

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of SEBA Real Estate Limited

In respect of:

1. SEBA Real Estate Limited [PAN: AAKCS2718Q],
2. Mr. Siddhartha Nag [PAN: AEOPN7092K],
3. Mr. Kanak Ranjan Nath [PAN: ADFPN9130J],
4. Mr. Sanjoy Nag [PAN: AEOPN7091L],
5. Mr. Subhash Chandra Saha [PAN: AYCPS4451M],
6. Mr. Satyendra Kumar Dey [PAN: AJLPD1430D],
7. Mr. Mrinal Chandra Nandi [PAN: ACZPN6252A],
8. Mr. Santanu Das [PAN: AJJPD4880B],
9. Mr. Ashis Dhar [DIN: 01042604],
10. Mr. Sujit Kumar Roy [PAN: AIYPR3451L] and
11. Mr. Shibendu Das [PAN: AGDPD7440A].

Date of hearing: July 28, 2015

Appearance:

For Noticees: Mr. Sanjay Kumar Baid, Company Secretary

For SEBI: Dr. Anitha Anoop, Deputy General Manager,
Mr. Pradeep Kumar, Assistant General Manager and
Mr. Jagannath Das, Assistant General Manager.

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), vide an *ex-parte interim* Order dated September 10, 2014 (hereinafter referred to as 'the *interim* order') had observed that the company, **SEBA Real Estate Limited** (hereinafter referred to as 'SEBA' or 'the Company') is *prima facie* engaged in mobilising funds through the issue of **preference shares** from the public and had allegedly violated the provisions of Sections 56, 60(read with Section 2(36)), 67, 73 of the Companies

Act, 1956 and the SEBI (Disclosure and Investor Protection) Guidelines 2003 (hereinafter referred to as 'DIP Guidelines') read with the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations'). In order to protect the interest of investors and to ensure that only legitimate fund raising activities are carried on by the Company and its directors, SEBI had issued the following directions:

“... ..

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

- i. SREL shall not mobilize funds from investors through the Offer of preference shares or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*
- ii. SREL and its Directors, viz. Shri Siddhartha Nag (DIN: 01560128; PAN: AEOPN7092K), Shri Kanak Ranjan Nath (DIN: 01042522; PAN: ADFPN9130J), Shri Sanjoy Nag (DIN: 01042623; PAN: AEOPN7091L), Shri Subhash Chandra Saha (DIN: 01042663; PAN: AYCP54451M) including its past Directors, viz. Shri Satyendra Kumar Dey (DIN: 01042500; PAN: AJLPD1430D), Shri Mrinal Chandra Nandi (DIN: 01047315; PAN: ACZPN6252A), Shri Santanu Das (DIN: 01042699; PAN: AJJPD4880B), Shri Ashis Dhar (DIN: 01042604), Shri Sujit Kumar Roy (DIN: 01042580; PAN: AIYPR3451L) and Shri Shibendu Das (DIN: 01042551; PAN: AGDPD7440A), 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. SREL and the abovementioned past and present 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. SREL shall provide a full inventory of all its assets and properties;*
- v. The abovementioned past and present Directors of SREL shall provide a full inventory of all their assets and properties;*
- vi. SREL and its present 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 preference shares, without prior permission from SEBI;*
- vii. SREL and its present Directors shall not divert any funds raised from public at large through the Offer of preference shares, which are kept in bank account(s) and/or in the custody of SREL.*
- viii. SREL and its present Directors shall, within 21 days from the date of receipt of this Order, provide SEBI with all relevant and necessary information, as sought vide SEBI letters dated March 25, 2013, February 21, 2014, March 12, 2014, June 9, 2014 and July 4, 2014.*

7. *The above directions shall take effect immediately and shall be in force until further orders.*

...

9. *This Order is without prejudice to the right of SEBI to take any other action that may be initiated against SREL and its abovementioned past and present Directors in accordance with law."*

2. The *interim* order observed that the *prima facie* observations made therein were on the basis of the information obtained from the 'MCA 21 Portal' and the information forwarded by the RoC, Shillong. The *interim* order was also to be treated as a show cause notice which advised the Company and its directors to file their replies within 21 days from the date of its receipt and also seek an opportunity of personal hearing.
3. The *interim* order was forwarded to the Company and its directors namely Mr. Siddhartha Nag, Mr. Kanak Ranjan Nath, Mr. Sanjoy Nag, Mr. Subhash Chandra Saha, Mr. Satyendra Kumar Dey, Mr. Mrinal Chandra Nandi, Mr. Santanu Das, Mr. Ashis Dhar, Mr. Sujit Kumar Roy and Mr. Shibendu Das vide respective letters dated September 22, 2014. The letters issued to the Company, Mr. Siddhartha Nag and Mr. Sanjoy Nag had returned undelivered. The directors of the Company namely Mr. Mrinal Chandra Nandi (vide letter dated October 07, 2014), Mr. Subhash Chandra Saha (vide letter dated October 14, 2014) and Mr. Kanak Ranjan Nath (vide letter dated October 11, 2014) replied to the *interim* order. SEBI granted an opportunity of personal hearing to the Company and all its directors on July 28, 2015 and the same was communicated vide respective letters all dated June 29, 2015. The date of personal hearing was also communicated vide the public notice dated July 14, 2015 in the newspapers namely '*Anand Bazar Patrika*', '*Asomiya Pratidin*', '*Nagaland Post*', '*Assam Tribune*' and '*Times of India*'. The Company and its directors were advised that in case they fail to appear on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record. On the date fixed, one Mr. Sanjay Kumar Baid, Company Secretary appeared for Mr. Subhash Chandra Saha, Mr. Satyendra Kumar Dey, Mr. Mrinal Chandra Nandi, Mr. Santanu Das, Mr. Ashis Dhar, Mr. Sujit Kumar Roy and Mr. Shibendu Das and made oral submissions. The representative also requested for time for filing the written submissions. The request

was considered and a time of one week was granted for submitting the written submissions.

On behalf of the Company and its directors namely Mr. Siddhartha Nag, Mr. Kanak Ranjan Nath and Mr. Sanjoy Nag, no one appeared for the personal hearing. Considering the reasonable opportunities to the Company and its directors already afforded for making submissions in the matter, I find that the matter could be proceeded on the basis of the material available on record.

4. The submissions made by the directors of the Company are as under:
 - a. **Mr. Mrinal Chandra Nandi** vide his letters dated October 07, 2014 and July 28, 2015, submitted the following:
 - He had resigned from the Company on June 11, 2007 and since then he is not the director of the Company. He does not know the details of the business of the Company. The main promoter and mastermind behind the Company was Mr. Siddhartha Nag, who was also looking after the day to day affairs of SEBA.
 - At the time of incorporation of the Company, Mr. Siddhartha Nag had approached him with a proposal to join the Company at a monthly salary of 8,000 and was promised to get the job of supervision of the future real estate projects of the Company. As earlier, he was not having a stable business, the opportunity was taken by him and the documents were signed.
 - After incorporation of the Company, he was neither assigned with any work nor was he paid any salary. Upon asking, he was given an assurance that as the Company was new, it would take some more time to start the business.
 - Later, he desired to quit from the Company as he was of no use to it and was also not getting any benefits from the Company. After his persistent efforts, the resignation was finally accepted w.e.f. June 11, 2007 and the same was filed by Mr. Siddhartha Nag with the RoC, Shillong.
 - He had neither visited/ seen the registered office of the Company nor was invited/ attended any meeting of the board of director of the Company. He was never allowed access to any books of accounts or statutory registers of the

Company. He is not aware about the issue of any preference shares by the Company.

- As per the provisions of Section 5 of the Companies Act, 1956 and Section 2(60) of the Companies Act, 2013, Mr. Siddartha Nag, the Managing Director of the Company is the officer in default and is liable for violations.

b. Mr. Subhash Chandra Saha vide his letter dated October 14, 2014, submitted as under:

- He became the director of the Company, at the time of its incorporation. It has been said that Mr. Siddartha Nag, the Managing Director of the Company and his brother Mr. Sanjay Nag had asked him to invest money in the Company. As per the request, he had invested in the Company.
- His name was fraudulently included as director of the Company without his consent. Upon knowing of this fact, he had immediately asked Mr. Siddartha Nag to delete his name from the Company as he is an old ailing person and had tendered his resignation. Mr. Siddartha Nag assured him that his name will be deleted immediately from the Company. He had never worked as director of the Company and has no knowledge regarding raising of the funds from the public, by way of issuing preference shares.
- He had no knowledge of the affairs of the Company. All the affairs of the Company were looked after and managed by Mr. Siddartha Nag along with Mr. Sanjay Nag and they were the key managerial personnel of the Company.
- The Company had stopped business since the year 2011/ 2012 and the head office/ branch offices of the Company are closed.

Mr. Subhash Chandra Saha vide his e-mail dated August 04, 2015, filed the written submissions. As per the same he was engaged in the profession of land broking. Mr. Siddartha Nag along with Mr. Sanjay Nag had approached him with a proposal to join their company and help them in acquisition of lands. He gave his consent as the same would have helped him in developing his profession. His role in the Company was to identify the land on sale and negotiate with the owner for which he used to

get a nominal commission. It has been said that after working for a year, Mr. Siddhartha Nag stopped paying his commission on land deals. Later he asked Mr. Siddhartha Nag to relieve him from the Company as he did not have any work to do. After repeated requests, he tendered his resignation directly to RoC, Shillong.

- c. Mr. Kanak Ranjan Nath vide his letter dated October 11, 2014, submitted as under:
- He was one of the directors of the Company. It has been said that Mr. Siddhartha Nag was the Managing Director of the Company and all the affairs of the Company were being looked after and managed by him along with Mr. Sanjoy Nag. They were also the key managerial personnel of the Company.
 - He was the director of the Company for a very brief period i.e. about 4-5 months from the date of its incorporation. Due to personal problems, he had tendered his resignation to Mr. Siddhartha Nag on January 15, 2008. He has no knowledge regarding raising of the funds from the public by issuing preference shares.
 - Mr. Siddhartha Nag accepted his resignation and issued acceptance letter dated February 01, 2008, with remarks that he has no liability in respect of the Company.
 - The Company had stopped business since last 2011/ 2012 and the head office/ branch offices of the Company are closed.
- d. Mr. Sujit Kumar Roy vide his letter dated August 04, 2015, submitted that:
- He had resigned from the Company on May 18, 2011 and he does not know the details of the business of the Company.
 - The main promoter and mastermind behind the Company was Mr. Siddhartha Nag, who was responsible for the compliances of the various acts and regulations.
 - Mr. Siddhartha Nag had approached him with a proposal to join the Company at a monthly salary of 8,000. He was promised to get the job of supervising the future real estate projects of the Company. As earlier he was unemployed,

engaged in private tuition and was not having a stable income, the opportunity was taken by him and the documents provided were signed.

- After incorporation of the Company, he was neither assigned with any work nor was he paid any salary. Upon asking, he was given assurance that as the Company was new, it would take some more time to start the business.
- He was never invited nor has he attended the meeting of the board of directors of the Company. He was never allowed access to any books of accounts or statutory registers of the Company. He is also not aware about the issue of any preference shares by the Company.
- As per the provisions of Section 5 of the Companies Act, 1956 and Section 2(60) of the Companies Act, 2013, Mr. Siddhartha Nag, the Managing Director of the Company is the 'officer in default' and is liable for the violation.

e. Mr. Shibendu Das vide his letter dated August 04, 2015, submitted as under:

- The main promoter and mastermind behind the Company was Mr. Siddhartha Nag, who was also looking the day to day affairs of SEBA.
- He was engaged in the work of 'deed writer' in the sub-registrar office Karimganj since the year 1995. At the time of incorporation of the Company, Mr. Siddhartha Nag had approached him with a proposal to join the Company at a monthly salary of 8,000. He was promised to get the job of getting land deals, which would be purchased by the Company. Lured by the proposal of Mr. Siddhartha Das, he had put his signatures in certain papers.
- After incorporation of the Company, he was working as a staff of the Company for some time and he was not the member of any decision making process. After passage of few months, he realized that Mr. Siddhartha Das did not have any intention to give him salary and he had approached Mr. Siddhartha Das with his resignation. On May 18, 2011, his resignation was accepted and the same was filed with the office of RoC, Shillong.
- He was neither a promoter nor any kind of beneficiary of the Company. He was never invited nor has he attended the meeting of the board of directors of the Company.

- As per the provisions of Section 5 of the Companies Act, 1956 and Section 2(60) of the Companies Act, 2013, Mr. Siddhartha Nag, the Managing Director of the Company is the officer in default and is liable for violation.

5. I have considered the *interim* order and the material available on record. The following are the observations from the *interim* order:

“... ”

- i.* SREL was incorporated on June 20, 2006, with CIN No. as U70101AS2006PLC008185. SREL's Registered Office is at House No. 5, Ward No. 56, Maidam Bakarapara, Basistha Chariali, Beltola, Guwahati, Assam-781029, India.
- ii.* The Directors in SREL are Shri Siddhartha Nag, Shri Kanak Ranjan Nath, Shri Sanjoy Nag and Shri Subhash Chandra Saba. Shri Satyendra Kumar Dey, Shri Mrinal Chandra Nandi, Shri Santanu Das, Shri Ashis Dhar, Shri Sujit Kumar Roy and Shri Shibendu Das, who were earlier Directors in SREL, have since resigned.
- iii.* SREL issued “Preference Shares” (“**Offer of preference shares**”) in accordance with the following terms and conditions –
 - a.* Since Preference shares are being issued on private placement basis, no prior approval/rating is required from Government/SEBI and other Statutory Authorities.
 - b.* Guaranteed dividend with Quarterly/Half yearly/Yearly withdrawal facility. (Preference Share Plan)
 - c.* Cumulative dividend with redemption (Cumulative Preference Share Plan)
 - d.* Share transfer facility at any time.
 - e.* Choice of six Different redemption options.
 - f.* Choice of investment in SEBA PREFERENCE SHARE and SEBA CUM PREFERENCE SHARE PLAN.
 - g.* Priority and discount for purchasing plots and flats from SEBA REAL ESTATE PROJECT.
 - h.* Double Nomination facility.
- iv.* The details of various plan launched by SREL in respect of the Offer of preference shares are as under –
 - a.* SEBAFLEXI CUM PREFERENCE SHARE PLAN:

REDEMPTION TERM TWO YEAR (2 YEARS)

Amount paid up per share/unit ()	Month-wise Subscription ()	Total Subscription ()	Total Dividend	Redemption Value ()
10	100	2400	15%	2760
10	150	3600	15%	4140
10	200	4800	15%	5520
10	300	7200	15%	8280
10	500	12000	15%	13800
10	600	14400	15%	16560
10	1500	36000	15%	41400

REDEMPTION TERM THREE YEAR (3 YEARS)

Amount paid up per share/unit ()	Month-wise Subscription ()	Total Subscription ()	Total Dividend	Redemption Value ()
10	100	3600	25%	4500
10	200	7200	25%	9000
10	300	10800	25%	13500
10	500	18000	25%	22500
10	600	21600	25%	27000
10	1500	54000	25%	67500

REDEMPTION TERM FIVE YEAR (5 YEARS)

Amount paid up per share/unit ()	Month-wise Subscription ()	Total Subscription ()	Total Dividend	Redemption Value ()
10	100	6000	42%	8520

b. SEBA PREFERENCE SHARE PLAN

Redemption Term	Amount paid up Per share/unit ()	Minimum Subscription	Annual Dividend	Dividend Withdrawal Option
Two Years	10	10 Units	12%	Quarterly/ Half Yearly/ Yearly
Three Years	10	10 Units	12%	
Five Years	10	10 Units	12%	
Six Years	10	10 Units	12%	
Eight Years	10	10 Units	12%	
Ten Years	10	10 Units	12%	

c. SEBA CUM PREFERENCE SHARE PLAN

Redemption Term	Amount paid up Per share/ unit ()	Minimum Subscription	Annual Dividend	Redemption Value (on 10 Units)
Two Years	10	10 Units	12%	124.00
Three Years	10	10 Units	15%	145.00
Five Years	10	10 Units	16%	180.00

- v. SREL issued preference shares to a large number of investors during the Financial Years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11, details of which are provided below –

Year	Type of Security	Date of Allotment	No. of Securities	No. of Allottees	Total Amount ()
2006 – 07	Preference Shares	31.03.2007	110805	849	1108050
2007 – 08		31.03.2008	1843707	8259	18437070
2008 – 09		31.03.2009	3571182	26704	35711820
2009 – 10		29.03.2010	1802000	3025	18020000
2010 – 11		31.03.2011	18019970	2461	180199700
Total				25347664	41298

...”

6. The *interim* order has alleged that the Company had issued and allotted preference shares during the financial years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 and had raised 25,34,76,640 from 41,298 persons/ investors, without complying with the 'public issue' norms stipulated under Sections 56, 60 read with Section 2(36) and 73 of the Companies Act, 1956. The *interim* order had also alleged that the Company, by issuing shares to more than 49 persons, had made a 'public issue of preference shares' in terms of the first proviso to Section 67(3) of the Companies Act, 1956. I note that the Company has not replied to the *interim* order.
7. In order to ascertain whether an issue of securities is a 'public issue' or done on 'private placement', it is necessary to make a reference to Section 67(3) of the Companies Act, 1956, which reads 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) ...

(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)."*

In terms of Section 67(3), as amended by the *Companies (Amendment) Act, 2000*, with effect from December 13, 2000, no offer or invitation shall be treated as made to the public by virtue of sub-sections (1) or (2), as the case may be, if the offer or invitation can properly be regarded, in all 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. In terms of the first *proviso* to the aforesaid section, the provisions of Section 67(3) shall **not** apply in a case where the **offer or invitation to subscribe for shares or debentures** is made to **fifty persons or more**. Therefore, the number of subscribers becomes relevant to conclude whether an issue of shares are for public or on a private placement basis. In view of the same, if an offer of securities are made to fifty or more persons, it would be deemed to be a public issue. I now place my reliance on the order of Hon'ble Supreme Court of India in the matter of *Sahara India Real Estate Corporation Limited & Others Vs. SEBI and another*(Civil Appeal Nos. 9813 and 9833 of 2011; decided on August 31, 2012) ('the Sahara case') had *inter alia* held that -

“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, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ...

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

8. I have seen the relevant 'Form 2' and the letter of RoC, as available on record and note that the number of persons to whom the preference shares were allotted clearly

exceeded 49. Therefore, considering the number of persons from whom monies were mobilised by the Company, it can be concluded that the Company had made a 'public issue of offer of preference shares' in terms of the first *proviso* to Section 67(3) of the Companies Act, 1956, where the 'offer' or 'invitation to subscribe for shares or debentures' is made to fifty persons or more, then it has to be construed as a public offer.

9. By making offer of preference shares, as discussed above, the Company was mandated to comply with all the legal provisions that govern and regulate public issue of such securities, including the Companies Act, 1956 and the SEBI Act and regulations. In this context, I refer and rely on the below mentioned observation made by the Hon'ble Supreme Court of India in the matter of *Sahara case*:

"... .. that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

10. In view of the above observations, by virtue of Section 55A(a) and (b), SEBI has jurisdiction and would govern the offer of preference shares as the same was clearly made to more than 49 persons. As alleged in the *interim* order, the Company was mandated to comply with the provisions of Sections 56, 60, 67 and 73 of the Companies Act, 1956, in respect of its offer of preference shares. 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 an abridged prospectus and contains disclosures as specified. 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'.
11. The *interim* order has alleged that the Company had failed to comply with Section 73 of the Companies Act, 1956, in respect of its offer of preference shares. By issuing preference shares to more than 49 persons, the Company had to compulsorily list

such securities in compliance with Section 73(1) of the Companies Act, 1956. As per Section 73(1) 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. There is no material on record to say that the Company has filed any application with a recognised stock exchange to enable the preference shares to be dealt with in such exchange. Therefore, the Company has also failed to comply with this requirement.

12. Section 73(2) of the Companies Act, 1956 states that "*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*". As the Company failed to make an application for listing such preference shares, the Company had to forthwith repay such money collected from investors. If such repayments are not made within 8 days after the Company becomes liable to repay, the Company and every director of the Company, who is an officer in default, is jointly and severally liable to repay with interest at such rate. There is no material on record to say that the Company has complied with the provisions of Section 73(3).

12. The Company was also mandated to comply with the provisions of DIP Guidelines, in respect of its public issue preference shares. However, the Company has failed to comply with the following provisions of the DIP Guidelines:

“...

- a) Clause 2.1.1. – (Filing of offer document)
- b) Clause 2.1.4 – (Application for listing)
- c) Clause 2.1.5 – (Issue of securities in dematerialized form),
- d) Clause 2.8 – (Means of finance),
- e) Clause 4.1 – (Promoters contribution in a public issue by unlisted companies),

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

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

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

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

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

..."

From the foregoing, I conclude that the Company failed to comply with the stipulation under Sections 56, 60, 73 of the Companies Act, 1956 read with the Companies Act, 2013 and the aforesaid provisions of the DIP Guidelines, in respect of its offer and issuance of preference shares as discussed in this Order. The Company shall therefore be liable to make refunds as per the mandate under Section 73(2) of the Companies Act, 1956 and also for regulatory action for committing the above violations.

13. Liability of Directors: Along with the Company, the *interim* order was issued against the directors of the Company namely Mr. Siddhartha Nag, Mr. Kanak Ranjan Nath, Mr. Sanjoy Nag, Mr. Subhash Chandra Saha, Mr. Satyendra Kumar Dey, Mr. Mrinal Chandra Nandi, Mr. Santanu Das, Mr. Ashis Dhar, Mr. Sujit Kumar Roy and Mr. Shibendu Das.

a. The details of the appointment and resignations of the directors of the Company are as under:

Name	Date of Appointment	Date of Cession
Mr. Siddhartha Nag	20/06/2006	Continuing as director
Mr. Kanak Ranjan Nath	20/06/2006	Continuing as director
Mr. Sanjoy Nag	20/06/2006	Continuing as director
Mr. Subhash Chandra Saha	20/06/2006	Continuing as director
Mr. Satyendra Kumar Dey	20/06/2006	26/12/2011
Mr. Mrinal Chandra Nandi	20/06/2006	11/06/2007
Mr. Santanu Das	20/06/2006	18/05/2011
Mr. Ashis Dhar	20/06/2006	21/06/2012
Mr. Sujit Kumar Roy	20/06/2006	18/05/2011
Mr. Shibendu Das	20/06/2006	18/05/2011

b. I note that the Company had commenced the offer of preference shares from 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 (the last date of allotment as per the relevant 'form 2' being March 31, 2011). Section 56 of the Companies Act, 1956 imposes the liability for the compliance, on the company, every director, and persons responsible for the issuance of the prospectus. It is observed that the liability of the Company to repay under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act, is continuing and the same continues till all the repayments are made to the investors/ public. Therefore, the directors who were present during the period when the Company had made the offer and allotted preference shares shall be liable for violation of Sections 56, 60 and 73 of the Companies Act, 1956, including the default in making refunds as mandated therein. As the liability to make repayments under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act is a continuing liability, the persons who joined the Company's Board pursuant to the 'offer of preference shares' shall also be liable

if the Company and the concerned directors have failed to make refunds, as mandated under the discussed provisions of law.

- c. From the table above, it is noted that Mr. Siddhartha Nag, Mr. Kanak Ranjan Nath, Mr. Sanjoy Nag, Mr. Subhash Chandra Saha, Mr. Satyendra Kumar Dey, Mr. Mrinal Chandra Nandi, Mr. Santanu Das, Mr. Ashis Dhar, Mr. Sujit Kumar Roy and Mr. Shibendu Das were the directors at the time of incorporation of the Company and allotment of preference shares during the financial years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 and were responsible for the affairs of the Company at the relevant point of time. Mr. Siddhartha Nag, Mr. Kanak Ranjan Nath, Mr. Sanjoy Nag and Mr. Subhash Chandra Saha continue as directors of the Company.

Mr. Mrinal Chandra Nandi was the director of the Company till June 11, 2007 and during his tenure allotment of preference shares was done to 849 investors by the Company on March 31, 2007.

Mr. Mrinal Chandra Nandi, Mr. Sujit Kumar Roy and Mr. Shibendu Das in respective submissions have argued that as per the provisions of Section 5 of the Companies Act, 1956 and Section 2(60) of the Companies Act, 2013, Mr. Siddhartha Nag, the Managing Director of the Company is the 'officer in default' and is liable for the violation. The role of directors in a Company is of utmost importance and they are required to take diligent steps for preventing financial fraud in the Company they are associated with. The directors are also required not to neglect the affairs of the company which results in the violation of various laws such as the instant 'deemed public issue' matter wherein the money is collected from the innocent and gullible public/ investors, without the statutory compliances, i.e. necessary disclosures about the company, exit opportunity, etc.

If the argument of Mr. Mrinal Chandra Nandi and other directors that only the Managing Director of the Company is the 'officer in default' and liable for violation is considered then the companies and the directors intending to defraud the public/ investors would attempt to deceive the gullible public/ investors by not signing the

minutes of meeting or other document and will go scot free. The same will also go against the collective responsibility of the Board of Directors imposed under the law. I note that the provisions of law cannot be interpreted in order to result in the consequence that violators go without legal accountability. I note that SEBI having the statutory mandate to protect the interests of investors in the securities market is obligated not to create such situations. The public interest requires that such violators who had the knowledge or consent or connivance in the act or omission which constitutes violation of the provisions of the 'deemed public issue' or who have neglected in preventing such illegalities be made accountable to the investors by way of refunding the money collected from them. In this regard, I also place my reliance on the order of Hon'ble High Court of Madras in the matter of *Madhavan Nambiar Vs. Registrar of Companies* [2002 108 Comp Case 1 Mad] wherein it was observed that "*In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956.*".

In view of the same, Mr. Siddhartha Nag, Mr. Kanak Ranjan Nath, Mr. Sanjoy Nag, Mr. Subhash Chandra Saha, Mr. Satyendra Kumar Dey, Mr. Mrinal Chandra Nandi, Mr. Santanu Das, Mr. Ashis Dhar, Mr. Sujit Kumar Roy and Mr. Shibendu Das are liable for the contraventions as found against the Company. They are also jointly and severally responsible with the Company for making refunds (for the funds collected during the respective tenures as directors of the Company) along with interest as mandated under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act.

14. I note that the Company and its directors namely Mr. Siddhartha Nag, Mr. Kanak Ranjan Nath, Mr. Sanjoy Nag, Mr. Subhash Chandra Saha, Mr. Satyendra Kumar Dey, Mr. Mrinal Chandra Nandi, Mr. Santanu Das, Mr. Ashis Dhar, Mr. Sujit Kumar Roy and Mr. Shibendu Das were required to provide full inventory of the assets and

properties within 21 days from the date of receipt of *interim* order. However, no such details have been filed, till date.

15. In view of the discussion above, appropriate action in accordance with law needs to be initiated against the Company and the directors/ promoters in charge of the affairs of the Company during the relevant period.
16. Therefore, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11 and 11B thereof hereby issue the following directions:
 - a. The Company, **SEBA Real Estate Limited [PAN: AAKCS2718Q]**, **Mr. Siddhartha Nag [PAN: AEOPN7092K]**, **Mr. Kanak Ranjan Nath [PAN: ADFPN9130J]**, **Mr. Sanjoy Nag [PAN: AEOPN7091L]**, **Mr. Subhash Chandra Saha [PAN: AYCPS4451M]**, **Mr. Satyendra Kumar Dey [PAN: AJLPD1430D]**, **Mr. Mrinal Chandra Nandi [PAN: ACZPN6252A]**, **Mr. Santanu Das [PAN: AJJPD4880B]**, **Mr. Ashis Dhar [DIN: 01042604]**, **Mr. Sujit Kumar Roy [PAN: AIYPR3451L]** and **Mr. Shibendu Das [PAN: AGDPD7440A]** jointly and severally, shall forthwith refund the money collected by the Company through the issuance of Redeemable Preference Shares (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956), to the investors including the money collected from investors, till date, pending allotment of preference shares, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.
 - b. The repayments to investors shall be effected only in cash through Bank Demand Draft or Pay Order.

- c. The Company/ its present management are permitted to sell the assets of the Company only for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalised Bank.
- d. The Company, its directors and other persons named above 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 details on contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.
- e. After completing the aforesaid repayments, the Company shall file a certificate of such completion with SEBI, within a period of three months from the date of this Order, from 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').
- f. In case of failure of the Company, **SEBA Real Estate Limited**, its directors including Mr. Siddhartha Nag, Mr. Kanak Ranjan Nath, Mr. Sanjoy Nag, Mr. Subhash Chandra Saha, Mr. Satyendra Kumar Dey, Mr. Mrinal Chandra Nandi, Mr. Santanu Das, Mr. Ashis Dhar, Mr. Sujit Kumar Roy and Mr. Shibendu Dasin complying with the aforesaid directions, SEBI, on expiry of three months from the date of this Order, -
- i. shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - ii. may initiate appropriate action against the Company, its promoters/ directors and the persons/ officers who are in default, including adjudication proceedings against them, in accordance with law.
 - iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of

fraud, cheating, criminal breach of trust and misappropriation of public funds;
and

- iv. would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.

 - g. The **Company** is directed not to, directly or indirectly, access the capital market by issuing prospectus, offer document or advertisement soliciting money from the public and is 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 (4) years from the date of completion of refunds to investors, made to the satisfaction of SEBI, as directed above.

 - h. The **directors** of the Company namely Mr. Siddhartha Nag, Mr. Kanak Ranjan Nath, Mr. Sanjoy Nag, Mr. Subhash Chandra Saha, Mr. Satyendra Kumar Dey, Mr. Mrinal Chandra Nandi, Mr. Santanu Das, Mr. Ashis Dhar, Mr. Sujit Kumar Roy and Mr. Shibendu Das are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, with immediate effect. They are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, with immediate effect. This restraint shall continue to be in force for a further period of four (4) years on completion of the repayments, as directed above.

 - i. The above directions shall come into force with immediate effect.
17. This Order is without prejudice to any action, including adjudication and prosecution proceedings, that might be taken by SEBI in respect of the above violations committed by the Company, its promoters, directors and other key persons.
18. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

19. 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.

DATE :January 15th, 2016
PLACE : Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA