

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 read with Sections 56(1), 56(3) and 56(4), Section 60 and Section 73(2) of the Companies Act, 1956 and Securities and Exchange Board India (Disclosure and Investor Protection) Guidelines, 2000 read with Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009

In the matter of Micro Finance Limited

In re Deemed Public Issue

In respect of:

Serial no.	Entity Name	PAN	DIN
1	Dr. Jugal Kishore Satapathy	AOEPS8695B	Not available

CASE FACTS

1. Micro Finance Limited (hereinafter referred to as “**MFL**”/ “**the Company**”) is a Public company incorporated on July 25, 1983 and registered with Registrar of Companies–Cuttack with CIN: U65923OR1983PLC001232. Its registered office is at Plot No. 68(P) 2nd Floor, N H 5, Rasulgarh, Bhubaneswar, Odisha - 751010.
2. Securities and Exchange Board of India (hereinafter referred to as ‘**SEBI**’) conducted a preliminary examination into the issuance of Cumulative Convertible Preference shares (hereinafter referred to as ‘**CCPS**’) by MFL with a view to ascertain the possible violations of the public issue norms stipulated under the Companies Act, 1956, Securities and Exchange Board India (Disclosure and Investor Protection) Guidelines, 2000 (as applicable at the relevant point of time) (hereinafter referred to

as ‘**DIP Guidelines**’) and SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (hereinafter referred to as ‘**ICDR Regulations**’). Pursuant to the examination, SEBI passed an interim order dated January 14, 2015 (hereinafter referred to as “**interim order**”) against MFL and its promoters and directors namely Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain, Dr. Jugal Kishore Satapathy and Mr. Bijoy Kumar Routray.

3. SEBI had granted an opportunity of personal hearing after the passing of the interim order scheduled on August 19, 2015. The scheduled date was communicated to MFL and its directors and promoters, Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain, Dr. Jugal Kishore Satapathy and Mr. Bijoy Kumar Routray, vide letter dated July 22, 2015. The hearing notice was also communicated vide public notice dated August 8, 2015, in the newspapers *The Times of India* and *The Samaja*. Vide the public notice the company and its directors were advised that in case they fail to appear before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of the material available on record.
4. On the date fixed for the personal hearing i.e. on August 19, 2015 one Mr. Tapa Kumar Acharya, Advocate appeared on behalf of the company, Mr. Durga Prasad Misra and Mr. Ashok Kumar Patnaik.
5. Thereafter, SEBI vide Final Order bearing no. WTM/RKA/ERO/BLO/161/2016 dated October 27, 2016 ("Final Order"), passed directions against MFL and its promoters and directors including Mr. Durga Prasad Misra [PAN: AATPM7049N], Mr. Ashok Kumar Patnaik [PAN: ABMPP5207H], Mr. Baikuntha Nath Patnaik [PAN: AAQPP3037J], Mr. Dharmananda Swain [PAN: AXRPS2952F], Dr. Jugal Kishor Satapathy [PAN: AOEPS8695B] and Mr. Bijoy Kumar Routray [PAN: AIBPR3316B], for violating the provisions of Section 56, Section 60 read with Section 2(36) and Section 73 of the Companies Act, 1956, and 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, 6.0, 6.1 to 6.15, 6.16 to 6.34

including 6.17.13, 8.3, 8.8.1, 9, 10.1, 10.5 of the DIP Guidelines and Regulations 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 63 of the ICDR Regulations by engaging in fund mobilising activity from the public, through the issue of CCPS.

6. As per the findings contained in the Final Order, the offer and allotment of CCPS made by MFL to 1,21,222 investors from the Financial Years 2005-2006 to 2012–2013, for the mobilization of Rs. 88,91,98,400/- has been held to be a public issue of securities within the first proviso to Section 67(3) of the Companies Act, 1956.
7. Final Order was delivered to Dr. Jugal Kishore Satapathy (hereinafter referred to as ‘the Noticee’) vide letter dated October 28, 2016 which was delivered. Thereafter, the Noticee replied vide letter dated December 8, 2016 wherein it was stated *inter alia*, that he had never received any intimation/notice for such appearance and requested for a chance to appear in person before SEBI. Thereafter, an appeal bearing no. 61/2017 was filed before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as ‘SAT’) by the Noticee on the ground that the Final Order was passed without giving an opportunity of personal hearing to the Noticee.
8. Thereafter, Hon’ble SAT vide order dated January 18, 2018, noted that since the notice of hearing was not served on the Noticee, the Final Order was set aside *qua* the Noticee and directed SEBI to pass fresh order after hearing the Noticee. Accordingly, the interim order dated January 14, 2015 was restored *qua* the Noticee and a fresh opportunity of hearing was to be provided to the Noticee.
9. *Prima facie findings/allegations*: Vide the order dated January 14, 2015, SEBI has held MFL and its promoters and directors namely Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain, Dr. Jugal Kishore Satapathy and Mr. Bijoy Kumar Routray, liable for the issuance of CCPS to 1,21,222 allottees and raising an amount of Rs. 88,91,98,400. In the interim order dated November 20, 2015, the following *prima facie* findings were recorded *qua* the Noticee
10. The Noticee, Dr. Jugal Kishore Satapathy, in his capacity as a Director of MFL, was

instrumental in the formulation of the alleged plan of mobilization of public funds through allotment of CCPS, and as a result of the aforesaid activity, had violated the applicable laws under Section 56, Section 60 read with Section 2(36) and Section 73 of the Companies Act, 1956, and SEBI Act read with the relevant provisions of the DIP Guidelines and the ICDR Regulations.

11. In view of the prima facie findings on the violations, the following directions were issued in the said interim order *qua* the Noticee, with immediate effect.

- i. "... Dr. Jugal Kishor Satapathy [PAN: AOEPS8695B] ... [is] restrained from mobilizing funds through the issue of cumulative convertible preference shares or through the issuance of equity shares or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
- ii. ... Dr. Jugal Kishor Satapathy ... [is] prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
- iii. ... Dr. Jugal Kishor Satapathy ... shall not dispose of any of the properties or alienate the assets of the Company or dispose off any of [his] properties or alienate [his] assets.
- iv. ... Dr. Jugal Kishor Satapathy ... shall not divert any funds raised from public at large through the issuance of the impugned cumulative convertible preference shares, kept in [the Company's] bank accounts and/or in the custody of the Company without prior permission of SEBI until further orders.
- v. ... Dr. Jugal Kishor Satapathy ... [is] restrained from accessing the securities market and [is] further prohibited from buying, selling or otherwise dealing in

securities in any manner whatsoever, either directly or indirectly, till further directions.

vi. Micro Finance Limited and its promoter and directors ... shall co-operate with SEBI and shall furnish all the documents.

vii. Micro Finance Limited, its promoters and directors are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.”

12. The interim order also directed the Noticee to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, read with the ICDR Regulations, not be passed against them:

- i. directing them jointly and severally to refund the money collected through the issue of convertible preference shares that are impugned in this Order, along with interest that is promised to the investors;
- ii. directing them to not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
- iii. directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;
- iv. directing them and other companies in which their directors hold substantial or controlling interest, to not access the capital market for an appropriate period.

13. Vide the said interim order, the Noticee was given the opportunity to file his replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

14. *Service of interim order:* The copy of the said interim order was sent to the Noticee vide letter dated January 14, 2015 which was delivered to the Noticee. Thereafter, vide letter dated February 3, 2015 Noticee submitted his reply wherein it was stated *inter alia* that:
- i. The Noticee had joined as an Honorary Director of the Company on October 7, 2005 and was relieved of his assignment by the Managing Director on May 25, 2013, and finally by the Company on October 31, 2013.
 - ii. The Company started issuing CCPS from September 30, 2005, i.e. before the date of his induction as an Honorary Director in the Company.
 - iii. The Noticee was never directly involved in the process of running the business of the Company.
15. Pursuant to the direction of Hon'ble SAT, a fresh opportunity of personal hearing scheduled on May 2, 2018, was granted to the Noticee vide letter dated April 2, 2018. The Noticee vide letter dated April 17, 2018 informed that his authorized representative would be appearing for the personal hearing at SEBI, Head Office, Mumbai.
16. *Hearing and submissions:* Ms. Kainaz Irani, Advocate, appeared on behalf of the Noticee and made oral and written submissions wherein, it was submitted *inter alia*, that:
- a. The Noticee was an Honorary Director without any Director Identification Number (DIN).
 - b. The Noticee joined as a Director of the Company on October 7, 2005, i.e. after the initiation of money mobilization by the Company. The Noticee was not involved in the day to day functioning of the Company and was not in charge of any specific functions of the Company.
 - c. The Noticee did not own any shares in the Company and does not possess a demat account. The Noticee did not sponsor or encourage any shareholders during his tenure as an Honorary Director and did not attend any Board meeting of the Company.
 - d. The Noticee had resigned as a director on May 25, 2013, which was accepted by

