

**WTM/AB/EFD-1/DRA-1V/03/ 2019-20****SECURITIES AND EXCHANGE BOARD OF INDIA****BEFORE THE WHOLE TIME MEMBER, SHRI ANANTA BARUA****FINAL ORDER**

Under sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of SLF Investment India Ltd.

<b>Noticee No.</b>	<b>Noticees</b>	<b>CIN / PAN</b>
1.	SLF Investment India Limited	U65923WB2011PLC164207
2.	Tujammel Sarkar	CKOPS2893D
3.	Ainul Shah	CKSPS0583C
4.	Ashadul Shah	DJTSP6122Q
5.	Pradip Singha	AYUPS9650G
6.	Sujit Kumar Das	AIIPD5147M
7.	Dipankar Biswas	AFJPB1731M
8.	Parimal Saha	CRBPS5912F
9.	Mou Majakuri	BIVPM8822L
10.	Anarul Shah	CJOPS4393H
11.	Sampurna Chakraborty	AJUPC6425E
12.	Mita Paul	BBYPP2241L

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

1. SEBI had received a reference dated June 10, 2016 from RBI, containing a complaint against SLF Investment India Ltd. (**‘SLF’/‘the Company’**), in respect of issue of Redeemable Preference Shares. SEBI conducted a preliminary inquiry to examine and ascertain whether SLF had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India

Act, 1992 (hereinafter referred to as '**SEBI Act**') and the Rules and Regulations framed thereunder.

2. On examination, it was observed that SLF had made an offer of redeemable preference shares in the financial years 2011-2012 and 2012-2013 (hereinafter referred to as '**Offer of RPS**') and raised more than Rs. 32 Lacs from 128 allottees. The number of allottees and funds mobilized were collated from the documents/ information obtained from the MCA 21 Portal.
3. As the Offer of RPS was found prima facie in violation of respective provisions of the Companies Act, 1956, SEBI passed an interim order dated March 28, 2018 ('**the interim order**'). The interim order contained certain directions mentioned therein against SFL and its directors and promoters, viz. the Noticees to this proceeding.
4. The following prima facie findings were recorded in the interim order:
  - i. SLF had made an Offer of RPS during the financial years 2011-2012 and 2012-2013 and raised an amount of Rs. 32,30,500/- as shown below:

<b>Financial Year</b>	<b>No. of allottees</b>	<b>Value of Allotment (Rs.)</b>
2011-2012	105	17,70,500/-
2012-2013	23	14,60,000/-
<b>Total</b>	<b>128</b>	<b>32,30,500/-</b>

- ii. The Offer of RPS and pursuant allotment were prima facie found to be deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36),

section 56, sections 73(1), 73(2) and 73(3) of the Companies Act, 1956 were not complied with by SLF in respect of the Offer of RPS.

5. In view of the prima facie findings on the violations, inter alia the following directions were issued in the interim order with immediate effect:

- i. *SLF and its Directors/Promoters, viz. Tujammel Sarkar; Ainul Shah; Ashadul Shah; Pradip Singha; Sujit Kumar Das; Dipankar Biswas; Parimal Saha; Mou Majakuri; Anarul Shah; Sampurna Chakraborty and Mita Paul, shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;*
- ii. *SLF and its Directors, viz. Tujammel Sarkar; Ainul Shah; Ashadul Shah; Pradip Singha; Sujit Kumar Das; Dipankar Biswas and Parimal Saha, shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through the offer and allotment of Redeemable Preference Shares;*

6. The interim order also directed SLF and its directors/promoters to show cause as to why suitable directions/prohibitions under section 11(1), 11(4) and 11B of the SEBI Act, 1992 should not be issued/imposed including the following directions:

- i. *SLF and its Directors, viz. Tujammel Sarkar; Ainul Shah; Ashadul Shah; Pradip Singha; Sujit Kumar Das; Dipankar Biswas and Parimal Saha, to jointly and severally refund the money collected through the offer and allotment of Redeemable Preference Shares, 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 till the date of actual payment),*

*supported by a Certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and*

*ii. The Noticees to be restrained/prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.*

7. The Noticees were given 21 days, from the date of receipt of the interim order to file their respective replies. The Noticees were directed to furnish an inventory of their assets along with their reply. Further, it was also advised in the interim order that the Noticees, who intended to avail an opportunity of personal hearing, may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of the interim order. The interim order also contained a direction that in the event of the respective Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings as contained in the interim order shall become final and absolute against the respective Noticees, automatically, without any further orders, and consequently, the respective Noticees shall automatically be bound by the directions contained in the interim order.

8. I note that the service of the Interim Order was completed for Noticee No. 3 vide Hand delivery, for Noticees No. 4, 5, 6, 7 and 10 through Speed Post Acknowledgment Due (SPAD). Since the service of interim order vide SPAD and affixture failed, hence, it was completed vide publication of Public Notices on July 27 & 28, 2018 in the Anandbazar Patrika, the Times of India and the Sanmarg, for Noticees at Sr. No. 1, 2, 8, 9, 11 and 12. I note that pursuant to the interim order only Noticee

no. 5 and 6 had sought for an opportunity of personal hearing. Accordingly, personal hearing was held for Noticee no. 5 and 6 on February 4, 2019 and March 11, 2019. The said Noticees have filed their replies on March 4, 2019 with SEBI.

9. Noticee no. 5 and 6 have contended that they were fraudulently made as directors of SLF by Mr. Dipankar Biswas (Noticee no. 7) without their knowledge and consent. The said Noticees further submit that, after the discovery of this fraud, they had informed the Police authorities at Barhampore Police Station and their complaint was reduced to a General Diary Entry. (Noticee no. 5 informed the police on 16/12/2011 and his complaint was reduced to General Diary Entry no. 336 dated 16/12/2011, Noticee no. 6 informed the police on 9/12/2011 and his complaint was reduced to General Diary Entry no. 211 dated 9/12/2011). Noticee no. 5 and 6 have also contended that after informing the police authorities in the aforesaid manner, they had tendered their resignation from directorship of SLF on 06/01/2012. Noticee no. 5 and 6 further submit that after getting to know about the misdeeds of Mr. Dipankar Biswas from the proceedings initiated by SEBI, they have filed another letter of information with SP, Murshidabad disclosing the commission of cognizable offence by Mr. Dipankar Biswas on 27/02/2019 & 28/02/2019. Noticee no. 5 and 6 have thus prayed that the directions contained in the interim order must not be continued against them and be exonerated from the present proceedings.

10. I note that Notice no. 5 and 6 were the directors of SLF for the period from September 19, 2011 to January 6, 2012 (approximately 4 months). I also note that during the period of their directorship in SLF, Noticee no. 5 and 6 were designated as non-executive directors of SLF. I also note from the documents available at MCA21 Portal that Noticee no. 2 and 4 have been designated as Executive Director/Whole Time Director of SLF and Noticee no. 3 has been designated as Managing Director of SLF. Further, I do not find any material on record to show that Noticee

no. 5 and 6 were persons charged by the Board of Directors of SLF with the responsibility of compliance with the provisions of the Companies Act. It is pertinent to note that in accordance with the provisions of section 73 of the Companies Act, 1956, the liability to repay the amount is upon the director of the company who is an officer in default. "Officer in default" has been defined under Section 5 of the Companies Act, 1956 such that the expression "officer who is in default" would mean the following officers, namely, the managing director or managing directors, whole time director or whole time directors, the manager, the secretary or any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act and would also include any person charged by the Board of responsibility of compliance with the provisions of Act. Section 5(g) of the Companies Act, 1956, further stipulates that where the company does not have any of these officers specified in clauses (a) to (c) in which case all the directors would be deemed to be an officer in default.

11. Thus, in view of the aforesaid discussion, without going into the merit of the contention of fraudulent directorship being raised by Noticee no. 5 and 6, Noticee no. 5 and 6 could not be made liable for refunding the amount under section 73(2) of the Companies Act, 1956. Hence, it may not be appropriate to continue the directions issued in the interim order against Noticee no. 5 and 6. Thus, the directions contained in para 4.2 and 4.3 of the interim order shall be rescinded for Noticee no. 5 and 6.

**Directions:**

12. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19, hereby issue, with immediate effect, the following directions under section 11, 11(4) and 11B of the SEBI Act:

a. Proceedings against Noticee no. 5 and 6 are disposed off in terms of directions as contained in para 11 above.

13. It is clarified that the directions as contained in para 4.2 and 4.3 (as applicable) against all the other Noticees (except Noticee no. 5 and 6) shall continue to be in force.
14. Copy of this Order shall be forwarded to the recognised stock exchanges, depositories and RTA's of all Mutual Funds for information and necessary action.

**Sd/-**

**Date: April 16, 2019**

**ANANTA BARUA**

**Place: Mumbai**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**