

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, In respect of Interim Order-cum-show cause notices dated April 22, 2016 in the matter of Chakra Infrastructure Limited.

In respect of:

Sr. No.	Noticees	PAN	DIN/CIN
Company			
1.	Chakra Infrastructure Limited	AADCC6855H	U45400WB2008PLC131200
Promoters / Director(s)			
2.	Partha Chakraborti	ADQPC5578E	01274437
3.	Soma Chakraborti	AEKPC9920P	01274477
4.	Swapan Kumar Sen	CILPS3142L	02704406
5.	Prithwis Kumar Das	AFCPD3788F	05268472
6.	Litan Chandra Sen	CEDPS4072K	05268471
7.	Biplab Halder	AHGPH6624N	05268469
8.	Santosh Kumar	ALUPK5400F	06710209
9.	Bijoy Das	ALRPD5933D	03155078
10.	Swapan Majumdar	AKJPM4426D	06405352
11.	Pranab Kumar Roy	ACDPR4876J	06623130
12.	Subhas Bose	BLEPB3468F	06623134

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- Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) passed an interim order-cum-show cause notice dated April 22, 2016 (“**interim order**”) against the Noticees as they were prima facie found to have been responsible for the offer and allotment of equity shares in contravention of the first proviso to section 67(3) of the Companies Act, 1956. Consequently, the noticees were also found to be in breach of sections 73, 60 and 56 of the Companies Act, 1956 and regulations 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

2. Prior to the interim order, SEBI received a reference from the Registrar of Companies (hereinafter referred to as 'RoC'), Kolkata and Reserve Bank of India, Guwahati against Chakra Infrastructure Limited (hereinafter referred to as 'CIL' or 'the Company') regarding its fund raising activities. During the examination, while scrutinizing the balance sheet of the Company for the year ended March 31, 2013, it was revealed that CIL had issued equity shares amounting to ₹ 30,00,000 during the financial year 2012-13. Further, from the annexure to the Auditor's Report dated August 28, 2013, at point no. 'xviii', the following was observed:

"The Company has made preferential allotment of 3,00,000 Equity shares during the year to 196 equity share holders. We are unable to express our opinion whether these allotments were in violation of provision of 67(3) of the Company Act, 1956".

Thereafter, the list of equity shareholders as on March 31, 2013, as enclosed with the Annual Return of the Company was scrutinized. The said list contained a total of 201 equity shareholders. A comparison of the same with the details of shareholders as on March 31, 2012 revealed that the Company had made fresh allotment of equity shares to 196 persons during the financial year 2012-13.

3. Based on the preliminary enquiry, SEBI vide the interim order dated April 22, 2016 issued *inter alia* the following directions that CIL and its Promoter/Directors be:-

(i) restrained from mobilizing funds through the issue of equity shares or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.

(ii) prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly or through other companies in which they are directors/promoters, till further directions.

(iii) restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.

(iv) prohibited from diverting any funds raised from public at large through the issuance of the impugned equity shares or redeemable preference shares, kept in its bank accounts and/or in the custody of the company without prior permission of SEBI until further orders.

CIL and its promoter / directors were further directed not to dispose of any of the properties or alienate the assets of the Company and to provide SEBI with a full inventory of all their assets and

properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

4. Further in the aforesaid interim order, CIL and its promoters/ directors were asked to show cause as to why suitable directions/ prohibitions, under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with 73(2) of the Companies Act, 1956 and the ICDR Regulations should not be passed against them. CIL and its promoters/ directors were directed to file their replies/ submissions within a period of 21 days from the date of receipt of the Order and also indicate whether they desire to avail an opportunity of personal hearing in the matter.
5. The interim order was delivered to all the noticees by way of speed post with acknowledgement (SPAD) and newspaper publication, in the case of noticees where the service failed. However, none of the noticees responded to the interim order. Even though the company and its directors failed to respond to the interim order, an opportunity of personal hearing was granted to all of them in order to comply with the principles of natural justice. The hearing notices were served on Pranab Kumar Roy, Subhas Bose, Prithwis Kumar Das and Santosh Kumar by Hand delivery and by affixture on Partha Chakraborti, Soma Chakraborti and Swapan Kumar Sen. As the hearing notices were not getting served on CIL, Swapan Majumdar, Litan Chandra Sen, Biplab Halder and Bijoy Das, SEBI caused a publication in newspaper on March 3, 2017, regarding the personal hearing scheduled on March 9, 2017.
6. In response to the hearing notice, one of the noticees, namely Prithwis Kumar Das vide letter dated February 27, 2017 communicated his inability to appear for personal hearing on the ground of his age and financial condition. Subsequently vide letter dated March 5, 2017, he reiterated his inability to appear for personal hearing citing the same reasons and requested for a hearing in Kolkata. He further submitted a copy of the letter dated February 27, 2017 as his reply to the interim order. In the said letter, he *inter alia* submitted:-
 - He was an employee of Chakra Wealth Management Advisory Limited as a Business Development Head against a meagre monthly salary of Rs.12,000/- from September 01, 2011.
 - During the time when he joined and even after joining, he had no idea about the nature of business. However, after being aware of the business, he had immediately resigned from the assignment in the month of July 2012.

- During his short tenure of employment with the company, the promoter of the Group, Mr. Partha Chakraborti forcibly compelled him to affix his signature on some papers which he could not understand due to lack of knowledge and ignorance.
 - He was not given copies of such documents.
 - The noticee had lodged a complaint during November 2012 with the Ministry of Corporate Affairs against the reluctance in accepting his resignation.
 - The noticee submitted that he does not have any knowledge about any decision taken by the board of directors of the company during his short tenure. He further stated that he did not receive any agenda for board meeting and did not sign any resolution of the company.
 - The noticee submitted that he is no more associated with the Chakra group.
7. Another noticee Swapan Majumdar submitted vide letter dated February 20, 2017 that he is a patient of high blood pressure, sugar and blockage in cardiac system. Therefore, he is authorizing and engaging a lawyer for appearing on behalf of him on March 9, 2017. All the noticees except five appeared for hearing on March 9, 2017 and made *inter alia* the following submissions:
- A. Reply from Chakra Infrastructure:
- CIL allotted equity shares to the tune of Rs. 60,00,000 (Sixty lacs) during the financial year 2012-13 to 196 persons.
 - The allotment was made by CIL to very close associates.
 - It was over looked that such allotment should have been restricted to not more than 50 persons/ heads.
 - However, at the time of finalization and during the course of auditing of final accounts of the company, it was brought to the notice of the management of CIL that there was a lapse in making of such allotment to 196 persons.
 - The company (CIL) forthwith tried to take steps for revising such allotment and immediately, took legal advice for the same.
 - After deliberations, CIL came to a conclusion that irrespective of the legal provisions contained anywhere it will be preferable to dispose of all the properties/ assets of CIL and repay all its creditors including debenture holders and equity shareholders of the company from the sale proceeds of such property / assets of CIL.
 - CIL found that the Govt. of West Bengal had laid down an embargo on dealing with the property / assets of CIL in any manner whatsoever.

- CIL then moved a writ petition before the Hon'ble High Court at Calcutta bearing W.P. No. 27879 (W) of 2013, praying for lifting of such embargo laid down by the Govt. of West Bengal over the properties of the company so as to enable CIL to sell of all its properties / assets and pay off all its creditors including debenture holders and equity share holders. However the matter is still pending before the Hon'ble Court for final decision in respect of such writ petition.
- The properties / assets lying in the name of CIL are much higher than all the liabilities of CIL taken together. The principal reason as to why CIL moved such a writ petition is to clear off all its liabilities as mentioned hereinabove.
- None out of the 196 equity share holders have raised any objection regarding such allotment and hopefully as on this date none of such shareholders lodged any written objection regarding the allotment of equity shares.
- It is only due to oversight and /or inadvertence that such allotment as alleged was made to 196 equity share holders.
- When such irregularity of allotment of equity shares made by CIL was pointed out, the company never repeated such mistake.

B. Reply from Partha Chakraborti

- That he resigned from the directorship of the company with effect from 3rd July, 2013 and handed over his responsibility as the director of the company. Since then the existing Board of Directors of the company took over all responsibilities of the company from him and issued notices informing all concerned that after his resignation he is not at all connected with the company or its associated companies in any manner from where he had resigned.
- The paper publication in the local newspapers highlighting his detachment from the company post his resignation, caused to be issued by the company is on record.
- That in the absence of any relevant documents, it is not possible for him to highlight about the details of the allotment of equity shares to 196 persons including the legalities involved with such allotment. However, he asserted that so far as his memory goes such allotment was made within closed persons/ associates of the company and that no public allotment was made in respect of such equity shares.
- Moreover, at that time of his resignation from the board of the company, it came to his knowledge that certain embargo has been laid down by the Govt. of West Bengal thereby restricting the company or its management to deal with any of the properties / assets of the company. This created a big set back to the company since a discussion was going on

within the management of the company that it will be a better approach to liquidate all the properties of the company and pay off all the creditors, debenture holders etc. so that at the end of the day, company should not be held up for any of its liabilities since the company was certain that its assets / properties are much more than its liabilities.

C. Reply from Litan Chandra Sen :

- He was a part time Director of Chakra Infrastructure Ltd only for a period of two and half month i.e. 21.04.2012 to 01.07.2012.
- During the said period, he had never attended any meeting / conference of the company nor was involved in any type of decision making activities of the company.
- He did not receive any remuneration from the company.

D. Reply from Swapan Kumar Sen

- He was one of the part time Directors of CIL and was with the company till 21.04.2012 when he resigned from the Directorship.
- Thereafter he was neither directly or indirectly involved/ connected with the Company and hence no idea about the alleged issued of any equity share / shares to various investors.

E. Reply from Soma Chakraborty

- She resigned from the Directorship of the said company with effect from 21.04.2012 and accordingly had no connection regarding the allotment made by the company in respect of equity shares to 196 persons post her resignation from the Directorship of the Company.

F. Reply from Santosh Kumar

- He joined the company in January 2011 as an agent. He was introduced to Partha Chakraborti the promoter director of CIL by a common friend whose name was also Santosh kumar.
- The noticee came to know that his name was appearing in the public notice issued in respect of the Company.
- The noticee had initially deposited Rs.1,00,000/- (NCD certificate dated January 10, 2012 issued by CIL enclosed) and thereafter became an agent of the Company. As an agent he deposited money from his wife and relatives considering the fact that the return assured was lucrative.

- After March 2013 CIL stopped paying the maturity value and because of the same a lot of altercation happening frequently between agents and managing director Partha Chakraborti.
- Managing Director Partha Chakraborti contended that because of the embargo of West Bengal government they are not in a position to pay off the maturity amount and the company had filed a writ petition before Calcutta High court for lifting the embargo.
- The directors of the Company particularly Mr. Partha Chakraborti had by way of misrepresentation inducted him as a director in the Company.
- Immediately on coming to know about the same, the noticee resigned from the directorship in the Company by submitting Form-32. A copy of such Form and Agency card were enclosed. As per Form-32, this noticee has ceased to be a director w.e.f. February 26, 2014. Noticee had also enclosed Form-32 regarding his resignation from three other Chakra group companies.

8. I have considered the interim order dated April 22, 2016 and the fact that noticee company CIL has accepted that it has issued equity shares to 196 persons. While accepting that the offer and allotment was a mistake, the company has taken up the defence that allotment was made to very close associates of the company. At this juncture, it is relevant to refer to Section 67 of the Companies Act, 1956 which 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. In this regard, it is important to note that as held by the Hon'ble Supreme Court in Sahara Order, by virtue of the first proviso to section 67(3) of the Companies Act, 1956, the issuance of shares to more than 49 persons would become an offer to the public. It is also to be kept in mind that the first proviso was inserted in section 67(3) vide the Companies (Amendment) Act, 2000, with effect from December 13, 2000, in order to curb the companies from offering shares and debentures to a wider group of people by disguising it as "domestic concern". In my view, the intention of the Legislature, as envisaged in the said Amendment is that any mobilization of funds from a group of investors, fifty or more in number, should be classified as a "public issue". It is mandatory for every company to comply with the aforesaid proviso both in letter and spirit. As held by the Hon'ble Supreme Court in the Sahara Order, once the number of allottees exceeds 49, it becomes irrelevant whether the allottees were friends, relatives or kith and kin as has been claimed by the Noticees in the present case. Accordingly, the provisions of section 67(3) and other related provisions of law apply to such issues of securities irrespective of the number of allottees, their relationship with the company and the quantum of allotment, etc.
10. I note from the records available that the noticee company has clearly made allotment to more than 49 persons, a fact which has not been rebutted on merit by any of the noticees. Considering this information in conjunction with other records available with the Board, I do not find any reason to differ with the conclusions arrived at in the interim orders. The legal provisions and the case law cited in the interim orders clearly render the matter within the jurisdiction of the Board. In view of the above, I am in agreement with the interim orders' prima facie conclusion that the offer and allotment of equity shares by the noticee company 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 the noticee company to comply with the mandate of sections 73, 60 and 56 of the Companies Act, 1956 and regulations 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, none of which have been complied with by the noticees. Since the aforesaid legal provisions and relevant case law have already been discussed in detail in the interim orders, for the sake of brevity I do not find it necessary to discuss the same in this final order against the noticees. It would suffice to state the aforesaid legal provisions and case law discussed in the said interim orders would be automatically applicable since it is found that the offer and allotment of equity shares by the noticee company qualifies to be an offer made to the public. For the sake of determining consequential measures, I draw reference to section 73 (1) & (2) of the Companies Act, 1956, extracts of which are 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. In terms of Section 73(2) of the Companies Act, 1956, 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). The interim order was issued against CIL, Partha Chakraborti, Soma Chakraborti, Swapan Kumar Sen, Prithwis Kumar Das, Litan Chandra Sen, Biplab Halder, Santosh Kumar, Bijoy Das, Swapan Majumdar, Pranab Kumar Roy and Subhas Bose. These persons are either the present or former directors of the Company. Despite affording opportunities Biplab Halder and Bijoy Das have not filed their submissions. The following table presents (information from RoC/MCA) the dates when the noticees were appointed as directors and also the dates of their resignation, if applicable:

	Name	Date of appointment	Date of resignation, if any
1.	Partha Chakraborti	12/12/2008	03/07/2013
2.	Soma Chakraborti	12/12/2008	21/04/2012
3.	Swapan Kumar Sen	06/07/2009	21/04/2012
4.	Prithwis Kumar Das	21/04/2012	08/08/2012
5.	Litan Chandra Sen	21/04/2012	01/07/2012
6.	Biplab Halder	21/04/2012	03/07/2013
7.	Santosh Kumar	22/11/2013	26/02/2014
8.	Bijoy Das	22/11/2013	26/02/2014
9.	Swapan Majumdar	03/08/2012	Continues as director
10.	Pranab Kumar Roy	03/07/2013	Continues as director
11.	Subhas Bose	03/07/2013	Continues as director

13. The allotment of equity shares were made during FY 2012-2013. From the details pertaining to the tenure of the directors, as mentioned in the table above, it can be inferred that –

- a. Partha Chakraborti, Soma Chakraborti, Swapan Kumar Sen, Biplab Halder, Litan Chandra Sen, Prithwis Kumar Das and Swapan Majumdar were the directors of the Company when the Company made the offer and allotment of equity shares during 2012- 2013 in violation of the law, and
- b. Bijoy Das, Pranab Kumar Roy, Subhas Bose and Santosh Kumar had joined the board subsequent to the allotment of equity shares.

14. The position of a “director” in a company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The board of directors of CIL at the time of the above mentioned issues of shares, being in control of the affairs of CIL, was under an obligation to ensure that the offer and allotment of equity shares were in compliance with all the applicable provisions of the Companies Act, 1956, SEBI Regulations and other applicable laws. In my view, the above named directors of CIL, namely, Partha Chakraborti, Soma Chakraborti, Swapan Kumar Sen, Biplab Halder, Litan Chandra Sen, Prithwis Kumar Das and Swapan Majumdar, would qualify to be "officers in default" as defined under section 5 of the Companies Act, 1956. I, therefore, find that Partha Chakraborti, Soma Chakraborti, Swapan Kumar Sen, Biplab Halder, Litan Chandra Sen, Prithwis Kumar Das and Swapan Majumdar are also responsible for the acts and omissions of CIL in this case. In view of the above, the submissions made by the noticees that they were the past directors; and had no role in the affairs of the Company and were inducted by misrepresentation etc. do not have any merit.

15. Bijoy Das, Pranab Kumar Roy, Subhas Bose and Santosh Kumar joined the Company’s board subsequent to the allotments, and are presently the directors of CIL. They along with Company and others as mentioned in the forgoing paragraph are jointly and severally liable to make refunds as such liability is not yet discharged, in terms of section 73(2) of the Companies Act along with interest.

DIRECTIONS

16. 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:-

- i Noticees namely, CIL, Partha Chakraborti, Soma Chakraborti, Swapan Kumar Sen, Prithwis Kumar Das, Litan Chandra Sen, Biplab Halder, Santosh Kumar, Bijoy Das, Swapan Majumdar, Pranab Kumar Roy and Subhas Bose shall jointly and severally refund the money collected through the offer and allotment of equity shares of CIL 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 90 days from the date of receipt of this Order;
- ii The refund as directed hereinabove shall be made through banking channels such as demand draft or electronic mode of transfer and a trail of such refunds shall be maintained by the Noticees for verification, if necessitated at a later date;
- iii The noticees may, subject to the direction/s of the Hon'ble High Court of Calcutta in Writ Petition No. 11804 (W) of 2015, sell the assets of the Company, if necessary, for the purpose of making the refund as directed above and deposit the excess proceeds in an Escrow Account opened with a nationalised Bank so as to satisfy subsequent claims of investors that may arise.
- iv Within seven days of completion of refund as directed hereinabove, the Noticees shall file a certificate of such completion with SEBI from two independent Chartered Accountants after proper verification of the details of such refunds from records including bank accounts of the Noticees and after being satisfied that the refund has actually been made.
- v Till the refund, as directed above, is complete, the Noticees Nos. 1- 12 are hereby—
 - (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

17. For a period of four years from the date of completion of the refund, as directed in para 16 above, the Noticees Nos. 1-12 are hereby—

- (a) restrained from accessing the securities market;

- (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
- (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

18. In the event of the Noticees failing to comply with the directions of refund stated in para 16 above, SEBI shall initiate recovery proceedings in accordance with the provisions of the SEBI Act, 1992.
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.

Place: Mumbai

Date: September 08, 2017

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