of cessation
1.	02299170	Diptendu Banerjee (Noticee No. 1)	12.12.2008	27.01.2012
2.	02315957	Rahul Banerjee (Noticee No. 2)	15.07.2005	15.01.2013

Records of filings made with Ministry of Corporate Affairs (“MCA”) :

6.2 As per the records from the filings made by the company RHRL on the MCA website, the Noticee No.1 and 2 signed the following documents, namely:

Sl.	Name of the document	Signed by	Description
1.	Extract of Board meeting resolution held on 01/03/2010 for issuance of debentures amounting Rs. 15 Crores	Rahul Banerjee (Noticee No. 2)	Shri Diptendu Banerjee (Noticee No. 1) and Shri Dipankar Gupta were authorized in the above board resolution to execute Debenture Trust Deed on behalf of the company
2.	Mortgage Deed dated 05/03/2010	Diptendu Banerjee (Noticee No. 1) and Chopal Biswas on behalf of Well Being Trust	Mortgage Deed for securing the issue of debentures to be made between RHRL and Well Being Trust
3.	Director’s Report dated 16/08/2010 for FY ended 2009-10	Rahul Banerjee (Noticee No. 2)	The report also mentions that RHRL entered into related party transactions with Diptendu Banerjee (Noticee No. 1), Rahul Banerjee (Noticee No. 2) and Dipankar Gupta
4.	Directors’ Responsibility Statement dated 16/08/2010	Rahul Banerjee (Noticee No. 2)	-
5.	Directors’ Responsibility Statement dated 18/08/2011 for FY ended 31/03/2011	Diptendu Banerjee (Noticee No. 1)	-
6.	Director’s Report for FY ended 31/03/2011	Diptendu Banerjee (Noticee No. 1)	-
7.	Form 23 ACA for FY ending 31/03/2011	Rahul Banerjee (Noticee No. 2)	Form for filing Profit and Loss account and other related documents
8.	Form 23AC for FY ending 31/03/2011	Rahul Banerjee (Noticee No. 2)	Form for filing Balance Sheet and other related documents. The said form also mentions the name of Shri Diptendu Banerjee (Noticee No. 1) and Shri Dipankar Gupta as directors.

Sl.	Name of the document	Signed by	Description
9.	Annual Return FY 2010-11	Diptendu Banerjee (Noticee No. 1) and Dipankar Gupta	-
10.	Request for new PAN Card / Updation in PAN card of RHRL	Diptendu Banerjee (Noticee No. 1)	-
11.	Post-Dated Cheque of RHRL drawn in favour of an investors – Papiya Kar, Nagar Sarkar	Diptendu Banerjee (Noticee No. 1)	The cheque bears account no. 910020005054154
12.	Balance Sheet (as on 31/03/2010)	Diptendu Banerjee (Noticee No. 1), Schedules to balance sheet signed by Rahul Banerjee (Noticee No. 2)	-
13.	Profit and Loss statement for FY ending 31/03/2010	Diptendu Banerjee (Noticee No. 1)	-
14.	Form 20B for FY ending 31/03/2011	Abhijit Majumdar. Attachments to the form signed by Diptendu Banerjee (Noticee No. 1) and Dipankar Gupta	Dt of AGM 30/09/2011 Form mentions Diptendu Banerjee (Noticee No. 1) and Rahul Banerjee (Noticee No. 2) as directors
15.	Balance Sheet as on 31/03/2011	Diptendu Banerjee (Noticee No. 1)	-
16.	Profit & Loss statement for FY ended 31/03/2011	Diptendu Banerjee (Noticee No. 1), Schedules and notes to the accounts signed by Diptendu Banerjee	-
17.	Form 10 (Particulars for registration of charge on debentures)	Rahul Banerjee (Noticee No. 2)	Date of charge creation 10/03/2009 Amount of debentures – 15 Crores
18.	Form 10 (Particulars for registration of charge on debentures)	Signed by Diptendu Banerjee (Noticee No. 1) and Chapal Biswas	Amount mentioned 30 Crores. Date of charge creation – 15/03/2010
19.	Mortgage Deed dated 05/01/2010	Diptendu Banerjee (Noticee No. 1) and Chapal Biswas	Dt. 05/01/2010

6.3 In Form 32 (Particulars of appointment of managing director, directors, manager and secretary and the changes amongst them or consent of candidate to act as managing director/ director) filed by RHRL, Noticee No. 1 (Diptendu Banerjee) is mentioned as the director and the appointment of Noticee No.1 is signed by Noticee No. 2 (Rahul Banerjee).

Report of Serious Fraud Investigation Office:

6.4 During the investigation by SEBI and as noted in the Final Order, the Funds collected by RHRL as per the balance sheet filed with the RoC was observed as under:

SI	Period	Funds collected as per the balance sheet (Rs. in crores)
1	2008-09	0
2	2009-10	14.44
3	2010-11	15.00
	Total	29.44

6.5 Subsequent to the passing of the Final Order confirming the observations made therein in the interim order, SEBI was in receipt of investigation report of Rahul Group of Companies from Serious Fraud Investigation Office (“**SFIO**”), New Delhi, vide letter dated 28.03.2022. In the report, SFIO has made a reference to SEBI for information and necessary action in view of the fact that Rahul Group of Companies had mobilized funds to the tune of Rs.700.65 crores under various schemes. The investigation was assigned to SFIO on the basis of recommendations made by the ROC – West Bengal. The following issues were highlighted in the ROC report:

- (i) falsification of accounts;
- (ii) diversification of funds along with the adverse state of affairs of the company
- (iii) improper & incredible management
- (iv) cheating by the companies under investigation (CUI) (Rahul Group – 16 companies including RHRL) by way of raising huge sums of money from the public at large through various schemes without following the due procedures under law
- (v) the Rahul Group of companies furnished incomplete, misleading and false information in the statutory returns submitted to the ROC.

6.6 On analysis of the technical data, bank transaction data and the financial statements/statutory forms filed by the Companies under investigation (CUI) with concerned ROCs, following facts emerged:

- (i) Non-Accounting/ non-disclosure of money collected under various schemes, commission paid / payable and interest accrued / paid on such mobilization of public funds during the financial years 2008-09 to 2014-15.
- (ii) Procedural formalities in respect of the purported financial instruments through which the companies had claimed to have raised funds from public were not completed.
- (iii) Statutory auditors failed to raise any alarm about the apparent inconsistencies.

6.7 As per the SFIO Report received by SEBI in the matter of investigation of Rahul Group of Companies, the funds mobilized by RHRL under NCDs, as per SFIO's analysis, was observed as under:

Sl.	Financial Year	Funds mobilized under Secured Redeemable Debentures scheme (Rs.)
1	2008-09	3,32,95,700
2	2009-10	21,73,97,600
3	2010-11	32,39,94,000
	Total	57,46,87,300

6.8 SCN thus observed that the funds mobilized by RHRL was more than the what was shown in the financial statements as submitted by RHRL to the RoC. Further, the number of investors were more than the number of debenture holders shown in the financial statements submitted by RHRL with the RoC.

6.9 The SFIO Report further observed that Form 10 for debentures issued by RHRL in FY 2009-10 was signed by Rahul Banerjee (Noticee No. 2) on April 17, 2009. The total amount of debentures to be issued was Rs.15 Crore. Board resolution was passed on February 20, 2009 authorizing the issuance of debenture of Rs.15 crores. Charge was created on March 10, 2009. Further, Form 10 for issuance of debentures in FY 2010-11 was signed by Diptendu Banerjee (Noticee No.1). Board resolution was passed on February 20, 2010 authorizing

issuance of debentures of Rs.15 crores. Following documents were signed by the Noticees, as per table from the SFIO report:

Sl. No.	Financial Year	Name of director who has signed balance sheet	Name of director who has signed Form 10 (Particulars for registration of charges for Debenture)
1.	2008-09	Shri Diptendu Banerjee (Noticee No. 1)	Shri Rahul Banerjee (Noticee No. 2)
2.	2009-10	Shri Rahul Banerjee (Noticee No. 2)	Shri Diptendu Banerjee (Noticee No. 1)
3.	2010-11	Shri Diptendu Banerjee (Noticee No. 1) Shri Dipankar Gupta*	---
4.	2011-12	Shri Abhijit Majumdar*, Shri Mrinmoy Bose*	---
5.	2012-13	Shri Mrinmoy Bose* Shri Dipankar Gupta*	----

* Order passed against the entities on November 27, 2017.

6.10 The following observations were made therein in the SFIO Report particularly with respect to Shri Diptendu Banerjee (Noticee No. 1) and Shri Rahul Banerjee (Noticee No. 2):

- (i) *“The affairs of the group were run only on the instructions of Shri Diptendu Banerjee*
- (ii) *The statutory returns were either signed by Shri Diptendu Banerjee, Shri Rahul Banerjee or by other directors under their instructions.*
- (iii) *Shri Diptendu Banerjee is the authorized signatory in most of the bank accounts of the Rahul Group of Companies.*
- (iv) *Accordingly, it has emerged that Shri Diptendu Banerjee and Shri Rahul Banerjee jointly own and control the entire group companies.”*

6.11 The SFIO’s examination further revealed that Shri Diptendu Banerjee (Noticee No. 1) was holding two PANs i) AHGPB0654G and ii) AIYPB5950G. The debenture trustee viz. Shri Dinendra Nath Bandopadhyay of RHRL is none other than Shri Diptendu Banerjee (Noticee No. 1), who submitted fake KYC documents to obtain PAN which was used to open a bank account in the name of Dinendra Nath Bandopadhyay. The third PAN is ALTPB3581F.

Deposition of Shri Diptendu Banerjee (Noticee No. 1):

6.12 During the course of examination by SFIO, statements of Shri Diptendu Banerjee (Noticee No. 1) was recorded on oath under Section 217 of the Companies Act, 2013. SFIO has observed that in his statements Shri Diptendu Banerjee (Noticee No. 1) has *inter alia* stated that:

- i. He took over the management control of RHRL sometime during 2008-09 to start real estate business. He further stated that debentures were issued to generate money for investing in real estate business.*
- ii. He was a director in RHRL from 2008 to 2010. The core business of RHRL was real estate business. The company raised money, to the tune of 30 crores, through private placement of secured redeemable debentures, the secured debentures were marketed through agents.*
- iii. In case of debentures, the agents were deducting 40% commission and depositing the remaining amount with the company.*
- iv. The money collected through these schemes was invested in properties and shares of group companies. The properties acquired include 200sq. ft in 104, S. P. Mukerjee Road, Hotel Sea Coast, Hotel Srijini, commercial property measuring 15000 sq.ft. and residential flats having an area of 18000 sq. ft in Bashirhat and 2.5 bighas land in Bashirhat*
- v. RHRL and Rahul Inn Hospitality Limited had floated the following schemes: -*
 - Secured Debenture (SD) for the tenure of 3/5/7/11/15 Yrs @ 18.22% per annum*
 - Monthly Incentive Scheme (MIS) for the tenure of 2/4/6/8/10 Yrs @17.50%*
 - Recurring Deposits (RD) for the tenure of 1/3/5/7/10 Yrs @ 16.67% per annum;*
 - Fixed Deposits (FD) for the tenure of 3/5/7/11/15 Yrs @ 18.22% per annum"*
- vi. Deposits were collected by RHRL under different schemes from 2008 to 2012 and in RIHL from 2012 to 2014.*
- vii. The bank operations were controlled by him only with the help of directors. It is only on his instruction, they(directors) used to sign cheques pertaining to maturity payment and other expenses.*
- viii. The repayments to the depositors was made out of either "daily deposits or business generated from day to day basis".*

- ix. *In reply to the question – "Please provide justification regarding list of 49 persons shows under the issue of Debenture", asked by the Investigation team on 09.06.2015, he stated that "-In 2009-10, the business volume was not at large hence the list of debenture holder was incomplete, and again in the year 2010-11 the nos. of debenture holders list is incomplete as the earlier year due to the facts that most of the investor were from very rural places whose addresses and personal details in most of the cases were not available, and also the lackadaisical attitude of the accounts people, which was wrong in the eyes of the law, I do confess the said facts".*
- x. *In reply to the question – "Please state the responsibilities discharged by you in the Rahul Group of companies?", asked by the Investigation team on 09.06.2015, he stated that "I do hereby affirm without any fear or pressure that I was the key personnel of running the whole show of Rahul Group by any and every manner whatsoever. To be more precise I was the only one who is responsible in starting the fund mobilizing generation, operating of all the bank accounts of the group companies, managing and handling all the funds of the companies, appointments and entrusting responsibilities to any one along with all the major and minor decision making activities. No other directors or shareholders are responsible for any decision making or bank account operations as they were being paid for their job role as per my discretions."*
- xi. *He confirmed that two applications were submitted by him for issuance of PANs. On the basis of these two applications he was issued two PAN cards. He further confirmed that all his financial transactions were under one PAN i.e. AHGPB0654G. "And the 2nd PAN card has been issued to him which he later on discarded and never used it for any purposes". (Reply to Q.No.9- deposition dated 18.02.2016)*

