

SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER CUM SHOW CAUSE NOTICE
UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992, IN THE MATTER OF –

Sr. No.	Noticees	DIN/CIN	PAN
Company			
1.	MGH PROJECT INDIA LIMITED	U45400WB2010PLC154341	AAGCM8612H
Promoters & Directors			
2.	Koushik Mukherjee	03192118	ARNPM5830G
3.	Syed Shofique Hossain	03206693	ABIPH8726P
4.	Pradyut Kumar Ghosh	03192123	AOGPG4013B
5.	Shome Shankar Ray	06589140	AGMPR5640P
6.	Syed Safkat Hossain	-	APFDH7958P
7.	Tapas Ghosh	-	AODPG3970J
8.	Sudip Banerjee	-	AYDPB5615K
9.	Mithu Ghosh	-	APDYG4586R

The aforesaid entities are hereinafter referred to by their respective names or collectively as "the Noticees".

1. Securities and Exchange Board of India ("SEBI") was in receipt of a complaint in relation to money mobilization by way of issue of shares by MGH Project India Limited ("MPIL"). Copy of a certificate of redeemable preference shares (RPS) allegedly issued by MPIL was also received by SEBI.
2. Based on the complaints received, SEBI sought information pertaining to the collection of money by MPIL. Details of the correspondence and replies are as under:
 - (i) SEBI issued letters dated April 05, 2016 and June 17, 2016 to the Registrar of Companies, Ministry of Corporate Affairs, Kolkata, seeking various information pertaining to MPIL.

- (ii) SEBI issued letters dated April 21, 2016 to MPIL and its three directors, namely Shri Pradyut Kumar Ghosh, Shri Syed Shofique Hossain and Shri Shome Shankar Ray, requesting them to furnish information regarding mobilization of funds from public.
- (iii) While SEBI letters dated April 21, 2016 to MPIL and its two directors, namely Shri Syed Shofique Hossain and Shri Shome Shankar Ray, returned undelivered, the third director, Shri Pradyut Kumar Ghosh, responded vide letter (undated) received on May 18, 2016, whereby he submitted *inter alia* that he was a “silent director” and had no documents or information with him which was sought by SEBI.
- (iv) A site visit was conducted on September 08, 2016 at the registered office address of MPIL. However, the company could not be located at the said address.

3. Details pertaining to MPIL were procured from the MCA21 portal. The following relevant information was taken note of :

- i) Date of Incorporation : 29.10.2010
- ii) Type of the company : Public and Unlisted
- iii) CIN : U45400WB2010PLC154341
- iv) PAN: AAGCM8612H
- v) Registered Office Address: NH-60, Near New Bus Stand, Rampurhat, W.B., 731224.
- vi) Correspondence Address: Same as above.
- vii) Date of filing of the last Annual Accounts & Annual Report: 31.03.2012
- viii) Return of allotment (Form 2)- Total capital of the company (Break up of issued and authorised capital:
 - a. Authorized Capital (As on March 31 2012, as per Form 2 and Balance Sheet filed by MPIL with RoC):
 - I. Equity Capital: **50,00,000**
 - II. Preference Capital : **1,51,00,000**
 - b. Issued capital (As on March 31 2012, as per Form 2 and Balance Sheet filed by MPIL with RoC):
 - I. Equity Capital: **9,50,000**
 - II. Preference Capital : **13,50,370**
 - III. Share Premium: **1,21,53,330**
- ix) Details of any Board meetings held by the company as per Registrar of Companies (RoC) records with respect to the issue.

Date of Board meeting	Date of passing resolution	Amount proposed to be raised	Type of issue
14.01.2011	14.01.2011	10 Crore	Redeemable Preference Shares of Rs. 10/- each at premium of Rs. 90/- per share on Private placement

4. From the list of allottees attached to Form-2 filed by MPIL with RoC, it was found that the company issued RPS to 2355 persons during 2011-12. Further, the documents submitted by one of the complainants to SEBI include a copy of a preference share certificate issued to the complainant during the FY 2012-13. However, the exact number of persons who have been allotted RPS during FY 2012-13 could not be ascertained since no Form 2 in respect of allotment of RPS by MPIL during FY 2012-13 is available on MCA21 portal and no information has been received from the company / directors. The details of the allotments made by MPIL during FYs 2011-12 & 2012-13, as ascertained from the Form-2 filed by MPIL with RoC and the documents submitted by one of the complainants, are tabulated below:

Details of Redeemable Preference Shares Issued

Year	Date of allotment	Type	No of allottees	Amount (Rs.)	Source of Information
2011-12	30.03.2012	Preference Shares	2355	1,35,03,700	List of allottees attached to Form 2 filed by MPIL with RoC
2012-13	31.12.2012	Preference Shares	01	12,000	Copy of Redeemable Preference Share certificate submitted by Mrs. Usmita Roy, complainant

5. From the above table, it is clearly evident that MPIL has issued RPS to more than 49 persons in F.Y. 2011-12.

ISSUES FOR DETERMINATION

6. In the context of the details of the offer and allotment of preference shares mentioned in the Table at paragraph 4 above (hereinafter referred to as "*the offer and allotment of preference shares*"), the issue for determination in the instant matter is whether or not such mobilization of funds by MPIL is

in accordance with the provisions of the Companies Act, 1956 read with the provisions of the SEBI Act, 1992.

RELEVANT PROVISIONS OF LAW AND PRIMA FACIE FINDINGS

7. Section 67 of the Companies Act, 1956 deals with the conditions or 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 MPIL 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. In this regard, it is observed from the documents obtained from MCA (i.e. List of Allottees attached to Form-2 filed by MPIL with RoC) that MPIL has offered and allotted RPS to 2355 persons amounting of

Rs. 1,35,03,700 during 2011-12. Therefore on the basis of available information recorded above, the *offer and allotment of preference shares* by MPIL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

9. From the above, it will follow that such a public issue makes it imperative for MPIL 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)

10. As 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 recognized stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. I find that MPIL is *prima facie* in breach of the provisions of Section 73 as well.
11. Further, in connection with a 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 MPIL 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 MPIL 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.

12. In terms of Section 73(2), the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). Further, in terms of Section 62 of the Companies Act, every person who *inter alia* is a director of the company at the time of the issue of the prospectus and every person who is a promoter of the company, are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein. As per the information available on the MCA Portal, the details of the directors / promoters of MPIL, including the dates of appointment/cessation as directors, are as under:

Sl. No	Name of director/ promoter	Designation	DIN /DPIN	PAN	Residential Address	Date of appointment	Date of cessation
1	Koushik Mukherjee	Director / Promoter	03192118	ARNPM5830G	Gram Sanghatapara (Purba), Mauja-Rampurhat (Ansha), J.L. No - 77 7 Rampurhat Birbhum, West Bengal - 731224	29/10/2010	23/11/2012
2	Syed Shofique Hossain	Director / Promoter	03206693	ABIPH8726P	Vill-Margram, Mollapara, Mauja-Margram, 138, Margram-2no. Margram, Birbhum, West Bengal - 731217	29/10/2010	-
3	Pradyut Kumar Ghosh	Director / Promoter	03192123	AOGPG4013B	Bejuri, Sahapur, Rampurhat-2, Margram, Rampurhat, Birbhum, West Bengal - 731224	29/10/2010	-

4	Shome Shankar Ray	Director	06589140	AGMPR5640P	Gram-Nishintapur (P) South Part,, Mouja Nishntapur (Pa81) 2 Rampurhat, Birbhum, West Bengal - 731224	23/11/2012	-
5	Syed Saffat Hossain	Promoter	-	APFDH7958P	Vill-Margram, Ps-Margram, Birbhum, West Bengal - 731217	-	-
6	Tapas Ghosh	Promoter	-	AODPG3970J	Vill - Parsalika, Po-Fatepur, Barowa, West Bengal - 743132	-	-
7	Sudip Banerjee	Promoter	-	AYDPB5615K	Vill - Balsa, Po-Dunigram, Birbhum, West Bengal – 731241	-	-
8	Mithu Ghosh	Promoter	-	APDYG4586R	Vill-Bejuri, Po-Tarapur, Birbhum, West Bengal - 731233	-	-

13. From the above table, it is noted that the directors of MPIL at sl. nos. 1-4 above were the directors at the time of the issue and allotment of RPS and directors at serial no. 2 to 4 continue to be responsible for the affairs of MPIL. Noticees mentioned at sl. nos. 5-8 in the above table are promoters of MPIL and hence liable.

DIRECTIONS

14. From the information available with SEBI and details downloaded from MCA portal, it can be reasonably inferred that the money mobilization on the part of MPIL is potentially placing investors at risk by not following the requirements of law applicable to a public issue. In the light of the facts in the instant matter, I find this to be a fit case to pass interim directions against MPIL and the above named Directors and promoters. 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. MPIL and its Directors and Promoters, namely Koushik Mukherjee, Syed Shofique Hossain, Pradyut Kumar Ghosh, Shome Shankar Ray, Syed Safkat Hossain, Tapas Ghosh, Sudip Banerjee and Mithu Ghosh, 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. MPIL and the above named Directors and promoters 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. MPIL and the above named Directors and promoter shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* sought vide letters April 21, 2016.

15. The preliminary findings contained in paragraphs 8, 10 and 11 of this Order are made on the basis of the information obtained from MCA portal. MPIL and the above named Directors and promoters 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. That the Noticees shall jointly and severally refund the 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), supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and
- ii. That the Noticees shall be restrained / prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.

16. The Noticees, may, within 21 days from the date of receipt of this interim order -cum- show cause notice, file their respective replies. The Noticees are directed to furnish an inventory of their assets in their reply. In the event the Noticees 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 the Noticees failing to file replies or requesting for an

opportunity of personal hearing within the said 90 days, the preliminary findings at paras 8, 10 and 11 of this Order and directions at para 15 (i) and (ii) above shall become final and absolute against the Noticees automatically, without any further orders. The Noticees shall comply with the directions at para 15(i) above within a period of 90 days from the date of this Order becoming final. Upon the expiry of the period of 90 days from the date of this Order becoming final and if the Noticees fail to comply with the directions at para 15 above, 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.

17. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
18. 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 the company and its directors and promoters.

DATE: JULY 31, 2017

PLACE: MUMBAI

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA