

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Nirmal Infrahome Corporation Limited

In respect of:

Name of Entity	PAN	DIN
Shri Prabal Pratap Singh Yadav	ABHPY2100M	01907205

1. Securities and Exchange Board of India (“**SEBI**”) passed the Final Order dated November 21, 2017 (“**Order**”), *inter-alia*, in respect of Shri Prabal Pratap Singh Yadav (“**Noticee**”) in the matter of Nirmal Infrahome Corporation Limited. (“**Nirmal Infrahome/Company**”). The Order, *inter-alia*, made the following findings qua the Noticee:

“In this regard, I note that Shri Prabal Pratap Singh Yadav was appointed as director of Nirmal Infrahome only on August 2, 2014 i.e. after the period of issuance of NCDs. Therefore, following the reasoning as provided in the matter of Manoj Agarwal vs. SEBI, I am of the view that Shri Prabal Pratap Singh Yadav is not liable for refund of money as he was not a director during the relevant time of fund mobilization. Further, Shri Prabal Pratap Singh Yadav had the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High

Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

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

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

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

2. The Order, *inter-alia*, issued the following directions in respect of Shri Prabal Pratap Singh Yadav:

(a) Shri Prabal Pratap Singh Yadav (on behalf of the Company) is directed to provide full inventory of all the assets and properties and details of all the bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of

the company.

- (b) Nirmal Infrahome, Shri Prabal Pratap Singh Yadav, Shri Harish Sharma, Shri Abhishek S. Chauhan are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.*
- (c) Nirmal Infrahome and on its behalf the present director who joined subsequent to the issues (Shri Prabal Pratap Singh Yadav) and Shri Phool Singh Choudhary, Shri Harish Sharma, Shri Abhishek S. Chauhan in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.*
- (d) After completing the aforesaid repayments, Nirmal Infrahome and on its behalf the present director who joined subsequent to the issues (Shri Prabal Pratap Singh Yadav) and Shri Phool Singh Choudhary, Shri Harish Sharma, Shri Abhishek S. Chauhan in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI")*
- (e) Shri Prabal Pratap Singh Yadav is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever*

manner for a period of 4 (four) years from the date of this Order. The above said person is also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years from the date of this order.

3. The Order further noted that *“Interim order dated February 20, 2015 has not provided for the directions listed herein. In view of this, this order will take effect as final order against each Noticee on the expiry of 30 days from the date of service of this order against the respective Noticee, unless any of the Noticees, within such period of 30 days from the date of service of this order files his objections. If no objections are filed, the interim directions vide Interim order dated February 20, 2015 shall continue against the Noticees till the time of said thirty days period, after which this order will come into effect. If objections are filed by any of the Noticees, the interim directions vide Interim order dated February 20, 2015 shall continue qua that Noticee till disposal of the said objections qua that Noticee and the directions passed herein against that Noticee shall be made applicable subject to the determination on the objections.”*
4. Accordingly, SEBI has received reply dated December 20, 2017 from the Noticee subsequent to receipt of the Order. Shri Prabal Pratap Singh Yadav has opposed the Order and stated that he does not find himself guilty of charges levied by SEBI in his individual capacity. His submissions in brief are as under:
 - a) Allotment relates to financial year 2012-2013 and he was appointed as Director on 2.8.2014, therefore, was not associated with the previous Directors and unaware of the facts of the allotment.
 - b) Did not receive the previous order at his communication address because he was not present there due to employment purposes, therefore, was unaware of the proceeding against him and could not avail opportunity of being heard.
 - c) In regards the list of inventory of assets sought by SEBI, the said list is available

with earlier directors as he had resigned from the Company from 2.8.2014 and he does not have access to any information pertaining to the Company.

- d) His appointment was made on 2.8.2014, *i.e.* after the period of issuance of NCDs, therefore following the reasoning in *Manoj Agarwal v. SEBI*, he is not liable to refund.
- e) He had resigned from the directorship of the Company from 2.8.2014 (same day after his appointment due to unavoidable personal reasons) and conveyed his resignation letter at the Company's registered office. Later on, he came to know about the fact that the Company has not filed his resignation with RoC in e-form DIR-12 and he is still showing as Director of the Company on MCA portal. Therefore, with the help of his friend he managed to file e-form DIR-11 on MCA portal. Copy of the same was enclosed.
- f) Not liable to comply with the directions in para 55(j) and (k) of the Order as he is not associated with the Company any more.
- g) As SEBI already knows that he was appointed as a Director after the alleged act was committed, therefore, he should not be held liable for such act and prohibition to access securities market for 4 years is prejudicial to the interest of his personal rights as he had not indulged in any activity conducted by the previous directors of the Company.
- h) Requested for relief and waiver from further action.
- i) He will be submitting further opposition in the matter within a period of 30 days from the date of the letter of opposition.

5. I note that no further reply was received from Shri Prabal Pratap Singh Yadav. However, in the interest of principles of natural justice, he was given opportunity of hearing on March 20, 2018. Shri Prabal Pratap Singh Yadav attended the hearing through video-conferencing and, *inter-alia*, submitted that he was appointed as director of the Company on August 2, 2014 and resigned on the same day, was doing office maintenance job, did not give consent to be director and was informed that he was appointed a director and sent

resignation letter to the registered office of the Company by courier. Further, Shri Prabal Pratap was provided a copy of MCA record showing that Dot Couriers Pvt. Ltd. (vide which he claimed to have sent his resignation letter) was struck off since 2008 and was advised to make submissions in this regard. As requested, he was given time till March 27, 2018 to make submissions. He was further advised to explain why he filed DIR-11 so late in 2017 after resigning in 2014. Accordingly, hearing was concluded.

6. Shri Prabal Pratap Singh Yadav submitted reply vide email on March 27, 2018 and, *inter-alia*, submitted that he sent his resignation from the post of Director of Nirmal Infrahome Corp. Ltd. via “Dot Courier” dated 02/08/2014 to the registered office of the Nirmal Infrahome Corp. Ltd. and regarding the status of that “Dot Courier” with the concerned Registrar of Companies; he was neither aware nor he thought to do the same. He further submitted that at the time of dispatch of his resignation to the Nirmal Infrahome Corp. Ltd., he was not aware with the procedure of filing of DIR -11; which was required to be filed with concerned R.O.C. and subsequently he involved himself into earning of money with an intention to take care of his family, but when he came across with the issues pertaining to the matters as mentioned herein, he by his own, started evaluating the legal procedure made in this relation & after making due search he filed his DIR-11 with the concerned R.O.C. He also stated that such delay was neither intentional nor deliberate in nature in any manner but a matter of lack of information & knowledge only.
7. The issue before me is to determine the extent of applicability of the directions passed qua Shri Prabal Pratap Singh Yadav vide Order dated November 21, 2017 in view of the reply given by the Noticee.
8. I have noted the submissions of the Noticee that allotment of NCDs related to financial year 2012-2013 and he was appointed as Director on August 2, 2014, therefore, was not associated with the previous Directors and unaware of the facts of the allotment and that his appointment was made on 2.8.2014, *i.e.* after the period of issuance of NCDs, therefore following the reasoning in *Manoj Agarwal v. SEBI*, he is not liable to refund. In this

regards, I note that the Order records the finding that the Noticee was appointed as director of Nirmal Infrahome only on August 2, 2014 i.e. after the period of issuance of NCDs and is not liable for refund of the amount collected by the issue of NCDs.

9. Further, I note the Noticee's submission that he had resigned from the directorship of the Company from August 2, 2014 (same day after his appointment due to unavoidable personal reasons) and conveyed his resignation letter at the Company's registered office and later on, he came to know about the fact that the Company has not filed his resignation with RoC in e-form DIR-12 and he is still showing as Director of the Company on MCA portal, therefore, with the help of his friend he managed to file e-form DIR-11 on MCA portal. The Noticee has enclosed Form DIR-11 filed by him in support of his claim of resignation from the directorship in the Company on August 2, 2014, though service request date for filing such DIR-11 is July 1, 2017. He has also enclosed in support of his claim of resignation on August 2, 2014 a copy of his resignation letter dated August 2, 2014 along with courier receipt dated August 2, 2014 purportedly for showing the proof of communication of his resignation from the Company.
10. As per section 168 of the Companies Act, 2013, a director may resign from his office by giving a notice in writing to the Company and the Board on receipt of such notice shall intimate the Registrar by Form no. DIR-12. Further, the director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation as per Form no. DIR-11 and the resignation of a director shall take effect as per section 168 (2) of the Companies Act, 2013 from the date on which the notice is received by the Company or the date, if any specified by the director in the notice, whichever is later.
11. Therefore, the fact required to be determined herein is whether the Noticee has given resignation letter on August 2, 2014 and the same has been received by the Company as

contented by him. I note that as per the MCA records dated October 3, 2017 as well as January 5, 2018, the Noticee was a director of the Company from August 2, 2014 with no date of cessation of directorship. I note that the Noticee has enclosed copy of his resignation letter purportedly sent to the Company along with the copy of the courier receipt showing a receiver's signature. On perusal of the copy of the courier receipt, I find that the address of the courier company (Dot Couriers Pvt. Ltd.) is in Delhi and the address on the letter of the resignation enclosed by the Noticee is shown as Laskhar Gwalior. The authenticity of Noticee signing his resignation letter from Gwalior on August 2, 2014 and sending the same from Delhi on August 2, 2014 through courier raises a doubt regarding the authenticity of the courier receipt. Further, it is noted that as per the information obtained from ROC, M/s. Dot Couriers Pvt. Ltd. is struck off under section 560 of the Companies Act, 1956 and date of notification of such striking off is given as 31.3.2008. Considering that Dot Couriers Pvt. Ltd. has been struck off from 31.3.2008, the preponderance of probability would lead to conclude that the courier receipt dated August 2, 2014 enclosed by the Noticee is a forged one. Therefore, there is no proof on record to accept the Noticee's submissions regarding sending the resignation letter on August 2, 2014 through M/s. Dot Couriers Pvt. Ltd. I also note that Shri Prabal Pratap Singh Yadav was provided MCA record showing that Dot Couriers Pvt. Ltd. (vide which he claimed to have sent his resignation letter) was struck off since 2008 and was advised to make submissions in this regard and he has submitted that he sent his resignation from the post of Director of Nirmal Infrahome Corp. Ltd. via "Dot Courier" dated 02/08/2014 to the registered office of the Nirmal Infrahome Corp. Ltd. and regarding the status of that "Dot Courier" with the concerned Registrar of Companies; he was neither aware nor he thought to do the same. I do not find the submissions of the Noticee satisfactory and in view of the above find that the preponderance of probability would lead to conclude that the courier receipt dated August 2, 2014 enclosed by the Noticee is a forged one. Further, considering that the Noticee has placed an apparently forged courier receipt before me in the current proceedings, SEBI is directed to proceed against the Noticee, for placing before the current proceedings a forged courier receipt, by way of FIR/complaint

before the police authority having jurisdiction. Further, notwithstanding the above, even assuming authenticity of the courier receipt, there is no proof of receipt of the same by the Company.

12. I also note that the service request date of Form –DIR-11 filed by the Noticee is dated July 1, 2017 and the said DIR-11 shows cessation of directorship of the Noticee from the Company on August 2, 2014. Considering that the courier receipt in support of sending the resignation letter itself is in question and in view of the preponderance of probability that it is a forged one, I do not find DIR-11 as proof of resignation by the Noticee even at subsequent date. The fact the DIR 11 was filed in 2017 does not prove that the Noticee has resigned from the date of service request for DIR -11, because the DIR 11 itself is based on forged courier receipt. Therefore DIR-11 also does not prove the fact of resignation from the date of service request. Accordingly, I find that the Noticee is a continuing director.
13. I have also considered the submissions of the Noticee that in regards the list of inventory of assets sought by SEBI, the said list is available with earlier directors as he had resigned from the Company from 2.8.2014 and he does not have access to any information pertaining to the Company. In this regard, I note that I have not accepted the claim of resignation of the Noticee, therefore, I find that he is liable to comply with the formalities of ensuring refund in the capacity of continuing director. Further, in regards his submissions that he is not liable to comply with the directions in para 55(j) and (k) of the Order as he is not associated with the Company any more, I note that para 55(j) of the Order relates to filing a report after completion of repayments to investors, therefore, the Noticee is liable to comply with the same as a Continuing director. However, para 55(k) of the Order relates to initiation of recovery proceedings against the Company and directors liable to make refund, therefore, the Noticee is not liable to comply with the same and the Order dated November 21, 2017 clearly specifies the same. Further, I also do not find the submissions of the Noticee that he was appointed as a Director after the alleged

act was committed, therefore, he should not be held liable for such act and prohibition to access securities market for 4 years is prejudicial to the interest of his personal rights as he had not indulged in any activity conducted by the previous directors of the Company tenable and find that the Order also records the finding that Shri Prabal Pratap Singh Yadav had the responsibility of ensuring that refund of money was made to the investors as prescribed in law and in view of the failure to discharge the said liability of ensuring refund, Shri Prabal Pratap Singh Yadav is liable to be debarred for an appropriate period of time.

14. Therefore, the direction issued qua the Noticee in his capacity as a director subsequent to issue/allotment of NCDs and responsible for ensuring that the refund is made to the investors in terms of section 73(2) of the Companies Act, 2013 as well as in his capacity as a continuing director need to be made applicable to the Noticee. Accordingly, I, in exercise of the powers conferred under section 19 read with sections 11, 11(4), 11A and 11B of the SEBI Act, 1992 hold that the directions stated at paragraph 55(f), (g), (i), (j) and (m) of the Order dated November 21, 2017, without prejudice to its force and effect in respect of entities mentioned in the said directions in order dated November 21, 2017, are made applicable to the Noticee, Shri Prabal Pratap Singh Yadav as stated here under. The same shall qua Shri Prabal Pratap Singh Yadav, take effect from the date of this order.

(f) Shri Prabal Pratap Singh Yadav (on behalf of the Company) is directed to provide full inventory of all the assets and properties and details of all the bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company.

(g) Nirmal Infrahome, Shri Prabal Pratap Singh Yadav, Shri Harish Sharma, Shri Abhishek S. Chauhan are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as

directed above is made.

- (i) *Nirmal Infrahome and on its behalf the present director who joined subsequent to the issues (Shri Prabal Pratap Singh Yadav) and Shri Phool Singh Choudhary, Shri Harish Sharma, Shri Abhishek S. Chauhan in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.*
- (j) *After completing the aforesaid repayments, Nirmal Infrahome and on its behalf the present director who joined subsequent to the issues (Shri Prabal Pratap Singh Yadav) and Shri Phool Singh Choudhary, Shri Harish Sharma, Shri Abhishek S. Chauhan in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI")*
- (m) *Shri Prabal Pratap Singh Yadav is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years from the date of this Order. The above said person is also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years from the date of this order.*

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

16. SEBI is directed to proceed against the Noticee, for placing before the current proceedings

a forged courier receipt, by way of FIR/complaint before the police authority having jurisdiction.

17. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.
18. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against Shri Prabal Pratap Singh Yadav
19. A copy of this Order shall also be forwarded to the State Government for information.

-Sd-

DATE: April 18, 2018

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**