

**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 SunTechno International Limited

In respect of:

S. No.	Name of the Entity	PAN	CIN/DIN
1.	SunTechno International Limited	Not available	U36999WB2012PLC173523
2.	Shri Dulal Chatterjee	AFSPC3069C	2720692
3.	Shri Biswanath Dutta	ALNPD6445N	5179661
4.	Shri Anirban Mukherjee	BPPPM0030M	6978609
5.	Smt Keya Chatterjee	ANGPC4373F	5179654
6.	Shri Pradip Kumar Roy Ghatak	AFUPG4722N	Not applicable
7.	Shri Ava Mukherjee	BJDPM1357D	Not applicable
8.	Shri Dipankar Dhar	AJSPD6109J	Not applicable
9.	Smt Rita Paul	BJXPP7149G	Not applicable

1. SunTechno International Limited (hereinafter referred to as "**STIL**"/ "**the Company**") is a Public company incorporated on February 03, 2012 and registered with Registrar of Companies-Kolkata with CIN: U36999WB2012PLC173523. Its registered office is at Premises No. 58, S.N. Banerjee Road, Ward No. 23 of Barrackpore Municipality, Kolkata-700120, West Bengal, India.

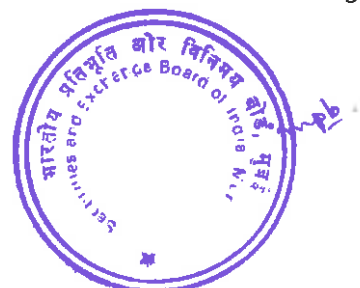


2. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an examination into the fund-raising activity of STIL in respect of issue of Redeemable Preference Shares ("RPS") to ascertain whether STIL had made any public issue of securities without complying with the provisions 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 STIL had made an offer of RPS in the financial years 2011-2012 and 2012-2013 (hereinafter referred to as "Offer of RPS") and raised an amount of Rs. 59.70 lakhs from 322 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 February 17, 2016 (hereinafter referred to as the "interim order") and issued directions mentioned therein against STIL and its Directors and promoters, viz. Shri Dulal Chatterjee, Shri Biswanath Dutta, Shri Anirban Mukherjee, Smt Keya Chatterjee, Shri Pradip Kumar Roy Ghatak, Shri Ava Mukherjee, Shri Dipankar Dhar and Smt Rita Paul and (hereinafter collectively referred to as "**Noticees**").
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded:
From the material available on record, it is observed that STIL issued "Redeemable Preference Shares" ("Offer of Redeemable Preference Shares") to investors during the Financial Years 2011-12 and 2012-13, details of which are provided below –

Type of Security	Year	No. of persons to whom preference shares were allotted	Total Amount (₹ in Lakhs)
Redeemable Preference Shares	2011-12	59	11.12
	2012-13	263	48.58
Total		322	59.70



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 STIL 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 February 17, 2016 with immediate effect.
- i. *STIL 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. *STIL, its past and present Directors and Promoters, viz. Shri Dulal Chatterjee (DIN: 02720692; PAN: AFSPC3069C), Shri Biswanath Dutta (DIN: 05179661; PAN: ALNPD6445N), Shri Anirban Mukherjee (DIN: 06978609; PAN: BPPPM0030M), Smt Keya Chatterjee (DIN: 05179654; PAN: ANGPC4373F), Shri Pradip Kumar Roy Ghatak (PAN: AFUPG4722N), Shri Ava Mukherjee (PAN: BJDPM1357D), Shri Dipankar Dhar (PAN: AJSPD6109J) and Smt Rita Paul (PAN: BJXPP7149G), 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. *STIL 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. *STIL shall provide a full inventory of all its assets and properties;*
 - v. *STIL's abovementioned past and present Directors and Promoters, shall provide a full inventory of all their assets and properties;*
 - vi. *STIL and its abovementioned present Directors and Promoters, shall not dispose of any of the properties or alienate or encumber any of the*



assets owned/acquired by that company through the Offer of Redeemable Preference Shares, without prior permission from SEBI;

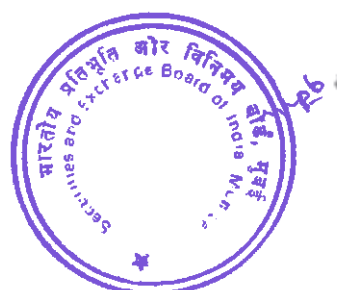
- vii. STIL and its abovementioned present Directors and Promoters, shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares, which are kept in bank account(s) and/or in the custody of STIL;*
- viii. STIL and its abovementioned past and present Directors and Promoters, shall furnish complete and relevant information (as sought by SEBI letter dated November 3, 2015), within 14 days from the date of receipt of this Order.*

8. The interim order also directed the STIL 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 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, STIL, its abovementioned Directors/promoters were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

10. *Service of interim order:* The copy of the said interim order was sent to the



Noticees vide separate letters dated February 18, 2016 which were not delivered to certain Noticees. Subsequently, vide notification dated November 08, 2016 published in newspaper, *Anand Bazar Patrika (West Bengal)*, notification dated November 09, 2016 published in newspaper, *The Times of India (West Bengal)* and notifications dated November 25, 2016 in newspapers, *Hindustan (Jharkhand)* and *Hindustan Times (Jharkhand)*, all the Noticees were notified by SEBI, that interim order dated February 17, 2016 was issued against them and they were given a final opportunity to submit their reply in the matter.

11. Replies of the Noticees: Pursuant to the interim order, only 4 Noticees filed their replies/objections in the manner summarized below:

- a. **Shri Pradip Kumar Roy Ghatak** – Vide letter dated May 6, 2016, he submitted that he was never a director or promoter of STIL. Further, he was not a director of any other company. He also submitted that he had no information about STIL and he did not know how his name was involved with STIL. In view of the above, he requested that his name be deleted from the company i.e. STIL.
- b. **Shri Dipankar Dhar** – Vide letter dated March 16, 2016, he submitted that he had received the interim order and that he intends to extend all kinds of cooperation with SEBI in the matter. He further submitted that he intends to file a reply to the interim order but due to his illness, he has been unable to gather necessary / important documents, which are necessary in respect of adjudication of the matter. In view thereof, he sought further time of 30 days to file his reply along with necessary documents.
- c. **Smt Rita Paul** – Vide letter dated March 16, 2016, she filed a reply similar to Shri Dipankar Dhar and sought further time of 30 days to file her reply along with necessary documents.
- d. **Shri Biswanath Dutta** – Vide letter dated November 25, 2016, he submitted that he had perused SEBI's notice dated November 8, 2016 published in the newspaper, *Anand Bazar Patrika*. Along with his reply he submitted a copy of STIL's certificate of incorporation, Memorandum of Association and Articles of Association and submitted that SEBI should publish a notice in respect of appropriate persons / authority as per the said documents.

12. Vide notifications dated June 10, 2017 published in newspaper, *The Times of*



India and 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 19, 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*: Noticees did not avail the opportunity of hearing held on July 19, 2017. Further, none of the Noticees filed any submission / communication after the date of hearing. Also, Shri Dipankar Dhar and Smt Rita Paul, who vide their earlier letters dated March 16, 2016 had sought time to file their respective replies, did not file any reply / submissions thereafter.

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 February 17, 2016 for the allegation of *Offer of RPS*. As noted above, replies were filed by certain Noticees but none of them disputed the said allegation of *Offer of RPS*.

16. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on record. It is noted, from Form-2s and other documents filed by STIL on the MCA portal that STIL had issued and allotted RPS to 322 investors during the financial years 2011-2012 and 2012-2013 and raised an amount of Rs. 59.70 lakhs.



17.I therefore conclude that STIL 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 STIL to 322 investors in the financial years 2011-2012 and 2012-2013 thereby raising Rs. 59.70 lakhs. The above findings lead to a reasonable conclusion that the *Offer of RPS* by STIL was a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
22. I find that STIL 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 find that there is no case that STIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
23. Neither STIL 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. 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 the above mentioned issuances, the company/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 issuances cannot be considered as



private placement. Moreover, reference may also be made to the order of Hon'ble Securities Appellate Tribunal dated April 28, 2017 in the matter of *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"*.

25. Therefore, in view of the material available on record, I find that the *Offer of RPS* by STIL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offers of RPS* mentioned above are deemed to be public issues and STIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
26. 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.
27. The allegations of non-compliance of the above provisions were not denied by STIL or its directors. I also find that no records have been submitted to indicate that STIL had made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that STIL has contravened the said provisions. Further, STIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that STIL 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.



28. 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, STIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that STIL 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 STIL has not complied with the provisions of section 60 of the Companies Act, 1956.

29. 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 STIL 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, STIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

30. 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"

31. 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..."

32. In view of the above findings, I am of the view that STIL 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?

33.I note that Shri Pradip Kumar Roy Ghatak vide letter dated May 6, 2016, submitted that he was never a director or promoter of STIL. He also submitted that he had no information about STIL and he did not know how his name was involved with STIL. In this regard, I observe that Shri Pradip has not submitted any documentary proof / evidence to support his submissions. It is noted that the interim order dated February 17, 2016 was served on Shri Pradip but he has not taken any steps since then against the claimed wrongful inclusion of his name as a promoter of STIL. As per the Memorandum of Association of STIL available on MCA, Shri Pradip was associated with STIL since its inception as he had subscribed to 1000 shares of STIL, however, Shri Pradip in his reply has not provided any explanation in that regard. Thus, I find that there is sufficient material available to say that he is a promoter of STIL. I also note that in the interim order dated February 17, 2016 Shri Pradip Kumar Roy Ghatak was categorized as promoter of STIL and not director of STIL. Considering the above, I am unable to accept the above submission of Shri Pradip Kumar Roy Ghatak that he was never a promoter of STIL.

34.Shri Dipankar Dhar and Smt Rita Paul vide separate letters dated March 16, 2016, had submitted that they had received the *interim order*, and had sought time of 30 days to file their respective replies along with necessary documents. In this regard, I note from the record that neither of them have filed any reply to the interim order subsequent to the aforesaid letters dated March 16, 2016, and therefore, have not disputed the findings of the interim order.

35.Another Noticee namely, Shri Biswanath Dutta vide letter dated November 25, 2016, submitted that he had perused SEBI's notice dated November 8, 2016 published in the newspaper, Anand Bazar Patrika. Along with his reply he submitted a copy of STIL's certificate of incorporation, Memorandum of Association and Articles of Association and submitted that SEBI should publish a notice in respect of appropriate persons / authority as per the said documents. In this regard, I note that the publication of notice in the newspapers as noted above, was in respect of all the Noticees (i.e. STIL, its promoters and directors). Thus, the submission of Shri Dutta regarding publishing of notice in respect of



appropriate persons holds no merit. Further, the copies of the Memorandum of Association and Articles of Association of STIL, which he had submitted with his reply, contain his name as a promoter and first director of STIL thereby confirming the findings of the interim order against him. Furthermore, in respect of the interim order, he has not made any submissions on merit. In view of the above, I find that Shri Dutta has not disputed the findings of the interim order against him.

36. From the documents available on MCA portal, I find that the present Directors in STIL are Shri Dulal Chatterjee, Shri Biswanath Dutta and Shri Anirban Mukherjee. I also note that Smt Keya Chatterjee who was earlier a director in STIL, has 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 Dulal Chatterjee	February 03, 2012	Continuing
Shri Biswanath Dutta	February 03, 2012	Continuing
Shri Anirban Mukherjee	August 26, 2014	Continuing
Smt Keya Chatterjee	February 03, 2012	September 08, 2014

37. I find that Shri Dulal Chatterjee, Shri Biswanath Dutta, Smt Keya Chatterjee, Shri Pradip Kumar Roy Ghatak, Shri Ava Mukherjee, Shri Dipankar Dhar and Smt Rita Paul are promoters of STIL as they had subscribed to the Memorandum of Association of STIL.

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, STIL and its directors 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 STIL as reproduced in paragraph 36 of this Order, it is noted that Smt Keya Chatterjee, Shri Dulal Chatterjee and Shri Biswanath Dutta 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 STIL 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 STIL, 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 have been able to satisfactorily dispute 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 STIL and its Directors, viz. Smt Keya Chatterjee, Shri Dulal Chatterjee and Shri Biswanath



Dutta 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.

41. I note that during the financial years 2011-2012 and 2012-2013, STIL through *Offer of RPS*, had collected an amount of Rs. 59.70 lakhs from various allottees. I note that Shri Dulal Chatterjee and Shri Biswanath Dutta have been directors of STIL since financial years 2011-2012, 2012-2013 till present date. I note that Smt Keya Chatterjee was director of STIL 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 STIL and other directors are limited to the extent of amount collected during his/her tenure as director of STIL.

42. In this regard, I note that Shri Anirban Mukherjee was appointed as a director of STIL only on August 26, 2014 i.e. after the period of issuance of RPS. Therefore, following the reasoning as provided by Hon'ble SAT in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the, Shri Anirban Mukherjee is not liable for refund of money as he was not a director during the relevant time of fund mobilization. Further, Shri Anirban Mukherjee had the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

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

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability



for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956. "

43. 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 therefore cannot 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 Anirban Mukherjee would 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 Anirban Mukherjee is liable to be debarred for an appropriate period of time.
44. I find that Shri Dulal Chatterjee, Shri Biswanath Dutta, Smt Keya Chatterjee, Shri Pradip Kumar Roy Ghatak, Shri Ava Mukherjee, Shri Dipankar Dhar and Smt Rita Paul are promoters of STIL and therefore, are liable as promoters for the *Offer of RPS* against the norms of deemed public issue. The said Noticees have either not denied or have not been able to refute (with supporting evidence) the 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.
45. 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 STIL and its Directors, viz., Smt Keya Chatterjee, Shri Dulal Chatterjee and Shri Biswanath Dutta 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.

46. I also note that, vide the interim order dated February 17, 2016, STIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors/promoters of STIL 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 STIL or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 10 of this Order.

47. In view of the discussion above, appropriate action in accordance with law needs to be initiated against STIL and its Directors and promoters, viz. Shri Dulal Chatterjee, Shri Biswanath Dutta, Shri Anirban Mukherjee, Smt Keya Chatterjee, Shri Pradip Kumar Roy Ghatak, Shri Ava Mukherjee, Shri Dipankar Dhar and Smt Rita Paul.

48. 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 thereof, hereby issue the following directions:

- a. STIL, Smt Keya Chatterjee, Shri Dulal Chatterjee and Shri Biswanath Dutta shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
- b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable".
- c. Smt Keya Chatterjee is directed to provide a full inventory of all her assets and properties and details of all her bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.



- d. STIL, Shri Dulal Chatterjee and Shri Biswanath Dutta 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. STIL, Shri Anirban Mukherjee, Shri Dulal Chatterjee and Shri Biswanath Dutta 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. Smt Keya Chatterjee, Shri Dulal Chatterjee and Shri Biswanath Dutta 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. STIL and on its behalf the present directors who joined subsequent to the issues (Shri Anirban Mukherjee) and Smt Keya Chatterjee, Shri Dulal Chatterjee and Shri Biswanath Dutta 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, STIL and on its behalf the present directors who joined subsequent to the issues (Shri Anirban Mukherjee), Smt Keya Chatterjee, Shri Dulal Chatterjee and Shri Biswanath Dutta 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") holding such certificate.
- i. In case of failure of STIL, Smt Keya Chatterjee, Shri Dulal Chatterjee and

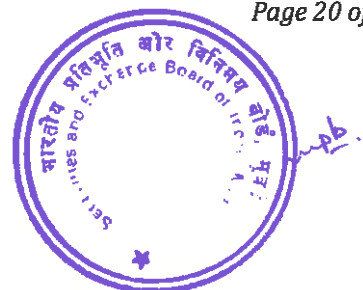


Shri Biswanath Dutta to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may recover such amounts, from the company and the directors liable to refund as specified in paragraph 48(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

- j. STIL, Smt Keya Chatterjee, Shri Dulal Chatterjee and Shri Biswanath Dutta 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. Shri Anirban Mukherjee, Shri Pradip Kumar Roy Ghatak, Shri Ava Mukherjee, Shri Dipankar Dhar and Smt Rita Paul 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.
- l. The above directions shall come into force with immediate effect.

49. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.

50. 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.

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

DATE: March 05th, 2018

PLACE: Mumbai



Madhabi Puri Buch

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