WTM/GM /SEBI/ERO/IMD/20 /JUNE/2017

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER cum SHOW CAUSE NOTICE

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF JEEVAN DHARA GEOMINE LTD.

Sr. No.	Noticees	PAN	DIN/CIN
	Company		
1.	Jeevan Dhara Geomine Limited	N.A.	U14200AS2008PLC008752
	Directors		
2.	Sarju Acharjee	N.A.	01844331
3.	Ajoy Kumar Sarkar	N.A.	02030451
4.	Tapash Paul	N.A.	02030470
5.	Rinku Deka	N.A.	01844326

The aforesaid entities are hereinafter referred to by their respective names/noticee serial numbers or collectively as "the Noticees".

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1. Securities and Exchange Board of India ("SEBI") was in receipt of complaints in relation to money mobilization by Jeevan Dhara Geomine Limited ("**JDGL**"). On a perusal of the MCA21 portal, it was noted that JDGL had issued Redeemable Preference Shares ("**RPS**").

2. Based on the complaints received, SEBI sought information pertaining to the collection of money by JDGL. Details of the correspondence with the Noticees are as under:

TABLE 1

Sr. No.	Name of Entity/ Director	Designation	Letter Date	Letter Status (Returned/ Delivered)
1	Jeevan Dhara Geomine Limited	Company	23.08.2016	Undelivered with the comment "Addressee Left"
2	Tapash Paul	Director	05.09.2016	Delivered.
3	Ajoy Kumar Sarkar	Director	05.09.2016	Delivered.
4	Sarju Acharjee	Director	05.09.2016	Delivered.
5	Rinku Deka	Director	03.10.2016	Undelivered with the comment "Insufficient Postal Address".
6	Manoj Kumar Jain	Auditor	05.10.2016	Delivered.

No replies have been received to the letters sent to the aforementioned entities in connection with the issuance of RPS by JDGL.

3. Details pertaining to JDGL were sought to be procured from the MCA21 portal. The following relevant information was taken note of :

(i) Date of Incorporation : 25.07.2008

(ii) Type of the company : Public & Unlisted

(iii) CIN: U14200AS2008PLC008752

(iv) PAN: Not available

(v) Registered Office Address : Avinash Niwas, 1st Floor, Vivekananda Path, Ulubari, Guwahati, Kamrup, Assam 781007.

(vi) Correspondence Office: same as above.

(vii) Date of filing of the last Annual Accounts & Annual Report : 31.03.2011

(viii) Return of allotment -

Issued capital(as on 31.03.2011, as per Balance Sheet filed by JDGL) :

(a) Equity Capital: 8,00,000

(b) Preference Capital : 32,53,400

(ix) Allotment details as per Form 2:

TABLE 2

Year	Date of allotment	Type	No. of allottees	Amount (Rs.)
2009-2010	27.03.2010 (Form-2)	Preference Shares	54	32,53,400

(x) Details of relevant board meeting:

TABLE 3

Date of Board meeting	Date of passing resolution	Amount proposed to raise (Rs.)	Type of issue
25.05.2009	30.01.2009	The subject matter of the resolution was to increase authorized capital from Rs. 50 lakh to Rs. 100 lakh by creation of 50,000 preference shares of Rs.100/- each. Further, it was resolved that the present unclassified authorized share capital be classified by allocating the existing 40,000 shares as redeemable preference shares and the balance shares as Equity Share capital.	

4. A site visit to the registered office address of JDGL was conducted on November 23, 2016 but the company was not traceable. The fact of the company not having filed annual report on the MCA21 portal and the company not being available at its registered office was brought to the notice of the Registrar of Companies ("RoC") by letter dated November 23, 2016.

5. Based on the preference share certificates and receipts of the company submitted to the Board, details of the allotment of RPS are as follows:

TABLE 4

Year	No. of allottee	Amount (`)
2009-2010	146	8,09,400
2010-2011	445	1,27,99,300
2011-2012	31	47,400
TOTAL	**622**	**1,36, 56, 100***

**The amount (in rupees) of the shares is only the amount that was calculated from the preference share certificates which had the value of the shares stated on them. There were many share certificates and receipts which did not have the value stated.*

6. Therefore based on the information available on the MCA21 portal and the complaints received, it is noted that RPS have been issued to atleast **676** persons raising an amount of atleast ` **1,69,09,500** (One crore sixty nine lakh nine thousand five hundred rupees only).

7. Till date, no other replies have been received from JDGL or its Directors, to the letters sent by SEBI seeking information in relation to the company particularly with regard to issuance of capital.

ISSUES FOR DETERMINATION

8. In the context of the details of the offer and allotment of preference shares mentioned in paragraph 6 above (hereinafter referred to as "**the offer and allotment of preference shares**"), the issue for determination in the instant matter is whether or not such mobilization of funds by JDGL is in accordance with the provisions of the Companies Act, 1956 read with the provisions of the SEBI Act, 1992.

RELEVANT PROVISIONS OF LAW AND PRIMA FACIE FINDINGS

9. Section 67 of the Companies Act, 1956 deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

> *"**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)."*

For ascertaining whether the *offer and allotment of preference shares* by JDGL would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the Company is important. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. The information submitted by complainants points to issuance of more shares and to a higher number than that indicated in the MCA21 portal. The large number of allottees and value of amount raised by way of offer and allotment of preference shares leads one to draw an adverse inference against JDGL. Therefore on the basis of complaints received, and available information recorded above, the *offer and allotment of preference shares* by JDGL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

10. From the above, it will follow that such a public issue makes it imperative for JDGL to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act, 1956 is reproduced as under:

*"**Allotment of shares and debentures to be dealt in on stock exchange.***

***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.*

....” (emphasis supplied)

As *the offer and allotment of preference shares* is, *prima facie,* a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement for such shares to be dealt on a recognised stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. I find that JDGL is *prima facie* in breach of the provisions of Section 73 as well.

11. Further, in connection with the public issue, Section 56 of the Companies Act, 1956 mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that JDGL has complied with the provisions of Sections 56 and 60 of Companies Act, 1956, in respect of the *offer and allotment of preference Shares*. In view of the same, I find that JDGL is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the subject offer and allotment of preference shares.
12. In terms of Section 73(2), the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). Further, in terms of Section 62 of the Companies Act, every person who *inter alia* is a director of the company at the time of the issue of

the prospectus and every person who is a promoter of the company, is/are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein. As per the information available on the MCA Portal, the details of the directors of JDGL, including the dates of appointment/cessation as directors, are as under:

TABLE 5

Name of the Directors	Date of Appointment	Date of Cessation
Sarju Acharjee	25.07.2008	-
Ajoy Kumar Sarkar	14.09.2010	-
Tapash Paul	25.07.2008	11.05.2013
Rinku Deka	25.07.2008	14.09.2010

From the above table, it is noted that Sarju Acharjee, Ajoy Kumar Sarkar, Tapash Paul and Rinku Deka were the directors of JDGL at the time of the offer and allotment of RPS and Sarju Acharjee and Ajoy Kumar Sarkar are also presently responsible for the affairs of JDGL.

DIRECTIONS

13. Given that the information provided to SEBI and RoC appears prima facie to be inadequate, it can be reasonably inferred that the money mobilization on the part of JDGL is a continuing affair potentially placing investors at risk. In light of the facts in the instant matter, I find this to be a fit case to pass interim directions against JDGL and its abovenamed Directors. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-

    i. JDGL and the abovenamed Directors namely, Sarju Acharjee, Ajoy Kumar Sarkar, Tapash Paul and Rinku Deka shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;

ii. JDGL and the abovenamed Directors shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through *the offer and allotment of preference shares*;

iii. JDGL and the abovenamed Directors shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* sought vide letters dated August 23, 2016, September 05, 2016 and October 03, 2016.

14. The preliminary findings contained in paragraphs 9 to 12 of this Order are made on the basis of the complaints received and information obtained from RoC. JDGL and the abovenamed Directors (hereinafter collectively referred to as "**Noticees**") are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, namely:-

i. The Noticees to jointly and severally refund the money collected through the *offer and allotment of preference shares*, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment), supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and

ii. The Noticees to be refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.

15. The Noticees, may, within 21 days from the date of receipt of this interim order - cum- show cause notice, file their respective replies. The Noticees are directed to furnish an inventory of their assets in their reply. In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. In the event of the Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary

findings at paras 9 to 12 of this Order and directions at para 14 (i) and (ii) above shall become final and absolute against the Noticees automatically, without any further orders. The Noticees shall comply with the directions at para 14(i) above within a period of 90 days from the date of this Order becoming final. Upon the expiry of the period of 90 days from the date of this Order becoming final and if the Noticees fail to comply with the directions at para 14 above, SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution in addition to making a suitable reference to State Government / Local Police.

16. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.

17. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

Place: Mumbai
Date: June 07, 2017

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA