

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 107 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 in the matter of Icore E-Services Limited.

In respect of: -

Sl. No.	Noticees	PAN/CIN/DIN
	Company	
1	Icore E-Services Limited	CIN: U72400WB2007PLC115309
	Promoters and Directors	
2	Mr. Ankul Maiti	PAN: AOMPM9182R
3	Mrs. Kanika Maiti	PAN: AOTPM3722N
4	Mr. Swapn Kumar Roy	PAN: ANVPR7210H
5	Mr. Radhashyam Giri	PAN: ARJPG7051P
6	Mr. Tapan Kumar Chatterjee	PAN: AGVPC6440K
7	Mr. Saral Ranjan Sengupta	PAN: AMAPS4265M
8	Mr. Amal Bhattacharya	PAN: AKDPB6648N
9	Mr. Chandan Dey	Not available
10	Mr. Mahadeb Gayan	DIN: 01396620

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- Securities and Exchange Board of India ("SEBI") issued a Show Cause Notice dated December 10, 2015 to Icore E-Services Limited (hereinafter referred to as "Icore") and its promoters/directors, namely, Mr. Anukul Maiti, Mrs. Kanika Maiti, Mr. Swapn Kumar Roy, Mr. Radhashyam Giri, Mr. Tapan Kumar Charterjee, Mr. Saral Ranjan Sengupta, Mr. Amal

Bhattacharya, Mr. Chandan Dey and Mr. Mahadeb Gayan (the company and its promoters/directors are hereinafter collectively referred to as “Noticees”), alleging that they were engaged in mobilization of funds to the tune of ₹54.75 crore from the public through issuance of equity shares or as application money for allotment of equity shares, during the financial years 2007-2008, 2008-2009, 2009-2010 and 2010-2011, in contravention of the provisions of sections 56, 60 read with 2(36) and 73 of the Companies Act, 1956 (since repealed) and various provisions of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (DIP Guidelines) and the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations). In this matter, prior to the issuance of the show cause notice, in order to ensure that the Noticees do not continue to collect money from the public in contravention of the law and funds raised from the public are not diverted, SEBI vide an ad-interim ex-parte interim Order dated July 25, 2014, interalia, restrained the Noticees from collecting funds from the public by issuing any kind of security, diverting funds of the company and disposing off their assets. The interim directions were confirmed vide order dated March 5, 2015.

2. During the examination in the matter, SEBI received certain information/documents including the Balance Sheets of the Company for the financial years 2008-2009, 2009-2010 and 2010-2011 from the Registrar of Companies, Kolkata (RoC). The company vide letter dated April 12, 2013 submitted copies of the Memorandum of Association, Articles of Association, audited balance sheets and profit and loss account for the financial years 2009-2010, 2010-2011 and 2011-2012 and the details of its directors/promoters. After perusing the filings made by the Company with the RoC, as available in the “MCA 21” Portal maintained by the Ministry of Corporate Affairs, Government of India and on the basis of the examination of the available documents, it has been alleged in the SCN that Icore has mobilized an amount of ₹54.75 crore through issue of equity shares as application money for issuance of equity shares from more than 5,239 public investors during the financial years 2007-2008 to 2010-2011. The details are as follows :

Year	Type and number of securities issued	No. of persons to whom issued (approx.)	Total amount Mobilized (in ₹)
2007-2008	20,00,000 equity shares	1956	4,00,00,000/-
2008-2009	35,00,000 equity shares	3283	5,00,00,000/-
2009-2010	Application money collected	Appears to have been collected from more than 49 persons.	45,74,55,833.58/-
2010-2011	40,19,558 equity shares	Appears to have been issued to more than 49 persons.	₹40,19,55,800/-*
Total			54,74,55,833.58/-

**The amount of ₹40.19 crore raised by issuance of equity shares (including premium) appears to be out of ₹45.74 crore collected as share application money during 2009-2010.*

3. On the basis of the above, it has been alleged that Icore mobilized funds from the public without complying with the provisions of Sections 56, 60 read with 2(36) and 73 of the Companies Act, 1956 (since repealed), Clauses 2.1.1, 2.1.4, 2.1.5, 2.8, 4.1, 4.11, 4.14, 5.3.1, 5.3.3, 5.3.5, 5.3.6, 5.4, 5.6, 5.6A, 5.7, 5.8, 5.9, 5.10, 5.12.1, 5.13, 6.0 (6.1 to 6.15, 6.16 to 6.34 including 6.17.13 and 41.6), 8.3, 8.8.1, 9, 10.1 of SEBI (DIP) Guidelines, 2000 and regulations 3, 4(2), 5, 6, 7, 25, 26, 37, 46, 57 and 59 of SEBI (ICDR) Regulation, 2009. The Noticees were therefore called upon to show cause as to why suitable directions, including the directions issued under the interim order dated July 25, 2014 and confirmed vide order dated March 5, 2015, and direction to refund the money collected through issuance of equity shares along with interest should not be issued against them under section 11(1), 11(4), 11A and 11B of the SEBI Act read with regulation 107 of the ICDR Regulations.

4. The Show Cause Notice was sent to the Noticees at their last known address through speed post and hand delivery. As it could not be served upon the Noticees by post, attempt was made to affix it at the last known address of the Noticees. As these attempts failed, the information about the pendency of the SCN against them was brought to their knowledge by publication in a Bengali newspaper - Anand Bazar Patrika on November 8, 2016, and in an English newspaper - Times of

India, Kolkata edition on November 9, 2016. Noticees did not file their reply to the SCN even after lapse of sufficient time. In order to proceed further in the matter, an opportunity of hearing was granted to the Noticees on May 19, 2017. The hearing notices sent through speed post either returned undelivered or was not acknowledged. Therefore, the intimation about the date of personal hearing was also given to the Noticees by publishing it in the newspapers on April 22, 2017 - The Statesman, Kolkata edition (English) and Anand Bazar Patrika, Kolkata edition (Bengali). No one appeared for the hearing. I am convinced that ample opportunities were given to the noticees to put across their submissions in defence, but they failed to use these opportunities to present their case. I am therefore constrained to proceed with the matter on the basis of documents available on record.

5. On perusal of the SCN and the documents available on record, it is observed that the issue that arise for determination in the present case is whether the offer and issuance of equity shares by Icore to thousands of allottees during the financial year 2007-2008, 2008-2009 and 2010-2011 and collection of application money for issuance of equity shares in financial year 2009-2010 were “public issues”. In this regard, it is observed that section 67 of the Companies Act, 1956 dealt with the conditions and circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. The extracts of the relevant provisions of the section are as under:

"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 subsection (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 nonbanking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."

6. Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI* (Civil Appeal no. 9813 and 9833 of 2011) has examined the scope of Section 67 of the Companies Act, 1956. In para 86 of the judgement, it has been observed by the Supreme Court that " ... *if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation.*". Thus, an offer of shares to fifty or more persons would be deemed to be a public issue.
7. It is observed from the SCN that in the extra-ordinary general meeting of Icore held on March 28, 2008, the Board of Directors of the company were authorised to issue in one or more tranches of 20,00,000 and 35,00,000 equity shares of ₹10 each at par or at a premium. Pursuant to this, the company issued and allotted equity shares to the investors. Subsequent to the allotments, the company filed return of allotment with RoC in eForm 2 along with the list of allottees on April 22, 2010. As per the e-filings, Icore has allotted 20,00,000 equity shares of ₹10/- each at a premium of ₹10/-per share to around 1956 investors on March 31, 2008 and raised an amount of ₹ 4 crore. The company has also filed return of allotment along with list of investors with RoC

for the allotments done on March 31, 2009. It is observed from this document that on March 31, 2009, Icore had allotted 35,00,000 equity shares of ₹10/- each at a premium of ₹10 per share to around 3283 investors and raised an amount of ₹5 crore.

8. Apart from the issue of equity shares as aforesaid, it is observed from the Balance Sheet of Icore for the year 2009-2010 that the Company had collected money under the head "Share Application" to the tune of ₹45,74,55,833/- (share application money of ₹13,71,26,833/- and premium of ₹32,03,29,000/-). As per the Balance Sheet for the year 2010-11, Icore issued 40,19,558 equity shares for ₹40,19,55,800/- (₹4,01,95,580/- for the equity shares allotted and ₹ 36,17,60,220/- was added to the "Securities Premium Account" under the head "Reserves and Surplus"). Thus, during the year 2009-2010, the company has mobilised an amount of ₹ 45,74,55,883/- as share application money towards allotment of equity shares and for the amount so collected the company issued equity shares for an amount of ₹ 40,19,55,800/- during the financial year 2010-2011. For this allotment of equity shares, the company has also filed a return of allotment with RoC in eForm 2. It is observed from this document that the company has allotted 40,19,558 equity shares of ₹10/- each at a premium of ₹90 per share and raised an amount of ₹40,19,55,800/- on April 20, 2010. It is also noted from the above that out of the amount of approximately ₹ 45.75 crore raised as share application money during the year 2009-2010, equity shares were issued only for an amount of approximately ₹ 40.20 Crore. No details of issuance of equity shares for the difference amount of ₹ 5,55,00,033/- is available on record. However, it is clear that this amount was also paid by the investors as application money for subscribing to the equity shares of the company. With regard to the number of subscribers/allottees, it is observed that list of investors with respect to this allotment is not available on record and the same was not provided by any of the Noticees in spite of there being a direction in the interim order to do so. Therefore, in view of the lack of information, it would not be possible to pinpoint the exact number of persons to whom the shares were allotted. However, considering the fact that during the financial year 2007-2008 and 2008-2009, the company had to go to thousands of investors to mobilise 4 -5 crore rupees and the money mobilised by the company during 2009-2010 and 2010-2011 is more than ₹ 45 crore, I am

inclined to conclude that the number of investors from whom the money was mobilised for issuance of equity shares is more than forty nine. Thus, Icore has mobilised money from the public by issuance of equity shares during the financial years 2007-2008, 2008-2009, 2009-2010 and 2010-2011.

9. In view of the above conclusion, it was obligatory on the part of Icore to comply with the provisions of sections 56, 60 and 73 of the Companies Act, 1956. As per 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. Section 56(3) of the Companies Act, 1956, mandates that an application form for shares in the company must be accompanied by an abridged prospectus. Section 60 of the Act mandates a company to register its 'prospectus' with the ROC before making a public offer. It is observed from the SCN that Icore was advised several times to furnish copy of prospectus, statement in lieu of prospectus, information memorandum etc. However, no such document was submitted. Therefore, it would be reasonable to conclude that the Noticees have not complied with these provisions of the Companies Act.
10. Further, by issuing equity shares to more than 49 persons, Icore was also required to compulsorily list such securities on at least one stock exchange in compliance with the provisions of section 73 of the Companies Act, 1956. Relevant provisions of the section are reproduced hereunder:

“73. Allotment of Shares and Debentures to be dealt in on Stock Exchange

(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 sub-section (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.
(2A) ...”

11. As per section 73(1) and (2) of the Companies Act, 1956, a company offering shares and debentures to the public, is required to make an application to one or more recognized stock exchange for permission for the shares or debentures to be offered to the public 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. I find that no material or record is available to indicate that Icore had made any such application seeking listing permission from any stock exchange.
12. I note that the Company had mobilized funds from the public during the financial years 2007-2008, 2008-2009, 2009-2010 and 2010-2011 towards issuance of equity shares. The shares allotted to the public were not listed on any stock exchange and the company has failed to make refund to the investors in terms of provisions of section 73(2) of the Companies Act, 1956. As per information furnished by the company, Noticee Nos. 2 to 10 were directors of I-Core during the relevant time and were involved in the mobilization of funds from the public through the issue of equity shares without complying with the applicable law, as discussed above. Therefore, I am inclined to hold them responsible for the contravention of the provisions of section 73(2) of the Companies Act, 1956.
13. In this regard, it is also pertinent to mention that SEBI has also laid down norms for protecting the interest of investors who subscribe or intend to subscribe to securities in a public issues under DIP Guidelines, which were replaced with ICDR Regulations with effect from August 28, 2009.

Thus, in addition to complying with the provisions of the Companies Act, the company was also required to comply with the provisions of the aforesaid Guidelines/Regulations as applicable during the relevant time. In this regard, it is observed that Icore has not complied with the following clauses of the DIP Guidelines for the issues made in the year 2007-2008 and 2008-2009.

- a) Clause 2.1.1. (filing of offer document),
- b) Clause 2.1.4 (application for listing),
- c) Clause 2.1.5.(issue of securities in dematerialized form),
- d) Clause 2.8. (means of finance),
- e) Clause 4.1.(promoters contribution in a public issue by unlisted companies),
- f) Clause 4.11. (lock-in of minimum specified promoters contribution in public issues),
- g) Clause 4.14 (lock-in of pre-issue share capital of an unlisted company),
- h) Clause 5.3.1(memorandum of understanding),
- i) Clause 5.3.3 (due diligence certificate),
- j) Clause 5.3.5 (undertaking),
- k) Clause 5.3.6 (list of promoters group and other details),
- l) Clause 5.4 – appointment of intermediaries,
- m) Clause 5.6 (offer document to be made public)
- n) Clause 5.6A (Pre-issue Advertisement),
- o) Clause 5.7 - dispatch of issue material,
- p) Clause 5.8 – no complaints certificate,
- q) Clause 5.9 – mandatory collection centers and Clause 5.9.1.(minimum number of collection centers),
- r) Clause 5.10 – authorized collection agents,
- s) Clause 5.12.1. (appointment of compliance officer),
- t) Clause 5.13 – abridged prospectus,
- u) Clause 6.0 – contents of offer documents - Clause 6.1 to Clause 6.15 (contents of prospectus), Clause 6.16 to Clause 6.34 (contents of abridged prospectus) including Clause 6.17.13 and Clause 41.6 – rating for the proposed debentures/preference shares issue, if any, obtained from credit rating agencies,
- v) Clause 8.3 (Rule 19(2)(b) of SC(R) Rules, 1957),

- w) Clause 8.8.1 (Opening & closing date of subscription of securities),
- x) Clause 9 – guidelines on advertisements by issuer company, and
- y) Clause 10.1 (requirement of credit rating).

14. Further, for the public issue made after August 28, 2009, I-Core was required to comply with the following provisions of the ICDR Regulations.

- Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)(d)),
- Appointment of merchant banker and other intermediaries (Regulation 5),
- Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),
- Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),
- Satisfying the conditions of initial public offer (Regulation 25 and 26),
- Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)
- Keeping the public issue open for the specified period (Regulation 46),
- Pre issue advertisement for public issue (Regulation 47)
- Manner of disclosures in the offer documents (Regulation 57)
- Refrain from offering any incentive to any person making application for allotment of specified securities (Regulation 59).

15. It is noted that Icore has not filed any prospectus, statement in lieu of prospectus, information memorandum etc. I am, therefore, of the view that the Noticees were engaged in fund mobilizing activity from the public, through the offer and issuance of equity shares in contravention of the provisions of sections 56, 60 and 73 of the Companies Act, 1956 and the above mentioned provisions of the DIP Guidelines and ICDR Regulations.

16. The show cause notice also mentions that SEBI had received an investor complaint on May 16, 2014 wherein the complainant has alleged that Icore has not paid the money due to him with respect to his subscription of the Redeemable Preference Shares (RPS). The complainant has also submitted copies of two “letters of allotment” issued by Icore. In this regard, it is noted that the SCN mentions that the company has not filed any return with respect to allotment of RPS. Further, Serious Fraud Investigation Office has also conducted a detailed investigation into the money mobilization by Icore group of companies and a copy of the report was forwarded to SEBI vide letter dated March 15, 2017. It is mentioned in the report that the collection of money by issuing RPS was in the nature of “deposit taken from the public” which comes under the purview of provisions of Section 58A of the Companies Act. They have also recommended action against the company and its directors for the violation. Therefore, I am not inclined to make any comment on the complaint.
17. It is also noted that Hon’ble Calcutta High Court, while hearing several Writ Petitions filed in the matter of Icore Group of Companies (W.P. Nos. 18164(W) of 2015; 3938(W) of 2014; 10341(W) of 2014 and 23894(W) of 2014), has vide order dated January 18, 2017 directed that the Committee formed by the High Court may look into the grievances of the investors in Icore Group of companies. SEBI has been directed to make available to the committee whatever information it has gathered as regards assets of the company and aid the committee in implementing the order of the High Court.
18. In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 and sections 11(1), 11(4), 11A and 11B thereof read with regulations 107 of the ICDR Regulations, hereby issue the following directions, which shall be subject to the directions passed or to be passed by Hon’ble Calcutta High Court in the matter of Icore Group of Companies.
- i. Icore E-Services Limited and its promoters/directors, namely, Mr. Anukul Maiti, Mrs. Kanika Maiti, Mr. Swapan Kumar Roy, Mr. Radhashyam Giri, Mr. Tapan Kumar

Charterjee, Mr. Saral Ranjan Sengupta, Mr. Amal Bhattacharya, Mr. Chandan Dey and Mr. Mahadeb Gayan shall jointly and severally refund the money collected through the offer and allotment of equity shares or as share application money with an interest at the rate of 15% p.a. in terms of Section 73(2) of the Companies Act, 1956, within a period of 90 days from the date of receipt of this Order.

- ii. The refund as directed above shall be made through banking channels such as demand draft or electronic mode of transfer and a trail of such refunds shall be maintained by the Noticees for records.
- iii. Within seven days of completion of refund as directed above, the Noticees shall file a certificate of such completion with SEBI from two independent Chartered Accountants after proper verification of the details of such refunds from records including bank accounts of the Noticees and after being satisfied that the refund has actually been made.
- iv. Till the refund, as directed above, is completed, the Noticees are hereby–
 - (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.
- v. For a period of four years from the date of completion of the refund, as directed above, the Noticees shall be –
 - (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

19. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action.

Date: December 11, 2017

Place: Mumbai

**G. MAHALINGAM
WHOLE TIME MEMBER**