

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 SHREEBHUMI CONSTRUCTIONS LTD.

Sr. No.	Noticees	PAN	DIN/CIN
Company			
1.	Shreebhumi Constructions Ltd.	AARCS1081P	U45201OR2011PLC013686
Directors			
2.	Mr. Shubhranshu Singh	AQLPS3885J	01261335
3.	Mr. Chhotrai Majhi	AZBPM9958P	03234683
4.	Mr. Prabin Dash	AISPD5571H	03642982

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 a complaint in relation to money mobilization by Shreebhumi Constructions Ltd. ("**SCL**"). On a perusal of the MCA21 portal, it was noted that SCL had issued Redeemable Preference Shares ("**RPS**").
2. Based on the complaint received, SEBI sought information pertaining to the collection of money by SCL. Details of the correspondence with the Noticees are as under:

TABLE 1

Name of the Company/ Director	Letter date	Letter Status (Returned/ Delivered)	Reminder Letter sent date	Letter Status (Returned/ Delivered)
Shreebhumi Constructions Ltd.	22.09.2016	Returned Undelivered citing 'No	-	-

Shubhranshu Singh	22.09.2016	such addressee/ Left'		
Chhotrai Majhi	22.09.2016			
Prabin Dash	22.09.2016	Delivered	14.10.2016	Delivered

No replies have been received to the letters sent to the aforementioned entities in connection with the issuance of RPS by SCL. A site visit to the registered office address of SCL was conducted on March 24, 2017 but the company was not traceable.

3. Copy of the complaint received by SEBI was forwarded to Registrar of Companies (RoC), Cuttack, by letter dated September 22, 2016 for necessary action and information/ documents were sought in respect of issuance of securities for our examination. RoC replied in its letter dated October 03, 2016 stating that the company has not filed any prospectus with them for issuance of debentures/ Redeemable Preference shares but seven Returns of Allotment (Form 2) have been filed by the company and the same may be inspected by visiting the MCA website. Further, RoC has stated that the company has also not filed its statutory returns since its incorporation.
4. Details pertaining to SCL were sought to be obtained from the MCA21 portal. The following relevant information was taken note of :
 - (i) Date of Incorporation : May 30, 2011 (incorporated as a Pvt. Ltd. Company).
The company converted to Public Limited Company with fresh certificate of Incorporation given by the RoC on 27.10.2011.
 - (ii) Type of the company : Public Limited Company
 - (iii) CIN: U45201OR2011PLC013686
 - (iv) PAN: AARCS1081P
 - (v) Registered Office Address : Plot No N6/508, IRC Village, Jayadev Vihar, Bhubaneswar, Odisha, Pin- 751013.
 - (vi) Date of filing of the last Annual Accounts & Annual Report : Not available
 - (vii) Return of allotment -
 - a. **Authorised Share Capital:** Total ₹ 5,00,00,000
 - i. Equity Shares : 1,00,000 Shares @ ₹ 10/- each and
 - ii. Preference Share : 49,00,000 Shares @ ₹ 10/- each
 - b. **Issued Capital**

- i. Equity Shares : 50,500 Shares @ ₹ 10/- each and
- ii. Preference Share : 19,49,200 Shares @ ₹ 10/- each

c. Allotment details as per Form 2:

Equity Shares:

(TABLE 2)

Date of Allotment of Shares	No. of Shares Allotted	No. of Allottees	Value of Allotment (in ₹)
25.05.2011	50,000	2*	5,00,000
27.09.2011	500	5	5,000
Total	50,500	7	5,05,000

*Allotted to the directors / promoters at the time of incorporation.

Redeemable Preference Shares:

(TABLE 3)

Date of Allotment of Shares	No. of Redeemable Preference Shares Allotted	No. of Allottees	Value of Allotment (in ₹)
30.01.2012	57,000	10	5,70,000
30.03.2012	3,27,000	38	32,70,000
27.04.2012	3,50,000	48	35,00,000
21.05.2012	4,00,000	48	40,00,000
18.06.2012	2,78,000	48	27,80,000
20.08.2012	5,37,200	49	53,72,000
Total	19,49,200	241	1,94,92,000

5. Considering the information available with the RoC as per the MCA website it is observed that SCL had issued RPS to **241** persons amounting to **₹ 1,94,92,000/-** during 2011-12 and 2012-13.
6. Till date no other replies have been received from SCL or its Directors, to the letters sent by SEBI seeking information in relation to the company particularly with regard to issuance of capital.

ISSUES FOR DETERMINATION

7. In the context of the details of the offer and allotment of preference shares mentioned in paragraph 5 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 SCL 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

8. 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).”

9. For ascertaining whether the *offer and allotment of preference shares* by SCL 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. I note from the data available on the MCA portal that although SCL has not exceeded allotment to more than 49 persons in each allotment made, commencing from January 30, 2012 to August 20, 2012 the total number of allottees exceeds 49. This pattern of repeated allotment on frequent basis during a short span of 8 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. The frequency of allotment of RPS thereby raising large amounts from the public coupled with the absence of information from the company including those relating to SCL's board decisions to allot RPS, leads one to draw an adverse inference against SCL. Therefore on the basis of the complaint received, and available information recorded above, the *offer and allotment of preference shares* by SCL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

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

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 SCL is *prima facie* in breach of the provisions of Section 73 as well.

11. 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 SCL 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 SCL 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.

12. 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 of SCL, including the dates of appointment/cessation as directors, are as under:

(TABLE 4)

Name of the Directors	Date of Appointment	Date of Cessation
Shubhranshu Singh	30/05/2011	-
Chhotrai Majhi	30/05/2011	-
Prabin Dash	27/09/2011	-

From the above table, it is noted that Shubhranshu Singh, Chhotrai Majhi and Prabin Dash were the directors of SCL at the time of the offer and allotment of RPS and are also presently responsible for the affairs of SCL.

DIRECTIONS

13. Given that the information provided to SEBI and conveyed to RoC appears sketchy and hence may not be complete, it can be reasonably inferred that the money mobilization on the part of SCL 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 SCL and its abovenamed Directors. 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. Shreebhumi Constructions Ltd. (PAN: AARCS1081P) and the abovenamed directors namely, Shubhranshu Singh (PAN: AQLPS3885J), Chhotrai Majhi (PAN: AZBPM9958P) and Prabin Dash (PAN: AISPD5571H) 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. SCL 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*;
- iii. SCL 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* sought vide letters dated September 22, 2016 and reminder letter dated October 14, 2016.

14. The preliminary findings contained in paragraphs 9 to 12 of this Order are made on the basis of the complaint received and information obtained from RoC. SCL and the abovenamed Directors (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), supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); 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, till completion of the refund and for a period of four years from the date of completion of the refund as directed above.

15. 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 9 to 12 of this Order and directions at para 14 (i) and (ii) above shall become final and absolute against the Noticees automatically, without any further orders. Upon the expiry of a period of 90 days from the date of this Order becoming final, 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.

16. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.

17. 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 12, 2017

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