

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. SIYARAM GREEN INDIA LTD. (PAN: AAPCS9876G)

DIRECTORS -

- 2. KALI SANKAR MAJHI (PAN: AUNPM9705D; DIN: 03499010)**
- 3. BHAKTA PRASAD DAS (PAN: ALJPD7750L; DIN: 03499036)**
- 4. ARUNANGSHU MANNA (PAN: AJTPM8782F; DIN: 03499022)**
- 5. TAPAS KUMAR GIRI (PAN: AQXPG2563P; DIN: 03499019)**
- 6. BIBEKANANDA MAITI (PAN: AQSPM6019P; DIN: 03499013)**
- 7. PRALAY KANTA BHATTACHARYYA (PAN: ALDPB2568G; DIN: 02680696)**
- 8. AVEDANANDA KHILA (PAN: BYYPK8546E; DIN: 05190424)**
- 9. SHUBHRANSHU SHEKHAR MAIKAP (PAN: BLUPM3877R; DIN: 05190418)**

-
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 SIYARAM GREEN INDIA LTD ("SGIL"). Copies of certificates of redeemable preference shares (RPS) allegedly issued by SGIL were also received by SEBI.
 2. Based on the complaints received, SEBI sought information pertaining to the collection of money by SGIL. Details of the correspondence and replies are as under:
 - (i) SEBI issued a letter dated April 21, 2016 to SGIL and its directors.
 - (ii) Letter issued to SGIL returned undelivered, the reason cited as being "Left".
 - (iii) Letter issued to other five directors returned undelivered citing several reasons like "left, refused to accept, out of station, left without address etc."

- (iv) As proof of delivery for letter issued to Kali Sankar Majhi was not received and no reply was received from him, an attempt was made to deliver the letter to him by hand delivery. However, the director was not available at that address.
- (v) Letter issued to Avedananda Khila was delivered, however, no reply was received from him.
3. A site visit was conducted on September 8, 2016 at the registered office address of SGIL. However, the company could not be located at the said address.
4. Details pertaining to SGIL were sought to be procured from the MCA21 portal. The following relevant information was taken note of :
- i) Date of Incorporation : 24/05/2011
 - ii) Type of the company : Public and Unlisted
 - iii) CIN : U01403WB2011PLC162941
 - iv) PAN : AAPCS9876G
 - v) Registered Office Address : AT-Basudevpur (Hpl Link Road, Kshudiram Square), Ishika Hotel, 3rd Floor, P.O-Khanjanchak, Basudevpur, Midnapore, West Bengal, 721602, India
 - vi) Correspondence Address: same as above.
 - vii) Date of filing of last Annual Accounts and Annual Report: 31.03.2012.
 - viii) Return of allotment (Form 2) - Total capital of the company (Break-up of issues and authorized capital)
 - a. Issued capital: As on 31.03.2012, as per Form 2 and Balance Sheet filed by SGIL with RoC
 - I. Equity Capital: Rs. 5,00,000
 - II. Preference Capital : Rs. 4,69,83,600
 - ix) Details of any Board meetings held by the company as per RoC record which indicate with respect to the issue.

Date of Board meeting	Date of passing resolution	Amount proposed to raise (Rs.)	Type of issue
06/06/2011	06/06/2011	Issue of 50,000 Redeemable Preference Shares of Rs.10/- each at a premium of Rs.1990/- per share.	
14/05/2012	14/05/2012	The Authorised capital of the company was increased from Rs. 15,00,000 to Rs 10,15,00,000 by creation of 10,00,000 Redeemable Preference Shares of Rs.100/- each.	

5. Information regarding mobilization of funds and signatory details pertaining to SGIL contained in documents like Annual Accounts, Annual Returns, Form 2 etc., were downloaded from the MCA portal.
6. As per the MCA (Form 2), the details of allotment of RPS are reproduced hereunder:

Year	Date of allotment	Type	No. of allottees	Face Value (Rs.)	Premium Amount (Rs.)	Total Amount (Rs.)
2011-2012	31.01.2012	Preference Shares	1710	1,03,590	2,06,14,410	2,07,18,000
2011-2012	31.03.2012	Preference Shares	1094	67,810	1,34,94,190	1,35,62,000
2012-2013	30.06.2012	Preference Shares	673	7,798,900	-	7,798,900
2012-2013	17.12.2012	Preference Shares	1917	2,65,38,900	-	2,65,38,900
2012-2013	30.03.2013	Preference Shares	992	1,24,74,400	-	1,24,74,400
TOTAL			6386	4,69,83,600	3,41,08,600	8,10,92,200

7. From the above table, it is seen that SGIL has issued RPS to more than 49 persons in F.Y. 2011-12 and 2012-13. Hence, SGIL appears to have made a public issue of RPS. Till date no replies have been received from SGIL 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

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 SGIL 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 SGIL 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. In this regard, it is observed from the documents obtained from MCA, that SGIL has offered and allotted RPS to 6,386 allottees during the year 2011-12 & 2012-13 and mobilized an amount of ₹ 8,10,92,200. Details of the offers made by the company relating to issue of securities remain unavailable due to non-cooperation on the part of the directors of the company. Therefore on the basis of complaints

received, and available information recorded above, the *offer and allotment of preference shares* by SGIL *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 SGIL 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 SGIL is *prima facie* in breach of the provisions of Section 73 as well.
13. Further, in connection with a 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 SGIL 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 SGIL 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 of SGIL, including the dates of appointment/cessation as directors, are as under:

Name of director	Designation	DIN/DPIN	PAN	Residential Address	Date of appointment	Date of cessation
Kali Sankar Majhi	Director	03499010	AUNPM9705D	Mauja - Chakakandu, J,L, No-232 Mathura, Patashpur Purba Medinipur, Patashpur, West Bengal - 721440, India	24/05/2011	-
Bhakta Prasad Das	Director	03499036	ALJPD7750L	Mauza - Laoya, G.P.-14, Argoyal, P.S.- Patashpur,, Block - Patashpur-II, Dist - Midnapur, Patashpur, West Bengal - 721440, India	24/05/2011	-
Arunangshu Manna	Director	03499022	AJTPM8782F	Mauja - Madhakhali J,L, No - 221 (Madhakhali Brij, Boundary Bandher Kaijani Jukhiya Bhupatinagar, Purbo Medinipur, West Bengal - 721425, India	24/05/2011	13/04/2013
Tapas Kumar Giri	Director	03499019	AQXPG2563P	Laluya (Sampurna) Laluya, Patashpur Purba Medinipur, Patashpur, West Bengal - 721456, India	24/05/2011	-
Bibekananda Maiti	Director	03499013	AQSPM6019P	Mouja - Barbhagiya J,L, No-236 2, Bathuyari,, Egra Midnapore, Egra Midnapore, West Bengal - 721440, India	24/05/2011	-

Pralay Kanta Bhattacharyya	Additional director	02680696	ALDPB2568G	2, Nimak Mahal Road, West Port, Kolkata, West Bengal - 700043, India	27/02/2012	-
Avedananda Khila	Additional director	05190424	BYYPK8546E	Village - Khalsiberia, P.O. Kayli, Purba Medinipore, West Bengal - 721422, India	27/02/2012	-
Shubhranshu Shekhar Maikap	Additional director	05190418	BLUPM3877R	Mauja-Kismatpatna, Mugberiya, Bhupati Nagar, Purba Medinipur, West Bengal - 721425, India	27/02/2012	-

15. From the above table, it is noted that Kali Sankar Majhi, Bhakta Prasad Das, Arunangshu Manna, Tapas Kumar Giri, Bibekananda Maiti, Pralay Kanta Bhattacharyya, Avedananda Khila and Shubhranshu Shekhar Maikap were the directors of SGIL at the time of the issue and allotment of RPS and are also presently responsible for the affairs of SGIL except Arunangshu Manna, who has resigned in April 13, 2013 .

DIRECTIONS

16. From the information available with SEBI and details downloaded from MCA portal, it can be reasonably inferred that the money mobilization on the part of SGIL is 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 SGIL and it's above named 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. SGIL and the above named Directors namely, Kali Sankar Majhi, Bhakta Prasad Das, Arunangshu Manna, Tapas Kumar Giri, Bibekananda Maiti, Pralay Kanta Bhattacharyya, Avedananda Khila and Shubhranshu Shekhar Maikap 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. SGIL and the above named 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. SGIL and the above named 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 April 21, 2016.

17. The preliminary findings contained in paragraphs 10, 12 and 13 of this Order are made on the basis of the complaints received and information obtained from MCA portal. SGIL and the above named 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 the 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, 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, 12 and 13 of this Order and directions at para 17 (i) and (ii) above shall become final and absolute against the Noticees automatically, without any further orders. The Noticees shall comply with the directions at para 17(i) above within a period of 90 days from the date of this Order becoming final. Upon the expiry of the period of 90 days from the date of this Order becoming final and if the Noticees fail to comply with the directions at para 17 above, 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.

19. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
20. 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.

DATE: JUNE 16, 2017

PLACE: MUMBAI

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