

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 Shreysth Production Industries Limited

In respect of:

1. Shreysth Production Industries Limited (PAN: AAMCS9737P)
2. Dipak Kumar Gupta (PAN: ALYPG7029G; DIN: 02597828).
3. Ajay Gosai (PAN: AOLPG4335H; DIN: 02606240).
4. Sankar Das (PAN: AJCPD8074A; DIN: 02642259).
5. Rajoo Shah (PAN: BZPPS2613N; DIN: 02606247).
6. Pramesh Das (PAN: ANAPD9529Q; DIN: 02606245).
7. Krishna Nand Pathak (PAN: AXVPP2389P; DIN: 02597822).
8. Pramod Kumar Jaiswal (PAN: AKOPJ0216B; DIN: 02597835).

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1. Shreysth Production Industries Limited (hereinafter referred to as “SPIL”/ “the Company”) is a Public company incorporated on April 16, 2009 and registered with Registrar of Companies–Kolkata with CIN: U15400WB2009PLC134588. Its registered office is at 13/9, S.N.Banerjee Road, 2nd Floor, Kolkata - 700120, West Bengal, India.
 2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a complaint against SPIL in respect of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether SPIL 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

Order in the matter of M/s Shreysth Production Industries Limited



referred to as "ICDR Regulations")

3. On enquiry by SEBI, it was observed that SPIL had made an offer of RPS in the financial years 2009-2010, 2010-2011 and 2011-2012 (hereinafter referred to as "Offer of RPS") and raised an amount of Rs. 62.64 Lakhs from 795 allottees.
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 March 02, 2016 (hereinafter referred to as "interim order") and issued directions mentioned therein against SPIL and its Directors and promoters, viz. Shreysth Production Industries Limited, Dipak Kumar Gupta, Ajay Gosai, Sankar Das, Rajoo Shah, Pramesh Das, Krishna Nand Pathak and Pramod Kumar Jaiswal (hereinafter collectively referred to as "Noticees")
5. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings were recorded. SPIL had made an *Offer of RPS* during the financial years 2009-2010 , 2010-2011 and 2011-2012 and raised an amount of Rs. 62.64 Lakhs as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2009-2010	RPS	7.15	134
2010-2011		13.74	183
2011-2012		41.75	478
Total		62.64	795

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 SPIL 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 March 02, 2016 with immediate effect.

- i. "SPIL (PAN: AAMCS9737P) shall not mobilize fresh funds from investors through the Offer of RPS 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. SPIL and its present/past Directors and, Promoters, viz. Dipak Kumar Gupta (PAN: ALYPG7029G; DIN: 02597828), Ajay Gosai (PAN: AOLPG4335H; DIN: 02606240), Sankar Das (PAN: AJCPD8074A; DIN: 02642259), Rajoo Shah (PAN: BZPPS2613N; DIN: 02606247), Pramesh Das (PAN: ANAPD9529Q; DIN: 02606245), Krishna Nand Pathak (PAN: AXVPP2389P; DIN: 02597822) and Pramod Kumar Jaiswal (PAN: AKOPJ0216B; ; DIN: 02597835) 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. SPIL and its abovementioned past and present Directors and Promoters, 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. SPIL shall provide a full inventory of all its assets and properties;
- v. SPIL's abovementioned past and present Directors and Promoters, shall provide a full inventory of all their assets and properties;



- vi. SPIL and its abovementioned present Directors and Promoters, 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 RPS*, without prior permission from SEBI;
- vii. SPIL and its abovementioned present Directors and Promoters, shall not divert any funds raised from public at large through the *Offer of RPS*, which are kept in bank account(s) and/or in the custody of SPIL;
- viii. SPIL and its abovementioned past and present Directors and Promoters, shall furnish complete and relevant information(as sought by SEBI letter dated November 2, 2015), within 14 days from the date of receipt of this Order;
8. The interim order also directed the SPIL and its Directors/promoters 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 read with section 27(2) of the SEBI Act should not be passed against them:
- i. Directing them jointly and severally to refund money collected through the *Offer of NCDs* along with 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, SPIL, its abovementioned Directors/promoters 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 March 03, 2016 by speed post which were delivered to Shri Ajay Gosai, Shri Pramesh Das and Shri Pramod Kumar Jaiswal as per the acknowledgment receipt obtained from India post website. Subsequently, vide notification dated November 09, 2016 published in newspaper *Times of India* , and notification dated November 08, 2016 published in newspaper *Ananda Bazar Patrika* , the Noticees were notified by SEBI, that interim order dated March 02, 2016 was issued against them and they were given a final opportunity to submit their reply in the matter.
11. *Hearing and submissions*: Vide notification dated June 10, 2017 published in Times of India and Ananda Bazar Patrika, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on July 18, 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. The Noticees did not avail the opportunity of hearing held on July 18, 2017. Shri Pramod Kumar Jaiswal replied vide letter dated March 18, 2016. His submissions in brief are as under:
- a) He has already submitted a resignation letter to the Chairman of SPIL on 31.8.2009 and the same was accepted and acceptance letter regarding his resignation has been issued by Shri Dipak Kumar Gupta on 3.11.2009 and copies of the resignation letter and acceptance letter were enclosed.
 - b) Though he was among the directors of SPIL at the time of incorporation, but the distorting mentality and forged behaviour of Shri Dipak Kumar Gupta compelled him to file criminal case against Shri Dipak and he has filed several complaints after coming to know the fraudulent mentality of the directors of SPIL.



- c) Prior to the date of his resignation and after his resignation, he was never consulted by the other directors of SPIL in regards to any decision of SPIL and that he was never involved in decision making of SPIL.

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 March 02, 2016 for the allegation of *Offer of RPS*. I note that neither the company nor the directors have disputed 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 MCA records that SPIL has issued and allotted RPS to 795 investors during the financial years 2009-2010, 2010-2011, 2011-2012 and raised an amount of Rs. 62.64 Lakhs.

16. *I therefore conclude that SPIL 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

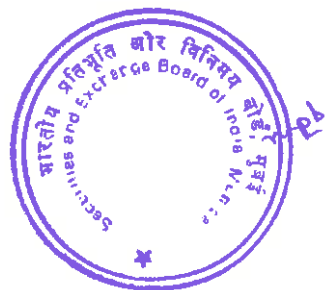


persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”

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 SPIL to 795 investors in the financial years 2009-2010, 2010-2011 and 2011-2012. I find that SPIL has mobilized an amount of Rs. 62.64 Lakhs over the financial years 2009-2010, 2010-2011 and 2011-2012. The above findings lead to a conclusion that the *Offer of RPS* by SPIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
21. I find that SPIL 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 SPIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.



22. Neither SPIL 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 SPIL 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 SPIL 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 SPIL 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 SPIL has contravened the said provisions. SPIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that SPIL 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, SPIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that SPIL 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 SPIL 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 SPIL 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, SPIL 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 FY 2009–10:

- 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)*
- b. 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),
- x. Clause 9 – (Guidelines on advertisements by Issuer Company),
- y. Clause 10.1 – (Requirement of credit rating),
- z. 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"

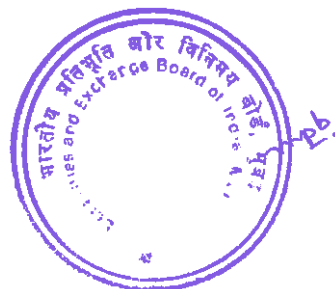
32. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase "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..."

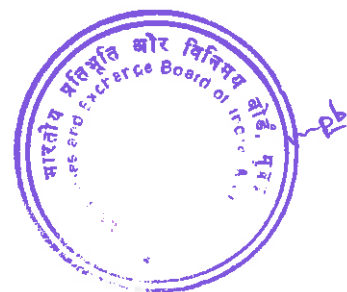
"...The appellant-companies must be deemed to have "intended" to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have "intended", what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

33. In view of the above findings, I am of the view that SPIL 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 SEBI ICDR.



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

34. Shri Pramod Kumar Jaiswal in his reply has stated, *inter-alia*, that he has already submitted a resignation letter to the Chairman of SPIL on 31.8.2009 and the same was accepted and acceptance letter regarding his resignation has been issued by Shri Dipak Kumar Gupta on 3.11.2009. Further, though he was among the directors of SPIL at the time of incorporation, but the distorting mentality and forged behaviour of Shri Dipak Kumar Gupta compelled him to file criminal case against Shri Dipak and he has filed several complaints after coming to know the fraudulent mentality of the directors of SPIL. In this regard, I find that as per the MCA records, Shri Pramod Kumar Jaiswal has joined as the director of the Company on April 16, 2009 and in line with his submission, resigned on September 1, 2009. However, the issuance of RPS commenced during his tenure as a director of the Company. Further, Shri Pramod Kumar Jaiswal has submitted that he was never involved in decision making of SPIL. 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 this director about 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. Therefore, the aforesaid submissions of Shri Pramod Kumar Jaiswal are untenable as he was a director during the issuance of the RPS and after accepting the position of director, he cannot wriggle out of his responsibility as director by pleading that he was not involved in the decision making of the Company.
35. From the documents available on record, I find that the present Directors in SPIL are Dipak Kumar Gupta, Ajay Gosai, Sankar Das. I also note that Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal, who were earlier Directors in SPIL, have since resigned. The details of the appointment and resignation of the directors are as following:



Name of the directors	Date of appointment	Date of cessation
Dipak Kumar Gupta	April 16, 2009	Continuing
Ajay Gosai	April 16, 2009	Continuing
Sankar Das	April 16, 2009	Continuing
Rajoo Shah	April 16, 2009	August 11, 2010
Pramesh Das	April 16, 2009	August 11, 2010
Krishna Nand Pathak	April 16, 2009	March 17, 2010
Pramod Kumar Jaiswal	April 16, 2009	September 01, 2009

36. I find that Dipak Kumar Gupta, Ajay Gosai, Sankar Das, Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal are also promoters of SPIL.
37. 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, SPIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
38. 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

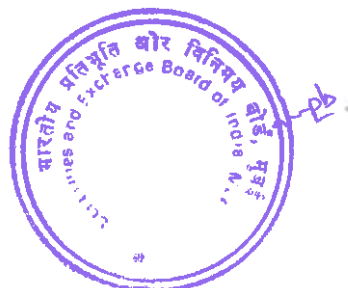


an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.

39. From the material available on record and the details of the appointment and resignation of the directors of SPIL as reproduced in paragraph 35 of this Order, it is noted that Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal, Dipak Kumar Gupta, Ajay Gosai, Sankar Das were directors at the time of the issuance of RPS. 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 SPIL 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 past and present directors of SPIL, 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. None of the Noticees disputed this legal liability by way of any written or oral submissions. 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. Therefore, I find that SPIL and its Directors, viz., Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal, Dipak Kumar Gupta, Ajay Gosai, Sankar 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.



40. I note that during the financial years 2009-2010, 2010-2011 and 2011-2012, SPIL through Offer of RPS, had collected an amount of Rs. 62.64 Lakhs from various allottees. I note that Dipak Kumar Gupta has been director of SPIL since financial years 2009-2010, 2010-2011, 2011-2012 till present date. I note that Ajay Gosai has been director of SPIL since financial years 2009-2010, 2010-2011, 2011-2012 till present date. I note that Sankar Das has been director of SPIL since financial years 2009-2010, 2010-2011, 2011-2012 till present date. I note that Rajoo Shah was director of SPIL during financial years 2009-2010, 2010-2011. I note that Pramesh Das was director of SPIL during financial years 2009-2010, 2010-2011. I note that Krishna Nand Pathak was director of SPIL during financial years 2009-2010. I note that Pramod Kumar Jaiswal was director of SPIL during financial years 2009-2010. 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 the obligation of the director to refund the amount with interest jointly and severally with SPIL and other directors are limited to the extent of amount collected during his/her tenure as director of SPIL.
41. I find that Dipak Kumar Gupta, Ajay Gosai, Sankar Das, Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal are also promoters of SPIL and therefore, are liable as promoters for the *Offer of RPS* against the norms of deemed public issue. The said Noticees have not taken any due diligence steps to prevent the deemed public issue. The public interest requires that the said promoters be made accountable to the investors. From the material available on record, I do not find that the aforesaid Noticees were not active as promoters of the Company during the issue of NCDs. Therefore, the said Noticees are liable to be debarred for an appropriate period of time.
42. 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 SPIL and its Directors, Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal, Dipak Kumar Gupta, Ajay Gosai, Sankar Das to refund the monies collected, with interest to such investors.



Further, in view of the violations committed by the Company and its Directors who are also promoters , 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.

43. I also note that, vide the interim order dated March 02, 2016, SPIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors/promoters of SPIL 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 upto date inventory has been provided either by SPIL 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.
44. In view of the discussion above, appropriate action in accordance with law needs to be initiated against SPIL and its Directors who are also promoters , viz. Dipak Kumar Gupta, Ajay Gosai, Sankar Das, Rajoo Shah, Pramesh Das, Krishna Nand Pathak and Pramod Kumar Jaiswal,
45. 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. SPIL, Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal, Dipak Kumar Gupta, Ajay Gosai and Sankar Das 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. Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal 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. SPIL and Dipak Kumar Gupta, Ajay Gosai, Sankar Das 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 and their own.
- e. SPIL, Dipak Kumar Gupta, Ajay Gosai, Sankar 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.
- f. SPIL, Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal, Dipak Kumar Gupta, Ajay Gosai and Sankar 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.
- g. SPIL, Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal, Dipak Kumar Gupta, Ajay Gosai and Sankar Das in their personal capacity to make refund, 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.

- h. After completing the aforesaid repayments, SPIL, Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal, Dipak Kumar Gupta, Ajay Gosai and Sankar Das in their personal capacity 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")
- i. In case of failure of SPIL, Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal, Dipak Kumar Gupta, Ajay Gosai and Sankar Das 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 and the directors liable to refund as specified in paragraph 45(a) of this Order, 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. SPIL, Rajoo Shah, Pramesh Das, Krishna Nand Pathak, Pramod Kumar Jaiswal,



Dipak Kumar Gupta, Ajay Gosai and Sankar 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.

k. The above directions shall come into force with immediate effect.

46. 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 SPIL and its directors and other key persons.
47. Copy of this Order shall be forwarded to the recognised stock exchanges, depositories and registrar and transfer agents for information and necessary action.
48. 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 13, 2017

PLACE: Mumbai



Madhabi Puri Buch

**MADHABI PURI BUCH
WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA