

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

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Jeevan Suraksha Real Estate Limited (PAN: AABCJ6757B) and its Directors, viz. Shri Chandan Das (DIN:00700889), Shri Ashok Chakraborty (DIN:00700921), Shri Uttam Acharjee (DIN:05112214), Smt. Champa Biswas (DIN:02247075), Smt. Sangita Das (DIN:02014574), Shri Arju Acharjee (DIN:00790737) and Shri Dipamoni Acharjee (DIN: 02247014).

1. Securities and Exchange Board of India ('SEBI') received a letter dated February 14, 2014 from the Office of the Registrar of Companies ('RoC'), Shillong stating that Jeevan Suraksha Real Estate Limited (hereinafter referred to as 'JSREL' or 'the company') mobilised funds from more than 49 persons.
2. RoC, Shillong vide aforesaid letter dated February 14, 2014 also *inter alia* provided documents/information, viz. copy of the show cause notice issued by RoC to JSREL, copy of Form 2 (for Return of Allotment), list of allottees and copy of Form 23 (for Registration of resolution(s) and agreement(s)) filed with RoC by JSREL with respect to issuance of Redeemable Preference Shares ('RPS'). RoC, Shillong has also informed that they have not received any reply from the company and/or its directors in respect of the notices issued by their office.
3. It was noted from the media reports that Assam Police arrested the Managing Director and owner of 'Jeevan Suraksha Group' Shri Chandan Das and directors Shri Ashok Chakraborty and Shri Uttam Acharjee charging them for duping investors and seized various documents. SEBI vide letter dated June 23, 2014 requested the Office of the Director, Bureau of Investigation Economic Offences Wing, Assam ('BIEO') to provide all the relevant documents/information related to JSREL available with them.
4. BIEO on July 11, 2014 *inter alia* provided the following documents/information, viz.
 - i. Copy of Memorandum and Articles of Association of the company;

- ii. Copy of Balance Sheet and Profit and Loss account of the company for FY 2008-09, 2009-10 and 2010-11.
 - iii. Copies of correspondence between BIEO and JSREL.
5. Efforts were also made to obtain the relevant information/documents from the Ministry of Corporate Affairs Website ('MCA') website i.e. MCA21 portal.
6. The material available on record i.e. information/documents provided by RoC, Shillong; information/documents provided by BIEO, Assam 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-
- i. JSREL (CIN:U70101AS2004PLC007570) was incorporated on November 09, 2004, with RoC, Shillong having its registered office situated at College Road, Lumding, Nagaon, Assam, India-782447.
 - ii. The Directors of JSREL are Shri Chandan Das, Shri Ashok Chakraborty and Shri Uttam Acharjee. Smt. Champa Biswas, Smt. Sangita Das, Shri Arju Acharjee and Shri Dipamoni Acharjee who were earlier directors of the company, have since resigned.
 - iii. It is observed from Form 2 (filed for allotment of RPS on 30/03/2007) and Balance Sheets of the company for the FY 2008-09 and 2009-10 provided by RoC, Shillong and BIEO, Assam that JSREL allotted RPS of face value Rs.100/- each during FY 2006-07, 2008-09 and 2009-10. The details of the same are mentioned in the table below:

Year	No. of RPS	No. of Allottees	Amount raised (in Rs.)
2006-07	80,000	299	80,00,000
2008-09	3,20,100	Not Available	3,20,10,000
2009-10	2,30,000	Not Available	2,30,00,000
Total	6,30,100	>299*	6,30,10,000

* Details of allottees during FY 2008-09 and 2009-10 are not available. Hence exact number of allottees could not be ascertained.

- iv. It is also observed from Balance Sheets of the company for FY 2008-09, 2009-10 and copy of the extracts of minutes of EGM held on April 05, 2010 that JSREL increased authorized preference share capital from Rs.4,25,00,000/- as on March 31, 2009 to Rs.9,60,00,000/- as on March 31, 2010. It is also evident from copy of notice for EGM to be held on June 14, 2011 that JSREL intended to further increase authorized preference share capital to 15,00,00,000/-. This, *prima facie* indicates that JSREL continues to mobilize large amount of funds from investors.
 - v. It is noted from copy of the show cause notice dated May 14, 2013 issued by RoC, Shillong to JSREL that the company did not publish or file any prospectus with RoC.
7. In the context of the abovementioned details of the *Offer of RPS*, the issue for determination in the instant matter is whether the mobilization of funds by JSREL through the aforesaid issue of RPS, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**"); the Companies Act, 1956; the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("**DIP Guidelines**") read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**").
 8. 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, at the relevant point of time 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:

"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."

9. 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. (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 *Sabara Case* observed:

"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. ...

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 RPS is a public issue in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.
 - a. It is an admitted fact that JSREL mobilized approximately Rs.6,30,10,000/- from more than 299 investors during financial years 2006-07, 2008-09 and 2009-10 as detailed in paragraph 6(iii) above. The number of persons to whom RPS were issued by JSREL during these financial years was way beyond the limit of forty-nine persons as prescribed under Section 67(3) of the Companies Act, 1956. It is also evident from copy of notice for EGM to be held on June 14, 2011 that JSREL intended to further increase authorized preference share capital to Rs.15,00,00,000/-. RoC, Shillong vide letter dated February 14, 2014 has informed that they did not receive any reply from the company and/or its directors in respect of the notices issued by their office. From the aforementioned facts, I, therefore, find that the *Offer of RPS* was indeed a public issue of securities under the *first proviso* to Section 67(3) of the Companies Act,

1956 and that JSREL continues to mobilize large amount of funds from investors.

- b. JSREL is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and therefore, 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 RPS* by JSREL, would *prima facie* qualify as a public issue under the *first proviso* to Section 67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the *Sabara Case*. 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.

10. I note that –

- i. From the abovementioned, it will follow that since the *Offer of RPS* 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 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 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 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 fifty 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.

...

Section 73(2) says that every company and every director of the company who is an officer in default, shall 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. The scope of the above mentioned provisions came up for consideration before this Court in Raymond Synthetics Ltd. & Ors. V. Union of India (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since Saharas had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."

- iii. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, since the *Offer of RPS* is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, 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 and also compliance with provisions of Sections 73(2) and 73(3) of that Act.
- iv. In the facts of the instant case, it *prima facie* appears that JSREL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of RPS*.

- 11. 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 RPS* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, JSREL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. Based on the material available on record, I find that *prima facie*, JSREL has not complied with the provisions of Section 60 of Companies Act, 1956.

12. 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 JSREL 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.

13. I also note that SEBI had framed the DIP Guidelines, 2000 in exercise of the powers conferred under the SEBI Act. In the words of the Hon'ble Supreme Court in the *Sabara 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 the Company has not complied with the provisions of the DIP Guidelines including the following clauses:

- 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*)

14. As per Regulation 111(1) of the ICDR Regulations, the DIP Guidelines, "*shall stand rescinded*". However, Regulation 111(2) of the ICDR Regulations, 2009, 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."

15. Upon consideration of the aforementioned paragraphs, I am of the view that *prima facie*, JSREL is engaged in fund mobilizing activity from the public, through the *Offer of RPS* 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), the DIP Guidelines read with ICDR Regulations, 2009.

16. 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, administrative authority on the subjects relating to public issue of securities is exclusively 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, over companies who issue *preference shares* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts; the DIP Guidelines read with ICDR Regulations, 2009. Steps, therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by JSREL and no investors are defrauded. In light of the same, I find there is no other alternative but to take recourse through an interim action against JSREL and its Directors, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of RPS*.
17. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act and Clause 17 of the DIP Guidelines read with Regulation 111 of the ICDR Regulations, 2009, hereby issue the following directions-
 - i. JSREL shall forthwith cease to mobilize any fresh funds from investors through the *Offer of RPS* 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. JSREL and its Directors, viz. Shri Chandan Das (DIN:00700889), Shri Ashok Chakraborty (DIN:00700921), Shri Uttam Acharjee (DIN:05112214), Smt. Champa Biswas (DIN:02247075), Smt. Sangita Das (DIN:02014574), Shri Arju Acharjee (DIN:00790737) and Shri Dipamoni Acharjee (DIN: 02247014) 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. JSREL and the 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. JSREL shall provide a full inventory of all its assets and properties;
 - v. The abovementioned Directors of JSREL shall provide a full inventory of all their assets and properties;
 - vi. JSREL and its abovementioned 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 RPS*, without prior permission from SEBI;
 - vii. JSREL and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of RPS*, which are kept in bank account(s) and/or in the custody of JSREL.
 - viii. JSREL and its abovementioned Directors shall, within 21 days from the date of receipt of this interim order cum show cause notice, provide SEBI with all relevant and necessary information.
18. The above directions shall take effect immediately and shall be in force until further orders.
19. The *prima facie* observations contained in this interim order cum show cause notice are made on the basis of the material available on record i.e. information/documents provided by RoC, Shillong; information/documents provided by BIEO, Assam and information obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal. In this context, JSREL and its abovementioned Directors may, within 21 days from the date of receipt of this interim order cum show cause notice, file their reply, if any, to this interim order cum show cause notice 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.
20. This interim order cum show cause notice is without prejudice to the right of SEBI to take any other action that may be initiated against JSREL and its abovementioned Directors in accordance with law.

Place: Mumbai
Date: March 13, 2015

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