the Company on October 31, 2013.

17. Ms. Kainaz Irani, Advocate, was handed over copy of the Form of Annual Return for the AGM dated 30/09/2010, as obtained from the MCA records, wherein the Noticee's name appeared as a Director of the Company. The Noticee was given time till May 23, 2018 to file additional written submissions, highlighting particularly on the issues as to the Company's aforesaid filing as a director with the Registrar of Companies.
18. Vide email dated May 18, 2018, the Noticee filed his additional written submissions, stating *inter alia* the following:
 - i. Mr. Durga Prasad Mishra, director of MFL, approached the Noticee, and told him that the Company was looking for reputed people from different fields to be appointed as Honorary Director. Therefore, at his request, the Noticee became an Honorary Director (without remuneration) of MFL. The Noticee never received any benefit from the Company.
 - ii. The Company issued a Certificate stating that the Noticee joined as an Honorary Director from October 7, 2005.
 - iii. The Noticee has never received any Director Identification Number (DIN), during his tenure as an Honorary Director. Further, the Noticee has quoted legal provisions under the Companies Act, 1956 to highlight the submission that it is essential for a Director of a Company to have a DIN, and since the Noticee never received DIN, he cannot be recognized as a Director of MFL.
 - iv. Company started issuing and allotting CCPS from September 30, 2005, i.e. before the Noticee's appointment.
 - v. The Noticee does not own any share of MFL and does not possess a Demat Account. His only source of income is his pension that he receives from the Government and he does not own any property. Savings Bank Account details have been provided by the Noticee, wherein the pension amount is deposited.
 - vi. Orders were passed by the Court of Special Chief Judicial Magistrate (CBI) in SPE

nos. 41(A) and 41(B)/2014 against Mr. Durga Prasad Mishra and Mr. Ashok Kumar Pattnaik wherein it was recorded that the Company being an artificial juristic person, Mr. Ashok Pattnaik was directed to pay compensation amount of Rs. 105 crores being guilty under the IPC, and Mr. Durga Prasad Mishra being the key man in the management and affairs of Micro Finance Group of Companies, who accepted the liability for and on behalf of the Companies, was directed to pay compensation of Rs. 215 crores, being guilty under the IPC. In view of this, the Noticee submitted that since both Mr. Ashok Kumar Pattnaik and Mr. Durga Prasad Mishra have confessed before the Hon'ble Court and accepted the liability for and on behalf of the Company to pay the unpaid depositors, the present proceedings against the Noticee should be dropped.

19. I have considered the allegations and materials available on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

(1) Whether the company came out with the Offer of CCPS as stated in the interim order.

(2) If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956 read with the relevant provisions of the DIP Guidelines and the ICDR Regulations.

(3) If the findings on Issue No.2 are found in the affirmative, whether the Noticee is liable for the violation committed?

ISSUE No. 1- Whether the company came out with the Offer of CCPS as stated in the interim order.

20. I have perused the interim order dated January 14, 2015 and I note that the Noticee has not filed any reply disputing the same.

21. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the records from MCA, that MFL has issued and allotted CCPS to 1,21,222 investors during the financial years 2005-2006 to

2012-2013 and raised an amount of Rs. Rs. 88,91,98,400/-. I also note that the number of allottees and funds mobilized has been collated from the documents collected from the documents / information obtained from the MCA 21 Portal. The details of allotment are as below:

Sr. No	Date of Allotment of CCPS	No. of CCPS Allotted	No. of Allottees	Value of such Allotment	Amount of Subscription
1	30-09-2005	42386	469	4238600	4238600
2	21-12-2005	180150	1226	18015000	18015000
3	30-06-2006	41000	789	4100000	4100000
4	16-04-2007	20817	546	2081700	2081700
5	27-04-2007	34699	954	3469900	3469900
6	30-04-2007	45542	941	4554200	4554200
7	17-07-2007	46861	3089	4686100	4686100
8	24-07-2007	91210	6703	9121000	9121000
9	29-09-2007	335398	8443	33539800	33539800
10	26-03-2008	427429	11171	42742900	42742900
11	24-06-2008	765664	19279	76566400	76566400
12	05-09-2008	549637	13762	54963700	54963700
13	18-09-2008	194272	4605	19427200	19427200
14	20-10-2008	194696	4733	19469600	19469600
15	30-01-2009	632640	15764	63264000	63264000
16	17-07-2009	266043	1989	26604300	26604300
17	27-07-2009	47916	768	4791600	4791600
18	19-10-2009	219732	1677	21973200	21973200
19	26-12-2009	163379	1676	16337900	16337900
20	15-02-2010	37141	403	3714100	3714100
21	06-03-2010	36612	307	3661200	3661200
22	29-03-2010	36035	342	3603500	3603500
23	11-05-2010	40180	412	4018000	4018000
24	17-07-2010	53795	587	5379500	5379500
25	21-08-2010	30550	289	3055000	3055000
26	22-09-2010	41250	388	4125000	4125000
27	30-10-2010	35075	304	3507500	3507500
28	16-12-2010	168171	1247	16817100	16817100
29	28-02-2011	271167	1376	27116700	27116700
30	12-04-2011	129566	659	12956600	12956600

31	20-05-2011	138569	881	13856900	13856900
32	12-08-2011	110833	643	11083300	11083300
33	25-10-2011	297283	1325	29728300	29728300
34	21-03-2012	268235	1074	26823500	26823500
35	31-03-2012	376574	1553	37657400	37657400
36	18-06-2012	992371	4798	99237100	99237100
37	17-08-2012	665366	2829	66536600	66536600
38	25-03-2013	863740	3221	86374000	86374000
	TOTAL		121222		889198400

22. I therefore conclude that MFL came out with an offer of CCPS as outlined above. The same has also been decided vide Final order dated October 27, 2016.

ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956 read with the relevant provisions of the DIP Guidelines and the ICDR Regulations.

23. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the Offer of CCPS made to the public. Therefore the primary question that arises for consideration is whether the issue of CCPS is ‘public issue’. At this juncture, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

"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).”

24. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI* (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the “***Sahara Case*”**), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

“Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the “section of the public”. Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is 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 otherwise as being a domestic concern of the persons making and

receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”

25. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not 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, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

26. In the instant matter, I find that CCPS were issued by MFL to 1,21,222 investors from the

financial years 2005-2006 to 2012-2013. I find that MFL has mobilized an amount of Rs. Rs. 88,91,98,400/- over the financial years 2005-2006 to 2012-2013. The above findings lead to a reasonable conclusion that the *Offer of CCPS* by MFL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

27. I find that MFL has not claimed to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that MFL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
28. The Noticee has not contended that the *Offer of CCPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
29. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that “In terms of Section 67(3) of the Companies Act any issue to ‘50 persons or more’ is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning”.
30. Therefore, in view of the material available on record, I find that the *Offer of CCPS* by MFL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of CCPS* are deemed to be public issues and MFL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956. The same has also been

decided vide Final order dated October 27, 2016.

31. Further, since the offer of CCPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered 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.
32. The allegations of non-compliance of the above provisions were not denied by the Noticee. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that MFL has contravened the said provisions. The Noticee has not provided any records to show that the amount collected by MFL is kept in a separate bank account. Therefore, I find that MFL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with. The same has also been decided vide Final order dated October 27, 2016.
33. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of CCPS was a deemed public issue of securities, MFL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that the Noticees have not submitted any record to indicate that MFL has registered a prospectus with the RoC, in respect of the offer of CCPS. I, therefore, find that MFL has not complied

with the provisions of section 60 of the Companies Act, 1956. The same has also been decided vide Final order dated October 27, 2016.

34. In terms of 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. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. The Noticee has not produced any record to show that MFL has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, MFL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956. The same has also been decided vide Final order dated October 27, 2016.
35. The Company was also required to comply with the following provisions of the DIP Guidelines read with regulation 111 of the ICDR Regulations in respect of the offer and allotments made during FY 2008–09:

- 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 – (Despatch of issue material),*
- p. Clause 5.8 – (No complaints certificate),*
- q. Clause 5.9 – [Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)],*
- r. Clause 5.10 – (Authorised 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),*
- v. Clause 6.1 to Clause 6.15 (contents of prospectus)*
- w. Clause 6.16 to Clause 6.34 (contents of abridged prospectus) including Clause 6.17.13*
- x. Clause 8.3 – (Rule 19(2)(b) of SC(R) Rules, 1957),*
- y. Clause 8.8.1 – (Opening & closing date of subscription of securities),*
- z. Clause 9 – (Guidelines on advertisements by Issuer Company),*
- aa. Clause 10.1 – (Requirement of credit rating),*
- bb. Clause 10.5 – (Redemption).*

36. I note that the Company continued to issue CCPS in the years 2009, 2010, 2011, 2012 and 2013, during which the provisions of ICDR Regulations needed to be complied with, which lays down the eligibility norms, disclosure norms and other procedural requirements, for ensuring protection of investor in the case of issue of securities. The relevant clauses of the ICDR Regulations, which MFS failed to comply with in respect of its issuance of CCPS are:

- Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)),
- 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),
- Satisfy 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)
- Issuer to appoint compliance officer who would be responsible for monitoring the compliance of securities laws and for redressal of investors' grievances. (Regulation 63).

The same has also been decided vide Final order dated October 27, 2016.

37. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara Case*, had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

38. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase “intend to get listed” in the context of deemed public issue the Hon’ble Supreme Court in *Sahara Case* observed-

“...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...”

“...Listing of securities depends not upon one’s volition, but on statutory mandate...”

“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”

39. In view of the above findings, I am of the view that MFL was engaged in fund mobilizing activity from the public, through the offer of CCPS and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956. The same has also been decided vide Final order dated October 27, 2016.

ISSUE No. 3- If the findings on Issue No.2 are found in the affirmative, whether the Noticee is liable for the same?

40. From the MCA records relating to the directorship of the Company, I find that the Noticee is not appearing as a director of the Company. However, on perusal of the copy of the Form 20B as filed with the RoC, for the financial year ending March 31, 2010, I note that the Noticee is stated to have been a director of the Company since August 30, 2005. The Noticee himself has submitted a certificate from the Company under the seal of the

Managing Director of the Company dated July 14, 2006, which certifies that the Noticee had joined MFL as an Honorary Director albeit on October 7, 2005. I note that Form 20B is only a declaration of the Company, and I am of the view that the Noticee should be considered to have joined the Company as the Director on October 7, 2005, as submitted by him. Further, I note that the Noticee has submitted that he resigned as an Honorary Director of the Company on May 25, 2013 which was accepted by the Company on October 31, 2013. However, there is no term in the Articles of Association of MFL to suggest that resignation of any director takes effect only from the date of acceptance by the Company of the communication of such resignation. Thus the tabulated details of directorship of the Noticee are as follows:

Name of the director	Date of appointment	Date of cessation
Dr. Jugal Kishore Satapathy	October 7, 2005	May 25, 2013

41. I note that the Noticee has relied on section 266A of the Companies Act, 1956, wherein every individual intending to be appointed as a director of a Company or a Director of a Company who was appointed before the commencement of the amendment bringing about this requirement, is required to make an application for allotment of DIN. Based on the said legal provision, it has been submitted by the Noticee that since he did not possess a DIN, he could not be recognized as a Director of the Company. I find no merit in the submission, as the said provision mandates the directors appointed prior to the amendment to apply for DIN. Non-compliance of legal provisions as a Director, cannot be taken as an avenue to absolve the Noticee of his liabilities as a Director of the Company once he has admitted to having been appointed as an Honorary Director of the Company, and has held himself out as a Director. I am of the view that the position of an Honorary Director of a Company, is neither recognized as any different nor is without the liabilities and responsibilities as would be ascribed to a Director of a company. Albeit an Honorary Director, by the description of the position may not be getting any compensation as a Director, except possibly an Honorarium. However, for all intents and purposes, due to his appointment as an Honorary Director of the Company, as seen from the certificate

dated July 14, 2006, the Noticee would be liable as a Director of the Company.

42. I note that the Noticee has vide written submissions dated May 18, 2018, has brought on record two orders of the Special Chief Judicial Magistrate, CBI, bearing nos. SPE No. 41(A)/2014 passed against Mr. Ashok Kumar Pattnaik, Managing Director representing MFL and SPE 41(B)/2014 passed against Mr. Durga Prasad Mishra, Managing Director representing other companies of the Micro Group. I note that in both the orders, the Court has imposed *inter alia*, compensation amounts of Rs. 105 crores and Rs. 215 crores, respectively for the violation of provisions of the Indian Penal Code. Further I note that the Court observes that Mr. Durga Prasad Mishra had categorically submitted during the confessional statement that he being the key man in the management and affairs of Micro Finance Group of companies, accepted the liability for and on behalf of the Companies. The Noticee has submitted that in view of the above, the Noticee may be absolved of the liability of the non-compliances which has been admittedly accepted by other directors of MFL. However, even though Mr. Ashok Kumar Pattnaik and Mr. Durga Prasad Mishra may have undertaken to accept the liability on behalf of the Company and other directors, with respect to the violation of the Indian Penal Code, I am of the opinion that the same does not absolve the Noticee of his liabilities for the non-compliance with the provisions of securities laws.
43. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, the Noticee is held liable for the violation of sections 56(1), 56(3) read with section 56(4) and 60 of the Companies Act, 1956.
44. With respect to the provisions of the DIP Guidelines and ICDR Regulations enumerated on paragraphs 35 and 36 of this order, the liability is on the Company to comply with the requirements therein.

45. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.
46. From the material available on record and the details of the appointment and resignation of the Noticee as reproduced in paragraph 40 of this Order, it is noted that Dr. Jugal Kishore Satapathy was a director at the time of the issuance of CCPS. Since the Noticee was acting as a director during the period of issuance of CCPS, he was an officer in default as per Section 5(g) of Companies Act, 1956. I note that there is no evidence brought on record to suggest that the same has been rebutted. With regard to the submission that Mr. Ashok Kumar Pattnaik and Mr. Durga Prasad Mishra have accepted the liability before the Special Chief Judicial Magistrate, CBI, I note that there is no evidence forthcoming to show that the Court passed its judgment on the merit of whether they alone could be held liable as “officers in default” for violation of securities laws as the said Court dealt with the limited aspect of the violations of Indian Penal Code. Therefore, as per Section 5(g) of the Companies Act, 1956 the Noticee, as officer in default, is liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the Noticee is co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General

Rules and Forms, 1956, and section 27(2) of the SEBI Act. Therefore, I find that Dr. Jugal Kishore Satapathy jointly and severally, along with MFL and its other directors, is liable to refund the amounts collected from the investors with interest at the rate of 15% per annum, for the non-compliance of the above mentioned provisions.

47. I note that the Noticee was a director of the Company during the financial years 2005-2006 to 2012-2013. MFL through Offer of CCPS, had collected an amount of Rs. 88,91,98,400/- from various allottees. Therefore, in view of the Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the Noticee to refund the amount with interest jointly and severally with MFL and its other directors are limited to the extent of amount collected during their tenure as director of MFL.
48. I note from the written submissions dated May 18, 2018, filed by Dr. Jugal Kishore Satapathy, and the oral submissions made by his authorized representative at the personal hearing, that it has been claimed that Dr. Jugal Kishore Satapathy was merely an Honorary Director without any involvement in the day to day activities of MFL. It was also submitted that he did not attend any Board Meeting during his directorship. It was submitted that Mr. Durga Prasad Mishra had approached him to join the Company as an Honorary Director and he consented for the same. It was also submitted that he had did not have any shareholding in the Company. I note that Dr. Jugal Kishore Satapathy was an Honorary Director of the Company during the period of fund mobilization. At this juncture I would like to rely on Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI* wherein Hon'ble SAT has observed that:

“Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read

with Section 5 of the Companies Act, 1956.”

49. In the light of above reasoning it is clear that Dr. Jugal Kishore Satapathy has lent his name to be a director in the company. 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."

50. 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 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. Dr. Jugal Kishore Satapathy 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. Merely contending that he was an Honorary Director without a say in the daily management of the Company does not absolve him of his duty as a director of the Company.

51. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct the Noticee, viz. Dr. Jugal Kishore Satapathy to refund the monies collected, with interest to such investors. Further, in view of the

violations committed by the Noticee to safeguard the interest of the investors who had subscribed to such CCPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Noticee.

52. From the records available on MCA21 Portal, I note that Dr. Jugal Kishore Satapathy has not signed on any Board Resolutions or other filings of the Company with the RoC. Further, I note that the Noticee has brought on record two orders passed by the Special Chief Judicial Magistrate, CBI, dated June 29, 2017 and July 18, 2017 wherein, Mr. Ashok Kumar Pattnaik and Mr. Durga Prasad Mishra, respectively are stated to have accepted the liability to repay on behalf of the Company and other directors. In view of the same, even though Dr. Jugal Kishore Satapathy is jointly and severally liable for the refund along with MFL and its other directors, in case of a failure to refund, it would be appropriate that the recovery may be considered against the assets of the Company at first, if sufficient assets are available; then from Mr. Ashok Kumar Pattnaik and Mr. Durga Prasad Mishra, if sufficient assets are available; and finally from other directors including Dr. Jugal Kishore Satapathy. Appropriate directions in this regard are issued in this Order.
53. I also note that the Special Chief Judicial Magistrate, CBI had passed the aforesaid orders dated June 29, 2017 and July 18, 2017, respectively directing MFL to repay Rs. 105 crores, and directing Micro Finance Group Companies to repay Rs. 215 crores. Therefore, I am of the view that the recovery proceedings may be continued taking into consideration any compensation amount which may have been paid to the unpaid investors in CCPS issued by MFL from the aforesaid amounts. Appropriate directions in this regard are issued in this Order.
54. In view of the discussion above, appropriate action in accordance with law needs to be initiated against the Noticee, viz. Dr. Jugal Kishore Satapathy.

ORDER

55. 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 directions:

- a. Dr. Jugal Kishore Satapathy, jointly and severally with MFL and other directors as mentioned in Order dated October 27, 2015 shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of CCPS including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
- b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.
- c. Dr. Jugal Kishore Satapathy is directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, belonging to him.
- d. Dr. Jugal Kishore Satapathy is prevented from selling his assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except 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.
- e. Dr. Jugal Kishore Satapathy in his 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.
- f. After completing the aforesaid repayments, Dr. Jugal Kishore Satapathy in his 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") holding such certificate.

- g. SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from the persons liable to refund, as specified in paragraph 55(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws. The recovery officer may consider proceeding against the assets of the Company at first, if sufficient assets are available; then from Mr. Ashok Kumar Pattnaik and Mr. Durga Prasad Mishra, if sufficient assets are available; and finally from other directors as given in the order dated October 27, 2016 including Dr. Jugal Kishore Satapathy.
- h. If repayments to the investors with respect to CCPS issued by MFL, have been carried out from the compensation amounts of Rs. 105 crores and Rs. 215 crores, as required to be paid by MFL and Micro Finance Group Companies, as per the Orders dated June 29, 2017 and July 18, 2017 passed by the Court of Special Chief Judicial Magistrate, CBI, then recovery proceedings may be continued taking the same into consideration.
- i. Dr. Jugal Kishore Satapathy is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and is further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. Dr. Jugal Kishore Satapathy 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 from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.

- j. The above directions with respect to Dr. Jugal Kishore Satapathy shall come into force with immediate effect.
56. I note that the recovery proceedings with respect to Mr. Jugal Kishore Satapathy have been initiated. The said proceedings may be considered for continuation in consonance with the directions in the present Order.
57. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories, registrar and transfer agents, for information and necessary action.
58. 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 director.

DATE: June 5, 2018

MADHABI PURI BUCH

PLACE: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA