WTM/MPB/EFD-1-DRA-IV/167/2018

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 Sanket Investments and Marketing Ltd.

In Re: Deemed public issue norms

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN
	Sanket Investments and Marketing Ltd.	**AAACS0029A**	**U74899DL1990PLC039452**
	Prashanta Kumar Dash	**AENPD6409F**	**00843963**
	Pravat Kumar Dash	**AEKPD7710E**	**02031548**
	Nibedita Nath	**AHBPN9799H**	**03576083**

1. Sanket Investments and Marketing Ltd. (hereinafter referred to as "**SIML**"/ "**the Company**") is a Public company incorporated on March 08, 1990 and registered with Registrar of Companies–New Delhi with CIN: U74899DL1990PLC039452. Its registered office is at A-223, Ansal Chamber-1, 2nd Floor, 3, Bhikaji Cama Place New Delhi - 110066.

2. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received a letter/complaint from some persons against SIML in respect of issue of Redeemable Preference Shares ("RPS") and undertook an enquiry to ascertain whether SIML had made any public issue of securities without complying with the provisions of the Companies Act,

1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and the Rules and Regulations framed thereunder

3. On enquiry by SEBI, it was observed that SIML had made an offer of RPS in the financial years 2011-2012 (hereinafter referred to as "Offer of RPS") and raised an amount of Rs. 58,10,300/- from 698 allottees.

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 March 10, 2017 (hereinafter referred to as "interim order") and issued directions mentioned therein against SIML and its Directors and , viz. Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath (hereinafter collectively referred to as "**Noticees**")

5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. SIML had made an *Offer of RPS* during the financial years 2011-2012 raised an amount of Rs. 58,10,300/- as shown below:

Year of Issue	**Security Issued**	**Amount raised (Rs.) (in lakh)**	**Number of allottees**
2011-2012	RPS	58,10,300	698
Total		58,10,300^	698*

**^ No. of allottees and funds mobilized has been collated from the allotment returns filed by SIML with RoC.*

6. *The* above *Offer of RPS* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by SIML 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 March 10, 2017 with immediate effect.

(i) *Sanket and the abovenamed Directors shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;*

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

(iii) *Sanket and the abovenamed Directors shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of preference shares sought vide letter dated March 01, 2016;*

8. The interim order also directed the SIML and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4) and 11B of the SEBI Act, should not be issued/imposed, including the following directions, namely :

(i) *Sanket and its abovenamed Directors, to jointly and severally refund money collected through the offer and allotment of preference shares, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment) within a period of 180 days from the date of receipt of this Order, supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI; and*

(ii) *Sanket and its abovenamed Directors be refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in*

securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.

9. Vide the said interim order, SIML, its abovementioned Directors were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate within 90 days from the date of receipt of this order whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

10. *Service of interim order*: The copy of the said interim order was sent to the Noticees vide letter dated March 16, 2017 which was delivered to all the three directors, however could not be delivered to SIML. Subsequently, vide notification dated March 28, 2017 published in newspaper Hindustan, New Delhi edition and notification dated March 28, 2017 published in newspaper Hindustan Times, New Delhi edition, the Noticees were notified by SEBI, that interim order dated March 10, 2017 was issued against them and they were given a final opportunity to submit their reply in the matter.

11. Ms. Nibediata Nath vide her letter dated April 08, 2017 filed her reply and made interalia the following submissions-

    a. That in the month Feb/March, 2007 there was advertisements by Seashore Company in the local newspaper for recruitment of Unit Manager (22 posts) and Office Assistant (30 posts) at Seashore Funds Management Pvt. Ltd and she applied for the post for Office Assistant and was offered appointment letter for the post of Office Assistant.

    b. That in the same year she was promoted as Assistant Manager on 1st Sep 2007 allotted the job profile to handle "Reliance Life Insurance" cases. In addition to the existing work profile in the year 2008 she was told to handle office administration also, like to maintain office attendance. Looking after the activities of back office staffs.

    c. That she has worked till 12th Dec 2009 with the same profile and her salary was increased to Rs 13,500/- (approximately) wherein she was reporting to Mr Prasant Dash, CMD.

d. That she was deputed to STV (Seashore Television) on 12th Dec 2009 with the same terms and conditions of the service and thereafter transferred from "Seashore Funds Management Pvt. Ltd." to "Seashore Securities Ltd" w.e.f 1st Dec 2009. The job profile was to look after office administration like keeping office attendance, office infrastructure and maintenance of office decorum. That she was reporting to Mr Prasant Dash, CMD Seashore Securities Ltd.

e. That on 1st January 2010, she got promoted as a Divisional Manager and given the same office administration profile at "Seashore Sahitya Academy". At that time Seashore was publishing one monthly Odiya Magazine in the name of "Sahitya Prithibi" and she was reporting to the same person, Mr. Prasant Dash.

f. On 17th May 2010, she was transferred to "Seashore Agricultural Promotion Company Pvt. Ltd" as a C.O.O (Chief Operating Officer) at that time my reporting got changed.

g. That in the year 2011 , she had received a letter from the HR Department of Company to submit the updated CV with all updated testimonials, passport size photo, address proof, PAN Card and ID Proof and accordingly she had submitted the same.

h. That one day in the year 2011, when she was sitting in the office along with the company CA Mr Manoj Naik, he called to Mr Prashant Dash (CMD Seashore) and asked him that whom to make the Director of the company M/s Sanket Investments and Marketing Ltd. At that time the CMD told that make Nibedita Nath as one of the Director. She asked what were the terms and conditions responsibilities to became a director but he did not clearly say anything and asked to submit PAN card copy and at that time from office end they had deposited Rs 1 Lac in her salary account (Indian Bank account) and asked to give a cheque of same amount to them and accordingly she gave the same.

i. That in the year 2012, CBI Conducted raid in the Seashore Company and after the CBI raid she came to know that the Company is a Cheat Fund Company which is collecting money from various customers by giving false promises of returns. After CBI

Investigation, she came to know that she was appointed fraudulently as a Director of two other Companies namely "Jatish Agro" and "Katua Finance Ltd".

j. That she had not received any appointment letter as a Director of M/s Sanket Investments and Marketing Ltd. and also not gone through the job profile of a director and its responsibilities. Her profile was same as office administration and along with this she was doing Gold trading for the company as per the instruction of the CMD Mr Prasant Dash through my reporting manager. She was not aware that the company is a cheat fund company. She had also invested some Rs 30,000/- in the company and was getting salary as an employee of Seashore of Rs 25,000/- pm (approximately) p.m at that time.

k. That before knowing the fact, she had tried to resign from her job various times and had also written application but it was told to her that if she resigns from the post then her salary will be reduced to half which she was getting as on that date.

l. That she was having some liabilities and for which she had to continue with the same post. When the salary was not paid in time continuously for 4/5 months she had submitted her resignation on 04.01.2013 asking to settle the pending amount (salary from Jul 2012 to Oct 2012) and the copy was being received by the then HR Head of Seashore Company but there was no proceeding on the same.

m. That she was not aware about the profit and loss of the company as well as she was never called for any board meeting of the company M/s Sanket Investments and Marketing Ltd. Later one at the time of CBI enquiry she came to know that she was also director in some other companies which was out of her knowledge. Above stated information's are also being given in writing to the CBI officers Odisha and officers of fraud investigation department, Delhi at the time of their investigations at different times. All the details are being informed in writing to the CBI at time of the investigation.

n. That she was forcefully made as the Director and was not involved in the day to day affairs of M / s Sanket Investments and Marketing Ltd. She was not aware about the

activities of the company. It was also not known to her that it was collecting money from the customers. Neither she had attended any Board of Meetings nor it was being told to her. Everything was being handled by Mr Prasant Dash CMD Seashore Group.

o. That she was not at all involved in any kind of illegal activities. She does not know how much amount being collected by violating the company rules and regulation. Being a post graduate she did know how to file the balance sheet, what are the things being mentioned in the sheet is also not known to her. The relevant portion of the preliminary charge sheet has been attached.

p. Last year on 7th Apr 2016 Ranchi CBI team has done a raid at her rented house at Bhubaneswar related to the "Sanket Investments and Marketing Limited" link and they seized the resignation letter and Indian bank passbook (copy attached to this). The originals are being taken by them also. After the raid she came to know that "Sanket Investments and Marketing Limited" was being involved in gathering money from public.

q. I don't have any documents with me/ She only has her joining, promotion/ transfer letters, company Identity Card, fixed/ regular deposit copies of invested amount (from her salary) with Seashore/ ITR assessment year 2011-12, Form 16 for year 2010-11/ available salary slips, Ranchi CBI raid copy date 7th Apr 2016 CBI preliminary investigation report (required pages). As a proof she attached the documents available with her.

r. That her financial status is not so good and she is unable to pay the house rent.

s. As per the local newspaper both the directors Mr Prashant Dash and Mr Pravat Dash are behind the bars and investigation is in progress from that day.

t. That she was being cheated by Mr Prashant Dash the then CMD of Seashore Company. She joined as a junior employee of the company and till the end she was working as an employee only and never involved herself in the role as a Director and withdraw her salary as an employee. She has not received any extra money. As a Director her name was just

in pen and paper and she was forced to continue as a director otherwise the salary could have been reduced to half which she was getting at that time.

12. Vide letter dated May 18, 2017, Shri Prashanta Kumar Dash, MD and Shri Pravat Kumar Dash through Advocate Shri Bijan Bihari Kar have filed representation and interalia submitted the following-

    a. That Shri Prashanta Kumar Dash, MD and Shri Pravat Kumar Dash, Director are in judicial custody and could receive the letter through proper channel during the month of May, 2017 only. Hence it is requested to consider the time limit mentioned in that letter.

    b. That they would like to state that, the corporate office of the Sanket Investments and Marketing Limited, along with all the documents in it, was seized and sealed by the Crime Branch of Odisha and subsequently by the Enforcement Directorate after the transfer of the case from the Crime Branch of Odisha to the CBI and ED by the virtue of the order dated 9th May 2014 passed by the Hon'ble Supreme Court in W.P. (C) No: 401 of 2013. Therefore, they are not in the possession of those documents and not in a position to submit copy of it at present.

    c. That they also submit that the documents sought earlier are not with them as the same are required to be kept at the registered office at the company in terms of the provisions of Companies Act, 1956 and seized by Crime Brach, Odisha and subsequently By CBI and ED. Prior intimation to ROC is required if somebody takes the document from the registered office of the company.

    d. In this regard they submitted the copy of the seizure lists given by the Crime Branch of Odisha.

    e. That as regards to the details of the Bank account of the directors and other documents mentioned in point no-3 of the interim order, the same are also in the custody of CBI and ED and they are not in a position to provide to SEBI at present unless and until released by above law enforcing agencies.

f. In view of the aforementioned, they are studying the order passed by the Hon'ble WTM and request SEBI to provide them a personal hearing in the matter to explain their position in the above matter.

Hearing and submissions:

13. Vide notification dated October 15, 2017 published in newspaper Dharitri, Odisha edition and notification dated October 15, 2017 published in newspaper Times of India, New Delhi edition, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on November 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.

14. Ms. Nibediata Nath neither availed the opportunity of hearing held on November 28, 2017 nor sought any adjournment. Vide letter dated 22/11/2017 forwarded through Office of Superintendent of Special Jail, Mr. Prashanta Kumar Dash on his behalf and on behalf of SIML, and Mr. Pravat Kumar Dash requested for postponement of the date of hearing for 30 days and requested an advance notice of at least 15 days to make travel and other arrangements. The request of the aforesaid noticees were acceded to and vide hearing notice dated December 11, 2017, forwarded to the noticee to its address available on record and also through Superintendent, Special Jail (Welfare Services) Bhubaneswar, the aforesaid noticees were granted one more opportunity of personal hearing on January 16, 2018. SIML, Mr. Prashanta Kumar Dash and and Mr. Pravat Kumar Dash neither availed the opportunity of hearing held on January 16, 2018 nor sought any adjournment.

15. 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.

16. I have perused the interim order dated March 10, 2017 for the allegation of Offer of RPS.

17. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the allotment returns filed by SIML with RoC that SIML has issued and allotted RPS to 698 investors during the financial years 2011-2012 and raised an amount of Rs. 58,10,300/-. The available details of the aforesaid allotments of RPS is provided below-

Sr. No.	Date of Allotment	Resolution date	No. of RCPS allotted	No. of allottees	Total no. of allottees in a month	Cumulative no. of RCPS after allotment
1.	15.10.2011	14.10.2011	3,28,500	49	98	3,28,500
2.	25.10.2011	21.10.2011	5,12,000	49		8,40,500
3.	03.11.2011	29.10.2011	3,96,800	49	147	12,37,300
4.	08.11.2011	07.11.2011	4,50,500	49		16,87,800
5.	19.11.2011	17.11.2011	4,05,000	49		20,92,800
6.	03.12.2011	25.11.2011	2,58,500	49	110	23,51,300
7.	09.12.2011	05.12.2011	55,000	12		24,06,300
8.	23.12.2011	20.11.2011	3,03,500	49		27,09,800
9.	05.01.2012	29.12.2011	3,82,000	49	196	30,91,800
10.	14.01.2012	09.01.2012	4,65,000	49		35,56,800

11.	23.01.2012	19.01.2012	3,30,000	49		38,86,800
12.	31.01.2012	27.01.2012	3,73,000	49		42,59,800
13.	06.02.2012	03.02.2012	5,10,000	49	147	47,69,800
14.	10.02.2012	08.02.2012	5,59,000	49		53,28,800
15.	17.02.2012	14.02.2012	4,81,500	49		58,10,300
	Total				**698**	**58,10,300**

18. *I therefore conclude that SIML 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.

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

> *"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
>
> *(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*

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

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation …

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

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

20. 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."

21. 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.*

22. In the instant matter, I find that RPS were issued by SIML to at least 698 investors in the financial years 2011-2012 and raised an amount of Rs. 58,10,300/-. I also note that none of their issues exceeded 50 persons or more at a time during the financial year 2011-2012 and the Company had made continuous allotments of RPS in multiple tranches to 698 allottees and had attempted to retain the limit of each tranch within 49. However, I note that the aggregate number of allottees exeeded more than 49. Reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that "In terms of Section 67(3) of the

Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant 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". The Hon'bl SAT has clearly laid down the law that such issuances as in instant case are deemed public issues and such methods of allotments (making allotments through multiple tranches) cannot be used to circumvent the provisions of the Companies Act, 1956. Therefore, in view of the material available on record, I find that the RPS by SIML 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 SIML was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

23. The above findings lead to a reasonable conclusion that the *Offer of RPS* by SIML was a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

24. I find that SIML has not claimed it to be a Non–banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that SIML is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

25. Neither SIML nor its directors have contended that the Offer of RPS does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.

26. 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.

27. Therefore, in view of the material available on record, I find that the *Offer of RPS* by SIML 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 SIML was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

28. Further, since the offer of RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

29. The allegations of non-compliance of the above provisions were not denied by SIML or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that SIML has contravened the said provisions. SIML has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that SIML has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.

30. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RPS was a deemed public issue of securities, SIML was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that SIML 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 SIML has not complied with the provisions of section 60 of the Companies Act, 1956.

31. 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 SIML 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, SIML has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

32. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *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"*

33. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While

interpreting the phrase "intend to get listed" in the context of deemed public issue the Hon'ble Supreme Court in *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…"*

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

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

35. Ms. Nibediata Nath has submitted that she had not received any appointment letter as a Director of SIML and also not gone through the job profile of a director and its responsibilities. That she was forcefully made as the Director and was not involved in the day to day affairs of SIML. She was not aware about the activities of the company and it was also not known to her that it was collecting money from the customers. Neither she had attended any Board Meetings nor it was being told to her. Everything was being handled by Mr Prasant Dash CMD Seashore Group.

36. Further I note her submission dated April 08, 2017 that one day in the year 2011, when she was sitting in the office along with the company CA Mr Manoj Naik, he called Mr Prashant Dash (CMD Seashore) and asked him that whom to make the Director of the company M/s

Sanket Investments and Marketing Ltd. At that time the CMD told that make Nibedita Nath as one of the Director. In the said submission it is further stated that she asked what the terms and conditions responsibilities were to became a director but he did not clearly say anything and asked to submit PAN card copy and at that time from office end they had deposited Rs 1 Lac in her salary account (Indian Bank account) and asked to give a cheque of same amount to them and accordingly she gave the same. These submission clearly show that the circumstances and reasons for which the documents were parted with by her. Further, she also submitted that she had tried to resign from her job various times but it was told to her that if she resigns from the post then her salary will be reduced to half of which she was getting as on that date. These submission clearly show that the circumstances and reasons for which she willingly continued to hold the post of director of SIML. Therefore, it is not possible to hold that Ms. Nibediata Nath was not aware of her becoming director before the CBI raid in 2012. In view of this, it does not stand to reason to find that she was forcefully made a director.

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

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

Thus in view of SAT decision of Manoj Agarwal vs. SEBI, the contention of the directors of SIML Ms. Nibediata Nath that she was not being involved in the day today affairs and finances of the company is not acceptable and will not absolve her from her liability as a director of SIML.

Further, Ms. Nibediata Nath has also submitted that she had tried to resign from her job various times and had also written application but it was told to her that if she resigns from

the post then her salary will be reduced to half which she was getting as on that date. However, when the salary was not paid to her in time continuously for 4/5 months, she had submitted her resignation on January 04, 2013 asking to settle the pending amount (salary from Jul 2012 to Oct 2012) and the copy was being received by the then HR Head of Seashore Company but there was no proceeding on the same. In this regard I note that the so claimed resignation submitted by Ms. Nibediata Nath January 04, 2013 evidences that she was acting as director of SIML during the period of issuance of RPS in 2011-2012. Further I note from the resignation letter January 04, 2013 submitted by Ms. Nibediata Nath before me that it does not bear any stamp of SIML to indicate that the same was submitted to SIML and was indeed received by SIML. In light of the insufficiency of evidence to establish the claim of resignation submitted by Ms. Nibediata Nath to SIML, I am inclined to go as per the MCA records.

I also note that Shri Prashanta Kumar Dash, MD and Shri Pravat Kumar Dash did not file any reply on merits. It was stated by them that the documents sought earlier are not with them as the same are required to be kept at the registered office at the company in terms of the provisions of Companies Act, 1956 and seized by Crime Brach, Odisha and subsequently by CBI and ED. Prior intimation to ROC is required if somebody takes the document from the registered office of the company. I note that, it is well within their rights to seek a copy of the documents needed to defend the case of the company and theirs. However, the Shri Prashanta Kumar Dash, and Shri Pravat Kumar Dash have not taken any step towards that. Further it was submitted by them that they are studying the order passed by the Hon'ble WTM and requested SEBI to provide them a personal hearing in the matter to explain their position in the matter. I note that as stated in the earlier paragraphs the hearing opportunity has been granted to Prashanta Kumar Dash and Shri Pravat Kumar Dash.

From the documents available on record, I find that the present Directors in SIML are Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Prashanta Kumar Dash	June 17, 2011	Continuing
Pravat Kumar Dash	June 17, 2011	Continuing
Nibedita Nath	July 25, 2011	Continuing

38. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, SIML and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

39. 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%.

40. From the material available on record and the details of the appointment and resignation of the directors of SIML as reproduced in paragraph 38 of this Order, it is noted that Prashanta Kumar Dash, Pravat Kumar Dash and Nibedita Nath were directors at the time of the issuance of RPS. Since these persons were acting as directors during the period of issuance

of RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. 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 SIML 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 SIML, as officers in default, are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. None of the Noticees disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act. Therefore, I find that SIML and its Directors, viz. Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath 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.

41. I note that during the financial years 2011-2012 SIML through Offer of RPS, had collected an amount of Rs. 58,10,300/- from various allottees. I note that Prashanta Kumar Dash has been director of SIML since financial years 2011-2012 till present date. I note that Pravat Kumar Dash has been director of SIML since financial years 2011-2012 till present date. I note that Nibedita Nath has been director of SIML since financial years 2011-2012 till present date. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with SIML and other directors are limited to the extent of amount collected during his/her tenure as director of SIML.

42. 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 SIML and its Directors, viz., Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors , to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.

43. I also note that, vide the interim order dated March 10, 2017, SIML was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of SIML were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided either by SIML or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 10 of this Order.

44. I find that Ms. Nibedita Nath was afforded an opportunity to file reply to the interim order cum SCN which was availed by her, however the opportunity of personal heraing dated November 28, 2017 has been provided to her via notification published in newspaper as detailed in para 13. In view of this, appropriate directions are issued at the end of this order.

45. In view of the discussion above, appropriate action in accordance with law needs to be initiated against SIML and its Directors viz. Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath. The interim order has contemplated issuance of directions against the Noticees, including prohibiting them from buying, selling or otherwise dealing in securities market, and directing them to refund any money collected to the concerned clients. Though the directors are jointly and severally liable for the acts of the company, in this case, I note from the charge sheet filed/Report filed by CBI in the court of Ld. Special Chief Judicial Magistrate, CBI Bhubaneshwar that the investigation has revealed that Shri Prashanta Kumar Dash was the Director of 21 different companies which are considered as Seashore group of companies and in the 21 group companies, SIML was revealed as one of the group company of Seashore group of companies. Further it was ascertained from the said Report filed by CBI

that Shri Prashanta Kumar Dash was the only authorized signatory in all the accounts standing in the name of Seashore Securities Ltd and as such, he was responsible for transfer of funds to other Seashore group of companies in which he was the promoter-director and authorized signatory of the bank accounts. I also note that Shri Prashanta Kumar Dash was the signatory to the Return of allotments (Form 2) filed by SIML to ROC. I note from the charge sheet filed/Report filed by CBI that the investigation revealed that out of the 21 Seashore group of companies, Shri Pravat Kumar Dash, younger brother of Shri Prashanta Kumar Dash, was director of 15 companies through which funds have been illegally and unauthorized manner collected from public. In view of this, though all directors along with SIML are jointly and severally liable for the refund, if there is a failure to refund, it would be appropriate that the recovery may be considered against the assets of SIML, at first, if there are sufficient assets of SIML and thereafter against the assets in the name of Shri Prashanta Kumar Dash, if there are sufficient assets of Shri Prashanta Kumar Dash, thereafter against the assets in the name of Shri Pravat Kumar Dash, if there are sufficient assets of Shri Pravat Kumar Dash and at last recovery officer may consider proceeding against Nibedita Nath. Appropriate directions in this regard is issued in this order.

46. 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. SIML, Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable" or

any other appropriate banking channel with clear identification of beneficiaries and supporting bank documents.

c. SIML and Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.

d. SIML, Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath 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.

e. Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath 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.

f. SIML and Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath 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.

g. After completing the aforesaid repayments, SIML ,Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the

Institute of Chartered Accountants of India ("ICAI") holding such certificate.

h. In case of failure of SIML, Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath 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 46(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws. The recovery officer may consider proceeding against the assets of SIML, at first, if there are sufficient assets of SIML and thereafter against the assets in the name of Shri Prashanta Kumar Dash, if there are sufficient assets of Shri Prashanta Kumar Dash, thereafter against the assets in the name of Shri Pravat Kumar Dash, if there are sufficient assets of Shri Pravat Kumar Dash and at last recovery officer may consider proceeding against Nibedita Nath

i. SIML, Prashanta Kumar Dash, Pravat Kumar Dash, Nibedita Nath 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.

j. In view of para 44 supra, this order will take effect as final order against Ms. Nibedita Nath only on the expiry of 30 days from the date of service of this order against her, unless she , within such period of 30 days from the date of service of this order seeks for personal hearing vide written letter, receivable by SEBI within said thiry days. If no request for personal hearing is filed, the interim directions vide Interim order dated March 10, 2017 shall continue against her till the time of said thirty days period, after which this order will come into effect. If request for personal hearing is filed by Ms. Nibedita Nath,

the interim directions vide Interim order dated March 10, 2017 shall continue qua her till conclusion of personal hearing afforded to her, if sought and the directions passed herein against her shall be made applicable subject to the determination on the objections/replies filed in the said personal hearing.

k. This Order shall be harmoniously read with the Orders passed by Hon'ble Orissa High Court in Writ Petition No.16380 Of 2013- Seashore Group & Ors Vs. State of Orissa & Ors.

47. A copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.

48. 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.

49. A copy of this Order shall also be forwarded to Local Police/ State Government for information.

DATE: April 24, 2018 **MADHABI PURI BUCH**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA