

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 Sunplant Constructions Limited

In respect of:

- 1. Shri Yoganand Prasad (PAN: AKUPP4675Q; DIN: 02011606).**
- 2. Shri Ameet Singh (PAN: BWIPS3911H; DIN: 02885973).**
- 3. Shri Girija Shankar Kumar (PAN: AKAPK2774R; DIN: 00355512).**

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1. Sunplant Constructions Limited (hereinafter referred to as “SCL”/ “**the Company**”) is a Public company incorporated on June 08, 2007 and registered with Registrar of Companies–Kolkata with CIN: U45400WB2007PLC116406. Its registered office is at 172 RGM Teghoria, VIP Road, Kolkata – 700059, West Bengal, India.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter from the Ministry of Corporate Affairs (“MCA”) against SCL in respect of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether SCL 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.
 3. On enquiry by SEBI, it was observed that SCL had made an offer of RPS in the financial years 2010-2011 and 2011-2012 (hereinafter referred to as “**Offer of RPS**”) and raised an amount of Rs. 24.08 crores from 2028 allottees. The number of allottees and funds mobilized has been collated from the information available in MCA records and documents submitted by the company. Therefore, it was concluded that the actual number
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of allottees and amount mobilized could be more than the above indicated figures.

4. As the above said Offer of RPS was found prima facie in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated July 24, 2014 and issued directions mentioned therein against SCL and its Directors viz. Shri Awdhesh Kumar Singh, Shri Satish Kumar Singh and Shri Rituraj Pradhan. Thereafter, SEBI vide an Order bearing no. WTM/PS/ 123/ERO/DEC/2015 dated December 31, 2015, passed certain directions as mentioned at paragraph 9.1 thereof, against SCL and its Directors viz. Shri Awdhesh Kumar Singh, Shri Satish Kumar Singh and Shri Rituraj Pradhan, for violating the provisions of Section 60, Section 56(1) and 56(3), Sections 73(1), (2) and (3) of the Companies Act, 1956. Meanwhile it also came to the notice of SEBI that Shri Yoganand Prasad, Shri Ameet Singh and Shri Girija Shankar Kumar were earlier Directors of SCL and thus SEBI passed an interim order dated November 20, 2015 (hereinafter referred to as “interim order”) against Shri Yoganand Prasad, Shri Ameet Singh and Shri Girija Shankar Kumar (hereinafter collectively referred to as “Noticees”) for the alleged violation of aforementioned provisions of the Companies Act, 1956, the SEBI Act.
5. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings were recorded. SCL had made an *Offer of RPS* during the financial years 2010-2011 and 2011-2012 and raised an amount of Rs. 24.08 crores as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in crores)	Number of allottees
2010-2011		24.08	2028*
2011-2012			
Total		24.08^	2028*

*^ No. of allottees and funds mobilized has been collated from the information available in MCA records and documents submitted by the company.

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 SCL 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 November 20, 2015 with immediate effect.
 - i. The past Directors of SCL, viz. Shri Yoganand Prasad (PAN: AKUPP4675Q; DIN: 02011606), Shri Ameet Singh (PAN: BWIPS3911H; DIN: 02885973) and Shri Girija Shankar Kumar (PAN: AKAPK2774R; DIN: 00355512), 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;
 - ii. The abovementioned past Directors of SCL 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;
 - iii. The abovementioned past Directors of SCL shall provide a full inventory of all their assets and properties.
8. The interim order also directed Noticees to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 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.
9. Vide the said interim order, the Noticees 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 November 23, 2015 and the same was duly delivered.

11. Shri Girija Shankar Kumar vide letter dated December 29, 2015 on behalf of all the Noticees prayed extension of 45 days' time to file reply on the ground that they need time to gather all the relevant documents. Vide the said letter they also requested for personal hearing on the date convenient to SEBI. Subsequently Shri Girija Shankar Kumar vide letter dated February 05, 2016 filed reply and made interalia the following submissions-

- a. That he was appointed in SCL as an additional Director on October 01, 2011 and resigned from the post on the very next day morning on October 02, 2011.
- b. That the reason for his resignation was that it was not possible for him to take extra burden of duties and responsibilities and thus before taking the Office of Additional Director, he resigned from the post of directorship.
- c. That October 01, 2011 was Saturday and October 02, 2011 was Sunday as well National Holiday and he did not even attend the office of SCL.
- d. That he had not received any remuneration from SCL and has no relation with SCL.

12. Shri Yoganand Prasad vide letter dated February 05, 2016 filed reply and made interalia the following submissions-

- a. That he was working as Chief Engineer in PWD of State of Bihar and during his tenure of government service he gained experience of Construction related activities.
- b. That after his retirement he came into contact with Mr. Awdhesh Kumar Singh, present director of SCL and he was offered job to look after construction related activities.
- c. That he observed that activities of SCL and reputation of Awdhesh Kumar was good and thus he joined as an employee of SCL.
- d. That subsequently he was appointed as Director of SCL on February 02, 2008 with a view that his presence in Board will bear importance during negotiation in tender

process with State Government.

- e. That he was not involved in financial activities of SCL and did not function as Director of the company. That he resigned from the post of director of SCL on February 02, 2011.
- f. That he will appear for personal hearing.

13. Shri Ameet Singh vide letter dated February 05, 2016 filed reply and made interalia the following submissions-

- a. That he was appointed in SCL on December 29, 2009 and resigned on October 02, 2011.
- b. That though he was appointed as Director of SCL but he was not performing the functions of director and has no idea what RPS and SEBI is.
- c. That he was issued NOC while resigning from SCL and the same was enclosed.
- d. That neither he was shareholder of SCL nor was involved in any financial activities of SCL in any manner.
- e. That he is salary earner person without any legal hurdles till date.

14. Vide notification dated October 15, 2017 published in newspaper *Times of India, Kolkata*, notification dated October 15, 2017 published in newspaper *Anand Bazar Patrika, Kolkata*, notification dated October 15, 2017 published in newspaper *Times of India, Patna* and notification dated October 15, 2017 published in newspaper *Hindustan, Patna*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on November 16, 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.

15. *Hearing and submissions*: Noticees did not avail the opportunity of hearing held on November 16, 2017. None of the Noticees have filed any replies as on date or sought any adjournment.

16. 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.

17. I have perused the interim order dated November 20, 2015 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.

18. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted, from the filings before MCA and the reply of the Company dated June 5, 2013 that SCL has issued and allotted RPS to 2028 investors during the financial years 2010-2011 and 2011-2012 and raised an amount of Rs. 24.08 crores. Further from the said reply, I find that the Company has come out with the offer of RPS with the terms and conditions as alleged. I therefore conclude that SCL came out with an offer of RPS as outlined above. The same has also been also decided vide SEBI's Final Order dated December 31, 2015.

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

19. 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). ”

20. 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.”

21. 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*.
22. In the instant matter, I find that RPS were issued by SCL to 2028 investors in the financial years 2010-2011 and 2011-2012. I find that SCL has mobilized an amount of Rs. 24.08 crores over the financial years 2010-2011 and 2011-2012. In the instant case, since the offer of RPS has been made by SCL and allotment to more than 49 persons, the offer of RPS is “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956. Though the Company contended that the offer was being made on a private placement basis as per the Unlisted Public Companies (Preferential Allotment) Rules, 2003, I find that the invitation for subscription to the Offer of RPS was extended to "Individuals, Trusts, Corporate Bodies, Minors (through Guardians), Institutions, HUFs, and Co-operative Bodies". Such a generalized category of investor(s), cannot be said to satisfy the condition as required under Section 67(3) of the Companies Act. Moreover, in

view of the allotment to more than 49 persons, the issue becomes a public issue under first proviso of section 67(3). The same has also been decided vide SEBI's Final Order dated December 31,2015.

23. I find that Noticees have 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 SCL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
24. I note that noticees have not contended that the *Offer of RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
25. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that "In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".
26. Therefore, in view of the material available on record, I find that the *Offer of RPS* by SCL 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 SCL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956. The same has also been

decided vide SEBI's Final Order dated December 31,2015.

27. 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.
28. The allegations of non-compliance of the above provisions were not denied by the noticees. 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 SCL has contravened the said provisions. SCL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that SCL 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. The same has also been decided vide SEBI's Final Order dated December 31,2015.
29. 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, SCL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that the noticees have not submitted any record to indicate that SCL has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that SCL has not complied with the

provisions of section 60 of the Companies Act, 1956. The same has also been decided vide SEBI's Final Order dated December 31, 2015.

30. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. The Noticees have not produced any record to show that SCL 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, SCL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956. The same has also been decided vide SEBI's Final Order dated December 31, 2015.
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 SCL 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. The same has also been decided vide SEBI's Final Order dated December 31, 2015.

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

34. The noticees have claimed that they were not involved in day today financial activities of the company and have no role in the issuance since they were not performing the functions of director. At this juncture I would like to rely on Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI wherein

Hon'ble SAT has observed that-

“Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956.”

35. Thus in view of SAT decision of Manoj Agarwal vs. SEBI, the contention of the noticees with respect to their being involved in company's affair is not acceptable.
36. I also note that Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar, who were earlier Directors in SCL, have since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Yoganand Prasad	October 01, 2011	October 02, 2011
Shri Ameet Singh	February 02, 2008	February 22, 2011
Shri Girija Shankar Kumar	December 29, 2009	October 02, 2011

37. I also note that Shri Yoganand Prasad was a director of SCL only for a day i.e. from October 01, 2011 to October 02, 2011 during the time of the issuance of RPS.
38. 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, the noticees are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act,

1956.

39. 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%.
40. From the material available on record and the details of the appointment and resignation of the directors of SCL as reproduced in paragraph 36 of this Order, it is noted that Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar 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 SCL 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 SCL, 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 Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar jointly and severally with SCL and other directors as mentioned in Order dated December 31, 2015 are 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.

41. I note that during the financial years 2010-2011 and 2011-2012, SCL through Offer of RPS, had collected an amount of Rs. 24.08 crores from various allottees. I note that Shri Ameet Singh was director of SCL during financial years 2010-2011. I note that Shri Girija Shankar Kumar was director of SCL during financial years 2010-2011 and 2011-2012. I also note that Shri Yoganand Prasad was a director of SCL only for a day i.e. from October 01, 2011 to October 02, 2011 during the time of the issuance of RPS. 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 SCL and other directors are limited to the extent of amount collected during his/her tenure as director of SCL. Shri Yoganand Prasad is liable to refund the money collected, if any, during his short span of one day tenure.
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 SCL and its Directors, viz. Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar 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 November 20, 2015, SCL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of SCL 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 SCL or the other Noticees despite the service of the interim order 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 SCL and its Directors viz. Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar.
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. Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar 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 jointly and severally with SCL and other directors as mentioned in Order dated December 31, 2015.
 - b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.
 - c. Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar is/ are directed to provide a full inventory of all his/their assets and properties and details of all his/their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
 - d. Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar 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.

- e. Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar in their personal capacity to make refund jointly and severally with SCL and other directors as mentioned in Order dated July 24, 2014, 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.
- f. After completing the aforesaid repayments, Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar jointly and severally with SCL and other directors as mentioned in Order dated December 31, 2015 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")
- g. In case of failure of Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from Shri Yoganand Prasad, Shri Ameet Singh, Shri Girija Shankar Kumar liable to refund as specified in paragraph 45(a) of this Order, in accordance with section 28A of the SEBI Act

- h. Shri Ameet Singh and Shri Girija Shankar Kumar 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.
- i. Shri Yoganand Prasad is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is 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 1 (one) year from the date of this order. He also restrained from associating himself 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 1 (one) year from the date of this order. The above directions shall come into force with immediate effect.
- j. The above directions shall come into force with immediate effect.
- k. ***This Order, shall be subject to and harmoniously read with, the orders passed and to be passed by Hon'ble Calcutta High Court in W.P. 30646 (W) of 2014 in the matter of Sanatan Pakhira & Ors. Vs. The Union of India & ors.***
46. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
47. 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 directors.

48. A copy of this Order shall also be forwarded to Local Police/ State Government for information.

DATE: November 27, 2017

PLACE: Mumbai

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