

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Sr. No.	Names of the Entity	PAN
1.	Basanta Kumar Dey	AHQPD3945E
2.	Sudha Kumari	ATNPK0940M
3.	Mritunjay Kumar Verma	AFQPV8716F

In the matter of JKS Projects Ltd.

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

Background

1. Securities and Exchange Board of India ("SEBI") had received a reference dated February 05, 2018 from the Economic Offences Wing of the Bihar State Police containing a complaint against JKS Projects Limited ("**JKSPL / Company**" for convenience) in respect of issue of Redeemable Preference Shares ("**RPS**" for convenience). SEBI conducted a preliminary inquiry to examine and ascertain whether JKSPL had made any irregularities/illegality while issuing securities disregarding *inter alia* the provisions of Companies Act, 1956.

2. On examination, it was observed that JKSPL had made an offer of RPS in the financial years 2011-2012 and 2012-2013 and raised ₹1,61,16,600/- from 404 allottees. The number of allottees and funds mobilized were collated from the documents/information obtained from the MCA 21 Portal.

3. As the Offer of RPS was *prima facie* found in violation of respective provisions of the Companies Act, 1956, SEBI passed an Interim Order dated February 26, 2019 ("*Interim Order*" for convenience). The *Interim Order inter-alia* contained certain directions mentioned therein, against JKSP and its Directors and Promoters.

4. The *Interim Order* has recorded that the *Company* has *prima facie* violated Sections 56, 60, 67(3), 73 of Companies Act, 1956 hence, it was thought fit to take certain measures on imminent basis to protect the interest of investors in the said *Company* and those of Securities Market. Accordingly, the following directions were issued to the *Company*, its Directors and Promoters

- a) JKSP and its Directors/Promoters, viz. Bhola Choudhuri, Suman Singh, Krishna Nandan Prasad, Dilip Kumar Pandey, Pintu Singh, Ramesh Prasad Gupta, Basanta Kumar Dey, Deepak Kumar Sinha, Anwar Sadat, Mohd Ali Imam, Sudha Kumari, Dinesh Prasad Bhagat, Debajyoti Chakraborty, Mritunjay Kumar Verma, Rakesh Ranjan, Ramanuj Kumar, Tushar Ghosh, Manabendra Sarkar, Pijush Kanti Ghosh, Kabita Kumari Sah, Rajabalbha Singh and Sankar Bhattacharya shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;
- b) JKSP and the above named Directors/Promoters shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through the offer and allotment of Redeemable Preference Shares;
- c) JKSP and the above named Directors/Promoters shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of Redeemable Preference Shares sought vide letter dated March 08, 2018.

5. The *Interim Order* also directed JKSP and its Directors/Promoters to show cause as to why suitable directions/prohibitions under section 11(1), 11(4) and 11B of the SEBI Act, 1992 should not be issued/imposed, including the following directions:

- a) JKSPIL and its Directors, viz. Bhola Choudhuri, Suman Singh, Krishna Nandan Prasad, Dilip Kumar Pandey, Pintu Singh, Ramesh Prasad Gupta, Basanta Kumar Dey, Deepak Kumar Sinha, Anwar Sadat, Mohd Ali Imam, Sudha Kumari, Debajyoti Chakraborty and Mritunjay Kumar Verma to jointly and severally refund the money collected through the offer and allotment of Redeemable Preference Shares to the extent liable, with an 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 till the date of actual payment);
- b) The money refunded should be supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and
- c) The Noticees 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 directed above.

6. I note that vide the above mentioned *Interim Order*, JKSPIL and its Directors/Promoters were given 21 days, from the date of receipt of the *Interim Order* to file their respective replies and were directed to furnish an inventory of their assets along with their replies. It was also advised in the *Interim Order* that if the Noticees, intended 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 the *Interim Order*, failing which, the findings recorded in the *Interim Order* with respect to violation of public issue norms and the directions contained therein (mentioned at paras 17 and 18 of the *Interim Order*) shall become final and absolute against the Noticees therein.

7. I note that the *Interim Order* was served upon the Noticee nos. 2, 3, 7, 8, 12, 13, 15, 18, 19, 20 21 and 23 of the *Interim Order*, through Speed Post Acknowledgment Due (SPAD). However, as the service of *Interim Order* vide SPAD as well as by affixture could not be made in respect of the remaining Noticees to the *Interim Order*, the service

of *Interim Order* was completed through alternate mode. In this regard, I find that Public Notices was got published on November 04, 2019 in the *Ananda Bazar Patrika*, the *Statesman*, the *Sanmarg*, the *Times of India* and the *Dainik Bhaskar* to effect service on the remaining *Noticees viz: Noticee nos. 1, 4, 5, 6, 9, 10, 11, 14, 16, 17 and 22.*

8. I note that none of the *Noticees* in the *Interim Order*, except for Mr. Basanta Kumar Dey, Ms. Sudha Kumari and Mr. Mritunjay Kumar Verma (i.e. *Noticee nos. 8, 12 and 14* to the *Interim Order*) has furnished any written reply after receipt of the *Interim Order* cum show cause notice duly served upon them. Under the circumstances, I observe that in terms of the said *Interim Order* itself, the directions issued in the *Interim Order* as quoted at paras 4 and 5 of this Order (paras 17 and 18 of the *Interim Order*), have become final and absolute against all the *Noticees* except for Mr. Basanta Kumar Dey, Ms. Sudha Kumari and Mr. Mritunjay Kumar Verma. (i.e. *Noticee nos. 8, 12 and 14* to the *Interim Order* and *Noticee nos. 1, 2 and 3* respectively in this order). Accordingly, the scope of the present proceedings is confined to examine the role and responsibilities of the aforesaid three (03) *Noticees* only, in the matter of issuance of RPS by JKS.

9. I note that *Noticee nos. 1 and 2* in the present proceedings (who were *Noticee nos. 8 and 12* to the *Interim Order*) have filed their replies vide letter dated April 09, 2019 and March 19, 2019 respectively. Similarly, *Noticee no. 3* (who was *Noticee nos. 14* to the *Interim Order*) in the present proceeding vide letters dated February 25, 2020 and March 28, 2020 filed his reply and has also communicated with SEBI requesting for personal hearing. Accordingly, an opportunity of personal hearing was granted to the three *Noticees* on August 11, 2020. During the scheduled hearing, Authorized Representative (AR) of *Noticee no. 1* appeared before me through video conferencing and made submissions on the lines of reply filed by the said *Noticee* vide letter dated April 09, 2019. Further, *Noticee no. 3* (Mr. Mritunjay Kumar Verma) cited his inability to attend the personal hearing through video conferencing due to connectivity issues at his end and therefore, made his submissions over voice call. I note that *Noticee no. 2* (Ms. Sudha Kumari) and did not appear for hearing, however, vide letter dated

August 03, 2020 (received by SEBI on August 13, 2020), she requested for an adjournment of hearing citing personal reasons. Accordingly, another opportunity of personal hearing was granted to the *Noticee no. 2* on September 23, 2020 and on the said date, she was heard through voice call as she cited her inability to travel as well as to attend the hearing through video conferencing. I also note that *Noticee nos. 1* (vide letter dated September 04, 2020) and *Noticee no. 3* (vide letter dated September 01, 2020) have filed their additional submissions. Further, *Noticee no. 2* has submitted her bank statements.

Submissions of the Noticees

10. After perusing the written replies filed by the *Noticees* in response to the *Interim Order / SCN*, after hearing them personally as well as perusing the post hearing submissions of the *Noticees*, I summarize their contentions as follows:

Mr. Basanta Kumar Dey (Noticee no. 1)

- a) He claims to be a real estate broker and an under-graduate who had dealt with Mr. Krishna Nandan Prasad (*Noticee no. 4 in the Interim Order*) for real estate brokerage purposes and was fraudulently made a Director of *JKSPL* by Mr. Krishna Nandan Prasad without his knowledge and consent.
- b) At the instruction of Mr. Krishna Nandan Prasad, he agreed to be involved in land-filling activity of land purchased by *JKSPL*. In order to access the land, an identity card was required and accordingly for the purpose of issuing of same, photographs along with self-attested PAN card and voter id was provided to Mr. Krishna Nandan Prasad.
- c) Signatures and other documents were misused to illegally appoint him as Director. In this regard, *Noticee no. 1* filed a FIR against the said Mr. Krishna Nandan Prasad for illegally and unauthorizedly misusing the documents of the *Noticee*. He has thus prayed that the directions contained in the *Interim Order* must not be continued against them and be exonerated from the present

proceedings as he has not attended in meeting of the Board and participated in the activities of the Company in the capacity of a Director.

