

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Swabhumi Real Estate India Ltd.

In respect of:

- 1. Swabhumi Real Estate India Ltd. (PAN: AALCS5321G)**
- 2. Shri Ramesh Subudhi (PAN: AKAPS2637R; DIN: 02389401).**
- 3. Shri Aloke Kumar Bhattacharjee (PAN: AYPPB8145E; DIN: 02389401).**
- 4. Shri Asit Ghosh (PAN: BAPPG7445D; DIN: 05262729).**

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1. Swabhumi Real Estate India Ltd. (hereinafter referred to as “**SREIL**”/ “**the Company**”) is a Public company incorporated on September 20, 2007 and registered with Registrar of Companies–Kolkata with CIN: U45400WB2007PLC118858. Its registered office is at 1/92, B. P. Township, P. S. Patuli, Kolkata–700094, West Bengal, India.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from investors against SREIL in respect of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether SREIL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as “**DIP Guidelines**”) read with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations**”)
 3. On enquiry by SEBI, it was observed that SREIL had made an offer of RPS in the financial

Order in the matter of M/s Swabhumi Real Estate India Ltd.

year 2008–09 (hereinafter referred to as “**Offer of RPS**”) and raised at least an amount of Rs. 12,92,800 from at least 141 allottees. The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures.

4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated December 02, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against SREIL and its Directors, viz. Shri Ramesh Subudhi, Shri Aloke Kumar Bhattacharjee and Shri Asit Ghosh (hereinafter collectively referred to as “**Noticees**”)
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. SREIL had made an *Offer of RPS* during the financial year 2008–09 and raised at least an amount of Rs. 12,92,800 as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2008–09	<i>RPS</i>	12,92,800	141
Total		12,92,800 [^]	141*

[^]*[^] No. of allottees has been collated from the documents submitted with the complaints received by SEBI. However, actual no. of allottees and amount mobilized could be more than the above indicated figures.

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), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by SREIL 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 December 02, 2015 with immediate effect.

- i. SREIL shall not mobilize any fresh 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. SREIL and its Directors, viz. Shri Ramesh Subudhi (DIN: 02389401), Shri Alope Kumar Bhattacharjee (DIN: 05342221) and Shri Asit Ghosh (DIN: 05262729), 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. SREIL 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. SREIL shall provide a full inventory of all its assets and properties;
- v. SREIL 's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. SREIL 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. SREIL 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 SREIL ;
- viii. SREIL and its abovementioned Directors shall furnish complete and relevant information in respect of the Offer of Redeemable Preference Shares (as sought by SEBI letter dated October 9, 2015), within 14 days from the date of receipt of this Order.

8. The interim order also directed the SREIL and its Directors to show cause as to why suitable directions/prohibitions under sections 11, 11(4), 11A and 11B of the SEBI Act read with the DIP Guidelines and ICDR Regulations and section 73(2) of the Companies

Act, 1956 read with section 27(2) of the SEBI Act should not be taken/imposed against them:

- a. Directing them jointly and severally to refund money collected through the *Offer of Redeemable Preference Shares* alongwith interest, if any, promised to investors therein;
 - b. 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;
 - c. 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, SREIL 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 said interim order was sent to the Noticees vide letter dated December 15, 2015. Subsequently, vide notification dated November 09, 2016 published in newspaper *Times of India* and notification dated November 08, 2016 published in newspaper *Anand Bazar Patrika* , the Noticees were notified by SEBI that interim order dated December 02, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter. However none of the noticees filed any replies.
11. Vide notification dated June 10, 2017 published in newspaper *Times of India* and notification dated June 10, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on July 20, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed 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.

12. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on July 20, 2017. None of the Noticees have filed any replies as on date.

13. I have considered the allegations and materials available on record. On perusal of the same, 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 56, Section 60 and Section 73 of 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.*

14. I have perused the interim order dated December 02, 2015 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.

15. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the investors' complaints received by SEBI in the matter that SREIL has issued and allotted RPS to at least 141 investors during the financial year 2008–09 and raised at least an amount of Rs.12,92,800. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than Rs. 12,92,800

16. *I therefore conclude that SREIL came out with an offer of RPS as outlined above.*

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

17. 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 issue'. At this juncture, reference may be made to sections 67(1) and 67(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).”

18. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. 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:-

“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.

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.”

19. 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*.
20. In the instant matter, I find that RPS were issued by SREIL to at least 141 investors in the financial year 2008–09. However, this number is not conclusive as it is based on the documents received by SEBI along with complaints and the actual number of investors could be more than 141. I find that SREIL has mobilized at least an amount of Rs. 12,92,800 over the financial year 2008–09 which is not a conclusive value as it is based on the complaints received by SEBI. The above findings lead to a reasonable conclusion that the Offer of RPS by SREIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
21. I find that SREIL has not claimed it to be a Non–banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that SREIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

22. Neither SREIL 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.
23. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that "In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".
24. Therefore, in view of the material available on record, I find that the *Offer of RPS* by SREIL 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 SREIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
25. 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.

26. The allegations of non-compliance of the above provisions were not denied by SREIL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that SREIL has contravened the said provisions. SREIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that SREIL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.
27. Section 2(36) of the Companies Act read with section 60 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), "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, SREIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that SREIL 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 SREIL has not complied with the provisions of section 60 of the Companies Act, 1956.
28. 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. Neither SREIL 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, SREIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

29. The Company was also required to comply with the following provisions of the DIP Guidelines read with regulation 111 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“the ICDR Regulations”) in respect of the offer and allotments made during:

- a. Clause 2.1.1. – (Filing of offer document);*
- b. Clause 2.1.4 – (Application for listing);*
- c. Clause 2.1.5 – (Issue of securities in dematerialized form),*
- d. Clause 2.8 – (Means of finance),*
- e. Clause 4.1 – (Promoters contribution in a public issue by unlisted companies),*
- f. Clause 4.11 – (Lock-in of minimum specified promoters contribution in public issues),*
- g. Clause 4.14 – (Lock-In of pre-issue share capital of an unlisted company)*
- h. Clause 5.3.1 – (Memorandum of understanding),*
- i. Clause 5.3.3 – (Due Diligence Certificate)*
- j. Clause 5.3.5 – (Undertaking),*
- k. Clause 5.3.6 – (List Of Promoters Group And Other Details),*
- l. Clause 5.4 – (Appointment of intermediaries),*
- m. Clause 5.6 – (Offer document to be made public),*
- n. Clause 5.6A – (Pre-issue Advertisement),*
- o. Clause 5.7 – (Despatch of issue material),*
- p. Clause 5.8 – (No complaints certificate),*
- q. Clause 5.9 – [Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)],*
- r. Clause 5.10 – (Authorised Collection Agents),*
- s. Clause 5.12.1 – (Appointment of compliance officer),*
- t. Clause 5.13 – (Abridged prospectus),*
- u. Clause 6.0 – (Contents of offer documents),*
- v. Clause 8.3 – (Rule 19(2)(b) of SC(R) Rules, 1957),*
- w. Clause 8.8.1 – (Opening & closing date of subscription of securities),*

- ∞. *Clause 9 – (Guidelines on advertisements by Issuer Company),*
- γ. *Clause 10.1 – (Requirement of credit rating),*
- ξ. *Clause 10.5 – (Redemption).*

30. As per Regulation 111(1) of the ICDR Regulations, the DIP Guidelines "*shall stand rescinded*". However, Regulation 111(2) of the ICDR Regulations, provides that:

"(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations."

31. Further, 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"

32. 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..."

33. In view of the above findings, I am of the view that SREIL 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, and above mentioned provisions pertaining to the SEBI DIP Guidelines read with ICDR Regulations.

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

34. From the documents available on record, I find that the present Directors in SREIL are Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh. The details

of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Ramesh Subudhi	December 02, 2009	Continuing
Shri Aloke Kumar Bhattacharjee	September 29, 2012	Continuing
Shri Asit Ghosh	June 19, 2013	Continuing

35. 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, SREIL is held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
36. 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 Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%. Therefore, I find that SREIL is 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.

37. In this regard, I note that Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh were appointed as a director of SREIL only on December 02, 2009, September 29, 2012, June 19, 2013 i.e. after the period of issuance of RPS. Therefore, following the reasoning as provided by Hon'ble Securities Appellate Tribunal (SAT) vide its Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh are not liable for refund of money as they were not a director during the relevant time of fund mobilization. However, the said Noticee has not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue and public interest requires that the persons who had such knowledge/connivance/consent be made accountable to the investors. Further, Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh has the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

" 13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956. "

38. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed 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 noticee cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh were also be responsible for all the deeds/acts of the Company during the period of their directorship and were obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh are liable to be debarred for an appropriate period of time.

39. 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 SREIL 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.
40. I also note that, vide the interim order dated December 02, 2015, SREIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of SREIL 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 SREIL or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 10 of this Order.
41. In view of the discussion above, appropriate action in accordance with law needs to be initiated against SREIL and its Directors viz. Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh.

42. I note that interim order has been issued against the directors who have joined the company subsequent to the issuance of RPS. However interim order does not cover the directors who were acting at the relevant issuance period as directors. Therefore SEBI shall further examine the role of those directors and pass appropriate orders, if any, as expeditiously as possible.
43. 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. SREIL shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective period of directorship, 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. SREIL and on its behalf the present directors who joined subsequent to the issues (Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh) are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company.
 - d. SREIL and on its behalf the present directors who joined subsequent to the issues (Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh) 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. SREIL and on its behalf the present directors who joined subsequent to the issues (Shri

Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh) are prevented from selling company's assets, properties and holding of mutual funds/shares/securities held by the company 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. SREIL and on its behalf the present directors who joined subsequent to the issues (Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh) shall issue public notice for refund by the company, 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, SREIL and on its behalf the present directors who joined subsequent to the issues (Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh) 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 aforesaid SREIL and its present directors, who joined subsequent to the issues namely, Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may initiate appropriate action against the Company and its present directors who are in default, including adjudication proceedings against them, in accordance with law.

- i. In case of failure of SREIL to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order:
 - i. may recover such amounts, from the company 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;
- j. SREIL is 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.
- k. Shri Ramesh Subudhi, Shri Alope Kumar Bhattacharjee and Shri Asit Ghosh 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 for a period of 4 (four) years from the date of this Order. The above said persons 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 for a period of 4 (four) years from the date of this order.

1. The above directions shall come into force with immediate effect.
44. 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 SREIL and its directors and other key persons.
45. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.
46. 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.

DATE: October 05, 2017

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**