

WTM/AB/EFD-1/DRA-IV/14/2020-21

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

UNDER SECTIONS 11(1), 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECTION 73 OF COMPANIES ACT, 1956

In respect of:

Noticee No.	Name of the entity	PAN No.
1.	Siya-Ram Agro Industries Ltd. CIN: U01117KA2006PLC040732	AMJPS7534C
2.	Mr. Aslam Sayeed	AMJPS7534C
3.	Mr. Amritendu Bhattacharyya	AJRPB1543M

(The aforesaid entities are hereinafter referred to by their respective names / Noticee numbers and collectively as “the Noticees”)

In the matter of Siya-Ram Agro Industries Ltd

1. Securities and Exchange Board of India (hereinafter referred to as ‘**SEBI**’) received complaints from various investors *inter- alia* alleging that they had invested in Non-Convertible Redeemable Debentures (‘**NCD’s**’) issued by Siya-Ram Agro Industries Ltd. (hereinafter referred to as “**SRAIL/ the Company**”) and were unable to recover their investments and promised returns. The complainants also alleged that the Company had closed their branches and they are not able to recover their investments from Noticee no. 1. In light of the aforesaid complaints, information was sought *inter alia* from Noticee no. 1 and its directors. However, no information was forthcoming.
2. From the copies of debenture certificates annexed by the complainants, the following details are collated:

Issued in FY	No. of certificates issued as per the certificates attached by the complainants	No. of Debentures as per the certificates attached by the complainants	Maturity value of debentures as per the certificates attached by the complainants
FY 2006-07	157	9,010	90,14,000

** Out of total Debenture Certificates, atleast 130 names of the investors are unique, i.e., though there are instances of issuances of more than one certificate to one investor, from the available information it could be deduced that at least the company has issued debenture certificate to 130 unique individuals.*

3. Since, the number of debenture holders who were issued securities by SRAIL were less than 200, hence, in terms of SEBI Circular no. CIR/CFD/DIL3/18/2015 dated December 31, 2015, SRAIL was called upon to provide option to the investors to surrender their securities and get refund of the subscription amount with interest. However, SRAIL failed to take heed of any of the communications from SEBI. Hence, a show cause notice bearing no. SEBI/HO/EFD1/DRA4/SPV/OW/P/2019 dated May 27, 2019 (hereinafter referred to as '**SCN**') was issued to SRAIL and its directors, thereby calling upon them to show cause as to why appropriate directions, under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992, should not be issued against them for the alleged violation of the provisions of Sections 56(1), 56(3), 60(1), 73(1), 73(2) and 73(3) read with 67 of the Companies Act, 1956, r/w. Section 465(2) of the Companies Act, 2013 and Clauses 2.1.1, 2.1.4, 2.1.5, 2.5, 2.8, 5.3.1, 5.6A, 6.0 to 6.33 and 10.0 to 10.9 of SEBI ((Disclosure and Investor Protection) Guidelines, 2000.

4. The brief findings of the examination done by SEBI as stated in the SCN is as follows:

a) Information available at MCA Website about SRAIL is as under:

Date of Incorporation: The Company is incorporated on October 13, 2006 and is having CIN: U01117KA2006PLC040732/PAN - AAKCS2215E. The company is an unlisted public company.

Registered office of the company is situated at: 21/36, 3rd Cross, 7th A Main, BTM 1st Stage, Bangalore - 560029.

Directors: The Directors of the Company are:

a) Aslam Sayeed (hereinafter referred to as "**Noticee 2**") - (DIN 00873273/PAN: AMJPS7534C) appointed as director on 17/10/2006.

b) Amritendu Bhattacharyya (hereinafter referred to as "**Noticee 3**") - (DIN 01742819/PAN AJRPB1543M) appointed as director on 13/10/2006.

c) Subrata Kumar Das (DIN 02161768/PAN ANYPD2233K) appointed as director on 03/06/2008.

Financials: SRAIL has only filed the Balance Sheet for the year ending March 2007. It is observed from the Balance Sheet of the company for the year ending March 2007 that the company has paid up capital of Rs.10,00,000/- and Share Application Money of around Rs. Rs. 55,00,000/-. The company has not shown any current liabilities. The company has fixed assets amounting to Rs.8.5 lakhs and cash at bank/hand- Rs.15.00 Lakhs.

- b) It is observed from Board resolutions of Noticee no. 1, the filings made by Noticee no. 1 before ROC and the information available from the application-cum-offer letters issued by Noticee no. 1 that Noticee no. 1 had resolved in the meeting held on November 09, 2006 to borrow money by issue of NCDs of value not exceeding Rs. 20 Crore on terms and conditions of the draft offer letter placed before the Board. On 25-07-2007, Noticee no. 1 further resolved to raise through issue of secured redeemable NCDs of Rs.100/- each up to a limit of Rs. 20 Crore. Further, it resolved that the said debentures may be issued privately and confidentially at par.
- c) Moreover, Noticee no. 1 had issued an application-cum-letter of offer for issue of Secured Redeemable Debentures of Rs. 100/- each, aggregating to Rs. 10.00 Crore with an option to retain over subscription up to another Rs.10.00 Crore including debentures of other series and the said application noted that the issue would open on 29-08-2007. Under the said offer, Noticee-1 issued two schemes, i.e. Scheme I: Multiplier Secured Redeemable Debenture; Scheme II: Regular Income Secured Redeemable Debenture. Noticee no.1 had issued various plans such as A, B, C, D, E and F for various terms having variable interest rates.
- d) Noticee no.1 has also made claims in the application forms that they are proposing to list their securities in Mumbai, Bangalore and Kolkata Stock Exchanges. Furthermore, Noticee no.1 has also made claims about its forthcoming construction projects and solicited subscriptions for its debentures.
- e) Even though the said resolution of Noticee no. 1 provides for issue of NCDs on private placement, it is noted from the number of complaints lodged with SEBI and

the copies of Debenture certificate annexed along with the said complaints that Noticee no.1 has issued NCDs to more than 49 persons.

- f) From the copies of debenture certificates annexed by the complainants, the following details are collated financial year wise:

Issued in FY	No. of certificates issued as per the certificates attached by the complainants	No. of Debentures as per the certificates attached by the complainants	Maturity value of debentures as per the certificates attached by the complainants
FY 2006-07	157	9,010	90,14,000

** Out of total Debenture Certificates, atleast 130 names of the investors are unique, i.e., though there are instances of issuances of more than one certificate to one investor, from the available information it could be deduced that at least the company has issued debenture certificate to 130 unique individuals.*

- g) As mentioned above, as per the documents/information obtained from MCA-21 website (the statutory filings made by the company with ROC) and from the number of complaints received against Noticee no.1, it is observed that the Noticee no. 1 had issued NCDs to more than 49 persons during 2006-07 and therefore, it is alleged that the issuance of NCDs by Noticee no. 1 (in FY 2006-07) is a public issue in view of the provisions of Section 67 of the Companies Act, 1956.
- h) Since the offer of NCDs is a public issue of securities, Noticee-1 was required to file the application for listing such securities on a recognized stock exchange and sought prior approval of stock exchanges to get their securities listed, as mandated under Section 73 of the Companies Act, 1956, before making the public issue. Though Noticee no. 1 claimed in the application forms that they are proposing to list their securities in Mumbai, Bangalore and Kolkata Stock Exchanges, it has not filed any listing application before any stock exchange. Further, the Noticee no. 1 and its directors (Noticees no. 2 and 3) have failed to return the money to the investors as required under Section 73 of the Companies Act, 1956 thereby, violating provisions of Section 73 of the Companies Act, 1956. Further, the claim of the Noticees regarding proposing to list in the stock exchanges is misrepresentation of facts and an untrue statement intended to mislead the investors.

- i) As mentioned above, since the offer of NCDs was made to more than 49 persons, it is alleged that the said offer is a public offer. As Noticee no. 1 had made public offer, it was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. In the instant case, there is no evidence on record to indicate that SRAIL has registered a prospectus with the RoC. In view of the same, the Noticee has not complied with the provisions of Section 60 of Companies Act, 1956.
- j) Further, no company shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. From the application form of the Noticee no. 1, it is observed that the abridged prospectus has not been attached to the application form. Therefore, it is alleged that the Noticee no.1 has not complied with Sections 56(1) and 56(3) of the Companies Act, 1956.
- k) Thus, on the basis of the facts narrated in the aforementioned paragraphs, it is alleged that Noticee no. 1 and its Directors during the said period (2006-07), i.e., Noticee no. 2 and Noticee no. 3 have engaged in fund mobilising activity from the public, through the offer of NCDs and as a result of the aforesaid activity have violated the provisions of section 56(1), 56(3), 60(1), 73(1), 73(2) and 73(3) read with section 67 of the Companies Act, 1956 and Section 465(2) of the Companies Act, 2013 and the provisions of Clauses 2.1.1, 2.1.4, 2.1.5, 2.5, 2.8, 5.3.1, 5.6A, 6.0 to 6.33 and 10.0 to 10.09 of , SEBI (Disclosure and Investor Protection) Guidelines 2000..

Replies, Inspection and Hearing:

- 5. I note that the SCN could not be delivered to the Noticees by SPAD on their last known address available on record. Attempts for affixture also did not materialize. Hence, the service of SCN was done through paper publication for all the Noticees. I note that none of the Noticees have filed any reply to the SCN. I also note that an opportunity of personal hearing was also granted to all the Noticees on February 10, 2020. However, none of the Noticees appeared for personal hearing on the scheduled date

and time. I also note that no request for adjournment of hearing has been received from any of the Noticees.

6. In view of the above, I shall now proceed to examine the allegations in the SCN qua the Noticees on the basis of the material available on record. Before proceeding further with the matter, it would be expedient to refer to the relevant provisions of the laws which Noticees have been alleged to be in violation of. The relevant extract of such provisions is reproduced below:

Relevant extract of provisions of Companies Act, 1956:

“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.

(4) A director or other person responsible for the prospectus shall not incur any liability by reason of any noncompliance with, or contravention of, any of the requirements of this section, if –

(a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Schedule II, unless it is proved that he had knowledge of the matters not disclosed.

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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.

(2) Every prospectus to which sub-section (1) applies shall, on the face of it, -

(a) state that a copy has been delivered for registration as required by this section; and

(b) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.

(3) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and subsections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.

(4) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration; and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.

(5) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to fifty thousand rupees. sign the prospectus depending on the circumstances of each case.

67. Construction of reference to offering shares or debentures to the public, etc.

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

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

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

- (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or
- (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation:

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

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

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73. Allotment of shares and debentures to be dealt in on stock exchange.

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

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

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

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Relevant provisions of SEBI (Disclosure and Investor Protection) Guidelines, 2000:

Clause of DIP Guidelines	Dealing With
Clause 2.1.1	Filing of offer document
Clause 2.1.4	Application for listing
Clause 2.1.5	Issue of securities in dematerialized form
Clause 2.5	Credit Rating for Debt Instruments
Clause 2.8	Means of Finance
Clause 5.3.1	Memorandum of Understanding (MOU)
Clause 5.6A	Pre-issue Advertisement
Clause 6.0	Contents of offer documents
Clause 6.33	Statement regarding minimum subscription clause:
Clause 10.9	Additional Disclosures in respect of debentures

Consideration of Issues and findings thereon:

7. What is up for consideration in the instant case is whether the Noticees by issuance of NCD's in the FY 2006-07 have violated the provisions of Sections 56(1), 56(3), 60(1), 73(1), 73(2) and 73(3) read with Section 67 of the Companies Act, 1956 and Section 465(2) of the Companies Act, 2013 and the provisions of Clauses 2.1.1, 2.1.4, 2.1.5, 2.5, 2.8, 5.3.1, 5.6A, 6.0 to 6.33 and 10.0 to 10.09 of SEBI (Disclosure and Investor Protection) Guidelines 2000 (since rescinded).
8. Examination conducted by SEBI revealed that in the application-cum-offer letters for NCDs, Noticee no.1 has made claims that they are proposing to list their securities in Mumbai, Bangalore and Kolkata Stock Exchanges. Further, from the copies of debenture certificates annexed by the complainants, it is observed that NCD's were issued by SRAIL to at least 130 unique individuals during the FY 2006-07. Thus, I find that Noticee no. 1 has made a public issue of NCD's in the FY 2006-07.
9. However, SCN issued in the present matter proceeds on the premise that as NCDs were issued to more than 49 persons, which in accordance with first proviso to section 67(3) of Companies Act, 1956, makes it a deemed public issue. In this regard, I note that Section 67(3) of the Companies Act, 1956 provides for situations when an offer or invitation is not considered as offer or invitation made to public even though it has been made to a section of public. As per the said sub section, if the offer is one which

is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same is not considered as public offer. Under such circumstances, in ordinary parlance, such offer or invitation is considered as private placement of shares or debentures. The scheme of Section 67(3) envisages the raising of funds by a company, privately, from informed and sophisticated investors or relatives/friends of promoters, who are capable of taking informed decisions on the basis of Letter of Offer or Information Memorandum issued by the company. The overarching intent of Section 67(3) is not to burden such private placements with regulatory supervision and compliances, since, the number of investors involved is restricted to 49 known/ pre-identified persons and the public at large is not involved. However, first proviso to Section 67(3) restricts this private placement only to 49 persons and once, the offerrees or invitees exceeds 49 persons, then such a private placement is also deemed as public issue. In such case, the regulatory supervision becomes more stringent and hence, the requirement in respect of contents of prospectus, filling of draft prospectus with SEBI, registration of prospectus with RoC, mandatory listing of securities on stock exchange etc. come into picture. In this regard, it would be appropriate to refer to the judgment of Hon'ble Supreme Court of India in Sahara Real Estate Corporation and Others Vs. SEBI (2013) 1 SCC1, wherein while examining the scope of Section 67 of the Companies Act, 1956, it was observed as follows:

"85. 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.

86. Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.

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90. 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. ..."

10. Once an offer or invitation is a public offer, then the provisions relating to public issue such as prospectus, listing etc. including Section 73 of the Companies Act, 1956 come into play and the company making such offer or invitation to public is required to make application for listing of shares or debentures offered to the public, to one or more recognized stock exchanges. Section 73(2) further provides that where the permission has not been applied or, such permission, having been applied for, has not been granted, 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, becomes jointly and severally liable to repay that money with interest. A company making a public issue of shares or debentures is also required to comply with provisions of SEBI Act, 1992 and the regulations/guidelines made thereunder, in this regard.
11. In view of the aforesaid discussion, I note that, the issue of NCD's by SRAIL was a public issue of securities. In such a scenario, in terms of Section 73 of the Companies Act, 1956, SRAIL was required to make an application to one or more recognised stock exchanges for permission for the debentures intending to be so offered to be dealt with in the stock exchange. I note that in the present case there is no evidence on record to indicate that SRAIL had made any application to recognised stock exchange(s) for listing of its NCD's on such a stock exchange and therefore, based on the material available on record, I find that SRAIL has not complied with the provisions of Section 73(1) of Companies Act, 1956.
12. I note that since, Section 73(1) of the Companies Act, 1956 was not complied with in this case, therefore, the amounts collected through these issues had to be forthwith repaid under Section 73 (2) of the Companies Act, 1956 and if such refund was not made within eight days the Company and every director of the Company who is an officer in default was liable to repay the amount raised with interest. Since, there is no evidence on record to indicate that the amounts collected from the investors have been forthwith repaid in terms of Section 73 (2) of the Companies Act, 1956, therefore, I find

that the Company and every director who is an officer in default have violated the provisions of Section 73 (2) of the Companies Act, 1956.

13. I also note that there is no evidence on record to indicate that funds received from the investors by issuing NCD's have been kept in separate bank account. Hence, I find that SRAIL and its every officer who is in default have not complied with the provisions of Section 73 (3) of the Companies Act, 1956.

14. In addition to the above requirements, I note that if a company issues debentures to public, it has to *inter alia* follow other compulsory requirements pertaining to public issues viz: filing of draft offer document with SEBI, issuance of Prospectus with required disclosures, registering of final Prospectus with RoC and listing of securities issued through the prospectus on a recognized stock exchange, etc. In terms of Section 56 of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Section 56(3) further provides that 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. The liability for compliance of this section is on the company as well as the directors. I note that the application-cum-offer letters issued by SRAIL fall within the definition of 'Prospectus' as defined in Section 2(36) of Companies Act, 1956. However, I note that in this matter the material available on record does not provide any evidence regarding the Prospectus with requisite disclosure in terms of Section 56 of the Companies Act, 1956. Further, no evidence is found that the memorandum containing the salient features of the prospectus were included by SRAIL alongwith its application form for NCD's. Therefore, I find that SRAIL and its directors i.e. Noticee no. 2 and 3 have not complied with Section 56 of the Companies Act, 1956 and relevant provisions of SEBI (Disclosure and Investor Protection Guidelines, 2000).

15. Further, in terms of Section 60(1) of the Companies Act, 1956, a prospectus is required to be signed by every director of the company concerned. Section 60(5) of the Companies Act, 1956 makes the company, and every person who is knowingly a party

to the issue of the prospectus liable if there is a failure to file the Prospectus before RoC and the required disclosures are not made in the Prospectus. I note that the material available on record does not provide any evidence of SRAIL having filed a prospectus (the application-cum-offer letters) with the RoC with respect to its issue of NCD's, as detailed above. Therefore, I find that SRAIL and its directors at that time i.e. Noticee no. 2 and 3 have violated Section 60 (1) and 60 (5) of the Companies Act, 1956.

16. SRAIL has made public issue of NCD's in financial year 2006-07. Therefore, a public issue of NCD's by SRAIL ought to have been made in compliance with the relevant provisions of SEBI (Disclosure and Investor Protection Guidelines, 2000 (since rescinded), as mentioned para 6 above. Based on the material available on record, I find that the issues of NCD's by SRAIL were made without complying with the relevant provisions of SEBI (Disclosure and Investor Protection Guidelines, 2000, as mentioned in para 6 and such issues of NCD's to public are in violation of such provisions of SEBI (Disclosure and Investor Protection Guidelines, 2000, also.

17. Regarding the liability of the directors in case of SRAIL i.e. Noticee no. 2 and 3, for the issues of NCD's to the public by SRAIL in violation of the provisions of law, as discussed above, I note that Noticee no. 3 has been the Chairman cum Managing Director of the Company since November 15, 2006. He was the Chairman cum Managing Director during the period of mobilization of funds through issue of NCD's. Hence, he would be "Officer in default" under Section 73(2) read with Section 5 of Companies for any NCD's issued by SRAIL during his period of directorship. It has also been observed that Noticee no. 2 was the Executive Director in SRAIL since November 15, 2006. Thus, I find that He was the Executive Director during the period of mobilization of funds through issue of NCD's. Hence, he would be "Officer in default" under Section 73(2) read with Section 5 of Companies for any NCD's issued by SRAIL during his period of directorship.

18. Section 55A of the Companies Act, 1956, confers the jurisdiction on SEBI to administer provisions specified therein, *inter alia*, in relation to public issue of securities. Section 11 (1) of the SEBI Act, 1992 empowers SEBI to take such measures, as it deems fit,

inter alia, to protect the interests of investors in securities. Section 11(4) of the SEBI Act, 1992 lists measures that SEBI may take, by an order in writing, either pending or on completion of investigation or inquiry, in the interest of investors in the securities market. Section 11A of the SEBI Act, 1992 empowers SEBI to *inter alia* prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities, by general or special orders. Section 11B of SEBI Act, 1992 empowers SEBI to issue such directions as may be appropriate, in the interest of investors in securities and the securities market, *inter alia*, to any company.

19. I note that the Company and its directors i.e. Noticee no. 2 and 3 are not co-operating with SEBI. I note that the Company has issued 9010 NCD's to 130 investors in FY 2006-07, for an amount of Rs. 90,14,000. From the material available on record, I also note that some NCD's were also issued by SRAIL in FY 2007-08, 2008-09 and 2009-10. Moreover, I observe that the Company has last filed its Financial Statements with RoC for FY 2006-07 and have not filed any Financial Statements with RoC, thereafter. I also find that the Company is not traceable at its registered office. Moreover, I note that the liability of the Company and directors who are officer in default, to repay under Section 73(2) of the Companies Act, 1956, is a continuing one and the same continues till all the repayments are made to the investors. Since, SRAIL made public issues of NCD's without following the public issue and listing norms, the same is detrimental to the interest of investors. In view of the same, the present matter is a fit case for issuance of directions under Section 11B and 11(4) of the SEBI Act, 1992.

Directions:

20. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act, 1992, read with Section 19 of the SEBI Act, 1992, hereby directs as under:

- (a) SRAIL i.e. Noticee no. 1, shall cease to mobilize fresh funds from investors through the offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly;

- (b) SRAIL and its directors i.e. Noticee no. 2 and 3 shall not dispose of, alienate or encumber any of its/their assets or divert any funds raised from public either through the offer and allotment of NCD's;
- (c) SRAIL (Noticee no. 1), Mr. Aslam Sayeed (Noticee no.2) and Mr. Amritendu Bhattacharyya (Noticee no. 3), shall jointly and severally refund money collected through the offer and allotment of NCD's, including the application money collected from investors, pending allotment of securities, if any, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment) within a period of 180 days from the date of this order, supported by a certificate from an independent Chartered Accountant. It is clarified that the restraint imposed on the sale of assets at para (b), shall not operate if the sale of assets is made for the sole purpose of making refund to the investors by depositing the proceeds of sale in an Escrow Account with a nationalized bank. It is further clarified that the present directors of SRAIL shall ensure and facilitate the compliance of this direction by SRAIL;
- (d) SRAIL and its directors i.e. Noticee no. 2 and 3, shall be refrained/prohibited from accessing the securities market by issue of prospectus/ offer document/ advertisement soliciting money from the public and also prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, from the date of this order, till the expiry of a period of three years from the date of effecting the refund as directed in para (c) above;
- (e) Noticee no. 2 and 3 above shall also be restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this order till the expiry of a period of three years from the date of completion of refunds to investors as directed at para (c) above; and
- (f) Noticee no. 1, 2 and 3 shall furnish an inventory of their assets to SEBI, within 21 days from the date of receipt of this order.

21. Copy of this order shall be forwarded to all recognized stock exchanges, all depositories and all RTA's of mutual funds, for information and necessary action at their end. A copy of this order may also be forwarded to MCA/ RoC, Bangalore and Kolkatta for their information and necessary action with respect to the directions imposed on Company and its directors.

Sd/-

Date: November 02, 2020

Place: Mumbai

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**