

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 –

Sr. No.	NOTICEE(S)	DIN/CIN	PAN
COMPANY			
1.	Shrivallis Securities Limited (SSL)	U67120OR2010PLC012811	AAPCS3118P
DIRECTORS / PROMOTERS			
2.	Smruti Ranjan Biswal	2169338	AGMPB8035G
3.	Sweta Biswal	2169340	AGGPB6452R
4.	Sambit Mohanty	3316512	AIGPM9759G
5.	Subrat Kumar Routray	NA	ADPPR9821A
6.	Snigdha Biswal	NA	AGEPB7235J
7.	Ramarani Mohanty	NA	ASCPM8803B
8.	Kalla Chidambareswar Rao	NA	AVNPK8074A

1. Securities and Exchange Board of India ("**SEBI**") received a complaint dated July 19, 2017 against M/s. Shrivallis Securities Limited ("**SSL**" / "the company") regarding *inter alia* illegal mobilization of money from public through issuance of Redeemable Preference Shares by the company. A copy of Redeemable Preference Share Certificate issued by the company was also found enclosed with the said complaint.
2. As a matter of preliminary inquiry, SEBI through letters dated September 11, 2017 sought the following information from SSL and its directors, namely Smruti Ranjan Biswal, Sweta Biswal and Sambit Mohanty (Noticee nos. 1 to 4), –

- i. Copy of Audited Annual Accounts and Annual Returns of the company since inception;
- 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).

Sl. No.	Date of Allotment (dd/mm/yyyy)	Financial Year	Name of Allottee	Address of Allottee/ Contact details	Amount of Shares / Debentures allotted (Rs.)
Total:					

- e. 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.
- f. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of Shares/Debentures.
- g. Terms and conditions of the issue of Shares/Debentures.
- h. Whether the company has applied for listing of its securities with any of the Stock Exchanges.
- i. Copies of Form 2 and Form 10 filed with the RoC.
- j. Details of Debenture Trustee viz. Name, address, board resolution authorizing their appointment etc.

3. While the abovementioned letter sent to the company (Noticee no. 1) returned undelivered, the said letters sent to the Noticee nos. 2, 3 and 4 were duly delivered. . Thereafter, SEBI received an email dated September 25, 2017 from VRL Legal Aides & Services, attaching a letter dated September 25, 2017 on behalf of the company whereby inter alia a request was made to grant three weeks' time to respond to SEBI's letter. Thereafter, no response was received by SEBI from the company or its directors.
4. In the meantime, letter dated September 11, 2017 was issued to the Registrar of Companies, Odisha, seeking various documents pertaining to the company. In response, the office of RoC, Odisha, vide letter dated February 22, 2018 *inter alia* informed SEBI that the company had been struck off from the register of companies under Section 248 of the Companies Act, 2013 with effect from 21.06.2017 as the company had not filed its Annual Returns / financial statements since the financial year ended 31.03.2013. It further informed SEBI that it had been found and verified from the MCA system that, in some instances, the company had allotted preference shares to more than 49 persons, i.e. issuance to the public. Further, the office of RoC, Odisha, in its abovementioned letter also referred to Section 248(7) of the Companies Act, 2013, wherein it has been prescribed that *"The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved"*. Thus, the office of RoC, Odisha requested SEBI to initiate appropriate action in this matter.
5. The company or the directors had failed to submit the documents sought by SEBI. However, the information obtained from MCA21 portal revealed the following:
 - (i) **Date of Incorporation:** 14.12.2010.
 - (ii) **Type of Company:** Public Limited Company
 - (iii) **Corporate Identity Number (CIN):** U67120OR2010PLC012811
 - (iv) **PAN:** AAPCS3118P
 - (v) **Registered Office Address:** Plot No.2B/108 Sector-9, CDA, Cuttack, Odisha, Pin-753014.
 - (vi) **Filing of Last Annual Accounts and Annual Returns till –** 31.03.2012.

(vii) **Total Capital of the Company:**

a. **Authorised Share Capital:** Total Rs. 10,00,00,000

- i. Equity Shares : 10,00,000 Shares @ Rs.10/- each and
- ii. Preference Share : 9,00,000 Shares @ Rs.100/- each

b. **Issued Capital**

- i. Equity Shares : 50,000 Shares @ Rs.10/- each and
- ii. Preference Share : 4,39,960 Shares @ Rs.100/- each

(viii) **Details of allotment of Redeemable Preference Shares as per Form-2**

Details of Redeemable Preference Shares Issued

Date of Allotment of Shares	No. of 24% Redeemable Preference Shares Allotted	No. of Allottees	Value of Allotment (in `)
06-05-2011	1,900	3	1,90,000
06-06-2011	15,200	11	15,20,000
29-07-2011	47,050	35	47,05,000
26-09-2011	89,850	81	89,85,000
11-11-2011	49,560	44	49,56,000
27-01-2012	42,650	45	42,65,000
27-04-2012	85,900	80	85,90,000
01-06-2012	43,200	47	43,20,000
06-07-2012	40,000	46	40,00,000
03-08-2012	24,650	29	24,65,000
Total	4,39,960	421	4,39,96,000

6. It is observed from multiple Form-2 filed by the company with RoC and the list of allottees attached thereto that the company has issued *Redeemable Preference Shares* (RPS) to 421 persons during the period covering Financial Years 2011-12 and 2012-13 and has raised a total of Rs.4.4 Crores (approx.) through such issuance, details of which have been summarized in the above Table under para 5(viii). From the same, it is clearly evident that SSL has issued RPS to more than 49 persons during each of the F.Ys. 2011-12 and 2012-13.

ISSUES FOR DETERMINATION

7. In the context of the details of the offer and allotment of preference shares mentioned in the Table at paragraph 5 above (hereinafter referred to as "*the offer and allotment of preference shares*"), the issue for determination in the instant matter is whether the mobilization of funds by SSL through the offer and allotment of RPS, is in accordance with the provisions of the SEBI Act, 1992 and the Companies Act, 1956.
8. I note from the information provided by the office of RoC, Odisha, that the name of SSL has already been struck off the register of companies under Section 248(5) of the Companies Act, 2013. However, I note that the proviso to Section 248(6) *inter alia* provides that the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies. Further, Section 248(7) provides that the liability, if any, of every director, manager or other officer who was exercising any power of management, and every member of the company dissolved under sub-section (5) shall continue and may be enforced as if the company has not been dissolved. Further, Section 250 of the Companies Act, 2013 provides that "*Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.*" Thus, in view of these provisions, since the liability of the company and its directors / promoters continues even after the company's name is struck off, I proceed to decide the matter at hand.

RELEVANT PROVISIONS OF LAW AND PRIMA FACIE FINDINGS

9. Section 67 of the Companies Act, 1956 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, 1956, 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, 1956 (1 of 1956).”*

10. For ascertaining whether the *offer and allotment of preference shares* by SSL would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the Company 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. In this regard, it is observed from the documents obtained from MCA (i.e. List of Allottees attached to Form-2 filed by SSL with RoC) that SSL has offered and allotted RPS to more than 49 persons during each of the Financial Years 2011-12 and 2012-13, as

summarized in the Table under para 5(viii) above. Therefore, on the basis of available information recorded above, the *offer and allotment of preference shares* by SSL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956. Further, it is observed that SSL is not a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956, and thus, is not covered under the exceptions provided in the *second proviso* to Section 67(3) of the Companies Act, 1956.

11. From the above, it will follow that such a public issue makes it imperative for SSL to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act, 1956 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 recognized 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)

12. As the offer *and allotment of preference shares* is, *prima facie*, a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement for such

shares to be dealt on a recognized stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. I find that SSL is *prima facie* in breach of the provisions of Section 73 as well.

13. Further, in connection with a public issue, Section 56 of the Companies Act, 1956 mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that SSL has complied with the provisions of Sections 56 and 60 of Companies Act, 1956, in respect of the *offer and allotment of Preference Shares*. In view of the same, I find that SSL is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the subject offer and allotment of preference shares.
14. In terms of Section 73(2) of the Companies Act, 1956, 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, 1956, 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. As per the information obtained from MCA21 portal, the details of the directors / promoters of SSL are as under:

Sl. No	Name of the person	Designation	DIN/DPIN	PAN	Residential Address	Date of Appointment	Date of Cessation
1	MR. SMRUTI RANJAN BISWAL	Managing Director/ Promoter	02169338	AGMPB8035G	S/O- TRAILOKYA BHUSAN BISWAL, PLOT NO 3D-1266/10, SECTOR-11 C.D.A, CUTTACK, ODISHA 753014	14/12/2010	Continuing
2	MRS. SWETA BISWAL	Director/ Promoter	02169340	AGGPB6452R	W/O- SMRUTI RANJAN BISWAL, PLOT NO 3D-1266/10, SECTOR-11 C.D.A, CUTTACK ODISHA 753014	14/12/2010	Continuing
3	MR. SAMBIT MOHANTY	Director/ Promoter	03316512	AIGPM9759G	S/O- SUJAYA KUMAR MOHANTY, SARTOL, NAYA BAZAR MADHUPATNA CUTTACK, ODISHA, 753004	14/12/2010	Continuing
4	MR. SUBRAT	Promoter	-	ADPPR9821A	S/O- RAJENDRA KUMAR ROUTRAY, RANIHAT, MALI	-	-

	KUMAR ROUTRAY,				SAHI, CUTTACK, ODISHA, 753001		
5	MRS. SNIGDHA BISWAL	Promoter	-	AGEPB7235J	W/O- SUBRAT KUMAR ROUTRAY, RANIHAT, MALI SAHI, CUTTACK, ODISHA, 753001	-	-
6	MRS. RAMARANI MOHANTY	Promoter	-	ASCPM8803B	W/O- SAMBIT MOHANTY, PLOT NO-6F/978, SECTOR-9, CDA, CUTTACK, ODISHA 753014	-	-
7	MR. KALLA CHIDAMBA RESWAR RAO	Promoter	-	AVNPK8074A	S/O- KALLA CHANDRA RAO, 43-7-4, RAILWAY NEW COLONY, BESIDE GANESH TEMPLE, VISAKHAPATNAM, ANDHRA PRADESH, 530016	-	-

15. I note that the persons at serial nos. 1 to 3 in the above Table under para 14 have been the directors of the company during the period of money mobilization through *offer and allotment of Redeemable Preference Shares* and hence are responsible for contravention of the of the abovementioned Public Issue requirements and are also liable for refund of money to the investors. The persons at sl. nos. 4 to 7 in the above Table under para 14 are the promoters of SSL, and hence, are liable for the alleged contraventions by SSL.

DIRECTIONS

16. From the information submitted by the company and that obtained from MCA portal, it can be reasonably inferred that the money mobilization on the part of SSL has *prima facie* placed the investors at grave risk by not following the requirements of law applicable to a 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 SSL and the above named directors /promoters. 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, 1992 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-
- SSL and its above named directors / promoters (i.e. Noticee nos. 1 to 8), viz., 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. SSL and its directors, viz. (i.e. Noticee nos. 1 to 4), 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. SSL and the above named directors / promoters, viz. (i.e. Noticee nos. 1 to 8), 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 September 11, 2017.
17. The preliminary findings contained in paragraphs 9 to 15 of this order are made on the basis of the information obtained from MCA portal. SSL and the above named directors / promoters 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, namely:-
- i. SSL and its directors, viz. Smruti Ranjan Biswal, Sweta Biswal and Sambit Mohanty (i.e. the Noticee nos. 1 to 4), 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, 1956 till the date of actual payment), supported by a certificate from two independent Chartered Accountants attesting the fact of refunds (to be submitted to SEBI within 7 days of completion of the refund); and
 - ii. SSL and its above named directors / promoters, viz. Smruti Ranjan Biswal, Sweta Biswal, Sambit Mohanty, Subrat Kumar Routray, Snigdha Biswal, Ramarani Mohanty and Kalla Chidambareswar Rao (i.e. the Noticee nos. 1 to 8), 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.

18. The Noticees may, within 21 days from the date of receipt of this interim order -cum-show cause notice, file their respective replies. SSL and its directors (i.e. Noticee nos. 1 to 4) 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 Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paras 9 to 15 of this order shall become final and absolute against the respective Noticees automatically, without any further orders. Consequently, the respective Noticees shall automatically be bound by the directions contained in paras 16 and 17, as applicable.
19. The Noticee nos. 1 to 4 shall comply with the directions at para 17(i) above within a period of 90 days from the date of this order becoming final, failing which SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution in addition to making a suitable reference to State Government / Local Police.
20. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
21. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order shall also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on the company and its directors and promoters.

Place: Mumbai

Date: October 30, 2018

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