Deposition of Shri Rahul Banerjee(Noticee No. 2)

6.13 SFIO has observed that in the statements of Shri Rahul Banerjee (Noticee No. 2) recorded on oath under Section 217 of the Companies Act, 2013, Shri Rahul Banerjee (Noticee No. 2) has *inter alia* stated that:

- i. *The core business of RHRL is construction of residential buildings. He is not aware of the rules and regulations under which debentures to the tune of Rs.14.44 crore had been issued by RHRL, except that the debentures were issued on private placement basis.*
- ii. *He was not aware of the companies raising money from the market*

apart from RHRL, and Shri Diptendu Banerjee was actively involved in the business of the companies.

iii. He is not a signatory in any of the bank accounts of the companies whereas he is the partner/proprietor in firms of the Rahul Group.

C. HEARINGS AND SUBMISSIONS:

7. The SCN dated March 4, 2024 was issued to the Noticees on the addresses available on record through Speed Post Acknowledgment Due (“**SPAD**”) and hand delivery. Mr. Diptendu Banerjee (Noticee No. 1) vide email dated April 2, 2024 sought an opportunity of personal hearing and vide letter dated June 8, 2024 made the following submissions:

“I, Diptendu Banerjee, being one of the EX-Director Resigned from the said position in the year 2010 Dec effected from 2011, of the Rahul Hi Rise Limited (RHRL), a Non-Government Company incorporated on 13th August, 2004 and is a Sister concern of the Rahul Group of Companies, have received your Show Cause notice under sections 11(1), 11(4), 11A and 11B (1) of Securities and Exchange Board of India Act, 1992 dated 4th March, 2024. I further say that it is a public unlisted company and is classified as company limited by shares and registered with Registrar of Companies, Kolkata, having CIN No.U51909Wb2004PLC099458.

Before going into the details of the show Cause notice. at the outset I would like to throw some light regarding the SEBI investigation about the above-mentioned company Rahul Hi Rise Ltd or Rahul Group of Companies.

SEBI first started the investigations regarding the Rahul Hi Rise Ltd in the year 2014 and passed an adverse interim order on Oct 09, 2015. PRNo: 241/2105. Copy of the said order is annexed here with as Annexure “A”.

Now in the Year 2015 the Complainant’s to EBI formed a Society named “Depositor and Agent Welfare Society of Rahul Group” comprising Rahul Hi Rise Ltd and Rahul Inn Hospitality Ltd and Others, filed a Writ Petition being Nos.WP-17904/2015 in Calcutta High Court, Where in SEBI was also a party of it, praying for the refund of the deposits by liquidating the Assets of the Rahul Group through One Man Committee of Justice S.P talukdar Committee. Hon’ble High Court was pleased to refer the matter to Justice One man Committee for the disposing of the Assets of the Company and refund of the Deposit’s.

The Said Order Copy of Hon’ble High Court is attached herewith as Annexure “B”

On the basis of this Order SEBI has passed a FINAL ORDER being Nos. WTM/MPB/EFD-1DRA-IV/98 /2017. I would like to specifically request your good self to refer to page No. 24 and point Nos. 51. The copy of the said Order is also annexed here with as Annexure "C".

And again, with all due respect, I would like to enlighten your good self that despite the above-mentioned FINAL ORDER where in the Companies has been mentioned as Rahul

Group in the Final Order by your Central Office, an Attachment Order has been issued and initiated against Rahul Inn Hospitality Ltd resulting in Freezing the Bank account of the Company and its Directors.

It would be pertinent to mention that said Order has been challenged in the Hon'ble High Court of Calcutta and the Hon'ble High Court of Calcutta was pleased to pass an order dated 15.12.2022, "Refraining the SEBI FROM Recovery of the Attached amount" till further Order been passed by the Hon'ble Court.

