

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of M/s. Skymarg Agro Industries India Ltd.

In respect of:

1. Skymarg Agro Industries India Limited (PAN: AASCS8925M; CIN No. U15122WB2013PLC191177),
2. Shri Pradip Kumar Das (PAN: ANZPD5088R; DIN: 06483239),
3. Shri Dharmnath Rai (PAN: AZBPR2908J; DIN: 06490157),
4. Shri Jai Singh (PAN: BPZPS7525B; DIN: 06490160),
5. Shri Subhasis Mahato (PAN: ARQPM0643J; DIN: 06490168),
6. Shri Sumit Kumar Das (PAN: AQIPD2277J; DIN: 06490177).

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1. M/s. Skymarg Agro Industries India Limited (hereinafter referred to as "SMAIIL" or "Company"), was incorporated on March 5, 2013, with ROC-Kolkata with CIN No. as U15122WB2013PLC191177.
 2. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an examination into the fund-raising activity of SMAIIL in respect of *Redeemable Preference Shares* (hereinafter referred to as "RPS").
 3. On enquiry by SEBI, it was observed that SMAIIL had made an offer of RPS in the year 2013-14 (hereafter referred to as "Offer of RPS") to at least 65 allottees.
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4. As the above said Offer of RPS was found prima facie in violation of respective provisions of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Companies Act, 1956, SEBI passed an interim order dated August 7, 2015 (hereinafter referred to as “**Interim Order**”) and issued directions mentioned therein against SMAILL and its Directors, viz. Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following prima facie findings/allegation were recorded. SMAILL had made an offer of RPS during the Financial Year 2013-14 to at least 65 allottees
6. The above offer of RPS and pursuant allotment were deemed public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under Section 60 read with Section 2(36), Section 56, Sections 73(1),(2) and (3) of the Companies Act, 1956 were not complied with by SMAILL in respect of the offer of RPS.
7. In view of the prima facie findings on the violations, the following directions were issued in the said interim order dated August 7, 2015 with immediate effect:
 - i. SMAILL (PAN: AASCS8925M) shall forthwith cease to mobilize funds from investors through the *Offer of Redeemable Preference Shares* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - ii. SMAILL and its present Directors, viz. Shri Pradip Kumar Das (PAN: ANZPD5088R; DIN: 06483239), Shri Dharmnath Rai (PAN: AZBPR2908J; DIN: 06490157), Shri Jai Singh (PAN: BPZPS7525B; DIN: 06490160), Shri Subhasis Mahato (PAN: ARQPM0643J; DIN: 06490168) and Shri Sumit

Kumar Das (PAN: AQIPD2277J; DIN: 06490177) are 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, till further orders;

- iii. SMAILL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
- iv. SMAILL shall provide a full inventory of all its assets and properties;
- v. SMAILL's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. SMAILL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of Redeemable Preference Shares*, without prior permission from SEBI;
- vii. SMAILL and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of Redeemable Preference Shares*, which are kept in bank account(s) and/or in the custody of SMAILL;
- viii. SMAILL and its abovementioned Directors shall co-operate with SEBI and shall furnish all information/documents sought vide letter dated October 29, 2014.

8. The interim order also directed the Noticees to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 should not be passed against them:

- i. Directing them jointly and severally to refund money collected through the *Offer of Redeemable Preference Shares* alongwith interest, if any, promised to investors therein;

- ii. Directing them not to issue 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, for an appropriate period;
 - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
9. Vide the said interim order, SMAIIL and its abovementioned Directors were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim Order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
10. *Service of interim order:* The copy of the interim order was sent to the Noticees by letter dated August 11, 2015 by speed post. The said interim order could not be delivered to the SMAIIL and its director, Shri Pradip Kumar Das. However, the interim order was delivered to the other directors, viz., Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das on August 17, 2015 and Shri Dharmnath Rai on August 18, 2015 as per the acknowledgment receipt obtained from India post website
11. *Replies:* Shri Sumit Kumar Das replied vide letter dated September 19, 2015 received on September 23, 2015 submitting, *inter-alia*, that he was just a mere director, generally ignorant of any issue regarding the day-to-day business of the Company and that he did not know about issuance of Preference Shares in the State of Bihar. Further, he submitted that he had no document regarding the account of the Company and that he had long since resigned from the Company.

12. *Opportunity of Hearing and Post hearing submissions:* The Company and the directors were given an opportunity of personal hearing on September 20, 2016 vide letter dated August 25, 2016 sent by speed post. The said letter was delivered to Shri Jai Singh, Shri Subhasis Mahato, Shri Sumit Kumar Das and Shri Dharmnath Rai while the letter sent to SMAIIL and Shri Pradip Kumar Das was returned undelivered. The Noticees were also notified vide notification dated August 28, 2016 published in the newspapers Times of India and Ananda Bazaar Patrika about the hearing scheduled on September 20, 2016 as well as about the interim order cum show cause notice issued to them. None of the Noticees availed the opportunity of hearing held on September 20, 2016. Shri Dharmnath Rai sought adjournment of the hearing vide letter dated September 15, 2016 received by SEBI on September 21, 2016 and was accordingly granted another/final opportunity of personal hearing on October 20, 2016 vide letter dated October 6, 2016. Shri Dharmnath Rai submitted the reply vide letter dated October 19, 2016 received on October 25, 2016. His submissions in brief are as under:

- (a) He requested for more time to be present in the final hearing and regretted that he was not in position to attend the hearing in Head Office due to bad financial condition and serious illness of his father.
- (b) He, therefore, requested to be given a chance to attend hearing at the Regional Office in Kolkata and further submitted that he was fully innocent about company law and regulation and that he did not have any documents of the Company to present before SEBI.

13. Subsequently, the Noticees were given one more opportunity of personal hearing on June 28, 2017 vide notification dated June 10, 2017 published in newspapers Times of India and Ananda Bazaar Patrika. The Noticees were notified by SEBI that they will be given the final opportunity of being heard on

June 28, 2017 at the time and the venue mentioned therein. The Noticees were also advised that in case they fail to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded ex-parte on the basis of material available on record. None of the Noticees availed the opportunity of personal hearing held on June 28, 2017.

14. I have considered the allegations and material available on record including documents downloaded from MCA 21 Portal and submissions by two of the Noticees. On perusal of the material available on record, the following issues arise for consideration. Each question is dealt with separately under different headings.

- (1) Whether the Company came out with the Offer of RPS as stated in the interim order?*
- (2) If so, whether the said issues are in violation of Section 60, Section 56 and Section 73 the Companies Act, 1956?*
- (3) If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1 - Whether the Company came out with the Offer of RPS as stated in the interim order?

15. I have perused the interim order dated August 7, 2015 for the allegation of offer of RPS to at least 65 allottees. I note that neither the Company nor the directors have disputed the same. However, Shri Sumit Kumar denied knowledge of issuance of RPS in Bihar.

16. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on record. Though Interim order does not mention the amount of approximate money collected by the Company, based on complaints received from various persons, it is found that at least 65 persons

were allotted the RPS for the aggregate value of at least Rs. 30,67,000.

17. Therefore, it is noted that SMAILL has issued and allotted RPS to at least 65 investors during the financial year 2013-14, mobilizing at least Rs. 30,67,000.

ISSUE No. 2- If so, whether the said issues are in violation of Section 60, Section 56 and Section 73 the Companies Act, 1956?

18. The provisions alleged to have been violated and mentioned in Issue No.2 are applicable to the offer of RPS made to the public. Therefore the primary question that arises for consideration is whether the issue of RPS is 'public issues'. At this juncture, reference may be made to section 67(1) & (3) of the Companies Act, 1956:

"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)."

19. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI* (Civil Appeal no. 9813 and 9833 of 2011)(hereinafter referred to as the "***Sahara Case***"), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

"84. Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the —section of the public. Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is 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 otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses

(1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

85. The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. ...” (Emphasis supplied)

20. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not 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, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

21. In the instant matter, I find that RPS were issued by SMAILL to at least 65

investors in the financial year 2013-14. I also find that SMAIIL has mobilized an amount of at least Rs. 3067000 over the financial year 2013-14. This indicates that the Offer of RPS was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956. Neither SMAIIL nor its directors have contended that the Offer of RPS does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956. Therefore, in view of the material available on record, I am of the opinion that the Offer of RPS by SMAIIL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the Offer of RPS are deemed to be public issues and SMAIIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

22. Further, since the offer of RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.
23. The allegations of non-compliance of the above provisions were not denied by SMAIIL or its directors. I also find that no records have been submitted to indicate that it has made an applications seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that SMAIIL has contravened the said provisions. SMAIIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that SMAIIL has also not complied with the provisions

of section 73(3) of Companies Act, 1956 which mandates that the amounts received from investors shall be kept in a separate bank account and failed to repay the same in accordance with section 73(2) of Companies Act, 1956 as observed above.

24. Section 2(36) of the Companies Act, 1956 read with section 60 of Companies Act, 1956 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36) of Companies Act, 1956, "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RPS was a deemed public issue of securities, SMAIIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that SMAIIL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that SMAIIL has not complied with the provisions of section 60 of the Companies Act, 1956.

25. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. The allegation of non-compliance of the above provisions was not denied by the Company or directors. Neither SMAIIL nor its directors produced any record to show that it has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act,

1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, SMAIIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

26. I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara Case*, had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

27. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase "intend to get listed" in the context of deemed public issue the Hon'ble Supreme Court in *Sahara Case*

observed-

"...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, "intent" has its limitations also, confining it within the confines of lawfulness..."

"...Listing of securities depends not upon one's volition, but on statutory mandate..."

"...The appellant-companies must be deemed to have "intended" to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have "intended", what was contrary to the mandatory requirement of law..."

28. In view of the above findings, I am of the view that SMAIIL was engaged in fund mobilizing activity from the public, through the offer of RPS and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956.

ISSUE No. 3- *If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

29. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, SMAIIL and its directors are

held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

30. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%. Therefore, I find that SMAIIL and its Directors, viz. Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

31. I find from the material available on record that the details of the appointment and cessation of the directorship were provided by RoC, which is reproduced below:

<i>Sr. No.</i>	<i>Name of the directors</i>	<i>Date of appointment</i>	<i>Date of cessation</i>
1.	Shri Pradip Kumar Das	05/03/2013	-
2.	Shri Dharmnath Rai	05/03/2013	-

3.	Shri Jai Singh	05/03/2013	-
4.	Shri Subhasis Mahato	05/03/2013	-
5.	Shri Sumit Kumar Das	05/03/2013	-

32. From the above table it is noted that Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das joined as above. Further, the records do not reveal the date of cessation of any of the directors, therefore, it can be considered that their directorships are continuing. The submissions of Shri Sumit Kumar Das that he was just a mere director and generally ignorant of any issue regarding the day-to-day business of the Company and that he did not know about issuance of Preference Shares and had no document regarding the account of the company can't be accepted. Shri Sumit Kumar accepting the position of director cannot wriggle out of his responsibility as director by pleading that he was not aware of the issuance of RPS in Bihar. Further, he has merely stated that he has resigned from the Company but has not provided any documentary proof for the same and as per the records available on MCA 21, Shri Sumit Kumar Das was the director of SMAIIL at the time of issuance of RPS by SMAIIL and the records also don't show cessation of his directorship. Therefore, this submission of Shri Sumit Kumar Das is also not tenable. Shri Dharmnath Rai's submissions that he was fully innocent about company law and regulation and that he did not have any documents of the Company to present before SEBI is also not acceptable. In view of the above, I am unable to accept the submissions of Shri Sumit Kumar Das and Shri Dharmnath Rai in this regard and hold that they were the directors of SMAIIL during the relevant time i.e. when SMAIIL made the issuance of RPS under consideration. Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, has considered the contentions similar to that of these directors that merely lending name to be a

director and noninvolvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act.

33. Since these persons were acting as directors during the period of issuance of RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of SMAIIL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the directors of SMAIIL as officers in default, are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. Since, the liability of the Company to repay under section 73(2) is continuing and such liability continues till all the repayments are made. The above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act.

34. Further, I note that the amount collected during the Financial Year (FY) 2013-14 by SMAIIL through offer of RPS from various preferential is at least Rs. 30,67,000. I also note that during the FY 2013-14, the directors of SMAIIL were Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that obligation of the director to refund the

amount with interest jointly and severally with SMAIIL and other directors are limited to the extent of amount collected during his/her tenure as director of SMAIIL.

35. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct the Company, SMAIIL and its Directors, viz. Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das to refund the monies collected, with interest to such investors. Further, in view of the *violations committed* by the Company and its directors, to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.

36. I also note that, vide the interim order dated August 7, 2015, SMAIIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the directors of SMAIIL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided either by SMAIIL or its directors despite the notifications of information about issuance of the interim order through newspaper publications as stated in paragraph 12 of this order.

37. In view of the discussion above, appropriate action in accordance with law needs to be initiated against SMAIIL and its Directors, viz. Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das.

38. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:

- (a) SMAILL, Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das shall forthwith refund the money collected by the Company through the issuance of RPS including the money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum from the eighth day of collection of funds, to the investors till the date of actual payment.
- (b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable".
- (c) SMAILL, Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (d) SMAILL, Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a

nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

- (e) Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- (f) SMAILL, Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- (g) After completing the aforesaid repayments, SMAILL, Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI").

- (h) In case of failure of SMAILL, Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das to comply with the aforesaid directions, SEBI, on the expiry of three months period from the date of this Order:
- i. may recover such amounts, from the company and the directors liable to refund [as per para 38(a)], in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.
 - iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds;
- (i) SMAILL, Shri Pradip Kumar Das, Shri Dharmnath Rai, Shri Jai Singh, Shri Subhasis Mahato and Shri Sumit Kumar Das are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed

public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.

(j) The above directions shall come into force with immediate effect.

39. This Order is without prejudice to any action that SEBI may initiate under securities laws, as deemed appropriate in respect of the above violations committed by SMAILL and its directors and other key persons.

40. Copy of this Order shall be forwarded to the recognized stock exchanges, depositories and registrar and transfer agents for information and necessary action.

41. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.

-Sd-

DATE: SEPTEMBER 28, 2017

PLACE: MUMBAI

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA