

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.	Dreamway Industries Limited	U74999WB2010PLC154202	AADCD6196N
Promoters & Directors			
2.	Nirupam Santra	3120359	CGCPS8873D
3.	Rupam Santra	3211869	CUXPS6610M
4.	Purnendu Santra	3120414	BSSPS9845L
5.	Malay Mallick	3120398	ANTPM5722B
6.	Soumen Manna	3588132	AKAPM7425R
7.	Naba Kumar Santra	3588138	CRYPS4172E
8.	Dipudas Ghosh	3588110	AKAPG2593G
9.	Bhaskar Ganguly	5113848	APEPG1595F
10.	Prodyumna Kumar Ghosh	-	APSPG1415Q
11.	Subrata Manna	-	AJPPM0546D
12.	Subrata Kumar Banerjee	-	ASPPB7641B

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- Securities and Exchange Board of India ("**SEBI**") received a complaint against M/s. Dreamway Industries Limited ("**DIL**" / "the company") whereby the complainant had *inter alia* requested SEBI to investigate fund mobilization from public by DIL and to take

necessary measures for refund of money invested by the complainant in the debenture issued by the company. The complainant had also submitted a copy of a debenture certificate issued by the company.

2. As a matter of preliminary inquiry, SEBI through letters dated October 22, 2015 sought the following information from M/s. Dreamway Industries Limited and its directors at that time, viz. Shri Nirupam Santra, Shri Bhaskar Ganguly and Shri Dipudas Ghosh –

- i. Copy of Audited Balance Sheet and Annual Returns of the company for the last 3 years;
- ii. Name, addresses, PAN and occupation of all the Promoters/Directors and Key Managerial Personnel of the company;
- iii. Nature of business of the company;
- iv. Other Information in respect of issue of Shares/Debentures:
 - a. Copy of Prospectus / Red Herring Prospectus/ Statement in lieu of prospectus/ Information memorandum filed with RoC for issuance of Shares/Debentures.
 - b. Date of opening and closing of the subscription list for the said Shares/Debentures.
 - c. Details regarding the number of application forms circulated inviting subscription for Shares/Debentures and number of applications received.
 - d. Details of allottees in the given format below (in hard copy as well as soft copy).

Sl. No.	Date of Allotment (dd/mm/yyyy)	Financial Year	Name of Allottee	Address of Allottee/ Contact details	Amount of Shares / Debentures allotted (Rs.)
Total:					

- e. Copies of the minutes of Board/committee meeting in which the resolution has been passed for raising such additional capital and also for allotment of Shares/Debentures.

- f. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of Shares/Debentures.
 - g. Terms and conditions of the issue of Shares/Debentures.
 - h. Whether the company has applied for listing of its securities with any of the Stock Exchanges.
 - i. Copies of Form 2 and Form 10 filed with the RoC.
 - j. Details of Debenture Trustee viz. Name, address, board resolution authorizing their appointment etc.
3. The abovementioned letter sent to Shri Nirupam Santra was delivered. However, the letters sent to DIL and Shri Bhaskar Ganguly were returned undelivered. The letter sent to Dipudas Ghosh has neither been returned undelivered nor has any reply been received from him in respect of the same. No information has been received by SEBI from DIL or any of its abovementioned directors, till date. A physical verification of the registered office address of DIL was conducted on December 26, 2015 and it was found that the company was not present there.
4. A letter dated December 09, 2015 was also issued to the complainant seeking various information and documents regarding mobilization of funds by DIL. However, no reply was received from her.
5. In the meantime, information regarding DIL was obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*. On examination of the information and documents obtained from MCA 21 Portal and other material available on record, the following are observed regarding DIL—
- i. **Date of Incorporation:** 21.10.2010.
 - ii. **Type of Company:** Public Limited Company
 - iii. **Corporate Identity Number (CIN):** U74999WB2010PLC154202
 - iv. **PAN:** AADCD6196N
 - v. **Registered Office Address:** Bagnan, Khadinan Library More, Bagnan, Pin - 711303, West Bengal.
 - vi. **Date of filing of Last Annual Accounts and Annual Reports –** 31.03.2012.

vii. **Total Issued Capital of the Company(As on March 31, 2012):**

- i. Equity Shares : 50,000 Shares @ Rs. 10/- each
- ii. Preference Share : 6,99,900 Shares @ Rs. 10/- each

viii. **Allotment details as per Form 2:**

Details of redeemable preference shares Issued

Financial Year	Date of Allotment of Shares	Type of Shares	No. of Allotees	No. of Shares Allotted	Value of Allotment (in Rs.)
2010 -11	31.03.2011	Redeemable Preference Shares	468	6,99,900	69,99,000/-
Total			468	6,99,900	69,99,000/-

6. It is observed from Form-2 filed by the company with RoC and the list of allottees attached thereto that the company has issued *Redeemable Preference Shares* (RPS) to 468 persons during the Financial Year 2010-11 and has raised a total of Rs.69.99 Lakhs through such issuance. Further, the documents submitted by the abovementioned complainant to SEBI include a copy of a Secured Non-Convertible Redeemable Debenture certificate. However, from the material available on record, it could not be ascertained whether the company has issued Secured Non-Convertible Redeemable Debentures to more than 49 persons or the total amount raised through such issuance. From the above, it is clearly evident that DIL has issued RPS to more than 49 persons in F.Y. 2010-11.

ISSUES FOR DETERMINATION

7. In the context of the details of the offer and allotment of preference shares mentioned in the Table at paragraph 5 above (hereinafter referred to as "*the offer and allotment of preference shares*"), the issue for determination in the instant matter is whether the mobilization of funds by DIL through the offer and allotment of RPS, is in accordance with the provisions of the SEBI Act, 1992 and the Companies Act, 1956.

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 DIL 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 DIL with RoC) that DIL has offered and allotted RPS to 468 persons during Financial Year 2010-11 and has mobilized Rs.69.99 Lakhs through such issuance. Therefore, on the basis of available information recorded above, the *offer and allotment of preference shares* by DIL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956. Further, it is observed that DIL is not a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956, and thus, is not covered under the exceptions provided in the *second proviso* to Section 67(3) of the Companies Act, 1956.

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

11. 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 DIL is *prima facie* in breach of the provisions of Section 73 as well.
12. 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 DIL 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 DIL 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.
13. 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 present and past directors / promoters of DIL, including the dates of appointment/cessation as directors, are as under:

Sl. No	Name of the person	Design.	DIN	PAN	Residential Address	Date of Appointment	Date of Cessation
1	Nirupam Santra	Promoter & director	3120359	CGCPS8873D	Shitalchak Santra Para, Kushberiya Amta, Howrah, West Bengal, PIN - 711303	21-10-2010	Continuing

2	Rupam Santra	Promoter & director	3211869	CUXPS6610M	Shitalchak Santra Para, Kushberiya Amta, Howrah, West Bengal, PIN - 711303	21-10-2010	02-04-2012
3	Purnendu Santra	Promoter & director	3120414	BSSPS9845L	Shitalchak Manna Para, Kushberiya Amta, Howrah, West Bengal, PIN - 711303	21-10-2010	28-01-2011
4	Malay Mallick	Promoter & director	3120398	ANTPM5722B	Gunanandapur Purba, Bagnan, Howrah, West Bengal, PIN - 711312	21-10-2010	01-12-2011
5	Soumen Manna	Director	3588132	AKAPM7425R	Kedar Chatterjee Lane, Behala, South Parganas West Bengal PIN - 700034	01-11-2011	01-12-2011
6	Naba Kumar Santra	Director	3588138	CRYPS4172E	Shitalchak, Santrapara Kushberia, Amta, Uluberia, Howrah, West Bengal PIN - 711401	01-12-2011	15-09-2014
7	Dipudas Ghosh	Director	3588110	AKAPG2593G	Kushberiya, Dakshin Bera Para, Amta-2, Amta, Uluberia, Howrah, West Bengal PIN - 711401	02-04-2012	Continuing
8	Bhaskar Ganguly	Director	5113848	APEPG1595F	Buri, Kalitola, Bainan, Bagnan Howrah, West Bengal, PIN - 711303	20-07-2012	Continuing
9	Produmna Kumar Ghosh	Promoter	-	APSPG1415Q	Vill- Khasmorah Ghoshpara, PO- Khasmorah, PS. Domjur, Howrah, West Bengal, 711411.	-	-

10	Subrata Manna	Promoter	-	AJPPM0546D	Shitalchak Manna Para, Shitalchak Kushberia, Amta-2, Amta, Uluberia, Howrah, West Bengal, 711112.	-	-
11	Subrata Kumar Banerjee	Promoter	-	ASPPB7641B	Harinarayanpur, Uttar Para, Mugkalyan, Benapur, Bagnan, Howrah, West Bengal, 711312.	-	-

14. I note that the persons at serial nos. 1, 7 & 8 are the present directors and continue to be responsible for the affairs of DIL. Further, the persons at serial nos. 2, 4, 5 & 6 in the above table were the directors of DIL either during the issuance of RPS by the company or thereafter and the persons mentioned at sl. nos. 3, 9, 10 & 11 in the above table are the promoters of DIL. Hence, they are liable for the alleged contraventions.

DIRECTIONS

15. From the information obtained from MCA portal, it can be reasonably inferred that the money mobilization on the part of DIL is potentially placing investors at risk by not following the requirements of law applicable to a public issue. In the light of the facts in the instant matter, I find this to be a fit case to pass interim directions against DIL and the above named promoters / 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:-
- DIL and its above named promoters / directors, viz. Shri Nirupam Santra, Shri Rupam Santra, Shri Purnendu Santra, Shri Malay Mallick, Shri Soumen Manna, Shri Naba Kumar Santra, Shri Dipudas Ghosh, Shri Bhaskar Ganguly, Shri Prodyumna Kumar Ghosh, Shri Subrata Manna and Shri Subrata Kumar Banerjee, 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. DIL and the above named promoters / 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. DIL and the above named promoter / 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 October 22, 2015.

16. The preliminary findings contained in paragraphs 9, 11 and 12 of this Order are made on the basis of the information obtained from MCA portal. DIL and the above named promoters / directors 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.

17. 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, 11 and 12 of this Order and directions at para 16 (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 16(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, if the Noticees fail to comply with the directions at para 16 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.

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

Place: Mumbai
Date: September 08, 2017

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