WTM/MPB/EFD-1-DRA-IV/141/2018

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Sunplant Forgings Ltd.

In respect of:

S.No.	Name of the Entity	PAN	DIN
	Shri Arup Kumar De	**AUCPD7283Q**	**07133085**

1. Sunplant Forgings Ltd. (hereinafter referred to as "**SFL**"/ "**the Company**") is a Public company incorporated on July 23, 2004 (as M/s North East Forgings Private Limited) and registered with Registrar of Companies–Kolkata with CIN: U28991WB2004PLC099218. Its registered office is at 14, G.C. Avenue, 5th Floor, Kolkata - 700013.

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a letter/reference from Ministry of Corporate Affairs against SFL in respect of issue of Redeemable Preference Shares ("RPS") and undertook an enquiry to ascertain whether SFL 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.

3. On enquiry by SEBI, it was observed that SFL had made an offer of 14% Cumulative RPS in the financial years 2011-2012 (hereinafter referred to as "**Offer of RPS**") and raised at least an amount of Rs. 9,69,81,000/- from at least 6,658 allottees. The number of allottees and

funds mobilized has been collated from the documents submitted by SFL to SEBI. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures.

4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956, SEBI passed an interim order dated July 16, 2014 (hereinafter referred to as "**interim order**") and issued directions mentioned therein against SFL and its Directors Shri Abhinandan Kumar Singh (DIN: 01916461), Shri Sumanta Sinha (DIN: 03573218) and Shri Neeraj Pathak (DIN: 03561265).

5. The interim order while noticing the submissions made by the Company also noted-

> *"5.3.7 ..... through the same offer, SFL circulated 11904 Application Forms inviting subscription towards the issue of RPS, out of which it admittedly allotted RPS to 6662 investors and mobilized funds amounting to approximately `17.51 Crores. ..... The aforesaid facts clearly indicate that the number of persons to whom the issue of RPS was made by SFL in tranches during the financial year 2011–12, was 6662 and hence, was way beyond the limit of forty–nine persons as prescribed under Section 67(3) of the Companies Act, 1956".*

6. Thereafter, SEBI vide an Order bearing no. WTM/PS/07/ERO/APR/2015 dated April 29, 2015 passed certain directions as mentioned at paragraph 23 thereof, against SFL and its Directors, viz. Shri Abhinandan Kumar Singh (DIN: 01916461), Shri Sumanta Sinha (DIN: 03573218) and Shri Neeraj Pathak (DIN: 03561265), for violating the provisions of Section 56, Section 60 read with Section 2(36), Section 73 read with Section 67(3) of the Companies Act, 1956 by engaging in fund mobilizing activity from the public, through the issue of RPS.

7. In the said Final Order dated April 29, 2015, at para 19(b), SEBI interalia observed the following-

> *"From the information available from the MCA website, it is noted that one* ***Arup Kumar De (DIN - 07133085)*** *was appointed as a director in the Company with effect from March 10, 2015. As this person is one of the present directors in the Company, he is also under liability to make repayments to investors in terms of section 73 of the Companies Act. SEBI is advised to issue a show cause notice to him for any further appropriate directions in case the Company and directors fail to refund the amounts collected from investors against offer and/or allotment of RPS"*

8. Accordingly, SEBI issued Show cause notice dated February 14, 2017 (hereinafter referred to as "**SCN**") against Shri Arup Kumar De (hereinafter referred to as "**Noticee**") for the alleged violation of aforementioned provisions of the Companies Act, 1956, the SEBI Act and the Rules and Regulations framed thereunder. Since the present SCN emanates from interim order dated July 16, 2014 and final order dated April 29, 2015 in the captioned matter, the SCN is read in context of the aforesaid orders.

9. *Prima facie allegations*: In the said SCN, the following *prima facie* allegations were made. SFL had made an *Offer of RPS* during the financial years 2011-2012 and raised at least an amount of Rs. 9,69,81,000/- from at least 6,658 allottees as shown below:

Year of Issue	**Security Issued**	**Amount raised (Rs.)**	**Number of allottees**
2011-2012	RPS	9,69,81,000/-	6,658
	Total	9,69,81,000/-^	6,658*

**^ No. of allottees and funds mobilized has been collated from the documents submitted by SFL. However, actual no. of allottees and amount mobilized could be more than the above indicated figures.*

9. Further, the Board of Directors of SFL passed multiple resolutions for the said allotment of RPS. The above *Offer of RPS* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by SFL in respect of the Offer of RPS.

10. Therefore the following allegations were made in the said SCN dated February 14, 2017 against Shri Arup Kumar De -

"From the information available from the MCA website, you were appointed as a director in the company with effect from March 10, 2015. The liability of the Company and directors to repay under Section 73(2) of Companies Act, 1956 and Section 27 of the SEBI Act, is a continuing liability and the same continues till

all the repayments are made. Such liability is a joint and several liability on them. Therefore, the director who join (irrespective of whether they continue or resign) after the issue is also liable in making refunds as mandated therein"

11. SCN inadvertently mentioned that SEBI has passed Final Order dated April 29, 2015 also in respect of Arup Kumar De directing him to refund the money collected by company. The SCN also called upon the noticee to show cause as to why suitable directions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, 1992 should not be issued including the following:

    i. Restraining Shri Arup Kumar De from accessing the securities market and further prohibition from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, with immediate effect, for an appropriate period.

    ii. Restraining Shri Arup Kumar De from associating himself with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI.

12. Vide the said SCN, noticee was given the opportunity to file its reply, within 21 days from the date of receipt of the said SCN. The SCN further stated the noticee may also indicate whether he desired to avail an opportunity of personal hearing before Whole Time Member, SEBI.

Service of SCN:

13. The said SCN dated February 14, 2017 was sent to the Noticee on the said date. However the same returned undelivered on account of insufficient address. Subsequently, vide notification dated October 15, 2017 published in newspaper *Times of India*, and notification dated October 15, 2017 published in newspaper *Anand Bazar Patrika*, the Noticee was notified by SEBI, that SCN dated February 14, 2017, which was inadvertently mentioned as interim order in the newspaper publication, was issued against him and he was given a final opportunity to submit his reply in the matter.

14. Vide the aforesaid notifications dated October 15, 2017 published in newspaper *Times of India*, and notification dated October 15, 2017 published in newspaper *Anand Bazar Patrika*, the Noticee was notified by SEBI that he will be given the final opportunity of being heard on November 23, 2017 at the time and the venue mentioned therein. The Noticee was advised that in case he failed to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded ex-parte on the basis of material available on record.

Hearing and submissions:

15. Noticee neither availed the opportunity of hearing held on November 23, 2017 nor requested for any adjournment. The noticee has not filed any reply as on date.

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

(1) Whether the company came out with the Offer of RPS as stated in the SCN?

(2) If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 read with Section 67 (3) of Companies Act 1956?

(3) If the findings on Issue No.2 are found in the affirmative, whether Shri Arup Kumar De is liable for the violation committed?

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

17. I have perused the SCN dated February 14, 2017 for the allegation of *Offer of RPS*. I note that the noticee did not file any reply disputing the same.

18. I have also perused interim order dated July 16, 2014 and final order dated April 29, 2015 with regard to issuance of RPS by SFL. I have perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted, from the documents submitted by SFL that SFL has issued and allotted RPS to at least 6,658 investors during the financial years 2011-2012 and raised at least an amount of Rs. 9,69,81,000/-. I

also note that the number of allottees and funds mobilized has been collated from the documents submitted by SFL. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than Rs. 9,69,81,000/-

19. I therefore conclude that SFL came out with an *Offer of RPS* as outlined above. The same has also been held in Final Order dated April 29, 2015.

ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 read with Section 67 (3) of Companies Act 1956?

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

> *"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
>
> *(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
>
> *(3) No offer or invitation shall be treated as made to the public by virtue of sub- section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-*
>
> *(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or*
>
> *(b) otherwise as being a domestic concern of the persons making and receiving the offer or*

invitation …

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

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

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

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

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

22. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

23. In the instant matter, I find that RPS were issued by SFL to at least 6,658 investors in the financial years 2011-2012. However, this number is not conclusive as it is based on the documents/information submitted by SFL and the actual number of investors could be more than 6,658. I find that SFL has mobilized at least an amount of Rs. 9,69,81,000/- over the financial years 2011-2012 which is not a conclusive value as it is based on the documents/information submitted by SFL. The above findings lead to a reasonable conclusion that the *Offer of RPS* by SFL was a "public issue" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

24. I find that the noticee has not claimed SFL to be a Non–banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that SFL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

25. The noticee has not contended that the *Offer of RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.

26. Even in cases where the allotments are considered separately, reference may be made to **Sahara Case**, wherein it was held that under Section 67(3) of the Companies Act, 1956, the

"Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs.* SEBI (Appeal No. 311 of 2016) which lays down that *"In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".*

27. Therefore, in view of the material available on record, I find that the *Offer of RPS* by SFL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS* are deemed to be public issues and SFL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956. The same has also been held in Final Order dated April 29, 2015.

28. Further, since the *Offer of RPS* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

29. The allegations of non-compliance of the above provisions was not denied by the noticee. I also find that no records have been submitted by the noticee to indicate that SFL has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that SFL has contravened the said provisions. SFL has not provided any records to show that the amount collected by it is kept in a separate

bank account. Therefore, I find that SFL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with. Further, from the Balance Sheet of SFL as on March 31, 2012, it is observed that Rs. 8.46 Crores is still appearing as 'Share Application Money pending allotment'. Out of the said amount, allotment of 80,81,070 preference shares is pending for more than 90 days. In view of the same, I find that SFL has not complied with the provisions of Section 73(2) of the Companies Act, 1956. The same has also been held in Final Order dated April 29, 2015.

30. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the *Offer of RPS* was a deemed public issue of securities, SFL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that the noticee has not submitted any record to indicate that SFL has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that SFL has not complied with the provisions of section 60 of the Companies Act, 1956. The same has also been held in Final Order dated April 29, 2015.

31. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. The noticee has not produced any record to show that SFL has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, SFL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956. The same has also been held in Final Order dated April 29, 2015.

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

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

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

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

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

"…Listing of securities depends not upon one's volition, but on statutory mandate…"

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

34. In view of the above findings, I am of the view that SFL engaged in fund mobilizing activity from the public, through the *Offer of RPS* and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) read with Section 67(3) of the Companies Act, 1956. The same has also been held in Final Order dated April 29, 2015.

ISSUE No. 3- If the findings on Issue No.2 are found in the affirmative, whether Shri Arup Kumar De is liable for the violation committed?

35. From the documents available on record and MCA records, I find that Shri Arup Kumar De is the present Directors in SFL. I have also perused the letter dated March 10, 2015 by which Shri Arup Kumar De consented to act as director of SFL. The details of the appointment and resignation of Shri Arup Kumar De is as following:

Name of the directors	**Date of appointment**	**Date of cessation**
Shri Arup Kumar De	March 10, 2015	Continuing

36. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision.

37. I note from the Balance Sheet of the Company (as on March 31, 2012) that, Rs.8.46 Crores was shown as 'Share Application Money pending allotment'. Out of the said amount, allotment of 80,81,070 preference shares was pending for more than 90 days. Since SFL had failed to make application for listing or listing permission was not obtained, in terms of section 73(2), the above said application money collected against issue of securities is also

liable to be repaid.

38. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.

39. I note that during the financial years 2011-2012, SFL through Offer of RPS, had collected at least an amount of Rs. 9,69,81,000/- from various allottees. I note that Shri Arup Kumar De has been director of SFL since financial years 2014-2015 till present date. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with SFL and other directors is limited to the extent of amount collected during his tenure as director of SFL.

40. In this regard, I note that Shri Arup Kumar De was appointed as a director of SFL only on March 10, 2015 i.e. after the period of issuance of RPS. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that Shri Arup Kumar De is not liable for refund of money as he was not a director during the relevant time of fund mobilization. However, Shri Arup Kumar De had the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

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

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956. "

41. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The noticee cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Arup Kumar De was also responsible for all the deeds/acts of the Company during the period of his directorship and was obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Arup Kumar De is liable to be debarred for an appropriate period of time.

42. In view of the violations committed by Shri Arup Kumar De, to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against Shri Arup Kumar De.

ORDER

43. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:

a. Shri Arup Kumar De, along with SFL and the persons mentioned in Order dated April 29, 2015, is directed to provide a full inventory of all the assets and properties and details of

all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company.

b. Shri Arup Kumar De, along with SFL and the persons mentioned in Order dated April 29, 2015, is permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

c. Shri Arup Kumar De on behalf of SFL, along with SFL and the persons mentioned in Order dated April 29, 2015, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.

d. After completing the aforesaid repayments, Shri Arup Kumar De on behalf of SFL shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("**ICAI**") holding such certificate.

e. Shri Arup Kumar De is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years from the date of this Order. Shri Arup Kumar De is also restrained from associating himself with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years from the date of this order.

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

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

45. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.

46. A copy of this Order shall also be forwarded to Local Police/ State Government for information.

DATE: February 23, 2018 **MADHABI PURI BUCH**

PLACE: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA