

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11(1), 11(4), 11A(1)(b) and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of SEASHORE SECURITIES LIMITED

In respect of Seashore Securities Limited, Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Pratiba Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena and Mr. Gopal Chandra Sahu

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received complaints against a company, Seashore Securities Limited (hereinafter referred to as 'Seashore' or 'the company'), alleging therein that:
 - a. the company has raised crores of rupees from investors by taking deposits under the garb of '*cumulative redeemable preference shares*' from investors promising them high returns. (*first complaint*)
 - b. the company had defaulted in payment of agreed interest and has not refunded the principal amount. (*second complaint*)

A perusal of the 'application form' submitted by one of the complainant revealed that the investors in the company were induced with the promise that the '*cumulative redeemable preference shares*' are liable for redemption after expiry of 6 years and the holder of such shares may opt for conversion for such shares to equity in the company.

2. Having considered the complaints so received, SEBI initiated a preliminary examination into the money mobilization activities of the Seashore from the public and asked the company vide letter dated May 07, 2013 (addressed to the registered office of Seashore), to *inter alia* furnish the following information/ documents:
 - i. Copy of the memorandum and articles of association of the company.
 - ii. Copy of audited balance sheet and profit & loss account of the company for last 3 years.
 - iii. Name, addresses and occupation of all the promoters/ directors of the company .
 - iv. Names and details of the key managerial personnel of the company.
 - v. Information in respect of issue of preference shares/ debentures issued by the Company:
 - a. Copy of Prospectus/ Red Herring Prospectus/ Statement in lieu of prospectus/ information memorandum filed with RoC for issuance of debentures/ preference shares.

- b. Date of opening and closing of the subscription list for the said debentures/ preference shares.
- c. Details regarding the number of application forms circulated inviting subscription for debentures/ preference shares.
- d. Details regarding the number of applications received, number of allottees and list of such allottees.
- e. Number of debentures/ preference shares allotted and value of such allotment against each allottee's name.
- f. Details regarding subscription amount raised.
- g. Date of allotment of the debenture/ preference shares.
- h. Copies of the minutes of board/ committee meeting in which the resolution has been passed for allotment.
- i. Date of dispatch of debenture/ preference share certificates, etc.
- j. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of debentures/ preference shares.
- k. Terms and conditions of the issue of debentures/ preference shares.

However, the said letter of SEBI was returned undelivered for the reason 'office shifted'. In the meanwhile, SEBI also sought information from the office of Registrar of Companies (hereinafter referred to as 'RoC'), Cuttack vide its letter dated March 01, 2013 and collected information from the Ministry of Corporate Affairs (hereinafter referred to as 'MCA') website. While such information was being collected, SEBI observed from the media reports that the Economic Offence Wing, Odisha Police has also initiated actions against Seashore and arrested one Mr. Prasant Kumar Dash and sealed certain immovable and movable assets of Seashore.

Thereafter, SEBI vide another letter dated June 26, 2013, again sought the above information from Seashore at its new registered address at B-58, Chandaka Industrial Estate, Patia, Bhubaneswar - 751024. This letter of SEBI was also returned undelivered with the reason 'party not available'. Before proceeding further, SEBI officials also visited the premises of Seashore on July 05, 2013, for inspection and found that the office is locked.

3. Subsequently, RoC vide its letter dated August 28, 2013, forwarded a copy of the letter of Economic Offences Wing, Odisha Police dated March 12, 2013, which stated that Seashore was engaged in collection of public deposits promising very high rate of interest. The interest of depositors was shown in the accounts of the company as dividend and paid to the depositors. It was also informed as under:
 - a. The matter is under investigation at Economic Offences Wing, Odisha Police under Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

- b. Seashore was accepting deposits from all over Odisha and issuing preferential shares with guaranteed monthly dividend of 2% for a period of six years and sometimes by offering rate of interest up to 36%. The commission being paid to agents ranges from 15% to 20%.
 - c. With a view to pay the interest of 1st lot of depositors, he collects money from 2nd lot which is nothing but a fraudulent pyramid style marketing scheme. The interests paid are only from the deposits of the public and not from the profit of the company. From the deposits so collected, Prasanta Kumar Dash used to pay the interest to the depositors and the rest of money he siphoned off to their group companies/ sister concern's account maintained in different branches of different banks.
 - d. It was further stated that Seashore had applied for certificate of registration as 'Non Banking Finance Company (hereinafter referred to as 'NBFC') from the Reserve Bank of India. However, the same was rejected vide Order dated November 29, 2010, since the company was not satisfying the eligibility criteria for registration as an NBFC. Therefore, the company cannot commence/ carry on the business of a NBFC.
4. As the letters issued to Seashore returned undelivered and no information was forthcoming from it, SEBI examined the matter on the basis of the material collected during the preliminary examination i.e. the complaints, information obtained from the 'MCA 21 Portal', letter from the RoC, letter of Economic Offences Wing, Odisha Police, etc. The following are the preliminary observation:
- a. Seashore was incorporated on April 25, 2008, with CIN no. as U67120OR2008PLC009969, having its office at 298/A, Saheed Nagar, Bhubaneswar – 751007, Odisha, India. At the time of incorporation, the directors in Seashore were Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Prativa Dash.
 - b. Upon resignation of Ms. Jyotirani Sarangi from the post of director, Mr. Sudhansu Shekhar Pati was appointed as Director with effect from October 29, 2008. Further, Ms. Sapna Jena and Mr. Gopal Chandra Sahu were appointed as directors of Seashore on April 12, 2011 and March 05, 2012 respectively.
 - c. From the extract of the minutes of meetings of the Board of Directors of Seashore as obtained from the 'MCA 21 Portal', it is *prima facie* noted that funds to the tune of ₹ 503,22,80,600 have been mobilized till April 27, 2012 through issuance of 50,32,28,060 *cumulative redeemable preference shares*. The relevant details with respect to the issuance of *cumulative redeemable preference shares* by Seashore are as under:

Table A

Date of board meeting	No. of allottees	No. of Redeemable Preference Share	Amount raised (in ₹)
02-06-2008	255	4,19,000	41,90,000
02-07-2008	683	45,00,000	4,50,00,000
04-08-2008	1,564	1,02,99,000	10,29,90,000
05-09-2008	954	62,75,700	6,27,57,000
06-10-2008	1,354	88,24,000	8,82,40,000
03-11-2008	1,529	97,63,000	9,76,30,000
05-12-2008	1,164	81,91,000	8,19,10,000
05-01-2009	1,397	1,01,89,500	10,18,95,000
06-02-2009	1,078	76,43,000	7,64,30,000
06-03-2009	1,091	67,14,000	6,71,40,000
03-04-2009	1,132	78,27,500	7,82,75,000
04-05-2009	1,163	76,70,500	7,67,05,000
05-06-2009	1,407	89,25,700	8,92,57,000
05-08-2009	1,222	80,29,000	8,02,90,000
21-09-2009	2,292	1,55,20,000	15,52,00,000
22-10-2009	1,405	92,78,000	9,27,80,000
23-11-2009	1,627	1,06,96,500	10,69,65,000
23-12-2009	1,946	1,20,25,000	12,02,50,000
29-01-2010	2,041	1,27,27,500	12,72,75,000
27-02-2010	1,452	92,61,000	9,26,10,000
24-03-2010	1	6,00,000	60,00,000
29-03-2010	1,642	1,02,16,000	10,21,60,000
26-04-2010	2,062	1,28,94,000	12,89,40,000
28-05-2010	2,430	1,54,80,500	15,48,05,000
25-06-2010	1,503	92,49,000	9,24,90,000
29-07-2010	1,789	1,14,23,000	11,42,30,000
30-08-2010	2,401	1,51,73,000	15,17,30,000
28-09-2010	2,084	1,28,18,500	12,81,85,000
27-10-2010	2,165	1,39,60,500	13,96,05,000
30-11-2010	3,180	2,09,28,500	20,92,85,000
28-12-2010	2,700	1,84,47,500	18,44,75,000
25-01-2011	2,396	1,48,80,980	14,88,09,800
21-03-2011	6,077	3,85,28,260	38,52,82,600
23-04-2011	4,417	2,79,30,660	27,93,06,600
31-05-2011	2,975	1,91,16,460	19,11,64,600
08-07-2011	3,237	2,38,25,780	23,82,57,800
05-08-2011	7,201	5,04,99,120	50,49,91,200
29-09-2011	678	48,71,000	4,87,10,000
04-11-2011	871	61,06,400	6,10,64,000
06-12-2011	45	2,65,500	26,55,000
11-01-2012	49	3,78,000	37,80,000
19-03-2012	49	4,36,000	43,60,000
27-04-2012	50	4,20,500	42,05,000
	76,758	50,32,28,060	503,22,80,600

From the above, it is seen that Seashore had issued *cumulative redeemable preference shares* in various tranches and a total of ₹ 503,22,80,600 has been mobilized from 76,758 investors during the relevant period. I note that the number of allottees in the issuances are substantial.

- d. The year-wise breakup of the issuance of *cumulative redeemable preference shares* by the company have been detailed hereunder:

Table B

S. No.	Year	No. of allottees	No. of preference shares	Amount (₹)
1.	2008 - 09	11,069	7,28,18,200	72,81,82,000
2.	2009 -10	17,330	11,27,76,700	112,77,67,000
3.	2010 - 11	28,787	18,37,83,740	183,78,37,400
4.	2011 -12	19522	13,34,28,920	133,42,89,200
5.	2012 -13	50	4,20,500	42,05,000
Total		76,758	50,32,28,060	503,22,80,600

As per the statement of account of Seashore as on March 31, 2011, Seashore had the authorized share capital of ₹400,00,00,000 (authorised preference share capital is 399,00,00,000 + authorised share capital of 1,00,00,000). Further from the return of allotment submitted on April 27, 2012, the authorized share capital of the Company has been shown as ₹550,00,00,000 (i.e. authorised preference share capital is 549,00,00,000 + authorised share capital of 1,00,00,000)

- e. As per the balance sheet of Seashore for the financial year 2010-2011 (obtained from the MCA website), the paid up equity share capital of the company as on March 31, 2011 was ₹65,00,000 and the paid up preference share capital is ₹ 368,77,67,200. I note that a sum of ₹1,24,73,51,200 is reflecting in the balance sheet as the share application money pending allotment. Thus, it is *prima facie* confirmed that as on March 31, 2011, the company had cumulatively collected ₹493,51,18,400 by way of issue of preference share and preference share capital pending allotment. As noted in the sub paragraph 'd' above, I note that the authorised share capital of the Company has been increased to ₹550,00,00,000.

From the information available on record, it is observed that Seashore had raised ₹5,03,22,80,600 till April 27, 2012 as detailed in table A above. From the 'form 2' / 'the return on allotment' as submitted to RoC by Seashore, it is observed that as on April 27, 2012, the company had subscribed capital of ₹502,62,80,600 by way of 50,26,28,060 redeemable preference share. It is also observed from the said 'form 2' that an amount of ₹ 60,00,000 in respect of 6,00,000 preference shares allotted to Mr. Prashanta Kumar Dash, Managing Director vide Board of Directors meeting dated March 24, 2010, has not been collected by the company.

- f. A further scrutiny of the audit report and balance sheet of Seashore for the year 2008-09, 2009-10 and 2010-11 including XBRL report for the balance sheet filed by the company with RoC, *prima facie*, indicates that the major outflow of the company's funds are as advances to the company related entities viz. Seashore Agricultural Promotion Company Pvt. Limited, Seashore Multipurpose Co-Operative Limited, Seashore Consultancy & Construction Private Limited, Seashore Healthcare Private Limited, Seashore Tourism & Development Company Private Limited, Sagiarien Systems Private Limited, Royal Purple Hotels Private Limited, Falcon Consultancy Private Limited, Florence Biotech Private Limited, Seashore Pharmaceuticals Private Limited, Seashore Dairy Products Private Limited, Seashore Courier & Cargo Private Limited, Sri Krishna Agricultures Private Limited, Orissa Millenium Education Trust, Seashore Medicine, Seashore Foundation, Seashore Films and Seashore Educational and Charitable Trust. All these transactions are loans granted by Seashore which includes inter-corporate deposits.
5. I have perused the sample 'application form' for *cumulative redeemable preference share* received along with the complaint, which states that the offer (to subscribe the preference shares) is 'for private circulation only'. The terms and conditions as set out in the 'application form' also mentions that:
- the face value for each preference share shall be ₹10 each. Minimum number of preference shares to be applied for allotment of 500 numbers i.e. ₹5,000 or any multiple of 500 numbers.
 - The preference shares are redeemable after 6 years from the date of issue/ allotment. However, the holder of preference shares may opt for conversion for such shares to equity in the company. In such case, the holder should express his option one month prior to expiry of 6 years and the number of equity to be allotted in place of his preference share shall depend on the face value or equity on the date of conversion. Any fraction shall be refunded to the holder in cash/ DD.
 - The preference shares shall carry dividend @ 24% p.a. The dividend will be paid to the holder of preference share once in a year. The shares may be redeemed before expiry of 6 years from the date of allotment or issues, if the company so decides by its Board of Directors.
 - The preference shares can be transferred to other person on mutual consent. The transferee shall deposit cash of 2% of the total value towards administrative charges for such transfer.

6. Having considered the above stated details, I proceed further with the matter. The issue for determination in the instant matter is whether the mobilization of funds by Seashore through the *cumulative redeemable preference share*, are *prima facie* in contravention of any provisions of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act'), the Companies Act, 1956 read with the Companies Act, 2013 and the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations').
7. Before proceeding further with the matter, it would be appropriate to understand the nature of securities i.e. *cumulative redeemable preference share* issued by Seashore. In terms of the Section 2(46) of the Companies Act, 1956, a *share* means share in the share capital of a company and includes stock except where a distinction between stock and shares is expressed or implied. According to Section 86 of the Companies Act, 1956 the share capital of a company limited by shares, comprises of equity shares and preference shares issued, if any. From the foregoing, it is easy to comprehend that shares defined under Section 2(46) of the Companies Act would include preference shares.

I note that Seashore has issued *cumulative redeemable preference share*, which is one of the kinds of preference shares. *Cumulative redeemable preference share* are those wherein the unpaid dividends on the preference shares are treated as arrears and are carried forward to subsequent years till it is paid off in full.

Further, the ICDR Regulations *inter alia* deals with issue of specified securities including equity shares and convertible securities. In my view, the convertible preference shares issued by Seashore are 'specified securities' within the ambit of Regulation 2(1)(zi) of the ICDR Regulations.

8. As detailed in table A above, Seashore has issued *cumulative redeemable preference shares* to 76,758 investors. In this regard, a reference is made to Section 67 of the Companies Act, 1956, which, reads as under:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) ...

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”

A reading of the above, makes it clear that in terms of the *proviso* to Section 67 of the Companies Act, 1956, the provisions of Section 67(3) shall not apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. I note that in at least 39 tranches out of a total of 43 tranches in which the shares were issued by Seashore, there were more than 50 number of allottees.

While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the matter of *Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the '*Sahara Case*'), had observed that:

"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, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ...

... .. that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

9. As Seashore has issued and allotted the *cumulative redeemable preference shares* to more than 50 persons, I observe that the Company had *prima facie* made public issue of such shares during the years of 2008, 2009, 2010, 2011 and 2012. Therefore, Seashore ought to have complied with the applicable provisions of the Companies Act, 1956, the SEBI Act, the rules, regulations, guidelines framed thereunder.
10. Having observed that the *cumulative redeemable preference shares* issued by Seashore are *prima facie* in the nature of public issue, now, the securities so issued require to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. The relevant portion of the same has been reproduced as under:

"73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more 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) ...

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1 [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 sub-section (2)]; and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees."

In the matter of the *Sahara Case*, the Hon'ble Supreme Court of India has observed as under, while examining the provision of Section 73 of the Companies Act, 1956,:

"93. Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act.

94. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons. ... A company cannot be heard to contend that it has no such intention or idea to make an application to the stock exchange. "

As Seashore had issued the *cumulative redeemable preference shares* to fifty persons or more and has failed to ensure listing of these with a recognised stock exchange, therefore, the same is *prima facie* in violation of the Section 73(1) of the Companies Act, 1956. Further, as per Section 73(2) of the Companies Act, 1956, Seashore has the mandatory obligation to refund the amount with interest that was collected from the investors under the *cumulative redeemable preference shares* is mandatory on Seashore.

11. I note that in terms of the Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. Seashore was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956, if it has made a public offer. Further, in terms of Section 56(1) of the Companies Act, 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 that 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, contain disclosures as specified. Having considered the above, I find that Seashore has not *prima facie* complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956.
12. I now discuss the regulatory powers and the jurisdiction of SEBI on the companies that raise funds, by issue of securities, from the public. In this regard, I refer to the Section 55A of the Companies Act, 1956. In terms of the relevant provisions of the said section, 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 the issue and transfer of securities shall be in the case of listed public companies and in the case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by SEBI. The terms 'securities' as per Section 2(h) of the Securities Contracts (Regulation) Act, 1956 includes 'shares'. As already observed above, the term 'shares' includes 'preference shares'. I observe that Sections 67 and 73 of the Companies Act, 1956 are included in the list of sections as mentioned in

Section 55A of the Companies Act, 1956, and therefore, such sections are to be administered by SEBI.

13. I have perused the Auditor's Report dated September 06, 2011 and annexure thereto. The auditor at point no. 3 of Annexure-I to the Report has certified that Seashore has not taken unsecured loans from any other company or body corporate. The report states that the company has not accepted any deposits from the public to which the provisions of the Section 58(a) and 58(AA) of the Companies Act, 1956. Further, the report also states that the company has granted unsecured loan to 13 companies covered in the register maintained under Section 301 of the Companies Act, 1956 and the total amount involved is ₹4,890 Lakhs.
- I have considered the balance sheet of Seashore as on March 31, 2011, from the same, I observe that under the head 'Source of Funds - unsecured loan', the company has taken a loan of ₹69,00,21,188 from one Seashore Multipurpose Co-operatives Limited. Further, under the head 'Application of Funds' - 'Loans & Advances', the company has given huge advances to several companies/ corporate bodies & others to the tune of ₹63.18 Crore as detailed hereunder:

Table C

Sl. No.	Name of the company	Advance made as on 31.03.2011 (Amt in ₹)	Advance made as on 31.03.2010 (Amt in ₹)
1	Seashore Agricultural Promotion Company Pvt. Ltd.	2,800	114,94,98,495
2	Seashore Consultancy & Construction Pvt. Ltd.	35,33,65,525	24,03,63,135
3	Seashore Healthcare Private Limited	3,87,08,134	2,99,84,688
4	Seashore Tourism & Development Company Pvt. Ltd.	3,48,90,089	2,64,53,433
5	Sagiarien Systems Private Limited	33,17,605	(89,525)
6	Royal Purple Hotels Private Limited	29,77,925	29,98,750
7	Florence Biotech Private Limited	1,54,53,753	1,34,92,188
8	Seashore Pharmaceuticals Pvt. Ltd.	1,44,70,220	-
9	Seashore Dairy Products Private Limited	1,26,24,522	-
10	Seashore Courier & Cargo Private Limited	59,11,895	-
11	Sri Krishna Agricultures Private Limited	71,50,962	-
12	Seashore Medicine	35,59,127	-
13	Seashore Foundation	30,96,486	(31,82,709)
14	Seashore Films	59,00,000	-
15	Seashore Securities	39,57,000	10,000
16	Orissa Millenium Education Trust	4,61,66,000	2,75,68,000
17	Soubhagya Drinks Pvt. Ltd.	20,116	-
18	Jatish Agro & Oil PDT Pvt. Ltd.	73,630	-
19	Others	8,01,16,348	1,18,79,815
	Total	63,17,62,137	149,89,76,270

The aforesaid advances as observed are related party transactions and it appears that the company has siphoned off the deposits raised to the group companies/ companies in which the directors have interest. It is also noted that as the rate of interest and other terms and conditions of such loans, whether prejudicial or not to the Company, cannot be determined in absence of the agreements for the said loans given/ taken by Seashore.

- The Auditor's Report referred above and at point no. 15 of Annexure-I has certified that the company has not given any guarantee for loans taken by others from banks or financial institutions, the terms and conditions whereof are pre-judicial to the interest of the company. However, from the available records, I observe that Seashore had given corporate guarantee for the secured over draft/ loan/ cash credit taken by Seashore Agriculture Promotion Company Private Limited with limit of ₹60 lakh from Indian Bank which was revoked on June 09, 2012. Further, it is noted that Seashore has given corporate guarantee of ₹10 Crore to Seashore Agriculture Promotion Company Private Limited from United Bank of India on June 19, 2012.

In the absence of any agreement for the said corporate guarantees given by Seashore, it is difficult to determine whether the terms and conditions of such guarantee, were prejudicial or not to the company. *Prima facie* it appears that the company has violated the limits on loans to the group companies/ associates and it has not complied with Section 370 of the Companies Act, 1956, for the related party transaction and did not maintain arms length relationship in its transaction with the group companies.

14. As observed above, the certifications given by Auditor namely Patro & Co. in its report have serious irregularities and the same needs to be referred to ICAI for necessary action. Further, as regards irregularities observed in the accounts of the company relating to the related party transactions, huge amount of money collected by way of 'advance from the customers' and non filing of Annual Report for the year 2011-12 and 2012-13 so far, the matter needs to be referred to MCA for their examination and necessary action.
15. I also observe from the Directors' Report dated September 03, 2010, that 'the management has decided for listing of shares of the Company in Bhubaneswar Stock Exchange and Bombay Stock Exchange'. It has also been said that as the Company has not completed the minimum period fixed by SEBI for listing, the Company is "on a running way for listing of its shares".

16. I note that SEBI had framed the DIP Guidelines in exercise of the powers conferred upon itself under the SEBI Act. The Hon'ble Supreme Court in the matter of Sahara has observed that:

"DIP Guidelines had statutory force since they were framed by SEBI in exercise of its powers conferred on it under Sections 11 and 11A of the SEBI Act. Powers have been conferred on SEBI to protect the interests of the investors in securities and regulate the issue of prospectus, offer documents or advertisement soliciting money through the issue of prospectus. Section 11 of the Act, it may be noted has been incorporated, evidently to protect the interests of investors whose securities are legally required to be listed. DIP Guidelines were implemented by SEBI with regard to the listed and unlisted companies, which made public offer, until it was replaced by ICDR 2009".

The DIP Guidelines were applicable to all public issues by listed and unlisted companies. I note that the ICDR Regulations has replaced the DIP Guidelines and all public issues are now required to comply with the ICDR Regulations. I observe that the ICDR Regulations lays down eligibility norms, disclosure norms and other procedural requirements, for ensuring investor protection in case of issue of specified securities.

The ICDR Regulations and the DIP Guidelines (as applicable at the relevant time) operates as reasonable safeguards for the investors who subscribed or intended to subscribe in the public issues of securities. In this regard, I *prima facie* observe that the company has also not complied with the following clauses of DIP Guidelines and the provisions of ICDR Regulations.

- a. As the Company had started issuing *cumulative redeemable preference shares* in the year 2008, the relevant clauses of the DIP Guidelines (as applicable till the date ICDR Regulations came into effect) and that are relevant to the issue are as under:

- Clause 2.1.1 (filing of offer document)
- Clause 2.1.4 (application for listing)
- Clause 2.1.5 (issue of securities in dematerialized form),
- Clause 2.8. (means of finance),
- Clause 4.1 (promoters contribution in a public issue by unlisted companies),
- Clause 4.11 (lock-in of minimum specified promoters contribution in public issues),
- Clause 4.14 (lock-in of pre-issue share capital of an unlisted company)
- Clause 5.3.1 (memorandum of understanding),
- Clause 5.3.3 (due diligence certificate)
- Clause 5.3.5 (undertaking)
- Clause 5.3.6 (list of promoters group and other details)
- Clause 5.4 (appointment of intermediaries)
- Clause 5.6 (offer document to be made public)

- *Clause 5.6A (Pre-issue Advertisement)*
- *Clause 5.7 (despatch of issue material)*
- *Clause 5.8 (no complaints certificate)*
- *Clause 5.9 (mandatory collection centres and Clause 5.9.1.(minimum number of collection centres)*
- *Clause 5.10 (authorised collection agents)*
- *Clause 5.12.1 (appointment of compliance officer),*
- *Clause 5.13 (abridged prospectus)*
- *Clause 6.0 (contents of offer documents)*
- *Clause 6.1 to Clause 6.15 (contents of prospectus)*
- *Clause 6.16 to Clause 6.34 (contents of abridged prospectus) including Clause 6.17.13*
- *Clause 41.6 (rating for the proposed debentures/preference shares issue, if any, obtained from credit rating agencies)*
- *Clause 8.3 (Rule 19(2)(b) of SC(R) Rules, 1957)*
- *Clause 8.8.1 (Opening & closing date of subscription of securities)*
- *Clause 9 (guidelines on advertisements by issuer company)*
- *Clause 10.1. (requirement of credit rating), and*
- *Clause 10.5. (redemption)*

b. As Seashore continued to issue *cumulative redeemable preference shares* in the years 2009, 2010, 2011, 2012, during which the provisions of ICDR Regulations were in force. In terms of Regulation 3 of the ICDR Regulations, *inter alia* all public issues are required to comply with the ICDR Regulations. The relevant provisions of the ICDR Regulations which had to be complied by Seashore are:

- *Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)),*
- *Appointment of merchant banker and other intermediaries (Regulation 5),*
- *Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),*
- *Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),*
- *Satisfy the conditions of initial public offer (Regulation 25 and 26),*
- *Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)*
- *Keeping the public issue open for the specified period (Regulation 46),*
- *Pre issue advertisement for public issue (Regulation 47)*
- *Manner of disclosures in the offer documents (Regulation 57)*
- *Refrain from offering any incentive to any person making application for allotment of specified securities (Regulation 59).*

17. I note that SEBI has a statutory duty to protect the interest of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act empowers SEBI to take such measures as it deems fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013, the administrative authority on the subjects

relating to public issue of securities is with SEBI. For this purpose, SEBI can exercise the jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 and Section 465 of the Companies Act, 2013, over companies who issue *preference shares* to fifty persons or more, but fail to comply with the applicable provisions of the aforesaid statutes. In view of the nature of the alleged violations and to prevent the Company from further mobilization of funds from the public under the garb of issuing *cumulative redeemable preference shares* or any other form of security, and in the interests of investors, it becomes necessary for SEBI to intervene at this stage by passing suitable directions, pending investigation and passing of further orders.

18. In view of the above, I find that the Seashore offered 'specified securities' to public but did not comply with any of the applicable provisions of the ICDR Regulations and the Companies Act. I, therefore, find that Seashore has *prima facie* contravened the provisions of the DIP Guidelines, ICDR Regulations and the Companies Act, 1956. I note that the scope of Sections 11, 11B and 11(4) of the SEBI Act are wide enough to include a promoter/ director or other concerned persons. Further, as per Regulation 107 of the ICDR Regulations, directions can be issued against Seashore and the 'persons concerned' including its promoters/ directors. In terms of Regulation 2(1)(za) of the ICDR Regulations, the term 'promoter' includes; 'the person or persons who are instrumental in the formulation of a plan or program pursuant to which specified securities are offered'. I, therefore, am of the view that for contravention of provisions of ICDR Regulations, the directions can be issued to the 'persons concerned' including the promoters who are instrumental in the formulation of an illegal plan or program pursuant to which convertible preference shares were offered to the public by Seashore.
19. I observe that Seashore had started issuing *cumulative redeemable preference shares* since June, 2008. Apparently, the process of offering the preference shares and inviting monies by the company from investors started almost immediately after its incorporation. Thus, it can be reasonably inferred that the promoters/ directors of Seashore namely Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena and Mr. Gopal Chandra Sahu were instrumental in the formulation of the plan of fraudulent public issue of Seashore.

20. At this stage, I note that Mr. Gopal Chandra Sahu while replying to SEBI's letter has submitted that he was working as an employee of 'S-TV Samachar', a subsidiary of Seashore Securities Limited. Due to certain criminal investigation, the said S-TV Samachar was closed down and the salary and perks due to him remained unpaid. While making inquiry, he came to know that he has been inducted as a Director of Seashore by means of fraud and forged practice of Mr. Prashanta Kumar Dash, the principal promoter of Seashore. On becoming aware, he has filed a civil suit before the Learned Civil Judge, Bhubaneswar with a prayer that the 'form 32' submitted before RoC, Cuttack be declared as illegal and not enforceable. Mr. Gopal Chandra Sahu also submitted that he had no relation or connection in the management of Seashore except that of 'master and servant'. He in his reply has submitted that Mr. Prashanta Kumar Dash, his wife Ms. Jyotirani Sarangi and brother Mr. Pravat Kumar Dash, are in possession of all the relevant documents of Seashore.

I note that Mr. Gopal Chandra Sahu became director of Seashore on March 05, 2012 and the civil suit has been filed by him in the year 2013. Further, he has not approached the police as the fraud and forged practice as alleged are offences of criminal nature. It appears that even the civil suit filed by him is still pending. In the absence of such documents, it would not be appropriate to give credence to such submission of Mr. Gopal Chandra Sahu, at this stage.

21. The SEBI investigations have observed that the associate of Seashore, namely, 'Seashore Group' and its partners had also floated 'ponzi' schemes and raised substantial monies from public using different names from gullible public through such dubious schemes. I also note that the Economic Offences Wing, Odisha had arrested the promoter/ director of Seashore and they are investigating the frauds committed by them.
22. Having found the acts of the aforesaid entities and the resultant violations / contraventions by them in this case, I find that the acts and omissions of the aforesaid entities pose serious threat to the integrity of the securities market in India. While SEBI is endeavouring to increase investors' confidence and retail participation in the securities market, such acts of fraud of inducing investors to invest their hard earned monies in the garb of inviting investments in securities (convertible preference shares), shake the confidence of investors in the securities market. Therefore, in my view, such acts and omissions as *prima facie* found

are detrimental to the interests of the investors in securities and also the development of the securities market. I, therefore, find it a fit case for regulatory intervention in order to ensure that Seashore does not collect further funds and also to safeguard the assets or property acquired through such public funds till the complete details are brought out and a final decision is accordingly taken in the matter. It becomes necessary for SEBI to take urgent preventive and remedial action by way of this ex-parte order. In the absence of such preventive action, irreparable loss and damage may be caused to investors.

- 23.** For the aforesaid reasons, I, in exercise of the powers conferred under Sections 11(1), 11(4), 11A(1)(b) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, Clause 17 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 read with Regulation 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby, pending investigation and passing of further directions, issue the following directions:
- a.** The company namely Seashore Securities Limited and its promoters and directors including Mr. Prashanta Kumar Dash [PAN: AENPD6409F], Mr. Pravat Kumar Dash [PAN: AEKTD7710E], Ms. Jyotirani Sarangi [DIN: 01321926], Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena [DIN: 03419332] and Mr. Gopal Chandra Sahu [DIN: 05240823] are restrained from mobilizing funds through the issue of redeemable preference shares or through the issuance of equity shares or any other securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.
 - b.** Seashore Securities Limited and its promoters and directors including Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena and Mr. Gopal Chandra Sahu are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders.
 - c.** Seashore Securities Limited and its promoters and directors including Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena and Mr. Gopal Chandra Sahu shall not dispose any of the properties of the said company or alienate the assets acquired/created through the funds raised from public by issuance of the impugned redeemable preference shares.

- d. Seashore Securities Limited and its promoters and directors including Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena and Mr. Gopal Chandra Sahu shall not divert any funds raised from public at large through the issuance of the impugned cumulative redeemable preference shares, kept in its bank accounts and/or in the custody of the company without prior permission of SEBI until further orders.
- e. Seashore Securities Limited and its promoters and directors including Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena and Mr. Gopal Chandra Sahu are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities and being associated with the securities market in any manner whatsoever, directly or indirectly through any person/ entity till further direction.
- f. The company namely Seashore Securities Limited and its promoters and directors shall co-operate with SEBI in the investigation and shall furnish documents, that are in their possession, which may be required by SEBI in the course of its investigation.
24. The above directions shall come into force with immediate effect.
25. The observations contained in this Order are *prima facie* and based on the material available on record. The entity/ persons against whom this Order is passed may file their objections, if any, within a period of 21 days from the date of receipt of this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

Place: Mumbai
Date: 23/JULY/2014

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA