

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER**

**UNDER SECTIONS 11, 11(4) AND 11B OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992, IN THE MATTER OF –**

- 1. SANKET INVESTMENTS AND MARKETING LIMITED**
- 2. ITS DIRECTORS, VIZ.**
 - I. PRASHANTA KUMAR DASH (PAN : AENPD6409F; DIN: 00843963)**
 - II. PRAVAT KUMAR DASH (PAN : AEKPD7710E; DIN: 02031548)**
 - III. NIBEDITA NATH (PAN : AHBPN9799H; DIN: 03576083)**

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1. SEBI received a letter dated October 26, 2015 from Registrar of Companies ("**RoC**"), Delhi and Haryana on November 02, 2015. Through the said letter, RoC informed SEBI that it was in receipt of a complaint alleging non-payment of interest for Redeemable Preference Shares ("**RPS**") issued by M/s Sanket Investments and Marketing Limited ("**Sanket**"). However, copy of the complaint was not appended with the said letter. RoC had taken up the matter for examination in the course of which it was observed that the company had issued preference shares during Financial Years 2011-12 and 2012-13. RoC also alleged that Sanket had mobilised funds from the public in the garb of Collective Investment Schemes.
 2. In view of the aforesaid communication from RoC, SEBI took the matter up for further examination. From the MCA portal (*website of the Ministry of Corporate Affairs*) it was observed that Sanket was incorporated on March 08, 1990 and its registered office is located at A-223, Ansal Chamber-1, 2nd Floor, 3 Bhikaji Cama Place, New Delhi- 110 066. The documents available on the MCA portal relating to Sanket were examined. Since filings, if any, prior to March 31, 2006 and after March 31, 2011 were not available on the MCA portal, annual returns and balance

sheet filed commencing from the financial year ending on March 31, 2006 till the financial year ending on March 31, 2011 were examined. On perusal of the annual returns and the balance sheets filed for each of the aforesaid financial years i.e. till March 31, 2011, it was noted that Sanket had not issued securities in the nature of preference shares or debentures. However, records available on the MCA portal also revealed that Sanket had filed fifteen (15) returns relating to allotment of 15% Redeemable Cumulative Preference Shares ("RCPS") of face value ₹ 10/- each after March 31, 2011. The available details of the aforesaid allotments of RCPS is provided below:

Sr. No.	Date of Allotment	Resolution date	No. of RCPS allotted	No. of allottees	Total no. of allottees in a month	Cumulative no. of RCPS after allotment
1.	15.10.2011	14.10.2011	3,28,500	49	98	3,28,500
2.	25.10.2011	21.10.2011	5,12,000	49		8,40,500
3.	03.11.2011	29.10.2011	3,96,800	49	147	12,37,300
4.	08.11.2011	07.11.2011	4,50,500	49		16,87,800
5.	19.11.2011	17.11.2011	4,05,000	49		20,92,800
6.	03.12.2011	25.11.2011	2,58,500	49	110	23,51,300
7.	09.12.2011	05.12.2011	55,000	12		24,06,300
8.	23.12.2011	20.11.2011	3,03,500	49		27,09,800
9.	05.01.2012	29.12.2011	3,82,000	49	196	30,91,800
10.	14.01.2012	09.01.2012	4,65,000	49		35,56,800
11.	23.01.2012	19.01.2012	3,30,000	49		38,86,800
12.	31.01.2012	27.01.2012	3,73,000	49		42,59,800
13.	06.02.2012	03.02.2012	5,10,000	49	147	47,69,800
14.	10.02.2012	08.02.2012	5,59,000	49		53,28,800
15.	17.02.2012	14.02.2012	4,81,500	49		58,10,300
	Total				698	58,10,300

3. Based on the information gathered from the MCA portal, SEBI issued a letter dated March 01, 2016 to the company i.e Sanket, advising it to furnish the following information latest by March 15, 2016:
- i. Certified copies of the Memorandum and Articles of Association of the company as filed with the Registrar of Companies (RoC).
 - ii. Details of the name change of the company since inception.
 - iii. Copy of Audited Annual Accounts and Annual Returns filed with ROC since inception.
 - iv. Details of the PAN of the company.
 - v. Names, addresses, occupation and PAN of all the promoters/directors of the company since incorporation.
 - vi. Names, addresses, occupation and PAN of the key managerial personnel of the company.
 - vii. Statement of mobilization of funds through issuance of preference shares duly certified by the auditors of the company.
 - viii. Information in respect of every series of preference shares issued by the company since its inception including:
 - a) Copies of the Board Resolutions and the minutes of such board meetings authorising issue of preference shares.
 - b) Details regarding the filing of prospectus/RHP with Registrar of Companies regarding issue of preference shares.
 - c) Copies of application forms, RHP, pamphlets, advertisement and any other promotional material circulated for issuance of preference shares.
 - d) Terms and conditions of the issue of preference shares.
 - e) Dates of opening and closing of the subscription list for the said preference shares.
 - f) Details regarding the number of applications received.
 - g) Details regarding the number of allottees.
 - h) List of such allottees, along with their names and addresses
 - i) Number of preference shares allotted and value of such allotment against each allottee's name, folio number, certificate number, etc.
 - j) Date of allotment of preference shares.
 - k) Details regarding the subscription amount raised.
 - l) Dates of despatch of share certificates etc.
4. As noted from the website of the Department of Post i.e. www.indiapost.gov.in, the said letter was delivered to the company on March 07,2016. However, no reply has been received by SEBI in response to its letter dated March 01,2016.
5. Subsequently, a letter dated March 30,2016 from Reserve Bank of India (RBI) with regard to Sanket was received informing SEBI that the company i.e. Sanket is a Non-Banking Financial

Company (NBFC) registered with RBI and its Certificate of registration was granted on February 21, 2012.

6. Based on the aforesaid available facts, the issue for determination in the instant matter is whether the mobilization of funds by Sanket, during the period commencing from October 15, 2011 to February 17, 2012 (hereinafter referred to as "***offer and allotment of preference shares***") as described above, is in accordance with the provisions of the Companies Act, 1956 read with the provisions of the SEBI Act, 1992.
7. Section 67 of the Companies Act, 1956 deals with the conditions/circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

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

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).”*

8. For ascertaining whether the *offer and allotment of preference shares* by Sanket would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the Company is crucial. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. Further, in terms of second proviso, the condition of number of persons to whom shares or debentures are issued to, will not apply to non-banking financial companies (NBFC).
9. The letter from RBI, already discussed in paragraph 6 above, states that Sanket was registered as an NBFC with effect from February 21, 2012. Therefore funds mobilised by Sanket through *offer and allotment of preference shares* are not eligible for the exemption in terms of second proviso to Section 67(3), since the said RCPS in question were offered and allotted prior to February 21, 2012.
10. I note from the facts available that although Sanket has not exceeded allotment to more than 49 persons in each allotment made commencing from October 2011 to February 2012, the total number of allottees exceeds 49 in each month and cumulatively the RCPS were issued to 698 persons raising ₹5,81,03,000. This pattern of repeated allotment to 49 persons on frequent basis i.e. 15 times during a short span of 4 months appears to have been done solely for the purpose of avoiding the applicability of Section 67 (3) of the Companies Act, 1956 and consequent regulatory compliances.

11. From the above, it will follow that the *offer and allotment of preference shares* made by Sanket *prima facie* qualifies to be construed as an offer made to the public in terms of section 67 of the Companies Act, 1956. Such a public issue would require Sanket to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act, 1956, is reproduced as under:

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

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

(1A) ...

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

...." (emphasis supplied)

12. Since *the offer and allotment of preference shares* is, *prima facie*, a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement for such shares to be dealt on a recognised stock exchange in terms of Section 73 of the Companies Act, 1956. I find that Sanket is *prima facie* in breach of the provisions of Section 73 as well.

13. Further, in connection with the public issue, Section 56 of the Companies Act, 1956 mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the ROC. I find

that there is no evidence on record to indicate that Sanket has complied with the provisions of Sections 56 and 60 of Companies Act, 1956, in respect of the *offer and allotment of Preference Shares*. In view of the same, I find that Sanket is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the subject offer and allotment of preference shares.

14. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 55A of the Companies Act, 1956, confers the jurisdiction on SEBI *inter alia* to administer provisions specified therein, in relation to public issue of securities. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, sub-section (4) of section 11 lists measures that SEBI may take, by an order in writing, either pending or on completion of investigation or inquiry, in the interest of investors in the securities market. Section 11B empowers SEBI to issue such directions as may be appropriate, in the interest of investors in securities and the securities market, *inter alia*, to any person associated with the securities market or to any company in respect of issue of capital, transfer of securities etc.

15. From the Form 32 filed with ROC, details of the persons who were directors of Sanket at the time of issue and allotment of preference shares and who are currently also responsible for the affairs of Sanket, are as follows:

Sl. No	Director Name	DIN	Designation	Date Of Appointment	Date of Cessation	PAN number
1.	Prashanta Kumar Dash	00843963	Promoter Director	17.06.2011	-	AENPD6409F
2.	Pravat Kumar Dash	02031548	Promoter Director	17.06.2011		AEKPD7710E
3.	Nibedita Nath	03576083	Promoter Director	25.07.2011	-	AHBPN9799H

DIRECTIONS

16. In light of the facts in the instant matter, I find this to be a fit case to pass interim directions against Sanket and its directors, viz. Prashanta Kumar Dash, Pravat Kumar Dash and Nibedita Nath. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-

- i. Sanket and the abovenamed Directors 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. Sanket and the abovenamed Directors 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 preference shares*;
- iii. Sanket and the abovenamed Directors shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* sought vide letter dated March 01, 2016;

17. The preliminary findings contained in paragraphs 11 to 13 of this Order are made on the basis of the material available on record and information obtained from RoC and RBI. Sanket and its abovementioned Directors are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, namely:-

- i. Sanket and its abovenamed Directors, to jointly and severally refund money collected through the *offer and allotment of 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, 1956 till the date of actual payment) within a period

of 180 days from the date of receipt of this Order, supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI; and

- ii. Sanket and its abovenamed Directors be refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement 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.

18. Sanket and its abovementioned directors, may, within 21 days from the date of receipt of this interim order -cum- show cause notice, file their respective replies. Sanket and the directors named above are directed to furnish an inventory of their assets in their reply. In the event Sanket or any of its aforementioned directors intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this order. In the event of Sanket or its aforementioned directors failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paras 11 to 13 of this Order and directions at para 17(ii) above shall become final and absolute against Sanket and its aforementioned directors automatically, without any further orders.

19. Upon the expiry of a period of 180 days from the date of receipt of this Order, SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution in addition to making a suitable reference to State Government / Local Police.

20. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.

21. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

Place: Mumbai

Date: March 10, 2017

**G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**