Ms. Sudha Kumari (Noticee no. 2)

- d) She joined as a receptionist in Patna Office of JKSPIL in June 2011 through Ms. Suman Singh (Noticee no. 3 of the Interim Order) and Mr. Krishna Nandan Prasad (Noticee no. 4 of the Interim Order). To facilitate issuance of appointment letter, she was asked to give copies of certain documents including PAN Card, which were duly provided and she was told that the joining letter would be dispatched from Kolkata Office. In December 2012, she stopped receiving her salary and she was informed that she has been made a Director in the Company. She was not educated and qualified enough to hold the post of directorship in a company. Further, she was not willing to shift to Kolkata and was not ready to be appointed as Director, however, by the time she was appointed as a Director against her wishes and asked for change in the directorship. Subsequent, the Managing Director of the Company got her signature on paper to have formally filed to ensure her name to be changed. Hence, formally resigned on 01.03.2013 and in the end of March, 2013 Mr. Krishna Nandan Prasad informed her that her name has been removed from the Company as a Director.
- e) Her signature and other documents were misused to fraudulently appoint her as Director of JKSPIL. As she was fraudulently made a Director of JKSPIL by Noticee no. 3 and 4, she has filed a complaint against Noticee no. 3 and 4 bearing Complaint Case No. 4537 (C) of 2018 on 11.10.2018, which is pending before the Court of competent jurisdiction at Patna.

Mr. Mritunjay Kumar Verma (Noticee no. 3)

- a) Noticee does not have any connection with the Company and has no idea how he was made Director of the Company. He claimed that his signature has been misused / forged to fraudulently make him a Director of the Company. In this

regard, *Noticee* has submitted expert opinion report dated August 20, 2020 to substantiate that his signatures were misused.

- b) He had never received salary from *JKSPL* and to substantiate his claims, *Noticee* has submitted his bank account statements.
- c) *Noticee* has also submitted copy of complaints dated August 17, 2020 filed with ROC and Police for the aforesaid alleged fraud of signature mismatch.

Consideration of Issues and Findings

11. I find that, the only question that merits consideration before me is whether *Noticee nos. 1 to 3* in the present proceedings, as Directors of *JKSPL*, are liable for issuance of directions against them as contemplated at para 18 of the *Interim Order* which have been reproduced at para 5 above in this order.

12. The available records on MCA 21 Portal show that *Noticee nos. 1 to 3* were shown as Directors of the *Company* during the period of mobilization of money through *RPS* issue (FY 2011-13). Their directorship on the Board of the *Company* including tenure thereof have already been elucidated in the *Interim Order*. The submissions made on behalf of these *Noticees* are that their documents and signatures thereon were misused/forged and they were made Director of *JKSPL* in a fraudulent manner. In this regard, I note that *Noticee no. 1* in the present proceeding has claimed that he was fraudulently made a Director of *JKSPL* by Mr. Krishna Nandan Prasad (*Noticee no. 4* in the *Interim Order*). While disputing his directorship in *JKSPL*, *Noticee no. 1* has further submitted that signatures and his personal documents were misused to illegally appoint him as Director.

13. The *Noticee no. 3* in the present proceeding (Mr. Mritunjay Kumar Verma) has made similar arguments about his signature being misused for making him Director of the *Company* fraudulently. He has submitted that he was basically working as an Insurance agent and in the course of his work as an Insurance agent, he came in contact with certain people who offered him employment and with whom he shared his personal documents, which were misused to appoint him as a Director in the

Company without his knowledge. He has strongly disputed his signature on the records filed before ROC and furnished an expert opinion report wherein a comparison of his present signature & his signature available on the MCA website has been compared and it has been opined that both the signatures are different from each other. Similarly, I note that *Noticee no. 2* in the present proceeding (Ms. Sudha Kumari), during her personal hearing and also in her written reply has made a categorical submission that her name and documents were misused and she was made a Director in the *Company*, without her knowledge. The *Noticee* has also filed a complaint in this regard bearing Complaint Case No. 4537 (C) of 2018 on 11.10.2018, (prior to passing of the *Interim Order*) before the Court of Learned Chief Judicial Magistrate, Patna. It has been submitted by her that she was working as a receptionist with the said *Company* and in course of her employment, she had submitted her KYC documents to the *Company* through the *Noticee no. 4* of the *Interim Order* i.e. Mr. Krishna Nandan Prasad.

14. Thus, it is noted that all the three *Noticees* in the instant proceedings have disputed their appointment as Directors in the *Company*. They have submitted that they were connected with the *Company* in one way or the other and in the course of their association as employee or job seeker, their personal documents were shared with the *Company* which has misused those documents, as they were never informed about their appointment as Directors of the *Company* nor the *Company* had obtained their consent in any form before appointing them as Directors in the said *Company*. As far as the claim pertaining to the alleged forgery perpetrated upon the *Noticees* including forging their signature and misusing their KYC documents are concerned, the *Noticees* have not brought any supporting evidence in the form of an order from a competent authority supporting their claim nor have they produced any document to show that they have got their names removed from the records of ROC after coming to know about the fraud committed by the *Company*. It is to be noted that the instant proceedings before me is not the right forum wherein the bonafide of signature of a person can be forensically verified and issues related to forgery can be

adjudicated upon. Further, the disputed signatures pertain to the year 2011 to 2013 and changes, modification in the signature of any person with the passage of time can also be not ruled out, which further has constraining impact in adjudicating on the authenticity of a signature after lapse of 7-9 years. In these circumstances, it is neither feasible nor practically possible to adjudicate the issue of disputed signature and record with certainty my views on the same in the instant proceedings. Therefore, the submissions of the *Noticees* seeking exoneration merely on the ground of forgery and misuse of their documents is not tenable.

15. I note that *JKSPL* had made an Offer of *RPS* during the financial years 2011-2012 and 2012-2013 and raised an amount of ₹1, 61,16,600/- as shown below:

Financial Year	Date of Allotment	No. of Allottees	Value of Allotment (in ₹)
2011-12	29.03.2012	58	45,29,000/-
2012-13	30.11.2012	346	1,15,87,600/-
Total	-	404	1, 61,16,600/-

16. I also note from the records that out of the three *Noticees*, *Noticee no. 1 and 2* were Directors during both the years and both the rounds of fund mobilization and *Noticee no. 3* was a Director during the fund mobilization in 2012-13. It is pertinent to note that the records available on MCA 21 Portal are in the nature of public records which required to be filed by the companies in terms of the provisions of the Companies Act, 1956/Companies Act, 2013 and hence a presumption is *suo moto* created in favor of its genuineness.

17. In the *Interim Order*, the *Company* and *Noticees* have been *prima facie* found to have indulged in activities in violations of Section 56, 60, 67(3), 73 of Companies Act, 1956. The said *Interim Order* also states that in the event of the *Noticees* not furnishing of any rebuttal within the specified period, the observations made under the *Interim Order* shall become final and absolute against them. It is a matter of records that, the *Company* was observed to have issued *RPS* to 58 persons amounting to ₹45,29,000/- during F.Y. 2011-12 and to 346 persons amounting to ₹1,15,87,600/- during F.Y. 2012-13. As stated above, the *Company* till date has not preferred to file any reply nor has

chosen to avail the opportunities of Personal Hearing granted to it in the matter. I find that the submissions of the *Noticees* primarily center around the contentions that they were fraudulently appointed as Directors of the *Company* without their knowledge or consent by misusing their KYC documents and forging their signatures too, hence, they should not be held accountable for the alleged violations committed by the *Company* while mobilizing funds through issuance of *RPS*. Against the aforesaid background, the limited issue that requires consideration here is the determination of liability of the *Noticees*, in their respective capacity of Director of the *Company*, in the matter of mobilizing funds for the *Company* by acting against the norms and rules of the Companies Act, 1956.

18. It is noted that the MCA Records *prima-facie* mention the names of the *Noticee nos. 1 to 3* as Directors of the *Company* and at the same time as per MCA records, Mr. Krishna Nandan Prasad (*Noticee no. 4* to the *Interim Order*) has been identified as Managing Director of the *Company* and these factual positions have not been contradicted before me so far. It is the case of the *Noticees* that it was Mr. Krishna Nandan Prasad, who was in the helm of the affairs of the *Company* during the said period and they had no knowledge about the actual working of the *Company*.

19. As regards the issuance of directions as contemplated in para 5 above (mentioned at paras 17 and 18 of the *Interim Order*) is concerned, it has been vehemently pleaded by the *Noticees* that they were made Directors fraudulently by misuse of their personal documents, hence, no liability can be fastened on them as they never acted in the capacity of Director of the *Company*. In this respect, the *Noticee nos. 2 and 3* have also submitted that they never received any remuneration as Directors of the *Company* in support of which they have submitted statements of their bank accounts to substantiate their claims. *Noticee no. 2* has further submitted that she was paid her the remuneration as receptionist in cash only. The *Noticees* in their submissions have strongly harped on that their appointment as Directors was primarily on account of mis use of their KYC documents without taking them into confidence at all. Perusal of the records filed by the *Company* before ROC on the face

of it shows that the *Notices* served as Directors in the *Company*, however, on a careful perusal of those records, it is noticed that their appointment was in the category of Non -Executive Directors.

20. Without prejudice to the above, the *Notices* have also submitted that they can't be fastened with liability of refund of money to the RPS holders in support of which they have placed reliance on the observation of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Pritha Bag v. SEBI* [Appeal no. 291/2017 – DoD February 14, 2019] wherein it has been held that,

"....In the instant case, the appellant has annexed documents to indicate that the company had a managing director, namely, Mr. Indranath Daw and, therefore, as per the provisions of Section 5 the managing director would be an officer in default.

It was further submitted that even the law laid down in the case of *Manoj Agarwal vs. SEBI* in Appeal No. 66 of 2016 decided on July 14, 2017, is not applicable to them as unlike the facts in the *Manoj Agarwal (supra)* matter, in the instant case there is a Managing Director in the *Company*.

21. Having considered the submissions of the *Notices* and the materials on records including the additional information placed by the *Notices* before me, it is observed that the *Notices* were shown as Non -Executive Directors of the *Company*, in the records of ROC which has been strongly denied by the *Notices*, who have also initiated action against the *Company* for alleged misuse of their KYC documents by the *Company* to appoint them as Directors without their knowledge. The material on records also do not indicate about involvement of the *Notices* in the affairs of the *Company*. I find strength in the submission that they should not be held liable for the mobilization of funds by the *Company* and the refund thereof, as they had never acted as Directors of the *Company* and except for the *Noticee no. 1* whose name is still appearing in the category of Director, the other two *Notices*, i.e. *Noticee nos. 2 & 3* have already been reported to ROC showing as ceased to be Directors in the year 2013 itself. *Notices* have also reported that they have taken legal action against the

Company for its illegal misuse of personal documents of *Notices* and demanding it to rectify its records in the office of ROC stating the correct position with respect to the *Notices*. In view of the aforesaid facts and circumstances and considering that these *Notices* did not play any role in the management of the *Company*, the present proceedings don't call for any further direction *qua* the three *Notices*.

22. I also note that the three *Notices* are under restraint from accessing securities market vide *Interim Order* dated February 26, 2019, therefore, in my view, it would be sufficient to meet the end of justice that the present proceedings are disposed of without any further direction *qua* the *Notices*. Accordingly, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby dispose of the proceedings without any further directions against them. The directions in operation *qua* the above three *Notices* i.e. Mr. Basanta Kumar Dey, Ms. Sudha Kumari and Mr. Mritunjay Kumar Verma vide *Interim Order* dated February 26, 2019 stand vacated.

23. This Order comes into force with immediate effect.

24. A copy of this Order shall be forwarded to the *Notices*, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action

-Sd-

Date: October 27, 2020
Place: Mumbai

S. K. MOHANTY
WHOLE TIME MEMBER