

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of RTC Properties India Limited

In respect of:

1. **RTC Properties India Limited (PAN: AAECR6307C)**
2. **Shri Karunamay Roy (PAN: AGUPR7778Q; DIN: 652651).**
3. **Shri Saurav Singha Roy (PAN: AMBPR6838E; DIN: 3384808).**
4. **Shri Amit Kumar Roy (PAN: AYNPR1829B; DIN: 3560315).**
5. **Shri Swapan Kumar Dey (PAN: AGBPD1377Q; DIN: 6683558).**
6. **Shri Rabishankar Basu (PAN: AIXPB3056C; DIN: 2888553).**
7. **Shri Satyajeet Kumar Singh (PAN: APUPS6554G; DIN: 1882323).**
8. **Shri Jiban Mitra (PAN: ARIPM6971F; DIN: 3088509).**
9. **Sint. Sarmistha Roy (PAN: AFYPN2168P; DIN: 2428518).**
10. **Shri Goutam Sarkar (PAN: AUBPS6532N).**
11. **Shri Kanchan Dutta (PAN: APWPD1547G).**
12. **Shri Sreemon Ghosh (PAN: AHXPG3771G).**

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1. RTC Properties India Limited (hereinafter referred to as “**RPIL**”/ “**the Company**”) is a Public company incorporated on February 12, 2010 and registered with Registrar of Companies–Kolkata with CIN: U45400WB2010PLC142136. Its registered office is at Badu Road, Rani Park Madhyamgram Kolkata - 700129.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had conducted an examination into the fund–raising activities of RPIL in respect of issue of Redeemable Preference Shares (“**RPS**”) and undertook an enquiry to ascertain whether RPIL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992
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Order in the matter of M/s RTC Properties India Limited

(hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder.

3. On enquiry by SEBI, it was observed that RPIL had made an offer of RPS in the financial years 2009-2010, 2010-2011 and 2011-2012 (hereinafter referred to as “**Offer of RPS**”) and raised an amount of Rs. 4,52,45,000/-. The number of allottees and funds mobilized has been collated from the information obtained from the MCA 21 Portal.
4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated January 14, 2016 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against RPIL and its Directors and promoters, viz. Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy, Shri Swapan Kumar Dey, Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, Shri Goutam Sarkar, Shri Kanchan Dutta, and Shri Sreemon Ghosh (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. RPIL had made an *Offer of RPS* during the financial years 2009-2010, 2010-2011 and 2011-2012 and raised an amount of Rs. 4,52,45,000/- as shown below:

Year of Issue	Security Issued	Amount raised (Rs.)	Number of allottees
2009-2010	RPS	58,50,000	3
2010-2011		1,13,65,000	386
2011-2012		2,80,30,000	754
Total		4,52,45,000	1143

6. The above *Offer of RPS* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the

resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by RPIL in respect of the *Offer of RPS*.

7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated January 14, 2016 with immediate effect.
- i. “RPIL shall not mobilize any fresh funds from investors through the Offer of Redeemable 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. RPIL, its Promoters and present Directors, viz. Karunamay Roy (DIN: 652651; PAN: AGUPR7778Q), Shri Saurav Singha Roy (DIN: 3384808; PAN: AMBPR6838E), Shri Amit Kumar Roy (DIN: 3560315; PAN: AYNPR1829B), Shri Swapan Kumar Dey (DIN: 6683558; PAN: AGBPD1377Q), Shri Rabishankar Basu (DIN: 2888553; PAN: AIXPB3056C), Shri Satyajeet Kumar Singh (DIN: 1882323; PAN: APUPS6554G), Shri Goutam Sarkar (PAN: AUBPS6532N), Shri Kanchan Dutta (PAN: APWPD1547G) and Shri Sreemon Ghosh (PAN: AHXPG3771G), 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. The past Directors of RPIL, viz. Shri Jiban Mitra (DIN: 3088509; PAN: ARIPM6971F) and Sarmistha Roy (DIN: 2428518; PAN: AFYPN2168P), 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;
 - iv. RPIL and its abovementioned past and present Directors and Promoters, 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;

- v. RPIL shall provide a full inventory of all its assets and properties
 - vi. RPIL's abovementioned past and present Directors and Promoters, shall provide a full inventory of all their assets and properties;
 - vii. RPIL and its abovementioned present Directors and Promoters, 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 Redeemable Preference Shares*, without prior permission from SEBI;
 - viii. RPIL and its abovementioned present Directors and Promoters, shall not divert any funds raised from public at large through the *Offer of Redeemable Preference Shares* which are kept in bank account(s) and/or in the custody of RPIL;
 - ix. RPIL and its abovementioned past and present Directors and Promoters, shall furnish complete and relevant information (as sought by SEBI letter dated October 27, 2015), within 14 days from the date of receipt of this Order.”
8. The interim order also directed the RPIL and its Directors/promoters to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act should not be passed against them:
- i. Directing them jointly and severally to refund money collected through the *Offer of RPS* along with interest, if any, promised to investors therein;
 - ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner

whatsoever, either directly or indirectly, for an appropriate period;

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

9. Vide the said interim order, RPIL, its abovementioned Directors/promoters were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
10. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated January 14, 2016 which were delivered to Shri Jiban Mitra, Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Kanchan Dutta, Shri Sourav Singha Roy and Shri Goutam Sarkar. The order was returned undelivered from RTC Properties India Limited, Shri Karunamay Roy, Smt Sarmistha Roy, Shri Amit Kumar Roy, Shri Swapan Kumar Dey. Subsequently, vide notification dated November 09, 2016 published in newspaper The Times of India , and notification dated November 08, 2016 published in newspaper Anand Bazar Patrika , the Noticees were notified by SEBI, that interim order dated January 14, 2016 was issued against them and they were given a final opportunity to submit their reply in the matter.
11. Vide letter dated January 27, 2016, Shri Satyajeet Kumar Singh has submitted, *inter alia* that:
- The Noticee had consented to acting as a working director of RPIL and engage in the business of the Company.
 - On completion of five months, the Noticee had dissociated with RPIL and had submitted his resignation on June 19, 2010 from the directorship which was duly accepted by Shri Karunamay Roy. Copy of the said letter is provided.
 - The Noticee had no knowledge of fund mobilization by way of RPS and since his

dissociation, is not in contact with any of the directors of RPIL.

12. Vide reply dated November 18, 2016, after the order was issued via public notification, Shri Satyajeet Kumar Singh reiterated his aforesaid submissions.

13. Vide reply dated February 1, 2016, Shri Kanchan Dutta, has submitted, *inter alia*, that:

- a. The Noticee was an agent-cum-depositor of RPIL and not a promoter of the Company, and had no knowledge of his appointment as a promoter of the Company.
- b. He was assured by RPIL that refund of the depositors' money would be initiated from December 2014. But no such refund was made.
- c. The Noticee and other depositors formed a forum (Depositor and Agent Welfare Association of RTC Group) which selected five pure depositors to file a petition against RPIL. The said petition was filed before the Hon'ble High Court of Calcutta, vide W.P. No. 24893(w)/2015.

14. Vide reply dated January 25, 2016, Shri Saurav Singha Roy has submitted, *inter alia*, that:

- a. The Noticee was not a Director of RPIL and has no connection with the maintenance and/or administration of the said Company.
- b. That the Noticee does not have knowledge about the formation of RPIL and does not know the whereabouts of the Company or the persons involved with the said Company.

15. Vide reply dated February 29, 2016, Shri Goutam Sarkar, has submitted, *inter alia*, that:

- a. The Noticee had been offered a part of land for sale, at a lucrative discount, by Shri Karunamay Roy and Shri Rabi Shankar Basu, for which the Noticee had handed over a signed photocopy of his PAN card.
- b. The Noticee has not been associated with RPIL in any manner whatsoever. The Noticee has submitted that his signature has been forged and had been put in the record of the RoC without his knowledge or acceptance. The Noticee has filed a General Diary in this regard, against Shri Kaiunamay Roy and Shri Rabi Shankar

Basu bearing GD no. 1906/16 dated February 23, 2016. Copy of the said General Diary has been provided.

16. Vide notification dated June 10, 2017 published in newspaper *The Times of India* and notification dated June 10, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on July 18, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.
17. *Hearing and submissions:* Shri Satyajeet Kumar Singh, appeared for the personal hearing held on July 18, 2017. During the personal hearing it was orally submitted that Shri Satyajeet Kumar Singh was a Director of RTC Properties India Limited from the time of incorporation of the Company till 19.06.2010. The Noticee has also submitted that he was not paid any remuneration by the Company during his position as a Director. Further, he has submitted that during the financial year 2009 - 2010, no redeemable preference shares had been offered or allotted to the public. Shri Satyajeet Kumar Singh has submitted the copies of the Preliminary Findings in the Inspection of the books of account and other statutory records of RTC Properties India Limited, conducted by the Ministry of Corporate Affairs, to substantiate his oral submissions. Shri Satyajeet Kumar Singh was granted a period of one week, to submit an inventory of his bank accounts, demat accounts, and other asset details.
18. Vide letter dated July 21, 2017, Shri Satyajeet Kumar Singh has submitted the details of property and bank accounts.
19. On August 17, 2017, SEBI advised the Noticees to submit additional supporting documentary evidence in the matter. Vide letter dated September 6, 2017, Shri Sourav Singha Roy has submitted, *inter alia*, that:
 - a. Shri Karunamay Roy was the kingpin behind all the illegal activities of RPIL and he

has siphoned off most of the money collected from the investors. The aforesaid has been obtained from the preliminary finds of MCA, intimated to the Noticee on May 7, 2017.

- b. That vide letter dated May 24, 2017 to the MCA, in reply to the aforesaid preliminary findings, the Noticee had submitted that he had signed on some documents at the behest of Shri Karunamay Roy, in the hope of getting a job.
- c. He further submitted that he was not a Director of the RPIL and his signature may have been taken on the consent letter or any other documents by Shri Karunamay Roy on the pretext of giving him a job. But the Noticee has submitted that he was never given a job. Neither did he have any responsibility in managing the activities of the Company.
- d. He further submitted that he has filed a Title Suit before the 2nd Court of Civil Judge (Junior Division), Chandannagar, District Hooghly, for decree of declaration that the Noticee was not a Director of RPIL. The said suit is awaiting disposal and a copy of the suit has been provided.

20. Vide a letter dated August 30, 2017, Shri Satyajeet Kumar Singh submitted, *inter alia*, that:

- a. Mr. Karunamay Roy had approached the Noticee with a proposal to set up a Company for the purpose of developing a shopping mall and other real estate and construction business. Since the Noticee had a DIN, he was proposed to be appointed as a Director of the Company.
- b. After registration, RPIL was to register certain land in the name of the Company which could not be done as there was a Court injunction on the said land.
- c. In April 2010, the Noticee approached Shri Karunamay Roy for the purpose of resignation from the Company. But he was asked to wait till new Directors joined. Finally on June 19, 2010, the Noticee signed on a resignation letter. No date was put on the copy of the letter with Shri Karunamay Roy as he stated that he would file the letter with the RoC, within a week.
- d. The Noticee submitted that he did not receive any money, nor did he pay any money

as promoters contribution from his account to RPIL.

21. Vide reply dated July 11, 2017, Shri Kanchan Dutta has reiterated his submissions made vide reply dated February 1, 2016.

22. I have considered the allegations and materials available on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

(1) *Whether the company came out with the Offer of RPS as stated in the interim order.*

(2) *If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.*

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

ISSUE No. 1- Whether the company came out with the Offer of RPS as stated in the interim order.

23. I have perused the interim order dated January 14, 2016 for the allegation of *Offer of RPS*. I note that Shri Satyajeet Kumar Singh, during his personal hearing, has submitted that during the financial year 2009 - 2010, no redeemable preference shares had been offered or allotted to the public. I have perused the Form 2 available on 'MCA 21 Portal' and find that allotments were made on March 31, 2010 to 3 allottees and an amount of Rs. 58,50,000/- has been mobilised. Therefore, I find no merit in the above submission of Shri Satyajeet Kumar Singh.

24. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the material available on record that RPIL has issued and allotted RPS to 1143 investors during the financial years 2009-2010, 2010-2011 and 2011-2012 and raised an amount of Rs. 4,52,45,000/-. I also note that the number of allottees and funds mobilized has been collated from information

obtained from the MCA 21 Portal.

25. I therefore conclude that RPIL came out with an offer of RPS as outlined above.

ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.

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

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

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

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

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons

other than those receiving the offer or invitation; or

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

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

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

27. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the “**Sahara Case**”), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

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

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”

28. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.
29. In the instant matter, I find that RPS were issued by RPIL to at least 1143 investors in the financial years 2009-2010, 2010-2011 and 2011-2012. I find that RPIL has mobilized an amount of Rs. 4,52,45,000/- over the financial years 2009-2010, 2010-2011 and 2011-2012. The above findings lead to a reasonable conclusion that the *Offer*

of RPS by RPIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

30. I find that RPIL has not claimed it to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that RPIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
31. Neither RPIL nor its directors have contended that the *Offer of RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
32. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that “In terms of Section 67(3) of the Companies Act any issue to ‘50 persons or more’ is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning”.
33. Therefore, in view of the material available on record, I find that the *Offer of RPS* by RPIL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS* are deemed to be public issues and RPIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

34. Further, since the offer of RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.
35. The allegations of non-compliance of the above provisions were not denied by RPIL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that RPIL has contravened the said provisions. RPIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that RPIL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.
36. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RPS was a deemed public issue of securities, RPIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that RPIL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that RPIL has not complied with the provisions of section 60 of the Companies Act, 1956.
37. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on

behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Neither RPIL nor its directors produced any record to show that it has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, RPIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

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

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

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

39. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase “intend to get listed” in the context of deemed public issue the Hon’ble Supreme Court in *Sahara Case* observed-

“...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...”

“...Listing of securities depends not upon one’s volition, but on statutory mandate...”

“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”

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

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

41. I have perused the replies filed by the Noticees in this regard. I note that Shri Satyajeet Kumar Singh has submitted a copy of the resignation letter dated June 19, 2010 which has been duly countersigned by Shri Karunamay Roy. On perusal of the letter of resignation filed with the RoC with respect to Shri Satyajeet Kumar Singh, I find that the

letter is dated April 4, 2011. I find that both the dates were written by hand and it is submitted by Shri Satyajeet Kumar Singh, that the copy of the letter was left deliberately undated by Shri Karunamay Roy. I note that there is no other material brought on record to show that the resignation letter was in fact signed on June 19, 2010. Further, the submission of Shri Satyajeet Kumar Singh can be discounted on the basis that the copy of the resignation letter produced by him was also undated and the date of “19.06.2010” has been written by hand, and could have been added at a later date. The Noticee has claimed that the letter was deliberately left undated as the Company would have made the necessary filings with RoC a week from the date of resignation. However, it may also be reasonably be inferred that the Noticee knowingly allowed RPIL to finally determine the date of resignation from his directorship and thus is now estopped from defending himself from such consequences thereafter. Therefore, I find that there is no preponderance of probability in favour of the submission made by Shri Satyajeet Kumar Singh. In view of the MCA records, I find that the tenure of Shri Satyajeet Kumar Singh is from February 12, 2010 to April 4, 2011.

42. I note that Shri Kanchan Dutta has submitted that he was an agent-cum-distributor of RPIL and had no knowledge of being a promoter of RPIL. He has further submitted that he is part of a Depositor and Agent Welfare Association of RTC Group, which selected five depositors who filed a petition before the Hon'ble High Court of Calcutta against RPIL bearing no. W.P. No. 24893(w)/2015 (Kalipada Das and others v. Union of India and Others). I have verified the material available on record, and there appears to be a perceptive mismatch in the signatures of the Noticee as available on record, leading to the preponderance of probability in favour of the submissions made by Shri Kanchan Datta. I therefore find that Shri Kanchan Dutta was made a promoter of RPIL without his knowledge. Therefore, he is not liable for any violation of the Companies Act, 1956 committed by RPIL.

43. I note that Shri Goutam Sarkar has submitted that his signature was forged in the incorporation documents of the RPIL. I note that Shri Goutam Sarkar has also submitted

a copy of a General Diary dated February 23, 2016 against Shri Karunamay Roy and Shri Rabi Shankar Basu, alleging the aforesaid. I have verified the material available on record, and there appears to be a perceptible mismatch in the signatures of the Noticee as available on record, leading to the preponderance of probability in favour of the submissions made by Shri Goutam Sarkar. I therefore find that Shri Goutam Sarkar was made a promoter of RPIL without his knowledge. Therefore, he is not liable for any violation of the Companies Act, 1956 committed by RPIL.

44. I note that Shri Sourav Singha Roy has submitted that he had signed on certain documents at the behest of Shri Karunamay Roy without verifying the documents. He has also admitted that his signature may have been taken on the consent letter or any other documents by Shri Karunamay Roy. The Noticee has submitted that he did not have any responsibility in managing the activities of the Company. In this regard he has submitted that he has filed a Title suit no. 39/2017 before the 2nd Court of Civil Judge (Junior Division), Chandannagar, District Hooghly, for decree of declaration that the Noticee was not a Director of RPIL. The said suit is awaiting disposal and a copy of the suit has been provided. I find that as per MCA records, Shri Sourav Singha Roy is shown as a continuing director, and it has been admitted by the Noticee that he may have signed on documents without verification, in the hope of some favour from Shri Karunamay Roy. Therefore, I find no merit in his submission that he is not a director of the Company. In view of his position as a director, he is liable to make refund as discussed in paragraph 51 of this Order. However, the said liability of the Noticee as a director of RPIL is to be read in harmony with the final decision to be passed by the Court in the Title suit no. 39/2017 filed before the 2nd Court of Civil Judge (Junior Division), Chandannagar, District Hooghly.

45. From the documents available on record and MCA website, I find that the present Directors in RPIL are Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy, Shri Swapan Kumar Dey. I also note that, Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, who were earlier Directors in RPIL,

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

Name of the directors	Date of appointment	Date of cessation
Karunamay Roy	February 12, 2010	Continuing
Saurav Singha Roy	June 22, 2011	Continuing
Amit Kumar Roy	July 01, 2011	Continuing
Swapan Kumar Dey	June 07, 2014	Continuing
Rabishankar Basu	February 12, 2010	August 13, 2010
Satyajeet Kumar Singh	February 12, 2010	April 04, 2011
Jiban Mitra	August 09, 2010	July 08, 2011
Sarmistha Roy	August 09, 2010	January 03, 2012

46. I find from the MCA records that Shri Karunamay Roy, Shri Swapan Kumar Dey, Shri Rabishankar Basu, Shri Satyajeet Kumar Singh and Shri Sreemon Ghosh are promoters of RPIL.
47. 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, RPIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
48. 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%.

49. In this regard I note that Shri Satyajeet Kumar Singh has submitted that he is not liable for refund as no fund mobilization was carried during his tenure in the Company, from February 12, 2010 till June 19, 2010. He has relied on the preliminary findings of MCA in this regard, copy of which has been provided for perusal. It may be noted that the tenure of Shri Satyajeet Kumar Singh, as observed from the MCA records is from February 12, 2010 till April 4, 2011, and not till June 19, 2010 as submitted by him. Further, it is noted that in the preliminary findings of MCA the period of allotment has been taken from July 2, 2010, whereas, as per the Form 2 filings of the Company, observed on MCA website, the first allotments were made on March 31, 2010 to 3 allottees and the same has been recorded in the interim order as well. In view of the above, I find no merit in the aforesaid submissions made by Shri Satyajeet Kumar Singh.
50. From the material available on record and the details of the appointment and resignation of the directors of RPIL as reproduced in paragraph 45 of this Order, it is noted that , Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, Shri Karunamay Roy, Shri Saurav Singha Roy and Shri Amit Kumar Roy were directors at the time of the issuance of RPS. Since these persons were acting as directors during the period of issuance of RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of RPIL 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 RPIL, as officers in default, are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. None of the Noticees disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act. Therefore, I find that RPIL and its Directors, viz., Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, Shri Karunamay Roy, Shri Saurav Singha Roy and Shri Amit Kumar Roy are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

51. I note that during the financial years 2009-2010, 2010-2011 and 2011-2012, RPIL through Offer of RPS, had collected an amount of Rs. 4,52,45,000/- from various allottees. I note that Shri Karunamay Roy has been a director of RPIL since financial years 2009-2010, 2010-2011, 2011-2012 till present date. I note that Shri Saurav Singha Roy has been a director of RPIL since financial years 2011-2012 till present date. I note that Shri Amit Kumar Roy has been a director of RPIL since financial years 2011-2012 till present date. I note that Shri Rabishankar Basu was a director of RPIL during financial years 2009-2010 and 2010-2011. I note that Shri Satyajeet Kumar Singh was a director of RPIL during financial years 2009-2010, 2010-2011 and 2011-2012. I note that Shri Jiban Mitra was director of RPIL during financial years 2010-2011 and 2011-2012. I note that Smt Sarmistha Roy was a director of RPIL during financial years, 2010-2011 and 2011-2012. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the

view that the obligation of the director to refund the amount with interest jointly and severally with RPIL and other directors are limited to the extent of amount collected during his/her tenure as director of RPIL.

52. In this regard, I note that Shri Swapan Kumar Dey was appointed as a director of RPIL only on June 07, 2014 i.e. after the period of issuance of RPS. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that Shri Swapan Kumar Dey is not liable for refund of money as he was not a director during the relevant time of fund mobilization. However, the said Noticee has not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue and public interest requires that the persons who had such knowledge/connivance/consent be made accountable to the investors. Further, Shri Swapan Kumar Dey had the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

" 13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. 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. "

53. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof.

The noticee cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Swapan Kumar Dey was also be responsible for all the deeds/acts of the Company during the period of his directorship and was obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Swapan Kumar Dey is liable to be debarred for an appropriate period of time.

54. I find that Shri Karunamay Roy, Shri Swapan Kumar Dey, Shri Rabishankar Basu, Shri Satyajeet Kumar Singh and Shri Sreemon Ghosh are promoters of RPIL and therefore, are liable as promoters for the *Offer of RPS* against the norms of deemed public issue. The said Noticees have not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue and public interest requires that the persons who had such knowledge/connivance/consent be made accountable to the investors. Therefore, the said Noticees are liable to be debarred for an appropriate period of time.
55. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct RPIL and its Directors, viz. Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors and promoters, to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.
56. I also note that, vide the interim order dated January 14, 2016, RPIL was directed to

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

57. In view of the discussion above, appropriate action in accordance with law needs to be initiated against RPIL and its Directors and promoters , viz. Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy, Shri Swapan Kumar Dey, Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, and Sreemon Ghosh.
58. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:
- a. RPIL, Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
 - b. The repayments and interest payments to investors shall be effected through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or through appropriate Banking channels.
 - c. Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy are directed to provide a full inventory of all their assets and

properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.

- d. RPIL and Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
- e. RPIL, Shri Swapan Kumar Dey, Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- f. RPIL, Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- g. RPIL and, on its behalf the present directors who joined subsequent to the issues Shri Swapan Kumar Dey, and Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this

Order coming into effect.

- h. After completing the aforesaid repayments, RPIL and, on its behalf the present directors who joined subsequent to the issues Shri Swapn Kumar Dey, and Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI")
- i. In case of failure of aforesaid present directors, including those who joined subsequent to the issues namely, Shri Swapn Kumar Dey, to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, 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.
- j. In case of failure of RPIL, Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order:
 - i. may recover such amounts, from the company and the directors liable to refund as specified in paragraph 58(a) of this Order, 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;
- k. RPIL, Shri Rabishankar Basu, Shri Satyajeet Kumar Singh, Shri Jiban Mitra, Smt Sarmistha Roy, Shri Karunamay Roy, Shri Saurav Singha Roy, Shri Amit Kumar Roy are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.
- l. Shri Swapan Kumar Dey, and Shri Sreemon Ghosh are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years from the date of this Order. The above said persons 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 for a period of 4 (four)

years from the date of this order.

m. The directions with respect to Shri Sourav Singha Roy are to be read in harmony with the final decision to be passed by the Court in the Title suit no. 39/2017 filed before the 2nd Court of Civil Judge (Junior Division), Chandannagar, District Hooghly.

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

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

60. 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: November 08, 2017

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA