

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF SHREE RAMKRISHNA ELECTRO CONTROLS LIMITED

In respect of:

Sr. No.	Name of the Entity	PAN/DIN
1.	Shree Ramkrishna Electro Controls Limited	PAN: AAACS5963M
2.	Chandrakant Bhargav Gole	DIN: 00180483
3.	Varsha Chandrakant Gole	DIN: 00180538
4.	Deepali Shriram Karandikar	DIN: 01865176
5.	Moreshwar Narayan Joshi	-

Background

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), had received a complaint from an investor *inter alia* complaining about non-receipt of the amount invested by him in Shree Ramkrishna Electro Controls Limited (hereinafter referred to as “**the Company or SRECL**”). The said complainant stated that he had invested a total of INR 2,60,000 in multiple tranches against the 12% redeemable

cumulative preference shares. The grievance of the said complainant was that he has not received the dividend and the principal amount from the *Company*.

2. On receipt of the aforesaid complaint, SEBI examined the matter of issuance of redeemable cumulative preference shares (hereinafter referred to as "**RCPS**") by the *Company*, so as to ascertain as to whether the *Company* had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and the Rules and Regulations framed thereunder.

3. In pursuit of the detailed facts underlying the issuance of RCPS by the *Company*, vide letters dated September 25, 2018, SEBI sought certain information with respect to the mobilization of funds from public by issuance of RCPS, from the *Company*. The said letter was followed up by reminder letters dated November 12, 2018 and October 29, 2019. Simultaneously, vide letter dated September 27, 2018 and reminder letter dated November 11, 2018, the Registrar of Companies (hereinafter referred to as "RoC") was requested to provide certain relevant information with respect to the issuance of RCPS by the *Company*.

4. Apart from the above, SEBI had also addressed letters dated November 12, 2018 and a reminder dated December 05, 2018 to the Directors of the *Noticee Company*, i.e., *Noticee nos. 2 to 5* herein. However, all the letters which were addressed to the *Company* and to the *Noticee nos. 2, 3 and 5* returned undelivered. The only response received was from the *Noticee no. 4*, who vide her letter dated January 31, 2019, had informed that she has resigned from the directorship of the *Company* on July 21, 2012. The said letter, however, was not supported by any evidence about her resignation like Form 32 etc.

5. Going a step further in the examination, SEBI also physically visited the Registered Office of the *Company*, however, it was observed during the said visit that

neither the *Company* was existing nor any of its officials/employees was present at the said Registered Address of the *Company*.

6. On the other hand, the RoC, vide its letter dated November 16, 2018, furnished certain relevant information as was sought by SEBI, which included copies of balance sheets filed by the *Company* for the financial years 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10; Form 23 AC, Annual Return, etc.

7. The examination of the aforesaid documents *prima facie* indicated that the *Company* was involved in issuance of its securities to public and for such an act, no approvals were obtained by the *Company* nor these records show any compliances having been made by the *Company* as per law while issuing RCPS to the public. Accordingly, a show cause notice dated December 31, 2020 (hereinafter referred to as “**the SCN**”) was issued to the *Company* and its Directors. The brief facts relevant for adjudging the present proceedings, as noted from the SCN and other material available on record, are stated hereunder:

- i. The *Company* was incorporated on September 01, 1989 as a public (unlisted) company, having its registered office at: Laxmi Govind Sadan Behind, Bank of Baroda Society, Baman Wada, Vile Parle East Mumbai-400099.
- ii. The details of the present and the past directors of the *Company* along with their respective periods of directorship (wherever applicable) are indicated in the table below:

Table no. 1

Sr. No.	Name of the promoter and/ or Director	Designation	DIN	PAN	Date of appointment	Date of Cessation
1	Chandrakant Bhargav Gole (Noticee no. 2)	Managing Director	00180483	NA	01/09/1989	-
2	Varsha Chandrakant Gole (Noticee no. 3)	Director	00180538	NA	01/09/1989	-

3	Deepali Shriram Karandikar (Noticee no. 4)	Director	01865176	NA	01/11/2007	-
4	Moreshwar Narayan Joshi (Noticee no. 5)	Director		NA	15/07/2003	22/02/2008

- iii. The *Company* had issued RCPS to numerous investors during the period of 2004-05 to 2009-10, details of which are as follows:

Table no. 2

Financial Year	No. RPS holder as on 30 th September*	No. of new RPS holders added in the year (as on Sept 30) compared to same period in the previous year
2004-05	117	117
2005-06	134	100
2006-07	267	150
2007-08	258	139
2008-09	232	125
2009-10	371	170

** The Company had provided the list of RPS holders as on 30th September of every year during the aforesaid period, in its annual returns filed with RoC. It is observed that some of the names are repeated more than once in the said annual returns. Therefore, no. of RPS holders is identified and tabulated above after removing the duplicate names*

- iv. The details of funds so raised by the *Company* by way of issuance of the RCPS, as noted from the Form 23 AC and the Annual Return filed with the RoC, are captured in the following table:

Table no. 3

Financial Year	Total no. of RPS issued, Subscribed & paid up in the financial year	Total no. of RPS issued, Subscribed & paid up as on Sept. 30	Amount of RPS (in INR)	Amount raised during the year (in INR)
2004-05	48705	48705	4870500	4870500
2005-06	51455	100160	10016000	5145500
2006-07	162040	262200	26220000	16204000
2007-08	33765	295965	29596500	3376500
2008-09	49235	345200	34520000	4923500
2009-10	229165	574365	57436500	22916500

v. Vide letter dated October 09, 2020, SEBI had requested Office of the Official Liquidator, Mumbai to provide further details like names and designation of the key managerial personnel; copy of prospectus filed by the *Company* with the RoC, copies of Board Resolutions etc. The Office of Official Liquidator, Mumbai, in response to the aforesaid letter, informed vide its letter dated October 23, 2020 that by virtue of an order dated August 08, 2012 passed by the Hon'ble Bombay High Court, the *Company* has been ordered to be wound up and the Official Liquidator attached to the Hon'ble Bombay High Court was appointed as Liquidator of the *Company*. It was further informed in the said letter that the Statement of Affair under Section 454 of the Companies Act, 1956 has not been filed on behalf of the *Company*.

8. Based on the facts as brought out above, the SCN makes the following allegation against the *Notices*:

- i. The *Company* had made allotment of RCPS to more than 49 persons in the financial years 2004-05, 2005-06, 2006-07 and 2009-2010. The said issuance of securities was a public issue, however, the *Company* has not complied with the provisions of Section 56(1), 56(3), 60, 73 read with Section 67 of the Companies Act, 1956 and Clauses 2.1.1, 2.1.4, 2.1.5, 2.8, 4.1, 4.11, 4.14, 5.3.1, 5.3.3, 5.3.5, 5.3.6, 5.4, 5.6, 5.6 A, 5.7, 5.8, 5.9, 5.9.1, 5.10, 5.12.1, 5.13, 6.0, 6.1-6.15, 6.16- 6.34, 8.3, 8.8.1, 9, 10.1, 10.5 of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000.
- ii. The *Noticee no. 2* was acting as Managing Director of the *Company* during the issuance of the RCPS, therefore he is an “Officer in default” in terms of Section 5 (a) of the Companies Act, 1956.
- iii. Though the *Noticee no. 4* had submitted vide her letter dated January 21, 2019 that she has resigned from the directorship, however neither any document has been provided by her nor any document with respect to her resignation is available in the records of RoC. The *Noticee nos. 3* and *4* had signed the Audited Financial Statement/Balance Sheet of the *Company* for the financial years FY 2005-06, 2007-08, 2008-09 and 2009-10. Therefore, the *Noticee nos. 3* and *4* were the Whole Time Directors in terms of Section 5 (b) of Companies Act, 1956 and along with the *Noticee no. 2*, are together liable to be held as, ‘Officers in default’ in terms Section 5 of Companies Act. The *Noticee no. 5* was also one of the Directors of the *Company* during the period of 2004-05 to 2007-08, i.e., the time when the RCPS were issued in violation of the various provisions. Therefore, the *Noticee no. 5* has also violated the aforesaid provisions of law pertaining to public issue of securities
- iv. The obligation of filing prospectus pertaining to the issue of RCPS and compliance of the aforesaid provisions of law were on the *Noticee nos. 1* to *5*, which have not

been complied with, thus leading to violation of the aforesaid provisions of law by these *Notices*.

9. I note from the records that the SCN were sent to the *Notices* through courier and the SCN to the *Noticee no. 4* was additionally sent through e-mail. All the SCNs except the one sent to the *Noticee no. 5* returned undelivered.

10. As the *Company* is going through liquidation, a copy of SCN was also served on the Office of Liquidator of the Hon'ble Bombay High Court. Further, an attempt was made to serve the SCN to the *Noticee nos. 2 to 4* by way of affixation on their last known address, however, the SCNs could not be affixed on such addresses. Accordingly, the SCNs were served upon the *Noticee nos. 2 to 4* by way of newspaper publication in Mumbai edition of the following newspapers on April 11, 2021: The Times of India (English); Navbharat Times (Hindi); and Maharashtra Times (Marathi). However, no reply in response to the SCN could be invoked from the *Notices*. Nevertheless, in compliances with the principles of natural justice, personal hearing of the *Notices* was also scheduled on July 28, 2021. The hearing notice, apart from being served upon on the Official Liquidator, was also served on the *Notices* through newspaper publication carried out in the Mumbai editions of The Times of India (English) and Navbharat Times (Hindi) on July 14, 2021.

11. It is noted that despite effecting service of SCN and serving hearing notice on the *Notices*, there has been no participation from the *Notices* in the present proceedings, except for a limited response received from the *Noticee no. 4*. Therefore, in my considerate view, adequate opportunities have already been provided to the *Notices* to respond to the SCN and make themselves heard before me but they did not avail of these opportunities to defend themselves against the allegations made in the SCN, hence, it may be apposite to adjudge the matter based on the material available on record.

12. Before I embark to evaluate the allegations and issues on their merits in the present case, it is deemed imperative to first have a look at the various provisions of law relevant to the present matter, which are quoted here under:

Companies Act, 1956

"5. MEANING OF "OFFICER WHO IS IN DEFAULT"

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely :

- (a) the managing director or managing directors;*
- (b) the whole-time director or whole-time directors;*
- (c) the manager;*
- (d) the secretary;*
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;*
- (f) any person charged by the Board with the responsibility of complying with that provision:*
Provided that the person so charged has given his consent in this behalf to the Board;
- (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:*

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form."

56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN PROSPECTUS

- (1) Every prospectus issued -*
 - (a) by or on behalf of a company, or*
 - (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule ; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.*
- (2)*

(3) No one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section :”

60. REGISTRATION OF PROSPECTUS

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto -

(a) any consent to the issue of the prospectus required by section 58 from any person as an expert ; and

(b) in the case of a prospectus issued generally, also –

(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.....”

67. Construction Of References 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).”

73. Allotment of Shares and Debentures to be dealt in in Stock Exchange.

(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.

(2) Where the permission has not been applied under sub-section (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 percent 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.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in subsection (2), and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine, which may extend to five thousand rupees.”

Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 (“DIP Guidelines, 2000”)

i.	Clause 2.1.1	—	filing of offer document
ii.	Clause 2.1.4	-	Application for listing
iii.	Clause 2.1.5	-	Issue of securities in dematerialized form
iv.	Clause 2.8	-	Means of finance
v.	Clause 4.1	-	Promoters contribution in a public issue by unlisted companies
vi.	Clause 4.11	-	Lock-in of minimum specified promoters’ contribution in public issues
vii.	Clause 4.14	-	Lock-in of pre-issue share capital of an unlisted company

viii.	Clause 5.3.1	-	Memorandum of understanding
ix.	Clause 5.3.3	-	Due diligence certificate
x.	Clause 5.3.5	-	Undertaking
xi.	Clause 5.3.6	-	List of promoters group and other details
xii.	Clause 5.4	-	Appointment of intermediaries
xiii.	Clause 5.6	-	Offer document to be made public
xiv.	Clause 5.6A	-	Pre-issue Advertisement
xv.	Clause 5.7	-	Dispatch of issue material
xvi.	Clause 5.8	-	No complaints certificate
xvii.	Clause 5.9	-	Mandatory collection centres
xviii.	Clause 5.9.1	-	Minimum number of collection centres
xix.	Clause 5.10	-	Authorised collection agents
xx.	Clause 5.12.1	-	Appointment of Compliance Officer
xxi.	Clause 5.13	-	Abridged prospectus
xxii.	Clause 6.0	-	Contents of offer documents
xxiii.	Clause 6.1 to Clause 6.15	-	Contents of Prospectus
xxiv.	Clause 6.16 to Clause 6.34	-	Contents of abridged prospectus
xxv.	Clause 8.3	-	Rule 19(2)(b) of SC(R) Rules, 1957
xxvi.	Clause 8.8.1	-	Opening & closing date of subscription of securities
xxvii.	Clause 9	-	Guidelines on advertisements by issuer company
xxviii.	Clause 10.1	-	Requirement of credit rating
xxix.	Clause 10.5	-	Redemption

13. After perusing and considering the contents of the SCN, the allegations levelled therein against the *Notices* and the other material available on record, I observe that the only issue that needs adjudication in the present matter is whether the *Company* has issued securities to the public in violation of the extant norms governing public issues and if yes, what direction deserves to be issued in the peculiar facts and circumstances surrounding the present case.

14. I note from the records of the matter that the *Company* vide its letter dated February 01, 2007, had forwarded the Share Certificate to one of the investors. The said letter was issued with a title: “Issue of 12% Redeemable Cumulative Preference Share-Series II”. Further, the contents of the said letter indicate that 300 shares have been allotted to the said investor, against the total consideration of INR 30,000, at the rate of INR 100 per share. In the said letter, the *Company* has mentioned the dividend amount to be at 12%, i.e., INR 3,600. The said letter has been signed by the *Noticee no. 2* herein, in the capacity of the Managing Director of the *Company*. Further, the share certificate carries the signature of the *Noticee no. 2* (Managing Director) and *Noticee no. 3* (Director). It may also be of relevance to mention that from the contents of the communication addressed on the behalf of the investor, it is gathered that the *Company* has employed/engaged individual agents for raising funds by issuance of the RCPS to the general public.

15. Further, as highlighted in the Table no. 2 above, the *Company* can be noticed to have issued its RCPS for the first time during the year 2004-05 to 117 investors. Similar such allotments of RCPS have been made by the *Company* in subsequent years as well, wherein number of such allottees ranged from 100 to 170, till the period of 2009-10. The aforesaid details would further go on to show that the *Company* had allotted a total of 574365 RCPS over a period of 6 financial years, to 801 investors. The amounts that have been raised by the *Company* from the issuance of RCPS have also been detailed out in Table no. 3 which show that the *Company* had raised a total amount of INR 5.74 Crore (approx.), during the said 6 financial years.

16. I note that the *Company* is at present in liquidation and the other *Noticees* who were the Directors of the *Company* during the relevant periods have also not contested the allegations levelled in the SCN with respect to the allotment of RCPS, as culled out above from the records filed by the *Company* with Ministry of Corporate Affairs (MCA).

From a collective perusal of the letter, share certificate and the other statutory records of the *Company* filed with the MCA, I may firmly conclude that the *Company* has undeniably offered its RCPS to public at large through agent (s) and in the said process, it has raised large amounts of monies from numerous investors.

17. After having concluded on facts that the *Company* had made public issuance of RCPS, the next task is to assess the legal provisions and the compliances thereof, which are relevant for adjudging the charges levelled in the SCN. I note that in order to determine as to whether an offer of securities like RCPS is a public issue of securities or not, a reference to Section 67 of Companies Act, 1956 (as reproduced earlier) needs to be made. A careful perusal of the Section 67 (3) of the Companies Act, 1956 shows that it envisages the situations in which an offer of securities is not considered to be an offer made to public. In terms of the said provisions, if the offer is the 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 said offer, the same is not to be considered as public offer; and such an offer is to be considered as private placement of securities. Further, in terms of the first proviso to the Section 67 (3), adherence to the legal requirements of a public offer and those pertaining to listing of securities would automatically be applicable to a company making the offer to fifty or more persons. The second proviso to Section 67 (3), however, grants exemption to the Non-Banking Financial Company (NBFC) and Public Financial Institutions (PFIs) from the applicability of the first proviso.

18. Reverting to the facts of the present matter, as captured in the Table no. 2 above, the *Company* has undisputedly allotted RCPS to more than 50 persons in the financial years 2004-05 till 2009-10, except for the financial year 2008-09, during which it had allotted RCPS to 22 persons. Notwithstanding the aforesaid facts, I observe at this

stage that the plain language of the relevant provisions of Companies Act, 1956 would show that it is the “offer” and not the “allotment” which would be the litmus test to colour the nature of offer as public or private. At this stage, I deem it fit to rely upon the findings of the Hon’ble Supreme Court of India made in the matter of *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI* [(2013) 1 SCC 1]. The Hon’ble Supreme Court, while dealing with the intent of Section 67, has observed *inter alia* as: “...*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 Subsection (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...*”

19. There is no gainsaying in the fact that allotment of securities made to fifty or more persons during a financial year in itself is a certain evidence of the fact that offers have been made to atleast such number of persons. At the same time, I observe that the allotment of shares to less than 49 persons in a particular financial year cannot be *suo motu* treated to be a private placement on its face value, since the other factors like absence of reply from the *Notices* regarding number of persons to whom the offer was actually made; facts of allotments made to a large number of investors in the preceding and succeeding years, and the fact of engagement of agents by the *Company* to raise money by issuance of RCPS go on to show otherwise. The onus was on the *Notices* to demonstrate that the allotment made in the year 2008-09 was indeed a private placement. However, no submission whatsoever has been made by the *Notices* to controvert the allegations made against them in the SCN. Under the circumstances, I may not extend any kind of benefit of doubt to the *Company* for the financial year 2008-09, merely for the reason that the RCPS was allotted to 22 persons since there is nothing

on record to show that RCPS were not offered to public at large or that the offer during the year was confined to only a group of 22 pre-selected persons.

20. As observed by the Hon'ble Supreme Court of India, any offer of securities made to fifty or more persons will be treated as a public issue under the Companies Act, 1956. Therefore, in light of the material available on record and based on the legal provisions and jurisprudence applicable to the facts of this matter, I hold that the offer of RCPS made by the *Company* during the aforementioned financial years, squarely falls within the ambit of the first proviso of Section 67 (3) of the Companies Act, 1956, and has to be treated as "public issue" of securities, and consequently, the extant legal provisions governing the issuance of public issue of securities, as laid down under the Companies Act, 1956 and the SEBI guidelines/regulations are required to be complied with. It now leads me to the next question to determine as to whether in the present case, the *Company* and/or its Directors have complied with the applicable requirements of law governing the public issue of securities

21. I note that in terms of Section 60 (1) of the Companies Act, 1956, a company offering/issuing its securities to public is required to register a prospectus with the RoC. In the present case, there is nothing on record to suggest that the *Company* had ever filed any document including any notice, circular, advertisement or other document inviting investments from the public or inviting offers from the public to subscribe to its securities, which can be termed as a prospectus.

22. Further, Section 56 of the Companies Act, 1956 prescribes the details of the matters which need to be stated [Section 56 (1)] and the reports that need to be set out [Section 56 (3)] in the Prospectus. As in the present case, there is no record of any prospectus having been filed by the *Company* for issue of its RCPS, the non-compliance with Section 56 (1) and 56 (3) of the Companies Act, 1956 becomes self-evident and does not require any further discussion.

23. Apart from above, Section 73 of the Companies Act, 1956 casts obligation on the company intending to offer shares to the public for subscription so as to ensure that such securities are listed on a recognized stock exchange. To elaborate it further, Section 73 (1) mandates that every such company which intends to offer shares/debentures to the public for subscription by the issue of a prospectus shall, before such issue, apply to one or more recognized stock exchange for permission for the listing of these shares/debentures. Section 73 (2) provides that in those cases where the permission for listing has not been applied for by the company or has not been granted to it by the stock exchange, the company shall refund such amounts as collected by it from the public forthwith. The said sub-section further provides that the refund of such money should be made within 8 days of the liability to refund accruing on the company and after expiry of such time, the liability to repay the money with the applicable interest would fall jointly and severally on the company as well as on the director (s) of the company who is an officer in default.

24. Thus, it is clear that statute casts an obligation on the company which is issuing securities to public to seek permission to list such securities on a recognised stock exchange but in the present case, evidently, the *Company* has not listed its RCPS on any recognised stock exchange. It is further observed that the details about factum of having filed such an application with the stock exchange needs to be mentioned in the prospectus issued to the public. In the present case, however, as noted above there is no prospectus nor any application has been filed by the *Company* seeking listing of its securities on a recognised stock exchange.

25. With respect to the mandatory nature of listing of securities on a recognised stock exchange, I note from the judgment of the Hon'ble Supreme Court of India in the matter of *Sahara (supra)* wherein it has been recorded as: “*..Since the invitation/ offer was made “to the public”, the same could only have been through one or more recognized stock exchange(s).*”

Once a public company adopts that course, which is actually a mandate of law emerging from section 73 of the Companies Act, the concerned companies portfolio changes that to a “listed” public company. So listing in the present controversy was an inevitable consequence of inviting subscriptions from the public. There can therefore be no hesitation to conclude, that the procedure contemplated in section 73 of the Companies Act, whenever a public company wishes to issue debentures “to the public”, is not optional but mandatory...”. From the same, it is clear that the requirement of seeking listing permission and listing of the securities thereafter, is a mandatory provision, and the company issuing such securities is obliged to follow such a mandate of the statute. The intent of the legislature, that can be inferred from the said provision seems to ensure that the members of public who are being offered the securities of a company, are given an opportunity to trade in such securities on the platform of the stock exchange. Further, in case such permission is not granted, the same statutory provisions prescribe for immediate refund of the monies so raised from the public and payment of interest in case of breach of the time limit provided for refund in the relevant provisions of Companies Act, 1956. The mandatory listing provision and the consequential refund provision in case of failure to get the securities listed shows that interest of the investors subscribing to such securities offered by a company has been kept paramount.

26. In the facts of the present case, it is an undisputed position that the *Company* has not listed its RCPS on any of the recognised stock exchange nor there is anything on record to show that any such permission was even sought from the recognized stock exchanges. Accordingly, in terms of the Section 73 (3) of the Companies Act, 1956, the *Company* and its every director who is an officer in default, are under a liability to repay/refund jointly and severally, the money raised from the public through the issuance of RCPS along with applicable interest rate. At this juncture, I note that no such repayment has been even attempted by the *Company* and its officers-in-default in discharge of their liability, which is evident from a complaint dated July 02, 2018

received by SEBI from one of the RCPS holder, who had subscribed to the RCPS in the years 2007-08 and 2008-09. Thus, in totality, there has been gross violation of all the legal provisions that have mandated the registration of a prospectus, seeking permission from the recognised stock exchanges for listing of RCPS as well as making refunds of the monies so mobilised by the *Company* by issuing the RCPS during various financial years. Under the circumstances, I observe that by virtue of the aforesaid violative acts and omissions as elaborated above, it becomes a clear cut case of issuance of securities by the *Company* to public at large in violation of Section 56 (1), 56 (3), 60, 73 read with Section 73 of the Companies Act, 1956.

27. Moving on to the other set of the allegations, it is to be first noted that the Section 11 of SEBI Act, 1992 enshrines a duty on SEBI to protect the interest of investors in securities and to promote the development of and to regulate the securities market by measures as it thinks fit. In pursuance of the said duty, SEBI had issued Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as "**the DIP Guidelines**"). The DIP Guidelines have laid down various requirements which a company needs to adhere to while raising funds from the public against the issue of its securities. In the present case, as alleged in the SCN, the following provisions of the DIP Guidelines have not been complied with by the *Company* while issuing its RCPS:

<i>Clause 2.1.1</i>	—	<i>filing of offer document</i>
<i>Clause 2.1.4</i>	-	<i>Application for listing</i>
<i>Clause 2.1.5</i>	-	<i>Issue of securities in dematerialized form</i>
<i>Clause 2.8</i>	-	<i>Means of finance</i>
<i>Clause 4.1</i>	-	<i>Promoters contribution in a public issue by unlisted companies</i>
<i>Clause 4.11</i>	-	<i>Lock-in of minimum specified promoters' contribution in public issues</i>
<i>Clause 4.14</i>	-	<i>Lock-in of pre-issue share capital of an unlisted company</i>
<i>Clause 5.3.1</i>	-	<i>Memorandum of understanding</i>
<i>Clause 5.3.3</i>	-	<i>Due diligence certificate</i>

<i>Clause 5.3.5</i>	-	<i>Undertaking</i>
<i>Clause 5.3.6</i>	-	<i>List of promoters group and other details</i>
<i>Clause 5.4</i>	-	<i>Appointment of intermediaries</i>
<i>Clause 5.6</i>	-	<i>Offer document to be made public</i>
<i>Clause 5.6A</i>	-	<i>Pre-issue Advertisement</i>
<i>Clause 5.7</i>	-	<i>Dispatch of issue material</i>
<i>Clause 5.8</i>	-	<i>No complaints certificate</i>
<i>Clause 5.9</i>	-	<i>Mandatory collection centres</i>
<i>Clause 5.9.1</i>	-	<i>Minimum number of collection centres</i>
<i>Clause 5.10</i>	-	<i>Authorised collection agents</i>
<i>Clause 5.12.1</i>	-	<i>Appointment of Compliance Officer</i>
<i>Clause 5.13</i>	-	<i>Abridged prospectus</i>
<i>Clause 6.0</i>	-	<i>Contents of offer documents</i>
<i>Clause 6.1 to Clause 6.15</i>	-	<i>Contents of Prospectus</i>
<i>Clause 6.16 to Clause 6.34</i>	-	<i>Contents of abridged prospectus</i>
<i>Clause 8.3</i>	-	<i>Rule 19(2)(b) of SC(R) Rules, 1957</i>
<i>Clause 8.8.1</i>	-	<i>Opening & closing date of subscription of securities</i>
<i>Clause 9</i>	-	<i>Guidelines on advertisements by issuer company</i>
<i>Clause 10.1</i>	-	<i>Requirement of credit rating</i>
<i>Clause 10.5</i>	-	<i>Redemption</i>

28. The above listed clauses and the directives laid down thereunder in terms of the DIP Guidelines, broadly indicate that the regulatory intent behind these directives/guidelines is to protect the interest of the investors subscribing to the securities being offered by a corporate entity. For illustration, filing of the offer document and the application for listing would enable the investors to take an informed decision about subscribing to the securities of a company and allow them to trade in such securities on the platform of the stock exchange. Similarly, the mandatory requirement of obtaining a credit rating of the security proposed to be issued to the public is also intended to provide a guide to the investing public in adjudging the risks involved in the instrument/security and making an informed decision accordingly.

29. I observe that despite laying down such detailed guidelines and directives for compliances that are required to be adhered to while issuing securities to general public, in the present case, there is no material on record nor is there any contention from any of the *Noticees* to show that they have made any compliance with the aforesaid

provisions of the DIP Guidelines. Hence, I am of the view that the *Company* has acted in gross defiance of the requirements stipulated under the DIP Guidelines.

30. To sum up, I observe that the offer of RCPS by the *Company* over different financial years as noted above, were deemed public issue of securities in terms of the first proviso to Section 67(3) of the Companies Act, 1956 as it had offered its RCPS to more than 49 persons during each of those six financial years. The said acts on the part of the *Company* resulted in compliances requirement with various provisions of Companies Act, 1956 pertaining to prospectus, listing permission etc., but the said requirements have not been complied with, resulting into violation of Section 56, Sections 73(1), 73(2) and 73(3) of the Companies Act, 1956.

31. As discussed earlier, the consequence of non-compliance with the aforesaid statutory requirements, in terms of Section 73 of Companies Act, 1956, leads to a joint and several liabilities of the *Company* and every Director who is an officer in default, to refund the monies that have been raised by the *Company* by way of subscription to its issuance of RCPS by the public shareholders. Insofar as the directorship of various individuals on the Board of the *Company* is concerned, I note that except for the *Noticee no. 4*, none of the other individual *Noticees* has disputed their appointment as Director (s) or the period of directorship, as alleged in the SCN. The claim of resignation from the directorship as made by the *Noticee no. 4* is also not supported by any documentary evidence like, her resignation letter and letter of acceptance by the *Company* followed by filing of Form 32 before the RoC. In terms of the information available on the website of MCA, the *Noticee no. 4* is still continuing to be a Director of the *Company*. Thus, I find that the claim of the *Noticee no. 4* having resigned from the Directorship is unfounded. Considering the same, the said submission of the *Noticee no. 4* deserves a rejection. Further, the other Directors have chosen not to respond to the SCN and

none of the Directors has availed the opportunity of personal hearing as granted to them.

32. As regards the liability arising out of the violations of various statutory provisions is concerned, it is noted that Section 56(1), 56(3) read with Section 56(4) of the Companies Act, 1956 impose the liability on the company, every director, and other persons responsible for filing the prospectus, for the compliance of the aforesaid provisions of Companies Act, 1956. Further, the liability for non-compliance of Section 60 of the Companies Act, 1956 also falls on the company, and every person who is a party to the non-compliance of the requirement of issuing the prospectus as per the said provision. However, as the *Company* being a legal person has to act through the natural persons who are holding the rein of its affairs, the liability of non-compliance of Section 60 by the *Company* also falls on the shoulders of the persons who were acting as the Director of the *Company* during the relevant period of alleged violation. In view of the discussion recorded above, more particularly the omission on the part of the *Company* to file the prospectus with the requisite details, I hold that the *Company* and its Directors as liable for the violation of Sections 56(1), 56(3) and 60 of the Companies Act, 1956.
33. As far as the liability for non-compliance with the Section 73 of Companies Act, 1956 is concerned, it is observed that as has been stipulated under Section 73(2) itself, the company and every director of the company who is an officer in default is jointly and severally liable, to refund all the money with interest at prescribed rate to the shareholders. Insofar as the rate of interest is concerned, it is observed that in terms of Rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest has been determined at 15% per annum.
34. Notwithstanding the above, it is noted that in the present case, by an order dated August 08, 2012, the Hon'ble Bombay High Court has ordered the winding up of the

Company and the Official Liquidator attached to the Hon'ble High Court has been appointed as Liquidator of the *Company*. In view of thereof, in my considerate view, the *Company* cannot be fastened with a liability which would adversely affect the assets of the *Company*. Therefore, the liability of refunding the money so mobilised by issuing RCPS under the deemed public cannot be fastened on the *Company*.

35. At the same time, however, it is observed that the investors who were issued such securities by the *Company* cannot be left helpless and the interest of such investors deserves to be protected by issuance of appropriate directions. In this connection, as discussed earlier, the liability of making refund of the money raised through such deemed public issuance of shares in case of failure of a company to get those securities listed, falls jointly and severally on the company and every Director who is an officer in default. However, in the peculiar facts of the present case, when the main culpable entity viz., the *Company* is now under a statutory shield, the other persons who are also holding "joint and several" liabilities under law, viz., the Directors of the *Company*, deserve no relaxation from the liability so fastened on them by law.
36. In this regard, it is noted from the SCN that the *Noticee nos. 2* was designated as Managing Director of the *Company* during the years when the *Company* had raised funds in violation of the public issue norms. Therefore, in terms of the categorical inclusion of the Managing Director in the definition of 'officer in default' under the Companies Act, 1956, I hold that the *Noticee no. 2* is liable for ensuring refunds to the investors of the *Company*. It is noted that the SCN has also alleged the *Noticee nos. 3* and *4* to be officers in default as they have signed the Audited Financial Statement/Balance sheet of the *Company* for the Financial years 2005-06, 2007-08, 2008-09 and 2009-10. However, after carefully considering the facts of the case in the light of the ratio laid down by the Hon'ble SAT in the matter of *Pritha Bag Vs. SEBI (Appeal no. 291 of 2017; date of decision February 14, 2019)*, and in view of the fact that there is nothing on record

to show that the *Noticee nos. 3 and 4* were entrusted to discharge the task of making necessary application to the recognised stock exchange as stipulated under Section 73 of the Companies Act, 1956, the *Noticee nos. 3 and 4* may not be held liable for the refund of the monies raised under the deemed public issue of the *Company* more so when the *Company* was having in place a Managing Director, who has already been held liable for making refunds to the public shareholders in terms of Section 73 read with Section 5 of the Companies Act, 1956, and in light of the decision in the case of *Pritha Bag (supra)*, referred to above. Nonetheless, the said two *Noticees* along with the *Noticee no. 5* and the *Noticee no. 2* deserve to be appropriately debarred from the securities markets as the violations of the public issue norms have been committed by the *Company* when the said *Noticees* were acting as Directors of the *Company*.

37. To sum up, it is noted that the *Company* had issued RCPS to large number of investors during the period of 2004-2010 and in the said process, an amount of INR 5.74 Crore was raised from the investors, in gross violation of provisions of Section 56, 60, 73 of Companies Act, 1956 and also of various provisions of DIP Guidelines. The *Company* is at present in liquidation and the Directors for reasons best known to them have chosen not to file any response rebutting the allegations made on them, nor have they preferred to avail the opportunity of personal hearing before me to controvert the allegations made against them in the SCN. In view of the foregoing discussion and the 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) and 11B, hereby issue the following directions:

- I. The *Noticee no. 2* shall forthwith refund the money collected by the *Company*, through the issuance of RCPS including the application money collected from investors till date, with an interest of 15% per annum to be calculated from the eighth day of collection of funds, till the date of actual payment to the investors.

- II. The repayments/refunds and interest payments to the investors shall be effected only through Bank Demand Draft or Pay Order crossed as “Non-Transferable”.
- III. The *Noticee no. 2* is directed to provide a full inventory of all his assets and properties and details of all his bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- IV. The *Noticee no. 2* is restrained from selling his assets, properties and holding of mutual funds/shares/securities held by him 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.
- V. The *Noticee no. 2* shall issue a 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 the contact persons such as names, addresses and contact details etc., within 15 days of this Order coming into effect.
- VI. After completion of the aforesaid repayments, the *Noticee no. 2* shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India (“ICAI”) holding such certificate.
- VII. The *Noticee no. 2* is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is 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 04 (four) years from the date of completion of refunds to investors as directed above. The *Noticee no. 2* is also restrained from associating himself with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 04 (four) years from the date of completion of refunds to investors.

VIII. The *Noticee nos. 3 to 5* are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of 04 (four) years.

IX. The *Noticee nos. 3 to 5* are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 04 (four) years.

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

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

40. A copy of this Order shall also be forwarded to the Official Liquidator of the Hon'ble Bombay High Court for record and information.

-Sd-

DATE: DECEMBER 13th, 2021

PLACE: MUMBAI

**S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**