

**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 Seashore Securities Ltd.

In re Deemed Public Issue Norms

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN/Address
1.	Seashore Securities Ltd.	AALCS9420L	U67120OR2008PLC009969
2.	Mr. Prashanta Kumar Dash	AENPD6409F	00843963
3.	Mr. Pravat Kumar Dash	AEKTD7710E	02031548
4.	Ms. Jyotirani Sarangi	ATYPS3889C	01321926
5.	Mr. Sudhanshu Shekhar Pati	AONPP6949L	00756296
6.	Ms. Sapna Jena	AJBPI8557H	03419332
7.	Mr. Gopal Chandra Sahu	AXCPS5392Q	05240823
8.	Mr. Surath Das	ALVPD8457D	-
9.	Ms. Shantiprava Dash	Not Available	W/o- Mr. Umesh Chandra Dash, At/PO- Turanga, Dist-Angul, Odisha- 759122
10	Mr. Manoj Kumar Nath	ADEPN2533N	-
11	Ms. Prativa Dash	ABRPD7107P	-

-
1. Seashore Securities Ltd. (hereinafter referred to as “SSL”/ “company”) is a Public company incorporated on April 25, 2008 and registered with Registrar of
-

Order in the matter of M/s Seashore Securities Ltd.

Companies–Odisha with CIN: U671200R2008PLC009969. Its registered office is at 298/A, Saheed Nagar, Bhubaneswar –751007, Odisha, India.

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons against SSL in respect of issue of Redeemable Preference Shares (hereinafter referred to as “**RPS**”) and undertook an enquiry to ascertain whether SSL 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 including SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as “**DIP Guidelines**”) read with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations**”)
3. On an enquiry by SEBI, it was observed that SSL had made an offer of RPS in the financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 (hereinafter referred to as “**Offer of RPS**”) and raised at least an amount of ₹ 503,22,80,600 from at least 76,758 allottees. In view of the receipt of the compliant in the instant matter by SEBI, the actual number of investors could be more than 76,758. 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 July 23, 2014 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against SSL and its Directors and Promoters, viz. Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena, Mr. Gopal Chandra Sahu, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash (hereinafter collectively referred to as “**Noticees**”)

5. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings were recorded. SSL had made an *Offer of RPS* during the financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 and raised at least an amount of ₹ 503,22,80,600 as shown below:

Year of Issue	Security Issued	Amount raised (₹) (in lakh)	Number of allottees
2008-2009	RPS	728,182,000.00	11069
2009-2010		1,127,767,000.00	17330
2010-2011		1,837,837,400.00	28787
2011-2012		1,334,289,200.00	19522
2012-2013		4,205,000.00	50
Total		503,22,80,600^	76,758*

[^]* No. of allottees and funds mobilized has been collated from the documents obtained from the 'MCA 21 Portal'. 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), 73(3) read with Section 27(2) of the SEBI Act and applicable provisions of DIP Guidelines and ICDR Regulations were not complied with by SSL and its Directors / Promoters 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 July 23, 2014 with immediate effect.

- The company namely Seashore Securities Limited and its promoters and directors including Mr. Prashanta Kumar Dash [PAN: AENPD6409F], Mr.

Pravat Kumar Dash [PAN: AEKTD7710E], Ms. Jyotirani Sarangi [DIN: 01321926], Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena [DIN: 03419332] and Mr. Gopal Chandra Sahu [DIN: 05240823] are restrained from mobilizing funds through the issue of redeemable preference shares or through the issuance of equity shares or any other securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.

- Seashore Securities Limited and its promoters and directors including Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena and Mr. Gopal Chandra Sahu 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.*
- Seashore Securities Limited and its promoters and directors including Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena and Mr. Gopal Chandra Sahu shall not dispose any of the properties of the said company or alienate the assets acquired/created through the funds raised from public by issuance of the impugned redeemable preference shares*
- Seashore Securities Limited and its promoters and directors including Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena and Mr. Gopal Chandra Sahu shall not divert any funds raised from public at large through the issuance of the impugned cumulative redeemable preference shares, kept in its bank*

accounts and/or in the custody of the company without prior permission of SEBI until further orders.

- Seashore Securities Limited and its promoters and directors including Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena and Mr. Gopal Chandra Sahu are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities and being associated with the securities market in any manner whatsoever, directly or indirectly through any person/ entity till further direction.*
- The company namely Seashore Securities Limited and its promoters and directors shall cooperate with SEBI in the investigation and shall furnish documents, that are in their possession, which may be required by SEBI in the course of its investigation.*

8. Vide the said interim order, SSL, its abovementioned Directors/ Promoters were given the opportunity to file their objections, if any, 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.
9. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letters dated July 28, 2014 and August 27, 2014. As the letter forwarding the *interim* order in respect of SSL and Mr. Prashanta Kumar Dash had returned undelivered, SEBI forwarded the same to the Superintendent of Police, Economic Offence Wing, vide letter dated September 17, 2014, requesting for the delivery thereof. The same was duly served on SSL and Mr. Prashantha Kumar Dash on October 09, 2014, in the District Jail, Koraput. Superintendent of Police, Koraput had

intimated vide letter dated September 17, 2014 that the copy of interim order was served on him in jail in presence of two witnesses.

10. In response to the interim order, the Directors of the company submitted their replies vide separate letters, The content of the same are summarised below:

a. Ms. Sapna Jena vide her undated letter received by SEBI on August 19, 2014, replied to the *interim* order as follows:

- The company had raised capital through issue of redeemable preference shares in terms of Section 86 of the Companies Act, 1956 and Article 9 of the Articles of Association so as to meet its capital expenditure for different projects undertaken by it and also for investment in group companies for implementing different projects either individually or jointly with Government of Odisha in Public Private Partnership mode. The issue of redeemable preference shares was made on private placement basis to friends and associates of the company and the same cannot be construed as public issue in terms of the SEBI Regulations and the Companies Act, 1956.
- Redeemable preference shares is a share as defined under Section 85 of the Companies Act, 1956 and the same does not carry any voting rights. Such shares have preference in respect of dividend and redemption. It has to be redeemed within a maximum period of 20 years under Section 80(5A) of the Companies Act, 1956. A public ltd. company, if authorized by Articles can issue preference shares provided that the offer is not made public in terms of Section 67 of the Companies Act, 1956. The company had never induced any public to invest in the preference shares at any point of time nor issued any prospectus to attract public to invest in such shares.
- The company had issued 6,50,000 equity shares @ ₹ 10 each and 50,26,28,060 preference shares @ ₹ 10 each. Until the raid by the Crime branch and seizure

of its assets, the company was regular in paying dividend and redemption of preference shares whenever asked for.

- The office premises of the company was found locked by SEBI as much before the visit of SEBI officials, the Crime branch of Odisha police had searched the office and factory premises of the company, evicted all the staffs and also sealed it.
- The application form issued by the company had clearly mentioned about the issuance of 'redeemable cumulative preference shares', in furtherance of which the company would give dividend as a token of return on investment. Therefore, the interest of depositors was shown in the accounts of the company as dividend in terms of the provisions of the Companies Act, 1956 and paid to the depositors.
- The Company has never carried on any activity which can be called as NBFC business.
- Persons like Mr. Prasanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Prativa Dash are mere subscribers to the Memorandum of Association and Articles of Association of the company and are not Directors.
- Ms. Shantiprava Dash was neither a Director nor holds any official position in the company. She was a mere shareholder of the company and subscribed to the Memorandum of Association and Articles of Association of the company to the tune of 10 shares amounting to ₹ 100 only in order to accomplish the mandatory requirement of incorporation under the Companies Act, 1956 and her liability was limited only to the extent of her subscribed shares in the

Company. The *interim* order has implicated her for the alleged action for which she was not responsible for.

- Mr. Pravat Kumar Dash was appointed as a director of Seashore for a short duration and resigned since long. Allegations regarding the applicable sections of the SEBI Act were not during his tenure, hence, implicating him on the subject is not fair.
- As regards, the 6,00,000 preference shares allotted to Mr. Prashanta Kumar Dash, Managing Director, it is submitted that the amount has been collected by the company to some extent as application money and the rest amount was treated as call in arrear due for collection.
- The major outflows of company's fund towards its group companies are as per the applicable mandatory provisions of the Companies Act, 1956, with a hope of getting adequate return in future.
- As regards, the issuance of cumulative preference shares to more than 50 persons, the same was inadvertently done as the issue was entirely made with the intention of making private placement. For the violation of all the applicable provisions, the company is ready for the compounding and in order to abide by the terms of Section 73(2) of the Companies Act. The company is also ready to refund the amount with interest that was collected from the investors provided the Crime Branch of Odisha Police releases the cessation and allows the company to do the business, so that out of the earned money, it can repay the genuine investors.
- The induction of Mr. Gopal Chandra Sahu into the company as a Director of 'S-TV Samachar', a subsidiary of the company was made with his due consent, the proof of which was there in the relevant form 32.

- Due to the seizure of operations of the company, the company cannot act and hence there is no question of violation of any of the orders passed by SEBI.
- b.** Mr. Pravat Kumar Dash vide his undated letter received by SEBI on August 19, 2014, replied to the *interim* order and submitted that he was appointed as a director of the company for a short duration and he had resigned since long. It was also submitted by him that the violations as alleged in the *interim* order were not committed during his tenure.
- c.** Ms. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Prativa Dash, vide their respective undated letters received by SEBI on August 19, 2014, submitted common reply to the *interim* order i.e. they were neither directors nor held any official position in the company affecting any decision in this regard. They were the shareholders of the company right from the beginning and had subscribed to the Memorandum of Association and Articles of Association of the company to the tune of 10 shares each, amounting to ₹ 100 only in order to accomplish the mandatory requirement of incorporation under the Companies Act, 1956 and their liability was limited only to the extent of the subscribed shares in the company. The *interim* order had implicated them for the alleged action for which they are not responsible.
- d.** Mr. Gopal Chandra Sahu vide his letters dated March 06, 2014 and August 12, 2014 replied as follows:
- SSL was incorporated in the year 2008 by its chief Promoter, Mr. Prashant Kumar Das, his wife, Ms. Jyotirani Sarangi and his younger brother, Mr. Pravat Kumar Dash. The company had several business activities including an electronic media unit known as 'S-TV Samachar'. He was contacted by the officials/ directors of Seashore to work for the media unit i.e. 'S-TV Samachar'

on salary. Thereafter, he joined 'S-TV Samachar', w.e.f. from October 09, 2010 as 'Advertisement Sales Executive'.

- He continued as a paid employee till the month of March 2013. During his tenure, his designation as 'Advertisement Sales Executive' was re-designated as 'Executive Director'. He was never associated with the management or the decision making process of the company. 'The company is yet to pay his arrear salary for the last six months.
- In March 2012, he came to know that he had been inducted as a Director in the Board of Directors of the company w.e.f. from March 05, 2012 and 'Form 32' in this regard had been filed before the RoC, Cuttack, Odisha, without his consent and forging his signature. On this, he had approached the Chairman of Seashore, Mr. Prashant Kumar Das for deletion of his name from the Board of Directors of the company, but all his requests went in vain. Thereafter, vide his letter dated August 01, 2012, he tendered his resignation retrospectively from the date of induction. The said letter was duly acknowledged and received by the then Company Secretary, Mr. Sachidananda Nayak. However, Chairman and the other Directors of the company had not taken any action on it.
- Thereafter, he filed a civil suit in the Court of Civil Judge, Junior Division, which was pending for disposal. He had not lodged the FIR with police as his plea would not have been believable till the said civil suit is pending. Further, he could not have managed and tackled the consequences of filing a FIR, before the police.
- He was never associated with the management or the decision making process of the company. It was also said by him that the relevant records of the

company were in the possession of Mr. Prashant Kumar Das, Chairman and his family members.

- He would co-operate with the process of inquiry by SEBI as and when his presence would be required.
- e. Mr. Surath Das replied to the *interim* order vide his letter dated August 16, 2014 and submitted as under:
- He had joined Seashore Consultancy Pvt. Limited as an employee/ record officer on September 01, 2007, on a fixed salary.
 - He has never signed any document either as a promoter or as a director of Seashore Securities Ltd. If any documents were signed in his name, the same are forged and fabricated.
 - He being an employee of the company, therefore a sum of ₹ 567/- was deducted from his amount and kept in employees provident fund.
 - The managing director of the company had transferred him within the other group companies. He was transferred from Seashore Consultancy Pvt. Limited to Seashore Funds Management Limited on November 01, 2007. He was again transferred from Seashore Funds Management Limited to Seashore Securities Limited on May 01, 2009.
 - No money of the company was diverted to his account except the salary.
- f. Mr. Sudhansu Shekhar Pati vide his undated letter received by SEBI on September 04, 2014, replied as follows:

- He was an employee of one M/s NAD Pvt. Limited at its Raipur Head Office since 2007. Mr. Prashanta Kumar Dash, Managing Director of SSL was known to him while he was working at Cuttack, Odisha. Mr. Prashanta Kumar Dash had approached him for becoming a director of the company to satisfy the statutory requirement of minimum 3 Directors as his wife who was a Director at the time of incorporation had to resign as she was a teacher in a State Government school.
- He had consented to be a Director for a temporary period and only for the purpose of statutory compliance. Later, he forgot to remind Mr. Prashanta Kumar Dash about his resignation. He reminded him for the same on February 03, 2012 and his resignation was duly approved in the Extra-ordinary General Meeting on March 05, 2012 and was filed at RoC, Cuttack on April 02, 2012.
- I have not participated in any of the business of the Board of Directors any time.
- He was not a person in charge of the business of the Company. The allegation against the company have occurred without his knowledge and he was not in any way accessible or responsible for any of the business of Seashore.
- He submitted that he has shares of a few listed companies in his demat account which are his life time saving for future necessities and he requested for release of restriction from his demat account.

11. Before proceeding further in the matter, an opportunity of personal hearing was granted to SSL and its Promoters/ Directors on October 29, 2014. On the date fixed Mr. Surath Das and Mr. Gopal Chandra Sahu appeared for the personal hearing and made submissions. On behalf of other noticees, Ms. Sapna Jena vide email and letter dated October 28, 2014, requested for rescheduling of the personal hearing by 4

weeks. This request was duly considered and the hearing was rescheduled to December 02, 2014. Again, Ms. Sapna Jena vide her letter dated November 29, 2014, wrote on her behalf and also for SSL and 6 other noticees namely Mr. Prashanta Kumar Dash, Ms. Jyotirani Sarangi, Manoj Nath, Ms. Prativa Dash, Mr. Pravat Kumar Dash and Ms. Shantiprava Dash again requested for extension of two months. Vide this letter, it was also submitted by her that all the documents of the company and computer peripheries were seized by the Crime Branch, Odisha Police. It was also said that the main Promoter - Director well versed with the facts of the case namely Mr. Prashanta Kumar Dash was in CBI custody and without him, it would be very difficult to prepare any reply in the matter. In the interest of natural justice, one last opportunity of hearing was granted on December 19, 2014.

12. Vide email dated December 18, 2014, SEBI received a letter dated December 18, 2014, from Ms. Sapna Jena, writing on behalf of herself, SSL and 6 other noticees namely Mr. Prashanta Kumar Dash, Ms. Jyotirani Sarangi, Manoj Nath, Ms. Prativa Dash, Mr. Pravat Kumar Dash and Ms. Shantiprava Dash requested for an adjournment citing similar problems as communicated vide the letter dated November 29, 2014. It was also said that steps were initiated to prepare and finalize the reply on the information and documents available and requested for 15 days further time, to file the reply. The aforesaid entities were informed vide email dated December 19, 2014 that on a consideration of their request, the same was not acceded to and the hearing would continue as scheduled.
13. In response to SEBI's email dated December 19, 2014, the aforesaid entities vide their email dated December 21, 2014 requested for minimum time to appear before SEBI and further requested for time till December 24, 2014 to submit additional reply. The request of the said entities for personal hearing was not accepted as sufficient opportunities of personal hearing was granted to them on 3 previous occasions. However, the entities were granted time till December 24, 2014 to submit

an additional reply in the extant matter.

14. Thereafter, SEBI received additional written submissions dated December 22, 2014 from Ms. Sapna Jena, the authorized representative of Ms. Shantiprava Dash, Mr. Pravat Kumar Dash, Mr. Surath Dash and Mr. Manoj Kumar Nath in response to the *interim* order. The submissions in brief are as under:

- a. Noticees namely Ms. Shantiprava Dash, Ms. Prativa Dash, Mr. Surath Dash and Mr. Manoj Kumar Nath have never acted as the Director of the company. They were subscribers / signatories to the Memorandum of Association and were only shareholders of the company holding 10 shares of ₹ 10 each.
- b. They were never involved with the management of the company and have nothing to do with the issue of Redeemable Preference Shares.
- c. Noticees are not covered under the definition of "*Officer who is in default*" as defined under Companies Act, 1956. They were merely shareholders with nominal shares and their liability under law is restricted to the number of shares held by them.
- d. Mr. Prashanta Kumar Dash, Ms. Jyotirani Sarangi and Mr. Pravat Kumar Dash were the first directors of SSL from the date of incorporation and accordingly 'form 32' was filed with the RoC on April 21, 2008. Therefore, although the noticees namely Ms. Shantiprava Dash, Ms. Prativa Dash, Mr. Surath Dash and Mr. Manoj Kumar Nath were subscribers/ signatories to the Memorandum of Association, they were never involved in the management of the company, as first Directors of the company were appointed from the date of incorporation.
- e. The main Promoter Director of SSL namely Mr. Prashanta Kumar Dash, who was well versed with the facts of the case is in CBI custody and it is very difficult to prepare any reply in the matter without his active contribution. All the

documents of SSL were seized by Odisha Police and therefore preparation of reply without such documents was not possible.

15. Further, vide letter dated December 23, 2014 signed by Ms. Sapna Jena on behalf of herself and other noticees namely Mr. Prashanta Kumar Dash, Ms. Jyotirani Sarangi, Mr. Manoj Kumar Nath, Mr. Sudhanshu Shekhar Pati, Mr. Gopal Chandra Sahu, Ms. Prativa Dash, Mr. Pravat Kumar Dash, Mr. Surath Das and Ms. Shantiprava Dash made further submissions. The aforesaid submissions in brief are as under:

- a. SSL has issued 50,32,28,060 Redeemable Preference Shares on private placement basis in compliance with the relevant provisions of the Companies Act, 1956 and has made all the necessary disclosures to the Registrar of Companies.
- b. The Noticees were not aware of the legal position to the effect that issue of RPS to more than 49 persons can be deemed as a public issue attracting the provisions of the Companies Act in respect of public issue.
- c. It is denied that the Noticees have violated DIP Guidelines as the said Guidelines were not applicable to the issue of 'Non-Convertible Redeemable Preference Shares'. DIP Guidelines have since been substituted by ICDR Regulations. ICDR Regulations have also not been made applicable to the issue of 'Non-Convertible Redeemable Preference Shares'. ICDR Regulations define 'specified securities' as equity shares and convertible securities and the same did not cover 'Non-Convertible Redeemable Preference Shares'. It is submitted that till SEBI (Issue and Listing of Non-convertible Redeemable Preference Shares) Regulations, 2013, came into force on June 12, 2013, there were no Regulations governing the issue of 'Redeemable Preference Shares'.

- d. The non-compliance of the provisions relating to the deemed public issue had occurred merely due to ignorance of the provisions. Such technical default had to be viewed leniently. The Company was committed to redeeming the 'redeemable preference shares' on their due dates as also paying the total redemption amount to the investors.
- e. SSL had issued 6,00,000 equity shares and not preference shares to Mr. Prashanta Kumar Dash.
- f. SSL had issued 'Redeemable Preference Shares' and such shares have no option of conversion into equity. The relevant board resolutions, shareholders' resolution and the 'share certificate' unambiguously stated that the preference shares were redeemable in nature and the same did not provide any option of conversion into equity shares. The clause for conversion of shares into equity in the application form was an inadvertent error and the same could not change the basic character of 'non-convertible preference shares'. Further, the terms and conditions of the issue of redeemable preference shares could not be altered without following the due process of law (i.e. Section 106 of the Companies Act, 1956).
- g. Sections 56, 67 and 73 of the Companies Act, 1956 were not applicable in the case of SSL as it had never intended to make public issue or to list the preference shares on stock exchanges.
- h. They have complied with all the relevant provisions of the Companies Act pertaining to the issue of Redeemable Preference Shares. In compliance with the provisions of Section 75(1) of the Companies Act, SSL had filed return of allotment with Registrar of Companies in prescribed 'Form 2' giving the details about the number of allottees, nominal amount of shares comprised in the

allotment, names, addresses and occupation of the allottees, etc. This information was available in the public domain and SEBI could have very well accessed the same from the RoC website / office of RoC. It is further stated that the provisions of law relating to deemed public issue were not well known to the people in general. This position of law has come into limelight only after the judgment of Hon'ble Supreme Court in the matter of Sahara where the Hon'ble Court has clarified the ambit of the provisions of Section 67 (3), Section 73, etc. of Companies Act and SEBI's jurisdiction in the matter.

- i. They do not have details/ information in respect of inter-corporate loans and terms and conditions of the same as all the documents of the company are seized by Odisha Police.
- j. 'Redeemable Preference shares' are neither regulated by ICDR Regulations or DIP Guidelines. DIP Guidelines only govern IPO, FPO and issue of equity shares and convertible/ non-convertible debt instruments. The IPO related provisions for unlisted companies and listed companies as provided under clause 2.2 and 2.3 respectively, of the DIP Guidelines were applicable for equity shares and convertible securities. Clause 10 of the DIP Guidelines discussed about the guidelines for issue of debt instruments. SEBI has framed SEBI (Issue and Listing of Debt Securities) Regulations, 2008 for the purpose of governing non-convertible debt securities. It was also said that preference shares were part of the share capital and cannot be treated as debt instrument.
- k. While relying on Section 24 of the Companies Act, 2013, it was submitted that SEBI has no power whatsoever to govern the redemption of preference shares.
- l. The company did not float any 'ponzi' schemes and raised the funds from the public.

16. After considering, the objections / reply filed by the company and its Promoter/ Directors and the relevant provisions of SEBI Act, Companies Act, 1956, DIP Guidelines and ICDR Regulations, SEBI vide its order dated March 18, 2015 confirmed the directions issued vide its interim order in respect of issuance of Cumulative RPS during the period 2008-2013 under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11(4), 11A and 11B thereof read with clause 17 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 and regulations 107 and 111 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
17. The noticees were 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 within a period of 15 days from the date of this Order.
18. Gopal Chandra Sahu vide letter dated April 01, 2015 furnished inventory of his assets, both movable & immovable. Meanwhile, aggrieved by the said confirmatory order, the company, Ms. Sapna Jena, Mr. Prashanta Kumar Dash, Ms. Jyotirani Sarangi, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Pravat Kumar Dash and Ms. Shantiprava Dash filed an appeal before Hon'ble SAT vide Appeal No. 328/2015. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") vide its Order dated November 25, 2016 quashed and set aside SEBI's confirmatory Order dated March 18, 2015 and directed SEBI to provide an opportunity of personal hearing to the noticees and thereafter pass an appropriate order.
19. Shri Bijan Bihari Kar, Advocate vide Affidavit dated 23/12/2016 submitted the following on behalf of the company, Mr. Prashanta Kumar Dash, Ms. Jyotirani Sarangi, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Pravat Kumar Dash and Ms. Shantiprava Dash -

- a. That all the movable and immovable properties of company and Promoters have been seized by the Crime Branch (EOW) of Odisha since the year 2013. Further, the government of Odisha by exercising its power under the Odisha Protection of Interests of Depositors Act, 2011 through its ad-interim order of attachment, has attached the said properties and transferred the same to the Competent Authority (Shri Bibhuti Bhusan Das). The Competent Authority prayed the Designed court constituted U/s 8(1) of the OPID Act, 2011 through Application No: 1 of 2013 to make the ad-interim order absolute as well as to sell the said properties by the public auction. All such properties are now under the possession of the government and the proceeding before the designated Court is in the Final Stage. The details of such properties and bank accounts are annexed to the affidavit.
- b. That some of the properties of the company and Promoters as referred above were purchased well before the incorporation of the company. These properties do not have any nexus to the public deposits. The details of such properties are also annexed to the affidavit.
- c. That the Hon'ble Supreme Court vide order dated May 9, 2014 in WP(C) No: 401 of 2013 transferred investigation in respect of company and Promoters to the Central Bureau of Investigation and Enforcement Directorate, where SEBI was also a party. The Enforcement Directorate after the aforesaid order, initiated proceedings and attached all the properties of company and Promoters under the provisions of the Prevention of Money Laundering Act, 2002.
- d. That the company and Promoters do not hold any other shares/ Securities except the shares in the company and group/associate of the company and Promoters and they do not hold any other shares/ securities in the physical form.

e. That apart from the aforesaid, following are the details pertaining to some of the individual Promoters of the Company:

- Smt. Jyotirani Sarangi, who is working as the Asst. Teacher in the Government High School, IRC Village, Bhubaneswar apart from the properties and bank accounts already mentioned, also has a bank account bearing Account No: 10508937941 maintained in Sahid Nagar Branch of State Bank of India. The said account was seized by the Crime Branch of Odisha. However, it was released pursuant to the order of Hon'ble High Court of Orissa dated September 17, 2013 in CRLREV No: 7120 of 2013 with the following observation:

"In the absence of any allegation of any nexus or direct link between the offences alleged to have been committed by the accused persons and money lying in deposit in the seized bank account, there is no cogent ground to restrain the petitioner from operating her salary account during pendency in the investigation."

- Further, Smt. Prativa Dash does not have any movable or immovable properties, bank account, etc. assets whatsoever.
 - Further, Mr. Prashanta Kumar Dash and Mr. Pravat Kumar Dash are in judicial custody and all their bank accounts along with all the properties has been seized by the Crime Branch of Odisha and subsequently by the Enforcement directorate.
- f. That, the facts stated above are true to the best of my knowledge and belief as per the instruction received from the above named persons.

- g. In view of the aforementioned, I request you to accept the list of properties along with the representation. I further request you to give an opportunity of personal hearing to the above named persons for explaining the position.

20. Vide his letter dated 23/12/2016, Shri Bijan Bihari Kar, made the following submissions –

- a. As regards to submission of form 32, it was reiterated that the offices of the company and all documents have been seized and sealed by Crime Branch of Odisha police and subsequently C.B.I and ED which is not in our control. However, Copies of Form: 32 filled with Registrar of Companies, Odisha are public documents and can be accessed by anybody.
- b. Consent letters signed by the persons to become director have also been filled and available in the portal of ROC, Odisha. The directors who have resigned in due course of business have also been filled with ROC, Odisha. Copies of which were in the office of the company and seized and sealed by the above mentioned authorities as mentioned in clause no: 1.
- c. Copies of register of directors is a part of combined statutory register maintained by the company and usually kept at the registered office of the company and those documents has been seized and sealed by different authorities under different laws. Board resolution with respects to the appointment of directors are kept in the minutes book of the company which was regularly maintained till the date of seizure, is in the custody of above mentioned authorities.
- d. As regards to register of director shareholding, it is also a part of combined statutory register maintained by the company and seized by the above authorities.

- e. As regards to minutes of Board of directors meeting along with attendance register of Board meetings.
 - f. We would like to reiterate that all the minutes books of EGM and AGM were regularly maintained in the minutes books kept for that purpose and seized by the above law enforcing authorities.
 - g. As regards to remuneration paid to directors, we would like to inform you that remuneration was paid to only whole time directors who were devoting their full time for the management of the company in terms of applicable provisions of companies act and schedules made there under.
 - h. We hope we have clarified all the points raised by you and the availability of documents of the company and we are not in a position to furnish copies any of them except those are available as public documents in the website of Ministry of Corporate Affairs.
 - i. As offices of the company are not functioning, the directors of the company are not in touch with each other and this communication received through mail is being replied for proper compliance of SEBI act, 1992.
 - j. As the managing director of the company Mr. Prashanta Kumar Dash is in judicial custody, he has empowered me, to reply and appear on behalf of him and company before concerned law enforcing agencies.
21. Vide letter dated 26/12/2016, Ms. Sapna Jena has submitted that she has been taken as one of the Directors of SSL without her knowledge and her signature is taken without her knowledge. After arrest of Mr. Prashanta Kumar Dash, his son and wife has taken some signature in different papers saying that the same is required to file appeal and to engage advocate. The same was also disclosed before CBI. She is not in possession of any documents of SSL and is not aware of any of its properties. Vide

letter dated 03/01/2017, Sapna Jena submitted that she does not have any immovable property of her own and submitted details of her saving account with HDFC Bank, salary account with Kotak Bank and salary account of her husband with SBI Bank. She requested for an opportunity of personal hearing.

22. Vide letter dated 27/12/2016, Mr. Prashanta Kumar Dash, MD submitted that they are not in position to furnish any copies except those are available as public documents in the website on MCA and submitted the seizure list given by the Crime Branch of Odisha. He also submitted that they have written letter to ED for furnishing the copies of those documents sought so that the same can be submitted to SEBI.
23. Vide notification dated 10/06/2017 published in newspaper Times of India and notification dated 10/06/2017 published in newspaper Dharitri, the Noticees were notified by SEBI that they will be given the final 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.
24. The Noticees vide their letter dated June 23, 2017 requested explanation whether the proposed hearing is pursuant to the order of SAT dated November 25, 2016. If not, provide the details including SCN in respect of the proceedings for which the public hearing notice is issued. Further also requested for postponement of the date of hearing in the second half of July and sought advance notice of at least 15 days to make travel and other arrangements. SEBI vide its letter dated July 21, 2017 informed the Noticees that the hearing in the matter was concluded, however, if the Noticees, if they so desire, could file their reply in the matter within 14 days from the receipt of the letter.
25. Vide letter dated 16/08/2017 Shri Bijan Bihari Kar, Advocate on behalf of the noticees inter alia made the following submissions-

- A public notice dated June 10, 2017 published in 'Times of India' was brought to the Noticees' knowledge by an acquaintance whereby the Noticees had been provided personal hearing on June 28, 2017 at 03:00 pm. Except that public notice, neither the company nor any of its Promoters/Directors had received any notice/communication from SEBI in respect of any personal hearing. The aforesaid public notice of hearing was a common notice for 7 companies including the Noticees' company without making any reference to the nature of proceedings or alleged violations. To clarify the understanding, the Noticees have immediately reverted to the said public notice by letter dated June 23, 2017 and requested explanation whether the proposed hearing is pursuant to the order of SAT dated November 25, 2016, If not, provide the details including SCN in respect of the proceedings for which the public hearing notice is issued. Further also requested for postponement of the date of hearing in the second half of July and sought advance notice of at least 15 days to make travel and other arrangements.
- The Noticees did not receive any further communication/clarification/reply from SEBI in response to the said Letter. It is respectfully submitted that SEBI has neither provided a proper notice for hearing nor clarified the nature of proceedings against which such public notice was issued. In lieu of that, SEBI had informed vide its letter dated July 21, 2017 (received on August 04, 2017) that the hearing in the matter has been concluded but the Noticees may, if they so desire, file their reply in the matter. The procedure adopted by SEBI is neither in conformity with SAT's order dated November 25, 2016 nor in compliance of principles of natural justice.
- Thus, noticees once again sought clarification whether the proposed hearing is pursuant to the order of SAT dated November 25, 2016, If not, provide the details including SCN in respect of the proceedings for which the public hearing notice is

issued. Further also requested for personal hearing and sought advance notice of at least 15 days to make travel and other arrangements. It was also intimated that the office of company was sealed by crime branch of Odisha and CBI and provided further communication address.

26. Vide his letter dated October 10, 2017, Shri Bijan Bihari Kar, Advocate on behalf of the noticees reiterated the submissions made earlier by Ms. Sapna Jena vide her letter dated December 23, 2014 on behalf of herself and other Noticees.

27. Subsequently, vide hearing notice dated April 17, 2018, Noticees were granted an opportunity of hearing on May 15, 2018 and were further advised to submit a reply along with documentary evidence, if any. In response to the hearing notice, Mr. Prashanta Kumar Dash, MD, vide his letter dated May 9, 2018 on behalf of himself and Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Prativa Dash, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Sapna Jena submitted that since the main Promoter Mr. Prashanta Dash had been recently released on bail and the Noticees were in the process of collating all the documents, record and data which were required to be submitted along with the reply, the Noticees requested to adjourn the hearing scheduled on May 15, 2018 by eight weeks for submission of reply and for final hearing. He also submitted that SEBI cannot proceed further with its investigation since SFIO has completed the investigation against the company and has filed a complaint before A.C.J.M. (Special) Cuttack, Odisha. As per Section 212 (2) of Companies Act, 2013, SEBI is obligated to transfer the relevant documents and records in respect of pending investigation to SFIO.

28. In response to the hearing notice, Mr. Gopal Chandra Sahu vide his letter dated May 15, 2018 reiterated his submissions made vide his letters dated March 06, 2014 and August 12, 2014.

29. *Hearing and submissions:* On the date of hearing, Mr. Surath Das appeared for

hearing and made *interalia* the following submissions:

- That he was an employee of Seashore Securities Ltd. working as Guest House- In charge in Seashore Securities Ltd.
- That he is not a Promoter/Director of Seashore Securities Ltd. and is not aware as to how his name is appearing as a promoter/director of Seashore Securities Ltd.
- That he has never signed any documents as promoter/director of Seashore Securities Ltd. and if any documents are signed the same is forged and fabricated.

Mr. Surath Das was given a copy of Memorandum of Association of Seashore Securities Ltd. He was advised to submit to SEBI certification that the signature in the Company's document are forged and not his signature. He was given time of 15 days to submit the proof of submission of his application to the concerned forensic laboratory for signature certification. Further he was given 3 months' time to submit the certification to SEBI that the signature in the Company's document are forged and not his signature.

30. Further, on the date of hearing, Mr. Gopal Chandra Sahu appeared for hearing and made *interalia* the following submissions:

- a) That he was merely an employee of Seashore Securities Ltd. and have never acted as Director of the company.
- b) That he was inducted as Director of Seashore Securities Ltd. by forging his signature without his consent.
- c) That when he requested Mr. Prashant Kumar Dash for deletion of his name as a Director of Seashore Securities Ltd., he was threatened by him that if he seeks removal from directorship, he will also be removed from his job. He was not allowed to resign.

- d) That he has filed Civil Suit for declaration that his induction as director in the said company as illegal and the said suit is pending in Court. With regard to the same, he is given 15 days' time to submit the receipt of filing the Civil Suit and the current status of the Civil Suit.

Mr. Gopal Chandra Sahu was given a copy of his consent letter dated February 03, 2012 to act as director of Seashore Securities Ltd. and the same is acknowledged by him.

He was advised to submit to SEBI certification that the signature in the said Consent letter are forged and not his signature. He was given time of 15 days to submit the proof of submission of his application to the concerned forensic laboratory for signature certification. Further he was given 3 months' time to submit to SEBI the certification that the signature in the Company's document are forged and not his signature, failing which matter will be proceeded on the material available on record.

31. Personal hearings with respect to SSL and Mr. Sudhanshu Shekhar Pati were also concluded as they neither sought adjournment nor appeared for the hearing.

32. It was noted that Mr. Prashanta Kumar Dash did not produced any letter of authority from the six noticees namely Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Prativa Dash, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Sapna Jena authorizing him to write on behalf of them. Thus without proper authorization, the letter dated May 09, 2018 can only be considered as request made by Mr. Pravat Kumar Dash. In this regard, the aforesaid six Noticees were to be informed that they should make written submissions (if any) only through proper authorization. Further, Mr. Prashanta Kumar Dash was provided with ample opportunities to submit reply and appear for personal hearing pursuant to Hon'ble SAT Order dated November 25, 2016. However the Noticee did not avail the same. Thus the request for extension of eight weeks to submit reply for an Interim Order dated July 23, 2014

and fixing of hearing was not acceded to.

33. However, in the interest of natural justice, one last and final opportunity was granted to all the seven noticees namely Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash and Ms. Sapna Jena vide hearing notice dated June 08, 2018 to appear for personal hearing on June 27, 2018 and submit written submission a week thereafter. It was also communicated to the aforesaid seven Noticees that their authorized representative should have proper authorization from them before submitting any documents / reply submitted on their behalf, otherwise the same will not be taken into consideration.
34. Vide his email dated June 22, 2018, Mr. Prashanta Kumar Dash as an authorised representative of aforesaid six Noticees informed that Ms. Aparna Wagle, Principal Associate, Alliance Law would be representing all seven of them for the scheduled hearing. Subsequently, vide his letter dated June 26, 2018, Mr. Prashanta Kumar Dash on behalf of all seven Noticees reiterated the submissions made earlier by Ms. Sapna Jena vide her letter dated December 23, 2014 on behalf of herself and other Noticees and submissions made by him vide his letter dated May 09, 2018.
35. On the date of hearing on June 27, 2018, Ms. Aparna Wagle appeared for the hearing on behalf of Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath, Ms. Prativa Dash and Ms. Sapna Jena. The authorized representative submitted a common reply dated June 26, 2018 on behalf of all the seven Noticees and made *inter alia* the following oral submissions-
- That SFIO has completed the investigation against the company and filed a complaint before ACJM (Special), Cuttack, Odisha against the company. As per

Section 212(2) of Companies Act, 2013, since case is assigned by Central Government to SFIO, SEBI cannot proceed further and is obligated to transfer the relevant documents and records in respect of the pending investigation to SFIO. In this regard, the AR is intimated that SFIO and SEBI both have different jurisdiction in the matter and the violations looked into by SEBI are not examined by SFIO.

- That all the documents of the company are seized by Odisha Police.
- That the DIP guidelines and ICDR Regulations are not applicable to the issue of Non- convertible Redeemable Preference Shares made by the company.
- Further, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 came into force only on June 12, 2013.
- That Ms. Jyotirangi Sarangi is a school teacher and was a Director merely for seven months until October, 2008 wherein she neither attended any board meeting nor received any remuneration as a Director. Thus no liability should be imposed on her.
- That Mrs. Shanti Prava Dash, Mr. Manoj Kumar Nath and Ms. Prativa Dash, though are shown in the Interim Order as Directors of the company since incorporation, they were never appointed as Directors of the company.

The authorized representative requested for time to submit written submissions and the same was acceded to and Noticees were granted time for furnishing written submissions to SEBI latest by July 6, 2018.

36. Alliance Law vide its letter dated July 06, 2018 submitted the letters of authority of the Noticees represented by them dated May 01, 2018 duly notarized on June 30, 2018.

37. Prashanta Kumar Dash vide his letter dated July 06, 2018 made the written submissions and supplementary reply on behalf of SSL, Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Ms. Prativa Dash, Ms. Shantiprava

Dash, Mr. Manoj Kumar Nath and Ms. Sapna Jena. He reiterated the submissions made earlier by Ms. Sapna Jena vide her letter dated December 23, 2014 and submissions made by him vide his letter dated May 9, 2015. Further, he submitted as follows:

- A crucial preliminary objection was raised by the Noticees that the proceedings initiated by SEBI ought to be stalled in light of Criminal Complaint filed by the SFIO on completion of its investigation. Since the same cause of action and alleged violations are involved in both the proceedings, the present proceedings before WTM ought to be stalled as there could not be parallel proceedings by different agencies for the same cause of action and the Noticees could not be put to trial twice for the same cause as the same is violative of Section 212 (2) of Companies Act and tantamount to double jeopardy.
- It was submitted that in light of Paragraph 14 of the Ex-parte Order dated July 23, 2014, SEBI was to refer the matter to MCA pertaining to related party transactions, huge amounts of money collected by way of advance from customers and non-filing of annual reports for the year 2011-2012 and 2012-2013 and which SFIO has investigated into and filed criminal complaint. It is pertinent to mention that Companies Act does not authorize SEBI to administer provisions of Section 370 or other provisions pertaining to related party transactions, collection of money by way of advances and non-filing of annual reports.
- That the current proceedings against certain Noticees namely Mrs. Shanti Pravat Dash; Mr. Manoj Kumar Nath and Ms. Prativa Dash have been initiated on wrong assumption that they were Directors of SSL, at the time of incorporation of SSL. It is submitted that they were only the shareholders of the company and were never appointed as Directors of the company and were

not involved in decision making or participation in any activities carried out by the company.

- That another Noticee Mrs, Jyotirangi Sarangi has been a school teacher and became a Director of the company for a negligible period of seven months during April, 2008 to October, 2008. During her term, she neither attended any Board Meetings nor signed any documents as Director of company nor received any salary or remuneration as a Director. She was never involved in any activities or affairs of the company. She submitted her resignation on being informed that a civil servant could not hold Directorship in any company.
- That another Noticee, Ms. Sapna Jena was an employee of the Noticee No.1 and became a Non- Executive Director on April 12, 2011. Howsoever, she did not attend any meetings/ Board Meetings nor participated in any administrative decisions at the time of issuance of redeemable preference shares. She was never involved in the day to day affairs and-activities of the company.
- It is submitted that the above-mentioned persons ought to be dropped from the charges considering their positions and no involvement in the affairs and management of the day to day activities of the company.

38. 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.

39. I have perused the interim order dated July 23, 2014 for the allegation of Offer of RPS. I note from the replies of the Noticees dated December 23, 2014, October 10, 2017, June 26, 2018 and July 6, 2018 that the issuance of 50,32,28,060 RPS to 76,758 allottees by the company is not in dispute.

40. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted, from information obtained from the 'MCA 21 Portal' in the matter that SSL that the company has issued and allotted RPS to at least 76,758 investors during the financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 and has raised at least an amount of ₹ 503,22,80,600. In view of the receipt of compliant in the instant matter by SEBI, the actual number of allottees in the extant matter could be more than 76,758 investors. Therefore, it is concluded that the actual number of allottees and amount mobilized could be more than ₹ 503,22,80,600.

41. *I therefore conclude that SSL 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?

42. 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 a '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)."*

43. 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.”

44. 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*.

45. In the instant matter, I find that RPS were issued by SSL to at least 76,758 investors in the financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013 raising at least an amount of ₹ 503,22,80,600. In view of receipt of complaint by SEBI, the actual number of investors could be more than 76,758. I find that SSL has mobilized at least an amount of ₹ 503,22,80,600 over the financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013 which is not a conclusive value as it is based on the information obtained from the 'MCA 21 Portal'. The above findings lead to a reasonable conclusion that the *Offer of RPS* by SSL was a “public issue” within the meaning of the first proviso to Section 67(3) of the Companies Act, 1956.
46. I note that the Noticees vide their replies dated July 06, 2018, June 26, 2018, December 23, 2016 and undated letter received by SEBI from Ms. Sapna Jena on August 19, 2014 contended that the issue was by way of private placement made to friends and they had complied with the relevant provisions of the Companies Act and made all necessary disclosures to the RoC. Further, the Noticees also submitted that the company had never induced any public to invest in the preference shares at any

point of time nor issued any prospectus to attract public to invest in such shares.

47. I note that SSL had issued RPS to at least 76,758 allottees during the financial years 2008-2013. Though the Company named it as a 'private placement', I note that SSL issued RPS to at least 11,069 allottees during the financial year 2008-2009 itself. Further, it has issued RPS to at least 76,758 allottees during 2008-2013. It is pertinent to mention that as per the first proviso to Section 67(3) (inserted by the Companies (Amendment) Act, 2000 w.e.f. 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"*. Also, reliance is placed on the observations made by the Hon'ble Supreme Court of India in *Sahara Case* wherein the Hon'ble Supreme Court observed: *"101. Section 81(1A), it may be noted, is only an exception to the said rule, that the further shares may be offered to any persons subject to passing a special resolution by the company in their general meeting. Section 81(1A) cannot, in any view, have an overriding effect on the provisions relating to public issue. Even if armed with a special resolution for any further issue of capital to person other than shareholders, it can only be subjected to the provisions of Section 67 of the Company Act, that is if the offer is made to fifty persons or more, then it will have to be treated as public issue and not a private placement. A public issue of securities will not become a preferential allotment on description of label. Proviso to Section 67(3) does not make any distinction between listed and unlisted public companies or between preferential or ordinary allotment."*

48. 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 SAT 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"*.

49. Since, SSL has allotted RPS to more than forty nine allottees, I find that the *Offer of RPS* by SSL was a "public issue" within the meaning of the first proviso to Section 67(3) of the Companies Act, 1956.
50. I find that SSL 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. Further, it is noted from records that the company had applied for certificate of registration as a non-deposit taking NBFC from Reserve Bank of India. However, the same was rejected vide order dated November 29, 2010 since the company was not satisfying the eligibility criteria for registration as an NBFC. Moreover, Ms. Sapna Jena vide her undated letter received by SEBI on August 19, 2014 has submitted that the company has never carried out any activity which can be called as NBFC business. In view of the aforesaid, I, therefore, find that there is no case that SSL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
51. Noticees submission is that they were not aware of the legal position to the effect that issue of RPS to more than 49 persons can be deemed as a public issue attracting

the provisions of the Companies Act in respect of public issue. It is trite law that ignorance of law will not excuse the Noticees to escape the liability of violating the law.

52. The Noticees further contended that the provisions of law relating to deemed public issue were not well known to the people in general and this position of law has come into limelight only after the judgment of Hon'ble Supreme Court in the matter of Sahara where the Hon'ble Court has clarified the ambit of the provisions of Section 67 (3), Section 73, etc. of Companies Act and SEBI's jurisdiction in the matter. I do not agree to this contention since the legislative intent and purport of the provisions of Sections 67(3) and 73 always remained the same. The said position was reaffirmed by the Hon'ble Supreme Court in the Sahara case.
53. Therefore, in view of the material available on record, I find that the *Offer of RPS* by SSL 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 SSL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
54. 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 Sections 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.
55. I 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. Moreover, the allegations of non-compliance of the above provisions

were not denied by SSL or its Directors. Therefore, I find that SSL has contravened the said provisions. SSL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that SSL has also not complied with the provisions of Section 73(3) of the Companies Act, 1956 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.

56. Section 2(36) read with Section 60 of the Companies Act, 1956 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, SSL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that SSL 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 SSL has not complied with the provisions of Section 60 of the Companies Act, 1956.

57. 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 SSL 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, SSL has not complied with Sections 56(1) and 56(3) of the Companies Act, 1956.

58. It is submitted by the Noticees that provisions of DIP Guidelines and ICDR Regulations are not applicable for Non-Convertible Preference shares and the term “securities” has not been defined under DIP Guidelines. Further, the Noticees have submitted that SSL had issued RPS and such shares have no option of conversion into equity. The relevant board resolutions, shareholders' resolution and the 'share certificate' unambiguously stated that the preference shares were redeemable in nature and the same did not provide any option of conversion into equity shares. The clause for conversion of shares into equity in the application form was an inadvertent error and the same could not change the basic character of Non-Convertible Preference shares.

59. To canvass the aforesaid claim of the Noticees, following provisions of DIP Guidelines are being referred:

The definitions as provided in clause 1.2.1 of DIP Guidelines –

(xvii) “*Issuer Company*” means a company which has filed offer documents with the Board for making issue of securities in terms of these guidelines.

(xxiii) “*Public Issue*” means an invitation by a company to public to subscribe to the securities offered through a prospectus.

1.4 Applicability of the Guidelines

i) These Guidelines shall be applicable to all public issues by listed and unlisted companies, all offers for sale and rights issues by listed companies whose equity share capital is listed, except in case of rights issues where the aggregate value of securities does not exceed Rs. 50 lacs.

60. Since the aforesaid provisions uses the term “*securities*”, it is relevant to refer to the definition of the term “*securities*” in Section 2(1)(i) of the SEBI Act. The same is being

extracted hereunder:

61. “2(1) (i) “*securities*” has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956.”

62. For a complete and effective understanding of Section 2(1)(i) extracted above, reference is liable to be made to Section 2(h) of the Securities Contracts (Regulation) Act, 1956.” The same is therefore being reproduced hereunder:

“2(h) “*securities*” include –

i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

63. The Noticees have also submitted that “*securities*” have not been defined in DIP Guidelines. In this regard, it may be noted that DIP Guidelines were framed under Section 11 of SEBI Act. Over here reference needs to be made to Section 20 of the General Clauses Act, 1897. The same is reproduced below:

“20. Construction of notifications, etc., issued under enactment.-Where, by any '[Central Act] or Regulation, a power to issue any [notification], order, scheme, rule, form, or bye-law is conferred then expressions used in the [notification], order, scheme, rule, form or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.”

64. The aforesaid provision, pointedly brings out that the expressions used in scheme/ rule/ bye-law will have the same meaning as in the Act conferring the power. Therefore, the term “*securities*” under DIP Guidelines will have the same meaning as there is under SEBI Act. In view of the same, the contention advanced by the Noticees is not tenable.

65. According to Section 86 of the Companies Act, 1956, the share capital of a company limited by shares shall be of two kinds only - (i) equity share capital and (ii)

preference share capital. Therefore, it can be seen that the share capital of a company limited by shares, comprises of equity shares and preference shares issued, if any. Therefore, the term “shares” under Section 2(46) of Companies Act, 1956 would include preference shares.

66. A collective perusal of aforesaid provisions of SEBI Act, Securities Contracts (Regulation) Act, 1956 and Companies Act, 1956, unequivocally establishes that the DIP Guidelines regulated public issues of Non-Convertible Preference shares. Further, there is no reservation expressed in the DIP Guidelines that it does not regulate the public issue of such securities.

67. Therefore, I hold that DIP Guidelines are applicable to the present issue made by the company till the repeal of the DIP Guidelines.

68. Hence, the company was required to comply with the following provisions of the DIP Guidelines read with regulation 111 of the ICDR Regulations in respect of the offer and allotments made during FY 2008–09:

- *Clause 2.1.1 (filing of offer document)*
- *Clause 2.1.4 (application for listing)*
- *Clause 2.1.5(issue of securities in dematerialized form)*
- *Clause 2.8. (means of finance)*
- *Clause 4.1 (promoters contribution in a public issue by unlisted companies)*
- *Clause 4.11 (lock-in of minimum specified promoters contribution in public issues)*
- *Clause 4.14 (lock-in of pre-issue share capital of an unlisted company)*
- *Clause 5.3.1 (memorandum of understanding)*
- *Clause 5.3.3 (due diligence certificate)*
- *Clause 5.3.5 (undertaking)*

- *Clause 5.3.6 (list of promoters group and other details)*
- *Clause 5.4 (appointment of intermediaries)*
- *Clause 5.6 (offer document to be made public)*
- *Clause 5.6A (Pre-issue Advertisement)*
- *Clause 5.7 (despatch of issue material)*
- *Clause 5.8 (no complaints certificate)*
- *Clause 5.9 (mandatory collection centres and Clause 5.9.1.(minimum number of collection centres)*
- *Clause 5.10 (authorised collection agents)*
- *Clause 5.12.1 (appointment of compliance officer)*
- *Clause 5.13 (abridged prospectus)*
- *Clause 6.0 (contents of offer documents)*
- *Clause 6.1 to Clause 6.15 (contents of prospectus)*
- *Clause 6.16 to Clause 6.34 (contents of abridged prospectus) including Clause 6.17.13 - Clause 6.41.6 (rating for the proposed debentures/preference shares issue, if any, obtained from credit rating agencies)*
- *Clause 8.3 (Rule 19(2)(b) of SC(R) Rules, 1957)*
- *Clause 8.8.1 (Opening & closing date of subscription of securities)*
- *Clause 9 (guidelines on advertisements by issuer company)*
- *Clause 10.1. (requirement of credit rating)*
- *Clause 10.5. (redemption)*

69. 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."

..."

70. It is noted that on August 26, 2009 the ICDR Regulations were notified, thus repealing DIP Guidelines. The company admittedly has issued RPS in the financial year 2008-09 and hence have violated the provisions of DIP Guidelines as mentioned at pre paragraph 68.

71. 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 *Sahara Case*, had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of

those public companies which intend to get their securities listed on a recognized stock exchange in India."

"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".

72. 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 the Companies Act, 1956, 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 *Sahara 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..."

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

Act, 1956. Further, SSL has also violated the above mentioned provisions pertaining to the DIP Guidelines read with ICDR Regulations for the financial year 2008-09.

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

74. Noticees vide their letter dated June 23, 2017 had sought a clarification whether the hearing which was scheduled on June 28, 2017 was pursuant to Hon'ble SAT order dated November 25, 2016. The said clarification was sought as the public notice vide which the communication of hearing date was done (Times of India dated June 10, 2017), did not making any reference to the nature of proceedings or alleged violations.
75. From the public notice published in Times of India dated June 10, 2017, I note that SEBI had provided the email id to contact the concerned person if any clarification was required. I also note that the public notice was published on June 10, 2017 and the Noticees did not bother to contact the concerned person through the given email id, rather sought the clarification through letter after a period of approximately two weeks. Be that as it may, subsequently vide hearing notice dated April 17, 2018, it was unequivocally communicated to the Noticee that the hearing scheduled on May 15, 2018 is in reference to the Show Cause Notice- cum- Interim Order dated July 23, 2014 in the extant matter.
76. Noticees have submitted that SFIO has completed the investigation against the Company and has filed a complaint before ACJM (Special), Cuttack, Odisha against the company and as per Section 212(2) of Companies Act, 2013, since case is assigned by Central Government to SFIO, SEBI cannot proceed further and is obligated to transfer the relevant documents and records in respect of the pending investigation to SFIO. Further, they have also contended that since the same cause of action and alleged violations are involved in both the proceedings (SFIO & SEBI), the present proceedings before WTM ought to be stalled as there could not be

parallel proceedings by different agencies for the same cause of action and the Noticees could not be put to trial twice for the same cause as the same is violative of Section 212 (2) of Companies Act and tantamount to double jeopardy.

77. I note that SEBI Act is a special law, a complete code in itself containing elaborate provisions to protect interests of the investors. Section 32 of the SEBI Act says that the provisions of that Act shall be in addition to and not in derogation of the provisions of any other law. SEBI Act being a special Act dealing with specific subject has to be read in harmony with the provisions of the Companies Act, 2013. As observed by Hon'ble Supreme Court of India in the *Sahara Case*, *"I only want to highlight the fact that both the Acts will have to work in tandem, in the interest of investors, especially when public money is raised by the issue of securities from the people at large."*

78. There is yet another reason why the submission of the Noticees is not acceptable. It is noted that SFIO and SEBI both have different jurisdiction in the matter and the violations of provisions of Companies Act looked into by SEBI in the extant matter are within the jurisdiction of SEBI and hence are not examined by SFIO. Further, on a perusal of Section 212(2) of the Companies Act, 2013, it is observed that the jurisdiction of SFIO in the said sub section is in relation to any offence under the Companies Act, 2013. The present proceedings before SEBI are under Sections 11B and 11(4) of SEBI Act and are not for investigation of any "offence" under the Companies Act. Therefore, the bar created under the sub section that *"no other investigating agency of Central Government or any State Government shall proceed with investigation"* and *"it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office"* does not apply to the present proceedings before SEBI.

79. The second contention of the Noticees is that the instant proceedings should be

quashed on the ground as it amounts to double jeopardy. In this regard, I note that the principle of double jeopardy flows from the fundamental right enshrined in Article 20(2) of the Constitution of India. I note that it is a judicially settled position that in order to claim the protection of Article 20(2) it is necessary to show that - (a) there was a previous prosecution, (b) as a result of which the accused was punished and (c) the punishment was for the same offence. Unless all the three conditions are fulfilled, Article 20 (2) of the Constitution of India is not attracted.

80. The words 'offence', 'prosecution' and 'punishment' in the context of Article 20(2) of the Constitution of India contemplate proceedings of criminal nature before a court of law. I note that directions under Sections 11 and 11B of the SEBI Act do not have element of punishment as contemplated under criminal proceedings. These are not criminal proceedings. This is a civil action for violation of the regulatory framework relating to the securities market. Therefore, the plea raised by the Noticees in this regard is totally misconceived and is liable to be rejected.

81. Noticees have also submitted that all the documents of the company and computer peripheries were seized by the Crime Branch, Odisha Police and therefore it is practically difficult to defend the case. I find the contention of the Noticees to be vague and non-specific. They have not submitted a list of documents which were required to make an effective defense. Further, they have failed to demonstrate as to how the lack of documents that were seized by the Crime Branch has hampered their effort to make an effective representation before SEBI. Moreover, the gravamen of charge against the Noticees is that whether SSL had issued RPS to more than 49 persons in violation of the relevant rules and regulations. The fact of issuance of RPS to more than 49 persons has been admitted by SSL and whether the said act is in conformity with the applicable rules and regulations or not is a question of law.

82. Mr. Sudhansu Shekhar Pati submitted that there were only 3 directors (statutory minimum) at the time of incorporation of SSL and he was taken as a Director for the

limited purpose and had not participated in any of the business of the Board of Directors any time as he had consented to be a Director for a temporary period and only for the purpose of statutory compliance. He was not a person in charge of the business of the company. The allegation against the company have occurred without his knowledge and he was not in any way accessible or responsible for any of the business of SSL. Later, he forgot to remind Mr. Prashanta Kumar Dash about his resignation. He reminded him for the same on February 03, 2012 and his resignation was duly approved in the Extra-ordinary General Meeting on March 05, 2012 and was filed at RoC, Cuttack on April 02, 2012.

83. I note from the extracts of Board of Directors meeting held from November, 2008 till February, 2010 that he has attended the said meetings. Further, from the MCA website it is noted he was the Director of SSL from October 29, 2008 till March 05, 2012.

84. Mrs. Jyotirangi Sarangi has submitted that she has been a school teacher and became a Director of the company for a negligible period of seven months during April, 2008 to October, 2008. During her term, she neither attended any Board Meetings nor signed any documents as Director of company nor received any salary or remuneration as a Director. She was never involved in any activities or affairs of the company. She submitted her resignation on being informed that a civil servant could not hold directorship in any company.

85. I note from the extracts of Board of Directors meeting held from June, 2008 till October, 2008 that she has attended the said meetings. Further, from the MCA website it is noted she was the Director of SSL from April 25, 2008 till October 29, 2008. Mrs. Jyotirangi Sarangi's contention that she submitted her resignation on being informed that a civil servant could not hold directorship in any company is not factually bore out of MCA records. It is noted from MCA records that she was Director in Seashore Healthcare Private Ltd. from August 17, 2007 till February 06, 2010 and

in Sagiarien Systems Private Ltd. from March 15, 2003 till August 08, 2011.

86. Ms. Sapna Jena has submitted that she has was an employee of SSL and became a Non- Executive Director on April 12, 2011. Howsoever, she did not attend any meetings/ Board Meetings nor participated in any administrative decisions at the time of issuance of redeemable preference shares. She was never involved in the day to day affairs and-activities of the company. She has been taken as one of the Director's of SSL without her knowledge and her signature is taken without her knowledge.
87. I note from the extracts of Board of Directors meeting held from April, 2011 till April, 2012 that she has attended the said meetings. Further, from the MCA website it is noted she is the Director of SSL since April 12, 2011. Further, her submission that her signature is taken without her knowledge is not acceptable as she has not substantiated it with any explanation or documentary proof not even by producing the copy of any complaints made in that respect.
88. At this juncture I would like to rely on Hon'ble 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."*
89. Thus, in light of the order of Hon'ble SAT in *Manoj Agarwal Vs. SEBI*, the contention of all the above directors that they were not aware of affairs of the company and were appointed as Directors merely for the sake of it and were never being informed about or involved in any functioning of the company is not acceptable. 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. No Director should be allowed to take a defence that he/she had merely lent his/her name as a Director, however was not aware about the affairs of the company and did not discharge any role as a Director of the company. In view of the same, the arguments advanced by the aforesaid Noticees is not acceptable.

90. Proceedings against Mrs. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Prativa Dash have been initiated on the assumption that they were Directors of SSL, at the time of incorporation of SSL. They submitted that they were only the shareholders of the company and were never appointed as Directors of the company. The said Noticees were neither involved in decision making process nor participated in any activities carried out by the company. The said contention of the Noticees was verified by RoC vide its letter dated March 14, 2018. It was confirmed by RoC, that Mrs. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Prativa Dash were not the Directors of SSL. Further, it is noted from the certificate of incorporation of the company that they were initial subscribers to the Memorandum of Association, and thus they were Promoters of SSL.
91. Mr. Surath Das submitted that he had joined Seashore Consultancy Pvt. Limited as an employee/ record officer on September 01, 2007, on a fixed salary and he is not a Promoter/Director of SSL. He is not aware as to how his name is appearing as a Promoter/Director of SSL. That he has never signed any documents as Promoter/Director of SSL and if any documents are signed the same are forged and fabricated. He was given 3 months’ time to submit the certification to SEBI that the signature in the company’s document are forged and not his signature.

92. It is noted from records that SEBI has not received any documents from Mr. Surath Das substantiating that his signature was forged. However, it was confirmed by RoC vide its letter dated March 14, 2018 that Mr. Surath Das was not a Director of SSL. In view of the same, I am inclined to agree with the submission of Mr. Surath Das that he was not the Director of SSL. Further, it is noted from the certificate of incorporation of the company that he was an initial subscribers to the Memorandum of Association, and thus he was Promoter of SSL. Though he denied signing the Memorandum of Association, he has not produced any proof to substantiate that the signature is in fact a forged one. Therefore, I am constrained to hold him as a Promoter of SSL.
93. Mr. Gopal Chandra Sahu submitted that SSL had several business activities including an electronic media unit known as 'S-TV Samachar'. He was contacted by the officials/ Directors of Seashore to work for the media unit i.e. 'S-TV Samachar' on salary. Thereafter, he joined 'S-TV Samachar', w.e.f. from October 09, 2010 as 'Advertisement Sales Executive'. He continued as a paid employee till the month of March 2013. During his tenure, his designation as 'Advertisement Sales Executive' was re-designated as 'Executive Director'. He was never associated with the management or the decision making process of the company. In March 2012, he came to know that he had been inducted as a Director in the Board of Directors of the company w.e.f. from March 05, 2012 and 'Form 32' in this regard had been filed before the RoC, Cuttack, Odisha, without his consent and forging his signature. On this, he had approached the Chairman of SSL, Mr. Prashant Kumar Das for deletion of his name from the Board of Directors of the company, but all his requests went in vain. Thereafter, vide his letter dated August 01, 2012, he tendered his resignation retrospectively from the date of induction. The said letter was duly acknowledged and received by the then Company Secretary, Mr. Sachidananda Nayak. Thereafter, he filed a civil suit in the Court of Civil Judge, Junior Division, which was pending for disposal. He is not a Promoter/Director of SSL and is not aware as to how his name

is appearing as a Promoter/Director of SSL. That he has never signed any documents as Promoter/Director of SSL and if any documents are signed the same is forged and fabricated.

94. Mr. Gopal Chandra Sahu was given 3 months' time to submit the certification to SEBI that the signature in the company's document are forged and are not his signature. He was also given 15 days' time to submit the receipt of filing of Civil Suit and the current status of Civil Suit.

95. It is noted from records that SEBI has not received any documents from Mr. Gopal Chandra Sahu substantiating that his signature was forged. Further, he has also not submitted any receipt / acknowledgment demonstrating that he has filed a Civil Suit as stated by him. In the absence of any documentary proof, the submissions of the Noticee are not acceptable. It is noted from material made available on record that vide a consent letter dated February 03, 2012, Mr. Gopal Chandra Sahu had given his consent to act as a Director of SSL. As per MCA records, Mr. Gopal Chandra Sahu was appointed as a Director of the company on March 05, 2012, the same day when the tenure of Mr. Sudhansu Shekhar Pati as a Director of the company was over. Further, it is noted from the extract of the minutes of the meetings of Board of Directors held on March 19, 2012 and April 27, 2012 that Mr. Gopal Chandra Sahu has attended the said Board meetings. Mr. Gopal Chandra Sahu has stated that he has tendered his resignation vide his letter dated August 01, 2012 and the same was acknowledged and received by the then Company Secretary, Mr. Sachidananda Nayak. However, on a perusal of his resignation letter, it is observed that the acceptance of his resignation letter is not acknowledged with the seal of the company and therefore, the authenticity of the acceptance is questionable. Moreover, from the salary slips submitted by him, which were issued to him by Seashore Television, a unit of SSL for the months of January and February, 2013, it is noted that he was drawing the salary as an Executive Director. In view of the same, it is held that Mr. Gopal Chandra Sahu

is the Director of the company. As per MCA records, he is yet to resign from the company as a Director.

96. From the documents available on record, I find that the present Directors in SSL are Mr. Prashanta Kumar Dash, Ms. Sapna Jena , Mr. Gopal Chandra Sahu. I also note that, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, who were earlier Directors in SSL, have since resigned. The details of the appointment and resignation of the directors are as following:

Sl. No.	Name of the directors	Date of appointment	Date of cessation
1	Mr. Prashanta Kumar Dash	April 25, 2008	Continuing
2	Mr. Pravat Kumar Dash	April 25, 2008	April 12, 2011
3	Ms. Jyotirani Sarangi	April 25, 2008	October 29, 2008
4	Mr. Sudhanshu Shekhar Pati	October 29, 2008	March 05, 2012
5	Ms. Sapna Jena	April 12, 2011	Continuing
6	Mr. Gopal Chandra Sahu	March 05, 2012	Continuing

97. I find that Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi were both Promoters and Directors of SSL and Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Prativa Dash were only Promoters / shareholders of SSL.

98. Sections 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, SSL and its Directors are held liable for the violation of Sections 56(1), 56(3) and 60 of the Companies Act, 1956.

99. 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%.
100. From the material available on record and the details of the appointment and resignation of the Directors of SSL as reproduced in paragraph 96 of this Order, it is noted that Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Mr. Prashanta Kumar Dash, Ms. Sapna Jena and Mr. Gopal Chandra Sahu were the 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. Further, 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 SSL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the past and present directors of SSL, are officers in default and 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) of the Companies Act, 1956 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 SSL and its Directors, viz. Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Mr. Prashanta Kumar Dash, Ms. Sapna Jena and Mr. Gopal Chandra Sahu 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.

101.I note that during the financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013, SSL through Offer of RPS, had collected at least an amount of ₹ 503,22,80,600 from various allottees. I note that Mr. Prashanta Kumar Dash has been Director of SSL during financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 till present date. I note that Mr. Pravat Kumar Dash was Director of SSL during financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012. I note that Ms. Jyotirani Sarangi was Director of SSL during financial years 2008-2009. I note that Mr. Sudhanshu Shekhar Pati was Director of SSL during financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012. I note that Ms. Sapna Jena has been Director of SSL during financial years 2011-2012, 2012-2013, till present date. I note that Mr. Gopal Chandra Sahu has been Director of SSL during financial years 2011-2012, 2012-2013, till present date. Therefore, in view of Hon'ble 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 SSL and other Directors are limited to the extent of amount collected during his/her tenure as Director of SSL.

102.I find that Mr. Prashanta Kumar Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Prativa Dash are Promoters of SSL. It has been held in preceeding paragraphs that SSL has issued

RPS against the norms of deemed public issue. In view of the same, for the violation of the provisions of the public issue, the aforesaid Noticees being the Promoters of SSL are also responsible and accountable to the investors. Therefore, the said Noticees are liable to be debarred for an appropriate period of time.

103. 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 SSL and its Directors, viz. Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Mr. Prashanta Kumar Dash, Ms. Sapna Jena and Mr. Gopal Chandra Sahu to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the company and its Directors and Promoters, in order 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.

104. I also note that, vide the interim order dated July 23, 2014 and Hon'ble SAT order dated November 25, 2016, SSL was directed to provide a full inventory of all the assets and properties belonging to the company. Similarly, the Directors/Promoters of SSL were also directed to provide an inventory of assets and properties belonging to them. It is noted from records that Mr. Gopal Chandra Sahu vide his letter dated April 01, 2015, Mr. Bijan Bihari Kar vide his letter dated December 12, 2016 on behalf of SSL, Mr. Prashanta Kumar Dash, Ms. Jyotirani Sarangi, Mr. Manoj Kumar Nath, Ms. Prativa Dash, Mr. Pavat Kumar Dash and Ms. Shantiprava Dash and Ms. Sapna Jena vide her letter dated January 03, 2017, have submitted a list of assets, if any owned by them.

105. In view of the discussion above, appropriate action in accordance with law needs to be initiated against SSL and its Directors and Promoters, viz. Mr. Prashanta Kumar

Dash, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Ms. Sapna Jena, Mr. Gopal Chandra Sahu, Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Prativa Dash.

106. 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. SSL, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Mr. Prashanta Kumar Dash, Ms. Sapna Jenaband Mr. Gopal Chandra Sahu 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”.
- c. Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati are directed to provide an updated full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- d. SSL, Mr. Prashanta Kumar Dash, Ms. Sapna Jena and Mr. Gopal Chandra Sahu are directed to provide an updated 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. SSL, Mr. Prashanta Kumar Dash, Ms. Sapna Jena and Mr. Gopal Chandra Sahu are permitted to sell the assets of the company 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. Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Mr. Prashanta Kumar Dash, Ms. Sapna Jena and Mr. Gopal Chandra Sahu 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. SSL, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Mr. Prashanta Kumar Dash, Ms. Sapna Jena and Mr. Gopal Chandra Sahu 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, SSL, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Mr. Prashanta Kumar Dash, Ms. Sapna Jena and Mr. Gopal Chandra Sahu 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 holding such certificate.

- i. In case of failure of SSL, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Mr. Prashanta Kumar Dash, Ms. Sapna Jena and Mr. Gopal Chandra Sahu 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 106(a) of this Order, in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws.
- j. SSL, Mr. Pravat Kumar Dash, Ms. Jyotirani Sarangi, Mr. Sudhanshu Shekhar Pati, Mr. Prashanta Kumar Dash, Ms. Sapna Jena and Mr. Gopal Chandra Sahu 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. Mr. Surath Das, Ms. Shantiprava Dash, Mr. Manoj Kumar Nath and Ms. Prativa Dash 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 for a

period of 4 (four) years from the date of this Order. The above said persons 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 for a period of 4 (four) years from the date of this order.

107. I find that during the course of current proceedings SSL and its Directors were not given an opportunity to show cause, why any directions, if any should not be issued against them including for refunding the money collected from the investors by SSL by issuing RPS during the period 2008-2013. In view of this, this order will take effect as final order against SSL and its Directors and Promoters, on the expiry of 30 days from the date of service of this order against the respective Noticees, unless any of the said Noticees, within such period of 30 days from the date of service of this order file their objections. If no objections are filed, the interim directions vide Interim order dated July 23, 2014 shall continue against the Noticees till the time of said thirty days period, after which this order will come into effect. If objections are filed by any of the said Noticees, the interim directions vide Interim order dated July 23, 2014 shall continue qua that Noticee till disposal of the said objections qua that Noticee and the directions passed herein against that Noticee shall be made applicable subject to the determination on the objections.
108. It is noted from material made available on record that CBI / Crime Branch (EOW) of Odisha has filed a complaint under Odisha Protection of Interests of Depositors (In Financial Establishments) Act, 2011 before ACJM (Special), Cuttack, Odisha for seeking the declaration from the court to pass an order making the ad-interim order of attachment absolute. Therefore, the effect and implementation of the aforesaid directions stated in paragraphs 106 and 107(excluding paragraphs 106(c, d, j and k) shall be subject to the order passed by ACJM (Special), Cuttack, Odisha and ad-

interim order of attachment passed by the State Government under Odisha Protection of Interests of Depositors (In Financial Establishments) Act, 2011 in this regard.

109. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
110. 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.
111. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

-Sd-

DATE: September 24, 2018

PLACE: Mumbai

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