

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 Shine India Agro Industries Limited

In respect of:

1. Shine India Agro Industries Limited (PAN: AAOCs8059C)
 2. Shri Sajahan Midya (PAN: BCJPM2413D; DIN: 03123485).
 3. Shri Arindam Pal (PAN: AOFPP2459F; DIN: 02838394).
 4. Shri Jaydeb Pandit (PAN: BGLPP0214P; DIN: 03343227).
 5. Shri Niamat Ali (PAN: AVYPA7767K; DIN: 05115145).
 6. Shri Kabil Patra (PAN: BPCPP1088R; DIN: 03564187).
 7. Shri Dulal Senapati (PAN: CJSPS8001G; DIN: 05201226).
 8. Shri Gurupada Das (PAN: APEPD6402Q; DIN: 02719926).
 9. Smt Suparna Das (PAN: APUPA4747D).
 10. Shri Irin Parvin (PAN: AQEDA8799D).
 11. Shri Basudev Ghosh (PAN: ACDPD9052D).
 12. Shri Ujjal Mandal (PAN: ACDPD9052D).
 13. Shri Kobil Patra (PAN: BDTPM9456M).
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1. Shine India Agro Industries Limited (hereinafter referred to as “**Shine India**”/ “**the Company**”) is a Public company incorporated on July 29, 2010 and registered with Registrar of Companies–Kolkata with CIN: U01400WB2010PLC151794. Its registered office is at 6A, Nayaratna Lane, Kolkata - 700004.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons against Shine India in respect of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether Shine India 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. Vide letters dated January 17, 2014 and January 31, 2014, SEBI sought certain information from Shine India and its existing directors, viz. Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra and Shri Dulal Senapati.

3. As information was not forthcoming from the above entities, an Investigating Authority (“IA”) was appointed for investigating possible violations by Shine India of the SEBI Act, Securities Contracts (Regulations) Act, 1956 (“SCRA”); the provisions specified in Section 55A of the Companies Act, 1956 or the Rules or Regulations made or directions issued by SEBI thereunder. Summons dated January 9, 2015, were issued by the IA to Shine India and all its Directors (past and present) for production of documents and to appear in person before him under Section 11C(3) & 11C(5) of the SEBI Act on January 21, 2015. The summons issued to Shine India, Shri Sajahan Midya, Shri Arindam Pal, Shri Niamat Ali, Shri Kabil Patra and Shri Gurupada Das, were returned as undelivered with the remarks ‘Addressee moved’. Shri Jaydeb Pandit appeared in person before the IA and submitted that he joined as an accountant of Shine India and had no clue as to how he became an Additional Director. Upon knowledge, he immediately raised the issue with the Chairman of Shine India and after several followups, he signed on a resignation letter and subsequently, he was relieved from Directorship. However, he continued to work with Shine India as an accountant till June 2013. He never received any remuneration as a Director. He submitted the appointment letter for the post of accountant.
4. On enquiry by SEBI, it was observed that Shine India had made an offer of RPS in the financial years 2011-2012 and 2012-2013 (hereinafter referred to as “**Offer of RPS**”) and raised at least an amount of Rs. 103.05 Lakh from at least 586 allottees. The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, the actual number of allottees and amount mobilized could be more than the above indicated figures.

5. 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 July 07, 2016 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against Shine India and its Directors and promoters, viz. Shri Sajahan Midya, Shri Arindam Pal, Shri Jaydeb Pandit, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati, Shri Gurupada Das, Smt Suparna Das, Shri Irin Parvin, Shri Basudev Ghosh, Shri Ujjal Mandal and Shri Kobil Patra (hereinafter collectively referred to as “**Noticees**”).
6. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. Shine India had made an *Offer of RPS* during the financial years 2011-2012 and 2012-2013 raised at least an amount of Rs. 103.05 Lakh as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2011-2012	RPS	30.88	28
2012-2013		72.17	558
Total		103.05^	586*

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

7. 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 Shine India in respect of the *Offer of RPS*.
8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated July 07, 2016 with immediate effect.

- i. “Shine India (PAN: AAOCS8059C) shall forthwith cease to mobilize funds from investors through the Offer of 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. Shine India and its present/past Directors and Promoters, viz. Shri Sajahan Midya (PAN: BCJPM2413D; DIN: 03123485), Shri Arindam Pal (PAN: AOFPP2459F; DIN: 02838394), Shri Jaydeb Pandit (PAN: BGLPP0214P; DIN: 03343227), Shri Niamat Ali (PAN: AVYPA7767K; DIN: 05115145), Shri Kabil Patra (PAN: BPCPP1088R; DIN: 03564187), Shri Dulal Senapati (PAN: CJSPS8001G; DIN: 05201226), Shri Gurupada Das (PAN: APEPD6402Q; DIN: 02719926), Smt Suparna Das (PAN: APUPA4747D), Shri Irin Parvin (PAN: AQEDA8799D), Shri Basudev Ghosh (PAN: ACDPD9052D) Shri Ujjal Mandal (PAN: ACDPD9052D) and Shri Kobil Patra (PAN: BDTPM9456M), 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. Shine India 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. Shine India shall provide a full inventory of all its assets and properties;
- v. Shine India's abovementioned past and present Directors and Promoters, shall provide a full inventory of all their assets and properties;
- vi. Shine India 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, without prior permission from SEBI;

vii. Shine India 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 Shine India;

viii. Shine India and its abovementioned past and present Directors and Promoters, shall co-operate with SEBI and shall furnish all information/documents sought vide letters dated January 17, 2014 and January 31, 2014.”

9. The interim order also directed the Shine India 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 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.

10. Vide the said interim order, Shine India, 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.

11. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated July 11, 2016 which were not delivered. Subsequently, vide notification dated November 09, 2016 published in newspaper *The 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 July 07, 2016 was issued against them and they were given a final opportunity to submit their reply in the matter.
12. Vide letter dated August 16, 2016, Shri Arindam Pal submitted *inter alia*, that:
- i. He ceased to be a non-executive director of Shine India from December 14, 2010 and copy of Form 32 filed with the RoC-Kolkata at the time of resignation has been provided to substantiate the same.
 - ii. Company was authorized to issue equity shares in accordance with the provisions of its Articles of Association as on the date of incorporation and receipt of the Certificate of Commencement of Business. The capital structure of Shine India was altered for the first time, to make specific provisions for the issuance of RPS, after passing a Board Resolution dated January 23, 2011 and after increase of the authorized share capital on February 21, 2011. Corresponding Form 5 filed with the RoC-Kolkata on February 21, 2011 has been provided to substantiate the same.
 - iii. He requested for an opportunity for inspection of documents in the matter.
13. Vide letter dated August 25, 2016, SEBI granted an opportunity of inspection to Shri Arindam Pal at the SEBI-Eastern Regional Office, Kolkata. Vide email dated August 30, 2016, opportunity of inspection was sought in the SEBI Head Office, Mumbai. The said request was reiterated by the Noticee, vide letter dated September 13, 2016. Alternatively, the Noticee requested for opportunity of inspection on any date after October 12, 2016 if the request for change of venue could not be granted. Vide letter dated September 20, 2016, SEBI granted an opportunity of inspection on October 18, 2016 at SEBI Eastern Regional Office, Kolkata, which was availed by Shri Arindam Pal. Thereafter, vide letter dated November 10, 2016, Shri Arindam Pal submitted *inter alia* that:

- i. The directions restraining the Noticee from accessing the securities market was neither preventive nor remedial but are penal in nature, and directions under sections 11 and 11B of the SEBI Act are issued with the aim of safeguarding the market and not for penalizing anyone.
 - ii. There was no urgency in the matter as SEBI had received complaints in 2013 whereas it passed the interim order only on July 7, 2016. SEBI has the power to issue ex parte ad interim order under sections 11 and 11B of the SEBI Act only in cases where there is a grave and serious/extreme urgency.
 - iii. Inspection of all documents were not granted to the Noticee.
14. Shri Arindam Pal, vide letter dated December 13, 2016 reiterated his request for another opportunity of inspection of documents citing the reason that inspection of all the relevant documents as requested for had not been provided to him during the inspection on October 18, 2016. Vide letter dated January 3, 2017, SEBI has intimated Shri Arindam Pal that certain documents had not been provided during inspection, as they were not in the records of SEBI. The said information had been sought from the Company and its directors, which was not provided, and the same has been recorded in the interim order. Vide the said letter, SEBI also provided a full list of all the documents which had been provided to Shri Arindam Pal for inspection.
15. Vide notification dated June 10, 2017 published in newspaper *The 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 August 23, 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.
16. *Hearing and submissions*: Shri Arindam Pal appeared for the personal hearing on August 23, 2017 and made oral submissions in line with his earlier replies. He was given time to submit written submission in this regard. The other Noticees did not appear for

the personal hearing and nor have they filed any reply as on date pursuant to the inteirm order.

17. Shri Arindam Pal vide letter dated September 6, 2017, submitted written submissions in the matter wherein the following, *inter alia*, has been submitted that:

- i. The Noticee was associated with a law firm during the time period August 2008 – September 2011. During this tenure at the said law firm, he had handled several professional mandates during which he had assisted clients by acting as first directors of the respective companies incorporated during that time, whereby as a matter of practice, the confirmed Director Identification Numbers (DIN) were used for the limited purpose of expediting the process of incorporation. After the DINs of the promoters of the respective companies were successfully processed, the Noticee would resign from the Company. In this capacity, the Noticee had been approached by Mr. Gurupada Das to incorporate a public limited company in April – May 2010 and had been requested to provide his confirmed DIN to act as the first director of the said company, while the provisional DINs of the other key promoters, Mr. Niamat Ali, Mr. Dulal Senapati and Mr. Kobil Patra, were being processed. Accordingly, the Noticee had rendered his DIN for the incorporation of Shine India, in the capacity of a legal profesional involved in the process of incorporation of Shine India. The provisional DINs of Mr. Niamat Ali, Mr. Dulal Senapati and Mr. Kobil Patra could not be confirmed as on the date of incorporation of Shine India. The Noticee was informed on December 13, 2010 of the DIN confirmation of Mr. Jaydeb Pandit who was to be appointed as a Director of Shine India. Accordingly, the Noticee arranged to make the requisite filings to effect the change in directorship on December 14, 2010.
- ii. The authorized capital of Shine India consisted only of equity shares during the tenure of the Noticee’s directorship, i.e., July 29, 2010 to December 14, 2010. A copy of the Memorandum of Association of Shine India has been provided to substantiate the submission. Shine India filed Form 5 on February 21, 2011 wherein

the share capital structure of the Company was altered to include 50,000 RPS of Rs. 10/- each. This was about two months after the resignation of the Noticee. From the Form 2 filings of Shine India it is seen that the Company allotted and issued RPS on July 1, 2011, which is more than 7 months after the resignation of the Noticee. Even the complaints in relation to issuance of RPS by Shine India relates to allotments on March 29, 2012 and July 18, 2012, which are after the resignation of the Noticee. Therefore, it is submitted by the Noticee that the issuance of RPS was not authorized nor carried out during the tenure of the Noticee's directorship.

- iii. The Noticee was a first director of Shine India in his capacity as a legal professional and that he has not acted as an authorized signatory at any point of time. The Noticee further submits that he was not involved in the overall control of the Company and was therefore not an "officer in default".

18. 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.

19. I have perused the interim order dated July 07, 2016 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.

20. 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 Shine India has issued and allotted RPS to at least 586 investors during the financial years 2011-2012 and 2012-2013 and raised at least an amount of Rs. 103.05 Lakh. 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, I find that the actual number of allottees and amount mobilized could be more than 586 and Rs. 103.05 Lakh, respectively.

21. I therefore conclude that Shine India 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.

22. 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).”

23. 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.”

24. 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.

25. In the instant matter, I find that RPS were issued by Shine India to at least 586 investors in the financial years 2011-2012 and 2012-2013. 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 586. I find that Shine India has mobilized at least an amount of Rs. 103.05 Lakh over the financial years 2011-2012 and 2012-2013 which is not a conclusive value as it is based on the complaints received by SEBI, and the amount could be higher. The above findings lead to a reasonable conclusion that the *Offer of RPS* by Shine India was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
26. I find that Shine India has not claimed 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 Shine India is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
27. Neither Shine India 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.
28. 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 appellants 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”.

29. Therefore, in view of the material available on record, I find that the *Offer of RPS* by Shine India 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 Shine India was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
30. 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.
31. The allegations of non-compliance of the above provisions were not denied by Shine India 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 Shine India has contravened the said provisions. Shine India has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that Shine India 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.
32. 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, Shine India was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that Shine India 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 Shine India has not complied with the provisions of section 60 of the Companies Act, 1956.

33. 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 Shine India 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, Shine India has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

34. 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"

35. 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..."

36. In view of the above findings, I am of the view that Shine India 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?

37. From the documents available on record, I find that the present Directors in Shine India are Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati. I also note that, Shri Arindam Pal, Shri Jaydeb Pandit, Shri Gurupada Das, who were earlier Directors in Shine India, have since resigned. The details of the appointment and resignation of the directors, as available on MCA records, are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Sajahan Midya	July 29, 2010	Continuing
Shri Arindam Pal	July 29, 2010	December 14, 2010
Shri Jaydeb Pandit	December 14, 2010*	November 01, 2011*
Shri Niamat Ali	November 01, 2011	Continuing
Shri Kabil Patra	April 20, 2012	Continuing
Shri Dulal Senapati	May 10, 2012	Continuing
Shri Gurupada Das	July 29, 2010	May 16, 2013

* Refer infra Paragraph 39

38. I note that Shri Arindam Pal has submitted that he was a director of Shine India in the capacity of a legal professional for the limited purpose of incorporation of the Company and that he resigned from the Company on December 14, 2010, immediately after the DIN for Mr. Jaydeb Pandit was confirmed on December 13, 2010. I have perused Form 32 filed with MCA in this regard, and observe that he resigned as a director of Shine India with effect from December 14, 2010. I therefore, find that Shri Arindam Pal was a director of Shine India from July 29, 2010 to December 14, 2010.

39. I note that Shri Jaydeb Pandit, had earlier stated during the proceedings that he was not aware as to when he was made a director of the Company. He has further submitted that as soon as he came to know of his directorship he asked to resign and that he finally was

removed from the directorship after continuous follow up with the Company. In this regard, I note from MCA records, that the Company has filed a consent letter of Shri Jaydeb Pandit dated December 14, 2010 expressing his willingness to act as a director of Shine India. I also note from the MCA records, that the Company has filed the resignation letter of Shri Jaydeb Pandit dated November 1, 2011. On perusal of both the letters, it appears that the signatures on both the documents are not matching with specimen signatures of Shri Jaydeb Pandit as available on record. Therefore, I find that the preponderance of probability is in favour of the submissions made by Shri Jaydeb Pandit and there is no other document on record to disprove the aforesaid submission.

40. From the MCA records I find that, Smt Suparna Das, Shri Irin Parvin, Shri Basudev Ghosh, Shri Ujjal Mandal, Shri Kobil Patra are promoters of Shine India.
41. 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, Shine India and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
42. 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%.

43. I note that Shri Arindam Pal has submitted that the authorized share capital of Shine India, at the time of incorporation and during the tenure of his directorship, consisted only of equity shares. It was further submitted that Shine India decided to alter the capital structure of the Company for the first time by making specific provisioning for RPS, after passing and adopting a Board Resolution dated January 23, 2011. The said increase of share capital to include RPS was also notified to MCA by way of Form 5 filed on February 21, 2011. It was submitted by Shri Arindam Pal, that the aforesaid alteration of capital structure happened after his resignation on December 14, 2010. It was also submitted that Shri Arindam Pal did not have any control in the management of the Company and he was appointed only as a non-executive director of Shine India without being authorized as a signatory of the Company. Therefore, he cannot be held liable for the violation of the provisions of the Companies Act, 1956 that occurred after his resignation. On perusal of the copy of the Memorandum of Association I find that at the time of incorporation the share capital structure of Shine India only included equity shares. Further, on perusal of the material obtained from MCA website, I find that the Company had passed a Board Resolution dated January 23, 2011 altering the capital structure to include 10,00,000 Redeemable Preference Shares of Rs. 10/- each. I further note from the Form 5 as obtained from MCA website that said increase of share capital to include RPS was notified on February 21, 2011. It is therefore clear that the decision to effect the aforesaid changes in share capital structure of the Company took place after Shri Arindam Pal had resigned from the directorship on December 14, 2010. In view of the above, I find that Shri Arindam Pal could not have knowledge of the intention of the Company for such alteration.

44. Further, Shri Arindam Pal had submitted that the issuance and allotment of RPS occurred on July 1, 2011 and thereafter. He further stated that the complaints received by SEBI in this regard pertain to allotments made on March 29, 2012 and July 18, 2012.

Since, Shri Arindam Pal had resigned on December 14, 2010, and the issuance of RPS occurred nearly 7 months after the resignation, it had been submitted that Shri Arindam Pal cannot be held liable for the said violations. On perusal of the Form 2 available on MCA website, in addition to material available on record, I find that Shine India had made an offer of RPS in the financial years 2011-2012 and 2012-2013. It is observed that Shri Arindam Pal had resigned from the directorship of Shine India on December 14, 2010. Therefore I find that Shri Arindam Pal was not liable for the Company's violation of the provisions of Companies Act, 1956.

45. In view of the discussion on paragraph 39, I find that Shri Jaydeb Pandit is not liable for any violation of the provisions of the Companies Act, 1956, by Shine India.
46. In view of nil adverse findings with respect to Shri Arindam Pal and Shri Jaydeb Pandit on the merits of this matter, I find that no other observation with regard to their submissions is necessary.
47. From the material available on record and the details of the appointment and resignation of the directors of Shine India as reproduced in paragraph 37 of this Order, it is noted that Shri Gurupada Das, Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati 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 Shine India 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 Shine India, except Shri Arindam Pal and Shri Jaydeb Pandit, 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 aforesaid 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 Shine India and its Directors, viz. Shri Gurupada Das, Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati 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.

48. I note that during the financial years 2011-2012 and 2012-2013, Shine India through Offer of RPS, had collected at least an amount of Rs. 103.05 Lakh from various allottees. I note that Shri Sajahan Midya has been director of Shine India since financial years 2011-2012, 2012-2013 till present date. I note that Shri Niamat Ali has been director of Shine India since financial years 2011-2012, 2012-2013 till present date. I note that Shri Kabil Patra has been director of Shine India since financial years, 2012-2013 till present date. I note that Shri Dulal Senapati has been director of Shine India since financial years, 2012-2013 till present date. I note that Shri Gurupada Das was director of Shine India during financial years 2011-2012 and 2012-2013. 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 Shine India and other directors are limited to the extent of amount collected during his/her tenure as director of Shine India.
49. I find that , Smt Suparna Das, Shri Irin Parvin, Shri Basudev Ghosh, Shri Ujjal Mandal, Shri Kobil Patra are promoters of Shine India and therefore, are liable as promoters for the *Offer of RPS* against the norms of deemed public issue. The said Noticees have 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. Therefore, the said Noticees are liable to be debarred for an appropriate period of time.

50. 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 Shine India and its Directors, viz. Shri Gurupada Das, Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors and 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.
51. I also note that, vide the interim order dated July 07, 2016, Shine India was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors/promoters of Shine India 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 Shine India or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 11 of this Order.
52. In view of the discussion above, appropriate action in accordance with law needs to be initiated against Shine India and its Directors and promoters, viz. Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati, Shri Gurupada Das, Smt Suparna Das, Shri Irin Parvin, Shri Basudev Ghosh, Shri Ujjal Mandal and Shri Kobil Patra.
53. 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. Shine India, Shri Gurupada Das, Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati 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 crossed as “Non-Transferable”, or other appropriate Banking channels.
- c. Shri Gurupada Das is directed to provide a full inventory of all his assets and properties and details of all his bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- d. Shine India and Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati 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. Shine India, Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati 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. Shine India, Shri Gurupada Das, Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati 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. Shine India, Shri Gurupada Das, Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, and Shri Dulal Senapati 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, Shine India, Shri Gurupada Das, Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati 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 Shine India, Shri Gurupada Das, Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati 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 53(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. Shine India, Shri Gurupada Das, Shri Sajahan Midya, Shri Niamat Ali, Shri Kabil Patra, Shri Dulal Senapati 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. Smt Suparna Das, Shri Irin Parvin, Shri Basudev Ghosh, Shri Ujjal Mandal, Shri Kobil Patra 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.
54. 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 Shine India and its directors and other key persons.
55. Copy of this Order shall be forwarded to the recognised stock exchanges, Registrar and Transfer Agents and depositories for information and necessary action.
56. 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: November 2, 2017

PLACE: Mumbai

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