

WTM/AB/IMD-ERO/05/2020-21

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

**UNDER SECTIONS 11(1), 11(4), 11A(1)(b) AND 11B OF THE
SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH
SECTION 73 OF COMPANIES ACT, 1956**

In respect of:

Noticee no.	Name of the entity	DIN	PAN No.
1.	Mr. Pradeep Kumar Behera	07142138	Not Available
2.	Mr. Ravendra Kumar	07152043	Not Available
3.	Mr. Janak Bhagat	07142136	Not Available

(The aforesaid entities are hereinafter referred to by their respective names / Noticee numbers and collectively as “the Noticees”)

In the matter of Mass Infra Realty Ltd.

1. SEBI had passed an ex-parte interim order dated December 04, 2014 and after hearing the parties to the said interim order, had passed a final order dated April 25, 2016 (hereinafter referred to as “**the Final Order**”), against Mass Infra Realty Ltd. (hereinafter referred to as “**MIRL**”/“**the Company**”) and its directors for violation of public issue norms by the Company by issuing Non-Convertible Redeemable Debentures (hereinafter referred to as “**NCDs**”) to at least 14, 256 investors in the Financial Year 2011-12, 2012-13 and 2013-14 and thereby raising a sum of Rs. 37.90 crore (approximately) without following the applicable provisions of law for public issue of NCDs. The Final Order found that MIRL had violated Regulations 4(2), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 16, 17, 19 and 26 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”) and Sections 56, 60 (1), 73(1), 73(3), 117B, 117C of

Companies Act, 1956. The Final Order also found that Debenture Trust Suraksha and Mass Debenture Trust, had violated Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”). For the aforesaid violations, the Final Order issued certain directions to MIRL, its directors and the debenture trustee, *inter alia*, restraining them from accessing the securities market and from buying, selling or dealing in securities, in any manner whatsoever. The Final Order also directed MIRL and its directors named therein to jointly and severally refund the money collected by way of issue of NCD’s to investors.

2. The Final Order had also made some observations with respect to the Noticees in the present proceedings, which are reproduced below:

“23. Liability of directors:

g. Mr. Pradeep Kumar Behera and Mr. Ravendra Singh are the present directors of the Company having been appointed on April 08, 2015 (i.e. after the last available year of impugned issue of NCDs). Further **Mr. Janak Bhagat** became the director of the Company on April 08, 2015 (i.e. after the passing of the interim order) and has resigned from the post on July 17, 2015. Therefore, they are deemed to be aware of the proceedings against the Company.

However, they are not the noticees in the interim order. Being the directors of the Company, they too may be liable for making refunds in terms of Section 73(2) of the Companies Act read with Section 27 of the SEBI Act. SEBI is therefore advised to examine role of **Mr. Pradeep Kumar Behera, Mr. Ravendra Singhand Mr. JanakBhagat**, and initiate appropriate action against them, in accordance with law, including issuance of a show cause notice calling upon them to show cause as to why, suitable directions including the following should not be imposed upon them:

- a. directing them jointly and severally to refund the money collected through the issue of NCDs (as found to be unauthorisedly issued in this Order), along with interest at 15% per annum from the date

when the refunds became due to the investors till the date of repayment;

- b. directing them 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;*
- c. directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;*
- d. directing them and other companies in which they are directors/promoters holding substantial or controlling interest, to not access the capital market for an appropriate period.”*

3. On the basis of the aforesaid observations made in the Final Order, SEBI examined the role of the Noticees and accordingly, a show cause notice dated February 16, 2017 (hereinafter referred to as “**the SCN**”) came to be issued to the Noticees, *inter alia*, alleging that:

Quote

- I. Mr Janak Bhagat, Mr. Pradeep Kumar Behera and Mr. Ravendra Singh were appointed as the directors of the Company on April 08, 2015. Copy of the signatory details obtained from the MCA website is placed as Annexure 3. At the time of passing of the Final Order Mr. Janak Bhagat had resigned from the post of director w.e.f. July 17, 2015. Copy of latest signatory details obtained from MCA website is at Annexure 4.*
- II. Further, by making a deemed public issue, the company had to compulsorily list such securities in compliance with 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 recognised stock-exchange and if the permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.*
- III. The liability of the Company and the directors to repay under Section 73(2) of the Companies Act, 1956 and Section 27 of the SEBI Act, 1992 is a continuing liability and the same continues till all the repayments are made. Such liability is joint and several liability on them. Therefore, the directors who join (irrespective of whether they continue or resign)*

after the issue is also liable in making refunds as mandated therein. As per section 291 of Companies Act, 1956, the board of directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorised to exercise and do. Therefore, the board of directors being responsible for the conduct of the business of a company will be held liable for any non-compliance of law and such liability is also on individual directors.

- IV. *In the extant matter the Company had commenced the issuance of NCD's from October 5, 2011 and continued with its money mobilization activity till February 21, 2014. Having being inducted as directors after passing of the interim order and being part of the Board of Directors of the Company, Mr. Pradeep Kumar Behera, Mr. Ravendra Singh and Mr. Janak Bhagat, are deemed to be aware of the proceedings against the Company and they have not made the refunds to the investors. Therefore, they have violated section 73(2) of the Companies Act, 1956 read with section 27 of SEBI Act, 1992.*

Unquote

4. In view of the aforesaid allegations, the SCN called upon the Noticees to show cause as to why suitable directions including the following should not be issued against them in terms of Sections 11(1), 11(4), 11A(1)(b) and 11B of the SEBI Act, 1992:

Quote

- i. directing them jointly and severally to refund the money collected through the issue of NCD's alongwith interest at 15% per annum from the date when the refunds became due to the investors till the date of repayment;*
- ii. directing them 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 they are directors or promoters holding substantial or controlling interest, to not access the capital market for an appropriate period.*

Unquote

Reply, personal hearing and written submissions:

5. I note that the SCN's sent through speed post, on two addresses of the Noticees available on record, were returned undelivered. Hence, service of SCN was

attempted through affixture of SCN, however, service through affixture also failed. Finally, as a measure of last resort, service of SCN was effected through publication of an advertisement in newspapers, calling upon and informing the Noticees that the SCN was issued against them in this matter and that they could collect the same from SEBI office or access and download it from the SEBI website. The advertisements relating to issue of SCN were published in the Kolkata edition of The Statesman (English language), Sanmarg (Hindi Language) and Bartaman (Bengali Language), on September 4, 2019.

6. An opportunity of personal hearing was granted to all the Noticees on January 6, 2020. I note that the hearing notice was served upon the Noticees through paper publication in three Newspapers including one in Bengali and Hindi each. The advertisements informing the date of personal hearing were published in the Kolkata edition of The Statesman (English language), Sanmarg (Hindi Language) and Sanbad Pratidin (Bengali Language), on November 30, 2019. However, no one turned up for the personal hearing on the said date. I note that no request for adjournment was received from any of the Noticees.
7. In view of the fact that Noticees have neither filed any reply to the SCN nor have appeared for hearing, I proceed to examine the allegations made in the SCN qua the Noticees, on the basis of the material available on record.
8. I note that present SCN against the Noticees have been issued as they were the directors of MIRL which was found to be in violation of public issue norms as it had issued NCDs to at least 14, 256 investors, from October 05, 2011 to February 21, 2014 in 297 tranches and raised a sum of Rs. 37.90 crore (approximately) without following the provisions of law applicable for public issue of NCDs. Vide order dated April 25, 2016, SEBI has already directed MIRL and some of its directors, *inter alia*, to refund the monies collected from the investors alongwith interest at the rate of 15% per annum.
9. I note that Noticee no. 1, 2 and 3 were appointed as directors in MIRL on April 8, 2015. Noticee no. 3 resigned from MIRL on July 17, 2015 and Noticee no. 2 resigned from MIRL on December 14, 2016. As mentioned above, impugned

issues of NCDs were made by MIRL till February 21, 2014. Thus, the Noticees have joined MIRL, as director, subsequent to making of public issue of NCDs in violation of public issue norms by MIRL. As MIRL made public issue of NCDs in violation of public issue norms and MIRL was directed to refund the monies collected from the investors, one of the major allegations made in the SCN against the Noticees is that since the liability of the Company and its directors to make refunds under Section 73(2) of the Companies Act, 1956 is a continuing liability, hence, the Noticees who joined MIRL subsequent to the issue of NCD's are also jointly and severally liable to make the refund to the investors. In this regard, I note that in terms of Section 73(2) where a company fails to apply for listing permission the company becomes liable to forthwith refund the money collected within 8 days and if such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, becomes jointly and severally liable to refund the money. Regarding the liability of the director to make refund, it is pertinent to refer to the observations of Hon'ble SAT, made in its order dated July 17, 2017 passed in ***Appeal No. 66 of 2006 - Manoj Agarwal Vs. SEBI***, wherein Hon'ble SAT observed that liability (under Section 73(2) of the Companies Act, 1956) of the appellant director therein would be restricted to refund the amount which was collected during the period of his directorship in the company, jointly and severally with the company and other directors during that tenure. In the present matter, NCDs, in violation of public issue norms were issued till February 21, 2014, hence, Noticee no. 1, 2 and 3, who joined MIRL on April 08, 2015, cannot be held personally liable for refund of money to the investors in view of the legal position discussed above.

10. I find that the Noticees had joined MIRL after the passing of the interim order dated December 4, 2014 *inter alia* debarring MIRL and its directors from raising further money through the issue of NCDs, till further orders. Noticee no. 3 resigned as director of MIRL on July 17, 2015 before passing of Final Order on April 25, 2016, however, Noticee no. 1 and 2 were directors of MIRL as on the date of passing of Final Order by SEBI on April 25, 2016. Subsequently, Noticee no. 2 resigned on December 14, 2016. In the Final Order the Company was directed to refund the money raised by issue of NCD's to the investors alongwith interest thereon. I note

that the Company was directed in the Final Order to file a report with SEBI from two independent peer reviewed Chartered Accountant certifying the refund made to the investors within three months from the date of the Final Order. However, I find that MIRL has neither completed the refund to the investors, nor filed any report from the Chartered Accountant, as directed in the Final Order. I also note that MIRL was directed in the Final Order to file with SEBI, a full inventory of its assets. However, I find that no such list has been filed by MIRL with SEBI. Further, it is understood that in view of the non-compliance with the direction to make refund given in the Final Order, SEBI's recovery proceedings against MIRL and its then directors are underway. Therefore, I find that Noticee no. 1 and 2, who were part of the board of directors of MIRL even after the passing of the Final Order, did not take any steps to ensure the compliance of the directions in the Final Order on behalf of MIRL. Hence, though none of the Noticees herein can be held personally liable for refund to the investors, but I find that Noticee no. 1 and 2, being part of the board of directors of MIRL, have failed to ensure the compliance of the directions issued against MIRL in the Final Order, on behalf of MIRL.

11. I note that, unlike Noticee no. 1 and 2, Noticee no. 3 left the directorship of MIRL even before the passage of the Final Order, hence, no case is made out against Noticee no. 3 and therefore the proceedings against Noticee no. 3 are disposed of without any directions.
12. In view of the above findings, I, in exercise of powers conferred upon me under Sections 11(1), 11(4), 11A(1)(b) and 11B read with Section 19, of the SEBI Act, 1992, hereby direct that Mr. Pradeep Kumar Behera (Noticee no. 1) and Mr. Ravendra Kumar (Noticee no. 2) are prohibited from accessing the securities market by issue of prospectus/offer document/advertisement or otherwise in any manner whatsoever, and are also prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of two (2) years from the date of this order.
13. This Order comes into force immediately.

14. Copy of this Order shall be forwarded to the Noticees, recognised stock exchanges, depositories and RTA's of all Mutual Funds for information and necessary action.
15. 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 of the Company.

Sd/-

Date: July 24, 2020

Place: Mumbai

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**