

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF –

1. TRUSTLINE REALTY INFRA INDIA LTD.

2. DIRECTORS/ PROMOTERS VIZ.

- (I) MOHAMMAD QAMAR (PAN: AABPQ9649J; DIN: 02515072)
- (II) SUSWETA DUTTA (PAN: AMFPD5940F; DIN: 02515132)
- (III) MD MOJAHD (PAN : N/A; DIN: 03376324)
- (IV) RAFAT NAZ(PAN : AIXPN4533G; DIN: 03376300)
- (V) MD AADIL (PAN : N/A; DIN: 03376398)
- (VI) AMAN KUMAR (PAN : CBCPK8700N; DIN: 03376344)
- (VII) SAROJANI DEVI (PAN : AQCPD0778N; DIN: 03383976)

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1. Securities and Exchange Board of India ("SEBI") was in receipt of complaints in relation to money mobilization by way of issue of shares by Trustline Realty Infra India Ltd ("TRIL"). Copies of certificates of redeemable preference shares (RPS) allegedly issued by TRIL were also received by SEBI.
 2. Based on the complaints received, SEBI sought information pertaining to the collection of money by TRIL. Details of the correspondence and replies are as under:
 - (i) SEBI issued a letter dated December 11, 2015 to TRIL which returned undelivered, the reason cited as being "Addressee Left".
 - (ii) An e-mail dated December 21, 2015 was sent to the e-mail id appearing on the RPS certificate i.e. "info@trustlinerealty.com" AND IT bounced/ remained undelivered.
 - (iii) Letters dated December 21, 2015 were forwarded to the directors on the address available on the website of the Ministry of Corporate Affairs (MCA). These letters returned undelivered.

3. A site visit was conducted on January 06, 2016 at the registered address of TRIL. However, the company could not be located at the said address.
4. Details pertaining to TRIL were sought to be procured from the MCA21 portal. The following relevant information was taken note of :
 - (i) Date of Incorporation : 17.02.2011
 - (ii) Type of the company : Public & Unlisted
 - (iii) CIN: CIN- U45200JH2011PLC014695
 - (iv) Registered Office Address : Hari Om Mansion, Mithu Road; Bank More, Dhanbad, JH- 826 001
 - (v) Correspondence Office: same as above.
 - (vi) Date of filing of the last Annual Accounts & Annual Report : Not available
 - (vii) Return of allotment (Form 2: Not available)- Total capital of the company (Break up of issues and authorised capital: Rs.10,00,000(Ten Lakh only)
 - (viii) Issue capital:
 - a. Equity: Not available (Master data showed paid up capital as being Rs.5 Lakh)
 - b. Preference Shares: Not available (Neither Form 2 nor Balance Sheet available)
 - (ix) Allotment details as per Form 2: Not available
 - (x) Details of relevant board meeting: A resolution dated 30.05.2011 was available on the MCA portal which indicates that authorised share capital was increased from Rs. 10,00,000 (Ten Lakh rupees only) to Rs. 35,00,000 (Thirty Five Lakh rupees only) by way of issuance of 2,50,000 preference shares of Rs. 10 each ranking pari-passu with the existing shares.
5. Letter dated February 08, 2016 was sent to Registrar of Companies (RoC)- Patna citing the absence of filings/disclosures pertaining to TRIL on the MCA Portal. Letter dated February 08, 2016 was also sent to IG- CID, Ranchi in the context of illegal mobilization of money by TRIL.
6. As per the complaints and the copies of RPS made available by the complainants, the details of allotment of RPS are reproduced hereunder:

Year	Date of Allotment	No of RPS	Amount Raised (Rs.)	No. of Allottees
2011-12	20.09.2011	2	17000.00	2
2011-12	23.12.2011	1	5208.00	1
2011-12	28.12.2011	1	18321.00	1
2011-12	16.01.2012	48	1116234.00	48
Total			11,56,763.00	52

7. Till date no replies have been received from TRIL or its Directors/Promoters, to the letters sent by SEBI seeking information in relation to the company particularly with regard to issuance of capital.

ISSUES FOR DETERMINATION

8. In the context of the details of the offer and allotment of preference shares mentioned in the Table at paragraph 6 above (hereinafter referred to as "*the offer and allotment of preference shares*"), the issue for determination in the instant matter is whether or not such mobilization of funds by TRIL is in accordance with the provisions of the Companies Act, 1956 read with the provisions of the SEBI Act, 1992.

