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STERLING AND WILSON SOLAR LIMITED

Solar Eclipse for Minority Public Shareholders of a Solar EPC Company

(This report is a part of a series of detailed examinations into scams at listed companies. The last report under this series published by InGovern was on Fortis Healthcare Limited. The Fortis report can be accessed here. Other corporate governance related research reports and articles can be accessed on www.ingovern.com).

Sterling and Wilson Solar Limited ("SWSOLAR") is an end-to-end solar EPC solutions provider which got listed on the BSE and NSE on August 20, 2019. The company was listed through an offer for sale of shares by the promoters, belonging to the Shapoorji Pallonji Group.

The offer for sale of shares resulted in Promoters raising Rs. 2,850 crore through the IPO. While the objects of the IPO were to enable the promoters to repay loans amounting to Rs. 2,563 crore to SWSOLAR within 90 days of listing, the Company has received only Rs. 1000 crore on December 31, 2019, i.e., 133 days after listing. An amount of Rs. 1,644 crore still remains outstanding for which the promoter has sought restructuring of the repayment schedule, i.e., Rs. 500 crore before March 31, 2020, Rs. 500 crore before June 30, 2020 and balance amount before September 30, 2020.

This non-fulfilment of obligations by the promoters as per the objects of the offer has resulted in a loss of over 60% in investment value for IPO investors as stock price has fallen from the issue price of Rs. 780 to Rs. 310 as on January 6, 2020, resulting in a loss of Rs. 1,700 crore (approx. USD 250 million) for public minority shareholders.

This report discusses whether the promoters of SWSOLAR have violated regulations, and what their obligations are. Also discussed are the potential actions that regulators as well as minority shareholders need to take to safeguard minority shareholder interests.

1. Background

The prospectus of Sterling and Wilson Solar Limited ("SWSOLAR" or "Company") dated August 10, 2019 stated that the Company was filing for an IPO of 3,69,35,157 equity shares at a price of Rs. 780 per share aggregating to Rs. 2,881 crore. This was an offer of sale by the promoters Shapoorji Pallonji and Company Private Limited ("SPCPL") and Khurshed Yazdi Daruvala. The pre-IPO shareholding and offer of shares by the promoters are given below:

Sl	Shareholder	# Equity Shares	%	Offer for Sale
1	SPCPL	10,54,66,670	65.77%	2,46,23,438
2	Khurshed Yazdi Daruvala	5,34,52,930	33.33%	1,23,11,719
3	Kainaz Khurshed Daruvala	200	-	-
4	Pervin Zarir Madan	100	-	-
5	Zarine Yazdi Daruvala	80	-	-
6	Zenobia Farhad Unwalla	20	-	-
7	Pallon Shapoorji Mistry	7,20,000	0.45%	-
8	Cyrus Pallonji Mistry	7,20,000	0.45%	-
	Total	**16,03,60,000**	**100%**	

As per the prospectus, the objects of offer were to enable promoters to repay the loans taken by them from SWSOLAR within 90 days of listing. The paragraph from the prospectus is reproduced verbatim below:

"The Promoter Selling Shareholders shall utilise a portion of the Net Offer Proceeds, towards funding full repayment of the loans due to our Company and Sterling and Wilson International Solar FZCO from SWPL and Sterling and Wilson International FZE (a subsidiary of SWPL) respectively within 90 days from the date of listing of the Equity Shares."

As noted above:

i) the proceeds were to be utilised towards funding "full repayment" of the loans due to the Company by the promoters; and

ii) within 90 days from the date of listing of the equity shares.

For the first part, "towards funding full repayment" translates to a priority in repayment of loans over any other purposes of utilisation of funds by the promoters. As the promoters had loans (inclusive of interest accrued) of Rs. 2,563 crore owed to SWSOLAR, repayment of this amount would have been the priority of the promoters over anything else. As per the second part, this repayment was supposed to be concluded by November 18, 2019, i.e., 90 days from the listing date of August 20, 2019.

However, on November 14, 2019, just days before the repayment due date, the company announced that the Board had received and approved a revised repayment schedule for the balance outstanding amount of Rs. 2,341 crore, being Rs. 2,085 crore in principal and Rs. 256 crore in interest payments.

Subsequently, the promoters made payments of Rs. 1000 crore by December 31, 2019, i.e., 133 days after listing further proposed to facilitate repayment of balance outstanding amount as per the schedule below:

i) Rs. 500 crore on or before March 31, 2020
ii) Rs. 500 crore on or before June 30, 2020
iii) Balance amount on or before September 30, 2020.

The reason for this delay in repayment, as per a letter from the promoters to the Board was,

"*due to the significant and rapid deterioration in the credit markets creating a significant liquidity crisis, all of which was unforeseeable and coupled with lesser than expected realisation from the IPO was Rs. 2,850 crore before expenses and taxes as compared to Rs. 4,500 crore as initially contemplated*"

Incredibly, the Board of Directors of SWSOLAR along with its Audit Committee approved this proposal of a revised payment schedule without even any questions or apprehensions!

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2. Genuine explanation by the promoters?

The sequence of events in the past 2 years gives considerable scope for doubt on the intentions of the promoters:

Step 1: Scheme of Arrangement where the Solar EPC Division of Sterling and Wilson Private Limited ("SWPL") was transferred to SWSOLAR on the Appointed Date of April 1, 2017.

Step 2: Between 2017 and 2019 SWPL takes loans of Rs. 2,850 crore from SWSOLAR. So, the obligation was from SWPL to SWSOLAR. These obligations seem to have been taken over by promoters as SWPL seems to have very poor creditworthiness.

Step 3: As of date of IPO – August 2019 – the obligations of SWPL are taken over by the Promoter as stated in the IPO prospectus.

"The Promoter Selling Shareholders shall utilise a portion of the Net Offer Proceeds, towards funding full repayment of the loans due to our Company and Sterling and Wilson International Solar FZCO from SWPL and Sterling and Wilson International FZE (a subsidiary of SWPL) respectively within 90 days from the date of listing of the Equity Shares."

Step 4: The promoters say that they are unable to repay loans due to significant and rapid deterioration in the credit markets which created a significant liquidity crisis. However, the IPO resulted in funds already going into the hands of the promoters, which they should have utilised as per the objects of the offer, i.e., full repayment of loans on a priority basis. On the day of the IPO, it was known that the IPO would raise only Rs. 2,850 crore and not Rs. 4,500 crore, and despite that the promoters went ahead with the offer. The amounts raised in the IPO have been put to use by the promoters elsewhere. Hence their explanation for inability to repay loans doesn't hold any ground and contrary to the objects of the offer.

The promoters have:

1. Not fulfilled their obligations to repay loan amounts within 90 days of listing
2. Changed the objects of the offer, after the IPO, without seeking approval from all shareholders
3. Made misstatements in the prospectus about the objects of the offer. This is evident through the explanation provided by the promoters regarding inability of repayment of loans in the agreed timeframe
4. Siphoned off funds raised from IPO and used it elsewhere than that stated in the objects of the offer; and
5. Wilfully violated various sections and provisions of Companies Act and SEBI Guidelines by doing all of the above

It looks like the debt situation of SWPL had deteriorated to the extent its debt obligations were taken over by the promoters. And even at the time of the IPO, the promoters knew the overall debt scenario and knowingly went in for the IPO.

This makes the promoters liable under the statutes and provisions of Companies Act and SEBI Regulations discussed below.

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3. Credit Rating of SWPL: Rating Commentary

In a rating report dated December 26, 2019 released by ICRA, of Rs.211 crore fund-based and non-fund-based facilities availed by Sterling & Wilson Private Limited ("SWPL") the ratings were downgraded to BBB-(Stable) from A+(Stable). Ratings downgraded based on best available information; ratings continue to remain under 'Issuer Not Cooperating' category. The note by ICRA says:

Rationale

The rating downgrade is because of lack of adequate information regarding Sterling & Wilson Private Limited's (SWPL) performance and hence the uncertainty around its credit risk. ICRA assesses whether the information available about the entity is commensurate with its rating and reviews the same as per its "Policy in respect of non-cooperation by the rated entity". The lenders, investors and other market participants are thus advised to exercise appropriate caution while using this rating as the rating may not adequately reflect the credit risk profile of the entity, despite the downgrade.

As part of its process and in accordance with its rating agreement with SWPL, ICRA has been trying to seek information from the entity so as to monitor its performance, but despite repeated requests by ICRA, the entity's management has remained non-cooperative. In the absence of requisite information and in line with SEBI's Circular No. SEBI/HO/MIRSD4/CIR/2016/119, dated November 01, 2016, ICRA's Rating Committee has taken a rating view based on the best available information.

It is to be noted that the rating agency has said that SWPL isn't cooperating. This is really surprising given that SWPL owned SWSOLAR over Rs. 2,500 crore till recently, and the promoters of the group are facing increasing investor scrutiny on debt repayment capacity.

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4. Provisions and Penalties under Companies Act, 2013

1. Section 34, Companies Act, 2013: Criminal liability for misstatements in prospectus

Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447:

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

In SWSOLAR, the promoters issued and circulated a prospectus where the objects of the offer and the timeframe of repayment of loans were untrue and misleading. Hence, Section 34 applies in this case and as per the Section, all persons involved in authorising the prospectus should be held criminally liable.

2. Section 35, Companies Act, 2013: Civil liability for mis-statements in prospectus

(1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who –

a. *is a director of the company at the time of the issue of the prospectus;*
b. *has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;*
c. *is a promoter of the company;*
d. *has authorised the issue of the prospectus; and*
e. *is an expert referred to in sub-section (5) of section 26, shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.*

(2) No person shall be liable under sub-section (1), if he proves –

a. *that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or*
b. *that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.*

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

The non-fulfilment of obligations of the promoters on repayment of loans has resulted in a significant 60% destruction in value of wealth of shareholders as the share price has crashed from a high of Rs. 780 per share during listing in August 2019 to Rs. 310 per share as on January 6, 2020, resulting in a loss of Rs.1700 crore (approx. USD 250 million) for minority shareholders. The erosion in value can be attributed solely to the action of promoters as the investors had taken part in the IPO under the information that the loans would be repaid by the promoters within the stipulated timeframe.

Hence, as per Section 35 of the Companies Act, the promoters, directors, the Company itself as well as the merchant bankers to the IPO are liable to pay compensation to all shareholders who have suffered loss in wealth due to the fall in share price of SWSOLAR.

3. <u>Section 36, Companies Act, 2013: Punishment for fraudulently inducing persons to invest money</u>

Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,

i. *any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or*

ii. *any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or*

iii. *any agreement for, or with a view to obtaining credit facilities from any bank or financial institution,*

shall be liable for action under section 447.

The promoters, through misleading objects of offer, fraudulently induced investors to invest money in SWSOLAR. Hence, they are also liable for action under Section 36 and 447.

4. Section 447, Companies Act, 2013: Punishment for fraud

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation. – For the purposes of this section –

i. *"fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;*

ii. *"wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;*

iii. *"wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.*

Section 447 lays down the punishments which persons guilty of frauds have to suffer if they are found to be guilty of fraud. These punishments include imprisonment for up to 10 years and fine for up to 3 times of amount involved in the fraud.

5. Provisions and Penalties under SEBI Act, 1992

The SEBI Act too has sections that talk of penalties and punishments for frauds. Some of these sections, which are applicable in this case, are listed below:

1. Section 12A, SEBI Act: Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

No person shall directly or indirectly –

a. *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
b. *employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
c. *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

…

2. Section 15HA, SEBI Act: Penalty for fraudulent and unfair trade practices

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

3. Section 24, SEBI Act: Offences

1) *Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.*
2) *If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term*

which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

Hence, as per these three sections, any person who engages in any kind of fraud in the process of listing of shares on stock exchanges (in this case, lying in the prospectus about the objects of the offer), then he/ she will be in contravention of SEBI Act and will be liable for penalties up to Rs. 25 crore or imprisonment up to 10 years.

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6. Provisions under SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

The relevant provisions on frauds under these Regulations are:

1. Regulation 3: Prohibition of certain dealings in securities

No person shall directly or indirectly –
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

2. Regulation 4: Prohibition of manipulative, fraudulent and unfair trade practices

1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:*

   …

   (f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

   …

   (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

   …

   (r) planting false or misleading news which may induce sale or purchase of securities.

   …

7. Provisions under SEBI (ICDR) Regulations, 2018

While SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 states various types of fraudulent and unfair trade practices, SEBI (ICDR) Regulations provide for remedial actions against promoters, to be taken by the Company and its Board in order to safeguard public shareholders against loss of their wealth.

1. Regulation 59: Post-listing exit opportunity for dissenting shareholders

The promoters, or shareholders in control of an issuer, shall provide an exit offer to dissenting shareholders as provided for in the Companies Act, 2013, in case of change in objects or variation in the terms of contract related to objects referred to in the offer document as per conditions and manner is provided in Schedule XX;
Provided that the exit offer shall not apply where there are neither any identifiable promoters nor any shareholders in control of the issuer.

This is one of the important regulations as it directs promoters to provide an exit route to public shareholders through an exit offer in case the change in objects of offer after the listing of shares.

2. Regulation 296: Directions by the Board

Without prejudice to the power under sections 11, 11A, 11B, 11D, sub-section (3) of section 12, Chapter VIA and section 24 of the Act, the Board may either suo motu or on receipt of information or on completion or pendency of any inspection, inquiry or investigation, in the interests of investors or the securities market, issue such directions or orders as it deems fit including any or all of the following:

a) *directing the persons concerned not to access the securities market for a specified period;*
b) *directing the person concerned to sell or divest the securities;*
c) *any other direction which Board may deem fit and proper in the circumstances of the case:*

Provided that the Board shall, either before or after issuing such direction or order, give a reasonable opportunity of being heard to the person concerned:

Provided further that if any interim direction or order is required to be issued, the Board may give post-decisional hearing to the person concerned.

3. Regulation 297: Liability for contravention of the Act, rules or the regulations

1) *The listed issuer or any other person thereof who contravenes any of the provisions of these regulations, shall, in addition to the liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the manner specified by the Board:*
   a) *imposition of fines;*
   b) *suspension of trading;*
   c) *freezing of promoter/promoter group holding of designated securities, as may be applicable in coordination with depositories;*
   d) *any other action as may be specified by the Board from time to time.*
2) *The manner of revocation of actions specified in clauses (b) and (c) of sub-regulation (1), shall be in the manner specified by the Board.*

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8. Judicial Precedent in Similar Cases

1. In the matter of Dr. Datsons Labs Limited

SEBI, through its order dated September 19, 2019 stated:

27. In my view, proceeds of any IPO ought to be used strictly for the objects stated in the RHP. Any deviation in utilisation of the IPO proceeds for objects and purpose other than what has been disclosed in the offer document, would require stricter compliance and disclosure and the Promoters should disclose in detail, their interim fund utilisation plan if any, in the offer documents only, otherwise there would be no meaning left for the objects of the issue in the offer document issued by a company, while raising money from the public at large.

45. Considering the fact that not a shred of evidence has been furnished by the Noticees in support of their submissions that the proceeds of IPO have been finally utilized as per the objects of the IPO, I have to hold that the proceeds of IPO have not been utilized in terms of the statements and disclosure made in the offer document. Therefore, it is but natural for me to hold that the investors have been induced by the misleading and specious statements disclosed in the offer document since the utilization of the IPO proceeds for purposes other than the stated objects was unfair, misleading and a fraud committed upon the investors of Securities Market in general and subscribers to the IPO of Datsons in particular.

56. The offer document should not contain any statement, promise or forecast which is untrue or misleading. However, going by factual analysis in the preceding paragraphs, the Noticees, by concealing material information and by providing information in a distorted manner in the offer document especially the information with respect to the proposed utlisation of IPO proceeds, have acted in breach of the provisions as alleged in the SCN. The above acts of Noticees have resulted in creating a misleading appearance about the business prospect and future projects of the Company and about the prospect of its scrip in the Securities Market.

…

Further, by not utilizing the IPO proceeds in terms of the objects stated in the offer document knowingly, the Noticees have deliberately committed an act of fraud on their shareholders and on the investors in the Securities Market at large.

2. In the matter of Ajay Jain vs. ROC

The Hon'ble High Court of Delhi through its order in 2010, stated:

4. A false statement is a statement which has been made purposely so that people may believe existence of a fact which does not exist. In case of prospectus of a company, a statement of objects, which the directors had no intention to carry, amounts to false statement. The intention of making a false statement is to mislead or deceive the person to whom the statement is made. In this present case, the petitioner's company while issuing prospectus made a statement to intending investors that it would undertake the business of leasing and wanted people to subscribe to the shares for this purpose. It gave projections of profits and business of the company of only in the field of leasing. One can understand that the surplus funds of the company are deployed by the company in a businesslike and wise manner but one cannot understand that the business of the company is not even undertaken and the entire funds of the company are either invested in shares or in the firms and companies of the directors. It is thus prima facie apparent that from the very beginning, the directors had no intention to do business as set out in the prospectus and their intention was to mop up the funds from public and then to utilize the same for their own companies and firms in which they were directors or to invest in shares. It is thus obvious that the statement made in the prospectus was prima facie a false statement deliberately made knowing fully well that the funds were not going to be utilized for the purpose they were collected.

3. In the matter of Bhupinder Kaur vs ROC

The Hon'ble High Court of Delhi through its order in 2007, stated:

12. It is sought to be contended that the funds were ultimately utilized by making huge investments in unproductive shares and securities and as the funds were utilized for a purpose other than what was stated in the prospectus, it should be inferred that statement made in the prospectus was false. The case is, therefore, not for misutilizing the funds. The case set up is that by the manner in which the funds were utilized, which was not the same as that stated in the prospectus, it is clear that the statement made in the prospectus was not true as there was no intention to utilize the funds for the purpose stated in the prospectus.

…

Learned Counsel for the complainant is right in his submission that the complainant can prove misstatement in the prospectus only by showing that the funds were not utilized for the purpose

stated in the prospectus and this can be done only when these funds were utilized in the subsequent years. Thus, looking the matter from this angle, one can clearly come to the conclusion that a case has been made out, prima facie, of mis-statement in the prospectus.

4. In the matter of Brooks Laboratories Limited

SEBI, through its order dated September 10, 2015 stated

59. From the foregoing, I find that the submissions of Noticees No. 2-5 does not hold good. Company though a legal entity cannot act by itself. It can act through its Board / Management / Key Managerial Personnel etc. Here it would be worthwhile to mention that in respect of allegation of round tripping / siphoning off funds, the persons in charge of day to day affairs of the Company viz. Directors / Management / Key Managerial Personnel (as Noticees No. 2-4 are in this case) are certainly responsible for the fraudulent activities.

67. Acts of round tripping of funds / siphoning off funds from the IPO proceeds, mis-utilisation of IPO proceeds coupled with non-disclosures and wrong Page 37 of 40 disclosure in the Offer Document, are in violation of regulations 3 (b), (c) and (d) and regulations 4 (1) and 4 (2) (f) of PFUTP Regulations read with section 12 A (a), (b) & (c) of the SEBI Act and make Noticees liable for imposition of monetary penalty under section 15 HA of the SEBI Act.

5. In the matter of V. Natarajan vs SEBI (SAT Appeal no. 104 of 2011)

The Securities Appellate Tribunal, through its order dated June 29, 2011 stated:

"we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, were violated. These regulations, among others, prohibit any person from employing any device, scheme or artifice to defraud in connection with dealing in or Issue of securities which are listed or proposed to be listed on an exchange. They also prohibit persons from engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains

information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities"

6. In the matter of P G Electroplast Limited

SEBI through its order dated December 28, 2011 stated:

PGEL has suppressed several material facts in the offer documents (RHP and Prospectus) pertaining to the company, utilization of proceeds of issue, agreements for purchase of land etc. and had also made several misstatements relating to ICDs, placement of purchase orders, general corporate purpose, investments in land etc. as has already been detailed above. Further, proceeds of the IPO were siphoned off and funds were also diverted by PGEL in the equity markets, in contradiction to the statement in the offer documents that it would invest interim use proceeds of IPO in high quality instruments and would not use it for any investments in the equity markets.

14.16. The company PGEL and its directors namely Mr. Pramod Gupta, Mr. Anurag Gupta, Mr. Vishal Gupta, Mr. Vikas Gupta, Mr. Pramod Kumar Mitra, Mr. Kaushal Chand Singhal, Mr. Prem Pal Malhotra and Mr. Suresh Chandra Gupta have therefore indulged in fraudulent activities and have prima facie violated the provisions of Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d), 4(1) ,4 (2) (a), (d), (e), (f) and (k) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

14.17. The company PGEL and its directors namely Mr. Pramod Gupta, Mr. Anurag Gupta, Mr. Vishal Gupta, Mr. Vikas Gupta, Mr. Pramod Kumar Mitra, Mr. Kaushal Chand Singhal, Mr. Prem Pal Malhotra and Mr. Suresh Chandra Gupta have also prima facie violated the provisions of Regulations 57(1), 60(4) (a) and 60 (7) (a) of SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 and Clauses 2(VII) (G); 2(VIII) (B) (5) (b) and (6); and 2 (XVI) (B) (2) of Part A of Schedule VIII read with Regulation 57 (2) (a) of SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009).

7. In the matter of RDB Rasayans Limited

SEBI through its order dated December 19, 2014 stated:

… The fact that the issue proceeds would be substantially transferred to its group company was, in fact, a material disclosure required to be made to the investors. Clearly, the Noticees withheld/failed to make material disclosures in the prospectus regarding the proposal and approval for passing on/granting the IPO proceeds in the form of inter corporate loan to RDBRIL. The investing public was, thus, deprived of the information that their money, instead of being used for the objects as stated in the prospectus, was being transferred to a group company. This clearly amounts to a failure on the part of RDB and its Noticee directors to inform the investors regarding material facts as required by law.

…

In view of the above, I find that the charges levelled against the Noticees in the SCN dated Order in the matter of RDB Rasayans Limited Page 23 of 23 August 05, 2013 regarding the violations of the provisions of regulation 57(1) and (2) read with Schedule VIII Part A (16), and 60(4) of the ICDR Regulations, 2009; clause 49 of Listing agreement read with section 21 of the SCRA, 1956; sections 62, 63 and 68 read with 55A of the Companies Act, 1956; and section 12A(a), (b) and (c) of the SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1),4 (2)(a), (d), (e) of the PFUTP Regulations, 2003 are established.

8. In the matter of Taksheel Solutions Limited

SEBI through its order dated November 15, 2017 stated:

60. In view of the findings above, that TSL and its managing director Mr. Pavan Kuchana were involved in manipulating the books of accounts of TSL by inflating its revenue, expenditure and profit and siphoning off of IPO proceeds by creating book entities as its clients and vendors, they have violated the provisions of section 12A(a), (b) and (c)of SEBI Act read with regulations 3(b), (c), (d), 4(1), 4(2)(e), (f), (k) and (r)of PFUTP Regulations, 2003. Durga Kuchana and Ravi Kusum were involved in creation/incorporation of fictitious entities and were signatories to the bank accounts of companies which were used in inflating the revenue, expenditure and profit of TSL and siphoning-off IPO proceeds. Therefore, I find that they have violated the provisions of section 12A(a), (b) and (c) of SEBI Act read with regulations 3(b), (c), (d), 4(1), 4(2)(e), (k) and (r) of the PFUTP Regulations, 2003.

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9. Accountability of the Board of Directors

A board meeting of SWSOLAR was held on November 14, 2019 where the Board considered and approved the request of the promoters to consider a revised repayment schedule for the balance outstanding amount and authorised the Audit Committee to work with the promoters to draw up a plan by December 31, 2019 for repayment of the loan.

The Board of Directors of SWSOLAR as on September 30, 2019 comprised of:

Sl	Name	Type	Date of Appointment
1	Khurshed Daruvala	Chairman/ NED	Apr 2018
2	Arif Doctor	ID	Mar 2019
3	Bikesh Ogra	NED	Mar 2019
4	Keki Olavia	ID	Mar 2019
5	Pallon Mistry	NED	Aug 2018
6	Rukhshana Mistry	ID	Mar 2019

The Audit Committee of the Board comprises of Ms. Rukhshana Mistry as Chairperson, Mr. Khurshed Daruvala and Mr. Keki Elavia as members.

The explanation provided by the promoters for their inability to repay the loans within the stipulated 90 days timeframe was provided through a stock-exchange filing by the Company on November 14, 2019. It stated,

"Further, the Promoters pursuant to a letter dated November 14, 2019 (the "Letter") had requested the Board of Directors of the Company to consider a revised repayment schedule for the balance outstanding amount which was reduced to Rs. 2,341 crore (principal amount of Rs. 2,085 crore and interest is Rs. 256 crore) as on September 30, 2019 due to the significant and rapid deterioration in the credit markets creating a significant liquidity crisis, all of which was unforeseeable and coupled with the lesser than expected realization from the IPO (given that the amount realised from the IPO was Rs. 2,850 crore before expenses and taxes as compared to Rs. 4,500 crore as initially contemplated)"

It is beyond understanding as to how the Audit Committee and the Board accepted this absurd explanation of the promoters when the latter already had received funds from the IPO proceeds and did not have the need to access the credit markets to arrange funds to repay loans owed to SWSOLAR.

Hence, the Board and the Audit Committee should also be held liable for their actions in failure to protect SWSOLAR's as well as its public minority shareholders' interests by approving the revised repayment schedule proposal of the promoters.

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10. The Road Ahead for SEBI and Public Minority Shareholders

It is evident that the promoter - Shapoorji Pallonji Group – has violated various sections of Companies Act, SEBI Act and provisions of SEBI PFUTP and ICDR Regulations by not utilising the IPO proceeds for the purposes that they were raised for. This has resulted in a significant loss of trust of the promoters as well as a significant erosion of wealth of minority public shareholders. The regulator SEBI and the minority shareholders can initiate following actions in order to protect the interests on minority shareholders in the Company:

1. Exit Route to Shareholders through an Open Offer by Promoters

SEBI (ICDR) Regulations, 2018 allow for the dissenting shareholders to be provided an exit offer by the promoters, in cases where there is a change in objects of the issue/ offer in the IPO prospectus.

SEBI (ICDR) Regulations, 2018

59: Post-listing exit opportunity for dissenting shareholders

The promoters, or shareholders in control of an issuer, shall provide an exit offer to dissenting shareholders as provided for in the Companies Act, 2013, in case of change in objects or variation in the terms of contract related to objects referred to in the offer document as per conditions and manner is provided in Schedule XX; Provided that the exit offer shall not apply where there are neither any identifiable promoters nor any shareholders in control of the issuer.

In this case, where shareholders have suffered significant erosion in value of their holdings solely due to the non-utilisation of funds as per the objects of offer of the IPO, SEBI must force the promoters to provide an exit offer to shareholders at a price as per SEBI (ICDR) Regulations.

2. Class Action Suit

Shareholders can also file a class-action suit against the Company and its promoters. A class action suit can be filed by shareholders if they of the opinion that the management

or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members. Section 245 of the Companies Act, 2013 empowers shareholders to file class action suits with the NCLT.

To file a class-action suit, shareholders have to fulfil either of the two eligibility conditions:

a) any 100 or more members of the company, or members equal to or exceeding 10% of the total number of its members, whichever is less, or
b) any member or members singly or jointly holding atleast 10% of the issued share capital of the company

The Companies Act, 2013
Section 245: Class Action

(1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely: –

(a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;

(b) to restrain the company from committing breach of any provision of the company's memorandum or articles;

(c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;

(d) to restrain the company and its directors from acting on such resolution;

(e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;

(f) to restrain the company from taking action contrary to any resolution passed by the members;

(g) to claim damages or compensation or demand any other suitable action from or against –

(i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;

(ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or

(iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

(h) to seek any other remedy as the Tribunal may deem fit.

(2) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

(3) (i) The requisite number of members provided in sub-section (1) shall be as under: –

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(ii) The requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

(4) In considering an application under sub-section (1), the Tribunal shall take into account, in particular –

(a) whether the member or depositor is acting in good faith in making the application for seeking an order;

(b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of subsection (1);

(c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;

(d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;

(e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be –

(i) authorised by the company before it occurs; or

(ii) ratified by the company after it occurs;

(f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

(5) If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely: –

(a) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;

(b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;

(c) two class action applications for the same cause of action shall not be allowed;

(d) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.

(6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.

(7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

(9) Nothing contained in this section shall apply to a banking company.

(10) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (1).

Shareholders of SWSOLAR have a strong case in their hands if they file a class action suit against the Company and the promoters as they have suffered a significant erosion of wealth due to the actions of the promoter.

Overall, a huge loss of reputation for the promoters of the Shapoorji Pallonji group, substantial – over Rs.1,700 crore - erosion of wealth of public minority shareholders, and loss of investor trust for a group that seemed to have a stellar reputation. In order to redeem this reputation, the SP group should provide an exit option for public minority shareholders.

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