

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

**FINAL ORDER**

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

In the matter of Suraksha Industries India Limited

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN
1.	Suraksha Industries India Limited	AAQCS1566C	U15400BR2011PLC017235
2.	Shri Arunabha Mukhopadhyay	AEYPM2888J	00566929
3.	Shri Indranil Das	AFTPD7822F	00566904
4.	Shri Subrata Das	AJEPD3008L	02262940
5.	Shri Akhil Chandra Saha	AQMPS4454N	02243929

1. Suraksha Industries India Limited (hereinafter referred to as “**SIIL**”/ “**the Company**”) is a Public company incorporated on July 21, 2011 and registered with Registrar of Companies—Patna with CIN: U15400BR2011PLC017235. Its registered office is at Vill-Rasulpur Suhavan, C/O: Suresh Prasad Singh, Bhagwanpur, Dist - Vaishali, 844114, Bihar.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a complaint dated September 05, 2014 against SIIL in respect of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether SIIL had made any

public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder

3. On enquiry by SEBI, it was observed that SIIL had made an offer of RPS in the financial years 2012-2013 (hereinafter referred to as “**Offer of RPS**”) and raised at least an amount of at least Rs. 82.23 lakhs from at least 794 allottees. The number of allottees and funds mobilized has been collated from the documents submitted by SIIL. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures.
4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated May 07, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against SIIL and its Directors and , viz. Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha (hereinafter collectively referred to as “**Noticees**”)
5. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings were recorded. SIIL had made an *Offer of RPS* during the financial years 2012-2013 and raised at least an amount of Rs. 82.23 Lakh as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in lakh)	Number of allottees
2012-2013	RPS	82.23	794
Total		82.23 <sup>^</sup>	794*

<sup>^</sup>No. of allottees and funds mobilized has been collated from the documents submitted by SIIL. However, actual no. of allottees and amount mobilized could be more than the above indicated figures.

6. The above *Offer of RPS* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and

73(3) of the Companies Act were not complied with by SIIL in respect of the *Offer of RPS*.

7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated May 07, 2015 with immediate effect.

- i. *SIIL shall forthwith cease to mobilize any fresh funds from investors through the Offer of RPS or through any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly, till further directions;*
- ii. *SIIL (CIN: U15400BR2011PLC017235; PAN: AAQCS1566C) and its directors, viz. Shri Arunabha Mukhopadhyay (DIN- 00566929; PAN:AEYPM2888J), Shri Indranil Das (DIN- 00566904; PAN:AFTPD7822F), Shri Subrata Das (DIN- 02262940; PAN: AJEPD3008L) and Shri Akhil Chandra Saha (DIN- 02243929; PAN:AQMPS4454N) 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. *SIIL 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. *SIIL shall provide a full inventory of all its assets and properties;*
- v. *The Directors of SIIL shall provide a full inventory of all their assets and properties;*
- vi. *SIIL 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. *SIIL 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 SIIL;*
- viii. *SIIL and its abovementioned Directors shall, within 21 days from the date of receipt of this order, provide SEBI with all relevant and necessary information as sought by SEBI.*

8. The interim order also directed the SIIL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act should not

be passed against them:

- i.* Directing them jointly and severally to refund money collected through the *Offer of Redeemable Preference Shares* along with interest, if any, promised to investors therein;
  - ii.* 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;
  - iii.* Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
9. Vide the said interim order, SIIL, its abovementioned Directors were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired 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. *Service of interim order:* The copy of the said interim order was sent to all the Noticees vide letter dated May 07, 2015. The Interim Order was served on SIIL and its Directors Shri Arunabha Mukhopadhyay Shri Akhil Chandra Saha and Shri Indranil Das.
11. Vide letter dated May 19, 2015, Shri Akhil Chandra Saha inter alia submitted as follows-
  - i.* That he was never involved into the day to day activities of the company and he was merely an independent director to, act in an Advisory role for dairy and other agricultural related projects.
  - ii.* That he got to know about the group's fund raising activities and he submitted his resignation letter dated 06/05/2013 with copy marked to Register of Company, Kolkata. Further a copy at the said letter was also sent to the commissioner of Police, Lal Bazar, Kolkata to which, Ministry of Corporate Affairs has sought for clarification from the Managing Director of SIIL.
  - iii.* That his resignation letter dated 06/05/2013 was duly uploaded on the ROC site on 01/07/2013.

- iv. That the company has forged his signature and have inserted his name in the Board of Directors stating that he has sought for re-appointment on 05/08/2013, which is totally false and fabricated. Upon knowing this fact , he had lodged a complaint to the Commissioner of Police Kolkata vide letter dated 13/12/2013 with copy to Registrar of Company, Kolkata and Registrar of Company, Patna
- v. That he, aged 68 years was associated with a leading Public sector Insurance Company for 3(Three) decades. His last designation with National Insurance Company Limited was a Regional Manager and he relinquished office in 2005.
- vi. Thereafter he started advisory services in the field of Agriculture as he possess agriculture background and also he represented National Insurance Company Limited for promotion of Mediclaim Insurance.
- vii. In the year 2007, he was approached by Suraksha Family Services to promote mediclaim insurance and accordingly he got associated with them in the said assignment. In view of the then prevailing IRDA regulation, the promotion of Mediclaim Insurance was discontinued. Thereafter, the Managing Director of Suraksha Agrotech Industries Limited Mr. Arunabha Mukhopadhyay advised him to take care & oversee their Dairy projects. Accordingly, he took initiative on holding discussions with Government of West Bengal for taking their Dairy Plants located at Purulia and Haringhata on long term lease basis. Under this pretext, the Managing Director of the company invited him to join their board as Independent Director of Suraksha Agrotech Industries Limited and look after the function of Dairy Projects.
- viii. That day to day functions including financial matters was solely looked after by Mr Arunabha Mukhopadhyay, Managing Director and Mr. Indranil Das, wholetime Director and he had no role in whatsoever manner either in policy framing or financial related matters. He was not a part of the day to day management of the Company and when he observed that there was no financial discipline in the organization, he submitted his resignation letter on 6th May 2013, however the company re-inducted him on the Board of Directors on 5th August, 2013 without obtaining his consent and forging his signature.

- ix. That all information / documents sought by SEBI would be available with the Managing Director of the company (Mr. Arunabha Mukhopadhyay) and would appeal to seek information from the company itself.
12. Vide letter dated May 20, 2015, Mr. Arunabha Mukhopadhyay inter alia submitted that on April 28, 2015, owing to earthquake and lightening, Overhead Tank and roof of their office building was heavily damaged, sealed by Municipal Corporation and repairing work is going on and thus extension of time till June 15, 2015 was sought. Thereafter letter dated June 05, 2015 was received from Mr. Arunabha Mukhopadhyay wherein owing to damage and repairing, extension of at least one month was sought to present/submit the requisite information. In the said letter Mr. Arunabha Mukhopadhyay also submitted that vide letter dated May 29, 2015 he has been addressed as managing director of SIIL, however he is just a simple director of SIIL. Subsequently vide letter dated June 22, 2015, Mr. Arunabha Mukhopadhyay inter alia submitted that on the basis of SEBI's letter, he has already sent compliance of certain instructions, however for compliance of remaining instructions, active cooperation and help from other three directors and Shri Indranil Das in particular is required. He also submitted that Shri Indranil Das has been responsible for supervision and managing all the financials activities since the inception of the company. However despite repeated reminders, no cooperation is being received from the aforesaid Directors and once he receives the cooperation and compliance from other three directors, he will send the same to SEBI without further delay.
13. No reply was received from remaining directors. Subsequently vide notification dated August 23, 2016 published in newspaper *Times of India, Kolkata edition* and notification dated August 23, 2016 published in newspaper *Anand Bazar Patrika, Kolkata* the Noticees were notified by SEBI, that interim order dated May 07, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.
14. Vide the aforesaid notification the Noticees were also notified by SEBI that they will be given the final opportunity of being heard on September 01, 2016 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-*

*parte* on the basis of material available on record. The said intimation of hearing was also send vide letter dated July 29, 2016, all the noticees.

*Hearing and submissions:*

15. Shri Arunabha Mukhopadhyay appeared on behalf of himself and the company and filed letter dated August 31, 2016 and made submissions in line with the aforesaid reply. Vide the aforesaid letter dated August 31, 2016 Shri Arunabha Mukhopadhyay inter alia submitted as follows-

- i. That they have already paid a sum of Rs. 9,60,500/- (Nine lacks sixty thousand five hundreds only) against their total dues up to 2027 of Rs. 82,23,350/- (eighty two lacks twenty three thousand three hundred fifty only - a list certified by Auditor is being submitted.
- ii. That he is not getting any cooperation from other directors of the company.
- iii. That under this compelling circumstances, he is trying his level best for fund generation towards repayment of investors due as mentioned in his letter with a view to protect the investors' interest despite the non-cooperating attitude of the other directors of the Company.
- iv. Considering the above situation, he sought for extension of at least 6 (six) months' time for enabling him to make payment to the Investors.

16. Shri Shriram Niwruiti Bhalerao, Advocate and Mr. Aditya Khanna, Advocate appeared on behalf of both Mr. Akhil Chandra Saha and Mr. Indranil Das. Advocates filed a letter dated August 17, 2016 on behalf of Mr. Indranil Das. Vide the aforesaid letter ARs inter alia submitted as follows-

- i. That in July 2011 Sri Arunabha Mukhopadhyay of Suraksha Agrotech Industries Limited formed one company named as Suraksha Industries India Limited, registered office at Patna with main objective to implement agricultural and allied projects including Diary and Goatary.

- ii. That he informed that one professional director having Agricultural background with sufficient experience will also be inducted in the board. Accordingly, Mr. Indranil Das joined the company as Director.
- iii. That Sri Arunabha Mukhopadhyay became the Managing Director and all the decisions, either financial or technical, were taken by him unilaterally and acted like a dictator. He also informed that he is the master in formulating all types of schemes. His wrong and unethical decisions landed Mr. Indranil Das in rough weather.

17. Further ARs on behalf of Mr. Akhil Chandra Shah sought inspection of documents and another opportunity of hearing after inspection of documents. Accordingly inspection of documents was provided to Mr. Akhil Chandra Shah on September 02, 2016 and next date of hearing was scheduled on September 08, 2016 for Mr. Akhil Chandra Shah. The hearing dated September 08, 2016 was rescheduled to October 18, 2016 wherein the ARs appeared and filed written submission dated October 18, 2016. Vide the aforesaid written submissions ARs inter alia submitted as follows-

- i. That the issuance of RPS by the Company was done without the knowledge of the Noticee, and that he has exercised all due diligence including filing Police Complaints/ Complaints before the ROC etc, in respect of the subject transactions. The day to day functioning and operation of the Company including the financial transactions were looked after by Mr Indranil Das (Wholetime Director) of the Company and Mr Arunabha Mukhopadhyay (Managing Director) of the Company; that the Noticee was not in charge of the Company's day to day management, affairs, functioning and operations, and had no part and role to play in policy framing and financial matters
- ii. That since it was found that the in-charged Management of the Company was irresponsible and indiscipline with respect to various affairs of the Company, including the financial affairs, the Noticee had resigned from the Company on May 06, 2013 and that despite the Noticee's resignation from the Company on May 06, 2013, the Management of the Company had, however, fraudulently re-inducted him



in the Board of Directors by forging and fabricating the Consent letter allegedly signed by him, to which he had filed the Complaint with Registrar of Companies

- iii. That there may be some element of lack of due skill and diligence on part of the Noticee in signing certain documents at instance of the in-charged Directors of the Company, in good faith and trust, however, it cannot be by any stretch of imagination said that the Noticee was guilty and have violated the provision of applicable laws. The said acts of the Noticee may have been an inadvertent error on the Noticee' end but no malafide intent be derived therefrom.
- iv. Thus, as can be apparently seen from the details / documents / disclosures, in respect of the subject transactions, the Noticee had no mala fide intent to defraud or cheat any investors / subscribers or otherwise. The Noticee further urge SEBI to appreciate that the alleged noncompliance of applicable provision of law by the Noticee, as sought to be alleged by SEBI, was totally on part of the Company. The non-compliance by the Company as well as the non-involvement / non-participation of the Noticee in the affairs of the Company, does not make the Noticee liable / responsible. No adverse inference may be drawn there from. That the Noticee respectfully submits that he was not fully well versed with the procedural compliances of Laws.

- 18. Vide notification dated June 10, 2017 published in newspaper *Times of India, Kolkata edition* and notification dated June 10, 2017 published in newspaper *Anand Bazar Patrika, Kolkata* the Noticees were once again notified by SEBI that they will be given the last opportunity of being heard on June 28, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.
- 19. Shri Akhil Chandra Saha has appeared for hearing scheduled on June 28, 2017 and made the oral submissions in line with replies available on record. He also made inter alia the following submissions:

- (a) He has done Master in Agriculture. He joined SIIL considering that he will get good exposure to work in agriculture field, as SIIL deals in real estate projects. He joined as a director of SIIL and was getting a monthly salary of Rs. 12,000/- only.
  - (b) He requested other directors to make an investment of approximately Rs. 35 lakhs in Dairy Project, however, the same was rejected by them. On a few more occasion his request for investment was again rejected. Thereafter in May 2013 he had resigned from the company, however, after a period of one month, the other directors had again inducted him into the board of directors of SIIL by forging his signature.
  - (c) He is one of the director of Suraksha Agrotech Limited and SEBI had passed final order dated October 12, 2015 in the matter of Suraksha Agrotech Limited. He had failed to comply with the directions of the said order, pursuant to which SEBI had initiated the recovery proceedings, due to which his demat and bank accounts along with fixed deposits were frozen.
  - (d) He also stated that his pension account was also frozen, however, same was released upon request with SEBI.
  - (e) He requested to de-freeze his bank accounts & fixed deposits in order to provide livelihood to his family.
20. Shri Arunabha Mukhopadhyay appeared for hearing scheduled on June 28, 2017 and made the oral submissions in line with replies available on record. He also made inter alia the following submissions:
- (a) He is a Chartered Financial Analyst and a qualified Banker. He alongwith other directors had started the company SIIL in the year 2011 with the purpose of investment in real estate projects. In SIIL he was looking into the administrative issues and investments in share trading.
  - (b) He accepted the fact that SIIL had raised the money from public of approximately Rs. 82.23 lakhs from 794 investors. Limited. He is ready to refund the money to investors and approximately Rs. 9.5 lakhs was refunded to investors.
  - (c) Further, company did not purchase or create any assets in its name. The money collected is diverted to the mother company i.e. Suraksha Agrotech Limited, or spent on expenses.

- (d) He stated that vide interim order dated May 07, 2015 in the matter of SIIL there is an embargo on Company and the Directors that they 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.
- (e) He is one of the directors of Suraksha Agrotech Limited and SEBI had passed the final order dated October 12, 2015 in the matter of Suraksha Agrotech Limited. He had failed to comply with the directions of the said order, pursuant to which SEBI had initiated the recovery proceedings.
- (f) He stated that SIIL should be allowed to utilize the funds raised from selling the assets of Suraksha Agrotech Limited to give refunds to the investors of Suraksha Industries India Limited, as both the companies belongs to Suraksha Group family.
- (g) In addition to the above submissions, he requested 7 days' time to submit the additional written submissions in the matter
21. During the course of hearing, Shri Arunabha Mukhopadhyay filed the submissions dated June 28, 2017 wherein he interalia submitted the following.
- (a) That they could not mobilize fund for repayment to the investors - owing to the embargo on disposal of properties ordered by SEBI on their properties in the name of M/s Suraksha Agrotech Industries Ltd.
- (b) That apart from the land properties - the valuation of our "DIGHA HOTEL, at Midnapur, West Bengal is near about Rs. 10 Crores and above and if the Company can dispose of the Digha Hotel, the entire dues / liabilities of their Suraksha Group of Companies will be cleared off easily. The total dues of three companies is as follows-

Name of the company	Total Liabilities	Already Paid by the company	Net Dues at Present
Suraksha Agrotech Industries Ltd.	11,45,97,600.00	5,51,58,650.00	5,94,38,950.00
Suraksha Industries India Ltd.	82,23,350.00	9,60,500.00	72,62,850.00
Suraksha Family Services Ltd.	82,30,000.00	43,63,500.00	38,66,500.00
		Total Dues	7,05,68,300.00

- (c) Apart from the Hotel the above companies possessed 14 Bighas of land at Malbazar, North Bengal, West Bengal, 21 Bighas of land at Banarhat North Bengal, West Bengal and 7 Bighas of land at Haringhata near Kalyani District Nadia, West Bengal.
- (d) In view of the above, it was requested that their case may be considered sympathetically and the embargo order be withdrawn at earliest as well as extend at least one year time because:
  - a. The property market is very much dull at the moment.
  - b. Due to non-cooperative attitude of other directors as they absent from the office since May, 2013 and Shri Arunabha Mukhopadhyay is the only person attending office, meeting the investors and doing all necessary compliances as and when required at his level best which he has informed to SEBI in his previous letters.
- (e) That the company under reference will be able to pay off all the dues as per record by disposing the properties specially the Digha Hotel if the company gets necessary permission from SEBI.

22. Shri Arunabha Mukhopadhyay was advised to submit the following information:

- (i) List of 794 investors.
- (ii) List of investors to whom refund was made.
- (iii) Shareholding (equity shares) of Shri Arunabha Mukhopadhyay in Suraksha Industries India Limited.

Shri Arunabha Mukhopadhyay was granted time till July 05, 2017 to submit the aforesaid information and additional written submissions, if any, in the matter.

23. Shri Arunabha Mukhopadhyay submitted the aforesaid information and submitted written submissions dated July 05, 2017 wherein he interalia submitted as under-

- a) The company was incorporated in July '2011' with the following four Promoter Directors - Mr. A. C. Saha, Mr. Arunabha Mukhopadhyay, Mr. Indranil Das and Mr. Subrata Das.
- b) Regarding utilization of Fund of 82 lacs approx as raised by the company as per record - nearly 15% - 20% appear to have been spent towards payment of commission to marketing people and field functionaries, 3% -5% on account of Administrative

Overhead for running the company, Rs.9.60 lakhs towards maturity payment to investors and utilization of balance amount may be explained by Mr. Indranil Das, Director who is responsible for handling the financial operation of the company.

- c) Regarding observation of regulatory compliance with respect of issuance of redeemable preference share, the matter was discussed by all the existing Directors of the company under reference wherein Mr. Akhil Chandra Saha and Mr. Subrata Das Director of the company both had assured and advised the company that the company has got legitimate right to issue redeemable preference share and such action will not violate any provision of the existing laws.
- d) On the basis of such advise and guidance the company has decided to issue the redeemable preference share by filing appropriate forms with registrar of company of West Bengal with requisite fees for this purpose.
- e) Shri Arunabha Mukhopadhyay submitted that he was a banker of a leading Nationalized Bank for 20 years-after taking VRS joined this Suraksha Group on request of Late Paresh Chandra Das (Father of Mr. Indranil Das, Director) on the basis of his assurance that a broking house will be opened under supervision of Shri Arunabha Mukhopadhyay as he had sufficient financial background being a CFA (Chartered Financial Analysts) for this purpose.
- f) But after the death Shri Paresh Chandra Das - Mr. Indranil Das (his son) Director took the overall charges of the company. Being major share holders (along with his relatives, friends and associates) of the company the entire finance & financial matters were controlled by him along with their Business Development Manager Mr. Sujit Mukherjee. Mr. Sujit Mukherjee was mainly responsible for appointing agents and field functionaries at different places for mobilization of funds under this redeemable preference shares and he played an important role also in collection of funds.
- g) The entire cash holding, cash disbursement was done by Mr. Indranil Das and Mr. Sujit Mukherjee jointly. Other Directors including Shri Arunabha Mukhopadhyay had no idea about it.

- h) In the year 2012 - Shri Arunabha Mukhopadhyay had entered an agreement with 'FROSTER' for preparing a Mineral Water Plant at their Nalbazar Land for the purpose of marketing their Mineral Water in the entire North-East India. But the same also could not be implemented as Indranil Das did not disburse requisite fund for the same. The entire 'Suraksha Group' was controlled by Mr. Indranil Das and his two associate Mr. Sujit Mukherjee (Right Hand) and Mr. Ranjit Das Pattanaik (Left Hand) Ex-Director of Suraksha Agrotech and contractor of Digha Hotel and his cousin brother Mr. Subrata Das, Director.
  - i) After May 2013 all of them flew away despite repeated request of Shri Arunabha Mukhopadhyay.
24. Thereafter Shri Arunabha Mukhopadhyay submitted letter dated August 29, 2017 wherein he has stated that he has already submitted the paid list of Rs. 9,60,500 in support of the payment made by them to the redeemable preference shareholders.
25. Vide letter dated March 08, 2018, all the noticees were given opportunity to provide documentary evidence on the fact of who is the managing director/s and the whole-time director/s of SIIL along with the supporting documents including but not limited to (i) copy of resolutions of the Board of Directors of a company or agreement executed by a company relating to the appointment of managing director/s and the whole-time director/s, (ii) copy of notice calling for General meeting proposing to appoint Managing Director, whole-time director (iii) Copy of General Body resolution for the said appointment (iv) documents showing managing director/s and the whole-time director/s being in full-time employment of the company (v) copy of resolutions of the Board of Directors of a company authorizing any particular director (if any) to discharge the obligation on account of deemed public issue.
26. Shri Indranil Das vide email dated March 13, 2018 interalia submitted the following without any documentary support-
- i. Mr. Arunabha Mukhopadhyay is the Managing Director of SIIL since incorporation of the company till date. He along with his wife Mrs. Rina Mukherjee operated the entire company.

- ii. He (Indranil Das), Shri Subrata Das and Shri Akhil Chandra Saha were directors of the company.
- iii. That he was betrayed and never got his remuneration. He tendered his resignation on May 02, 2013 five years back but it was not submitted to ROC.
- iv. No resolutions were made and no paper works was done. All the funds raised through issuance of preference shares by SIIL were siphoned to its mother concern Suraksha Agrotech Industries Ltd.
- v. That he is a 12<sup>th</sup> pass person and it was difficult for him to trace the motive of Mr. Arunabha Mukhopadhyay who was a well-educated ex-bank employee.
- vi. That he is not guilty of the charges in any way in the instant case.

Further, Shri Akhil Chandra Saha vide letter dated March 15, 2018 received on March 20, 2018 submitted that Shri Arunabha Mukhopadhyay was the Managing Director of the company and Shri Indranil Das and Subrata Das were the whole time directors of the company and he has no access to any supporting documents as he was an independent director.

27. I have considered the allegations and materials available on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

- (1) Whether the company came out with the Offer of RPS as stated in the interim order.*
- (2) If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.*
- (3) If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

**ISSUE No. 1- Whether the company came out with the Offer of RPS as stated in the interim order.**

28. I have perused the interim order dated May 07, 2015 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.
29. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the documents received from SIIL that SIIL has issued and allotted RPS to at least 794 investors during the financial years 2012-2013 and raised at least an amount of Rs. 82.23 Lakh. I also note that the number of allottees and funds mobilized has been collated from the documents submitted by SIIL. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than 794 allottees and Rs. 82.23 Lakhs respectively.
30. *I therefore conclude that SIIL came out with an offer of RPS as outlined above.*

**ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.**

31. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of RPS* made to the public. Therefore the primary question that arises for consideration is whether the issue of RPS is 'public issue'. At this juncture, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

*"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)."*

32. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI* (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the "***Sahara Case***"), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

*"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.”*

33. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not 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, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.
34. In the instant matter, I find that RPS were issued by SIIL to at least 794 investors in the financial years 2012-2013 raising amount of at least Rs. 82.23 lakhs. However, this number is not conclusive as it is based on the documents received by SEBI from SIIL and the actual

number of investors could be more than 794. I find that SIIL has mobilized at least an amount of Rs. 82.23 Lakh over the financial year 2012-2013 which is not a conclusive value as it is based on the documents submitted by SIIL. The above findings lead to a reasonable conclusion that the *Offer of RPS* by SIIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

35. I find that SIIL has not claimed it 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 there is no case that SIIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
36. Neither SIIL nor its directors have contended that the *Offer of RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
37. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that “In terms of Section 67(3) of the Companies Act any issue to ‘50 persons or more’ is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellants have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning”.
38. Therefore, in view of the material available on record, I find that the *Offer of RPS* by SIIL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS* are deemed to be public issues and SIIL was mandated to comply with the 'public issue' norms

as prescribed under the Companies Act, 1956.

39. Further, 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. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized 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.
40. The allegations of non-compliance of the above provisions were not denied by SIIL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that SIIL has contravened the said provisions. SIIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that SIIL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.
41. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ 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 the offer of RPS was a deemed public issue of securities, SIIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that SIIL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that SIIL has not complied with the provisions of section 60 of the Companies Act, 1956.
42. In terms of 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 a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Neither SIIL nor its directors produced any record to show that it has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, SIIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

43. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, 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, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sabara 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."*

*"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"*

44. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase "intend to get listed" in the context of deemed public issue the Hon'ble Supreme Court in *Sabara Case* observed-

*"...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to*

*be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...*

*“...Listing of securities depends not upon one’s volition, but on statutory mandate...”*

*“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”*

45. In view of the above findings, I am of the view that SIIL was engaged in fund mobilizing activity from the public, through the offer of RPS and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956,

***ISSUE No. 3- If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?***

46. Mr. Arunabha Mukhopadhyay submitted that he has been addressed as managing director of SIIL, however he is just a simple director of SIIL. He further submitted that he is a Chartered Financial Analyst and he along with other directors had started the company Suraksha Industries India Limited in the year 2011 with the purpose of investment in real estate projects. He accepted the fact that SIIL had raised the money from public of approximately Rs. 82.23 lakhs from 794 investors. He is ready to refund the money to investors and approximately Rs. 9.5 lakhs was refunded to investors. He further submitted that the company did not purchase or create any assets in its name and the money collected was diverted to the mother company i.e. Suraksha Agrotech Limited, or spent on expenses. Therefore SIIL should be allowed to utilize the funds raised from selling the assets of Suraksha Agrotech Limited to give refunds to the investors of Suraksha Industries India Limited, as both the companies belongs to Suraksha Group family. Shri Arunabha Mukhopadhyay also submitted that Shri Indranil Das has been responsible for supervision and managing all the financials activities since the inception of the company, however despite repeated reminders, no cooperation is being received from the aforesaid Director.

Mr. Indranil Das admitted that he along with Shri Subrata Das and Shri Akhil Chandra Saha

were directors of the company. He further submitted that Shri Arunabha Mukhopadhyay of Suraksha Agrotech Industries Limited formed SIIL with main objective to implement agricultural and allied projects including Dairy and became the Managing Director of SIIL and all the decisions, either financial or technical, were taken by Shri Arunabha Mukhopadhyay unilaterally, thus implying that Mr. Indranil Das had no active role in the financial decisions/affairs of the company.

Mr. Akhil Chandra Shah similarly submitted that he was never involved in the day to day activities of the company and he was merely an independent director to, act in an Advisory role for dairy and other agricultural related projects. Mr. Akhil Chandra Shah submitted that day to day functions including financial matters of SIIL was solely looked after by Mr Arunabha Mukhopadhyay, Managing Director and Mr. Indranil Das, whole time Director and he had no role in whatsoever manner either in policy framing or financial related matters.

47. At this juncture I would like to rely on Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI wherein Hon'ble SAT has observed that-

*‘Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956.’*

Thus in view of SAT decision of Manoj Agarwal vs. SEBI, the contention of the directors of SIIL namely Mr. Indranil Das, Mr Arunabha Mukhopadhyay and Mr. Akhil Chandra Shah that they are not being involved in the day today affairs and finances of the company is not acceptable and will not absolve them from their liability as a director of SIIL.

48. Shri Akhil Chandra Shah also submitted that that the issuance of RPS by the Company was done without his knowledge. He, as a director of SIIL, cannot claim that he is not aware of the issuance of RPS during his tenure of directorship. A person cannot assume the role of a director in a company in a casual manner. The position of a ‘director’ in a public company comes along with responsibilities and compliances under law associated with such position,

which have to be fulfilled by such director or face the consequences for any violation or default thereof. Any director cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Mr. Akhil Chandra Shah was also responsible for all the deeds/acts of the Company during the period of his directorship and was obligated to ensure SIIL does not undertake fund mobilizing activity in violation of law.

49. Shri Akhil Chandra Shah further submitted that he had resigned from the Company on 06/05/2013; and that despite the Noticee's resignation from the Company on 06/05/2013, the Management of the Company had fraudulently re-inducted him 05/08/2013 in the Board of Directors by forging and fabricating the Consent letter allegedly signed by him, to which he had filed the Complaint with Registrar of Companies Patna and Kolkata and Commissioner of Police Kolkata. It is noted RPS was issued in 2012-2013 (with the date of Allotment of RPS on June 01, 2012) i.e. during his undisputed first stint of directorship from July 21, 2011 to May 06, 2013. Since Mr. Akhil Chandra Shah was Director of SIIL during the issuance of RPS, he is indeed liable to refund the money raised through RPS in view of SAT decision of Manoj Agarwal. The question only remains with regard to his second stint of directorship from 05/08/2013 till date. The directors who are inducted subsequent to fund mobilization are liable to ensure refund as per decision of SAT in the matter of Manoj Agarwal vs. SEBI. In view of the same, the only issue under and for determination is whether Mr. Akhil Chandra Shah is also liable to ensure refund on account of his second stint of directorship. Mr. Akhil Chandra Shah has claimed that he has been re-inducted in the Board of Directors by forging and fabricating the Consent letter allegedly signed by him. In this regard he has produced copy of Complaint with Registrar of Companies Patna and Kolkata and Commissioner of Police Kolkata, however he has not produced any Court's Final Order with respect to the issue of forgery. In view of the same, I am inclined to go as per MCA records which shows him as present Director of SIIL and thus consider him as present Director of SIIL and is also liable to ensure refund. I also note that Mr. Akhil Chandra Shah is at liberty to produce Court's Final Order on the issue of forgery within 3 months from the date of this Order, in case there is a final order passed by the court. In case the proceedings



in respect of determination of forgery is pending before the court and the same has not been concluded within the said three months, he may produce the same thereafter. On production of the copy of the final order, his liability for ensuring refund will be accordingly determined and communicated by SEBI. In view of the non-production of evidence on the proof of forgery, Mr. Akhil Chandra Shah is deemed to continue as director.

50. Shri Akhil Chandra Saha has also submitted that he was one of the directors of Suraksha Agrotech Limited and SEBI had passed final order dated October 12, 2015 in the matter of Suraksha Agrotech Limited. Since he had failed to comply with the directions of the said order, SEBI had initiated the recovery proceedings, due to which his demat, bank accounts, fixed deposits were frozen and his pension account was frozen, however, same was released upon request with SEBI. In this regard I note that property liable to attachment on noncompliance of SEBI's Order is governed as per the provisions of Section 60 of Civil Procedure Code.
51. I also note that Shri Indranil Das vide email dated March 13, 2018 has also submitted that he tendered his resignation on May 02, 2013 five years back but it was not submitted to ROC. However apart from a mere claim, no documentary proof was submitted to substantiate this claim. In view of the same, I am inclined to go as per MCA records which shows him as present Director of SIIL.
52. From the documents available on record, I find that the present Directors in SIIL are Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha. The details of the appointment and resignation of the directors are as following:

<b>Name of the directors</b>	<b>Date of appointment</b>	<b>Date of cessation</b>
Shri Arunabha Mukhopadhyay	July 21, 2011	Continuing
Shri Indranil Das	July 21, 2011	Continuing
Shri Subrata Das	July 21, 2011	Continuing

Shri Akhil Chandra Saha	July 21, 2011	Continuing
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53. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, SIIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
54. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.
55. In this respect one of the Directors of the company, Shri Arunabha Mukhopadhyay has submitted that the company has repaid to the investors to the tune of Rs. 9,60,500/- and submitted Chartered Accountant's Certificate for the same. I have perused the Certificate of Chartered Accountant and the list of allottees paid by SIIL as on 23<sup>rd</sup> August 2016. I observe that SIIL has submitted list of 65 allottees who have been paid the maturity amount to the tune of Rs. 9,60,500/-. However, the noticees have has not shown that the repayments and interest payments to investors is effected through Bank Demand Draft or Pay Order crossed as "Non-Transferable or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents .

56. I also note that Shri Arunabha Mukhopadhyay has submitted that the company did not purchase or create any assets in its name and the money collected was diverted to the mother company i.e. Suraksha Agrotech Limited, or spent on expenses. He, thus, prayed that SIIL should be allowed to utilize the funds raised from selling the assets of Suraksha Agrotech Limited to give refunds to the investors of Suraksha Industries India Limited, as both the companies belongs to Suraksha Group family. However I note that the noticees have not submitted any supporting documents to substantiate their claim. Even if the same is true, the liability to repay is on the SIIL and the directors of SIIL who are liable to repay and thus his request cannot be accepted.
57. From the material available on record and the details of the appointment and resignation of the directors of SIIL as reproduced in paragraph 52 of this Order, it is noted that , Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha were directors at the time of the issuance of RPS. Since these persons were acting as directors during the period of issuance of RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. Vide letter dated March 08, 2018, all the noticees were given opportunity to provide documentary evidence on the fact of who is the managing director/s and the whole-time director/s of SIIL along with the supporting documents with respect to any resolutions of the Board of Directors of a company authorizing any particular director (if any) to discharge the obligation on account of deemed public issue. However, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of SIIL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956 with supporting documents. Therefore, as per Section 5(g) of the Companies Act, 1956 all the past and present directors of SIIL, as officers in default, are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with

rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act. Therefore, I find that SIIL and its Directors, viz. , Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

58. I note that during the financial year 2012-2013, SIIL through Offer of RPS, had collected at least an amount of Rs. 82.23 lakhs from various allottees. I note that Shri Arunabha Mukhopadhyay has been director of SIIL since financial years 2012-2013 till present date. I note that Shri Indranil Das has been director of SIIL since financial years 2012-2013 till present date. I note that Shri Subrata Das has been director of SIIL since financial years 2012-2013 till present date. I note that Shri Akhil Chandra Saha has been director of SIIL since financial years 2012-2013 till present date. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with SIIL and other directors are limited to the extent of amount collected during his/her tenure as director of SIIL.
59. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct SIIL and its Directors, viz., Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors, to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.
60. I also note that, vide the interim order dated May 07, 2015, SIIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of SIIL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the

receipt of the order. However, I find that no such inventory has been provided either by SIIL or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 13 of this Order.

61. In view of the discussion above, appropriate action in accordance with law needs to be initiated against SIIL and its Directors viz. Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das and Shri Akhil Chandra Saha
62. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:
  - a. SIIL, Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
  - b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or any other appropriate banking channel with clear identification of beneficiaries and supporting bank documents
  - c. If SIIL had repaid/redeemed the Preference Shares to certain extent to its investors as per section 73(2) of the Companies Act, along with promised returns as claimed, the above directions in (a) and (b) shall be applicable as modified herein, for the amounts claimed to have been returned to the investors:
    - i. Such prior repayments should have been made by the Company as per the requirements laid down in paragraph 62(b) above and the same shall be certified by peer reviewed Chartered Accountants, as directed in paragraph 62(h) below, or

- ii. The Company shall produce a peer reviewed Chartered Accountant's certificate, for the repayments claimed to have been made by the company, within a period of three months from the date of this Order, certifying repayment on verification of the originals of the application form for RPS bearing signature of the shareholder, certificate of RPS issued by the company to shareholder holder and returned to the Company on redemption, payment receipt/voucher issued by the Company to the shareholder bearing the signature of the shareholders, and corresponding proof of debit from the Bank Account of the Company with an original document of proof of identity, address and signature issued by the State/Central Government to the shareholders bearing their signature and a statement in Chartered Accountant's certificate to the effect that he has made the above said verification enclosing copies of verified documents.
- d. SIIL and Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
- e. SIIL, Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha are permitted to sell the assets of the Company, under the supervision of peer reviewed Chartered Accountants who is engaged for the purpose of certification under paragraph 62(h) below, for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- f. SIIL, Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole

- purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- g. SIIL and Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
  - h. After completing the aforesaid repayments, SIIL, Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("**ICAI**") holding such certificate.
  - i. In case of failure of SIIL, Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from the company and the directors liable to refund as specified in paragraph 62(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
  - j. SIIL, Shri Arunabha Mukhopadhyay, Shri Indranil Das, Shri Subrata Das, Shri Akhil Chandra Saha are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order,

till the expiry of **4 (four) years** from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of **4 (four) years** from the date of completion of refunds to investors.

- k. The above directions shall come into force with immediate effect.
63. A copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
64. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.
65. A copy of this Order shall also be forwarded to Local Police/ State Government for information.

**DATE: March 27, 2018**

**PLACE: Mumbai**

**MADHABI PURI BUCH  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**