

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 Suraksha Family Services Limited

In respect of:

- 1. Suraksha Family Services Limited (PAN: AAJCS1625B)**
- 2. Shri Indranil Das (PAN: AFTPD7822F; DIN: 00566904).**
- 3. Shri Arunabha Mukhopadhyay (PAN: AEYPM2888J; DIN: 00566929).**
- 4. Shri Subrata Das (PAN: AJEPD3008L; DIN: 02262940).**
- 5. Shri Ranjit Daspattanayak (PAN: AKDPD9098A; DIN: 02821903).**

-
1. Suraksha Family Services Limited (hereinafter referred to as “**SFSL**”/ “**the Company**”) is a Public company incorporated on June 03, 2005 and registered with Registrar of Companies–Kolkata with CIN: U85199WB2005PLC103522. Its registered office is at 176 AJC Bose Road, 3rd Floor, Kolkata–700014, West Bengal, India.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons against SFSL in respect of issue of Redeemable Preference Shares (“**RPS**”) and undertook an enquiry to ascertain whether SFSL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as “**DIP Guidelines**”) read with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations**”).
-

3. On enquiry by SEBI, it was observed that SFSL had made an offer of RPS in the financial years 2007-2008 and 2008-2009 (hereinafter referred to as “**Offer of RPS**”) and raised an amount of Rs.82,30,000 from 1804 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 December 01, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against SFSL and its Directors viz., Shri Indranil Das, Shri Arunabha Mukhopadhyay, Shri Subrata Das and Shri Ranjit Dasguptanayak (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. SFSL had made an *Offer of RPS* during the financial years 2007-2008 and 2008-2009 and raised an amount of Rs.82,30,000 as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2007-2008	RPS	31.76	774
2008-2009		50.54	1030
Total		82.30	1804

[^]The amount of mobilization has been collated from the documents submitted by the company pursuant to the interim order and also from the documents available on MCA21Portal.

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 SFSL in respect of the *Offer of RPS*.
7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated December 01, 2015 with immediate effect.

- i. *“SFSL shall not mobilize any fresh funds from investors through the Offer of Redeemable Preference Shares or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*
- ii. *SFSL and its Directors, viz. Shri Indranil Das (DIN: 00566904), Shri Arunabha Mukhopadhyay (DIN: 00566929), Shri Subrata Das (DIN: 02262940) and Shri Ranjit Daspattanayak (DIN: 02821903), 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. *SFSL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*
- iv. *SFSL shall provide a full inventory of all its assets and properties;*
- v. *SFSL's abovementioned Directors shall provide a full inventory of all their assets and properties;*
- vi. *SFSL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of Redeemable Preference Shares, without prior permission from SEBI;*
- vii. *SFSL and its abovementioned Directors shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares, which are kept in bank account(s) and/or in the custody of SFSL;*
- viii. *SFSL and its abovementioned Directors shall furnish complete and relevant information in respect of the Offer of Redeemable Preference Shares (as sought by SEBI letter dated October 9, 2015), within 14 days from the date of receipt of this Order.”*

8. The interim order also directed the SFSL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the DIP Guidelines and ICDR Regulations and section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act should not be passed against them:
- i. *“Directing them jointly and severally to refund money collected through the Offer of Redeemable Preference Shares alongwith interest, if any, promised to investors therein;*
 - ii. *Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;*
 - iii. *Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.”*
9. Vide the said interim order, SFSL, its abovementioned Directors were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
10. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated December 15, 2015 and May 06, 2016. Subsequently, vide notification dated November 09, 2016 published in newspaper *Times of India* , and notification dated November 08, 2016 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI, that interim order dated December 01, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.
11. *Replies:* SFSL vide letter dated November 28, 2016 submitted as under:
- i. “We have issued RPS during the period 2007-2008 and 2008-2009 to total 1804

investors amounting to Rs.82,30,000/-.

ii. Out of total dues of Rs.82,30,000/- we have already paid Rs. 43,63,500/-.

11.1 Further, SFSL vide letter dated December 28, 2016 furnished the list of investors repaid by SFSL duly certified by Auditors.

12. Vide notification dated June 10, 2017 published in newspaper *Times of India* and notification dated June 10, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on July 05, 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.

13. Hearing and submissions: On July 05, 2017 Shri Arunabha Mukhopadhyay and Shri Ranjit Daspattanayak appeared together for the personal hearing and made submissions.

13.1 Shri Ranjit Daspattanayak has submitted that he was a Director of Suraksha Family Services Limited from January, 2010 and that he resigned in August, 2010. He also submitted that he was paid Rs.10,000/- per month for his services as the Director and that he never attended a meeting nor signed any documents of Suraksha Family Services Limited, in the capacity of a director. Shri Ranjit Daspattanayak submitted a written representation along with the lines of his oral submissions. He was further requested to provide a copy of his letter of resignation as the director of Suraksha Family Services Limited and his personal asset details. He was granted a period of 1 week, till July 12, 2017 to provide the aforesaid details. However, Shri Ranjit Daspattanayak has failed to furnish the said details.

13.2 Shri Arunabha Mukhopadhyay made oral submissions in line with the replies of Suraksha Family Services Limited dated November 28, 2016 and December 28, 2016. He was further requested to provide the following:

- Copies of Share Certificates and details of investors,

- Asset details of Suraksha Family Services Limited, including Bank Account details, registered deed of the property located at Nadia District,
- Asset details of all the Directors as on date,
- Details of disposal of all assets from the date of the Interim Order in the matter, i.e. December 1, 2015,
- Board Resolution of Suraksha Family Services Limited for issuance of redeemable preference shares,
- Form 2 filed by Suraksha Family Services Limited with the Ministry of Corporate Affairs.

Post hearing submissions:

13.3 SFSL vide letter dated July 19, 2017 submitted the following documents:

- Photocopies of RPS certificates already issued to the investors and paid by the company;
- Photocopy of Deed of immovable properties of the company;
- Asset statement of Mr. Arunabha Mukhopadhyaya as on July 05, 2017.
- Photocopies of letters addressed to Mr. Indranil Das, Director and Mr. Subrata Das seeking details of their assets, board resolution for issuing RPS and Form 2.
- Bank account details of the company.

13.4 SFSL vide another letter dated August 29, 2017 reiterated its earlier submissions made vide letter dated November 28, 2016 and furnished copy of the list of investors repaid which was already submitted vide its letter dated December 28, 2016.

13.5 Shri Indranil Das and Shri Subrata Das neither availed the opportunity of hearing nor filed any reply till date.

14. 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.*

15. I have perused the interim order dated December 01, 2015 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.
16. I have also perused the documents/ information obtained from the '*MCA 21 Portal*' and other documents available on records including the replies of SFSL. It is noted that SFSL has issued and allotted RPS to 1804 investors during the financial years 2007-2008 and 2008-2009 and raised an amount of Rs.82,30,000.
17. *I therefore conclude that SFSL 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.*

18. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of RPS* made to the public. Therefore the primary question that arises for consideration is whether the issue of RPS is 'public 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).”

19. 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.”

20. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation,

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

21. In the instant matter, I find that RPS were issued by SFSL to 1804 investors in the financial years 2007-2008 and 2008-2009 and an amount of Rs.82,30,000 was raised. The above findings lead to the conclusion that the *Offer of RPS* by SFSL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
22. I find that SFSL 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 SFSL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
23. Neither SFSL 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.
24. Therefore, in view of the material available on record, I find that the *Offer of RPS* by SFSL 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 SFSL 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 in respect of Section 73(1) of the Companies Act, 1956 were not denied by SFSL 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. SFSL vide letters dated December 12, 2016 and August 29, 2017 submitted that out of total fund mobilized through issuance of RPS, they had repaid Rs.43,63,500/. SFSL has also submitted the list of investors to whom such refunds were made along with certificate of Auditor. Even assuming that SFSL has made refunds to a few investors, I note that the same has not been made in accordance with the provisions of Section 73(2) of the Companies Act, 1956. Therefore, I find that SFSL has contravened the provisions of Sections 73(1) and 73(2) of the Companies Act, 1956. SFSL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that SFSL 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, SFSL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that SFSL 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 SFSL 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 SFSL 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, SFSL 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 2008–09:

Clause 2.1.1. – (Filing of offer document);

a. Clause 2.1.4 – (Application for listing);

b. Clause 2.1.5 – (Issue of securities in dematerialized form),

c. Clause 2.8 – (Means of finance),

d. Clause 4.1 – (Promoters contribution in a public issue by unlisted companies),

e. Clause 4.11 – (Lock-in of minimum specified promoters contribution in public issues),

f. Clause 4.14 – (Lock-In of pre-issue share capital of an unlisted company)

g. Clause 5.3.1 – (Memorandum of understanding),

h. Clause 5.3.3 – (Due Diligence Certificate)

i. Clause 5.3.5 – (Undertaking),

j. Clause 5.3.6 – (List Of Promoters Group And Other Details),

k. Clause 5.4 – (Appointment of intermediaries),

- l. Clause 5.6 – (Offer document to be made public),*
- m. Clause 5.6A – (Pre-issue Advertisement),*
- n. Clause 5.7 – (Despatch of issue material),*
- o. Clause 5.8 – (No complaints certificate),*
- p. Clause 5.9 – [Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)],*
- q. Clause 5.10 – (Authorised Collection Agents),*
- r. Clause 5.12.1 – (Appointment of compliance officer),*
- s. Clause 5.13 – (Abridged prospectus),*
- t. Clause 6.0 – (Contents of offer documents),*
- u. Clause 8.3 – (Rule 19(2)(b) of SC(R) Rules, 1957),*
- v. Clause 8.8.1 – (Opening & closing date of subscription of securities),*
- w. Clause 9 – (Guidelines on advertisements by Issuer Company),*
- x. Clause 10.1 – (Requirement of credit rating),*
- y. 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 SFSL 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 DIP Guidelines read with ICDR Regulations.

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

34. Before dealing with the above issue, it would be appropriate to deal with the submissions of the Noticees. It is noted that one of the directors of the company viz., Shri Ranjit Daspattanayak vide letter dated July 05, 2017 contended that he had resigned from the directorship of the company within a few months. Shri Ranjit Daspattanayak was granted a weeks’ time to submit the documents pertaining to his resignation. However, he has failed to submit any proof of resignation till date. On the contrary, as per the MCA records available on ‘MCA 21 Portal’ he is still shown as an additional director of SFSL since February 01, 2010. Thus I consider Shri Ranjit Daspattanayak to be present and continuing director of SFSL since February 01, 2010. Further, it is noted from the interim order that Shri Ranjit Daspattanayak has been considered as a Director of SFSL on the basis of MCA records. However, despite knowing the aforesaid fact, neither Shri Ranjit Daspattanayak has made any efforts to rectify his records with RoC nor has he submitted any evidence of communication of his claim of resignation. Therefore, I am inclined to hold Shri Ranjit Daspattanayak as present and continuing director of SFSL since February 01, 2010.
35. From the documents available on record, I find that the present Directors in SFSL are Shri Indranil Das, Shri Arunabha Mukhopadhyay, Shri Subrata Das and Shri Ranjit Daspattanayak. The details of the appointment of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Indranil Das	June 03, 2005	Continuing
Shri Arunabha Mukhopadhyay	July 06, 2005	Continuing
Shri Subrata Das	June 03, 2005	Continuing
Shri Ranjit Daspattanayak	February 01, 2010	Continuing

- *It is noted that the period of mobilization was 2007-2008 to 2008-2009.*

36. 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, SFSL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

37. 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%.

38. From the material available on record and the details of the appointment of the directors of SFSL as reproduced in paragraph 35 of this Order, it is noted that Shri Indranil Das, Shri Arunabha Mukhopadhyay and Shri Subrata 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 SFSL 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 SFSL, 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 SFSL and its Directors, viz., Shri Indranil Das, Shri Arunabha Mukhopadhyay, Shri Subrata 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.
39. I note that during the financial years 2007-2008 and 2008-2009, SFSL through Offer of RPS, had collected an amount of Rs.82,30,000 from various allottees. I note that Shri Indranil Das has been director of SFSL since financial years 2007-2008, 2008-2009 till present date. I note that Shri Arunabha Mukhopadhyay has been director of SFSL since financial years 2007-2008, 2008-2009 till present date. I note that Shri Subrata Das has been director of SFSL since financial years 2007-2008, 2008-2009 till present date.

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 SFSL and other directors are limited to the extent of amount collected during his/her tenure as director of SFSL.

40. In this regard, I note that, Shri Ranjit Dasguptanayak was appointed as a director of SFSL only on February 01, 2010 i.e. after the period of issuance of RPS. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the Shri Ranjit Dasguptanayak is not liable for refund of money jointly and severally with SFSL and other directors as he was not a director during the relevant time of fund mobilization. However, I note that the company has continuing liability to refund the money collected from the public through issuance of RPS pursuant to its failure to comply with public issue norms for said issuance. The fact that Shri Ranjit Dasguptanayak is the present and continuing director of SFSL, I find that Shri Ranjit Dasguptanayak is indeed responsible to ensure that SFSL makes refund of money to the allottees as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

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

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

41. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with

responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The noticee cannot therefore wriggle out from liability. A director who is part of a Company's Board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Ranjit Daspattanayak was also be responsible for all the deeds/acts of the Company during the period of his directorship and was obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Ranjit Daspattanayak is 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 SFSL and its Directors, viz., Shri Indranil Das, Shri Arunabha Mukhopadhyay and Shri Subrata Das to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors, to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.
43. I also note that, vide the interim order dated December 01, 2015, SFSL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of SFSL 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 SFSL and one of the Directors viz., Shri Arunabha Mukhopadhyay have provided certain details of assets of the company. However, the remaining Noticees failed to furnish the same 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 SFSL and its Directors viz., Shri Indranil Das, Shri Arunabha Mukhopadhyay, Shri Subrata Das and Shri Ranjit Dasguptanayak.
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. SFSL, Shri Indranil Das, Shri Arunabha Mukhopadhyay and Shri Subrata 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. If SFSL had repaid the Preference Shares as submitted in its replies to its investors as per section 73(2) of the Companies Act, the above directions and the below mentioned consequential directions from paragraphs 45 (c) to 45 (h), shall be applicable for the amounts still due to be returned to the investors.
 - i. However, such prior repayments should have been made by the Company as per the requirements laid down in paragraph 45(c) below and the same shall be certified by peer reviewed Chartered Accountants, as directed in paragraph 45(h) below, or
 - ii. The Company shall produce a peer reviewed Chartered Accountant's certificate, for the repayments claimed to have been made by the company, certifying repayment on verification of the originals of the application form for RPS bearing signature of the RPS holder, certificate of RPS issued by the company to RPS holder and returned to the Company on redemption, payment receipt/voucher issued by the Company to the RPS holders bearing the signature of the RPS holders, (in the absence of payment receipt/voucher an Affidavit of receipt of payment with full description of RPS holders' identity, address and

amount received by them) and corresponding proof of debit from the Bank Account of the Company with an original document of proof of identity, address and signature issued by the State/Central Government to the RPS holders bearing their signature and a statement in Chartered Accountant's certificate to the effect that he has made the above said verification enclosing copies of verified documents.

- c. 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".
- d. SFSL and Shri Indranil Das, Shri Arunabha Mukhopadhyay and Shri Subrata Das are directed to provide a full and up-to-date 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. SFSL, Shri Ranjit Dasguptanayak, Shri Indranil Das, Shri Arunabha Mukhopadhyay and Shri Subrata 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. SFSL, Shri Indranil Das, Shri Arunabha Mukhopadhyay and Shri Subrata 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. SFSL and, on its behalf the present director Shri Ranjit Daspattanayak who joined subsequent to the issues and Shri Indranil Das, Shri Arunabha Mukhopadhyay and Shri Subrata 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, SFSL and on its behalf the present directors viz., Shri Ranjit Daspattanayak who joined subsequent to the issues and Shri Indranil Das, Shri Arunabha Mukhopadhyay and Shri Subrata 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 aforesaid present director, who joined subsequent to the issues namely, Shri Ranjit Daspattanayak to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may initiate appropriate action against him including adjudication proceedings against him, in accordance with law.
- j. In case of failure of SFSL, Shri Indranil Das, Shri Arunabha Mukhopadhyay and Shri Subrata 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;
- k. SFSL, Shri Indranil Das, Shri Arunabha Mukhopadhyay and Shri Subrata 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.
- l. Shri Ranjit Daspattanayak is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years from the date of this Order. He is 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.
- m. 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 SFSL 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: November 07, 2017

PLACE: Mumbai

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