

SECURITIES AND EXCHANGE BOARD OF INDIA

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

In respect of:

1. Jeevan Suraksha Real Estate Limited [PAN: AABCJ6757B],
2. Mr. Chandan Das [PAN: AFEPD6600G; DIN: 00700889],
3. Mr. Ashok Chakraborty [PAN: AFZPC5242E; DIN: 00700921],
4. Mr. Uttam Acharjee [PAN: AHRPA3277H; DIN: 05112214],
5. Mr. Pankaj Biswas,
6. Ms. Champa Biswas [DIN: 02247075],
7. Ms. Sangita Das [PAN: AJCPD4443P; DIN:02014574],
8. Mr. Arju Acharjee [PAN: AIDPA6075A; DIN:00790737] and
9. Ms. Dipamoni Acharjee [PAN: AKNPA2732Q; DIN: 02247014].

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') on receipt of reference from the Registrar of Companies (hereinafter referred to as 'RoC'), Shillong against one **Jeevan Suraksha Real Estate Limited** (hereinafter referred to as '**Jeevan Suraksha**' or '**the Company**') had initiated a preliminary examination into the fund raising activities of **Jeevan Suraksha** and asked certain information/ documents from the Company. From certain media reports, it was noted that Assam Police had arrested the Managing Director and owner of 'Jeevan Suraksha Group' Mr. Chandan Das and directors Mr. Ashok Chakraborty and Mr. Uttam Acharjee on the charges of duping investors and had seized various documents. Considering the same, SEBI vide its letter dated June 23, 2014, requested the Office of the Director, Bureau of Investigation Economic Offences Wing, Assam ('BIEO') to provide the copies of relevant documents/ information related to **Jeevan Suraksha** available with them.
 2. BIEO vide letter dated July 11, 2014, provided certain documents/ information. During the examination, the copy of Form 2 (Return of Allotment), list of allottees, copy of Form 23 {Registration of resolution(s) and agreement(s)}, balance sheet and

Profit and Loss account of the company for Financial Year 2008-09, 2009-10 and 2010-11 of Jeevan Suraksha were scrutinized with respect to the issuance of equity shares.

3. From an examination of the documents available on record, I note the following:
- i. Jeevan Suraksha was incorporated on November 09, 2004, with the RoC, Shillong. The Registered Office of the Company is situated at College Road, Lumding, Nagaon, Assam - 782447.
 - ii. The subscribers to the Memorandum of Association of the Company were Mr. Ashok Chakraborty, Mr. Pankaj Biswas, Mr. Chandan Das, Ms. Sangita Das, Mr. Arju Acharjee, Ms. Dipamoni Acharjee and Ms. Champa Biswas.
 - iii. As per the information obtained from 'MCA-21' portal, the present directors of the Company are Mr. Chandan Das, Mr. Ashok Chakraborty and Mr. Uttam Acharjee.
 - iv. The earlier directors of the Company were Ms. Champa Biswas, Ms. Sangita Das, Mr. Arju Acharjee and Ms. Dipamoni Acharjee.
 - v. From the 'form 2' (filed for allotment of Equity Share on March 30, 2007) and the balance sheets of the Company for the financial year 2006-07, it was observed that Jeevan Suraksha had allotted equity shares of face value ₹100 each during the financial year 2006-07. The details of the same are as under:

Year	No. of Equity Share	No. of Allottees	Amount raised (in ₹)
2006-07	10,000	65	10,00,000

- vi. From the copy of the show cause notice dated May 14, 2013 issued by RoC, Shillong to Jeevan Suraksha, it is noted that the Company had not published and/or filed any prospectus with RoC.
4. Having observed the above, I proceed further with the matter and note that the issue for determination in the instant matter is whether Jeevan Suraksha had complied with the applicable provisions of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act'), the Companies Act, 1956 (since repealed) read with the Companies Act, 2013, the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as 'DIP Guidelines') in respect of its issuance of the *equity shares*.

5. As the *equity shares* had been issued by Jeevan Suraksha during the year 2006-07, the provisions of sub-sections (1), (2) and (3) of the Section 67 of the Companies Act, 1956, are applicable to the allotments made by the Company. In terms of Section 67(3), no offer or invitation shall be treated as made to the public by virtue of sub-sections (1) or (2), as the case may be, if the offer or invitation can properly be regarded, in all 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.

In terms of the proviso to the aforesaid section, 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. Therefore, 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 receiving the offer or invitation. The number of persons to whom the shares have been allotted becomes relevant to judge whether an issue of shares is made to public or made on a private placement basis.

6. As noted from the discussion above, the Company had allotted *equity shares* to 65 investors during the financial year 2006-07. As per the first proviso to Section 67(3) of the Companies Act, 1956, where the “offer” or “invitation to subscribe for shares or debentures” is made to fifty persons or more, then it has to be construed as a public offer. In view of the same, the offer and allotment of *equity shares* by Jeevan Suraksha in the financial year 2006-07 is alleged to be made to public. All mobilisation of funds from fifty or more investors should be classified as a public issue requiring the company to make an application to list its securities. In view of the foregoing, it could be observed that the aforesaid issues of *equity shares* made by Jeevan Suraksha were deemed public issues. I now place my reliance on the order of 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’), wherein the Hon'ble Court *inter alia* observed as under:

“... 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.

...

90. ... 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. ...”

[Emphasis supplied]

7. Having observed that the *equity shares* issued by Jeevan Suraksha are in the nature of public issue, the Company was required to comply with provisions of the Companies Act, 1956 and other relevant statutory provisions as applicable. I note that in the case of any public issue of securities, the relevant provisions of the Companies Act, 1956 *inter alia* Sections 60 read with Section 2(36), 56(1), 56(3) and Section 73 thereof needs to be complied with. In terms of Section 60 read with the Section 2(36) of the Companies Act, 1956, a company needs to file a prospectus with respect to its public issue with the RoC. Further, in terms of Section 60B(2) of the Companies Act, 1956, a company inviting subscription by an information memorandum is bound to file a prospectus prior to the opening of the subscription lists, at least three days before the opening of the offer. While Section 60B(3) of the Companies Act, 1956, stipulates that the ‘Information Memorandum’ shall carry the same obligations as are applicable in case of prospectus. Section 60B(9) required Jeevan Suraksha to file a final prospectus with SEBI/ RoC. As per Section 2(36) of the Companies Act, 1956, ‘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 a body corporate. As per the information available on record and a perusal of the show cause notice dated May 14, 2013 issued by RoC, Shillong to the Company, it is observed that the Company had not filed any prospectus/ information memorandum with respect to the said issues of *equity shares* and had also *prima facie* not complied with the above discussed provisions of the Companies Act, 1956.

8. By issuing *equity shares* to more than 49 persons, the Company had to compulsorily list such securities in compliance with Section 73 of the Companies Act, 1956, in order to ensure liquidity and exit opportunity to the subscribers to the shares. As per Section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognised stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. From the material available on record, the Company, does not appear to have done so and thus, contravened the said provisions. It neither made an application seeking listing permission nor refunded the amounts on account of such failure. The Company has also not complied with the provisions of Section 73(3) of the Companies Act, 1956, as it had not kept the amounts received from investors in a separate bank account and failed to repay the same in accordance with Section 73(2) of the Companies Act, 1956. In view of the above, it is alleged that the Company had contravened the provisions of the Companies Act, 1956, which regulates the public issue of securities, including Sections 60B(2), 60B(9) read with Sections 2(36), 56(1), 56(3) and 73 of the Companies Act, 1956, in respect of its collection of public funds towards the issue of equity shares.
9. Considering the discussion above, now I discuss the regulatory powers and the jurisdiction of SEBI on the company 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 of the Companies Act, 1956, in so far as they relate to the issue and transfer of securities 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, shall be administered by SEBI. The terms ‘securities’ as per Section 2(h) of the Securities Contracts (Regulation) Act, 1956 includes ‘shares’. I observe that Sections 67 and 73 of the

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

As per the provisions of Section 55A of the Companies Act, 1956, the administrative authority on the subjects relating to public issue of securities is 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, over companies who issue equity shares to fifty persons or more, but fail to comply with the applicable provisions of the aforesaid statutes. Therefore, in addition to the compliance with the provisions of the Companies Act, 1956, the Company was mandated to comply with the applicable provisions of the ICDR Regulations.

10. I note that SEBI had framed the DIP Guidelines, 2000, in exercise of the powers conferred under the SEBI Act. The Company was also mandated to comply with the provisions of DIP Guidelines, while issuing the equity shares, 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 centers 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)*

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."

11. In view of the above, in addition to the non-compliance with the relevant provisions of the Companies Act, 1956, the Company has also *prima facie* failed to comply with the aforesaid provisions of the DIP Guidelines, with respect to its money mobilization activities from the public by issuing equity shares. In this regard, it is important to note the following observation made by the Hon'ble Supreme Court of India in the matter of *Sahara Case*:

*"90. 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.**"*

12. I note that the Company had allegedly commenced allotment of *equity shares* to the public in the financial year 2006-07. It can reasonably be inferred that the **directors/ promoters of the Company** namely Mr. Chandan Das, Mr. Ashok Chakraborty, Mr. Uttam Acharjee, Mr. Pankaj Biswas, Ms. Champa Biswas, Ms. Sangita Das, Mr. Arju Acharjee and Ms. Dipamoni Acharjee were *prima facie* instrumental in the formulation of the plan/ scheme of the mobilisation of public funds through the issue of *equity shares* without complying with the applicable law, as discussed above.

Section 56(1) and 56(3) read with Section 56(4) of the Companies Act, 1956 imposes the liability for the compliance of the said provisions, on the company, every director, and other persons responsible for the issuance of the prospectus. The liability for non-compliance of Section 60 of the Companies Act is on the Company, and every person who is a party to the non-compliance of issuing the prospectus as per the said section. Similarly, the Company and the directors would be liable for action for not complying with the provisions of the ICDR Regulations. The liability of the Company and directors to repay under Section 73(2) of the Companies Act, 1956 and Section 27 of the SEBI Act, is a joint and several liability on them and is also a continuing liability and therefore such liability would be extinguished only after the repayments are made as mandated under law.

Therefore, the directors (irrespective of whether they continue or resign) who were present during the period when the Company made the offer and allotted equity shares are allegedly liable for violation of Sections 56, 60 and 73 of the Companies Act, including the default in making refunds as mandated therein. Further, the persons who join the Company's Board pursuant to the offer and allotment of securities shall also be liable, if the Company and the concerned directors have failed to make refunds as required under law.

In view of the same, it is alleged that the above stated directors/ promoters of Jeevan Suraksha, being the persons responsible for the conduct of the business, are responsible under Section 27(2) of the SEBI Act, for the contraventions committed by Jeevan Suraksha in its offer and issue of *equity shares*.

13. I note that SEBI had passed an *ex-parte interim* order on March 13, 2015 and a final order on March 16, 2016 with respect to the Company's unauthorized public issue of Redeemable Preference Shares and the Company and its directors were restrained from accessing the securities market, directly or indirectly, by issuing offer document/ advertisement and were also prohibited from dealing in securities. The liability of the

said Company has increased by way of issue of *equity shares* and for preventing the Company and its directors from further carrying on with the fund mobilizing activity under the 'offer of *equity shares*' or any other securities. Therefore, I find it necessary to issue an *interim* order cum show cause notice in respect of issue of *equity shares* allegedly without complying with the public issue norms, as observed in this Order.

14. I also note that SEBI, in its Order dated March 16, 2016, issued against the Company/ directors in respect of unauthorised fund mobilising activity from public, through the offer of Redeemable Preference Shares, has granted liberty to the Company and its directors to sell the assets and deposit the proceeds in an Escrow Account with a nationalised bank for repaying the investors. The amounts in this Escrow Account may also be used to repay the investors to whom *equity shares* have been issued by the Company unauthorisedly, after the final order in this regard is passed.
15. Accordingly, I, in exercise of the powers conferred under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 read with Section 19 thereof and Regulation 107 read with Regulation 111 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions:
 - a. The Company namely **Jeevan Suraksha Real Estate Limited [PAN: AADCC6855H]** and its promoters/directors (present and past) including **Mr. Chandan Das [PAN: AFEPD6600G]**, **Mr. Ashok Chakraborty [PAN: AFZPC5242E]**, **Mr. Uttam Acharjee [PAN: AHRPA3277H]**, **Mr. Pankaj Biswas**, **Ms. Champa Biswas [DIN: 02247075]**, **Ms. Sangita Das [PAN: AJCPD4443P]**, **Mr. Arju Acharjee [PAN: AIDPA6075A]** and **Ms. Dipamoni Acharjee [PAN: AKNPA2732Q]** are restrained from mobilizing funds through the issue of *equity shares* or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.

- b. Jeevan Suraksha Real Estate Limited** and its promoters/ directors including the above named persons 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. Jeevan Suraksha Real Estate Limited** and its promoters/ directors including the above named persons shall not divert any funds raised from public at large through the issuance of the impugned equity shares, kept in its bank accounts and/ or in the custody of the Company without prior permission of SEBI until further orders.
- d. Jeevan Suraksha Real Estate Limited** and its promoters/ directors including the above named persons are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.
- e. Jeevan Suraksha Real Estate Limited** and its promoters/ directors including the above named persons shall co-operate with SEBI and shall furnish all the documents that they have been or shall be required to furnish.
- f. Jeevan Suraksha Real Estate Limited** and its promoters/ directors including the above named persons are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.
- 16.** The above directions shall come into force with immediate effect and shall continue to be in force till further directions. This Order shall be read harmoniously with the SEBI Order dated March 16, 2016 (in respect of **Jeevan Suraksha Real Estate Limited** and its directors).
- 17.** **Jeevan Suraksha Real Estate Limited** and its promoters/ directors including the above named persons shall show cause as to why suitable directions/ prohibitions, under the Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with 73(2) of the

Companies Act, 1956 and the ICDR Regulations, including the following, should not be taken/ imposed against them:

- a. directing them jointly and severally to refund the money collected through the issue of *equity shares* that are impugned in this Order, along with interest at 15% per annum from the date when the refunds became due to the investors till the date of repayment;
 - b. directing them not to issue 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, for an appropriate period;
 - c. directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;
 - d. directing them and other companies in which their directors hold substantial or controlling interest, to not access the capital market for an appropriate period.
18. **Jeevan Suraksha Real Estate Limited** and its promoters/ directors including the above named persons may file their replies/ submissions within a period of 21 days from the date of receipt of this Order and may also indicate whether they desire to avail an opportunity of personal hearing in the matter.
19. This Order is without prejudice to the right of SEBI to take any other action including prosecution proceedings under Section 24 of the SEBI Act and Section 621 of the Companies Act, 1956 read with the relevant provisions of the Companies Act, 2013 and adjudication proceedings under the SEBI Act, against **Jeevan Suraksha Real Estate Limited** and its promoters/ directors including the above named persons, in accordance with law.

Date: May 20th, 2016
Place: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA