

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 Shreebhumi Constructions Limited

In re Deemed Public Issue Norms

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN
1.	Shreebhumi Constructions Limited	AARCS1081P	U45201OR2011PLC013686
2.	Mr. Shubhranshu Singh	AQLPS3885J	01261335
3.	Mr. Chhotrai Majhi	AZBPM9958P	03234683
4.	Mr. Prabin Dash	AISPD5571H	03642982

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1. Shreebhumi Constructions Limited (hereinafter referred to as “**SCL**”/ “**the Company**”) is a Public company incorporated on May 30, 2011 and registered with Registrar of Companies–Cuttack with CIN: U45201OR2011PLC013686. Its registered office is at Plot No-N6/508, Jayadev Vihar, Bhubaneswar, Khordha – 751013.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint 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.

Order in the matter of M/s Shreebhumi Constructions Limited

3. On enquiry by SEBI, it was observed that SCL 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. 1,94,92,000 from 241 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 June 12, 2017 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against SCL and its Directors viz. Mr. Shubhranshu Singh, Mr. Chhotrai Majhi and Mr. Prabin Dash (hereinafter collectively referred to as “**Noticees**”).
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 2011-2012 and 2012-2013 and raised an amount of Rs. 1,94,92,000 as shown below:

Date of Allotment of Shares	No. of Redeemable Preference Shares Allotted	No. of Allottees	Value of Allotment (in Rs.)
30.01.2012	57,000	10	5,70,000
30.03.2012	3,27,000	38	32,70,000
27.04.2012	3,50,000	48	35,00,000
21.05.2012	4,00,000	48	40,00,000
18.06.2012	2,78,000	48	27,80,000
20.08.2012	5,37,200	49	53,72,000
Total	19,49,200	241	1,94,92,000

6. The above *Offer of RPS* and pursuant allotments 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 June 12, 2017 with immediate effect.
 - i. “Shreebhumi Constructions Ltd. (PAN: AARCS1081P) and the abovenamed directors namely, Shubhranshu Singh (PAN: AQLPS3885J), Chhotrai Majhi (PAN: AZBPM9958P) and Prabin Dash(PAN: AISPD5571H) 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. SCL and the abovenamed Directors 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 preference shares*;
 - iii. SCL and the abovenamed Directors shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* sought vide letters dated September 22, 2016 and reminder letter dated October 14, 2016;
8. The interim order also directed the SCL and its Directors/promoters 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, namely:
 - i. “The Noticees to jointly and severally refund money collected through the *offer and allotment of 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, 1956 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 refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, till completion of the refund and for a period of four years from the date of completion of the refund as directed above.”

9. Vide the said interim order, SCL, its abovementioned Directors were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order-cum-show cause notice. The Noticees were further directed to furnish an inventory of their assets in their reply. In the event the Noticees intended to avail an opportunity of personal hearing, they were given the opportunity to do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. The order further stated that in case the Noticees failed to file replies or to request for an opportunity of personal hearing within the aforesaid 90 days, then the directions as reproduced in paragraph 8 of this Order would become final and absolute against the said Noticees, without any further orders.
10. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated June 13, 2017 which were not delivered to SCL and its two directors, Mr. Chhotrai Majhi and Mr. Shubhranshu Singh. Copy of the interim order was received by one Mr. P. Mahapatra at the last known address of Mr. Prabin Dash. Thereafter, affixture of the interim order was carried out at the premises of SCL, and its two directors, Mr. Chhotrai Majhi and Mr. Shubhranshu Singh. Subsequently, vide public notifications dated November 01, 2017 published in the newspapers *The New Indian Express*, *Samaj* and *Prabhat Khabar*, the Noticees were intimated by SEBI, that interim order dated June 12, 2017 was issued against them.

11. *Hearing and submissions:* Vide September 5, 2017, Mr. Prabin Dash submitted his reply to the interim order, wherein the he has submitted, *inter alia*, the following:
- i. He was appointed as a Non-Executive Director of SCL on September 27, 2011 and was not involved in the day-to-day management of the Company. He merely signed the document giving consent to become a Non-executive director, but had not attended any Board Meeting in which any decision relating to issue of shares were made.
 - ii. No undue advantage was received by him and no public money has been misappropriated by him, as evident from his bank account statements for the relevant period.
 - iii. Certain investments in mutual fund folios were made at different points of time, which belonged to his father, and which devolved to him after the passing away of his father. Investments in these mutual funds were from the income of his father, and it was requested that the freeze on transactions in these folios be lifted since he held the same in a fiduciary capacity.
12. As per the timelines given in the interim order, the Company, and its two directors, Mr. Chhotrai Majhi and Mr. Shubhranshu Singh, had time till February 1, 2018, from the date of public notification of the interim order, to request for an opportunity of personal hearing or to file their replies. However, no such request or reply was received by SEBI in this regard.
13. Thereafter, vide letter dated February 9, 2018, sent to the last known addresses of the Company, and its directors, Mr. Prabin Dash, Mr. Chhotrai Majhi and Mr. Shubhranshu Singh, SEBI gave an opportunity of personal hearing scheduled on March 6, 2018.
14. Mr. Prabin Dash appeared for the said personal hearing and made the following submissions:
- i. He has done graduation and now engaged in the business of real estate dealer/broker.
 - ii. The director of the Company Mr. Chhotrai Majhi was his friend. In order to convert their private company to public company they approached him and made him a non-

- executive director. They took his PAN.
- iii. He has never received any remuneration till date. He has never been involved in the company and the Chartered Accountant took his signatures on some papers and assured him that he had no role in the Company.
 - iv. He is not aware of any money mobilized from the investors. He neither collected any money from the investors nor attended the office of the Company.
15. Vide written submission dated March 9, 2018, Mr. Prabin Dash has reiterated his submissions stating *inter alia*, that he was appointed as a Non-Executive Director on September 27, 2011 and was never invited to any Board Meeting and was not a signatory to the Memorandum of Association and Article of Association of the Company. He also submitted that he was not involved in the management of the Company and had no information with respect to its assets and liabilities.
16. No one appeared on behalf of the Company and its other directors, Mr. Chhotrai Majhi and Mr. Shubhranshu Singh. I have perused the interim order in this regard and note that in the absence of any reply or request for personal hearing from the aforesaid Noticees, (except Mr. Prabin Dash), within 90 days from the date of receipt of the interim order, the directions as reproduced in paragraph 8 of this Order has become final and absolute against the Company and its other directors, Mr. Chhotrai Majhi and Mr. Shubhranshu Singh, without any further orders. Since Mr. Prabin Dash has filed submissions, I proceed further in respect of Mr. Prabin Dash.
17. 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.

18. I have perused the order dated June 12, 2017 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.

19. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the Form 2 obtained from the MCA 21 Portal by SEBI in the matter that SCL has issued and allotted RPS to 241 investors during the financial years 2011-2012 and 2012-2013 and raised an amount of Rs. 1,94,92,000/-, as given below.

Date of Allotment of Shares	No. of Redeemable Preference Shares Allotted	No. of Allottees	Value of Allotment (in Rs.)
30.01.2012	57,000	10	5,70,000
30.03.2012	3,27,000	38	32,70,000
27.04.2012	3,50,000	48	35,00,000
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18.06.2012	2,78,000	48	27,80,000
20.08.2012	5,37,200	49	53,72,000
Total	19,49,200	241	1,94,92,000

20. I therefore conclude that SCL came out with an offer of RPS as outlined above and the

year-wise tabulation of the same is as follows:

Year of Issue	Security Issued	Amount raised (Rs.)	Number of allottees
2011-2012	RPS	38,40,000	48
2012-2013		1,56,52,000	193
Total		1,94,92,000	241

The same has also been determined vide order dated June 12, 2017.

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

21. 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).”

22. 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.”

23. 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*.

24. In the instant matter, I find that RPS were issued by SCL to 241 investors in the financial years 2011-2012 and 2012-2013 and raised an amount of Rs. 1,94,92,000/-. The above findings lead to a reasonable conclusion that the *Offer of RPS* by SCL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
25. I find that SCL has not claimed it to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that SCL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
26. Neither SCL 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.
27. 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 aforesaid 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”.
28. 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 determined vide order dated June 12, 2017.

29. 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.
30. The allegations of non-compliance of the above provisions were not denied by SCL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that 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 determined vide order dated June 12, 2017.
31. 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 SCL 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 SCL has not complied with the provisions of section 60 of the Companies Act, 1956. The same has also been determined vide order dated June 12, 2017.

32. 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 SCL 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, SCL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956. The same has also been determined vide order dated June 12, 2017.

33. 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"

34. 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..."

35. In view of the above findings, I am of the view that SCL 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 determined vide order dated June 12, 2017.

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

36. From the documents available on MCA21 Portal, I find that the present Directors in SCL are Mr. Shubhranshu Singh, Mr. Chhotrai Majhi, Mr. Prabin Dash. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Mr. Shubhranshu Singh	May 30, 2011	Continuing
Mr. Chhotrai Majhi	May 30, 2011	Continuing
Mr. Prabin Dash	September 27, 2011	Continuing

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

38. 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%.

39. 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 Mr. Shubhranshu Singh, Mr. Chhotrai Majhi and Mr. Prabin Dash 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. 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 SCL and its Directors, viz. Mr. Shubhranshu Singh, Mr. Chhotrai Majhi and Mr. Prabin Dash 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.

40. I note that during the financial years 2011-2012 and 2012-2013, SCL through Offer of RPS, had collected an amount of Rs. 1,94,92,000/- from various allottees. I note that Mr. Shubhranshu Singh, Mr. Chhotrai Majhi and Mr. Prabin Dash have been directors of SCL since financial years 2011-2012, 2012-2013 till present date. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with SCL and other directors are limited to the extent of amount collected during his/her tenure as director of SCL.

41. I note from the written submissions dated September 5, 2017 and March 9, 2018 filed by Mr. Prabin Dash, and the oral submission made by him at the personal hearing, that it has

been claimed that Mr. Prabin Dash was merely a Non-Executive Director without any involvement in the management of SCL. It was also submitted that he did not attend any Board Meeting during his directorship and was also not aware of the assets and liabilities of the Company. It was submitted that he was known to Mr. Chhotrai Majhi and consented to become a director of SCL in order to help Mr. Chhotrai Majhi to turn his private limited company to a public company. It was also submitted that he had received no remuneration for his directorship, and it was claimed that as per the Bank Statements of Mr. Prabin Dash, no undue advantage or public money had been credited to his accounts. He has admitted that he was appointed as a director of the Company on September 27, 2011. I note from the above that even though the Noticee, Mr. Prabin Dash has denied knowledge of any schemes of public money mobilization, he had consented to become a director of SCL and was a director of SCL during the period of money mobilization through *Offer of RPS*. 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.”

In light of this reasoning it is immaterial whether money was actually received in the bank accounts of Mr. Prabin Dash. 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."

42. 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. Mr. Prabin Dash cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Merely contending that he was a Non-Executive Director without any knowledge of the assets and liabilities of the Company, and without a say in the daily management of the Company does not absolve him of his duty as a director of the Company.
43. I note that vide the order dated June 12, 2017, the Noticees were directed to furnish an inventory of their assets. However, no such inventory has been provided as on date. I also note that Mr. Prabin Dash, vide his reply dated September 5, 2017 has requested that the restraint on trading in the mutual fund folios, which devolved to him on his father's death, be removed. While it is claimed that he is merely holding them in fiduciary capacity, since the mutual fund folios have devolved to him on the death of his father, the folios are in effect the property of Mr. Prabin Dash. I find that the Mr. Prabin Dash is liable to make refund and also to be debarred from dealing in the securities market, directly or indirectly till completion of the refund and for a period of four years from the date of completion of refund, as envisaged in the order dated June 12, 2017 as well as in this Order. Therefore, I am inclined to reject his plea to allow trading by Mr. Prabin Dash in his mutual fund folios.

44. 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. Mr. Shubhranshu Singh, Mr. Chhotrai Majhi and Mr. Prabin Dash to refund the money collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors, viz. Mr. Shubhranshu Singh, Mr. Chhotrai Majhi and Mr. Prabin Dash, 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.
45. I also note that, vide the order dated June 12, 2017, 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 notifications of information of issuance of the order through newspaper publications as stated in paragraph 10 of this Order.
46. I note that Mr. Prabin Dash has claimed to be a Non-executive director. From the records available on MCA21 Portal, I note that Mr. Prabin Dash has not signed in any Board Resolutions or other filings of the Company with the RoC. In view of the same, though Mr. Prabin Dash is jointly and severally liable for the refund, in case of a failure to refund, it would be appropriate that the recovery may be considered against the assets of the Company at first, if sufficient assets are available; then the directors, Mr. Shubhranshu Singh and Mr. Chhotrai Majhi, if sufficient assets are available, and finally recovery officer may consider proceeding against Mr. Prabin Dash. Appropriate directions in this regard is issued in this order.
47. In view of the discussion above, appropriate directions and consequential directions pursuant to the order dated June 12, 2017, in accordance with law needs to be initiated

against SCL and its Directors viz. Mr. Shubhranshu Singh, Mr. Chhotrai Majhi and Mr. Prabin Dash.

48. It is further noted that in respect of SCL, Mr. Shubhranshu Singh, Mr. Chhotrai Majhi, the following directions against them have become already final. As per the directions SCL, Mr. Shubhranshu Singh, Mr. Chhotrai Majhi are

“to jointly and severally refund money collected through the *offer and allotment of 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, 1956 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

to be refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, till completion of the refund and for a period of four years from the date of completion of the refund as directed above.”

49. 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. SCL, Mr. Shubhranshu Singh, Mr. Chhotrai Majhi, Mr. Prabin Dash, read with paragraph 14(ii) of the order dated June 12, 2017 and reproduced in paragraph 48 of this Order jointly and severally, shall forthwith refund the money collected by the Company, during their 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. SCL and Mr. Shubhranshu Singh, Mr. Chhotrai Majhi, Mr. Prabin Dash 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.
- d. SCL, and on its behalf the directors, Mr. Shubhranshu Singh, Mr. Chhotrai Majhi, Mr. Prabin Dash 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.
- e. Mr. Shubhranshu Singh, Mr. Chhotrai Majhi and Mr. Prabin Dash 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.
- f. Mr. Prabin Dash in his personal capacity as well as in his capacity as the present director of SCL 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. If such notice is not issued by SCL and its directors Mr. Shubhranshu Singh and Mr. Chhotrai Majhi, in their personal capacity as well as in their capacity as present directors of SCL), they shall issue the same as referred to above.
- g. SCL, Mr. Shubhranshu Singh, Mr. Chhotrai Majhi and Mr. Prabin Dash in their

personal capacity shall complete the payment within three months from the date of receipt of this order and file a report of such completion with SEBI within 7 days of completion of refund, 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.

- h. In case of failure of SCL, Mr. Shubhranshu Singh, Mr. Chhotrai Majhi, Mr. Prabin Dash to comply with the aforesaid applicable directions, SEBI, on the expiry of three months and seven days from the date of this Order may recover such amounts, from the company and the directors liable to refund, namely, SCL, Mr. Shubhranshu Singh, Mr. Chhotrai Majhi, Mr. Prabin Dash, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws. The recovery officer may consider proceeding against the assets of the Company at first, if there are details of sufficient assets of the Company and thereafter against the assets in the name of Mr. Shubhranshu Singh and Mr. Chhotrai Majhi, if sufficient assets are available, and finally in the name of Mr. Prabin Dash.
- i. SCL, Mr. Shubhranshu Singh, Mr. Chhotrai Majhi, Mr. Prabin Dash read with paragraph 14(ii) of the order dated June 12, 2017 and reproduced in paragraph 48 of this Order, 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.

j. The above directions shall come into force with immediate effect.

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

51. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.

DATE: May 04, 2018

PLACE: Mumbai

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