RELEVANT PROVISIONS OF LAW AND PRIMA FACIE FINDINGS

9. 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)."*

10. For ascertaining whether the *offer and allotment of preference shares* by TRIL 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 crucial. 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. I note from the facts available that although TRIL has not exceeded allotment to more than 49 persons in each allotment made, commencing from September 20, 2011 to January 16, 2012, the total number of allottees exceeds 49 raising thereby ₹ 11, 56, 763. This pattern of repeated allotment on frequent basis during a short span of 5 months appears to have been done solely for the purpose of avoiding the applicability of Section 67 (3) of the Companies Act, 1956 and consequent regulatory compliances. As is noted above, the filing on the MCA Portal includes a reference to a Board resolution dated May 30, 2011 whereby a decision was taken to raise ₹ 25, 00, 000 (Twenty five lakh rupees) by way of preference shares. It is relevant to note that the Board resolution was passed by TRIL within a span of 3 months from the date of its incorporation. Therefore the complaints received by SEBI pertaining to allotment of preference shares does not appear to be shorn of credibility and appears to be the tip of the iceberg. Since disclosures have not been made in the MCA Portal and the letters to TRIL and its Directors/Promoters were not responded to, one can draw an adverse inference against TRIL. Therefore on the basis of complaints received, and available information recorded above, the *offer and allotment of preference shares* by TRIL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

11. From the above, it will follow that such a public issue makes it imperative for TRIL 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)

12. As the offer and allotment of preference shares 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 TRIL is *prima facie* in breach of the provisions of Section 73 as well.

13. 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 TRIL has complied with the provisions of Sections 56 and 60 of Companies Act, 1956, in respect of the *offer and allotment of Preference Shares*. In view of the same, I find that TRIL 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.

14. 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 TRIL, including the dates of appointment/cessation as directors, are as under:

Sr. No.	DIN	Full Name	PAN	Designation	Date of Appointment	Date of cessation
1.	02515072	Mohammad Qamar	AABPQ9649J	Director	04.02.2011	N.A
2.	02515132	Susweta Dutta	AMFPD5940F	Director	04.02.2011	N.A
3.	03376324	Md Mojahd	N/A	Director	04.02.2011	N.A
4.	03376300	Rafat Naz	AIXPN4533G	Promoter	04.02.2011	N.A
5.	03376398	Md Aadil	N/A	Promoter	04.02.2011	N.A
6.	03376344	Aman Kumar	CBCPK8700N	Promoter	04.02.2011	N.A
7.	03383976	Sarojani Devi	AQCPD0778N	Promoter	04.02.2011	N.A

15. From the above table, it is noted that Rafat Naz, Md Aadil, Aman Kumar and Sarojani Devi were promoters of TRIL. Mohammad Qamar, Susweta Dutta and Md Mojahd, were the directors of TRIL at the time of the issue and allotment of RPS and are also presently responsible for the affairs of TRIL.

DIRECTIONS

16. In light of the facts in the instant matter, I find this to be a fit case to pass interim directions against TRIL, its abovenamed Directors/Promoters. 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. TRIL and the abovenamed Directors and Promoters 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. TRIL and the abovenamed Directors and Promoters 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*;
- iii. TRIL and the abovenamed Directors / Promoters shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* sought vide email dated December 21, 2015 and letters dated December 11, 2015 and December 21, 2015;

17. The preliminary findings contained in paragraphs 10 to 14 of this Order are made on the basis of the complaints received and information obtained from RoC. TRIL and the abovenamed Directors and Promoters (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. The Noticees to jointly and severally refund money collected through the *offer and allotment of preference shares*, 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) within a period of 180 days from the date of receipt of this Order, 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.

18. The Noticees, may, within 21 days from the date of receipt of this interim order -cum- show cause notice, file their respective replies. The Noticees 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 Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paras 10 to 14 of this Order and directions at para 17 above shall become final and absolute against the Noticees automatically, without any further orders.
19. Upon the expiry of a period of 180 days from the date of receipt of this Order, 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.
20. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
21. 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: April 05, 2017

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA