

National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/63179	Date: July 31, 2024
Circular Ref. No: 355/2024	

To All NSE Members,

Sub: SEBI Order in respect of Diamondray Industries Limited

This is with reference to SEBI Order No. QJA/AA/ERO/ERO/30603/2024-25 dated July 31, 2024, wherein SEBI has restrained following entities from accessing the securities market and prohibited them 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 SEBI order, whichever is later.

Sr. no.	Name of Entity	PAN	CIN / DIN
1	Taiebul Haque Sahaji	BAAPS3033G	2844680
2	Subrata Bandyopadhyay	AGYPB6263A	3499342
3	Mohammed Abdur Razzak Mondal	AJLPM6376M	3499377

Further, SEBI has clarified that if the above entities 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 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.

National Stock Exchange of India

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 Diamondray Industries 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 DIAMONDRAY INDUSTRIES LIMITED.

In respect of:

Noticee No.	Name of Noticee	PAN	CIN / DIN
1.	M/s. Diamondray Industries Ltd.	NA	U29253WB2012PLC175512
2.	Taiebul Haque Sahaji	BAAPS3033G	2844680
3.	Subrata Bandyopadhyay	AGYPB6263A	3499342
4.	Mohammed Abdur Razzak Mondal	AJLPM6376M	3499377

(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. Diamondray Industries Limited (**'DIL'** / **'company'** / **Noticee 1**) is an unlisted public company which was incorporated on 12.03.2012 with CIN U29253WB2012PLC175512 with its registered office at 38/2, Jessore Road (West) Barasat P. S. - Barasat, Dist. - 24 Paraganas (North) , Kolkata, West Bengal, India - 700124.
2. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), in compliance with the Order dated 15.01.2019 of Hon'ble Calcutta High Court while conducting a joint inventory with Directorate of Economic Offences, West Bengal, in a certain matter, also observed that there were complaints alongwith certificate of Redeemable Preference Shares (**RPS**) issued by DIL.

3. Thereafter, SEBI undertook an examination to ascertain whether DIL 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 complaint alongwith copy of certificate of RPS.
B	Copy of MCA filings including Form 2 (Return of allotment filed by the company for F.Y.2012-13)
C	Copy of director details received from ROC-Kolkata.

5. The SCN has *inter alia* alleged the following which is summarized hereinbelow:-
- 5.1 SEBI sent letter to the company and its directors vide letter dated 20.03.2022 seeking further information regarding money mobilization by issuance of securities by DIL. No reply has been received from any of the noticees. The status of the delivery of the letter is as given below:-

Sl. No.	Name of entity/director	Date of Letter	Status / Date of Delivery	Reply received by SEBI
1.	Diamondray Industries Limited	20.03.2022	Returned with remarks – Addressee Left	No

2.	Subrata Bandyopadhyay	20.03.2022	Returned with remarks – Addressee cannot be located	No
3.	Taiebul Haque Sahaji	20.03.2022	Delivered on 01.04.2022 as per the status report on India Post Website	No
4.	Mohammad Abdur Razzak Mondal	20.03.2022	Delivered on 01.04.2022 as per the status report on the India Post website.	No

5.2 The details of the three directors of DIL as obtained from ROC-Kolkata were provided.

5.3 From the details mentioned in the RPS certificate available with SEBI, it was observed, *inter alia*, that the complainant was issued 10 RPS. The date of allotment of RPS was 19.07.2012 and the redemption date was 18.07.2017. The face value of the RPS was Rs.10,000/- and redemption value was Rs.20,000/-.

5.4 The filings made by the company on MCA website were accessed. Based on the details of the RPS issued by the company as per the filings made by the company on the MCA portal and the certificate available with SEBI, the following was observed:-

FY	Date of allotment	No. of allottees	No. of shares allotted	Nominal amount per share	Amount Mobilized (in Rs.)
2012-13	19.07.2012	1	10	1000	10,000/-
	30.09.2012	207	4015	1000	40,15,000/-
	TOTAL	208	4025		40,25,000/-

5.5 It was evident from the above table and material available on record that DIL had issued RPS to more than 49 persons in the F.Y. 2012-2013. Hence, it was alleged that DIL made a public issue of securities and was required to comply with the various requirements as per the Companies Act, 1956.

5.6 Upon completion of examination by SEBI, the said offer of RPS by DIL was allegedly deemed to be public issue and hence the company and its directors by issuing RPS to more than 49 persons in 2012-13 are alleged to have violated the provisions of Section(s) 56, 60 read with 2(36), 67(3), 73(1), (2)

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

5.7 Although the Companies Act, 1956 has been repealed by the Companies Act, 2013, 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 Companies Act, 1956.

5.8 The company has been shown as struck off as per the details available on MCA website. However, in terms of proviso to Section 560(5) of the Companies Act, 1956 which deals with the Power of Registrar to strike defunct company off the Register and Section 248(7) and Section 250 of the Companies Act, 2013, the liability of the directors shall continue and is still enforceable.

6. The SCN dated 01.03.2024 was attempted to be delivered through Speed Post with Acknowledgment Due. Affixture of SCN was also attempted. The delivery status of the SCN to the noticees is as follows:-

Noticee No.	Name of Noticee	SPAD Delivery Status Remarks / (Date of Delivery)	Affixture Status Remarks / (Date of affixture)
1	M/s. Diamondray Industries Ltd.	Not delivered - "Addressee left"	Not delivered (29.04.2024). "Entity not found at the above given address. As per local enquiries, it was informed that entity left this address current resident didn't allow to affix the notice."
2	Taiebul Haque Sahaji	Delivered as per India Post Website on 07.03.2024	-
3	Subrata Bandyopadhyay	Not delivered "Decided" (sic)	-
4	Mohammed Abdur Razzak Mondal	Not delivered "Addressee moved"	Not delivered (30.04.2024) "Entity could not be found at the above from address. Current residents refused affixture."

7. Thereafter an attempt to deliver the hearing notice dated 30.05.2024 for hearing scheduled on 19.06.2024 was attempted. The hearing notice sent by SPAD was

delivered to Noticee 2 only. The hearing notices to the other 3 noticees came back undelivered with similar remarks as given above w.r.t the undelivered SCN attempted through SPAD. However, no hearing could be scheduled on 19.06.2024.

8. Another date of hearing was once again fixed for 03.07.2024 which was intimated to the noticees vide hearing notice dated 19.06.2024 which was attempted to be delivered by affixture. The status of affixture of hearing notice dated 19.06.2024 is as follows:-

Noticee No.	Name of Noticee	Affixture Status Remarks / (Date of affixture)
1	M/s. Diamondray Industries Ltd.	Not delivered (22.06.2024) <i>"Entity not found at the above given address. Current residents refused affixture."</i>
2	Taiebul Haque Sahaji	Delivered (22.06.2024)
3	Subrata Bandyopadhyay	Not delivered (22.06.2024) <i>"Resident informed that Subrata Bandyopadhyay expired in 2013. Affixture not allowed."</i>
4	Mohammed Abdur Razzak Mondal	Not delivered (22.06.2024) <i>"Person not found at this address".</i>

9. Due to the issues w.r.t the service of SCN and hearing notice, a newspaper publication for the delivery of SCN and hearing notice for all the noticees for hearing scheduled on 03.07.2024 was made in the Times of India (English), Sanmarg (Hindi) and Bartaman (Bengali) on 25.06.2024. However, on the scheduled date of hearing the noticees have not availed the opportunity of personal hearing.

10. I further note that, although the SCN and hearing notices have been delivered to Noticee 2 i.e. Taiebul Haque Sahaji, the noticee has neither provided his reply nor has attended the personal hearing in the matter.

11. The noticees have not cooperated either during the examination or during the current proceedings. They have not filed any reply nor have they availed the opportunity of personal hearing. 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. 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”.

12. 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...”

13. 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.

CONSIDERATION OF ISSUES AND FINDINGS

14. 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.

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

Companies Act, 1956

“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, 1 [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?

16. 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.”

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

- i) DIL has filed a detailed list of allottees of RPS allotted by the company on 30.09.2012 in F.Y. 2012-13 on the MCA website. As per filings, DIL has issued RPS to 207 persons in F.Y. 2012-13 thereby raising an amount of Rs.40,15,000/-.
- ii) Further, from the details of the RPS certificate provided by the complainant it is noted that the RPS was also allotted on 19.07.2012. However, there is no filings on the MCA portal w.r.t RPS allotted on 19.07.2012. Hence there is a possibility that the total number of investors and amounts mobilised during 2012-13 may be higher.
- iii) However, from the filings made by the company on the MCA website and the certificate submitted by the complainant the details of RPS of DIL is as follows:-

F.Y.	Date of allotment	No. of allottees	No. of RPS allotted	Nominal amount per share	Amount mobilised (Rs.)
2012-13	19.07.2012	1	10	1000	10,000
	30.09.2012	207	4015	1000	40,15,000
TOTAL		208	4025		40,25,000

- iv) It is, therefore, evident from the above table and material available on record that the company had issued RPS to more than 49 persons in the financial year 2012-13. Hence, DIL made a public issue of securities and was required to comply with the various requirements as per the Companies Act, 1956.

18. Since DIL issued RPS to more than 49 persons in F.Y. 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, the allotments were made in terms of Companies Act, 1956 and hence the limit of 50 persons or more is applicable in the instant case.

19. The Companies Act, 1956, has been repealed by the Companies Act 2013, 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.

20. 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)

21. 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.”

22. In this regard I note that, Section 67(3) of the Companies Act, 1956 provides for situations when an offer is not considered as offer 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.

23. In the instant matter, I find that DIL issued RPS to atleast 208 investors in the financial year 2012-13 thereby raising atleast Rs. 40.25 lakhs (figures may be higher). The above findings lead to a reasonable conclusion that the Offer of RPS by DIL was a “public issue” within the meaning of the first proviso to Section 67(3) of the Companies Act, 1956.

24. Further, I also note from the material available on record that DIL 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 there is no case that DIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956 and hence not eligible for the exception.

25. Therefore, in view of the material available on record, I find that the offer of RPS by DIL 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 DIL 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 DIL 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 DIL is kept in a separate bank account. Therefore, I find that DIL 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 DIL 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, DIL 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 DIL has registered a prospectus with the RoC,

in respect of the offer of RPS. Therefore, I find that DIL 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 DIL 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 DIL 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 DIL 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. DIL 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 DIL was listed at

Sr.No.2643. 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 DIL 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. However, 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-Kolkata, it is noted that alongwith the details of directors of DIL, the consent letters dated 01.03.2012 were submitted to the ROC by the Noticees (which has also been provided to the noticees alongwith the SCN). I note that DIL had the following directors:-

Director Name & (Noticee No)	Designation	Date of appointment	Date of cessation
Taiebul Haque Sahaji (Noticee 2)	Director	12.03.2012	N.A.
Subrata Bandyopadhyay (Noticee 3)	Director	12.03.2012	N.A.
Mohammad Abdur Razzak Mondal (Noticee 4)	Director	12.03.2012	N.A.

37. I find from the documents on record that the noticees i.e Taiebul Haque Sahaji, Subrata Bandyopadhyay and Mohammad Abdur Razzak Mondal are also promoters of DIL as they had subscribed to the Memorandum of Association (MoA) of DIL. Further, during examination, certain details w.r.t the issuance of the securities including RPS was sought from the noticees vide letter dated 20.03.2022. However, I note that no reply has been received from the noticees either during the examination nor during the present proceedings. The SCN and hearing notices issued to Noticee 3 i.e Subrata Bandyopadhyay had returned undelivered with the remarks “Decided” (sic). However, there is no documentary evidence provided for the same.

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, as stipulated in Section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eight 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 DIL as can be seen at Para 36 above, it is noted that Noticees 2, 3 and 4 were directors at the time of issuance of the RPS during 2012-13. These persons were acting as directors during the period of issuance of RPS and therefore, 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 DIL 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. The liability of the company to repay under Section 73(2) is continuing and such liability continues till all the repayments are made and therefore the above said directors are co-extensively responsible alongwith the company 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 DIL had the responsibility of ensuring 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 brings along 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 from material on record that the DIL through the offer of RPS has collected Rs.40,25,000/- during the financial year 2012-13. Therefore, I find that DIL and its directors viz Noticees 2 and 3 and 4 are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15% per annum, for the non-compliance of the above mentioned provisions for the issuance of RPS during 2012-13.
43. In view of the foregoing, 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 Taiebul Haque Sahaji, Subrata Bandyopadhyay and Mohammed Abdur Razzak Mondal shall, forthwith refund the money, jointly and severally, collected by the Company through the issuance of RPS in F.Y. 2012-13 including the application money collected from investors 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 Taiebul Haque Sahaji, Subrata Bandyopadhyay and Mohammed Abdur Razzak Mondal 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 Taiebul Haque Sahaji, Subrata Bandyopadhyay and Mohammed Abdur Razzak Mondal 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 Taiebul Haque Sahaji, Subrata Bandyopadhyay and Mohammed Abdur Razzak Mondal, 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 Taiebul Haque Sahaji, Subrata Bandyopadhyay and Mohammed Abdur Razzak Mondal 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 Noticees, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws;

- g. The Noticees viz Taiebul Haque Sahaji, Subrata Bandyopadhyay and Mohammed Abdur Razzak Mondal 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 Taiebul Haque Sahaji, Subrata Bandyopadhyay and Mohammed Abdur Razzak Mondal 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.

Date : July 31, 2024

Place: Mumbai

**DR. ANITHA ANOOP
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA**