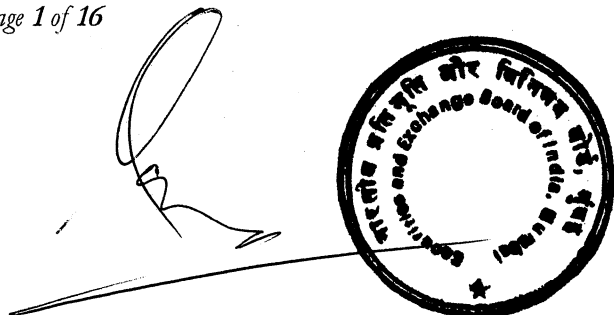


BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of SLB Invest (India) Limited (PAN: AAMCS8354E) and its Directors, viz. Shri Bairi Ganjan Dash (DIN-02282802; PAN:AEWPD4198N), Saubhagya Kumar Mohapatra (DIN- 02282744; PAN: ANQPM5013N), Shri Basudev Mohanty (DIN-02281627; PAN:AHZPM1022C), Shri Aurobindo Maiti (PAN:ANPPM8071M), Ms. Baisalini Das (PAN:AKAPD0726A), Ms. Rosalin Mohanty (PAN:ANXPM3985E) and Ms. Swati Satpathy (DIN- 02287754; PAN:AXTPS4159G).

1. Securities and Exchange Board of India ("SEBI") received a complaint on November 19, 2012 alleging illegal mobilization of funds by SLB Invest (India) Limited (hereinafter referred to as 'SLB' or 'the company'), through issue of preference shares.
- 2.1 As a part of preliminary inquiry, SEBI vide letter dated March 27, 2013, sent to its registered office at N4/222, IRC Village, (Near Hotel Bari International), Nayapalli, Bhubaneswar, Orissa advised SLB to furnish *inter alia* the following information, viz.
 - i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Copy of the Audited Balance Sheet and Profit and Loss account of the company for last 3 years;
 - iii. Names, addresses and occupation of all the promoters/directors of the company;
 - iv. Names and details of the Key Managerial Personnel of the company;
 - v. Information in respect of preference shares/debentures issued by the company, viz. –
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with RoC for issuance of debentures/ preference shares.
 - b. Date of opening and closing of the subscription list for the said debentures/ preference shares;
 - c. Details regarding the number of application forms circulated inviting subscription for debentures/ preference shares;
 - d. Details regarding the number of applications received;



The image shows a handwritten signature in black ink, followed by a circular official stamp. The stamp contains the text 'Securities and Exchange Board of India, Mumbai' in English and its Hindi equivalent 'भारतीय प्रतिष्ठान और विनिवेश बोर्ड, मुंबई'. There is a small star at the bottom of the stamp.

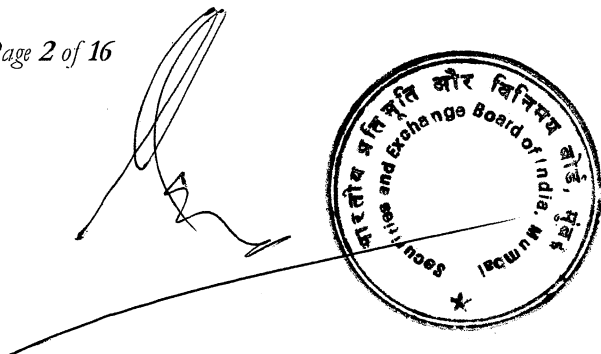
- e. Details regarding the number of allottees and list of such allottees;
- f. Number of debentures/ preference shares allotted and value of such allotment against each allottee's name.
- g. Details regarding subscription amount raised;
- h. Date of allotment of debentures/ preference shares;
- i. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
- j. Date of dispatch of debentures/ preference shares certificates etc.;
- k. Details of the total number of applicants for each of SLB's schemes besides the lists of final allottees;
- l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of debentures/ preference shares.
- m. Terms and conditions of the issue of debentures/ preference shares.

The aforesaid letter was however returned as undelivered to SEBI. Thereafter, SEBI forwarded the aforesaid letter on April 12, 2013 to SLB on another address (of a group company of SLB, which was found from the information available on internet, at 687/2428, SLB Zone-B, Ekamra Kanan Road, Jayadev Vihar, Bhubaneswar - 751015) SLB in its reply vide letter dated April 24, 2013 submitted some of the documents/information and also sought time of one month to submit the rest of the documents/information. SEBI vide letter dated April 25, 2013 advised SLB to submit required documents/information by May 07, 2013. Thereafter, SLB vide its letters dated May 06, 2013 and May 08, 2013 submitted certain documents/information.

2.2 SLB vide its letters dated April 24, 2013, May 06, 2013 and May 08, 2013 provided *inter alia* the following documents/information, viz.:

- i. Copy of the Memorandum and Articles of Association of the company;
- ii. Copy of the Certificate of Incorporation;
- iii. Copy of Certificate of Commencement of Business;
- iv. Copy of letter for allotment of Tax Deduction Account Number (TAN);
- v. Copy of Permanent Account Number (PAN) of the company
- vi. Copies of Annual Reports for the years 2008-09, 2009-10, 2010-11
- vii. Names, addresses and occupation of all the promoters/directors of the company;

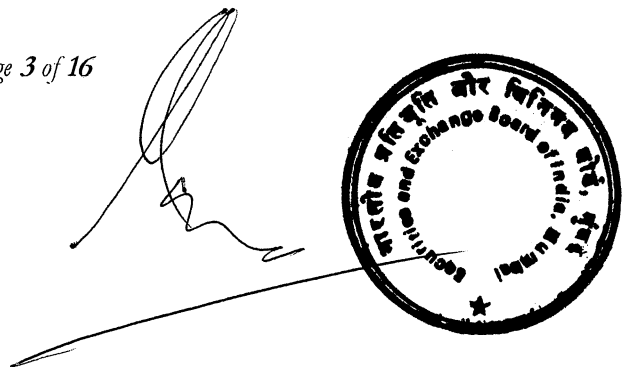
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- viii. Names and details of the Key Managerial Personnel/Managing Director of the company;
- ix. Sample of Application Form, Money receipt, Certificate of Allotment, Letter of Allotment;
- x. List of allottees along with Minutes of the meetings of the Board of Directors;
- xi. List of Investors under monthly payment scheme
- xii. Information in respect of preference shares/debentures issued by the company, viz. –
 - a. Details regarding the number of allottees and list of such allottees.
 - b. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment of preference shares.
 - c. Terms and conditions of the issue of preference shares

SLB also *inter alia* made submissions in respect of certain queries raised by SEBI which are reproduced as under:

- a. *"Date of opening and closing of the subscription list for the said preference shares/debentures -*
Closing date for issue of 4768 preference shares is 5th June 2009
Closing date for issue of 6844 preference shares is 4th December 2009
Closing date for issue of 12485 preference shares is 25th May 2010
Closing date for issue of 15563 preference shares is 10th November 2010
Closing date for issue of 12584 preference shares is 20th December 2010
- b. *Details regarding the number of application forms circulated inviting subscription -*
Tentatively more than 10000 applications forms had been circulated
- c. *Details regarding the number of applications received -* Total 1500 application forms received
- d. *Number of debentures/ preference shares allotted and value of such allotment against each allottee's name-* Total 52244 preference shares allotted and total value of share allotment is Rs.5,22,44,000/-
- e. *Date of dispatch of preference shares/debentures certificates, etc. -* Certificates had been dispatched in 30 days from the date of allotment
- f. *Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of preference shares/debentures -* we have only used and circulated the application forms where all details like terms & conditions, benefits, drawbacks etc. were available

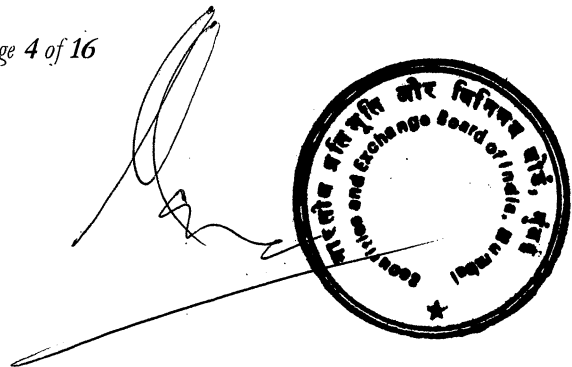


3. The material available on record i.e. correspondence exchanged between SEBI and SLB along with the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal' have been perused. On an examination of the same, it is observed that-

- i. SLB was incorporated on February 27, 2009, with the ROC, Cuttack, Orissa. The CIN No. is U65993OR2009PLC010642. The Registered Office of SLB is situated at N4/222, IRC Village, Nayapalli, Bhubaneswar, Orissa, India- 751015.
- ii. The Directors/Promoters of SLB are Shri Bairi Ganjan Dash, Saubhagya Kumar Mohapatra, Shri Basudev Mohanty, Shri Aurobindo Maiti, Ms. Baisalini Das, Ms. Rosalin Mohanty and Ms. Swati Satpathy. Vide letter dated September 18, 2014, Saubhagya Kumar Mohapatra has submitted that he resigned on March 11, 2013 as a Director of the company and expressed his inability to supply the information required by SEBI.
- iii. It has been mentioned in the application form circulated by SLB that application is for " Private Placement & Issue of Redeemable Preference Shares of Rs.5,000 lacs @ Rs. 1000 per share". The application form also *inter alia* states that SLB is privately placing "Redeemable Preference Shares" ("RPS") on the terms and conditions which are reproduced below-

(On Issue price of 100 Shares i.e. Principal of Rs. 1,00,000 (one lac))

Sr. No.	Plan	Redemption Period	Redemption Premium (in Rs.)	Redemption Value (in Rs.)	Annualized Yield on Investment
I	1YTD/RPS	1 Year & 1 month	11,850	1,11,850	11.85%
II	3YTD/RPS	3 Year & 6 months	50,000	1,50,000	12.75%
III	5YTD/RPS	5 Year & 6 months	1,00,000	2,00,000	13.52%
IV	7YTD/RPS	7 Year & 6 months	2,00,000	3,00,000	15.76%
V	10YTD/RPS	10 Year & 6 months	4,00,000	5,00,000	16.52%
VI	7MDD/RPS	7 months	3,029	1,03,029	N.A.



VII	1YDD/RPS	1 Year	11,580	1,11,580	11.58%
VIII	2YDD/RPS	2 Years	19,633	1,19,633	12.56%
IX	3YDD/RPS	3 Years	26,978	1,26,978	12.56%
X	5YDD/RPS	5 Years	51,187	1,51,187	14.11%
XI	7YDD/RPS	7 Years	77,038	1,77,038	14.33%
XII	MDS/RPS	1 Years to 5 Years	1,250 p.m.	1,00,000	15%

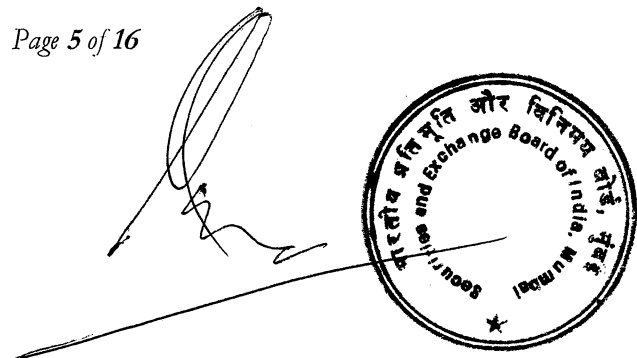
- iv. As per the details provided by SLB vide its letters dated May 06, 2013 and May 08, 2013, SLB mobilized Rs. 5,22,44,000/- through issuance of 52,244 RPS of face value of Rs. 1000/- each to 1436 investors in the Financial Years 2009-10, 2010-11 which was approved by Resolutions passed by Board of Directors of the company. The details are given below :

Year	Date of Meeting of Board of Directors	No. of Allottees	Amount raised (in Rs.)	No. of RPS
2009-10	06.06.2009	29	47,68,000	4,768
	25.11.2009	144	68,44,000	6,844
Total		173	1,16,12,000	11612
2010-11	25.05.2010	496	1,24,85,000	12,485
	15.11.2010	410	1,55,63,000	15,563
	20.12.2010	357	1,25,84,000	12,584
Total		1,263	4,06,32,000	40,632
Grand Total		1,436	5,22,44,000	52,244

4.1 It is noted that-

- It is observed from the balance sheet of the company as on March 31, 2011 that SLB has authorized share capital of Rs. 9,00,00,000/- (preference share capital ₹8,90,00,000 + equity share capital of ₹10,00,000).
- In response to query raised by SEBI vide letter dated August 04, 2014, the Auditor of the company 'Manas Dash & Co.' vide their letter dated August 12, 2014 has submitted that during the year 2010-2011 only preference shares amounting to Rs. 4,11,32,000/- were allotted and no equity shares were issued

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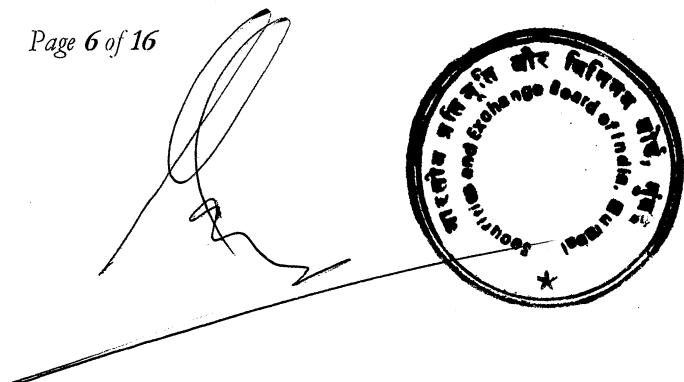


during year 2010-2011 as depicted in the Balance Sheet of the company as on March 31, 2011. It is observed that there is mismatch of RPS worth Rs. 5,00,000/- as mentioned in the Balance Sheet of the company as on March 31, 2011 and details provided by the company vide its letters dated May 06, 2013 and May 08, 2013 as mentioned in paragraph 3(iv) above.

- c. It has also been observed that the company has Rs. 3.11 Crores outstanding as 'Advance from customers' in the Financial Year 2010-11. Details in this regard were sought from the company and auditor of the company 'Manas Dash & Co.' by SEBI vide letter dated August 04, 2014. However, no information has been received in this regard till date.
- d. It has been mentioned in the application form circulated by SLB that application is for " Private Placement & Issue of Redeemable Preference Shares of Rs.5,000 lacs @ Rs. 1000 per share".
- e. Further, it is an admitted fact that SLB circulated more than 10,000 application forms inviting subscription for preference shares.

From the details mentioned above, *prima facie* it appears that SLB has been mobilizing large amounts of money on continuous basis.

- 4.2 In the context of the abovementioned details of the *Offer of RPS*, the issue for determination in the instant matter is whether the mobilization of funds by SLB through the aforesaid issue of RPS, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**"); the Companies Act, 1956 read with the Companies Act, 2013; the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("**DIP Guidelines**") read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**").
- 4.3 The jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, whether listed or unlisted, when they issue and transfer securities, at the relevant point of time flows from the provisions of Section 55A of the Companies Act. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. vs.*



SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012) (hereinafter referred to as the "**Sahara Case**"), had observed:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

4.4 In this regard –

- i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced as under:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

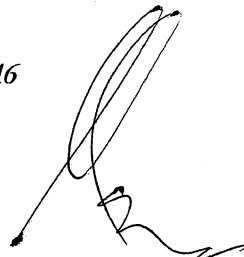
- (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or*
(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation

...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."

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- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sahara Case* observed:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

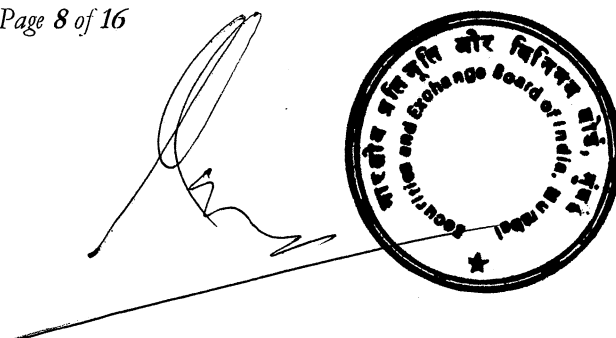
The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. ...

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

- iii. In the instant matter, for ascertaining whether the Offer of RPS is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.

- a. Although the *Offer of RPS* is stated to have been made on a private placement basis, it is an admitted fact that SLB issued RPS to more than 49 investors in each of the Financial Years 2009-10 & 2010-11 and mobilized approximately Rs.5,22,44,000/- from 1436 individuals/investors during these two Financial



Years as detailed in paragraph 3(iv) above. The aforesaid facts clearly indicate that the number of persons to whom RPS was issued by SLB in each of these two years was way beyond the limit of forty-nine persons as prescribed under Section 67(3) of the Companies Act, 1956. I, therefore, find that the *Offer of RPS* was nothing but a public issue of securities under the *first proviso* to Section 67(3) of the Companies Act, 1956 and the company merely camouflaged the issuance of a public issuance of RPS as private placements.

- b. SLB is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and therefore, is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.
- c. In view of the above, the *Offer of RPS* by SLB, would *prima facie* qualify as a public issue under the *first proviso* to Section 67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the *Sahara Case*. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

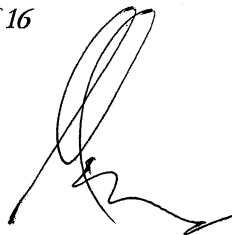
4.5 I note that –

- i. From the abovementioned, it will follow that since the *Offer of RPS* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard, reference is made to Sections 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which is reproduced as under:

"73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange

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or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

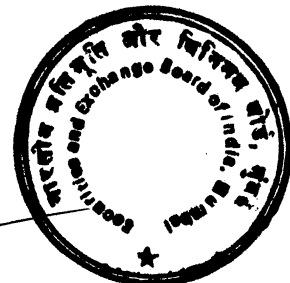
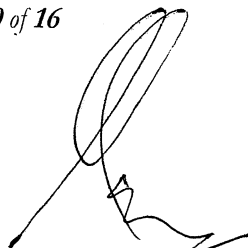
Provided that where an appeal against the decision of any recognised stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2); and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees."

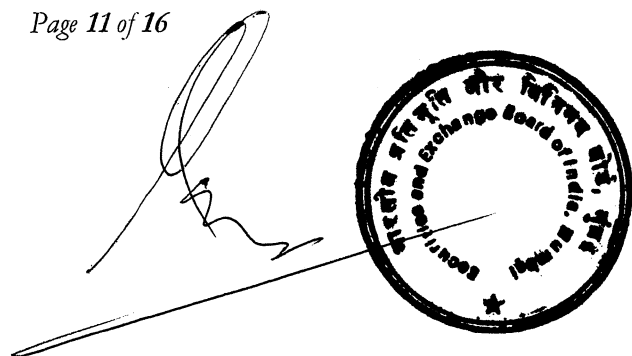
- ii. In the *Sahara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed:

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus.



The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

- iii. In the facts of the instant case, since the *Offer of RPS* was made to fifty persons or more by SLB, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956. It therefore *prima facie* appears that SLB has violated the provisions of Section 73(1) of the Companies Act, 1956, since it has failed to ensure listing with a recognised stock exchange of the securities issued under the *Offer of RPS*.
- iv. As per Section 73(2) of the Companies Act, 1956, the obligation to refund the amount with interest that was collected from investors under the *Offer of RPS* is mandatory on SLB. In this regard, there is no evidence on record to indicate whether or not SLB has paid interest to the investors where such *RPS* are not allotted within 8 days, as per the aforesaid Section. In view of the same, I find that *prima facie*, SLB has not complied with the provisions of Section 73(2) of the Companies Act, 1956.
- v. Section 73(3) of Companies Act, 1956, says that all moneys received shall be kept in a separate bank account maintained with a Scheduled Bank and if default is made in complying with this sub-Section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees. In the instant case, there is no evidence on record to indicate whether or not funds received from the investors under the *Offer of RPS* has been kept in separate bank account by SLB. In view of the same, I find that *prima facie*, SLB has not complied with the provisions of Section 73(3) of Companies Act, 1956.
- 4.6 Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the ROC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for



the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, since the *Offer of RPS* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, SLB was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. Based on the material available on record, I find that *prima facie*, SLB has not complied with the provisions of Section 60 of Companies Act, 1956.

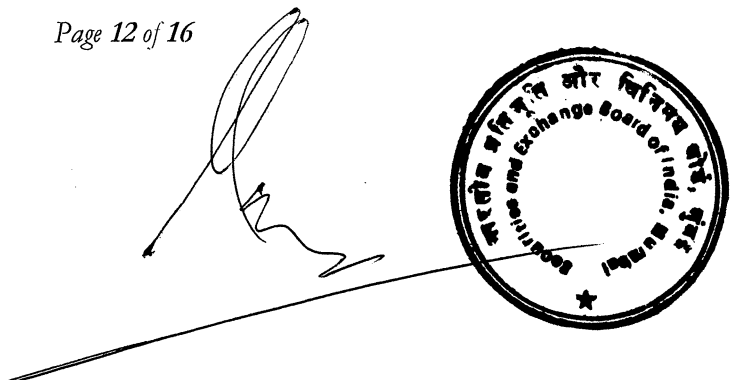
4.7 Under Section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that SLB has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

4.8 As per Section 465(1) of the Companies Act, 2013, the Companies Act, 1956, "*shall stand repealed*". However, Section 465(2)(a) of the Companies Act, 2013, 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 any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;"

4.9 I also note that SEBI had framed the DIP Guidelines, 2000 in exercise of the powers conferred under the SEBI Act. In the words of the Hon'ble Supreme Court in the *Sahara Case*, "*DIP Guidelines had statutory force since they were framed by SEBI in exercise of its powers conferred on it under Sections 11 and 11A of the SEBI Act. Powers have been conferred on SEBI to protect the interests of the investors in securities and regulate the issue of prospectus, offer documents or advertisement soliciting money through the issue of prospectus. Section 11 of the Act, it may be noted has been incorporated, evidently to protect the interests of investors whose securities are legally required to be listed. DIP Guidelines were implemented by SEBI with regard to the listed and unlisted companies,*



which made public offer, until it was replaced by ICDR 2009". In this regard, I observe *prima facie* that the Company has not complied with the provisions of the DIP Guidelines including the following clauses:

- a. Clause 2.1.1. – (Filing of offer document)
- b. Clause 2.1.4 – (Application for listing)
- c. Clause 2.1.5 – (Issue of securities in dematerialized form),
- d. Clause 2.8 – (Means of finance),
- e. Clause 4.1 – (Promoters contribution in a public issue by unlisted companies),
- f. Clause 4.11 – (Lock-in of minimum specified promoters contribution in public issues),
- g. Clause 4.14 – (Lock-In of pre-issue share capital of an unlisted company)
- h. Clause 5.3.1 – (Memorandum of understanding),
- i. Clause 5.3.3 – (Due Diligence Certificate)
- j. Clause 5.3.5 – (Undertaking),
- k. Clause 5.3.6 – (List Of Promoters Group And Other Details),
- l. Clause 5.4 – (Appointment of intermediaries)
- m. Clause 5.6 – (Offer document to be made public)
- n. Clause 5.6A – (Pre-issue Advertisement)
- o. Clause 5.7 – (Despatch of issue material)
- p. Clause 5.8 – (No complaints certificate)
- q. Clause 5.9 – (Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)
- r. Clause 5.10 – (Authorised Collection Agents)
- s. Clause 5.12.1 – (Appointment of compliance officer)
- t. Clause 5.13 – (Abridged prospectus)
- u. Clause 6.0 – (Contents of offer documents)
- v. Clause 8.3 – (Rule 19(2)(b) of SC(R) Rules, 1957)
- w. Clause 8.8.1 – (Opening & closing date of subscription of securities)
- x. Clause 9 – (Guidelines on advertisements by Issuer Company)
- y. Clause 10.1 – (Requirement of credit rating)
- z. Clause 10.5 – (Redemption)



4.10 As per Regulation 111(1) of the ICDR Regulations, the DIP Guidelines, "shall stand rescinded". However, Regulation 111(2) of the ICDR Regulations, 2009, provides that:

"(2)Notwithstanding the repeal under sub-section (1) of the repealed enactments,—

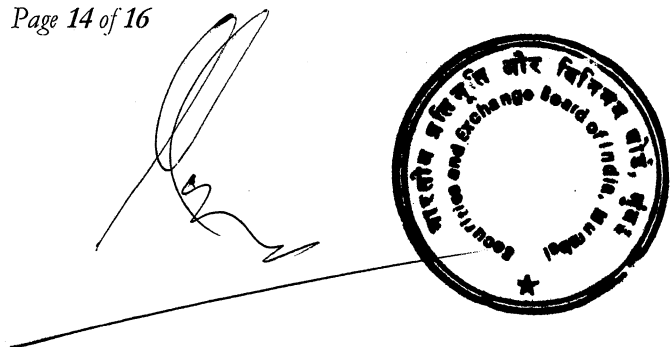
(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations."

4.11 Upon consideration of the aforementioned paragraphs, I am of the view that *prima facie*, SLB is engaged in fund mobilizing activity from the public, through the *Offer of RPS* and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73,) read with Section 465 of the Companies Act, 2013; the DIP Guidelines read with ICDR Regulations, 2009.

5. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013, administrative authority on the subjects relating to public issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 and Section 465 of the Companies Act, 2013, over companies who issue *preference shares* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts; the DIP Guidelines read with ICDR Regulations, 2009. Steps, therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by SLB and no investors are defrauded. In light of the same, I find there is no other alternative but to take recourse through an interim action against SLB and its Directors, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of RPS*.

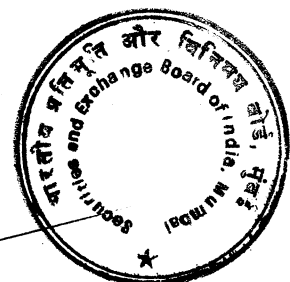
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6. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act and Clause 17 of the DIP Guidelines read with Regulation 111 of the ICDR Regulations, 2009, hereby issue the following directions-

- i. SLB shall not mobilize any fresh funds from investors through the *Offer of RPS* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly, till further directions;
- ii. SLB and its Directors, viz. Shri Bairi Ganjan Dash (DIN-02282802; PAN:AEWPD4198N), Saubhagya Kumar Mohapatra (DIN- 02282744; PAN: ANQPM5013N), Shri Basudev Mohanty (DIN-02281627; PAN:AHZPM1022C), Shri Aurobindo Maiti (PAN:ANPPM8071M), Ms. Baisalini Das (PAN:AKAPD0726A), Ms. Rosalin Mohanty (PAN:ANXPM3985E) and Ms. Swati Satpathy (DIN- 02287754; PAN:AXTPS4159G) are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
- iii. SLB and the abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
- iv. SLB shall provide a full inventory of all its assets and properties;
- v. The abovementioned Directors of SLB shall provide a full inventory of all their assets and properties;
- vi. SLB and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of RPS*, without prior permission from SEBI;
- vii. SLB and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of RPS*, which are kept in bank account(s) and/or in the custody of SLB.
- viii. SLB and its abovementioned Directors shall, within 21 days from the date of receipt of this Order, provide SEBI with all relevant and necessary information sought by SEBI vide letters dated March 27, 2013 and August 04, 2014 but not yet furnished.

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7. The above directions shall take effect immediately and shall be in force until further orders.
8. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondence exchanged between SEBI and SLB along with the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'. In this context, SLB and its abovementioned Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
9. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against SLB and its abovementioned Directors in accordance with law.

Place: Mumbai
Date: December 03, 2014


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

