

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 –

Sr. No.	Noticees	DIN/CIN	PAN
Company			
1.	SURAKSHAPLUS INFRASTRUCTURE & PROJECTS LIMITED	U45400WB2009PLC138968	NOT AVAILABLE
Directors			
2.	SANKAR PAILAN	02320639	AWTPP2649D
3.	SAUMEN MONDAL	02377959	AVZPM5268J
4.	NITYANANDA BAIDYA	02320722	AQIPB5315P
5.	SADHON BACHHAR	02863656	AIFPB0585Q
6.	GIRI DHARI NASKAR	02726319	NOT AVAILABLE
7.	RATAN NASKAR	02378083	AHGPN9138H

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 Surakshaplus Infrastructure & Projects Limited ("SIPL"). Copies of certificates of redeemable preference shares (RPS) allegedly issued by SIPL were also received by SEBI.
2. Based on the complaints received, SEBI sought information pertaining to the collection of money by SIPL. Details of the correspondence and replies are as under:
 - (i) SEBI issued letters dated December 30, 2015 to SIPL and its six directors, namely Shri Sankar Pailan, Shri Saumen Mondal, Shri Nityananda Baidya, Shri Sadhon Bachhar, Shri Giri Dhari Naskar and Shri Ratan Naskar, requesting them to furnish information regarding mobilization of funds from public. Out of the same, letters sent to SIPL and four directors,

namely Shri Sankar Pailan, Shri Saumen Mondal, Shri Nityananda Baidya, and Shri Giri Dhari Naskar, returned undelivered.

- (ii) SEBI again issued letters dated March 07, 2016 to SIPL and its six directors. Out of the same, letters sent to SIPL and four directors, namely Shri Sankar Pailan, Shri Sadhon Bachhar, Shri Saumen Mondal and Shri Giri Dhari Naskar, returned undelivered and letters sent to two directors, namely Shri Nityananda Baidya and Shri Ratan Naskar, were delivered to them.
- (iii) Shri Nityananda Baidya, one of the directors of SIPL, responded to the SEBI letter through letter (undated) received by SEBI on March 22, 2016 and submitted *inter alia* that “... .. the company is not functioning for more than three years or more years, and I had no knowledge about the information / documents (copy of Audited Annual and Annual Returns of the company, copy of prospectus / Red Herring Prospectus / Statement in lieu of prospectus / Information memorandum filed with Roc for issuance of Shares / Debentures) that is required or to be maintained for compliance under SEBI’s statutes. Therefore, I am totally ignorant and innocent in this regards. Under such situation I may be absolved of all such charges and no reference in this regard may please be made to me.”
- (iv) SEBI issued a letter dated April 29, 2016 to the Registrar of Companies, Ministry of Corporate Affairs, Kolkata, seeking various information pertaining to SIPL.
- (v) In the meantime, various documents pertaining to SIPL, including Form-2, Balance Sheets etc. filed by SIPL with RoC were obtained by accessing MCA21 portal.
- (vi) A site visit was conducted on August 06, 2016 at the registered office address of SIPL. However, the company could not be located at the said address.

3. Details pertaining to SIPL were procured from the MCA21 portal. The following relevant information was taken note of :

- i) Date of Incorporation : 21.10.2009
- ii) Type of the company : Public and Unlisted
- iii) CIN : U45400WB2009PLC138968
- iv) PAN: Not Available
- v) Registered Office Address: A.P. NAGAR, 2ND FLOOR, P.O. & P.S. – SONARPUR, KOLKATA, WEST BENGAL-700150
- i) Correspondence Address: Same as above.
- ii) Date of filing of the last Annual Accounts & Annual Report: 31.03.2012

4. From the different sets of Form-2 filed by SIPL with RoC, it was observed that the company had issued Redeemable Preference Shares during the Financial Years (FYs) 2009-10, 2010-11 and 2011-12 to 167 persons, 256 persons and 146 persons respectively. The documents submitted by the complainants include a blank '*Share Application Form*' pertaining to '*Issue of 40 Lacs Redeemable Preference Shares – Face Value of Rs.10/- Per Share Aggregating to Rs. 400 Lacs*', issued by the company. The said form describes the said offer as a private placement and mentions 28-2-2011 as the 'Issue Open Date'. However, as stated above, it is evident from the Form-2 filed by the company with RoC that the company has allotted RPS to investors even before and after the said date. The details of issuance of RPS by the Company during FYs 2009-10, 2010-11 and 2011-12, as collated from the available documents, are provided in the table below:

Details of Redeemable Preference Shares Issued

Year	Date of Allotment	Type	No of Allottees	Amount (Rs.)	Source of Information
2009-10	01/01/2010	Redeemable Preference Shares of Rs. 10/- each	78	5,46,000	Form-2 filed by the Company with RoC.
	12/03/2010	Redeemable Preference Shares of Rs. 10/- each	89	13,53,000	Form-2 filed by the Company with RoC.
	Total		167	18,99,000	
2010-11	22/07/2010	Redeemable Preference Shares of Rs. 10/- each	256	25,38,000	Form-2 filed by the Company with RoC.
	Total		256	25,38,000	
2011-12	26/08/2011	Redeemable Preference Shares of Rs. 10/- each	48	3,93,000	Form-2 filed by the Company with RoC.
	07/09/2011	Redeemable Preference Shares of Rs. 10/- each	49	4,41,500	Form-2 filed by the Company with RoC.
	20/09/2011	Redeemable Preference Shares of Rs. 10/- each	49	3,59,500	Form-2 filed by the Company with RoC.
	Total		146	11,94,000	

5. Apart from the RPS issued as mentioned above, the documents submitted by the complainants to SEBI include copies of preference share certificates issued by the company during FYs 2012-13 and 2013-14 as well. The exact number of persons to whom the RPS have been issued or the exact

amount mobilized thereby during FYs 2012-13 and 2013-14 could not be ascertained since no information has been received from the company / directors. However, from the table provided under para 4 above, it is clearly evident that SIPL has issued RPS to more than 49 persons in FYs 2009-10, 2010-11 and 2011-12.

ISSUES FOR DETERMINATION

6. In the context of the details of the offer and allotment of preference shares mentioned in the Table at paragraph 4 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 SIPL 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

7. 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)."*

8. For ascertaining whether the *offer and allotment of preference shares* by SIPL 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 (i.e. List of Allottees attached to Form-2 filed by SIPL with RoC) that SIPL has offered and allotted RPS to 167 persons (amounting to Rs.18,99,000/-) during FY 2009-10; 256 persons (amount to Rs.25,38,000/-) during FY 2010-11 and 146 persons (amounting to Rs.11,94,000/-) during FY 2011-12. Therefore, on the basis of available information recorded above, the *offer and allotment of preference shares* by SIPL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956. It is also noted that the company had started issuing series of RPS to the public within a span of 3 months from the date of its incorporation.

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

10. 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 recognized stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. I find that SIPL is *prima facie* in breach of the provisions of Section 73 as well.
11. 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 SIPL 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 SIPL 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 SIPL, including the dates of appointment/cessation as directors, are as under:

Sl. No	Name of director/promoter	Designation	DIN /DPIN	PAN	Residential Address	Date of appointment	Date of cessation
1	SANKAR PAILAN	Director	02320639	AWTPP2649D	METTYARI (POYAGAZI PARA), PRATAPNAGAR, SONARPUR, KOLKATA, West Bengal - 743369, INDIA	21/10/2009	-
2	SAUMEN MONDAL	Director	02377959	AVZPM5268J	VILL - PROTAPNAGAR, P.O. - PROTAPNAGAR, P.S. SONARPUR, 24 PARGANAS (SOUTH), SONARPUR, West Bengal - 743330, INDIA	21/10/2009	-
3	NITYANANDA BAIDYA	Director	02320722	AQIPB5315P	174 BISWAS PARA, BARUIPUR, MADHYA SITAKUNDU, RAMNAGAR, KOLKATA, West Bengal - 743387, INDIA	21/10/2009	-
4	SADHON BACHHAR	Director	02863656	AIFPB0585Q	VILL- NAKURAIT ,P.O.- MABHABPUR,, P.S. BHANGAR, 24 PARGANAS (SOUTH), BHANGAR, West Bengal - 743502, INDIA	16/08/2010	-
5	GIRI DHARI NASKAR	Director	02726319	Not Available	DHAP DHOPI, BARUIPUR, KOLKATA, West Bengal - 700144, INDIA	16/08/2010	-
6	RATAN NASKAR	Director	02378083	AHGPN9138H	KEBAYETPUR,SOUTH GARIA - 1, BARUIPUR, 24 PARGANAS (SOUTH), BARUIPUR, West Bengal - 743387, INDIA	16/08/2010	-

13. From the above table, it is noted that the directors of SIPL at sl. nos. 1-6 above were the directors at the time of the issue and allotment of RPS and they continue to be responsible for the affairs of SIPL and hence liable.

DIRECTIONS

14. From the information available with SEBI, including the investor complaints received and the details downloaded from MCA portal, it can be reasonably inferred that the money mobilization on the part of SIPL is potentially placing investors at risk by not following the requirements of law applicable to a public issue. I note that the noticee company and its directors have not provided the information and documents sought by SEBI in this regard. In the light of the facts in the instant matter, I find this to be a fit case to pass interim directions against SIPL and the 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. SIPL and its Directors, namely Sankar Pailan, Saumen Mondal, Nityananda Baidya, Sadhon Bachhar, Giri Dhari Naskar and Ratan Naskar, 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. SIPL 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. SIPL 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 April 21, 2016.

15. The preliminary findings contained in paragraphs 8, 10 and 11 of this Order are made on the basis of the information obtained from MCA portal. SIPL and the above named Directors and promoters 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. That the Noticees shall 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. That the Noticees shall be restrained / prohibited from accessing the securities market 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.

16. 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 8, 10 and 11 of this Order and directions at para 15 (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 15 (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 15 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.

17. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
18. 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 the company and its directors.

DATE: AUGUST 08, 2017

PLACE: MUMBAI

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