The said Order Copy has been annexed herewith as Annexure-D.

Being retired from the said company 13 years back and with a limited information, I do deny and dispute each and every allegation that has been made in the show cause notice under reply. None of the allegations and/ or contentions that has been mentioned in the show cause notice are true and correct and the whole subject matter is pending before the Hon'ble High Court at Calcutta and Hon'ble S.P. Talukdar's committee for further adjudication.

With reference to the statements and allegations made in paragraphs No.1, 2, 3, and 4 are denied and disputed save and except what are, matters of record. It is stated here in that SEBI vide order dated 27.11.2017 has tried to exceed the jurisdiction and had tried to act over and above their own order. Furthermore, the SEBI vide their order date 27.11.2017 have tried to circumvent the proceedings pending before the Hon'ble High Court and as well as the proceedings before the One man committee.

With reference to the statements and allegations made in paragraphs No.5,6,7,9 and 10 are denied and disputed save and except what are, matters of record.

With reference to the statements and allegations made in paragraphs No.11,12,13,14,15,16,18, and 19 are denied and disputed save and except what are, matters of record. It is stated here in that the order of SEBI dated 27.11.2017 as well as the consequential certificate being Certificate No. RC4082 OF 2021 and notice of attachment being 7231 and 7232 of 2021 have been challenged before Hon'ble High Court at Calcutta vide Writ petitions being WPA 14702 of 2021 and WPA 14711 of 2021. Both the writ petitions came up for hearing on 15.12.2022 before the Hon'ble Division Bench comprising of their Lordship the Hon'ble Justice LP Mukherjee and Biswaroop Mukherjee, where in the Lordship after hearing the parties were pleased to refrain SEBI from recovery of the attached amount, till an order is passed by the Hon'ble Court. Copy of the order dated 15.12.2022 is annexed hereto for your ready reference.

Thereafter the instant show cause notice dated 4th March 2024 is an attempt made by SEBI to overreach the Hon'ble Court and an attempt to circumvent the order passed by the Hon'ble High Court.

It is further stated that the company is trying its level best to repay the investors and depositors, but the certificate, orders and the instant show cause notice issued by SEBI trying to attach all assets and bank account of the company which in a way is hampering the process of payback to the investors and or depositors, for which the investors and creditors are at loss in the present scenario.

With reference to the statements and/ or allegations made in paragraphs No.20, 21, 22,23,24,25, and 26 are denied and disputed save and except what are, matters of record.

It is stated here in that SEBI should not take appropriate directions under 11(1), 11(4), 11A, 11B of the SEBI Act, 1992 or else that will be an action on the part of SEBI to

overreach and circumvent the proceeding before the Hon'ble High Court at Calcutta and the proceeding pending before the One Committee S.P Talukda's Committee. Therefore, under the facts and circumstances above, I being the Noticee No.1 do hereby request you to withdraw the instant Show Cause notice dated March 4 2024 or else I would be constrained to take necessary Legal recourse."

8. In the interest of natural justice, an opportunity of personal hearing was granted to Mr. Diptendu Banerjee (Noticee No. 1) on June 14, 2024. Accordingly, he appeared for personal hearing and reiterated the above submissions made vide his reply dated June 8, 2024 in the matter.

9. As regards, Shri Rahul Banerjee (Noticee No. 2) as the SCN was hand delivered at the address on record and since no response was received from him, an opportunity of personal hearing was granted on June 28, 2024. Although the Hearing Notice was affixed at the address of Shri Rahul Banerjee (Noticee No. 2) he however failed to appear for personal hearing in the matter.

10. In the matter of *Dave Harihar Kiritbhai vs. SEBI* (Appeal no. 93 of 2014), order dated December 19, 2014, the Hon'ble SAT has observed that: *"...and since further it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*

11. I note that Shri Rahul Banerjee (Noticee No. 2) has been given sufficient opportunity to make his submission. The principles of natural justice has therefore been duly complied with, and I now proceed to consider the matter on merits on the basis of the material available on record.

D. CONSIDERATION OF ISSUES AND FINDINGS:

12. In order to evaluate the charges made against the Noticees on merit, it is relevant to first refer to the relevant provisions of the Companies Act, 1956 and the ILDS Regulations 2008. The relevant extracts of these provisions are reproduced as under:

Companies Act, 1956

Section 2 (36) "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate;

5. Meaning of "Officer who is in Default"

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:

(a) the managing director or managing directors;

(b) the whole-time director or whole-time directors;

(c) the manager;

(d) the secretary;

(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;

(f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

Section 67. Construction of references to offering shares or debentures to the public, etc .-

67(1)

(2)

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

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

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

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

Section 56. Matters to be stated and reports to be set out in the prospectus.

(1) Every prospectus issued - (a) by or on behalf of a company, or (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2)

(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied [by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section : [Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him :] Provided [further] that this sub-section shall not apply if it is shown that the form of application was issued either - (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees.

60. Registration of prospectus

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto - (a) any consent to the issue of the prospectus required by section 58 from any person as an expert ; and (b) in the case of a prospectus issued generally, also - (i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and (ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

Section 73 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.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2); and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees.

117B. Appointment of debenture trustees and duties of debenture trustees

Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed.

Provided that no person shall be appointed as a debenture trustee, if he -

- (a) beneficially holds shares in the company;
- (b) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee;
- (c) has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon.

117C. Liability of Company to Create Security and Debenture Redemption Reserve

(1) Where a company issues debentures after the commencement of this Act, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed.

(2) The amounts credited to the debenture redemption reserve shall not be utilised by the company except for the purpose aforesaid.

(3) The company referred to in sub-section (1) shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(4) Where a company fails to redeem the debentures on the date of maturity, the 2[Tribunal] may, on the application of any or all the holders of debentures shall, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith by the payment of principal and interest due thereon.

(5) If default is made in complying with the order of the 2[Tribunal] under sub-section (4), every officer of the company who is in default, shall be punishable with imprisonment which

may extend to three years and shall also be liable to a fine of not less than five hundred rupees for every day during which such default continues.

Companies Act, 2013

465. Repeal of certain enactments and savings.

(1) ...

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments, —

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

....

SEBI (Issue and Listing of Debt Securities) Regulations, 2008:

General Conditions

4. (1) ...

(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.

....

(4) The issuer shall appoint one or more debenture trustees in accordance with the provisions of Section 71 of the Companies Act, 2013 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

Disclosures in the offer document-

5. (1)

(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) disclosures specified in Companies Act, 2013 and Rules prescribed thereunder; (b) disclosure specified in Schedule I of these regulations;

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 an 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.*

(1A) *Where an issuer fails to execute the trust deed within the period specified in the sub-regulation (1), without prejudice to any liability arising on account of violation of the provisions of the Act and these Regulations, the issuer shall also pay interest of at least two percent per annum to the debenture holder, over and above the agreed coupon rate, till the execution of the trust deed. (1B) A clause stipulating the requirement under sub-regulation (1A) shall form part of the Trust Deed and also be disclosed in the Offer Document. (2) Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as prescribed under section 71 of Companies Act, 2013 and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts: (a) Part A containing statutory/standard information pertaining to the debt issue. (b) Part B containing details specific to the particular debt issue. (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.*

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-pasu 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) and sub-section (2) of section 40 of the Companies Act, 2013. (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 mis-leading 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 the Companies Act, 2013 and the Rules made thereunder. (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. (7) The issuer shall create a recovery expense fund in the manner as maybe specified by the Board from time to time and inform the Debenture Trustee about the same.

SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

Repeal and Savings

59.(1) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 and the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 shall stand repealed from the date on which these regulations come to force.

(2) Notwithstanding such repeal:

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any adjudication, enquiry or

investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

....

13. At the outset, it may be noted that as far as the liability under sections 117B and 117C of the Companies Act, 1956, is concerned, the liability is on the company to comply with the said provisions. Further, with respect to the provisions of the ILDS Regulations as enumerated above in this order, the liability is on the Company RHRL to comply with the requirements therein. Therefore, the company RHRL is liable for the violation of sections 117B and 117C of the Companies Act and the ILDS Regulations. In the extant matter, I find that the company RHRL was one of the Noticee in the Final Order dated November 27, 2017 and accordingly suitable directions have been issued against RHRL in the Final Order.

14. As regards the issue of offer of NCDs by RHRL, the Final Order dated November 27, 2017 has held that the issuance of NCDs by RHRL was a deemed public issue and that the Company and its directors and trustees failed to comply with the relevant provisions of the Companies Act, 1956 in respect of its money mobilization through issuance of NCDs. I find that the said order was not challenged in appeal (as per material available on record) and therefore has attained finality. Hence, the offer of NCDs are deemed to be public issues and RHRL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

15. I have considered the SCN issued to Noticee No. 1 and 2 and the material available on record. The primary question that arises for consideration is whether at the time of issuance of NCDs by RHRL, Noticee No. 1 and 2 were persons in charge and responsible for the affairs of RHRL and whether Noticee No. 1 and 2 were 'officer in default' within the scope of Section 5 of the Companies Act, 1956.

16. As per the director details obtained from RoC, Kolkata, I note that Noticee No. 1 was appointed as the director of RHRL from December 12, 2008 till January 27, 2012. Noticee No. 2 was appointed as the director of RHRL from July 15, 2005 till January 15, 2013. Further, Form 10 for 'particulars for registration of charge on

debentures' issued by RHRL in FY 2009-10 was signed by Noticee No. 2 and subsequently, Form 10 for 'particulars for registration of charge on debentures' issued by RHRL in FY 2010-11 was signed by Noticee No.1. Additionally, Form 32 with respect to appointment of Noticee No 1 in the year 2008 was signed by Noticee No. 2. Moreover, the balance sheet for the financial year 2008-09 was signed by Noticee No. 1 and the balance sheet for the year 2009-10 was signed by Noticee No. 2.

17. I find it pertinent to refer to the deposition of Shri Diptendu Banerjee (Noticee No. 1) in the SFIO Report wherein Noticee No. 1 has stated that he had taken over the management control of RHRL during 2008-09 and had issued debentures to generate money for investing in real estate business. Further, Shri Rahul Banerjee (Noticee No. 2) in his deposition to SFIO has admitted that he was not aware of the rules and regulations under which debentures to the tune of Rs.14.44 crore had been issued by RHRL, except that the debentures were issued on private placement basis.

18. Thus, from the material available on record and the details of the appointment and resignation of the directors as obtained from RoC, Kolkata, Form 10 and Form 32 as submitted by RHRL during the relevant time period and the deposition of Noticees in the SFIO Report, I find that Noticee No. 1 and 2 were the directors of RHRL during the time of the issuance of NCDs by RHRL. Since they were acting as directors during the period of issuance of NCDs, they are officers in default as per Section 5 of Companies Act, 1956.

19. Section 56(1) and 56(3) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision.

20. As far as the liability for non-compliance of section 73 of the Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. With regard to liability to pay interest, 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 note that in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.

21. I note that both Noticee No. 1 and 2 were the directors of RHRL during the issue of NCDs by RHRL. In view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with RHRL and other directors are limited to the extent of amount collected during his/her tenure as director of RHRL.

22. Here, it is pertinent to make a reference to the SFIO Report wherein, as per the SFIO's analysis the funds mobilized by RHRL under NCDs constitutes Rs.57.44 crore while the Final Order had observed that during the financial years 2009-2010 and 2010-2011, RHRL through offer of NCDs, had collected at least an amount of Rs. 29.44 crores from various allottees. The details of funds collected as provided in the Final Order and the analysis of fund collected in the SFIO Report may be referred to at paragraph 6.4 and 6.7 of this order.

23. I find that the SFIO Report has observed that funds were mobilized by RHRL even during the financial year 2008-09. The SFIO Report has further noted that the funds mobilized by RHRL was more than what was shown in the financial statements submitted by RHRL with RoC. The number of investors were also more than the number of debenture holders shown in the financial statements submitted by RHRL with the RoC. I further find that Shri Diptendu Banerjee (Noticee No. 1) in his deposition to SFIO had indicated that in the year 2009-10 and 2010-11 the list of debenture holders was incomplete due to the fact that the investors were from rural areas whose addresses and personal details were not available. Further, Noticee No. 1 has admitted in his deposition that bank operations were controlled by him with the help of

directors and on his instructions the directors would sign cheques pertaining to maturity payment and other expenses. The summary of the SFIO Report along with the extract of deposition of the Noticees were forwarded as annexures along with the SCN, however, the Noticees have neither disproved nor rebutted the findings of the Report.

24. As regards the amount of fund mobilized by RHRL, a reference is made to paragraph 17 and 42 of the Final Order dated November 27, 2017, wherein, the following observations were made by SEBI in the order:

*“17. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted, from the investors' complaints received by SEBI in the matter and MCA records that RHRL has issued and allotted NCDs to at least 100 investors during the financial years 2009-2010 and 2010-2011 and raised at least an amount of Rs. 29.44 crores. I also note that complainants have forwarded copies of NCDs dated September 14, 2011 and December 20, 2011 showing the allotment of NCDs even after March 2011. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI and MCA records. **Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 100 allottees and Rs. 29.44 crores respectively.** (emphasis supplied)*

.....
*42. I find that NCDs were issued by RHRL to at least 100 investors in the financial years 2009-2010 and 2010-2011. However, **this number is not conclusive** as it is based on the documents received by SEBI along with complaints and MCA records and **the actual number of investors could be more than 100.** I also note that complainants have forwarded copies of NCDs dated September 14, 2011 and December 20, 2011 showing the allotment of NCDs even after March 2011 and at least till December 2011.” (emphasis supplied)”*

25. In light of the aforesaid observations, the depositions available on record and the absence of any contrary evidence available on record to refute the analysis of amount collected by SFIO, I am hereby inclined to go with the analysis made by SFIO that RHRL through the offer of NCDs had collected an amount of **Rs.57.44 crores** from various allottees.

26. In view of the foregoing and keeping in mind the directions in the Final Order dated November 27, 2017, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct the Noticees to refund the monies collected, with interest to such investors. With a view to safeguard the investors investments and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Noticees.

27. Notwithstanding the above, I note that the SCN has also referred to SFIO's examination which has revealed that Shri Diptendu Banerjee (Noticee No. 1) was holding the following PANs i) AHGPB0654G and ii) AIYPB5950G. The debenture trustee viz. Shri Dinendra Nath Bandopadhyay of RHRL is none other than Noticee No. 1, who submitted fake KYC documents to obtain PAN which was used to open a bank account in the name of Dinendra Nath Bandopadhyay. The third PAN is ALTPB3581F. In this regard, a reference may be made to the Income Tax Department and the details of these multiple PANs of Noticee No. 1 may be brought to the notice of Income Tax Department for necessary action at their end.

E. ORDER

28. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:

28.1 The Noticees viz. Shri Diptendu Banerjee (Noticee No. 1) and Shri Rahul Banerjee (Noticee No.2) being directors during the relevant period shall be jointly and severally liable to make repayments along with the company RHRL and other directors in terms of paragraph 50 of the Final Order dated November 27, 2017 in the matter of M/s Rahul Hi-Rise Limited.

28.2 The directions contained therein under paragraph 50 (a) to (h) of the aforesaid Final Order dated November 27, 2017 shall also be applicable and complied by

the Noticees viz. Shri Diptendu Banerjee (Noticee No. 1) and Shri Rahul Banerjee (Noticee No.2).

28.3 The Noticees viz. Shri Diptendu Banerjee (Noticee No. 1) and Shri Rahul Banerjee (Noticee No.2) are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the 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 investors till the full refund/repayment as directed above is made.

28.4 The Noticees viz. Shri Diptendu Banerjee (Noticee No. 1) and Shri Rahul Banerjee (Noticee No.2) are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The Noticees are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.

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

29. As noted at paragraph 51 of the Final Order, the Hon'ble Calcutta High Court has passed an order dated August 12, 2016 in WP No. 17904(W) of 2015 -Depositors and Agent Welfare Association of Rahul Group & Ors v. Union of India & Ors.in respect of Rahul group of Companies. Therefore, the effect and implementation of the directions in the extant order shall be subject to the directions passed by the Hon'ble High Court in its Order dated August 12, 2016.

30. The directions given in the order does not preclude the complainants/investors to pursue the other legal remedies available to them under any other law, against the

Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

31. A copy of this order shall be sent to the Noticees, Stock Exchanges, BSE Administration and Supervision Ltd (BASL), Depositories, Banks, Registrar and Transfer Agents for information and compliance of the above directions.

32. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Noticees.

33. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

Date: September 20, 2024
Place: Mumbai

G RAMAR
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA