

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Sampri Projects Limited and its Directors, viz. Shri Manas Biswas (DIN: 01534712; PAN: AJDPB9583B), Shri Md. Obay Dul Islam (DIN: 01535532; PAN: AANPI7704G), Shri Shyamal Kumar Mitra (DIN: 03603107; PAN: AQDPM7488B), Shri Kaushik Dhar (DIN: 0153602; PAN: AILPD7952R), Smt. Sonali Islam (DIN: 01535548; PAN: AANPI7705H), Shri Nazrul Islam Gazi (DIN: 01554003; PAN: ARCPG5694H), Shri Rajib Kumar Saha (DIN: 01534716) and Shri Sheikh Alamgir Kabir (DIN: 01659849; PAN: AHRPK5233D).

1. Securities and Exchange Board of India ("**SEBI**") received a reference wherein a request was made to it, for examination of the issue of *Redeemable Preference Shares* by certain companies including Sampri Projects Limited ("**SPL**").
- 2.1 Thereafter, SEBI vide letter dated January 19, 2012, sought *inter alia* the following information from SPL in respect of the issue of *Redeemable Preference Shares*, viz. –
 - i. Certificate from the company's Statutory Auditor certifying the date/time and size of the issue, amount collected and number of investors for the issue;
 - ii. Details of the issue including details of allotment, amount collected, etc.
 - iii. Certified copy of the Board resolution authorizing the issue;
 - iv. Return of allotment filed with the Registrar of Companies ("**ROC**");
 - v. Copy of latest Audited Annual Report;
 - vi. Certificate from the Company Secretary, etc. certifying that the issue was not in violation of Section 67(3) of the Companies Act, 1956.
- 2.2 SPL replied vide letter dated January 31, 2012, stating that: "*As the company has not issued any advertisement/ offer document for issuing such preference shares, the requirement of certificate from the statutory auditor relating to date, time and size does not arise ... As the paid up capital till March 31, 2011, was below 5 Crore and the issue was entirely on private placement basis, no such certificate*

(from the Company Secretary) was obtained". Sampriti Projects provided the following information, viz. –

- i. Details of the issue including details of allotment, amount collected, etc.
 - ii. Certified copy of the Board resolution authorizing the issue;
 - iii. Return of allotment filed with the ROC;
 - iv. Copy of the company's Audited Annual Report for the Financial Year 2010–11.
- 2.3 Thereafter, vide e-mails dated March 1, 2012 and March 2, 2012, SEBI sought information pertaining to the number of shares allotted alongwith the names of the holders of such shares, from SPL. However, no information was provided by SPL.
- 2.4 SEBI also received a complaint (forwarded by the Finance Department, Government of West Bengal vide letter dated May 19, 2014), against SPL, alleging illegal mobilization of funds.
- 2.5 Subsequently, vide letter dated May 21, 2014 (addressed to SPL), and letters each dated May 26, 2014 (addressed to the Directors of SPL), SEBI sought the following information, viz. –
- i. Copy of Audited Annual Accounts for the Financial Years 2011–12 to 2013–14;
 - ii. Copy of Form – 2 filed with ROC;
 - iii. Copy of Annual Return for the Financial Years 2011–12 to 2013–14;
 - iv. Year – wise details regarding the number of allottees and list of such allottees in respect of preference shares (issued by SPL).
- 2.6 No information was received from SPL and its Directors, in respect of the SEBI letters dated May 21, 2014 and May 26, 2014, respectively.
- 2.7 Vide letter dated May 30, 2014, SEBI also sought additional information in respect of the abovementioned complaint against SPL. A reply dated June 7, 2014, was received from the complainant therein, who submitted *inter alia* the following information, viz. –
- i. Copy of Application form;
 - ii. Proof of payment;

- iii. Copy of brochure for issue of *Redeemable Preference Shares*;
3. The material available on record i.e. correspondences exchanged between SEBI and SPL alongwith the documents contained therein; the abovementioned complaint alongwith the documents forwarded by the complainant and information obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*, have been perused. On an examination of the same, it is observed that –
- SPL was incorporated on August 1, 2007, with the ROC, Kolkata, with CIN No. as U70101WB2007PLC117557. SPL's Registered Office is at 10, Taki Road, 3rd Floor, Bidhan Park Champadali, Barasat, Kolkata – 700124, West Bengal, India.
 - The present Directors in SPL are Shri Manas Biswas, Shri Md. Obay Dul Islam and Shri Shyamal Kumar Mitra.
 - Shri Kaushik Dhar, Smt. Sonali Islam, Shri Nazrul Islam Gazi, Shri Rajib Kumar Saha and Shri Sheikh Alamgir Kabir, who were earlier Directors in SPL, have since resigned.
 - From the application form in respect of the issue of *Redeemable Preference Shares ("Offer of Redeemable Preference Shares")* by SPL, it is observed that the terms and conditions included the following:

<i>Redeemable Preference Shares Category – A (Single Investment Plan)</i>				
Redemption Period	3 Years	5 Years	7 Years	10 Years
Minimum Share Issue (10 x 100) and Multiples	1000			
Annual Yield on Investment	15%	16%	17%	19%

<i>Redeemable Preference Shares Category – B (Term Investment Plan)</i>				
Redemption Period	3 Years	5 Years	7 Years	10 Years
Minimum Share Issue (3 x 100) and Multiples	50000			
Annual Yield on Investment	15%	16%	17%	19%

<i>Redeemable Preference Shares Category – C (Flexible Investment Plan)</i>				
Redemption Period	1 Year	2 Years	3 Years	5 Years
Minimum Share Issue (500 x 100) and Multiples	300			
Annual Yield on Investment	13%	14%	15%	17%

- v. SPL issued *Redeemable Preference Shares* to a large number of investors during the Financial Years 2007–08 to 2012–13, details of which are provided below -

Type of Security	Year	No. of persons to whom Redeemable Preference Shares were allotted	Total Amount ()
<i>Redeemable Preference Shares</i>	2007–08	189	13, 64, 900
	2008–09	936	70,96,100
	2009–10	1541	1,50,07,300
	2010–11	2184	2,28,80,000
	2011–12	1481	1,64,85,200
	2012–13	648	1,02,19,900
Total		6979	7,30,50,700

- vi. The year – wise breakup of the abovementioned allotments under the *Offer of Redeemable Preference Shares* is provided below –

Type of Security	Period	Date of Allotment	No. of Shares	No. of Allottees (Approximate)	Amount raised ()
<i>Redeemable Preference Shares @ Rs. 100/- Per Share</i>	2007-08	15.12.2007	5809	55	580900
	2007-08	29.03.2008	7840	134	784000
	2008-09	21.04.2008	3235	58	323500
	2008-09	30.06.2008	4353	93	435300
	2008-09	05.11.2008	10340	149	1034000
	2008-09	15.12.2008	16680	271	1668000
	2008-09	29.01.2009	19435	202	1943500
	2008-09	31.03.2009	16918	163	1691800
	2009-10	25.05.2009	20129	190	2012900
	2009-10	30.06.2009	9052	102	905200
	2009-10	31.07.2009	12760	107	1276000
	2009-10	31.08.2009	27165	173	2716500
	2009-10.	30.09.2009	14561	151	1456100
	2009-10	31.10.2009	11830	105	1183000
	2009-10	30.11.2009	12888	186	1288800
	2009-10	31.12.2009	7740	100	774000
	2009-10	31.01.2010	19387	233	1938700
	2009-10	03.03.2010	14561	194	1456100
	2010-11.	03.04.2010	15614	138	1561400
	2010-11	10.05.2010	13430	144	1343000
	2010-11	02.06.2010	11651	157	1165100
	2010-11	03.07.2010	16095	191	1609500
	2010-11	30.07.2010	11806	<i>Details Not Available</i>	1180600
	2010-11	31.08.2010	38082	341	3808200
	2010-11	27.09.2010	15121	160	1512100
	2010-11	10.11.2010	31776	364	3177600
	2010-11	30.11.2010	14705	155	1470500
	2010-11	04.12.2010	15896	183	1589600
	2010-11,	31.01.2011	44624	351	4462400
	2011-12	20.06.2011	19578	214	1957800
	2011-12	20.07.2011	**52099	476	5209900
	2011-12	16.09.2011	21392	167	2139200
	2011-12	07.12.2011	22014	216	2201400
	2011-12	07.12.2011	22736	215	2273600
	2011-12	07.12.2011	27006	193	2700600
	2012-13	10.05.2012	34195	258	3419500
	2012-13	10.05.2012	68004	390	6800400
Total			730507	6979	73050700

4.1 The issue for determination in the instant matter is whether the mobilization of funds by SPL through the *Offer of Redeemable Preference Shares*, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**"); the Companies Act, 1956 read with the Companies Act, 2013; the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("**DIP Guidelines**") read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**").

4.2 I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)* (hereinafter referred to as the "*Sahara Case*"), had 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 recognized stock exchange in India."

4.3 In this regard –

- i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced as under:

"67. Construction of reference to offering shares or debentures to the public, etc.

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

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to

invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

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

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

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

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

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

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sahara Case* 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. ...

I may, therefore, indicate, subject to what has been stated above, in India 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. ..."

- iii. In the instant matter, for ascertaining whether the *Offer of Redeemable Preference Shares* is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.
 - a. Under the *Offer of Redeemable Preference Shares*, it is observed that during the Financial Years from 2007–08 to 2012–13, SPL allotted *Redeemable Preference Shares* to a total of 6979 individuals/investors and mobilized funds amounting to approximately 7.30 Crores (details provided in Table at paragraphs 3(v)–(vi) of pages 4-5). The number of investors to whom allotments were made under the *Offer of Redeemable Preference Shares* alongwith the amount mobilized therein, during the Financial Years from 2007–08 to 2012–13, would *prima facie* indicate that such *Offer* was a public issue of securities and that the number of persons to whom such *Offer* was made, was above the limit of forty–nine persons as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956.
 - b. It is observed that SPL is not stated to be a Non – banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that SPL is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.
 - c. In view of the above, the *Offer of Redeemable Preference Shares* by SPL, would *prima facie* qualify as a public issue under the *first proviso* to Section 67(3) of the Companies Act, 1956. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

4.4 I note that –

- i. From the abovementioned, it will follow that since the *Offer of Redeemable Preference Shares* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard, reference is made to Sections 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which is 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) Where a prospectus, whether issued generally or not, states that an application under subsection (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognized 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 recognized 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 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."

- ii. In the *Sabara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that –

"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. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

- iii. In the facts of the instant case, since the *Offer of Redeemable Preference Shares* was made to fifty persons or more by SPL, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956. It therefore *prima facie* appears that SPL has violated the provisions of Section 73(1) of the Companies Act, 1956, since it has failed to ensure listing with a recognised stock exchange of the securities issued under the *Offer of Redeemable Preference Shares*.
- iv. As per Section 73(2) of the Companies Act, 1956, the obligation to refund the amount with interest that was collected from investors under the *Offer of Redeemable Preference Shares* is mandatory on SPL. In this regard, there is no evidence on record to indicate whether or not SPL has paid interest to the investors within 8 days under the *Offer of Redeemable Preference Shares*, as per the aforesaid Section. In view of the

same, I find that SPL has *prima facie* not complied with the provisions of Section 73(2) of the Companies Act, 1956.

- v. Section 73(3) of Companies Act, 1956, says that all moneys received shall be kept in a separate bank account maintained with a Scheduled Bank 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 instant case, there is no evidence on record to indicate whether or not funds received from the investors under the *Offer of Redeemable Preference Shares* has been kept in separate bank account by SPL. In view of the same, I find that SPL has *prima facie* not complied with the provisions of Section 73(3) of Companies Act, 1956.

4.5 Under 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 or issuing the prospectus. As per the 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 mentioned above, since the *Offer of Redeemable Preference Shares* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, SPL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. There is no evidence on record to indicate whether or not SPL has not complied with the provisions of Section 60 of Companies Act, 1956.

4.6 Under 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 that Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that SPL has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

4.7 As per Section 465(1) of the Companies Act, 2013, the Companies Act, 1956, "*shall stand repealed*". However, Section 465(2)(i) of the Companies Act, 2013, provides that:

"(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;"

4.8 I also note that SEBI framed the DIP Guidelines, in exercise of the powers conferred under the SEBI Act. In the words of the Hon'ble Supreme Court in the *Sahara Case*, "*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*". In this regard, I observe *prima facie* that SPL has not complied with the following provisions of the DIP Guidelines as regards the *Offer of Redeemable Preference Shares, viz. —*

- a. Clause 2.1.1. — (*Filing of offer document*)
- b. Clause 2.1.4 — (*Application for listing*)
- c. Clause 2.1.5 — (*Issue of securities in dematerialized form*),
- d. Clause 2.8 — (*Means of finance*),
- e. Clause 4.1 — (*Promoters contribution in a public issue by unlisted companies*),
- f. Clause 4.11 — (*Lock-in of minimum specified promoters contribution in public issues*),
- g. Clause 4.14 — (*Lock-In of pre-issue share capital of an unlisted company*)
- h. Clause 5.3.1 — (*Memorandum of understanding*),
- i. Clause 5.3.3 — (*Due Diligence Certificate*)
- j. Clause 5.3.5 — (*Undertaking*),
- k. Clause 5.3.6 — (*List Of Promoters Group And Other Details*),
- l. Clause 5.4 — (*Appointment of intermediaries*)

- m. Clause 5.6 – (*Offer document to be made public*)
- n. Clause 5.6A – (*Pre-issue Advertisement*)
- o. Clause 5.7 – (*Despatch of issue material*)
- p. Clause 5.8 – (*No complaints certificate*)
- q. Clause 5.9 – [*Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)*]
- r. Clause 5.10 – (*Authorised Collection Agents*)
- s. Clause 5.12.1 – (*Appointment of compliance officer*)
- t. Clause 5.13 – (*Abridged prospectus*)
- u. Clause 6.0 – (*Contents of offer documents*)
- v. Clause 8.3 – (*Rule 19(2)(b) of SC(R) Rules, 1957*)
- w. Clause 8.8.1 – (*Opening & closing date of subscription of securities*)
- x. Clause 9 – (*Guidelines on advertisements by Issuer Company*)
- y. Clause 10.1 – (*Requirement of credit rating*)
- z. Clause 10.5 – (*Redemption*)

4.9 As per Regulation 111(1) of the ICDR Regulations, the DIP Guidelines, "*shall stand rescinded*". However, Regulation 111(2) of the ICDR Regulations, provides that:

"(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 observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations."

4.10 Upon a consideration of the abovementioned paragraphs, I am of the view that *prima facie*, SPL is engaged in fund mobilising activity from the public, through the *Offer of Redeemable Preference Shares* and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73) read with Section 465 of the Companies Act, 2013; the DIP Guidelines read with ICDR Regulations.

5. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks 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, administrative authority on the subjects relating to public issue of securities is with SEBI. For this purpose, SEBI can exercise its 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; the DIP Guidelines read with ICDR Regulations, over companies who issue securities such as *Redeemable Preference Shares* by way of a public issue, but do not comply with the applicable provisions of the aforesaid Companies Acts (as mentioned in paragraphs 4.1–4.10 above). Steps therefore, have to be taken in the instant matter to ensure that only legitimate fund raising activities are carried on by SPL and no investors are defrauded. In light of the same and also considering the failure on the part of SPL to submit relevant information to SEBI (despite being given several opportunities), I find there is no other alternative but to take recourse through an interim action against SPL and its Directors for preventing that company from further carrying on with its fund mobilising activity under the *Offer of Redeemable Preference Shares*.
6. I note that Shri Kaushik Dhar, Smt. Sonali Islam, Shri Nazrul Islam Gazi, Shri Rajib Kumar Saha and Shri Sheikh Alamgir Kabir, who were earlier Directors in SPL, have since resigned. In this regard, it is observed that the aforementioned 5 former Directors were also involved in the fund mobilizing activity under the *Offer of Redeemable Preference Shares* carried out by SPL during the period they were Directors in that company.
7. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act and Clause 17 of the DIP Guidelines read with Regulation 111 of the ICDR Regulations, hereby issue the following directions –
- i. SPL shall not mobilize any fresh funds from investors through the *Offer 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;
 - ii. SPL and its present Directors, viz. Shri Manas Biswas (DIN: 01534712; PAN: AJDPB9583B), Shri Md. Obay Dul Islam (DIN: 01535532; PAN: AANPI7704G)

and Shri Shyamal Kumar Mitra (DIN: 03603107; PAN: AQDPM7488B) alongwith it past Directors, viz. Shri Kaushik Dhar (DIN: 0153602; PAN: AILPD7952R), Smt. Sonali Islam (DIN: 01535548; PAN: AANPI7705H), Shri Nazrul Islam Gazi (DIN: 01554003; PAN: ARCPG5694H), Shri Rajib Kumar Saha (DIN: 01534716) and Shri Sheikh Alamgir Kabir (DIN: 01659849; PAN: AHRPK5233D), 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;

- iii. SPL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
 - iv. SPL shall provide a full inventory of all its assets and properties;
 - v. The abovementioned Directors of SPL shall provide a full inventory of all their assets and properties;
 - vi. SPL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of Redeemable Preference Shares*, without prior permission from SEBI;
 - vii. SPL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of Redeemable Preference Shares*, which are kept in bank account(s) and/or in the custody of SPL;
 - viii. SPL and its present Directors shall furnish complete and relevant information in respect of the *Offer of Redeemable preference shares* (as sought by SEBI letters/e – mail dated March 1, 2012; March 2, 2012; May 21, 2014 and May 26, 2014), within 21 days from the date of receipt of this Order.
8. The above directions shall take effect immediately and shall be in force until further orders.
9. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondences exchanged between SEBI and SPL alongwith the documents contained therein; the complaint alongwith the documents forwarded by the complainant and information obtained from *MCA 21 Portal*. In this context, SPL and its abovementioned past and present Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to 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.

10. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against SPL and its abovementioned past and present Directors in accordance with law.

Place: Mumbai
Date: November 28, 2014

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA