

SECURITIES AND EXCHANGE BOARD OF INDIA

INTERIM ORDER CUM SHOW CAUSE NOTICE

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF SLF INVESTMENT INDIA LIMITED –

	NOTICEES	DIN/CIN	PAN
COMPANY –			
1.	SLF INVESTMENT INDIA LIMITED	U65923WB2011PLC164207	–
DIRECTORS CUM PROMOTERS –			
2.	TUJAMMEL SARKAR	03018170	CKOPS2893D
3.	AINUL SHAH	03018093	CKSPS0583C
4.	ASHADUL SHAH	03515020	DJTPS6122Q
DIRECTORS –			
5.	PRADIP SINGHA	03625572	AYUPS9650G
6.	SUJIT KUMAR DAS	03626036	AIIPD5147M
7.	DIPANKAR BISWAS	03627230	AFJPB1731M
8.	PARIMAL SAHA	03630679	CRBPS5912F
PROMOTERS –			
9.	MOU MAJAKURI	–	BIVPM8822L
10.	ANARUL SHAH	–	CJOPS4393H
11.	SAMPURNA CHAKRABORTY	–	AJUPC6425E
12.	MITA PAUL	–	BBYPP2241L

1. Securities and Exchange Board of India (“**SEBI**”) received reference dated June 10, 2016, from the Lucknow Office of the Reserve Bank of India (“**RBI**”) containing a complaint against SLF Investment India Limited (“**SLF**”). Vide the aforesaid complaint, the complainants therein while submitting a copy of *Redeemable Cumulative Preference Share Certificate inter alia* alleged non–repayment of amount by SLF.
- 2.1 As a matter of preliminary inquiry, vide separate letters dated July 19, 2016 and December 23, 2016, SEBI sought the following information from SLF and its Directors, –
 - i. Copy of Audited Balance Sheet and Annual Returns of the company for the last 3 years.

- ii. Name, addresses, PAN and occupation of all the Promoters/Directors and Key Managerial Personnel of the company.
- iii. Nature of business of the company.
- iv. Other Information in respect of issue of Shares/Debentures:
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of prospectus/Information Memorandum filed with RoC for issuance of Shares/Debentures.
 - b. Date of opening and closing of the subscription list for the said Shares/Debentures.
 - c. Details regarding the number of application forms circulated inviting subscription for Shares/Debentures and number of applications received.
 - d. Details of allottees in the format given below (in hard copy as well as soft copy).

Sr. No.	DATE OF ALLOTMENT (DD/MM/YYYY)	FINANCIAL YEAR	NAME OF ALLOTTEE	ADDRESS OF ALLOTTEE/ CONTACT DETAILS	AMOUNT OF SHARES / DEBENTURES ALLOTTED (₹)
TOTAL					

- v. Copies of the minutes of Board/committee meeting in which the resolution has been passed for raising such additional capital and also for allotment of Shares/Debentures.
- vi. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of Shares/Debentures.
- vii. Terms and conditions of the issue of Shares/Debentures.
- viii. Whether the company has applied for listing of its securities with any of the Stock Exchanges.
- ix. Copies of Form 2 and Form 10 filed with the RoC.

- 2.2 Details concerning the above–mentioned letters dated July 19, 2016 and December 23, 2016, issued by SEBI and replies received thereto, etc. are provided as under –

TABLE I			
	NAME	LETTER STATUS (RETURNED/ DELIVERED)	REMINDER LETTER
1.	SLF INVESTMENT INDIA LIMITED	RETURNED UNDELIVERED WITH THE COMMENT “INSUFFICIENT ADDRESS”.	01.09.2016
2.	AINUL SHAH	RETURNED UNDELIVERED WITH THE COMMENT “ADDRESSEE NOT AVAILABLE AT THE ADDRESS.”	01.09.2016
3.	TUJAMMEL SARKAR	DELIVERED	01.09.2016
4.	ASHADUL SHAH	RETURNED UNDELIVERED WITH THE COMMENT “MISSENT”.	01.09.2016
5.	PRADIP SINGHA	DELIVERED	–
6.	SUJIT KUMAR DAS	RETURNED UNDELIVERED WITH THE COMMENT “LEFT. RETURN TO SENDER”.	–
7.	DIPANKAR BISWAS	RETURNED UNDELIVERED WITH THE COMMENT “LEFT WITHOUT ADDRESS”.	–
8.	PARIMAL SAHA	RETURNED UNDELIVERED WITH THE COMMENT “NOT KNOWN. INSUFFICIENT ADDRESS”	–

- 2.3 Of the 8 entities to whom letters were issued by SEBI, reply was received from only 1 entity (Past Director) i.e. Pradip Singha on January 6, 2017 (vide letter dated January 2, 2017). Pradip Singha stated that he had joined as a Director of SLF on September 19, 2011 and resigned on January 6, 2012. Pradip Singha also submitted a copy of Form 32 filed for his resignation from Directorship of SLF.
- 2.4 Thereafter, a physical verification of the Registered Office address of SLF i.e. 285B, B. B. Ganguly Street, 2nd Floor, Kolkata, West Bengal–700012, India, was conducted by SEBI, by a site visit, on September 13, 2016. However, SLF could not be located at the aforesaid address.
- 3.1 During the intervening period, details pertaining to SLF were sought to be procured by SEBI from the Ministry of Corporate Affairs’ website i.e. *MCA 21 Portal*. The following relevant information was taken note of –
- DATE OF INCORPORATION:** June 25, 2011.
 - TYPE OF COMPANY:** Public Limited Company.

- iii. **CORPORATE IDENTITY NUMBER (CIN):** U65923WB2011PLC164207.
- iv. **PAN:** Not Available.
- v. **REGISTERED OFFICE ADDRESS:** 285B, B. B. Ganguly Street, 2nd Floor, Kolkata, West Bengal–700012, India.
- vi. **DATE OF FILING OF LAST ANNUAL ACCOUNTS AND ANNUAL REPORTS –** No Annual Accounts/Annual Reports were filed by SLF.
- vii. **TOTAL ISSUED CAPITAL OF THE COMPANY (AS ON 31.03.2017):**
 - a. Equity Capital: ₹5,00,000.
 - b. Preference Capital: ₹14,00,000.
- viii. **DETAILS OF RELEVANT BOARD MEETING:** NOT AVAILABLE.

3.2 From a perusal of the records available on *MCA21 Portal*, it was apparent that SLF issued and allotted *Redeemable Preference Shares*. Details regarding the aforesaid as available on *MCA21 Portal* and other relevant material on record are reproduced as under –

A. ALLOTMENT DETAILS OF REDEEMABLE PREFERENCE SHARES [AS PER FORM 2 AND COMPLAINTS RECEIVED] –

TABLE II – DETAILS OF REDEEMABLE PREFERENCE SHARES ISSUED		
FINANCIAL YEAR	NO. OF ALLOTTEES	VALUE OF ALLOTMENT (₹)
2011–12	105	17,70,500
2012–13	23	14,60,000
<i>SLF had issued Redeemable Preference Shares during the year 2011–12 and 2012–13.</i>		

ISSUE FOR DETERMINATION –

3.3 The issue for determination in the instant matter is whether the mobilization of funds by SLF through the *offer and allotment of Redeemable Preference Shares*, as detailed at paragraph 3.2, is in accordance with the provisions of the SEBI Act and the Companies Act?

RELEVANT PROVISIONS OF LAW AND *PRIMA FACIE* FINDINGS –

3.4 Section 67 of the Companies Act deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one made to the public.

Extracts of the relevant provisions of Section 67 of the Companies Act, dealing with offer of shares or debentures to the public, are reproduced as under:

“Construction of reference to offering shares or debentures to the public, etc.

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 (1 of 1956).”*

- 3.5 For ascertaining whether the offer and allotment of Redeemable Preference Shares by SLF will fall within the scope of Section 67 of the Companies Act, the number of persons to whom such offers were made by SLF is crucial. In terms of the first proviso to Section 67(3), *an offer of shares or debentures made to fifty persons or more would constitute an offer to the public.* Further, the Hon’ble Supreme Court of India in *Sahara India Real Estate Corporation Limited vs. SEBI* (Civil Appeal no. 9813 and 9833 of 2011) examined the scope of Section 67 of the Companies Act. At paragraph 86 of the judgment, the Hon’ble Supreme Court observed: “... *if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation.*”

3.6 In this context, the following is noted from the information obtained from the *MCA21 Portal* and other relevant material available on record –

A. ***Offer and allotment of Redeemable Preference Shares –***

- i. SLF offered and allotted *redeemable preference shares* to 105 persons during the Financial Year 2011–12. SLF mobilized approximately ₹17.70 Lakhs through such issuance.
- ii. Under the new Companies Act, 2013, post April 1, 2014, any offer or allotment of securities shall be construed as public issue if the number of offerees/allottees exceeds 200 persons, excluding certain class of subscribers.
- iii. Paragraph 2 of the SEBI Circular dated December 31, 2015 (Procedure to deal with cases prior to April 1, 2014, involving offer/allotment of securities to more than 49 upto 200 investors in a financial year), provides as below –

2. *“Considering the higher cap for private placement provided in the Companies Act, 2013, it has now been decided that in respect of earlier cases involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to investors.”*

- iv. As detailed in the preceding paragraphs, SLF and its Directors did not provide any information to SEBI.
- v. Further, from the material available on record, there is no evidence to indicate that SLF provided investors with the requisite option for surrender of *Redeemable Preference Shares* and refund in accordance with the SEBI Circular dated December 31, 2015, in respect of the *offer and allotment of Redeemable Preference Shares* during the Financial Year 2011–12.
- vi. In view of the above, the *offer and allotment of Redeemable Preference Shares* by SLF *prima facie* qualifies to be construed as an offer made to the public in terms of Section 67(3) of the Companies Act.

3.7 It is also observed that SLF is not a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, and thus, is not covered under the exceptions provided in the *second proviso* to Section 67(3) of the Companies Act.

3.8 From the above, it will follow that such public issue makes it imperative for SLF to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act is reproduced as under:

“Allotment of shares and debentures to be dealt in on stock exchange.

73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A)...

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, **the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, 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, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money (Emphasis supplied) ...”**

3.9 As the offer and allotment of Redeemable Preference Shares by SLF is *prima facie* a public issue in accordance with the provisions of the Companies Act, the same will attract the requirement for such shares/debentures to be dealt on a recognized stock exchange in terms of Section 73 of the Companies Act, as stated above. I find that SLF is *prima facie* in breach of the provisions of Section 73 as well.

3.10 Further, in connection with a public issue, Section 56 of the Companies Act mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that SLF has complied with the provisions

of Sections 56 and 60 of Companies Act, in respect of the *offer and allotment of Redeemable Preference Shares* by SLF. In view of the same, I find that SLF is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act in connection with the aforesaid *offer and allotment of Redeemable Preference Shares*.

3.11 In terms of Section 73(2), the Company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of Section 73(1). Further, in terms of Section 62 of the Companies Act, every person who *inter alia* is a director of the company at the time of the issue of the prospectus and every person who is a Promoter of the company, are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein.

3.12 As per the information available on the *MCA21 Portal*, the details of the present and past Directors and Promoters of SLF, including the dates of appointment/cessation as Directors, are as under:

TABLE III							
	NAME OF THE PERSON	CAPACITY	DIN	PAN	RESIDENTIAL ADDRESS	DATE OF APPT.	DATE OF CESSATION
1.	TUJAMMEL SARKAR	DIRECTOR AND PROMOTER	03018170	CKOPS2893D	VILL AND PO DASTURHAT, PS SAGARDIGHI, MURSHIDABAD, W. B. - 742122	25.06.2011	–
2.	AINUL SHAH	DIRECTOR AND PROMOTER	03018093	CKSPS0583C	VILL :-BARANDA, P.O :- AMDAHARA, MURSHIDABAD, W. B. – 742149	25.06.2011	–
3.	ASHADUL SHAH	DIRECTOR AND PROMOTER	03515020	DJTPS6122Q	BARANDA SHIBNAGAR, BARANDA SIBNAGAR, MURSHIDABAD, 742149, W. B.	25.06.2011	–
4.	PRADIP SINGHA	DIRECTOR	03625572	AYUPS9650G	46/3 JHAUKHOLA ROAD, BERHAMPORE, MURSHIDABAD, 742102, W. B.	19.09.2011	06.01.2012
5.	SUJIT KUMAR DAS	DIRECTOR	03626036	AIIPD5147M	43, BISHEWAR CHOWDHURY LANE, BERHAMPORE, MURSHIDABAD, 742103, W. B.	19.09.2011	06.01.2012

6.	DIPANKAR BISWAS	DIRECTOR	03627230	AFJPB1731M	WORD NO-15, PARA-BEGAMGANG, MURSHIDABAD, 742123, W. B.	19.09.2011	20.04.2013
7.	PARIMAL SAHA	DIRECTOR	03630679	CRBPS5912F	PARA/MAHALLA-KANAIGANJ (KASHIGANJ), WARD NO-7 JIYAGANJ MURSHIDABAD, 742123, W. B.	19.09.2011	20.04.2013
8.	MOU MAJAKURI	PROMOTER	—	BIVPM8822L	LALBAGH, GOLAPBAGH, MURSHIDABAD, W. B. - 742149	—	—
9.	ANARUL SHAH	PROMOTER	—	CjOPS4393H	VILL. - BARANDA, P.O. - AMDAHARA, MURSHIDABAD, W. B. — 742149	—	—
10.	SAMPURNA CHAKRABORTY	PROMOTER	—	AJUPC6425E	LALBAGH, GOLAPBAGH, MURSHIDABAD, W. B. — 742149	—	—
11.	MITA PAUL	PROMOTER	—	BBYPP2241L	LALBAGH, GOLAPBAGH, MURSHIDABAD, W. B. — 742149	—	—

3.13 I note that the persons at serial nos. 1–7 of Table III were the Directors during the period of money mobilization and hence, are responsible for the *offer and allotment of Redeemable Preference Shares* in violation of the Public Issue requirements and are also liable for refund of money. The persons/entities at serial nos. 8–11 of Table III are the Promoters of SLF. Hence, they are liable for the alleged contraventions by SLF.

DIRECTIONS –

- 4.1 From the information obtained from *MCA21 Portal*, it can be reasonably inferred that the money mobilization on the part of SLF is potentially placing investors at risk by not following the requirements of law applicable to public issue. In the light of the facts in the instant matter, I find this to be a fit case to pass interim directions against SLF and the abovenamed Directors/Promoters.
- 4.2 In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-
- i. SLF and its Directors/Promoters, viz. Tujammel Sarkar; Ainul Shah; Ashadul Shah; Pradip Singha; Sujit Kumar Das; Dipankar Biswas; Parimal Saha; Mou Majakuri; Anarul Shah; Sampurna Chakraborty and Mita Paul, shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;
 - ii. SLF and its Directors, viz. Tujammel Sarkar; Ainul Shah; Ashadul Shah; Pradip Singha; Sujit Kumar Das; Dipankar Biswas and Parimal Saha, shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through the *offer and allotment of Redeemable Preference Shares*;
 - iii. SLF and the above named Directors/Promoters shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of Redeemable Preference Shares* sought vide letters dated July 19, 2016 and December 23, 2016.

- 4.3 The preliminary findings contained in paragraphs 3.6–3.13 of this Order are made on the basis of the information obtained from *MCA21 Portal* and other relevant material on record. SLF and the abovenamed Directors/Promoters (Collectively referred to as “**Noticees**”) are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, viz. –
- i. SLF and its Directors, viz. Tujammel Sarkar; Ainul Shah; Ashadul Shah; Pradip Singha; Sujit Kumar Das; Dipankar Biswas and Parimal Saha, to jointly and severally refund the money collected through the *offer and allotment of Redeemable Preference Shares*, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act till the date of actual payment), supported by a Certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and
 - ii. The Noticees to be restrained/prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.
- 4.4 The Noticees may, within 21 days from the date of receipt of this *Interim Order–cum–Show Cause Notice*, file their respective replies. SLF and the abovenamed Directors are directed to furnish an inventory of their assets in their reply. In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. In the event of the respective Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paragraphs 3.6–3.13 of this Order shall become final and absolute against the respective Noticees automatically, without any further orders. Consequently, the Noticees shall automatically be bound by the directions contained in paragraphs 4.2 and 4.3, as applicable.
- 4.5 In case of failure by the respective Noticees to comply with the aforesaid directions within a period of 180 days from the date of receipt of this Order, SEBI may initiate appropriate

enforcement action under SEBI Act including Recovery proceedings, Adjudication or Prosecution in addition to making a suitable reference to State Government/Local Police.

- 4.6 This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
- 4.7 Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on SLF and the abovenamed Directors/Promoters.

Place: Mumbai

Date: March 28, 2018

**G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**