

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECTION 73 OF COMPANIES ACT, 1956

In respect of:

S. No.	Name of the entity	PAN No.
1	Mr. Subrat Kumar Routray	ADPPR9821A
2	Mrs. Snigdha Biswal	AGEPB7235J

(The aforesaid entity at Sr. no. 1 shall hereinafter be referred to as Noticee no. 5 and the entity at Sr. no. 2 as Noticee no. 6)

In the matter of Shrivallis Securities Limited

1. SEBI had passed an ex-parte interim order dated October 30, 2018 (hereinafter referred to as '**the interim order**') against the company – Shrivallis Securities Limited (hereinafter referred to as '**SSL**'/ '**the Company**') and its directors and promoters for violation of public issue norms by the Company by issuing redeemable preference shares (hereinafter referred to as '**RPS**') to at least 421 investors during the Financial Years 2011-12 and 2012-13, thereby, illegally raising a sum of Rs. 4.4 Crores. The interim order found the Company had *prima facie* violated Sections 56, 60 (1), 67 (3) and 73(1) of Companies Act, 1956. For the aforesaid violations, the interim order issued certain directions to SSL, its directors and its promoters, which are as under:

i. 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.*

2. The interim order also called upon SSL and its directors and promoters, to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act, 1992 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.

3. I note that SSL and its directors and promoters were given time till 90 days from the date of receipt of the interim order to furnish their reply or seek an opportunity of personal hearing from SEBI, failing which the interim order stipulated that, the *prima facie* findings with respect to violation of public issue norms by SSL would become final and the directions contained in para 2 above would become final and absolute against all the Noticees to the interim order.

4. I note that none of the Noticees to the interim order, except Noticee no. 5 and 6 thereto, either furnished a reply or sought for a personal hearing after receipt of the interim order. Thus, I note that in terms of the directions, as quoted at para 2 above (and also as contained in para 17 of the interim order) the directions have become final and absolute against all the Noticees to the interim order, except Noticee no. 5 and 6 thereto. I note that Noticee no. 5 to the interim order has filed his reply dated November 16, 2018 and written submissions dated January 16, 2020. I also note that Noticee no. 6 to the interim order has filed his reply dated November 16, 2018 and written submissions dated January 16, 2020. I also note that an opportunity of personal hearing was granted to Noticee no. 5 and 6 on January 14, 2020, which was availed by them.
5. I shall deal with the contentions raised by Noticee no. 5 and 6 together, since Noticee no. 5 and 6 are spouse of each other and both of them have raised similar contentions in their respective submissions. The gist of the contentions raised by Noticee no. 5 and 6 is as follows:
 - a. We were the signatories to the incorporation documents of SSL and also subscribers of the initial share capital of SSL. We agreed to sign the incorporation documents, out of respect for our family relationship with Mr. Smruti Ranjan Biswal – the Managing director of SSL. Mr. Smruti Ranjan Biswal is the brother of Noticee no. 6.
 - b. After few months of incorporation of SSL, we came to know from market that SSL was issuing RPS to outside public. After consultation with our professional friends they suggested us to quit the Company by transferring the shares allotted to us. On June 10, 2011, we had transferred all our shares to other persons including transfer to Smruti Ranjan Biswal, the Managing Director of SSL. Thus, till the time of our exit from the Company i.e. till June 10, 2011, as per the interim order, SSL has allotted RPS to only 14 number of persons.
 - c. The Board of Directors of a company are responsible for its day to day management. The Companies Act, 1956 has not fixed any duties on shareholders except to pass resolution in general meeting. In the interim order it is alleged that SSL has not complied with all the procedures in Companies Act 1956 and SEBI Act, 1992 on the allotment of preference

shares to the public. It is the primary duty and responsibility of the director to comply with all statutory requirements and not the shareholders.

6. Now the question for determination before me is whether Noticee no. 5 and 6, as the promoters of SSL, are liable for directions as contemplated in para 17 (ii) of the interim order, namely:

- 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.

7. I note that the interim order has found that SSL has violated provisions of Sections 56, 60 (1), 67 (3) and 73(1) of Companies Act, 1956. I note that in accordance with Section 73(2), for the violation of Section 73(1), the Company alongwith the directors who are officers in default shall be liable for refund, accordingly the interim order stipulates to show cause as to why SSL alongwith its directors should not be called upon to refund. I note that Noticee no. 5 and 6 were not directors in SSL and accordingly, in the interim order, Noticee no. 5 and 6 have not been called upon to refund the money as contemplated under Section 73 of the Companies Act, 1956 by SSL. However, Noticee no. 5 and 6 being promoter of SSL have been called upon to show cause as to why they should not be debarred from accessing the capital markets and be debarred from directly or indirectly dealing in securities for the violations of Section 56 (Matters to be stated and reports to be set out in the prospectus), Section 60 (1) (Registration of Prospectus with RoC) and Section 67 (3) (Deemed public issue of shares or debentures) of the Companies Act, 1956 by SSL.

8. Noticee no. 5 and 6 have contended that they were the promoters of SSL from December 14, 2010 to June 10, 2011. It is their case that they ceased to be the promoters of the Company after the transfer of all the shares held by them to other persons on June 10, 2011 and hence, they cannot be held responsible for the illegal allotments of RPS made by SSL after that date. I do not agree with the contention of Noticee no. 5 and 6 that since they ceased to be the shareholder of

SSL, hence, they ceased to be the promoter of the Company. I note that Noticee no. 5 and 6 were the promoters of SSL when money through issue of RPS was raised by SSL. Noticee no. 5 and 6 have admitted that they sold their shares in SSL when they come to know about the raising of money through issue of RPS by SSL.

9. The role of promoter in the fund raising by a company through the issue of prospectus, can be understood in the light of Section 62 of the Companies Act, 1956 which provides for civil liability for mis-statements in the prospectus and relevant extract whereof is reproduced hereunder:

“62. CIVIL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS

(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be 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, that is to say,

- (a) every person who is a director of the company at the time of the issue of the prospectus;*
- (b) every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;*
- (c) every person who is a promoter of the company; and*
- (d) every person who has authorised the issue of the prospectus :*

Provided that where, under section 58, the consent of a person is required to the issue of a prospectus and he has given that consent, or where, under sub-section (3) of section 60, the consent of a person named in a prospectus is required and he has given that consent, he shall not, by reason of having given such consent, be liable under this subsection as a person who has authorised the issue of the prospectus except in respect of an untrue statement, if any, purporting to be made by him as an expert.

(2) No person shall be liable under sub-section (1), if he proves –

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent ;*
- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent ;*

(c) that, after the issue of the prospectus and before allotment there under, he, on becoming aware of any untrue statement therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason therefor ; or

(d) that –

.....”

10. The said section provides that every promoter of the company is 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 sustained due to untrue statement included in the prospectus. Thus, the law recognizes the role/complicity of the promoter in issue of securities through prospectus and fastens liability for any untrue statement in the prospectus, on the promoter also. The said Section 62 also provides that there no person shall be liable for any untrue statement in the prospectus, if he proves *inter alia* that that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent. Applying the same principle underlying Section 62 to the present case, I note that the Noticee no. 5 and 6 are contending that they were not aware of issue of RPS and on becoming aware they transferred their shares in SSL to the managing director but they have failed to prove that they had given a reasonable public notice that RPS were issued without their knowledge or consent. Thus, the contention of the Noticee no. 5 and 6, in this regard, is untenable.
11. Thus, I find the contention raised by Noticee no. 5 and 6 in respect of cessation of their promotership of SSL consequent upon transfer of their shares in the Company and regarding exclusion of their liability as promoter for the violations committed by SSL, as untenable and without merit, in the facts and circumstances of the present case. I note that Noticee no. 5 and 6 have failed to make out a case for why they should not be held liable for violation of Section 56, 60(1) and 67(3) of the Companies Act, 1956 by SSL.
12. In view of the above findings, I, in exercise of powers conferred upon me under Sections 11 and 11B of the SEBI Act, 1992 read with Section 19 thereof, hereby directs that Mr. Mr. Subrat Kumar Routray (Noticee no. 5 to the interim order) and Mrs. Snigdha Biswal (Noticee no. 6 of the interim order) shall be refrained/prohibited from accessing the securities market by issue of

prospectus/offer document/advertisement or otherwise in any manner whatsoever, and shall be refrained/prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of this order or till the completion of refund to the investors of SSL, as directed in the interim order, whichever is later.

13. Copy of this Order shall be forwarded to the Noticee no. 5 and 6, recognised stock exchanges, depositories and RTA's of all Mutual Funds for information and necessary action.

Sd/-

Date: May 28, 2020

Place: Mumbai

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**