WTM/AB/EFD-1/DRA-4/ 17/ 2018-19

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: ANANTA BARUA, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Reliable Multi Managerial Services Ltd.

In respect of:

Sr. No.	Noticee(s)	DIN	PAN
1.	Reliable Multi Managerial Services Limited	U52390WB2010PLC140984	AAECR5851P
2.	Shri Pintu Dutta	02795345	AIMPD4441Q
3.	Shri Raju Acharjya	02795427	AJKPA9285C
4.	Shri Sanjay Karmakar	02819516	AMUPK1443K
5.	Shri Omprakash Gupta	02991510	AWBPG1988J
6.	Shri Kanhaiya Singh Kushwaha	03049285	AQVPK5541K
7.	Shri Arjun Majumdar	03198475	ALIPM6848H
8.	Shri Asim Bosu	06565255	AIPPB3421P
9.	Shri Ganesh Chandra Saha	02801938	BHBPS2976Q
10.	Shri Pijus Kumar Patra	02801972	AKEPP1290R
11.	Shri Pijush Kanti Dey	02801989	AIDPD8349L
12.	Shri Sujit Kumar Das)	Not Available	AJMPD0349L
13.	Ramavatar & Associates (represented by its Proprietor Ramavatar R. Jhanwar	Not Available	AEVPJ6885R [PAN of Ramavatar R Jhanwar]

The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as "the Noticees".

BACKGROUND:

1. Based on receipt of a reference dated November 17, 2016 from the Registrar of Companies (RoC), Kolkata, Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) passed an Interim Order–cum– Show Cause Notice dated February 23, 2018 and a corrigendum thereto dated February 27, 2018 (collectively hereinafter referred to as 'Interim Order') in which interim directions were issued against Reliable Multi Managerial Services Limited (hereinafter referred to as "RMMSL/Company"), its promoters, directors and debenture trustee, *inter alia,* prohibiting them from accessing the securities market and from alienating their assets or diverting funds raised from the public through Redeemable Non–Convertible Debentures (hereinafter referred to as "SRNCDs") and also directed the Company and its promoters/directors to furnish the documents and information sought by SEBI. The debenture trustee was directed not to act as a debenture trustee for the Company and also prohibited from taking any new assignments or involve itself in any new issue of securities in that capacity until further orders. The said Order was issued as RMMSL had mobilized funds from the public through issuance of SRNCDs.

2. Vide said Interim Order, in addition to the interim directions, the Company its promoters/directors and the debenture trustee were also called upon to show cause as to why appropriate directions/ prohibitions as mentioned in para 4.3 of the Interim Order dated February 23, 2018 should not be passed under Section 11, 11(4) and 11B of the SEBI Act, 1992 and directed them to file replies if any within 21 days from the date of receipt of the said order.

3. The Company, its directors, promoters and debenture trustees were also directed to indicate for availing an opportunity of personal hearing, if any, within 90 days of the receipt of said Interim Order. It was also clarified that if they fail to file replies or making request for an opportunity of personal hearing within the said 90 days from

the date or receipt of that Interim Order, the preliminary findings made therein shall become final and absolute against them without any further orders and that, consequently, they would be bound by the directions mentioned therein.

REPLY AND HEARING :

4. The said SEBI Interim Order (which was an interim order-cum-show cause notice) was served upon the Noticees through various means like Hand Delivery, Speed Post, making affixture on their last known address and also by giving public notice in the newspapers.

5. Except Noticee No. 6 and 8, other Noticees have submitted their reply. Notwithstanding the fact that replies from some of the Noticees have been received after expiry of the time period allowed in the Interim Order, I have taken into consideration all the replies which are received from the Noticees till the date of consideration of the matter. The replies filed by the Noticees are summarised as under:

a. **Reliable Multi Managerial Services Limited (Noticee No. 1)** (reply dated May 28, 2018 received on June 01, 2018) – The Company has admitted that total 50000 forms were circulated to public and the issue was open for subscription from April 01, 2011 to March 31, 2012 and, 47765 number of debentures were issued on March 31, 2013.

No documents are available regarding application forms, copy of prospectus, pamphlets, advertisements and other promotional materials circulated for issuance of shares/ debentures.

Company has never applied for listing of its securities with any of the stock exchanges.

Nature of business being carried out by the Company is stated to be as 'Corporate Agency Insurance (Life)' and that Mr. Sanjay Karmakar was the director and Key Managerial Person of the Company.

In respect of property and assets of the Company, it has submitted that it has two running factories i.e. Reena Engineering at Bhilai with valuation of Rs. 125 lakh and another Factory at Sodepur (*name and address not mentioned*) under the proprietorship of Mr. Sanjay Karmakar, the Key Managerial Person of the Noticee No. 1. It is also stated that the value of property managed by the debenture trustee is substantial.

b. **Shri Pintu Dutta (Noticee No. 2)** (reply received on March 28, 2018) – He worked in Reliance Life Insurance as an agent and that he was admitted in the Company by Mr. Sanjay Karmakar as an Associate and subsequently his name was given as director of the Company. Mr. Sanjay Karmakar was authorised and used to take all administrative decision. Noticee No. 2 has denied of having any knowledge in respect of fund raising activity by the Company and further stated that, not being satisfied with the Company, he had resigned subsequently. The Noticee has requested to relieve him from the charges of irregular fund raising.

c. **Shri Raju Acharjya (Noticee No. 3) (**reply received on March 28, 2018**) -** He joined the Company as an employee of insurance section, however, Mr. Sanjay Karmakar added his name as director of the Company. Mr. Sanjay Karmakar was authorised and used to take all administrative decision. It was further stated that, not being satisfied with the Company, he had resigned subsequently. The Noticee has requested to relieve him from the charges of irregular fund raising.

d. **Shri Sanjay Karmakar (Noticee No. 4) (**reply received on March 26, 2018**) –** He admitted to had all the records and details of issuance of debentures and refunds made to the investors. However, he has further stated that, his company suffered heavy loss due to which office was closed and all the employees left. In spite of those difficulties he assured to take all possible efforts to retrieve the

records and, accordingly, requested for two months' time to provide all the details.

e. **Shri Omprakash Gupta (Noticee No. 5) (**reply received on November 14, 2018**) -** He stated that he was official staff in this Company and that everything was being done by Mr. Sanjay Karmakar only. He has also made a request to grant him an opportunity of hearing before me.

f. **Shri Arjun Majumdar (Noticee No. 7) (**reply received on May 08, 2018**) –** He admitted to have joined the Company as a Director for very short period of time i.e. November 01, 2010 to January 10, 2013 in expectation to do some business for earning bread and butter. He denied to have any power of decision making in the Company and also pleaded his ignorance about the fund raising activity of the Company. The Noticee has requested to relieve him from the charges of irregular fund raising.

g. Shri Ganesh Chandra Saha (Noticee No. 9) (reply received on March 22, 2018**) –** The Noticee has submitted that he had resigned from the Company within a period of five months (01.11.2010-01.04.2011) and before the charge was stated to have been created. When he had joined the Company, it was engaged in the business of insurance and that, subsequently, he gradually learned that they were closing the business of insurance and were starting a business of fund raising. He has denied having any information which was sought by SEBI and also stated that he has not signed any document for and on behalf of the Company and that he was not indulged in the mobilizing of funds from the public.

h. Shri Pijus Kumar Patra (Noticee No. 10) (reply received on March 15, 2018**) –** He is stated to have resigned from the directorship on May 01, 2011 and that he was not a director on the date when charge was created nor at the time of fund raising by the Company. He has also submitted that he is not promoter in terms of Regulation 2(za) of the SBI (Issue of Capital and Disclosure

Requirements) Regulations, 2009 {SEBI (ICDR) Regulations, 2009} and, therefore, no proceedings should be initiated against him. He has also stated that the same submissions were made vide his earlier letter dated December 23, 2016 but the same has not been taken into account in the said Interim Order dated February 23, 2018. He has requested to drop his name from proceedings and also requested for personal hearing.

i. **Shri Pijush Kanti Dey (Noticee No. 11) (**reply received on May 08, 2018**) –** He admitted to have joined the Company as a director for very short period of time i.e. January 13, 2010 to May 01, 2011 in expectation to do some business for earning bread and butter. He denied to have any power of decision making in the Company and also pleaded his ignorance about the fund raising activity of the Company. The Noticee has requested to relieve him from the charges of irregular fund raising.

j. **Shri Sujit Kumar Das (Noticee No. 12) (**reply received on April 17, 2018**) –** The Noticee has stated that while joining the Company he was under impression that it was a software Company wherein he will be holding minority shareholding in addition to his monthly remuneration of Rs. 30,000/-. He has also enclosed a copy of offer letter issued to him by the Company for joining as 'Sr. Software Engineer'.

- He has further stated that he never knew the true intent of few documents which he had signed in good faith and that based upon document like Form-1 and Memorandum of Association, Mr. Sanjay Karmakar fraudulently projected his name as promoter of the Company.

- He has submitted that he was merely a shareholder of the Company despite no share certificate was ever issued to him.

k. **Ramavatar & Associates (Noticee No. 13) (**reply received on March 19, 2018**) –** Relying on the provisions of Section 12 (1) of the SEBI Act, 1992 and

Regulation 7 of the DT Regulations, 1993, as referred to in para 3.13 of the said Interim Order dated February 23, 2018, the Noticee has submitted that, since he was not eligible, he cannot become a debenture trustee. He has further submitted that the issuance of said SRNCDs were made without his information and that promoter/ directors are not accessible to him. He has requested to remove his name from debarment.

6. In compliance with the principles of natural justice, the Noticees were also provided an opportunity of personal hearing on October 29, 2018 when only Noticee No. 10 (Shri Pijus Kumar Patra) appeared along with his Advocate at Eastern Regional Officer of SEBI in Kolkata and the hearing was taken through tele-cum-video conferencing through Internet Protocol (IP) telephone. He submitted that he had resigned from the Company at the relevant period of time. After hearing, the Noticee No. 10 also filed a written submission on affidavit affirmed on November 05, 2018 stating the following:

- Before joining this Company he was working as an insurance adviser with the SBI Life Insurance and that the Company had started its business in insurance sales through sister concerns of the Company like Aggressive Merchant etc.

- He has disputed his signature where the professional tax was paid by the Company under his signature. In this regard, he has submitted his specimen signature with the copy of professional tax where his signature was allegedly forged by the Company and other persons.

- He has pleaded his ignorance about inclusion of his name as a director of the Company and submitted that his name was included in the list of promoter/director without his knowledge or consent. In this respect, he has stated to have questioned Mr. Sanjay Karmakar (Noticee No.4) and requested him also for removal his name, in past, which was ultimately done May 01, 2011.

- He was not promoter/ director of the Company at the time of the mobilization of money by issuance of NCDs and, therefore, he cannot be made liable for making refund of any amount to the investors.

- He has reiterated his submissions made vide earlier reply letter dated March 14, 2018 that he is not falling under the definition of 'promoter' as provided to under Regulation 2(za) of SEBI ICDR Regulations, 2009.

7. As per requests made by other Noticees, a last opportunity of hearing was provided on November 14, 2018 when the Noticees Nos. 1, 2, 3, 4, 7, 9, 11 and 13 appeared at Eastern Regional Officer of SEBI in Kolkata and made their submissions before me through video-cum-tele conferencing through IP telephone. Noticee No. 1 (the Company) was represented through Noticee No. 4. All the Noticees reiterated their submissions made in the reply, as detailed in para 5 above and also mentioned that they were merely employees of the Company. Reply from the Noticee No. 5 was received for the first time on November 14, 2018 only when other Noticees were provided a last opportunity of personal hearing and, therefore, no hearing was afforded to Noticee No. 5. However, the submission made by him vide his reply dated November 14, 2018 has been taken into consideration.

8. During the course of hearing, all the Noticees (except Noticee No. 1, 4 and 13) pleaded their ignorance about the fund raising activity of the Company and also submitted that the Noticee No. 4 i.e. Mr. Sanjay Karmakar was the whole and sole owner of the Company and he alone was taking all the decision. Noticee No. 4 i.e. Mr. Sanjay Karmakar, in his submission, admitted that he was the main person of the Company and that name of other Noticees were given to comply with the legal requirements. He also stated that, out of the money collected from investors, he had purchased land and also started two factories one in Kolkata and another in Bhilai, Madhya Pradesh. He has also submitted one letter dated November 14, 2018 along with an affidavit affirmed by him on the same date reiterating the stand taken during the hearing. As per his request, he was allowed to file a reply on or before December 07, 2018. The Noticee No. 4 vide email dated December 06, 2018 requested to grant

time till December 21, 2018 for filing his submissions and documents at the Eastern Regional Officer of SEBI in Kolkata. However, no documents or reply has been received by SEBI till the date of passing of this Order.

9. Noticee No. 12 (Shri Sujit Kumar Das) did not turn up for availing the opportunity of personal hearing granted to him. Noticee No. 13 (Ramavatar & Associates) was represented by its Proprietor Ramavatar R. Jhanwar who pleaded ignorance about the requirement of obtaining registration from SEBI for acting as debenture trustee and mentioned that the charge was filed with RoC Kolkata and also assured to submit the address and other details of the property. However, no information has been received from the Noticee No. 13 till the date of passing of this Order.

10. The Noticee Nos. 2, 3 and 7 by their common letter dated December 05, 2018 have provided the address of three assets of Noticee No. 1 and 4 viz. (i) Reena Engineering Works, 89-B Industrial Estate, Bhilai, Dist. – Durgapur, Chhattisgarh – 490026, Ph. No. – 0788-4033243, (ii) Bhedica Ayurveda, Saharpur Panchayat Road, Jugberia Industrial Estate, Kolkata – 700110 and (iii) Chakadh 55 acre (1094 Katha) situated in West Bengal.

CONSIDERATION OF ISSUES AND FINDINGS:

11. I have perused the *prima facie* findings made in the SEBI Interim Order-cum-show cause notice dated February 23, 2018, replies filed by the Noticees, submissions made during the course of personal hearings and the written submissions filed by some of the Noticees after the hearing.

12. SEBI vide its interim Order dated February 23, 2018 *prima facie* found that Noticee No.1 while issuing 47,765 SRNCDs to 4055 persons mobilizing Rs. 4,77,65,000/-, had contravened the provisions of Section 56, 60 and 73 of the Companies Act, 1956 which requires issuance of prospectus with specified matters, registration of prospectus with the RoC and to make listing application with one or more recognised stock exchanges before making such public issue, respectively. It was also noted that

the Company had failed to comply with the relevant provisions of ILDS Regulations, 2008 and the debenture trustee was appointed in violation of Section 12(1) of the SEBI Act, 1992 read with Regulation 7 of the DT Regulations, as the person/entity appointed as debenture trustee was neither registered with SEBI nor even eligible for obtaining the certificate of registration from SEBI for acting as a debenture trustee.

13. I note that, in the reply dated May 28, 2018 filed by Noticee No.1 (the Company) in respect of the Interim Order dated February 23, 2018, filed through the Noticee No. 4 (Mr. Sanjay Karmakar), it is admitted that the Company had issued 47765 of Rs. 1000/- each during the F.Y. 2012-13. The Company has not mentioned the number of persons to whom such SRNCDs were issued. However, along with its reply dated May 28, 2018, the Company has enclosed director's report dated August 31, 2013, for the financial year 2012-13, wherein it is mentioned that the SRNCDs were issued to 4055 persons. Section 67 of the Companies Act, 1956 deals with the conditions/circumstances under which an offer of shares/debentures by a company would be construed as made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

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

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

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

properly be regarded, in all the circumstances-

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

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.
Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

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

14. In view of the first proviso to section 67(3) of the Companies Act, 1956, an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. As per the said sub section, if the offer of securities is, directly or indirectly, not 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 with the limited number of 49 persons, the same are not considered as public offer. However, when securities are offered to the public at large or deemed to be offered to the public, then the regulatory supervision becomes more stringent and hence, the requirement in respect of contents of prospectus, filling of draft prospectus with SEBI, registration of prospectus with RoC, mandatory listing of securities on stock exchange etc. come into picture. It is noted above that the Company has admitted the issuance of 47,765 SRNCDs and also submitted the directors report dated August 31, 2013 mentioning that the same were issued to 4055 persons during the F.Y. 2012-13. Thus, the issuance of 47,765 SRNCDs to 4055 persons by the Noticee No. 1 falls within the purview of 'public issue'.

15. In connection with the public issue, 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, the Company and its aforementioned promoter/ director are liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

16. Further, in case of public issue, the requirement of making application to one or more recognised stock exchanges seeking permission for listing of such shares in terms of Section 73 (1) of the Companies Act, 1956 is also attracted. Section 73(3) requires that the monies received by the Company has to be kept in a separate bank account until the permission for listing is granted. The relevant extract of Section 73 of the Companies Act, 1956, providing the requirement of making listing application to one or more recognised stock exchanges and consequences in case of omission thereof, is reproduced as under:

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

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

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall,

where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2); and if default is made in complying with this sub- section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees.

17. In respect of the mandate of Section 73(1) of the Companies Act, 1956 for making listing application to one or more recognised stock exchanges, the Company has specifically admitted that it never applied for listing of its securities with any of the stock exchanges. There is also nothing on record nor mentioned by the Company that monies received by the Company was kept in a separate bank account, as required under Section 73(3) of the Companies Act, 1956.

18. In addition to the requirements of Companies Act, 1956, a public issue of debentures requires compliance with the norms provided by SEBI in ILDS Regulations, 2008 which are, *inter alia,* as under:

i. Regulation 4(2)(c) – Obtaining Credit rating;
ii. Regulation 4(2)(d) – Dematerialization of debt securities;
iii. Regulation 4(4) – Appointment of SEBI registered Debenture Trustees;
iv. Regulation 5(2)(b) – Disclosure requirements in the Offer Document;
v. Regulation 6 – Filing of draft Offer Document;
vi. Regulation 9 – Abridged Prospectus and application forms;
vii. Regulation 12 – Disclosure of Minimum subscription;
viii. Regulation 15 – Execution of Trust Deed;
ix. Regulation 16(1) – Creation of Debenture Redemption Reserve;
x. Regulation 17 – Creation of security;
xi. Regulation 19 – Mandatory Listing of debt securities;
xii. Regulation 4(2)(a) – Application for listing of debt securities;
xiii. Regulation 4(2)(b) – In-principle approval for listing of debt securities
xiv. Regulation 26 – Obligations of the Issuer, etc.

19. As noted above, in respect of public issue of debt securities, Regulation 4 of ILDS Regulations, 2008, *inter alia*, mandates an issuer to obtain credit ratings, dematerialisation of debt securities and appointment of SEBI registered debenture trustee etc. Regulation 19 of ILDS Regulations, 2008 provides that the public issue of debenture has mandatorily to be listed. Further, in terms of Regulation 4, application has to be made for listing of debt securities and in principle approval has also to be obtained from the stock exchanges. In this respect, I note that the Company has not complied with these requirements including the requirement of making listing application with any of the stock exchanges, which is specifically admitted by the Company in its reply dated May 28, 2018.

20. In view of the above, the *prima facie* findings made in the SEBI Interim Order dated February 23, 2018 in respect of public issue of SRNCDs made by the Company and thereby violating the aforementioned provisions of Companies Act, 1956, SEBI Act, 1992 read with the ILDS Regulations, 2008, stands established. I also note that none of the Noticees have disputed the findings recorded in para 3.2 to 3.12 of the SEBI Interim Order dated February 23, 2018 such as issuance of 47,765 SRNCDs were made by RMMSL to 4055 persons during the F.Y. 2012-13 which resulted into violation of Sections 56, 60 and 73 of the Companies Act, 1956 and SEBI ILDS Regulations, 2008. The Noticees have, however, contended their role as director/ promoter in respect of making public issue of SRNCDs which are dealt in following paragraphs.

21. I note that all the Noticees (except the Noticee No. 1, 4 and 13), who appeared for the hearing before me, have submitted that they were merely employee of the Company and that the Noticee No. 4 (Mr. Sanjay Karmakar) was whole and sole of the Company taking all the decision. Further, these Noticees have also pleaded their ignorance about their name included as director/promoter of the Company. Even Noticee No. 10 and Noticee No. 12 have alleged that their names were fraudulently included in the list of promoter/ director without their knowledge or consent. In this respect, however, I note that Noticee No. 10 and Noticee No. 12 have signed the Memorandum of Association of the Company on December 19, 2009 and the Noticee

No. 10 (Mr. Pijus Kumar Patra) has also submitted his consent letter (which is not dated) for acting as director of the Company. Further, these two Noticees have not submitted any documents or records showing any action taken against the Noticee No. 4 for alleged fraud committed by him or against Noticee No. 1 for making wrongful filings showing their names as director/ promoter with the MCA. Therefore, the contentions that their names were fraudulently mentioned as director/ promoter are not sustainable.

22. I, further, note that the Noticee No. 4 (Mr. Sanjay Karmakar), during the course of hearing as well as vide letter and affidavit dated November 14, 2018, submitted that he was whole and sole of the Company and was responsible for taking all the decisions. He has also stated that the other Noticees (except Noticee No.1 and Noticee No. 13) were his official staffs and that their names were given as promoter/ director to comply with the legal requirements. On the affidavit he has affirmed that, *"... every Directors related with the Company were my official Staff, I was whole and Sole Director in this Organization, I am taking every liability and responsibility for this organisation there is no liability of any Director for this organization, I will fully liable for any kind of legal issues, any responsibilities, any liabilities for past, present and future also. Please give up my all directors shareholders for any kind of liabilities."*

23. In respect of the aforesaid submissions made by the Noticee No. 4, I note that the statement affirmed on oath by Noticee No. 4 before Notary cannot be sole ground or basis for exonerating the liability of other directors imposed under law. As such, the act of the Noticee No. 4 in seeking to take the liabilities of other Noticees upon himself, for absolving others from their liabilities, is not tenable. Section 73 (2) of the Companies Act, 1956 specifically provides that where the permission has not been applied or applied but not granted, the company has to forthwith repay all moneys received from applicants within a period of eight days and in case the money is not repaid within that period then the company and every director of the company, who is an officer in default shall be jointly and severally liable to repay that money with interest from four per cent to fifteen per cent. A statutory provision is the

sovereign will of the legislature and the same binds every director and no individual would be allowed to contract out of a statutory liability by mutual consent.

24. In respect of submissions made by the Noticee No 10 that he was not falling in the definition of 'promoter' as defined under Regulation 2(za) of SEBI ICDR Regulations, 2009, I note that the definition of the term promoter provided here is inclusive in the nature as it starts with words '*promoter" includes* …. I further note that the Noticee has signed the Memorandum of Association as promoter. In Form 1, which is filed by the Company with the MCA and are available on MCA21 portal, the name of Noticee No. 10 has been mentioned as promoter. In this view, the plea of this Noticee that he was not falling in the definition of promoter is not tenable.

25. I note that Noticee No. 2 to 12 are shown as promoters/ directors as per the records at MCA 21 Portal and their signatures are also available on the Memorandum of Association of the Company filed with the MCA. The records filed by the Company with the MCA which are available on MCA 21 Portal, are 'statutory records' and, therefore, I am inclined to rely on its genuineness. If it is the case of the Noticee that their names were mentioned fraudulently then it is upon them to take appropriate steps and get the records rectified and to prove their innocence, if there has been an adverse inference drawn against them on the basis of such records. I note that the Interim Order dated February 23, 2018 was received by the Noticees wherein their names are shown as promoter/ director, however, none of the Noticees have filed any documents showing the steps taken by them to remove their name as director/ promoter of the Company as shown in the records of MCA, at least from the date of receipt of the Interim Order. Therefore, I find no merit in such contentions and it appears that the said Noticees have denied being the promoter/ director of the Company only to evade the consequences of this proceeding.

26. From the documents available on MCA 21 portal, I find that Noticee No. 2 to 12 were promoter/ director of the Company (Noticee No.1). The status and duration of Noticee No. 2 to 12 are tabulated as below:

Notice e No.	Name of the Noticee(s)	Promoter/ Director	Date of being admitted as Director	Date when resigned from Director
2.	Shri Pintu Dutta	Promoter and Director	01/11/2010	06/08/2012
3.	Shri Raju Acharjya	Promoter and Director	13/01/2010	10/01/2013
4.	Shri Sanjay Karmakar	Promoter and Director	13/01/2010	Present Director
5.	Shri Om Prakash Gupta	Director	01/11/2010	Present Director
6.	Shri Kanhaiya Singh Kushwaha	Director	01/11/2010	03/05/2013
7.	Shri Arjun Majumdar	Director	01/11/2010	10/01/2013
8.	Shri Ashim Bosu	Director	03/05/2013	Present Director
9.	Shri Ganesh Chandra Saha	Promoter and Director	01/11/2010	01/04/2011
10.	Shri Pijus Kumar Patra	Promoter and Director	13/01/2010	01/05/2011
11.	Shri Pijush Kanti Dey	Promoter and Director	01/11/2010	01/05/2011
12.	Shri Sujit Kumar Das	Promoter	--	--

27. The status and duration of the Noticees No. 2 to 12 is tabulated in above para based on the documents and information available at MCA21 portal. For the purpose of determining the role and responsibility of the Noticee No. 2 to 12, their status as director/ promoter at the relevant period may be seen as under:

i. As shown in para 26 above, Noticee No. 2 to 4 were promoters and directors of the Company and Noticee No. 5 to 7 were directors of the Company. The Noticee Nos. 2 to 7 were directors of the Company at the relevant period when public issue of SRNCDs were made by the Noticee No. 1 in the F.Y. 2012-13. As mentioned in table give in para 26 above, the Noticee Nos. 2, 3, 6 and 7 have ceased to be director of the Company from given dates whereas Noticee No. 4 and 5 are continued as director of the Company and, therefore, referred to as 'Present Director' in the table given in para 26 above.

ii. Noticee No. 8 has joined the Company in the capacity of director on May 08, 2013 i.e. after the date of public issue SRNCDs made by the Company (SRNCDs were issued during the F.Y. 2012-13). Further, the Noticee No. 8 is continued as director of the Company and, therefore, referred to as 'Present Director' in the table given in para 26 above.

iii. Noticee No. 9 to 11 were promoter and director and ceased to be as director before the date of public issue SRNCDs made by the Company (SRNCDs were issued during the F.Y. 2012-13). Noticee No. 12 was not director of the Company but he was promoter of the Company.

28. 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%. As detailed in para 26 and 27

above, the Noticee No. 2 to 7 were acting as directors of the Noticee No. 1 at the relevant time period when SRNCDs were issued by the Noticee No. 1 to public without complying with the requirements of provisions of Section 56, 60 and 73 of the Companies Act, 1956 and ILDS Regulations, 2008.

29. 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 the Company 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 the Company shall be considered as officers in default and are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. However, in view of the Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 passed in the matter of *Manoj Agarwal vs. SEBI (SAT Appeal No. 66 of 2016),* I am of the view that the obligation of the director to refund the amount with interest, jointly and severally, with RMMSL and other directors are limited to the extent of amount collected during his/her tenure as director of RMMSL. As per the details of the appointment and resignation of the directors of RMMSL explained in para 26 and 27 above, Noticee Nos. 2 to 7 were directors at the time of the alleged offer of SRNCDs and, therefore, these Noticees are officers in default in terms of Section 5(g) of Companies Act, 1956.

30. As detailed in para 26 and 27 above, the Noticee No. 8 was admitted as director on on May 08, 2013 i.e. after the date of public issue SRNCDs made by the Company (SRNCDs were issued during the F.Y. 2012-13). However, it was the liability of this Noticee to ensure that the Company complies with all statutory requirements or orders issued to the Company after he joined as director. Further, the Noticee No. 9 to 12 were part of the Company, in the capacity of promoter, at the time of making public issue of SRNCDs in violation of the provisions of Sections 56, 60, 73 of the of the Companies Act, 1956 and SEBI ILDS Regulations, 2008.

31. The Noticee No. 13 (Ramavatar & Associates) in its reply dated March 19, 2018 has submitted that in view of the provisions of Section 12(1) of the SEBI Act, 1992 he cannot be allowed to become debenture trustee and, in this light, he has pleaded to not to treat him as debenture trustee. He has also submitted that the issuance of SRNCDs were made by the Company without any disclosure to him. On perusal of the records, however, I note that this Noticee has signed the debenture trust deed which was registered on October 17, 2011 and also affixed its seal thereon. Further, it has also given a declaration on its letter dated October 18, 2011 (i.e. next day to the date of creation of charge) stating *that "....hereby confirm that I am the Registered Debenture Trustee of the proposed debenture holders of M/S RELIABLE MULTI MANAGERIAL SERVICES LIMITED.."*. In this view, no doubt remain that this Noticee has acted as debenture trustee for the Company without obtaining registration from SEBI for acting as a debenture trustee and, therefore, the Noticee has violated the provisions of Section 12(1) of the SEBI Act, 1992.

32. I, further, note that no reply has been received from the Noticee No. 6 and 8 and, therefore, in terms of para 4.4 of the Interim Order dated February 23, 2018 read with the Corrigendum Order dated February 27, 2018, the proposed directions as mentioned in para 4.3 of the Interim Order dated February 27, 2018 has become final *qua* these two Noticees. However, on consideration of issues, the names of these two Noticees are also included in the direction portion of this Order with suitable directions.

DIRECTIONS:

33. In view of the above, in order to protect the interest of the investors in securities market, I, in exercise of the powers conferred on me under Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 hereby, prohibit/ direct the Noticees, as under:

i. RMMSL (Noticee No. 1) and its Directors, viz. Pintu Dutta (Noticee No. 2); Raju Acharjya (Noticee No. 3); Sanjay Karmakar (Noticee No. 4); Om

Prakash Gupta (Noticee No. 5); Kanhaiya Singh Kushwaha (Noticee No. 6) and Arjun Majumdar (Noticee No. 7) shall not, 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 **four** years from the date of completion of refunds to all the investors as directed in para 33(ii). During the period of restraint, the existing holding, including units of mutual funds, of the aforesaid Noticees shall remain frozen. The aforesaid 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 **four** years from the date of completion of refunds to investors.

ii. RMMSL (Noticee No. 1) and its Directors, viz. Pintu Dutta (Noticee No. 2); Raju Acharjya (Noticee No. 3); Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5); Kanhaiya Singh Kushwaha (Noticee No. 6) and Arjun Majumdar (Noticee No. 7), shall jointly and severally, within a period of three months from the date of this Order, refund all the money collected by RMMSL through the issuance of SRNCDs including the application money collected from investors pending allotment of securities, if any, with an interest @ 15% per annum, from the eighth day of collection of funds from the investors till the date of actual payment. The present directors of RMMSL viz. Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5) and Ashim Bosu (Noticee No. 8) shall ensure and facilitate the compliance of this direction by RMMSL.

iii. 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 through internet banking channels such as NEFT or RTGS with appropriate audit trail.

iv. RMMSL (Noticee No. 1) and its Directors, viz. Pintu Dutta (Noticee No. 2); Raju Acharjya (Noticee No. 3); Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5); Kanhaiya Singh Kushwaha (Noticee No. 6) and Arjun Majumdar (Noticee No. 7) 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, within 21 days from the date of receipt of this order. The present directors of RMMSL viz. Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5) and Ashim Bosu (Noticee No. 8) shall ensure and facilitate the compliance of this direction by RMMSL.

v. RMMSL (Noticee No. 1) and its Directors, viz. Pintu Dutta (Noticee No. 2); Raju Acharjya (Noticee No. 3); Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5); Kanhaiya Singh Kushwaha (Noticee No. 6) and Arjun Majumdar (Noticee No. 7) 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. The present directors of RMMSL viz. Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5) and Ashim Bosu (Noticee No. 8) shall ensure and facilitate the compliance of this direction by RMMSL.

vi. RMMSL (Noticee No. 1) and its Directors, viz. Pintu Dutta (Noticee No. 2); Raju Acharjya (Noticee No. 3); Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5); Kanhaiya Singh Kushwaha (Noticee No. 6) and Arjun Majumdar (Noticee No. 7), shall ensure that a public notice is issued, 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 from the date of receipt of this Order. The present directors of RMMSL viz. Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5) and Ashim Bosu (Noticee No. 8) shall ensure and facilitate the compliance of this direction by RMMSL and shall also ensure that the refund is made to all the investors of debentures (SRNCDs) whose names lies in the records of the Company or from whom money was mobilized by issuance of SRNCDs.

vii. RMMSL (Noticee No. 1) and its Directors, viz. Pintu Dutta (Noticee No. 2); Raju Acharjya (Noticee No. 3); Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5); Kanhaiya Singh Kushwaha (Noticee No. 6) and Arjun Majumdar (Noticee No. 7) shall file a report of completion of such refund 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. The present directors of RMMSL viz. Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5) and Ashim Bosu (Noticee No. 8) shall ensure and facilitate the compliance of this direction by RMMSL.

viii. Ashim Bosu (Noticee No. 8); Ganesh Chandra Saha (Noticee No. 9); Pijus Kumar Patra (Noticee No. 10); Pijus Kanti Dey (Noticee No.11) and Sujit Kumar Das (Noticee No. 12) shall not, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of **four**

years. During the period of restraint, the existing holding, including units of mutual funds, of the aforesaid Noticees shall remain frozen. However, I note that vide the Interim Order dated February 23, 2018, the aforesaid Noticees were directed not to access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly in whatsoever manner. In this connection, I note that the aforesaid five Noticees have already undergone prohibition for approximately a year. Hence, the prohibition already undergone by the said five Noticees pursuant to the Interim Order shall be adjusted while computing the period in respect of prohibition imposed vide this Order.

ix. The Debenture Trustee - Ramavatar & Associates, Chartered Accountant (represented by its Proprietor, Ramavatar R Jhanwar) –

a. to submit, within 21 days from the date of receipt of this Order, all the title deeds and other documents relating to land property mortgaged by the Company securing the interest of debenture holders;

b. to be restrained/ prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, till the period of four years from the date of Interim Order dated February 23, 2018. During the period of restraint, the existing holding, including units of mutual funds, of this Noticee shall remain frozen.

c. to be restrained/ prohibited from acting as a Debenture Trustee in respect of debentures of RMMSL and from taking up any new assignment or involve itself in any new issue of securities in a similar capacity whatsoever, directly or indirectly, without obtaining registration from SEBI as a Debenture Trustee under the DT Regulations.

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

35. If the Noticees, as referred to in para 33(ii) above, fail to repay the money as directed, on the expiry of three months from the date of this Order, SEBI may recover the amounts, from RMMSL (Noticee No. 1) and its Directors, viz. Pintu Dutta (Noticee No. 2); Raju Acharjya (Noticee No. 3); Sanjay Karmakar (Noticee No. 4); Om Prakash Gupta (Noticee No. 5); Kanhaiya Singh Kushwaha (Noticee No. 6) and Arjun Majumdar (Noticee No. 7), in accordance with Section 28A of the SEBI Act, including such other provisions contained in securities laws.

36. A copy of this Order shall be forwarded to the Noticees, all the recognised stock exchanges, depositories and Registrar and Share Transfer Agents of all Mutual Funds for the necessary compliance with the above directions.

37. The communication, if any, to be made by the Noticees in respect of this Order such as submitting inventory of assets etc. in terms of para 33 above of this Order shall be addressed to Mr. S Madhusudhanan, General Manager at '3rd Floor, L and T Chambers, Eastern Regional Office, Securities and Exchange Board of India, 16, Camac Street, Kolkata – 700017 and by email, if any, at smadhu@sebi.gov.in and debdutib@sebi.gov.in

Date: January 24, 2019 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA