National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/63123	Date: July 29, 2024
Circular Ref. No: 353/2024	

To All NSE Members,

Sub: **SEBI Order in respect of S.P. Natural Eco-Green Projects (India) Limited**

This is with reference to SEBI Order No. QJA/AA/ERO/ERO/30595/2024-25 dated July 29, 2024, wherein SEBI has restrained from accessing the securities market, issuing prospectus, offer document or advertisement soliciting money from the public, directly or indirectly and are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of two (2) years from the date of this order or till the expiry of six months from the date of completion of refunds to the investors as directed in Para 44 (a) of the SEBI Order, whichever is later.

Noticee No.	Name of Noticee	PAN	CIN / DIN
1	Bishwajit Natuya	AGXPN6610N	3491395
2	Subal Natuya	N.A.	3491438
3	Barnali Natuya	AQIPN8430D	6401255

Further, SEBI has vide above order directed if the Noticee has any open position in any exchange traded derivative contracts, as on the date of this order, he can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticee / Mr. Naresh Pal is permitted to settle the pay in and pay out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

The detailed order is available on SEBI website (https://www.sebi.gov.in/enforcement.html).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

https://www.nseindia.com/regulations/member-sebi-debarred-entities

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI Order in respect of S.P. Natural Eco-Green Projects (India) Limited

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4), 11A and 11B (1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF S.P. NATURAL ECO-GREEN PROJECTS (INDIA) LIMITED.

In respect of:

Noticee No.	Name of Noticee	PAN	CIN / DIN
1.	M/s.S.P.Natural Eco-Green Projects (India) Limited	N.A.	U74900WB2011PLC165318
2.	Bishwajit Natuya	AGXPN6610N	03491395
3.	Subal Natuya	N.A.	03491438
4.	Barnali Natuya	AQIPN8430D	06401255

(The aforesaid entities are hereinafter individually referred to by their respective names / noticee numbers and collectively as 'Noticees', unless the context specifies otherwise).

BACKGROUND OF THE CASE

1. S.P.Natural Eco-Green Projects (India) Ltd. *('***SPNEPIL'** /'**company**'**/Noticee 1***)* is an unlisted public company which was incorporated on 25.07.2011 with CIN U74900WB2011PLC165318 with its registered office at 23, Bamandeb Bhattarcharya Road, Burorghat, Joynagar Majilpur, Ward No.03, Joynagar South, 24 Parganas, West Bengal 743337.

2. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), received a reference from the Central Economic Intelligence Bureau (**CEIB**) vide letter dated 03.01.2022 sharing a list of cases of economic offences registered by Economic Offence Wing of State Police. The list, *inter alia*, included the name of SPNEPIL against which an FIR was registered in West Bengal for allegedly running a collective investment scheme and cheating various investors. From the

details received from CEIB, it was observed that the FIR was filed in Jaynagar Police Station on 04.06.2017 bearing Case No.525/17. Accordingly, SEBI vide letter dated 21.03.2022 sought further information from the complainant.

3. Based on the reply dated 05.04.2022 received from the complainant alleging non receipt of amount w.r.t the issue of Redeemable Preference Shares (*hereinafter referred to as* **RPS**), SEBI undertook an examination to ascertain whether SPNEPIL had made any public issue of securities without complying with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India Act, 1992 (*hereinafter referred to as* **SEBI Act)** and the Rules and Regulations framed thereunder.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice dated 01.03.2024 (hereinafter referred to as "**SCN**") was issued to the Noticees calling upon them to show cause as to why suitable directions under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 including direction of refund of monies collected from the investors through the offer of RPS and direction of restraint and prohibition from accessing the securities market should not be issued against the Noticees for the alleged violations. The following documents were enclosed as annexures to the SCN:-

Table A

Annexures to SCN	
Annex. No.	**Particulars**
A	Copy of the information received from the complainant.
B	Copy of MCA filings.
C	Copy of ROC letter.

5. The SCN has *inter alia* alleged the following which is summarized hereinbelow:-

5.1 The complainant vide letter 05.04.2022 provided money receipts issued by SPNEPIL, copy of the complaint made to Police (in Bangla) and copies of 3

RPS certificates issued by SPNEPIL for a cumulative investment amount of Rs. 3,50,000/-.

5.2 The following was mentioned, *inter alia*, on the back of the RPS certificates:-

- Period of the scheme shall be for the terms mentioned in the application form.
- Amount will not be refunded before maturity.
- Above Rs. 20,000 maturity value the maturity amount will be paid by cheque.
- In case of loss of redeemable preference share certificates, duplicate certificate may be issued on payment of Rs. 200/- along with application and copy of general diary entry at police station.

5.3 The following were the details of the past and present directors of SPNEPIL which were obtained from ROC Kolkata :-

Sl. No.	Name of director	Current Designation	Date of Appointment	Date of Cessation
1.	Bishwajit Natuya	Director	25.07.2011	N.A.
2.	Subal Natuya	Director	25.07.2011	N.A.
3.	Barnali Natuya	Director	15.12.2012	N.A
4.	Partha Chakraborty*	N.A	25.07.2011	15.12.2012

*W.r.t. *Partha Chakraborty - The company had filed a copy of his death certificate on the MCA portal and the letter addressed to him also returned with the remarks "Deceased".*

5.4 SEBI sought information vide letters dated 17.06.2022 and 30.01.2023 from the company and its directors regarding money mobilized from the public by issuance of securities. The letters sent to the company and its directors returned undelivered. The status of the same is given below:-

Sl. No.	Name of entity/director	Date of Letter	Status/ Date of Delivery	Reply received by SEBI
1.	S. P. Natural Ecogreen Projects (India) Ltd.	17.06.2022	Returned with remarks – Addressee could not be located.	No
2.	Bishwajit Natuya	17.06.2022	Returned with remarks – Insufficient Address	No
3.	Subal Ch Natuya	17.06.2022	Returned with remarks – Insufficient Address	No
4.	Barnali Natuya	17.06.2022	Returned with remarks –	No

			No such person in the address.	
5.	Partha Chakraborty	30.01.2023	Returned with remarks – Deceased	No

5.5 The filings made by the company on MCA website were accessed. The details of the RPS issued by the company as per the filings made by the company on the MCA portal revealed that SPNEPIL mobilized Rs. 24,76,500/- from 330 allottees during F.Y. 2011-12 and Rs. 34,76,000/- from 319 allottees during the F.Y. 2012-13.

5.6 It is also noted that the date of RPS certificates provided by the complainant is 30.09.2013. However, no form of allotment or details of allotment with regard to the allotment for the financial year 2013-14 have been filed by the company on the MCA website. Hence, it is difficult to ascertain the number of investors for FY 2013-14.

5.7 It was observed that SPNEPIL had issued RPS in the years 2011-12, 2012-13 and 2013-14 and mobilized amount to the tune of atleast Rs.63 lacs.

5.8 Upon completion of examination by SEBI on the offer of RPS by SPNEPIL, the following was observed:-

i) RPS was issued to more than 49 persons in the financial years 2011-12 and 2012-13 by inviting applications from the general public.

ii) SPNEPIL issued application form for shares without prospectus / abridged prospectus containing requisite disclosures.

iii) SPNEPIL did not file any prospectus with the Registrar in connection with the issue of securities.

iv) SPNEPIL did not get the securities listed on the stock exchange.

v) SPNEPIL did not refund the money collected from investors and did not keep the amounts in a separate designated bank account.

5.9 As the above said offer of RPS was deemed to be public issue, it was alleged that the company and its directors by issuing RPS to more than 49 persons each in F.Y. 2011-12 and F.Y. 2012-13, thereby violated the provisions of Section 56 (1), (3), Section 60 read with Section 2(36), Section 67(3), Section

73(1), (2) & (3) of the Companies Act, 1956 read with Section 5 of the Companies Act, 1956 read with Section 465(2) of the Companies Act, 2013.

6. The SCN dated 01.03.2024 was attempted to be delivered through Speed Post with Acknowledgment Due. However, the delivery was not successful. The SCN returned undelivered from Noticees 2, 3 and 4 with the remarks “Refused” and from Noticee 1 as “Addressee could not be located”. The affixture of SCN was not permitted.

7. An opportunity of hearing was scheduled for the noticees on 03.07.2024 and hearing notice dated 19.06.2024 was once again attempted to be sent to the noticees through SPAD. The status of the delivery of the hearing notice through SPAD is as follows:-

Sl. No.	**Name of entity/director**	**Date of Letter**	**Status/ Date of Delivery**	**Reply received by SEBI**
1.	S. P. Natural Ecogreen Projects (India) Ltd.	19.06.2024	Returned with remarks – Addressee could not be located.	No
2.	Bishwajit Natuya	19.06.2024	Returned with remarks – Refused.	No
3.	Subal Ch Natuya	19.06.2024	Returned with remarks – Refused.	No
4.	Barnali Natuya	19.06.2024	Returned with remarks – Refused.	No

8. An attempt to affix the hearing notice dated 19.06.2024 was also attempted on 22.06.2024. However, the affixture of the hearing notice was not allowed for all the noticees with the remarks “current resident has not allowed affixture”. Thereafter, a newspaper publication for the delivery of SCN and hearing notice for hearing scheduled on 03.07.2024 was made in the Financial Express (English), EI Samay and Sangbad Pratidin (Bengali) on 25.06.2024. However, the noticees have neither responded nor appeared for the personal hearing.

9. I note that the Noticees 2, 3 and 4 have repeatedly refused to receive the SCN and hearing notices. In this regard, the Hon'ble Supreme Court of India vide its order dated 13.10.2023 w.r.t *Transfer Petition Civil No. 2090/2019* in respect of *Priyanka Kumari Versus Shailendra Kumar IA No.126261/2019* has recorded the following:-
" ….. *The word 'refusal' can be interpreted in synonymous to the word "unclaimed". As held by the Hon'ble Supreme Court in the above decisions, when a notice is served to the proper address of the addressee, it shall be deemed to be served unless contrary is proved. Thus, when the notice is returned as unclaimed, it shall be deemed to be served and it is proper service. Therefore, service of notice to the sole respondent which has returned as unclaimed is considered as deemed to be served but none has entered appearance*."

10. I note the noticees have not cooperated either during the examination or during the current proceedings. They have neither filed any reply nor have they availed the opportunity of personal hearing. I am of the view that they have nothing to submit and the matter is being proceeded ex-parte on the basis of material available on record. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006* has, *inter alia*, observed that, "......*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". Therefore, it can be presumed that the noticees have admitted to the charges levelled against them as they did not file any reply to the SCN.

11. Further, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014),* has also, *inter alia*, observed that: "........... *appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."* . Additionally, the same position has been reiterated by the Hon'ble SAT in the matter of *Dave Harihar Kirtibhai vs SEBI (Appeal No. 181 of 214 dated December 19, 2014),* wherein the Hon'ble SAT observed as under: "...*further, it is being increasingly*

observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non- receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."

12. Considering the aforesaid, I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notices were duly served upon the Noticees which is on record and sufficient opportunity was granted to them to reply to the SCN and appear for the personal hearing. Hence, I deem it appropriate to proceed against the Noticees ex-parte, based on the material available on record.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

13. I have considered the allegations made in the SCN and the documents available on record. I note that the issue for consideration is;

    (I) Whether the company came out with the Offer of RPS in violation of Section 56, 60, 67 (3) and Sections 73(1),(2) and (3) of the Companies Act, 1956 read with Section 465(2) of the Companies Act, 2013?

    (II) If the findings are found to be affirmative, who shall be liable for the violations committed ?

14. The relevant provisions of the Companies Act, 1956 alleged to have been violated by the Noticees are as follows:-

<u>Companies Act, 1956</u>

"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:"

[Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:]

Provided [further] that this sub-section shall not apply if it is shown that the form of application was issued either –

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees."

"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….."

"Section 2(36) of the Companies Act, 1956

(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."

"67. Construction of References to Offering Shares or Debentures to the Public, etc.

(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 the 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 ON 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.

[(1A)] Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock

exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

Provided that where an appeal against the decision of any recognised stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(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 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.

…………

(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 fifty thousand rupees."

Companies Act, 2013

*465. **REPEAL OF CERTAIN ENACTMENTS AND SAVINGS***

(1)…

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,- -

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;

(d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;

(e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;

(f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;

(g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;

(h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

(j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and

(k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal."

Issue 1: Whether the company came out with the Offer of RPS in violations of Sections 56, 60, 67(3) and Section 73(1), (2) and (3) of the Companies Act, 1956 read with Section 465(2) of the Companies Act, 2013?

15. Before proceeding further with the issue, I note that the Companies Act, 1956 empowers SEBI to take action in matters related to issue and transfer of securities. Section 55A of the Companies Act, 1956 states the following :

*"**55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA***

The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, -

(a) in case of listed public companies ;

(b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India ; and

(c) in any other case, be administered by the Central Government.

Explanation. - For the removal of doubts, it is hereby declared that all powers relating to all other matters including the matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares shall be exercised by the Central Government, the Tribunal or the Registrar of Companies, as the case may be.".

16. I note from the SCN that during the examination, the filings made by the company on the MCA website were accessed and perused. The following have been noted from the filings made by the company on the MCA website:-

    i) SPNEPIL has filed a detailed list of allottees of RPS allotted by the company on various dates in F.Y. 2011-12 and F.Y. 2012-13.

    ii) SPNEPIL had issued RPS to 330 and 319 persons in F.Y. 2011-12 and F.Y. 2012-13 thereby raising an amount of Rs.24,76,500/- and Rs.34,76,000/- respectively.

    iii) The details of the RPS issued by the company is as under:-

FY	Date of allotment	No. of allottees	No. of shares allotted	Nominal amount per share (in Rs.)*	Amount Mobilized (in Rs.)
2011-12	01/02/2012	45	2485	100	248500
	08/02/2012	48	2990	100	299000
	15/02/2012	47	2890	100	289000
	05/03/2012	49	5210	100	521000
	12/03/2012	46	3885	100	388500
	19/03/2012	48	4460	100	446000
	26/03/2012	47	2845	100	284500
		330			**24,76,500**
2012-13	03/01/2013	45	4160	100	416000
	10/01/2013	47	3310	100	331000
	17/01/2013	48	5325	100	532500
	24/01/2013	46	7740	100	774000
	05/02/2013	46	4360	100	436000
	12/02/2013	48	5655	100	565500
	20/02/2013	39	4210	100	421000
		319			**34,76,000**
	TOTAL	**649**			**59,52,500**

*Nominal amount has been considered as Rs.100/- based on the total amount mobilized as uploaded by the company.

iv) From the above, I note that SPNEPIL had issued RPS to 649 persons in the F.Ys. 2011-12 and 2012-13 thereby raising an amount of Rs.59,52,500/-.

v) Further, on examining the RPS certificates provided by the complainant (which was also enclosed with the SCN), it is observed that there is one certificate dated 22.12.2012 (for Rs.50,000/-) and two certificates dated 30.09.2013 (for a total amount of Rs. 3 lakhs). However, I note that there are no details of the allotment done for 22.12.2012 on the MCA website. Hence, there is a possibility that the total number of investors and the total amounts mobilised during 2012-13 may be higher. Further, there are also no filings for F.Y.2013-14 by the company on the MCA website.

vi) Hence, based on information available on the MCA website and the complaint, I note that the following details of funds mobilised by SPNEPIL:-

F.Y.	**No. of allottees**	**Amount mobilized (Rs.)**
2011-12	330	24,76,500
2012-13*	320*	35,26,000*
2013-14^	NA	3,00,000
TOTAL	650	63,02,500

**For F.Y. 2012-13 : The no. of allottees and amount mobilised* *includes* *the details available in the complaint. The complainant has provided one RPS certificate for allotment dated 22.12.2012 for Rs.50,000/- for which there are no filings available on MCA for this allotment.*

^ The complainant has also provided two RPS certificates for allotment dated 30.09.2013 of Rs. 1 lakh and Rs.2 lakh. No filings available on MCA for this allotment.

17. Since SPNEPIL issued RPS to more than 49 persons in F.Ys 2011-12 and 2012-13, it amounts to public issue of securities as per the first proviso to Section 67(3) of the Companies Act, 1956. This limit is now revised to 200 in a financial year as per the Companies Act, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 which came into effect from 01.04.2014. However, since the allotments were made in terms of Companies Act, 1956, the limit of 50 persons or more is applicable in the instant case.

18. The Companies Act, 1956, has been repealed by the Companies Act 2013 and anything done or any action taken or purported to have been done or taken under the Companies Act, 1956, is deemed to have been done or taken under the corresponding provisions of the Companies Act, 2013, by virtue of Section 465(2) of the Companies Act, 2013 and is therefore saved regardless of the repeal of the Companies Act, 1956.

19. The alleged violations of provisions in the SCN 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'. Hence, a reference may be made to Sections 67(1) and 67(3) of the Companies Act, 1956:-

"67 CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC

(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 the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)." (emphasis supplied)

20. In this regard, it would be pertinent to note 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)*, while examining the scope of Section 67 of the Companies Act, 1956:-

"*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."*

21. In this regard, I note that, Section 67(3) of the Companies Act, 1956 provides for situations when an offer is not considered as one to the 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) of the 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 the Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the first proviso.

22. In the instant matter, I find that SPNEPIL issued RPS to 330 investors in the financial year 2011-12 thereby raising Rs. 24,76,500/- and to atleast 320 investors in 2012-13 thereby raising atleast Rs. 35, 26,000/-. The above findings lead to the conclusion that the Offer of RPS by SPNEPIL was a "public issue" within the meaning of the first proviso to Section 67(3) of the Companies Act, 1956.

23. Further, I also note from the material available on record that SPNEPIL is not a non-banking financial company or public financial institution within the meaning of Section 4 of the Companies Act, 1956. In view of the aforesaid, I find that SPNEPIL is not covered under the exception mentioned at second proviso to Section 67(3) of the Companies Act, 1956.

24. Even in cases where the allotments are considered separately, reference may be made to *Sahara Case* (supra), 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 capacity which they have not discharged*." Moreover, reference may also be made to the order of the Hon'ble SAT dated 28.04.2017 in the matter of *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 be comply with the provisions of Section 56 of the 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*."

25. Therefore, in view of the material available on record, I find that the offer of RPS by SPNEPIL falls within the first proviso of Section 67(3) of the Companies Act, 1956. Hence, the offers of RPS mentioned above is deemed to be public issue and

SPNEPIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

26. Further, the offer of RPS being a public issue of securities, such securities shall also have to be listed on a recognised 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 recognised 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 sought for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. I do not find any material on record to indicate that SPNEPIL had made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure or to show that the amount collected by SPNEPIL is kept in a separate bank account. Therefore, I find that SPNEPIL has also not complied with the provisions of Section 73(3) which mandates that the amounts received from the investors shall be kept in a separate bank account. In view of the same, it is noted that SPNEPIL has not complied with Sections 73(1), (2) and (3) of the Companies Act, 1956.

27. Section 2(36) of the Companies Act read with Section 60 thereof, mandates a company to register its prospectus with the Registrar of Company (RoC), before making a public offer / issuing the prospectus. As per 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, SPNEPIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that there is no material on record to indicate that SPNEPIL has registered a prospectus with the RoC, in respect of the offer of RPS. Therefore, I find that SPNEPIL has not complied with the provisions of Section 60 of the Companies Act, 1956.

28. 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 the 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. There is no material to show that SPNEPIL has issued prospectus containing the disclosures mentioned in Section 56(1) of the Companies Act, 1956 or issued application forms accompanying the abridged prospectus. In view of above, I find that SPNEPIL has not complied with Sections 56(1) and 56(3) of the Companies Act, 1956.

29. The public companies, whether listed or unlisted, when they issue and transfer securities, the jurisdiction of SEBI is governed by 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 the *Sahara Case* (supra) has 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 recognised stock exchange in India."*

"*SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of the SEBI Act and Regulation 107 of the 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 recognised stock exchange*."

30. 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 the Act, in 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 the matter of *Sahara Case* (supra) observed the following;-

"….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 recognised 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…."

31. In view of the above, I find that SPNEPIL engaged in fund mobilising activity from the public, through the offer of RPS and has contravened the provisions of Section 56(1), 56(3), Section 60 read with Section 2(36), Section 67(3) and Section 73(1), (2) and (3) of the Companies Act, 1956 read with Section 465 (2) of the Companies Act, 2013.

Issue No. 2 : If the findings on Issue No.1 are found in the affirmative, who shall be liable for the violations committed?

32. I note from the MCA portal that the company status of Noticee 1 i.e. SPNEPIL is shown as 'Strike Off'. Further, I have also noted that MCA had issued a public notice dated 07.04.2017 pursuant to sub-section (1) and sub-section (4) of Section 248 of the Companies Act, 2013 and Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 w.r.t striking off of companies u/s 248 (1) of the Companies Act, 2013 wherein SPNEPIL was listed at Sr.No.8570. Accordingly, it is noted that although Noticee 1 is struck off from the register of companies, the current proceedings have been initiated against it.

33. A company being a juristic person owes its existence / legal status as a person to the certificate of incorporation issued to it. Once the name of the company is struck off from the register of the companies and a notification under Section 248(5) regarding the dissolution is published, then the legal status of such juristic person stands withdrawn or goes away and the company is as good as *non est*. Dissolution puts an end to the existence of the company as a corporate entity.

34. Besides, depending upon the circumstances of the case, it is sometimes necessary to lift the corporate veil and to examine the roles of the natural persons acting as directors in the company, who are actually guilty of the violations. In this case, although the company has been struck off, I find that the directors of SPNEPIL are responsible for the commissions and omissions of the company, as they were the persons in charge of the company's affairs. Here, I would also like to quote the observations of the Hon'ble Supreme Court of India in the matter of *Shri N. Narayanan vs. SEBI[(2013) 12 SCC 152]* decided on 26.04.2013, wherein it was observed that -"... *Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence*." Hence, in the instant case, although the proceedings against the company cannot be pursued, I find the directors liable for the acts of the company.

35. Section 248(7) of the Companies Act, 2013 provides 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.*" 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 realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company. Hence, the liabilities of the directors of the company still continue even after the company is struck-off.

36. With regard to the liability of the directors, from the documents submitted by RoC, I note that SPNEPIL had the following directors:-

Director Name & (Noticee No)	Designation	Date of appointment	Date of cessation
Bishwajit Natuya (Noticee 2)	Director	25.07.2011	N.A.
Subal Natuya (Noticee 3)	Director	25.07.2011	N.A.
Barnali Natuya (Noticee 4)	Director	15.12.2012	N.A.

37. I find from the documents on record that the noticees i.e Bishwajit Natuya, Subal Natuya and Barnali Natuya are also promoters of SPNEPIL as they had subscribed to the Memorandum of Association (MoA) of SPNEPIL. Further, during examination, certain details w.r.t the issuance of the securities including RPS was sought from the noticees vide letter dated 17.06.2022. However, I note that no reply has been received from the noticees either during the examination nor during the present proceedings.

38. Sections 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, in the instant matter the directors are held liable for the violations of Section 56(1), 56(3) and 60 of the Companies Act, 1956.

39. With respect to the liability for non-compliance of Section 73 of the Companies Act, 1956 is concerned, Section 73(2) of the said Act states that 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%.

40. From the material available on record and the details of the appointment and resignation of the directors of SPNEPIL as can be seen at Para 36 above, it is noted that Noticees 2, 3 were directors at the time of issuance of the RPS during 2011-12 and 2012-13 and Noticee 4 was the director during the issuance of RPS during 2012-13. These persons were acting as directors during the period of issuance of RPS and hence they are officers in default as per Section 5(g) of the 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 the Companies Act, 1956 or any specified director of SPNEPIL 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 said directors of the company i.e.Noticees 2, 3 and 4, as officers in default, are liable to make refund, jointly and severally, alongwith 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, in the instant case, the aforesaid directors are responsible for making refunds along with the 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.

41. The directors of SPNEPIL had the responsibility to ensure that refund of money was made to the investors as prescribed in law. A person cannot assume the role of a director in a casual manner. The position of a 'director' in a public company / listed company along with the 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.

42. Further, I note that the SPNEPIL through the offer of RPS has collected atleast Rs.24,76,500/- during the financial year 2011-12 and Rs.35,26,000/- during the financial year 2012-13. Therefore, in view of the Hon'ble Securities Appellate Tribunal (SAT) Order dated 14.07.2017 in the matter of *Manoj Agarwal vs SEBI*, I am of the view that obligation of the director to refund the amount with interest jointly and severally with other directors are limited to the extent of amount collected during his/her tenure as director SPNEPIL. Therefore, I find the directors viz. Noticees 2 and 3 are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15% per annum, in view of the non-compliance of the above mentioned provisions for the issuance of RPS during 2011-12 and 2012-13 and alongwith Noticee 4 w.r.t the issuance of RPS during 2012-13.

43. In view of the above, appropriate action in accordance with law needs to be initiated in the instant matter.

DIRECTIONS

44. 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. The noticees viz Bishwajit Natuya, Subal Natuya and Barnali Natuya shall, forthwith refund the money, jointly and severally, collected by the Company through the issuance of RPS in FYs 2011-12 and 2012-13 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 Noticees viz Bishwajit Natuya, Subal Natuya and Barnali Natuya 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 contact person such as names, addresses and contact details, within 15 days of coming into force of this direction.

c. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments.

d. The noticees viz Bishwajit Natuya, Subal Natuya and Barnali Natuya 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 nationalised bank. Such proceeds shall be utilised for the sole purpose of making refunds to the investors till full refund as directed above is made. Further, the banks are directed to allow debit only for the purpose of making refunds to the investors of the issuance of RPS, as directed in this order, from the bank accounts of the noticees.

e. After completing the aforesaid refunds, the Noticees viz Bishwajit Natuya, Subal Natuya and Barnali Natuya, shall file a report of such completion with SEBI addressed to the "Division Chief, Department of Debt and Hybrid Securities (SEC) , SEBI Bhavan, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051", within a period of 15 days, after completion of three months from the coming into force of the directions at Paras 44 (a) and (b) above, duly certified by an independent Chartered Accountant and the direction at Para 44 (d) above shall cease to operate upon filing of such report on completion of refunds to the investors.

f. In case of failure of the Noticees viz Bishwajit Natuya, Subal Natuya and Barnali Natuya to comply with the aforesaid directions in sub-paragraphs 44 (a) and (e), SEBI, on the expiry of the stipulated time period therein from the date of coming into force of this order, may recover such amounts, from the Noticee, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws;

g. The noticees viz Bishwajit Natuya, Subal Natuya and Barnali Natuya are restrained from accessing the securities market, issuing prospectus, offer document or advertisement soliciting money from the public, directly or indirectly and are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of **two (2)** years from the date of this order or till the expiry of six months from the date of completion of refunds to the investors as directed in Para 44 (a) above, whichever is later.

h. The Noticees viz Bishwajit Natuya, Subal Natuya and Barnali Natuya 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 **two (2) years** from the date of this order or till the expiry of six months from the date of completion of refunds to the investors as directed in Para 44 (a) above, whichever is later.

i. No directions are being issued against the company ie Noticee 1 as discussed at Para 34 above.

45. It is hereby clarified that if the Noticees have any open position in any exchange traded derivative contracts, as on the date of this order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticees are permitted to settle the pay in and pay out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

46. The direction for refund, as given in Para 44(a) above, does not preclude the investors to pursue the other legal remedies available to them under any other law,

against the Noticee for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

47. This order shall come into force with immediate effect.

48. A copy of this order shall be sent to all the noticees, recognized Stock Exchanges, banks, depositories and Registrar and Transfer Agents of mutual funds to ensure that the directions given above are strictly complied with.

DR. ANITHA ANOOP

Date : July 29, 2024 **CHIEF GENERAL MANAGER**

Place: Mumbai **SECURITIES AND EXCHANGE BOARD OF INDIA**