WTM/MPB/EFD-1-DRA-IV/ 139 /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 Real Sunshine Corp Limited (Earlier known as Real Sunshine Agrotech Limited)

In respect of:

S.No	Entity Name	PAN	CIN/DIN
1	Real Sunshine Corp Limited(Earlier known as Real Sunshine Agrotech Limited)	Not Available	U15423MP2009PLC021485
2	Shri Abdul Wahid	AAQPW8347L	02506350
3	Shri Pradeep Ojha	Not Available	03563844
4	Shri Anil Kumar	Not Available	03641596
5	Shri Bipin Singh Yadav	ABOPY8869L	02258136
6	Shri Rajkumar Yadav	AHWPY1598A	02411346
7	Shri Atendra Kumar	ASKPK2385C	02475381
8	Shri Siba Prosad Ghosh	AJWPG8924E	02625449
9	Shri Jitendra Singh Yadav	BKPPS9160P	02411359

1. Real Sunshine Corp Limited (Earlier known as Real Sunshine Agrotech Limited) (hereinafter referred to as "**RSCL**"/ "**the Company**") is a Public company incorporated on January 02, 2009 and registered with Registrar of Companies–Gwalior, MP with CIN: U15423MP2009PLC021485. Its registered office is at 51, Morar Enclave, Gwalior, Madhya Pradesh - 474001.

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received complaint from some persons against RSCL in respect of issue of Redeemable Preference Shares ("RPS") and undertook an enquiry to ascertain whether RSCL 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 RSCL had made an offer of RPS in the financial years 2009-2010, 2010-2011 and 2011-2012 (hereinafter referred to as **"Offer of RPS"**) and raised at least an amount of Rs. 8,49,72,900 from at least 4,525 allottees. The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI and MCA records. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures.

4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated March 13, 2015 (hereinafter referred to as "**interim order**") and issued directions mentioned therein against RSCL and its Directors viz. Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh and Shri Jitendra Singh Yadav (hereinafter collectively referred to as "**Noticees**")

5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. RSCL had made an *Offer of RPS* during the financial years 2009-2010, 2010-2011 and 2011-2012 and raised at least an amount of Rs. 8,49,72,900 as shown below:

Year of Issue	**Security Issued**	**Amount raised (Rs.)**	**Number of allottees**
2009-2010	*RPS*	1,23,44,000	Not available

2010-2011		2,83,63,700	Not available
2011-2012		4,42,65,200	4,525
	Total	8,49,72,900^	4,525*

**^ No. of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI and MCA records. However, actual no. of allottees and amount mobilized could be more than the above indicated figures.*

6. The above *Offer of RPS* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) of the SEBI Act were not complied with by RSCL 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 13, 2015 with immediate effect.

   i. "RSCL shall forthwith cease to 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. RSCL and its Directors viz. Shri Abdul Wahid (DIN: 02506350), Shri Pradeep Ojha (DIN: 03563844), Shri Anil Kumar (DIN: 03641596), Shri Bipin Singh Yadav (DIN: 02258136), Shri Rajkumar Yadav (DIN: 02411346), Shri Atendra Kumar (DIN: 02475381), Shri Siba Prosad Ghosh (DIN: 02625449), Shri Jitendra Singh Yadav (DIN: 02411359) 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. RSCL and its abovementioned Directors, are restrained from accessing the securities

market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;

iv. RSCL shall provide a full inventory of all its assets and properties;

v. RSCL's abovementioned Directors shall provide a full inventory of all their assets and properties;

vi. RSCL 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. RSCL 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 RSCL;

viii. RSCL and its abovementioned Directors shall furnish complete and relevant information within 21 days from the date of receipt of this Order.

8. The interim order also directed the RSCL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 should not be passed against them:

i. Directing them jointly and severally to refund money collected through the *Offer of RPS* along with interest, if any, promised to investors therein;

ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;

iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

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

10. *Service of interim order***:** The copy of the said interim order was sent to the Noticees vide letter dated March 16, 2015 which were not delivered. Subsequently, vide notification dated January 12, 2017 published in newspaper *Times of India*, notification dated January 12, 2017 published in newspaper *Dainik Bhasker* and notification dated January 12, 2017 published in newspaper *Ananda Bazar Patrika*, the Noticees were notified by SEBI, that interim order dated March 13, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.

11. Vide notification dated October 15, 2017 published in newspaper *Times of India,* notification dated October 15, 2017 published in newspaper *Navbharat Times*, and notification dated October 15, 2017 published in newspaper *Ananda Bazar Patrika*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on November 29, 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.

12. *Hearing and submissions*: Noticees did not avail the opportunity of hearing held on November 29, 2017. None of the Noticees have filed any replies as on date.

13. 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.

14. I have perused the interim order dated March 13, 2015 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.

15. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted, from the investors' complaints received by SEBI in the matter and MCA records that RSCL has issued and allotted RPS to at least 4,525 investors during the financial years 2009-2010, 2010-2011 and 2011-2012 and raised at least an amount of Rs. 8,49,72,900. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI and MCA records. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than 4,525 and Rs. 8,49,72,900.

16. *I therefore conclude that RSCL 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.

17. 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)."*

18. 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.*
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> *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."*

19. 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*.

20. In the instant matter, I find that RPS were issued by RSCL to at least 4,525 investors in the financial years 2009-2010, 2010-2011 and 2011-2012. However, this number is not conclusive as it is based on the documents received by SEBI along with complaints and MCA records and the actual number of investors could be more than 4,525. I find that RSCL has mobilized at least an amount of Rs. 8,49,72,900 over the financial years 2009-2010, 2010-2011 and 2011-2012 which is not a conclusive value as it is based on the complaints received by SEBI and MCA records. The above findings lead to a reasonable conclusion that the *Offer of RPS* by RSCL was a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

21. Neither RSCL 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. Herein, I note that the Interim order refers to the RPS certificates issued by RSCL, wherein it has been mentioned that the RPS were issued on private placement. In regards the FY 2009-2010 and 2010-2011 wherein details of number of allottees are not available, I note that no evidence has been brought on record to show that the RPS issue was made to known

persons or was a domestic concern. In regards the FY 2011-2012, I note that the Company has issued and allotted RPS to at least 4,525 investors, therefore considering that the issue of RPS has exceeded 49 persons, the said issue is a deemed public issue irrespective of whether the RPS issue was made to known persons or was a domestic concern. Further, considering that RSCL has issued and allotted RPS to at least 4,525 investors during the financial years 2009-2010, 2010-2011 and 2011-2012 and raised at least an amount of Rs. 8,49,72,900, I do not find that the RPS issue by the Company was a private placement.

22. I find that RSCL 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 RSCL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

23. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that "In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the 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".

24. Therefore, in view of the material available on record, I find that the *Offer of RPS* by

RSCL 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 RSCL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

25. 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.

26. The allegations of non-compliance of the above provisions were not denied by RSCL 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 RSCL has contravened the said provisions. RSCL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that RSCL 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.

27. 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, RSCL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that RSCL 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 RSCL has not complied with the provisions of section 60 of the Companies Act, 1956.

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

29. 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."*
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> *"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"

30. 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..."

31. In view of the above findings, I am of the view that RSCL 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?

32. From the MCA records, I find that Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh and Shri Jitendra Singh Yadav who were earlier Directors in RSCL, have

since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	**Date of appointment**	**Date of cessation**
Shri Abdul Wahid	April 05, 2009	January 12, 2017
Shri Pradeep Ojha	November 15, 2011	January 12, 2017
Shri Anil Kumar	November 15, 2011	January 12, 2017
Shri Bipin Singh Yadav	January 02, 2009	November 15, 2011
Shri Rajkumar Yadav	January 02, 2009	January 12, 2017
Shri Atendra Kumar	January 10, 2009	November 15, 2011
Shri Siba Prosad Ghosh	September 01, 2009	October 10, 2011
Shri Jitendra Singh Yadav	January 02, 2009	July 14, 2009

33. 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, RSCL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

34. 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%.

35. From the material available on record and the details of the appointment and resignation of the directors of RSCL as reproduced in paragraph 32 of this Order, it is noted that Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh and Shri Jitendra Singh Yadav 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 RSCL 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 RSCL, 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 RSCL and its Directors, viz. Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh and Shri Jitendra Singh Yadav 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.

36. I note that during the financial years 2009-2010, 2010-2011 and 2011-2012, RSCL through Offer of RPS, had collected at least an amount of Rs. 8,49,72,900 from various allottees. I note that Shri Abdul Wahid was director of RSCL during financial years 2009-2010, 2010-2011, 2011-2012. I note that Shri Pradeep Ojha was director of RSCL during financial year 2011-2012. I note that Shri Anil Kumar was director of RSCL during financial year 2011-2012. I note that Shri Bipin Singh Yadav was director of RSCL during financial years 2009-2010, 2010-2011, 2011-2012. I note that Shri Rajkumar Yadav was director of RSCL during financial years 2009-2010, 2010-2011, 2011-2012. I note that Shri Atendra Kumar was director of RSCL during financial years 2009-2010, 2010-2011, 2011-2012. I note that Shri Siba Prosad Ghosh was director of RSCL during financial years 2009-2010, 2010-2011, 2011-2012. I note that Shri Jitendra Singh Yadav was director of RSCL during financial year 2009-2010. 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 RSCL and other directors are limited to the extent of amount collected during his/her tenure as director of RSCL.

37. 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 RSCL and its Directors, viz. Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh, Shri Jitendra Singh

Yadav 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.

38. I also note that, vide the interim order dated March 13, 2015, RSCL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of RSCL 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 RSCL 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.

39. In view of the discussion above, appropriate action in accordance with law needs to be initiated against RSCL and its Directors, viz. Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh, Shri Jitendra Singh Yadav.

40. 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. RSCL, Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh, Shri Jitendra Singh Yadav shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities,

if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

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

c. Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh, Shri Jitendra Singh Yadav are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.

d. RSCL is 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.

e. RSCL is permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

f. RSCL, Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh, Shri Jitendra Singh Yadav are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

g. RSCL and Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh

Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh, Shri Jitendra Singh Yadav in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.

h. After completing the aforesaid repayments, RSCL, Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh , Shri Jitendra Singh Yadav in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India **("ICAI")** holding such certificate.

i. In case of failure of RSCL, Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh, Shri Jitendra Singh Yadav 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 40(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

j. RSCL, Shri Abdul Wahid, Shri Pradeep Ojha, Shri Anil Kumar, Shri Bipin Singh Yadav, Shri Rajkumar Yadav, Shri Atendra Kumar, Shri Siba Prosad Ghosh, Shri Jitendra Singh Yadav are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or

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

k. The above directions shall come into force with immediate effect.

41. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
42. 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.
43. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

-Sd-

DATE: February 15, 2018 **MADHABI PURI BUCH**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA