

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 28 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 in the matter of Reliable Mega Projects Ltd.

In respect of:

Sl. No.	Company	PAN
1.	Reliable Mega Projects Limited	AAFRCR8322L
	Directors	
2.	Devendra Kumar	BDMPK8128B
3.	Madhusudan Makwana	ATFPM8729G
4.	Rohit Patwa	AXJPP2766J
5.	Jitendra Singh Dagala	AQTPD5941J
6.	Bhagwati Bai	AVPPB2371M
7.	Santosh Panwar	BHIPP4346J
	Debenture Trustee	
8.	Reliable Mega Project Trust represented by Santosh Panwar	BHIPP4346J

1. Securities and Exchange Board of India ("SEBI") received several complaints along with copy of debenture certificates, alleging that Reliable Mega Projects Limited (RMPL) had issued Fully Secured Redeemable Debentures (hereinafter referred to as "NCDs") to mobilize money from the public and that they are not refunding the money to the investors.
2. As a matter of preliminary enquiry, the information/documents received from the complainants and the information received from ROC – Madhya Pradesh vide letter dated December 19, 2013 (including Form 10 filed by RMPL with RoC for registration of charges for debentures and letter of RMPL to ROC submitting list of allottees) and the information

available on MCA portal was analysed. It is observed from the information/details forwarded by ROC, the complainants and the details obtained from MCA portal that:

- The company is registered with ROC–Madhya Pradesh with CIN No. U70101MP2012PLC028023 and it was incorporated on March 21, 2012. The registered office of the company is at - 182 T. R. D. Colony, Maksi, Tehsil-Shajapur, Shajapur, Madhya Pradesh, 465106. The paid up and authorized share capital of the company is Rs. 5, 00,000/- each.
- The details of past and present directors of the company is tabulated below :

Table - A

Sl. No.	Name of directors of RMPL	Date of Appointment	Date of Cession
1	Shri Rohit Patwa, S/o. Nagjiram Patwa	20.09.2013	24.06.2016
2	Shri Santosh Panwar, S/o. Jujhar Singh Panwar	21.03.2012	29.03.2012
3	Shri Devendra Kumar, S/o. Soudan Singh	21.03.2012	NA
4	Shri. Madhusudan Makwana, S/o. Chhitar Mal Makwana	21.03.2012	NA
5	Shri Bhagvati Bai, D/o. Lallu Singh	29.03.2012	10.06.2013
6	Shri Jitendra Singh Dagala, S/o. Uday Singh Dagala	10.06.2013	12.02.2016

- On examination of the copy of debenture certificates enclosed with the complaints filed by the investors and the list of allottees filed by RMPL with ROC vide letter dated March 20, 2013, it is observed that RMPL has issued and allotted NCDs to several investors. The number of allottees to whom debenture certificate was issued and allotted and the amount of fund mobilised are as follows:

Table- B

Financial Year	As per letter of RMPL to RoC		As per complaints received by SEBI			Total	
	No. investor	Amount (Rs.)	No. of certificate	No. of investor	Amount (Rs.)	No. of investor	Amount (Rs.)
2012-13	30*	35,00,000/-	42	30	2,31,215/-	60	37,31,215/-
2013-14	NA	NA	99	73	8,36,680/-	73	8,36,680/-
2014-15	NA	NA	07	06	1,87,200/-	06	1,87,200/-

2015-16	NA	NA	07	02	3,50,000/-	02	3,50,000/-
Total	30	35,00,000/-	155	111	16,05,095/-	141	51,05,095/-

*Name of allottees in the list provided by RMPL to RoC and the details/data in the complainants filed by investors are mutually exclusive.

- The complainants have also forwarded certain documents, which includes a booklet titled 'Carrier Guidelines'. This booklet contains different schemes/ payment plans offered by RMPL for mobilisation of money from the investors by issuance of NCDs. It also contains copy of certificate of incorporation of the company and several pictures to show the work carried out by the company and its future projects.
- The debenture certificates furnished by the complainants mention the following:
 - a) The 'Fully secured redeemable Non-Convertible Debenture' are for 'Private Placement only'.
 - b) Face value of the debenture is Rs. 100/-.
 - c) The registered folio number, registration number, date of issue and date of redemption, distinctive number of certificate, number of debentures etc. are mentioned on the certificate.
 - d) The registration certificate also mentions that Fully Secured Redeemable Non-Cumulative Debentures are issued in terms of the Debentures Trust deed dated 30.03.2012 entered between Reliable Mega Projects Limited and Reliable Mega Projects Debenture Trust.
- From the documents available on MCA 21 portal, it is noted that:
 - a) The company has mortgaged or created charge on all the immovable and movable property of the company to the extent of Rs.25 crore in favour of the Reliable Mega Projects Trust represented by Santosh Panwar. In this connection the Minutes of the Extraordinary General Meeting held on March 30, 2012, Debenture Trust Deed and Form no. 10 for registration of charges for debentures have been filed by the company with ROC on March 30, 2012.
 - b) The board of directors of the company passed a resolution in the meeting held on March 30, 2012 to issue secured redeemable non-convertible debentures.
 - c) Company has not filed any balance sheets except for FY 2012-2013.

3. Based on the complaints filed by the investors, SEBI sent letters dated June 16, 2016 to the company and its directors, namely, Devendra Kumar, Madhusudan Makwana, Jitendra Singh Dagala and Rohit Patwa calling for various documents and details of issue of debentures and fund mobilisation, structure of the schemes, branch offices, details on commissions to agents etc. The letters were delivered to the directors by speed post. One director of the company, namely Devendra Kumar, vide letter dated June 29, 2016 requested on behalf of the company to allow them time of 3-4 week for collating and furnishing the information. However, no information was furnished by Devendra Kumar despite a reminder letter dated October 15, 2016 to him. Another letter dated November 7, 2016 was also sent to the company and its other directors to provide the requested information. None of the directors or the company replied to the letter. Another letter dated August 4, 2017 was sent to the company and its directors, including Bhagwati Bai and Santosh Panwar, seeking information on issuance of debentures and its fund raising activity. However, no reply has been received.
4. It is noted that the company and its directors have neither provided any information/details sought by SEBI nor offered any comment. It is observed from the documents available on record that the board of directors of RMPL had passed a resolution in the meeting held on March 30, 2012 to create a charge on all the immovable and movable property of the company to the extent of Rs.25 crore in favour of trustee in order to enable the company to raise an amount of Rs.25 crore by issuance of debenture. As per the copy of debenture certificates provided by the complainants and list of allottees filed by RMPL with RoC, company has issued Fully Secured Redeemable Non-Convertible Debentures (NCD) to a number of investors during the financial years 2012-2013 to 2015-2016.
5. In the context of the abovementioned details, the issue for determination in the instant matter is whether the mobilization of funds by RMPL through the issuance of NCDs is in accordance with the provisions of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"), the Companies Act, 1956 read with the Companies Act, 2013 and the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("Debt Securities Regulations").
6. Section 67 of the Companies Act, 1956 deals with conditions and circumstances under which an offer of shares and debentures by a company would be construed as one made to the public. Extract of relevant provisions of section 67 of the Companies Act, 1956 in this regard are reproduced 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.

(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)."

7. Hon'ble Supreme Court of India has examined the scope of Section 67 of the Companies Act, 1956 in *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI* (Civil Appeal no. 9813 of 2011 - Judgment dated August 31, 2012). It has been observed that:

"Resultantly, 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. ...

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

8. In view of the above, for ascertaining whether the issuance of NCDs is a public issue or an issue on private placement basis, the number of subscribers is of utmost importance. Further, under the new Companies Act, 2013, post April 1, 2014, any offer or allotment of securities shall be construed as public issue if the number of offerees/allottees exceeds 200 persons,

excluding certain class of subscribers. In the instant case, it is observed that even after repeated advice, the company has not provided the details about issue and allotment of debentures by it and its funds mobilization activity. However, from the analysis of the details of investor complaints and copy of debenture certificates provided by the complainants and the list of debenture holders provided by company to RoC-Madhya Pradesh, it is observed that the company has issued NCDs to more than forty nine persons during the financial year 2012-13 (60 investors) and financial year 2013-2014 (73 investors). It is also pertinent to mention here that despite continuous follow up by SEBI with the company and its directors, they have not co-operated with the examination process. Therefore the number of investors and amount of funds mobilised could be more than what is mentioned in Table – B. However, considering the documents available on record, it is certain that the number of persons to whom the NCDs were offered and issued is beyond the prescribed limit of forty nine for the years 2012-13 and 2013-14. Therefore, the offer and allotment of debentures by RMPL 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. As the noticee company has prima facie made a public issue of its NCDs, it was under an obligation to comply with relevant provisions of the Companies Act that would apply to a public issue of shares or debentures as well as the relevant provisions of the SEBI (Issue of Listing of Debt Securities) Regulations, 2008. Section 73 of the Companies Act, 1956 [corresponding Section 40 of Companies Act, 2013] mandates that such securities shall be listed on a recognized stock exchange. As per this provision, 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 recognized stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange. RMPL having failed to disclose about such securities to any recognized stock exchange has violated the provisions of Section 73 of Companies Act, 1956.
10. Further, as per Section 60 read with Section 2(36) of the Companies Act, 1956 [corresponding Section 389 read with Section 2(70) of the Companies Act, 2013], a company needs to register its prospectus with the RoC, before making a public offer or issuing the prospectus. Being a public offer, RMPL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. But as per documents available on record, RMPL did not file the prospectus and thus has violated these provisions. Section 56(1) of the Companies Act, 1956

provides that every prospectus issued by or on behalf of a company shall contain the details specified in the provision. It prima facie appears that RMPL had not complied with the provisions of Section 56(1) of the Companies Act, 1956.

11. As per Section 117C of the Companies Act, 1956 [Section 71(4) of the Companies Act, 2013] where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited out of its profits every year until such debentures are redeemed. Based on the available documents, it is observed that the RMPL did not comply with the provisions of Sections 117C of the Companies Act, 1956 as well.
12. The relevant provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 required to have been complied with in the given facts and circumstances are listed as under:
 - a) Regulation 4(2)(a) – Application for listing of debt securities;
 - b) Regulation 4(2)(b) – In-principle approval for listing of debt securities;
 - c) Regulation 4(2)(c) – Credit rating has been obtained;
 - d) Regulation 4(2)(d) – Dematerialization of debt securities;
 - e) Regulation 4(4) – Appointment of Debenture Trustees;
 - f) Regulation 5(1) - Offer document to contain all material information necessary for taking informed investment decision
 - g) Regulation 5(2)(b) – Disclosure requirements in the Offer Document;
 - h) Regulation 6 – Filing of draft Offer Document;
 - i) Regulation 7 – Mode of disclosure of Offer Document;
 - j) Regulation 8 – Advertisements for Public Issues;
 - k) Regulation 9 – Abridged Prospectus and application forms;
 - l) Regulation 12 – Minimum subscription;
 - m) Regulation 14 – Prohibition of mis-statements in the Offer Document;
 - n) Regulation 15 – Trust Deed;
 - o) Regulation 16(1) – Debenture Redemption Reserve;
 - p) Regulation 17 – Creation of security;
 - q) Regulation 19 – Mandatory Listing;
 - r) Regulation 26 – Obligations of the Issuer, etc.
13. Upon consideration of the aforementioned paragraphs, I am of the view that RMPL is engaged in raising money from the public through the offer and issuance of NCDs which is, prima facie, in breach of the aforementioned provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

14. It is also observed from the extracts of the minutes of the Meeting of Board of Directors of RMPL held on March 30, 2012 and other documents that RMPL appointed M/s Reliable Mega Projects Trust represented by Santosh Panwar as Debenture Trustee for the issuance of NCDs. As per Section 12(1) of the SEBI Act "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("*Debenture Trustees Regulations*"), provides that: "*no person should act as a debenture trustee unless he is either –*
- i. a scheduled bank carrying on commercial activity; or*
 - ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
 - iii. an insurance company; or*
 - iv. body corporate."*
15. It is observed that RMPL had appointed a Debenture Trustee which is not registered with SEBI. A letter dated August 04, 2017 was sent to Santosh Panwar by SEBI, but no reply was received. Based on the material available on record, I find that M/s Reliable Mega Projects Trust represented by Santosh Panwar has prima facie failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as an unregistered Debenture Trustee, which is a violation of the provisions of Section 12(1) of SEBI Act, 1992 and Regulation 7 of SEBI (Debenture Trustee) Regulations, 1993.
16. In terms of section 73(2) of the Companies Act, 1956, 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). As per available information, Devendra Kumar, Madhusudan Makwana, Jitendra Singh Dagala, Bhagwati Bai, Rohit Patwa and Santosh Panwar were directors of RMPL during the time when the securities were issued and allotted and are responsible for the mobilisation of money from the public and its non-refund in violation of the provisions stated above.
17. 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 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 of SEBI Act, 1992 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 to any company in respect of issue of capital, transfer of securities etc., in the interest of investors in securities and the securities market.

18. Protecting the interest of investors is the prime mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure that issue of securities to the public is carried out in accordance with the applicable provisions of law as cited in the foregoing paragraphs. It can be reasonably inferred that the money mobilization on the part of RMPL is placing the potential investors at risk as the company is not following the requirements of law applicable to a public issue. As per available information, the company has mobilised at least Rs.51,05,095/-. Further, the company and its directors have not co-operated with SEBI in the examination of the matter and company has not complied with filing of annual reports and balance sheet. Therefore, I am of the view that there is no other alternative but to take recourse through an interim action against RMPL and its Directors for preventing them from carrying on further with the issuance of NCDs to the public.

Directions

19. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act read with regulation 28 of the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions, which shall take effect immediately and shall remain in force till further directions: –
- i. RMPL shall cease to offer and issue NCDs or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly.
 - ii. RMPL and its directors, viz Devendra Kumar, Madhusudan Makwana, Jitendra Singh Dagala, Bhagwati Bai, Rohit Patwa and Santosh Panwar shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves as directors with any listed company or company intending to raise money from the public.
 - iii. RMPL and its abovementioned Directors shall neither dispose of nor alienate or encumber any of its/their assets or properties or divert any fund raised from the public through offer and allotment of NCDs, without prior permission from SEBI.

- iv. RMPL and its above named directors shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and issuance of securities, including the documents sought earlier.

20. The prima facie observations contained in this Order are made on the basis of the material available on record i.e. complaints received from investors along with the documents, information received from ROC and MCA 21 portal. In this context, RMPL and its abovementioned Directors, its Debenture Trustee M/s Reliable Mega Projects Trust represented by Santosh Panwar (hereinafter referred to as the “Noticee”) 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. RMPL and its directors to jointly and severally refund the money collected through the *offer and allotment of NCDs*, with a simple 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 certificate of two independent Chartered Accountants to the satisfaction of SEBI, and
- ii. RMPL and its directors to 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 mentioned above.
- iii. The Debenture Trustees viz. Santosh Panwar—
 - (a) to 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 this Order.
 - (b) to be restrained/prohibited from acting as Debenture Trustee in respect of debentures of RMPL and from taking up any assignment or involve itself in any issue of securities in a similar capacity whatsoever, directly or indirectly, without obtaining registration as a Debenture Trustee.

21. 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 along with their reply. If 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 reply or requesting for an opportunity of personal hearing within the said 90 days, the prima facie findings regarding the violations at paragraph 8 to 18 of this Order and the directions at paragraphs 19 and 20 shall become final and absolute against the Noticees automatically, without any further orders. Consequently, the Noticees shall automatically be bound by the directions contained in paragraphs 19 and 20, as applicable. The restrictions/prohibitions imposed upon Noticees shall continue till the expiry of four years from the date of completion of repayment.

22. In case of failure by the respective Noticees to comply with the aforesaid directions within a period of 180 days from the date of receipt of this Order, SEBI may initiate appropriate enforcement action under SEBI Act including Recovery proceedings, Adjudication or Prosecution in addition to making a suitable reference to State Government/Local Police.
23. 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, its directors and debenture trustee.

Date: April 20, 2018

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER