

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 Jeevan Suraksha Energy and Industries Ltd.

In respect of:

Sr. No.	Noticees	PAN	DIN/CIN
Company			
1.	Jeevan Suraksha Energy and Industries Ltd	N.A.	U40101AS2008PLC008605
Promoters / Director(s)			
2.	Chandan Das	AFEPD6600G	00700889
3.	Ashok Chakraborty	AFZPC5242E	00700921
4.	Uttam Acharjee	AHRPA3277H	05112214
5.	Arju Acharjee	AIDPA6075A	00790737
6.	Sangita Das	AJCPD4443P	02014574
7.	Subhrajyoti Das	N.A.	N.A.
8.	Dipamoni Acharjee	AKNPA2732Q	N.A.
9.	Abrith Acharjee	N.A.	N.A.
10.	Paban Malakar	N.A.	N.A.

1. Securities and Exchange Board of India ("SEBI") received a complaint alleging fund mobilization from public by Jeevan Suraksha Energy and Industries Ltd. (hereinafter referred to as "JSEIL"/"the company") by way of issuance of Redeemable Preference Shares ("RPS") and inability to recover investments and promised returns.
2. By way of preliminary inquiry, SEBI sought information from the company and its directors in respect of issuance of RPS by the company, by way of separate letters dated January 09, 2015. The letters sought information pertaining to the shareholders, directors, key managerial personnel, financial statements, nature of business, capital raised and details thereof, board meetings etc. However all the said letters returned undelivered.
3. A physical verification of the registered office address of JSEIL was conducted on February 18, 2015 and it was found that the company was not present there. Accordingly, letter dated

August 12, 2015 was sent informing the Registrar of Companies (RoC)-Shillong, that the company was not available at its registered office address.

4. In the meantime, information regarding JSEIL 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 JSEIL –

- i. Date of Incorporation: February 26, 2008
- ii. Type of Company: Public Limited
- iii. Corporate Identity Number (CIN): U40101AS2008PLC008605
- iv. PAN: N.A.
- v. Registered Office Address: College Road, Lumding, Nagaon, Assam- 782447
- vi. Date of filing of Last Annual Accounts and Annual Reports – 31/03/2011
- vii. Total Issued Capital of the Company(As on March 31, 2011):
 - i. Equity Shares Rs. 7,50,000
 - ii. Preference Share: N.A.
- viii. Allotment details as per Form 2/ Details of redeemable preference shares\ Issued:
NIL
- ix. Details of any Board meetings held by the company as per RoC record with respect to issue of capital:

TABLE 1

Date of Board meeting	Date of passing resolution	Amount proposed to be raised	Type of issue
12-03-2009	12-03-2009	53,500,000	Increase in Authorized Capital
05-04-2010	05-04-2010	90,000,000	Not ascertainable. However, minutes of extra ordinary general meeting of the company indicates decision to issue Redeemable Preference Shares(RPS) forming part of the authorized capital to such persons, institutions and/or bodies corporate as the board may think fit
14-06-2011	14-06-2011	150,000,000	Increase in Authorized Capital

5. The complainant had submitted 135 certificates in respect of RPS issued to 125 allottees thereby raising `25,82,000. The brief details of the above RPS certificates are as follows:

TABLE 2

Year of Allotment	Date of allotment	Type of Securities	No. of Allottees	Amount (Rs)
2012-13	During April 2012, allotments were made on 8 different dates	RPS	25	7,25,000

2012-13	During May 2012, allotments were made on 6 different dates	RPS	13	1,08,000
2012-13	During June 2012, allotments were made on 16 different dates	RPS	71	8,44,000
2012-13	During July 2012, allotments were made on 9 different dates	RPS	16	9,05,000
Total			125	25,82,000

ISSUES FOR DETERMINATION

6. In the context of the details of the offer and allotment of preference shares mentioned in Table 2 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 JSEIL 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

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 JSEIL 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. From the material available on record, I note that it cannot be ascertained whether the company had in any single instance offered and allotted RPS to more than 49 persons. However, I note from the available record that in a short period of four months (*i.e. from April 2012 to July 2012*) the total number of allottees exceeds 49 and cumulatively the RPS were issued to 125 persons thereby raising ₹25,82,000. This pattern of repeated allotment in small tranches appears to have been done solely for the purpose of circumventing the applicability of Section 67 (3) of the Companies Act, 1956 and consequent regulatory compliances. Therefore, on the basis of available information recorded above, the offer and allotment of preference shares by JSEIL *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 JSEIL is not a Non-banking financial company or a 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.

9. From the above, it will follow that such a public issue makes it imperative for JSEIL 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 JSEIL 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 JSEIL 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 JSEIL is also *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the 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 from MCA Portal, the details of the present and past directors / promoters of JSEIL, including the dates of appointment/cessation as directors, are as under:

TABLE 3

Sr. No.	Name of Director	Designation	DIN	PAN	Residential Address	Date of Appointment	Date of cessation
1.	Chandan Das	Director	00700889	AFEPD6600G	Kharihulie Colony, Half Nagarjan, Dimapur, 797112, Nagaland, India	26/02/2008	-
2.	Ashok Chakraborty	Director	00700921	AFZPC5242E	Bbc Colony, Pandu,	21/11/2011	-

					Guwahati, 781012, Assam, INDIA		
3.	Uttam Acharjee	Director	05112214	AHRPA3277H	Sabitri Bhawan, Haflong Road, Lumding, 782447, Assam, India	01/03/2012	-
4.	Arju Acharjee	Director	00790737	AIDPA6075A	Lmithi Colony Sitalabari Dimapur Nagaland India 797112	26/02/2008	29/09/2012
5.	Sangita Das	Director & Promoter	02014574	AJCPD4443P	Khriholie Colony Half Nagarjan, House No.Njc 697 Dimapur Nagaland India 797112	26/02/2008 (as Director)	21/11/2011 (as Director)
6.	Subhrajyoti Das	Promoter	N.A.	N.A.	Chiring Chapori Dibrugarh Assam-AS 786001	N.A.	N.A.
7.	Dipamoni Acharjee	Promoter	N.A.	AKNPA2732Q	Lhomithi Colony sitalabari Dimapur Nagaland- NL 797112	N.A.	N.A.
8.	Abrith Acharjee	Promoter	N.A.	N.A.	Lhomithi Colony sitalabari Dimapur Nagaland- NL 797112	N.A.	N.A.
9.	Paban Malakar	Promoter	N.A.	N.A.	Wed Ward Colony, Dimapur, Nagaland	N.A.	N.A.

13.I note that the persons at serial nos. 1 to 3 are the present directors and are responsible for the affairs of JSEIL. The person at serial no. 4 in Table 3 above was director during the period of the alleged *offer and allotment of preference shares*. The persons mentioned at serial nos.

5 to 9 in Table 3 above are promoters of JSEIL. Hence, the aforesaid persons are liable for the contraventions alleged in paras 8 to 11 above.

DIRECTIONS

14. From the information obtained from MCA portal, it can be reasonably inferred that the money mobilization on the part of JSEIL is potentially placing investors at risk by not following the requirements of law applicable to a public issue. In the absence of records or information forthcoming from the company or its directors, it is also likely that money mobilization by JSEIL, including by way of issuance of RPS, has not ceased. In the light of the facts in the instant matter, I find this to be a fit case to pass interim directions against JSEIL and the above named directors/ promoters. 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. JSEIL and its above named promoters / directors, viz. Chandan Das (PAN: AFEPD6600G), Ashok Chakraborty (PAN: AFZPC5242E), Uttam Acharjee (PAN: AHRPA3277H), Arju Acharjee (PAN: AIDPA6075A), Sangita Das (PAN: AJCPD4443P), Subhrajyoti Das (PAN: N.A.), Dipamoni Acharjee (PAN: AKNPA2732Q), Abrith Acharjee (PAN: N.A.) and Paban Malakar (PAN: N.A.) 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. JSEIL 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. JSEIL 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* as sought vide letters dated January 09, 2015.

15. The preliminary findings contained in paragraphs 5 and 8 of this Order are made on the basis of the information obtained from MCA portal and complainant. JSEIL and the above named directors/ promoters (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. 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 further 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 5 and 8 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, 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 and promoters.

Place: Mumbai

Date: September 27, 2017

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA