

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 Vikdas Industries Limited

In re Deemed Public Issue Norms

In respect of:

Sl.No.	Name of the Entity	PAN	DIN
1.	Mr. Ram Kumar Sinha	APYPS1402F	02460975

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) passed an Order dated February 24, 2016, *inter alia*, in respect of Mr. Ram Kumar Sinha (hereinafter referred to as “Noticee”) in the matter of Vikdas Industries Limited (hereinafter referred to as “Vikdas”/ “the Company”). The said Order, *inter alia*, made the following findings qua the Noticee:

“From the ‘MCA-21 portal’ accessed on February 23, 2016, it is noted that the name of one Mr. Ram Kumar Sinha is also appearing in the list of signatories. I note that he became the director of the Company on August 05, 2015.I also hold that Mr. Ram Kumar Sinha being the present director of the Company, he is also under liability to make repayments to investors in terms of Section 73 of the Companies Act, 1956. In view of the same, SEBI is advised to issue a show cause notice to him for any further appropriate directions in case the Company and its directors fail to refund the amounts collected from investors against offer and/ or allotment of NCDs.”

2. In the light of the above, vide the Order dated February 24, 2016, the following directions

Order in respect of Mr. Ram Kumar Sinha in the matter of M/s Vikdas Industries Limited

were issued against Mr. Ram Kumar Sinha and other entities:

*“The Company, **Vikdas Industries Limited** [PAN: AADCV5860F], **Mr. Indranil Sinha** [PAN: ATIPS7061A], **Mr. Debasish Das** [PAN: AGWPD4747K], **Mr. Sandip Paul** [PAN: BBAPP0971P], **Mr. Goutam Chatterjee** [PAN: ADWPC8320Q], **Mr. Ramen Chatterjee** [PAN: ACTPC0530E], **Mr. Sachin Kumar Thakur** [PAN: AJUPT3341C], **Mr. Jadunath Jena** [PAN: ANUPJ8465D], **Mr. Bhabagrahi Behera** [PAN: ASWPB3847N] and **Mr. Ram Kumar Sinha** [DIN: 02460975] jointly and severally, shall forthwith refund the money collected by the Company through the issuance of **Secured Non-Convertible Redeemable Debentures** (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956), to the investors including the money collected from investors, till date, pending allotment of NCD, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.”*

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*In case of failure of **Vikdas Industries Limited**, **Mr. Indranil Sinha**, **Mr. Debasish Das**, **Mr. Sandip Paul**, **Mr. Goutam Chatterjee**, **Mr. Ramen Chatterjee**, **Mr. Sachin Kumar Thakur**, **Mr. Jadunath Jena**, **Mr. Bhabagrahi Behera** and **Mr. Ram Kumar Sinha** to comply with the aforesaid directions SEBI, on the expiry of the three months period from the date of this order,-*

...

- v. shall issue a show cause notice to Mr. Ram Kumar Sinha for any further appropriate directions including restraining him from accessing the securities market.*

.....

3. The Noticee vide letter dated March 03, 2016 replied to the Order dated February 24, 2016. Meanwhile, since the Noticee failed to comply with the direction to refund the money collected from investors, SEBI issued a Show Cause Notice (“SCN”) dated

December 19, 2017 under Section 11(1), 11(4) and 11B of SEBI Act, 1992 to the Noticee, asking him to show cause as to why appropriate directions including the directions restraining the Noticee from accessing the securities market and prohibiting him from buying, selling or otherwise dealing in securities for an appropriate period, under Section 11(1), 11(4) and 11B of SEBI Act, 1992 should not be issued against him, for non-compliance of directions contained in the Order dated February 24, 2016.

4. The Noticee was advised to reply to the SCN within 15 days from the receipt of the SCN. SEBI informed the Noticee that in case of failure to reply, it would be presumed that he had no explanation to offer and that the matter would be proceeded on the basis of the evidence available on record. The Noticee was further advised to indicate if he would like to avail an opportunity of personal hearing before SEBI.
5. The SCN was delivered to the Noticee by way of Speed Post with Acknowledgment.
6. Thereafter, vide hearing notice dated March 05, 2018, an opportunity of being heard was given to the Noticee on April 19, 2018 at the time and the venue mentioned therein.
7. *Hearing and submissions:* The Noticee attended the hearing held on April 19, 2018 through Video Conferencing at Ranchi Local Office, SEBI at Ranchi. During the hearing the Noticee made the following submissions.
 - i. “That he was not aware of the fact of his directorship in the Company.
 - ii. He had given his identity proofs to one Mr. Raju Ghosh for the purpose of getting a job in one of the Company run by Mr. Raju Ghosh.
 - iii. When SEBI’s letter came to him, he became aware that he was made director in the Company. At that point of time he was working as a newspaper agent in Delhi.
 - iv. The signature in the consent letter filed before the RoC is forged and fabricated by the Company.”
8. I have considered the allegations and materials available on record such as Order dated February 24, 2016, the submissions of the Noticee, documents downloaded from MCA21 Portal, etc. On perusal of the same, the following issue arises for consideration.

- *Whether the Noticee is liable to be debarred as envisaged in the Show Cause Notice dated December 19, 2017*

9. I note from the Order dated February 24, 2016 that Vikdas had issued and allotted NCDs to 206 investors during the financial years 2011-2012 and 2012-2013 and raised at least an amount of Rs. 71.38 lacs. I note that the said Order had, on the basis of material available on record, found that Vikdas engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act, 1956, and various provisions pertaining to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.
10. I also note that vide the Order dated February 24, 2016, the liability of the Noticee to make repayments to the investors is already determined. The said Order also recorded a finding that the Noticee was appearing in the list of signatories of the Company as per MCA21 Portal and his date of appointment was shown as August 05, 2015 and continuing as a director of the Company. However, I note that the said findings have been rendered in the order without granting an opportunity of being heard to the Noticee. The Order dated February 24, 2016 recorded a finding that the Noticee was appearing in the list of signatories of the Company as per MCA21 Portal and his date of appointment was shown as August 05, 2015 and continuing as a director of the Company. I further note that on receipt of the Order dated February 24, 2016, Noticee vide letter dated March 03, 2016 submitted that he was wrongfully appointed as director of the Company without his prior consent and communication. The Noticee has also claimed that forged documents were submitted to Registrar of Companies (RoC) for the said appointment. In support of his submission, the Noticee submitted following documents:-
 - i. E-Form DIR 12 filed by the company for the appointment of the Noticee;
 - ii. Legal Notice dated March 03, 2016 sent to the directors of Vikdas along with the proof of despatch;

- iii. Attachment of E-Form DIR 12 viz., Consent letter wherein allegedly his signature was forged by the Company and its directors;
- iv. Complaint Letter to RoC, Kolkata attaching copy of his PAN card.

11. I also note that during the personal hearing before me the Noticee reiterated the above submissions. I have perused the documents submitted by the Noticee in support of his claim of forgery. I note that the Noticee has not adduced any document which goes to prove his claim of forgery. The copy of the Legal Notice dated March 03, 2016 sent to the directors of Vikdas along with the proof of despatch cannot be sufficient to prove the forgery claimed by the noticee. In view of the same, the claim of forgery could not be proved by the noticee. Therefore, I am constrained to hold relying upon the MCA records that the Noticee was appointed as a director of the Company on August 05, 2015 and continuing as a director till date.

12. However, I also note that Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, held that that the obligation of the director to refund the amount with interest jointly and severally with the Company and other directors is limited to the extent of amount collected during his/her tenure as director of the company. Since the Noticee was appointed as director of the company only after the issuance period which was during the financial years 2011-2012 and 2012-2013 as determined in the Order dated February 24, 2016, I am of the view that the, Noticee is not liable for refund of money as he was not a director during the relevant time of fund mobilization.

13. However, 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.

14. 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, the Noticee 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, the Noticee is liable to be debarred for an appropriate period of time.
15. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and ensuring repayment as directed under section 73(2) of the Companies Act, 1956, is to direct the Noticee to ensure refund of the monies collected, with interest to such investors. Also, in order to safeguard the interest of the investors and to further ensure orderly development of securities market, the Noticee becomes liable to be debarred for an appropriate period of time.
16. In view of the above, the earlier findings/consequential findings/directions in the Order dated February 24, 2016, qua the Noticee stands modified. Accordingly, the basis for debarment also changes from non-compliance of Order dated February 24, 2016 to failure to ensure refund to the investors by the Company. The findings as to the status of the Noticee as director and the consequent liability of the noticee has been rendered in the

present order. In satisfaction of the principles of natural justice, the findings rendered against the Noticee would become final only on giving an opportunity to the Noticee to file objections and if objections are filed, after considering the objections. Accordingly, appropriate directions in this order are incorporated.

17. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following direction:

Mr. Ram Kumar Sinha 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. Mr. Ram Kumar Sinha is also restrained from associating himself 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.

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

19. The effect and implementation of this Order against Noticee is subject to expiry of 60 days from the date of service of this order, unless the Noticee, within such period of 60 days from the date of service of this order files his objections. If no objections are filed, within the said time, this present Order will come into effect on the expiry of 60 days from the date of service of this order. If objections are filed by the Noticee, the directions passed herein against Noticee shall be made applicable subject to the determination of the objections.

20. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.

21. 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 the Company and the individuals.

DATE: May 16, 2018

PLACE: Mumbai

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