General Manager
Eastern Regional Office

SEBI/ERO/VSS/GB/P/OW/2024/8303/4
March 01, 2024

By Speed Post Ack. Due

Noticees:

Noticee No.	Noticee Details	Noticee No.	Noticee Details
1.	**M/s. Diamondray Industries Limited** **CIN:** U29253WB2012PLC175512 38/2, Jessore Road (West) Barasat P. S. - Barasat, Dist. - 24 Paraganas (North) Kolkata West Bengal - 700124	2.	**Shri Taiebul Haque Sahaji** DIN – 2844680 Taiebul Haque Sahaji S/O Golam Rasul Sahaji Purba Uttar Bagundi, Gotra Basirhat, North 24 Parganas Basirhat West Bengal - 743422
3.	**Shri Subrata Bandyopadhyay** (DIN – 3499342 S/O Manindranath Bandyopadhyay 232, Karttik Pur, Deganga, North 24 Parganas, Kolkata West Bengal - 743423	4.	**Shri Mohammed Abdur Razzak Mondal** DIN: 3499377 S/O Mohammed Abdul Latif Mondal Vill – Daulatpur, P.O. Sendanga PS – Ashoke Nagar North 24 Parganas, Kolkata West Bengal - 743272

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

Sub: Show Cause Notice under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of M/s. Diamondray Industries Limited (CIN: U29253WB2012PLC175512)

1. In compliance with the Hon'ble Calcutta High Court order dated January 15, 2019, while conducting a joint inventory with Directorate of Economic Offences, West Bengal, of approximately ten lacs claims received in a certain matter, SEBI observed complaints against certain other companies as well, including complaints against Diamondray Industries Ltd (DIL). During examination of these complaints, it was observed that the

For Securities and Exchange Board of India
कोलकाता KOLKATA

certificate of Redeemable Preference Shares (RPS) issued by DIL were found during the above exercise. SEBI, therefore initiated further examination in the matter with respect to deemed public issue.

2. Accordingly, from the information obtained from the Ministry of Corporate Affairs website (MCA 21 portal) and Registrar of Companies, Kolkata (hereinafter referred to as "RoC") and other material available on record, the following were observed:

2.1 The details of the company are as follows:

i) Name of Company: Diamondray Industries Ltd.
ii) CIN: U29253WB2012PLC175512
iii) Date of Incorporation: March 12, 2012
iv) Type of the Company: Public and Unlisted
v) PAN: Not available
vi) Authorized Capital: Rs. 5,00,00,000/-
vii) Paid Up capital: Rs. 45,15,000/-
viii) Date of last AGM: 29/09/2012
ix) Date of Balance Sheet: 31/03/2012
x) Company Status (for e-filing): Strike off
xi) Registered Office Address: 38/2, Jessore Road (West) Barasat P. S. - Barasat, Dist. - 24 Paraganas (North) Kolkata Parganas North WB 700124

2.2 The list of directors as obtained from RoC – Kolkata is as mentioned below:

Sl. No.	Name	Current Designation	DIN/CIN	PAN	Address	Dt. of Appointment	Dt. of Cessation
1.	Taiebul Haque Sahaji	Director	2844680	N.A.	Taiebul Haque Sahaji S/O Golam Rasul Sahaji Purba Uttar Bagundi, Gotra Basirhat, North 24 Parganas Basirhat 743422 West Bengal	12.03.2012	N.A.
2.	Subrata Bandyopadhyay	Director	3499342	N.A.	Subrata Bandyopadhyay S/O Manindranath Bandyopadhyay	12.03.2012	N.A.

For Securities and Exchange Board of India कोलकाता KOLKATA

					232, Karttik Pur, Deganga, North 24 Parganas, Kolkata 743423 West Bengal		
3.	Mohammed Abdur Razzak Mondal	Director	3499377	N.A.	Mohammed Abdur Razzak Mondal S/O Mohammed Abdul Latif	15.12.2012	N.A.
					Mondal Vill – Daulatpur, P.O. Sendanga PS – Ashoke Nagar North 24 Parganas Kolkata 743272 West Bengal		

3. SEBI vide letters dated March 20, 2022 sent to the company and its directors sought further information regarding money mobilization by issuance of securities by DIL. However, no reply has been received till date. The status of delivery of letters is tabulated below:

Sl. No.	Name of entity/director	Date of Letter	Status/ Date of Delivery	Reply received by SEBI
1.	Diamondray Industries Ltd.	20.03.2022	Returned with remarks – Addressee left	No
2.	Subrata Bandyopadhyay	20.03.2022	Returned with remarks – Addressee cannot be located	No
3.	Taiebul Haque Sahaji	20.03.2022	Delivered on 01.04.2022 as per the status report on the	No

For Securities and Exchange Board of India कोलकाता KOLKATA

			India Post website.	
4.	Mohammad Abdur Razzak Mondal	20.03.2022	Delivered on 01.04.2022 as per the status report on the India Post website	No

4. The details mentioned in the RPS certificate available with SEBI is as given below:

Regd. Folio No.: F10000562, Certificate No. 159
Name of the holder: Smt Hemlata
Father/ Husband's Name: Ram Lal
Address: Moh – Azizganj, Dist. SPN, UP – 242001
Nominee – Ram Lal, Age of Nominee – 59, Relationship – Father
No. of Redeemable Preference Share – 10
Face Value – Rs. 10,000/-, Redemption Value – Rs. 20,000/-
Distinctive No. – From 3536 to 3545
Date of Allotment – 19/07/2012, Redemption Date –18/07/2017
Given the under the seal of the company – Diamondray Industries Ltd.

5. The filings made by the company on the MCA website were accessed and perused. The details of Redeemable Preference Shares issued by the company (as per the filings available on MCA portal and the certificate available with us) is as under:

FY	Date of allotment	No. of allottees	No. of RPS allotted	Nominal amount per share	Amount Mobilized (in Rs.)
2012-13	19.07.2012	1	10	1000	10,000
	30.09.2012	207	4015	1000	40,15,000
		208	4025		**40,25,000**

6. It is evident from the above table and material available on record that the company had issued RPS to more than 49 persons in the FY 2012-2013. Hence, DIL made a public issue of securities and was required to comply with the various requirements as per the Companies Act, 1956.

The noticees are alleged to have violated Section 56 (1) & (3) of the Companies Act, 1956, which requires that no one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing

For Securities and Exchange Board of India कोलकाता KOLKATA

such salient features of a prospectus including certain provisos and conditions. Further, Section 60 r/w 2(36) of the Companies Act, 1956 prescribes conditions for registration of prospectus, Section 67 (3) of the Companies Act, 1956 provides for construction of references to offering shares or debentures to public, etc., and Section 73 of Companies Act, 1956 prescribes the rules for the company to get its shares listed on the stock exchange.

7. However, it is noted that the Noticees failed to follow and adhere to all of the above mentioned provisions of law by issuing RPS to more than 49 persons in FY 2012-13, by issuing application form for shares without accompaniment of prospectus/ abridged prospectus containing requisite disclosures, by not filing prospectus with RoC in connection with the said issuance of securities, by not applying to stock exchange(s) for permission to get the securities listed, by not keeping the amounts collected in a separate designated bank account and not refunding the money collected through the issue of RPS, they have allegedly violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3), Section 73(1), (2) & (3) of the Companies Act, 1956 read with Section 5 of the Companies Act, 1956 read with Section 465(2) of Companies Act, 2013.

8. Further, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 [SEBI(NCRPS) Regulations, 2013] were notified on June 12, 2013. Prior to the notification of SEBI (NCRPS) Regulations, companies making public issuances of redeemable preference shares had to comply with the provisions of the Companies Act, 1956 concerning public issues i.e. Sections 56, 60 read with 2(36), 73.

9. Although the Companies Act, 1956, has been repealed by the Companies Act, 2013, anything done or any action taken or purported to have been done or taken under the Companies Act, 1956, is deemed to have been done or taken under the corresponding provisions of the Companies Act, 2013, by virtue of Section 465(2) of the Companies Act, 2013, and is therefore saved regardless of the repeal of the Companies Act, 1956.

10. Further, it is noted from the details available on MCA website that the status of the company has been shown as struck off. However, proviso to Section 560(5) of Companies Act, 1956 which deals with Power of Registrar to strike defunct company off Register, states the following:

"Provided that -
(a) the liability, if any, of every director, manager or other officer who was exercising any power or management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved;"

Section 248(7) of Companies Act, 2013 states that:



"(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved."

Section 250 of Companies Act, 2013 states that:
250. Effect of company notified as dissolved — Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

In view of the above, the liability of the violation shall continue and is still enforceable.

11. The relevant regulatory provisions and the provisions alleged to have been violated by the Noticees are as follows:

11.1. **Companies Act, 1956**

55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA
The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, - (a) in case of listed public companies; (b) in case of those public companies which intend to get their securities listed on any recognized stock exchange in India, be administered by the Securities and Exchange Board of India ; and (c) in any other case, be administered by the Central Government.

56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN PROSPECTUS
(1) Every prospectus issued - (a) by or on behalf of a company, or (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied [by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section : [Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him :] Provided [further] that this sub-section shall not apply if it

For Securities and Exchange Board of India कोलकाता KOLKATA

is shown that the form of application was issued either - (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees.

60. REGISTRATION OF PROSPECTUS

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto - (a) any consent to the issue of the prospectus required by section 58 from any person as an expert ; and (b) in the case of a prospectus issued generally, also - (i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and (ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

"Section 2(36) of the Companies Act, 1956

(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."

67. CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC

(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 the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).*



Supreme Court Judgement:

While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the 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"), observed:

".....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 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.
...
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. ..."

73. ALLOTMENT OF SHARES AND DEBENTURES TO BE DEALT IN ON STOCK EXCHANGE

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

[(1A)] Where a prospectus, whether issued generally or not, states that an [application under sub-section (1) has been] made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied [under sub-section (1)], or, such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, [the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such

rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.]

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in subsection (2) ; and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [fifty] thousand rupees.

5. MEANING OF "OFFICER WHO IS IN DEFAULT

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:

(a) the managing director or managing directors;
(b) the whole-time director or whole-time directors;
(c) the manager;
(d) the secretary;
(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
(f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board;
(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

11.2. ***Companies Act, 2013***

465. Repeal of certain enactments and savings

(1)….

(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 any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken

भारतीय प्रतिभूति और विनिमय बोर्ड Securities and Exchange Board of India कोलकाता KOLKATA

under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;

(d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;

(e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;

(f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;

(g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;

(h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

(j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and

(k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

11.3. ***Relevant extract of provisions of SEBI Act, 1992:***

Section 11(1), 11(4), 11A and 11B of the SEBI Act, 1992.

Functions of Board

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

11. (4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely :—

(a) suspend the trading of any security in a recognised stock exchange;
(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;
(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;
(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities.

11A. (1) Without prejudice to the provisions of the Companies Act, 1956 (1 of 1956), the Board may, for the protection of investors, —

(a) specify, by regulations –

(i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
(ii) the manner in which such matters shall be disclosed by the companies;

(b) by general or special orders –
(i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
(ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.]

Power to issue directions [and levy penalty].

11B. [(1) [Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary —
(i) in the interest of investors, or orderly development of securities market; or
(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
(iii) to secure the proper management of any such intermediary or person, it may issue such directions, —
(a) to any person or class of persons referred to in section 12, or associated with the securities market; or
(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

12. In light of above, the Noticees 1 to 4 are hereby called upon to show cause as to why appropriate direction(s) including direction to refund money collected by Diamondray Industries Limited through offer of NCDs and direction for restraint and prohibition from accessing securities market, be not issued against them under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992. The written submissions, if any, of the Noticees should reach the undersigned, at the address given below and by e-mail at vikas@sebi.gov.in and gunjanb@sebi.gov.in within 21 days from the date of receipt of this notice, failing which it shall be construed that the Noticees have no reply to submit and SEBI shall be

For Securities and Exchange Board of India
कोलकाता
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free to proceed with on the basis of documents available on record in terms of the provisions of SEBI Act and other applicable laws.

Shri Vikas S. S., General Manager
SEBI Eastern Regional Office
Address: L&T Chambers, 3rd Floor, 16 Camac Street,
Kolkata - 700017, West Bengal
Tel. Board: +91-33-23023000.
E-mail : sebiero@sebi.gov.in, gunjanb@sebi.gov.in

13. If personal hearing before the Quasi-Judicial Authority, SEBI is desired, it shall be indicated by the Noticees accordingly. The Noticees are advised to keep SEBI informed about the change in their correspondence address, if any, till the proceedings in the extant matter are complete.

14. This notice is without prejudice to the rights of SEBI to issue a supplementary notice and to initiate any other proceedings/actions for the aforesaid violations in terms of the SEBI Act and rules or regulations made there under.

15. The Noticees are advised to submit a photocopy of the Income Tax Permanent Account Number i.e PAN for our records.

16. All documents relied upon in the notice have been annexed as per the list of enclosures.

Vikas SS
General Manager

Enclosures:

Annexure No.	Particulars
1.	Copy of complaint along with copy of certificate of redeemable preference share
2.	Copies of MCA filings including Form 2 (Return of allotment filed by the company for FY 2012-13)
3.	Copy of Director details received from RoC - Kolkata

For Securities and Exchange Board of India कोलकाता KOLKATA भारतीय प्रतिभूति और विनिमय बोर्ड

General Manager
Eastern Regional Office

SEBI/ERO/VSS/GB/P/OW/2024/8303/1
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By Speed Post Ack. Due

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2. Accordingly, from the information obtained from the Ministry of Corporate Affairs website (MCA 21 portal) and Registrar of Companies, Kolkata (hereinafter referred to as "RoC") and other material available on record, the following were observed:

2.1 The details of the company are as follows:

i) Name of Company: Diamondray Industries Ltd.
ii) CIN: U29253WB2012PLC175512
iii) Date of Incorporation: March 12, 2012
iv) Type of the Company: Public and Unlisted
v) PAN: Not available
vi) Authorized Capital: Rs. 5,00,00,000/-
vii) Paid Up capital: Rs. 45,15,000/-
viii) Date of last AGM: 29/09/2012
ix) Date of Balance Sheet: 31/03/2012
x) Company Status (for e-filing): Strike off
xi) Registered Office Address: 38/2, Jessore Road (West) Barasat P. S. - Barasat, Dist. - 24 Paraganas (North) Kolkata Parganas North WB 700124

2.2 The list of directors as obtained from RoC – Kolkata is as mentioned below:

Sl. No.	Name	Current Designation	DIN/CIN	PAN	Address	Dt. of Appointment	Dt. of Cessation
1.	Taiebul Haque Sahaji	Director	2844680	N.A.	Taiebul Haque Sahaji S/O Golam Rasul Sahaji Purba Uttar Bagundi, Gotra Basirhat, North 24 Parganas Basirhat 743422 West Bengal	12.03.2012	N.A.
2.	Subrata Bandyopadhyay	Director	3499342	N.A.	Subrata Bandyopadhyay S/O Manindranath Bandyopadhyay	12.03.2012	N.A.

					232, Karttik Pur, Deganga, North 24 Parganas, Kolkata 743423 West Bengal		
3.	Mohammed Abdur Razzak Mondal	Director	3499377	N.A.	Mohammed Abdur Razzak Mondal S/O Mohammed Abdul Latif Mondal Vill – Daulatpur, P.O. Sendanga PS – Ashoke Nagar North 24 Parganas Kolkata 743272 West Bengal	15.12.2012	N.A.

3. SEBI vide letters dated March 20, 2022 sent to the company and its directors sought further information regarding money mobilization by issuance of securities by DIL. However, no reply has been received till date. The status of delivery of letters is tabulated below:

Sl. No.	Name of entity/director	Date of Letter	Status/ Date of Delivery	Reply received by SEBI
1.	Diamondray Industries Ltd.	20.03.2022	Returned with remarks – Addressee left	No
2.	Subrata Bandyopadhyay	20.03.2022	Returned with remarks – Addressee cannot be located	No
3.	Taiebul Haque Sahaji	20.03.2022	Delivered on 01.04.2022 as per the status report on the	No

			India Post website.	
4.	Mohammad Abdur Razzak Mondal	20.03.2022	Delivered on 01.04.2022 as per the status report on the India Post website	No

4. The details mentioned in the RPS certificate available with SEBI is as given below:

Regd. Folio No.: F10000562, Certificate No. 159
Name of the holder: Smt Hemlata
Father/ Husband's Name: Ram Lal
Address: Moh – Azizganj, Dist. SPN, UP – 242001
Nominee – Ram Lal, Age of Nominee – 59, Relationship – Father
No. of Redeemable Preference Share – 10
Face Value – Rs. 10,000/-, Redemption Value – Rs. 20,000/-
Distinctive No. – From 3536 to 3545
Date of Allotment – 19/07/2012, Redemption Date –18/07/2017
Given the under the seal of the company – Diamondray Industries Ltd.

5. The filings made by the company on the MCA website were accessed and perused. The details of Redeemable Preference Shares issued by the company (as per the filings available on MCA portal and the certificate available with us) is as under:

FY	Date of allotment	No. of allottees	No. of RPS allotted	Nominal amount per share	Amount Mobilized (in Rs.)
2012-13	19.07.2012	1	10	1000	10,000
	30.09.2012	207	4015	1000	40,15,000
		208	4025		**40,25,000**

6. It is evident from the above table and material available on record that the company had issued RPS to more than 49 persons in the FY 2012-2013. Hence, DIL made a public issue of securities and was required to comply with the various requirements as per the Companies Act, 1956.

The noticees are alleged to have violated Section 56 (1) & (3) of the Companies Act, 1956, which requires that no one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing

For Securities and Exchange Board of India कोलकाता KOLKATA

such salient features of a prospectus including certain provisos and conditions. Further, Section 60 r/w 2(36) of the Companies Act, 1956 prescribes conditions for registration of prospectus, Section 67 (3) of the Companies Act, 1956 provides for construction of references to offering shares or debentures to public, etc., and Section 73 of Companies Act, 1956 prescribes the rules for the company to get its shares listed on the stock exchange.

7. However, it is noted that the Noticees failed to follow and adhere to all of the above mentioned provisions of law by issuing RPS to more than 49 persons in FY 2012-13, by issuing application form for shares without accompaniment of prospectus/ abridged prospectus containing requisite disclosures, by not filing prospectus with RoC in connection with the said issuance of securities, by not applying to stock exchange(s) for permission to get the securities listed, by not keeping the amounts collected in a separate designated bank account and not refunding the money collected through the issue of RPS, they have allegedly violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3), Section 73(1), (2) & (3) of the Companies Act, 1956 read with Section 5 of the Companies Act, 1956 read with Section 465(2) of Companies Act, 2013.

8. Further, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 [SEBI(NCRPS) Regulations, 2013] were notified on June 12, 2013. Prior to the notification of SEBI (NCRPS) Regulations, companies making public issuances of redeemable preference shares had to comply with the provisions of the Companies Act, 1956 concerning public issues i.e. Sections 56, 60 read with 2(36), 73.

9. Although the Companies Act, 1956, has been repealed by the Companies Act, 2013, anything done or any action taken or purported to have been done or taken under the Companies Act, 1956, is deemed to have been done or taken under the corresponding provisions of the Companies Act, 2013, by virtue of Section 465(2) of the Companies Act, 2013, and is therefore saved regardless of the repeal of the Companies Act, 1956.

10. Further, it is noted from the details available on MCA website that the status of the company has been shown as struck off. However, proviso to Section 560(5) of Companies Act, 1956 which deals with Power of Registrar to strike defunct company off Register, states the following:

"Provided that -
(a) the liability, if any, of every director, manager or other officer who was exercising any power or management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved;"

Section 248(7) of Companies Act, 2013 states that:



"(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved."

Section 250 of Companies Act, 2013 states that:
250. Effect of company notified as dissolved — Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

In view of the above, the liability of the violation shall continue and is still enforceable.

11. The relevant regulatory provisions and the provisions alleged to have been violated by the Noticees are as follows:

11.1. **Companies Act, 1956**

55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA
The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, - (a) in case of listed public companies; (b) in case of those public companies which intend to get their securities listed on any recognized stock exchange in India, be administered by the Securities and Exchange Board of India ; and (c) in any other case, be administered by the Central Government.

56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN PROSPECTUS
(1) Every prospectus issued - (a) by or on behalf of a company, or (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied [by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section : [Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him :] Provided [further] that this sub-section shall not apply if it

is shown that the form of application was issued either - (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees.

60. REGISTRATION OF PROSPECTUS

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto - (a) any consent to the issue of the prospectus required by section 58 from any person as an expert ; and (b) in the case of a prospectus issued generally, also - (i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and (ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

"Section 2(36) of the Companies Act, 1956

(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."

67. CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC

(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 the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).*



Supreme Court Judgement:

While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the 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"), observed:

".....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 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.
...
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. ..."

73. ALLOTMENT OF SHARES AND DEBENTURES TO BE DEALT IN ON STOCK EXCHANGE

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

[(1A)] Where a prospectus, whether issued generally or not, states that an [application under sub-section (1) has been] made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied [under sub-section (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

For Securities and Exchange Board of India कोलकाता KOLKATA

rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.]

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in subsection (2) ; and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [fifty] thousand rupees.

5. MEANING OF "OFFICER WHO IS IN DEFAULT

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:

(a) the managing director or managing directors;
(b) the whole-time director or whole-time directors;
(c) the manager;
(d) the secretary;
(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
(f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board;
(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

11.2. ***Companies Act, 2013***

465. Repeal of certain enactments and savings

(1)....

(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 any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken

under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;

(d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;

(e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;

(f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;

(g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;

(h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

(j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and

(k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

11.3. ***Relevant extract of provisions of SEBI Act, 1992:***

Section 11(1), 11(4), 11A and 11B of the SEBI Act, 1992.

Functions of Board



11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

11. (4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely :—

(a) suspend the trading of any security in a recognised stock exchange;
(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;
(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;
(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.



Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities.

11A. (1) Without prejudice to the provisions of the Companies Act, 1956 (1 of 1956), the Board may, for the protection of investors, —

(a) specify, by regulations –

(i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
(ii) the manner in which such matters shall be disclosed by the companies;

(b) by general or special orders –
(i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
(ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.]

Power to issue directions [and levy penalty].

11B. [(1) [Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary —
(i) in the interest of investors, or orderly development of securities market; or
(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
(iii) to secure the proper management of any such intermediary or person, it may issue such directions, —
(a) to any person or class of persons referred to in section 12, or associated with the securities market; or
(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

12. In light of above, the Noticees 1 to 4 are hereby called upon to show cause as to why appropriate direction(s) including direction to refund money collected by Diamondray Industries Limited through offer of NCDs and direction for restraint and prohibition from accessing securities market, be not issued against them under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992. The written submissions, if any, of the Noticees should reach the undersigned, at the address given below and by e-mail at vikas@sebi.gov.in and gunjanb@sebi.gov.in within 21 days from the date of receipt of this notice, failing which it shall be construed that the Noticees have no reply to submit and SEBI shall be

For Securities and Exchange Board of India कोलकाता KOLKATA

free to proceed with on the basis of documents available on record in terms of the provisions of SEBI Act and other applicable laws.

Shri Vikas S. S., General Manager
SEBI Eastern Regional Office
Address: L&T Chambers, 3rd Floor, 16 Camac Street,
Kolkata - 700017, West Bengal
Tel. Board: +91-33-23023000.
E-mail : sebiero@sebi.gov.in, gunjanb@sebi.gov.in

13. If personal hearing before the Quasi-Judicial Authority, SEBI is desired, it shall be indicated by the Noticees accordingly. The Noticees are advised to keep SEBI informed about the change in their correspondence address, if any, till the proceedings in the extant matter are complete.

14. This notice is without prejudice to the rights of SEBI to issue a supplementary notice and to initiate any other proceedings/actions for the aforesaid violations in terms of the SEBI Act and rules or regulations made there under.

15. The Noticees are advised to submit a photocopy of the Income Tax Permanent Account Number i.e PAN for our records.

16. All documents relied upon in the notice have been annexed as per the list of enclosures.

Vikas SS
General Manager

Enclosures:

Annexure No.	Particulars
1.	Copy of complaint along with copy of certificate of redeemable preference share
2.	Copies of MCA filings including Form 2 (Return of allotment filed by the company for FY 2012-13)
3.	Copy of Director details received from RoC - Kolkata

General Manager
Eastern Regional Office

SEBI/ERO/VSS/GB/P/OW/2024/8303/3
March 01, 2024

By Speed Post Ack. Due

Noticees:

Noticee No.	Noticee Details	Noticee No.	Noticee Details
1.	**M/s. Diamondray Industries Limited** **CIN:** U29253WB2012PLC175512 38/2, Jessore Road (West) Barasat P. S. - Barasat, Dist. - 24 Paraganas (North) Kolkata West Bengal - 700124	2.	**Shri Taiebul Haque Sahaji** DIN – 2844680 Taiebul Haque Sahaji S/O Golam Rasul Sahaji Purba Uttar Bagundi, Gotra Basirhat, North 24 Parganas Basirhat West Bengal - 743422
3.	**Shri Subrata Bandyopadhyay** (DIN – 3499342 S/O Manindranath Bandyopadhyay 232, Karttik Pur, Deganga, North 24 Parganas, Kolkata West Bengal - 743423	4.	**Shri Mohammed Abdur Razzak Mondal** DIN: 3499377 S/O Mohammed Abdul Latif Mondal Vill – Daulatpur, P.O. Sendanga PS – Ashoke Nagar North 24 Parganas, Kolkata West Bengal - 743272

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

Sub: Show Cause Notice under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of M/s. Diamondray Industries Limited (CIN: U29253WB2012PLC175512)

1. In compliance with the Hon'ble Calcutta High Court order dated January 15, 2019, while conducting a joint inventory with Directorate of Economic Offences, West Bengal, of approximately ten lacs claims received in a certain matter, SEBI observed complaints against certain other companies as well, including complaints against Diamondray Industries Ltd (DIL). During examination of these complaints, it was observed that the

For Securities and Exchange Board of India कोलकाता KOLKATA

certificate of Redeemable Preference Shares (RPS) issued by DIL were found during the above exercise. SEBI, therefore initiated further examination in the matter with respect to deemed public issue.

2. Accordingly, from the information obtained from the Ministry of Corporate Affairs website (MCA 21 portal) and Registrar of Companies, Kolkata (hereinafter referred to as "RoC") and other material available on record, the following were observed:

2.1 The details of the company are as follows:

i) Name of Company: Diamondray Industries Ltd.
ii) CIN: U29253WB2012PLC175512
iii) Date of Incorporation: March 12, 2012
iv) Type of the Company: Public and Unlisted
v) PAN: Not available
vi) Authorized Capital: Rs. 5,00,00,000/-
vii) Paid Up capital: Rs. 45,15,000/-
viii) Date of last AGM: 29/09/2012
ix) Date of Balance Sheet: 31/03/2012
x) Company Status (for e-filing): Strike off
xi) Registered Office Address: 38/2, Jessore Road (West) Barasat P. S. - Barasat, Dist. - 24 Paraganas (North) Kolkata Parganas North WB 700124

2.2 The list of directors as obtained from RoC – Kolkata is as mentioned below:

Sl. No.	Name	Current Designation	DIN/CIN	PAN	Address	Dt. of Appointment	Dt. of Cessation
1.	Taiebul Haque Sahaji	Director	2844680	N.A.	Taiebul Haque Sahaji S/O Golam Rasul Sahaji Purba Uttar Bagundi, Gotra Basirhat, North 24 Parganas Basirhat 743422 West Bengal	12.03.2012	N.A.
2.	Subrata Bandyopadhyay	Director	3499342	N.A.	Subrata Bandyopadhyay S/O Manindranath Bandyopadhyay	12.03.2012	N.A.

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3.	Mohammed Abdur Razzak Mondal	Director	3499377	N.A.	Mohammed Abdur Razzak Mondal S/O Mohammed Abdul Latif	15.12.2012	N.A.
					Mondal Vill – Daulatpur, P.O. Sendanga PS – Ashoke Nagar North 24 Parganas Kolkata 743272 West Bengal		

3. SEBI vide letters dated March 20, 2022 sent to the company and its directors sought further information regarding money mobilization by issuance of securities by DIL. However, no reply has been received till date. The status of delivery of letters is tabulated below:

Sl. No.	Name of entity/director	Date of Letter	Status/ Date of Delivery	Reply received by SEBI
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3.	Taiebul Haque Sahaji	20.03.2022	Delivered on 01.04.2022 as per the status report on the	No

			India Post website.	
4.	Mohammad Abdur Razzak Mondal	20.03.2022	Delivered on 01.04.2022 as per the status report on the India Post website	No

4. The details mentioned in the RPS certificate available with SEBI is as given below:

Regd. Folio No.: F10000562, Certificate No. 159
Name of the holder: Smt Hemlata
Father/ Husband's Name: Ram Lal
Address: Moh – Azizganj, Dist. SPN, UP – 242001
Nominee – Ram Lal, Age of Nominee – 59, Relationship – Father
No. of Redeemable Preference Share – 10
Face Value – Rs. 10,000/-, Redemption Value – Rs. 20,000/-
Distinctive No. – From 3536 to 3545
Date of Allotment – 19/07/2012, Redemption Date –18/07/2017
Given the under the seal of the company – Diamondray Industries Ltd.

5. The filings made by the company on the MCA website were accessed and perused. The details of Redeemable Preference Shares issued by the company (as per the filings available on MCA portal and the certificate available with us) is as under:

FY	Date of allotment	No. of allottees	No. of RPS allotted	Nominal amount per share	Amount Mobilized (in Rs.)
2012-13	19.07.2012	1	10	1000	10,000
	30.09.2012	207	4015	1000	40,15,000
		208	4025		**40,25,000**

6. It is evident from the above table and material available on record that the company had issued RPS to more than 49 persons in the FY 2012-2013. Hence, DIL made a public issue of securities and was required to comply with the various requirements as per the Companies Act, 1956.

The noticees are alleged to have violated Section 56 (1) & (3) of the Companies Act, 1956, which requires that no one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing

such salient features of a prospectus including certain provisos and conditions. Further, Section 60 r/w 2(36) of the Companies Act, 1956 prescribes conditions for registration of prospectus, Section 67 (3) of the Companies Act, 1956 provides for construction of references to offering shares or debentures to public, etc., and Section 73 of Companies Act, 1956 prescribes the rules for the company to get its shares listed on the stock exchange.

7. However, it is noted that the Noticees failed to follow and adhere to all of the above mentioned provisions of law by issuing RPS to more than 49 persons in FY 2012-13, by issuing application form for shares without accompaniment of prospectus/ abridged prospectus containing requisite disclosures, by not filing prospectus with RoC in connection with the said issuance of securities, by not applying to stock exchange(s) for permission to get the securities listed, by not keeping the amounts collected in a separate designated bank account and not refunding the money collected through the issue of RPS, they have allegedly violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3), Section 73(1), (2) & (3) of the Companies Act, 1956 read with Section 5 of the Companies Act, 1956 read with Section 465(2) of Companies Act, 2013.

8. Further, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 [SEBI(NCRPS) Regulations, 2013] were notified on June 12, 2013. Prior to the notification of SEBI (NCRPS) Regulations, companies making public issuances of redeemable preference shares had to comply with the provisions of the Companies Act, 1956 concerning public issues i.e. Sections 56, 60 read with 2(36), 73.

9. Although the Companies Act, 1956, has been repealed by the Companies Act, 2013, anything done or any action taken or purported to have been done or taken under the Companies Act, 1956, is deemed to have been done or taken under the corresponding provisions of the Companies Act, 2013, by virtue of Section 465(2) of the Companies Act, 2013, and is therefore saved regardless of the repeal of the Companies Act, 1956.

10. Further, it is noted from the details available on MCA website that the status of the company has been shown as struck off. However, proviso to Section 560(5) of Companies Act, 1956 which deals with Power of Registrar to strike defunct company off Register, states the following:

"Provided that -
(a) the liability, if any, of every director, manager or other officer who was exercising any power or management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved;"

Section 248(7) of Companies Act, 2013 states that:

For Securities and Exchange Board of India
कोलकाता
KOLKATA

"(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved."

Section 250 of Companies Act, 2013 states that:
250. Effect of company notified as dissolved — Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

In view of the above, the liability of the violation shall continue and is still enforceable.

11. The relevant regulatory provisions and the provisions alleged to have been violated by the Noticees are as follows:

11.1. **Companies Act, 1956**

55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA
The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, - (a) in case of listed public companies; (b) in case of those public companies which intend to get their securities listed on any recognized stock exchange in India, be administered by the Securities and Exchange Board of India ; and (c) in any other case, be administered by the Central Government.

56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN PROSPECTUS
(1) Every prospectus issued - (a) by or on behalf of a company, or (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied [by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section : [Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him :] Provided [further] that this sub-section shall not apply if it

is shown that the form of application was issued either - (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees.

60. REGISTRATION OF PROSPECTUS

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto - (a) any consent to the issue of the prospectus required by section 58 from any person as an expert ; and (b) in the case of a prospectus issued generally, also - (i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and (ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

"Section 2(36) of the Companies Act, 1956

(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."

67. CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC

(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 the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).*



Supreme Court Judgement:

While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the 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"), observed:

".....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 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. ...

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. ..."

73. ALLOTMENT OF SHARES AND DEBENTURES TO BE DEALT IN ON STOCK EXCHANGE

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

[(1A)] Where a prospectus, whether issued generally or not, states that an [application under sub-section (1) has been] made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied [under sub-section (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

For Securities and Exchange Board of India KOLKATA

rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.]

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in subsection (2) ; and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [fifty] thousand rupees.

5. MEANING OF "OFFICER WHO IS IN DEFAULT

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:

(a) the managing director or managing directors;
(b) the whole-time director or whole-time directors;
(c) the manager;
(d) the secretary;
(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
(f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board;
(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

11.2. ***Companies Act, 2013***

465. Repeal of certain enactments and savings

(1)….

(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 any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken

For Securities and Exchange Board of India कोलकाता KOLKATA

under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;

(d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;

(e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;

(f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;

(g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;

(h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

(j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and

(k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

11.3. ***Relevant extract of provisions of SEBI Act, 1992:***

Section 11(1), 11(4), 11A and 11B of the SEBI Act, 1992.

Functions of Board



11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

11. (4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely :—

(a) suspend the trading of any security in a recognised stock exchange;
(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;
(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;
(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities.

11A. (1) Without prejudice to the provisions of the Companies Act, 1956 (1 of 1956), the Board may, for the protection of investors, —

(a) specify, by regulations –

(i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
(ii) the manner in which such matters shall be disclosed by the companies;

(b) by general or special orders –
(i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
(ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.]

Power to issue directions [and levy penalty].

11B. [(1) [Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary —
(i) in the interest of investors, or orderly development of securities market; or
(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
(iii) to secure the proper management of any such intermediary or person, it may issue such directions, —
(a) to any person or class of persons referred to in section 12, or associated with the securities market; or
(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

12. In light of above, the Noticees 1 to 4 are hereby called upon to show cause as to why appropriate direction(s) including direction to refund money collected by Diamondray Industries Limited through offer of NCDs and direction for restraint and prohibition from accessing securities market, be not issued against them under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992. The written submissions, if any, of the Noticees should reach the undersigned, at the address given below and by e-mail at vikas@sebi.gov.in and gunjanb@sebi.gov.in within 21 days from the date of receipt of this notice, failing which it shall be construed that the Noticees have no reply to submit and SEBI shall be

free to proceed with on the basis of documents available on record in terms of the provisions of SEBI Act and other applicable laws.

Shri Vikas S. S., General Manager
SEBI Eastern Regional Office
Address: L&T Chambers, 3rd Floor, 16 Camac Street,
Kolkata - 700017, West Bengal
Tel. Board: +91-33-23023000.
E-mail : sebiero@sebi.gov.in, gunjanb@sebi.gov.in

13. If personal hearing before the Quasi-Judicial Authority, SEBI is desired, it shall be indicated by the Noticees accordingly. The Noticees are advised to keep SEBI informed about the change in their correspondence address, if any, till the proceedings in the extant matter are complete.

14. This notice is without prejudice to the rights of SEBI to issue a supplementary notice and to initiate any other proceedings/actions for the aforesaid violations in terms of the SEBI Act and rules or regulations made there under.

15. The Noticees are advised to submit a photocopy of the Income Tax Permanent Account Number i.e PAN for our records.

16. All documents relied upon in the notice have been annexed as per the list of enclosures.

Vikas SS
General Manager

Enclosures:

Annexure No.	Particulars
1.	Copy of complaint along with copy of certificate of redeemable preference share
2.	Copies of MCA filings including Form 2 (Return of allotment filed by the company for FY 2012-13)
3.	Copy of Director details received from RoC - Kolkata

General Manager
Eastern Regional Office

SEBI/ERO/VSS/GB/P/OW/2024/8303/1
March 01, 2024

By Speed Post Ack. Due

Noticees:

Noticee No.	Noticee Details	Noticee No.	Noticee Details
1.	**M/s. Diamondray Industries Limited** **CIN:** U29253WB2012PLC175512 38/2, Jessore Road (West) Barasat P. S. - Barasat, Dist. - 24 Paraganas (North) Kolkata West Bengal - 700124	2.	**Shri Taiebul Haque Sahaji** DIN – 2844680 Taiebul Haque Sahaji S/O Golam Rasul Sahaji Purba Uttar Bagundi, Gotra Basirhat, North 24 Parganas Basirhat West Bengal - 743422
3.	**Shri Subrata Bandyopadhyay** (DIN – 3499342 S/O Manindranath Bandyopadhyay 232, Karttik Pur, Deganga, North 24 Parganas, Kolkata West Bengal - 743423	4.	**Shri Mohammed Abdur Razzak Mondal** DIN: 3499377 S/O Mohammed Abdul Latif Mondal Vill – Daulatpur, P.O. Sendanga PS – Ashoke Nagar North 24 Parganas, Kolkata West Bengal - 743272

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

Sub: Show Cause Notice under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of M/s. Diamondray Industries Limited (CIN: U29253WB2012PLC175512)

1. In compliance with the Hon'ble Calcutta High Court order dated January 15, 2019, while conducting a joint inventory with Directorate of Economic Offences, West Bengal, of approximately ten lacs claims received in a certain matter, SEBI observed complaints against certain other companies as well, including complaints against Diamondray Industries Ltd (DIL). During examination of these complaints, it was observed that the

भारतीय प्रतिभूति और विनिमय बोर्ड Securities and Exchange Board of India कोलकाता KOLKATA

certificate of Redeemable Preference Shares (RPS) issued by DIL were found during the above exercise. SEBI, therefore initiated further examination in the matter with respect to deemed public issue.

2. Accordingly, from the information obtained from the Ministry of Corporate Affairs website (MCA 21 portal) and Registrar of Companies, Kolkata (hereinafter referred to as "RoC") and other material available on record, the following were observed:

2.1 The details of the company are as follows:

i) Name of Company: Diamondray Industries Ltd.
ii) CIN: U29253WB2012PLC175512
iii) Date of Incorporation: March 12, 2012
iv) Type of the Company: Public and Unlisted
v) PAN: Not available
vi) Authorized Capital: Rs. 5,00,00,000/-
vii) Paid Up capital: Rs. 45,15,000/-
viii) Date of last AGM: 29/09/2012
ix) Date of Balance Sheet: 31/03/2012
x) Company Status (for e-filing): Strike off
xi) Registered Office Address: 38/2, Jessore Road (West) Barasat P. S. - Barasat, Dist. - 24 Paraganas (North) Kolkata Parganas North WB 700124

2.2 The list of directors as obtained from RoC – Kolkata is as mentioned below:

Sl. No.	Name	Current Designation	DIN/CIN	PAN	Address	Dt. of Appointment	Dt. of Cessation
1.	Taiebul Haque Sahaji	Director	2844680	N.A.	Taiebul Haque Sahaji S/O Golam Rasul Sahaji Purba Uttar Bagundi, Gotra Basirhat, North 24 Parganas Basirhat 743422 West Bengal	12.03.2012	N.A.
2.	Subrata Bandyopadhyay	Director	3499342	N.A.	Subrata Bandyopadhyay S/O Manindranath Bandyopadhyay	12.03.2012	N.A.

For Securities and Exchange Board of India
KOLKATA

					232, Karttik Pur, Deganga, North 24 Parganas, Kolkata 743423 West Bengal		
3.	Mohammed Abdur Razzak Mondal	Director	3499377	N.A.	Mohammed Abdur Razzak Mondal S/O Mohammed Abdul Latif	15.12.2012	N.A.
					Mondal Vill – Daulatpur, P.O. Sendanga PS – Ashoke Nagar North 24 Parganas Kolkata 743272 West Bengal		

3. SEBI vide letters dated March 20, 2022 sent to the company and its directors sought further information regarding money mobilization by issuance of securities by DIL. However, no reply has been received till date. The status of delivery of letters is tabulated below:

Sl. No.	Name of entity/director	Date of Letter	Status/ Date of Delivery	Reply received by SEBI
1.	Diamondray Industries Ltd.	20.03.2022	Returned with remarks – Addressee left	No
2.	Subrata Bandyopadhyay	20.03.2022	Returned with remarks – Addressee cannot be located	No
3.	Taiebul Haque Sahaji	20.03.2022	Delivered on 01.04.2022 as per the status report on the	No

			India Post website.	
4.	Mohammad Abdur Razzak Mondal	20.03.2022	Delivered on 01.04.2022 as per the status report on the India Post website	No

4. The details mentioned in the RPS certificate available with SEBI is as given below:

Regd. Folio No.: F10000562, Certificate No. 159
Name of the holder: Smt Hemlata
Father/ Husband's Name: Ram Lal
Address: Moh – Azizganj, Dist. SPN, UP – 242001
Nominee – Ram Lal, Age of Nominee – 59, Relationship – Father
No. of Redeemable Preference Share – 10
Face Value – Rs. 10,000/-, Redemption Value – Rs. 20,000/-
Distinctive No. – From 3536 to 3545
Date of Allotment – 19/07/2012, Redemption Date –18/07/2017
Given the under the seal of the company – Diamondray Industries Ltd.

5. The filings made by the company on the MCA website were accessed and perused. The details of Redeemable Preference Shares issued by the company (as per the filings available on MCA portal and the certificate available with us) is as under:

FY	Date of allotment	No. of allottees	No. of RPS allotted	Nominal amount per share	Amount Mobilized (in Rs.)
2012-13	19.07.2012	1	10	1000	10,000
	30.09.2012	207	4015	1000	40,15,000
		208	4025		**40,25,000**

6. It is evident from the above table and material available on record that the company had issued RPS to more than 49 persons in the FY 2012-2013. Hence, DIL made a public issue of securities and was required to comply with the various requirements as per the Companies Act, 1956.

The noticees are alleged to have violated Section 56 (1) & (3) of the Companies Act, 1956, which requires that no one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing

For Securities and Exchange Board of India KOLKATA

such salient features of a prospectus including certain provisos and conditions. Further, Section 60 r/w 2(36) of the Companies Act, 1956 prescribes conditions for registration of prospectus, Section 67 (3) of the Companies Act, 1956 provides for construction of references to offering shares or debentures to public, etc., and Section 73 of Companies Act, 1956 prescribes the rules for the company to get its shares listed on the stock exchange.

7. However, it is noted that the Noticees failed to follow and adhere to all of the above mentioned provisions of law by issuing RPS to more than 49 persons in FY 2012-13, by issuing application form for shares without accompaniment of prospectus/ abridged prospectus containing requisite disclosures, by not filing prospectus with RoC in connection with the said issuance of securities, by not applying to stock exchange(s) for permission to get the securities listed, by not keeping the amounts collected in a separate designated bank account and not refunding the money collected through the issue of RPS, they have allegedly violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3), Section 73(1), (2) & (3) of the Companies Act, 1956 read with Section 5 of the Companies Act, 1956 read with Section 465(2) of Companies Act, 2013.

8. Further, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 [SEBI(NCRPS) Regulations, 2013] were notified on June 12, 2013. Prior to the notification of SEBI (NCRPS) Regulations, companies making public issuances of redeemable preference shares had to comply with the provisions of the Companies Act, 1956 concerning public issues i.e. Sections 56, 60 read with 2(36), 73.

9. Although the Companies Act, 1956, has been repealed by the Companies Act, 2013, anything done or any action taken or purported to have been done or taken under the Companies Act, 1956, is deemed to have been done or taken under the corresponding provisions of the Companies Act, 2013, by virtue of Section 465(2) of the Companies Act, 2013, and is therefore saved regardless of the repeal of the Companies Act, 1956.

10. Further, it is noted from the details available on MCA website that the status of the company has been shown as struck off. However, proviso to Section 560(5) of Companies Act, 1956 which deals with Power of Registrar to strike defunct company off Register, states the following:

"Provided that -
(a) the liability, if any, of every director, manager or other officer who was exercising any power or management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved;"

Section 248(7) of Companies Act, 2013 states that:



"(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved."

Section 250 of Companies Act, 2013 states that:
250. Effect of company notified as dissolved — Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

In view of the above, the liability of the violation shall continue and is still enforceable.

11. The relevant regulatory provisions and the provisions alleged to have been violated by the Noticees are as follows:

11.1. **Companies Act, 1956**

55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA
The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, - (a) in case of listed public companies; (b) in case of those public companies which intend to get their securities listed on any recognized stock exchange in India, be administered by the Securities and Exchange Board of India ; and (c) in any other case, be administered by the Central Government.

56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN PROSPECTUS
(1) Every prospectus issued - (a) by or on behalf of a company, or (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied [by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section : [Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him :] Provided [further] that this sub-section shall not apply if it

is shown that the form of application was issued either - (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees.

60. REGISTRATION OF PROSPECTUS

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto - (a) any consent to the issue of the prospectus required by section 58 from any person as an expert ; and (b) in the case of a prospectus issued generally, also - (i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and (ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

"Section 2(36) of the Companies Act, 1956

(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."

67. CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC

(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 the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).*



Supreme Court Judgement:

While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the 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"), observed:

".....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 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.

...

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. ..."

73. ALLOTMENT OF SHARES AND DEBENTURES TO BE DEALT IN ON STOCK EXCHANGE

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

[(1A)] Where a prospectus, whether issued generally or not, states that an [application under sub-section (1) has been] made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied [under sub-section (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

For Securities and Exchange Board of India कोलकाता KOLKATA

rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.]

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in subsection (2) ; and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [fifty] thousand rupees.

5. MEANING OF "OFFICER WHO IS IN DEFAULT

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:

(a) the managing director or managing directors;
(b) the whole-time director or whole-time directors;
(c) the manager;
(d) the secretary;
(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
(f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board;
(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

11.2. ***Companies Act, 2013***

465. Repeal of certain enactments and savings

(1)….

(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 any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken

For Securities and Exchange Board of India कोलकाता KOLKATA

under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;

(d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;

(e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;

(f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;

(g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;

(h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

(j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and

(k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

11.3. ***Relevant extract of provisions of SEBI Act, 1992:***

Section 11(1), 11(4), 11A and 11B of the SEBI Act, 1992.

Functions of Board

भारतीय प्रतिभूति और विनिमय बोर्ड Securities and Exchange Board of India कोलकाता KOLKATA For

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

11. (4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely :—

(a) suspend the trading of any security in a recognised stock exchange;
(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;
(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;
(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.



Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities.

11A. (1) Without prejudice to the provisions of the Companies Act, 1956 (1 of 1956), the Board may, for the protection of investors, —

(a) specify, by regulations –

(i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
(ii) the manner in which such matters shall be disclosed by the companies;

(b) by general or special orders –
(i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
(ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.]

Power to issue directions [and levy penalty].

11B. [(1) [Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary —
(i) in the interest of investors, or orderly development of securities market; or
(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
(iii) to secure the proper management of any such intermediary or person, it may issue such directions, —
(a) to any person or class of persons referred to in section 12, or associated with the securities market; or
(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

12. In light of above, the Noticees 1 to 4 are hereby called upon to show cause as to why appropriate direction(s) including direction to refund money collected by Diamondray Industries Limited through offer of NCDs and direction for restraint and prohibition from accessing securities market, be not issued against them under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992. The written submissions, if any, of the Noticees should reach the undersigned, at the address given below and by e-mail at vikas@sebi.gov.in and gunjanb@sebi.gov.in within 21 days from the date of receipt of this notice, failing which it shall be construed that the Noticees have no reply to submit and SEBI shall be

free to proceed with on the basis of documents available on record in terms of the provisions of SEBI Act and other applicable laws.

Shri Vikas S. S., General Manager
SEBI Eastern Regional Office
Address: L&T Chambers, 3rd Floor, 16 Camac Street,
Kolkata - 700017, West Bengal
Tel. Board: +91-33-23023000.
E-mail : sebiero@sebi.gov.in, gunjanb@sebi.gov.in

13. If personal hearing before the Quasi-Judicial Authority, SEBI is desired, it shall be indicated by the Noticees accordingly. The Noticees are advised to keep SEBI informed about the change in their correspondence address, if any, till the proceedings in the extant matter are complete.

14. This notice is without prejudice to the rights of SEBI to issue a supplementary notice and to initiate any other proceedings/actions for the aforesaid violations in terms of the SEBI Act and rules or regulations made there under.

15. The Noticees are advised to submit a photocopy of the Income Tax Permanent Account Number i.e PAN for our records.

16. All documents relied upon in the notice have been annexed as per the list of enclosures.

Vikas SS
General Manager

Enclosures:

Annexure No.	Particulars
1.	Copy of complaint along with copy of certificate of redeemable preference share
2.	Copies of MCA filings including Form 2 (Return of allotment filed by the company for FY 2012-13)
3.	Copy of Director details received from RoC - Kolkata

भारतीय प्रतिभूति और विनिमय बोर्ड Securities and Exchange Board of India कोलकाता KOLKATA