
BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Midfield Industries Limited.

In respect of –

Sr. No.	Noticee	PAN
1	Midfield Industries Limited	AAACM9490M
2	M. Madan Mohan Reddy	ACIPM3240J
3	Ashok Sagar Mudumba	ACIPM3400E
4	Ashok Kumar Kolla	AFWPK8481L
5	Raja Raju Kothapalli	AEQPK8843P
6	Kamlesh Kumar Bhargava	AAOPB7601A
7	Vegulla Gopala Krishna Rao	ABKPV9532D

1. Background –

1.1. The present matter emanates from several complaints received from the shareholders of Midfield Industries Limited (**‘Midfield Industries’**/ the

‘**Company**’) alleging non-payment of dividend declared for the financial year 2011-12.

1.2. Pursuant to the above, SEBI issued letter dated February 13, 2013 to the Company asking it to furnish information regarding declaration and payment of dividends under the Companies Act, 1956 and reasons if any, for default.

1.3. Midfield Industries by way of letter dated February 25, 2013 informed SEBI that they had not been able to pay dividend to the shareholders as the Income Tax Department had attached their bank accounts.

2. Issuance of Show Cause Notice (“SCN”)

2.1. In view of the above, a common SCN dated October 20, 2016 was issued to the Noticees.

2.2. The said SCN states that

- a. the Company has not paid the dividend declared to be paid to the shareholders for the financial year 2011-12;
- b. as per the provisions of Section 205(1A) of the Companies Act, 1956, the Noticees were required to deposit the amount of dividend in a separate account within 5 days of such declaration, and as per Section 207 of the Companies Act, 1956, the Noticees were under the obligation to disburse the dividend declared to shareholders within a period of 30 days from the date of declaration of dividend;
- c. it was alleged that the Noticees had failed to pay the dividend declared by the company to the Shareholders within the prescribed time, thereby violating the provisions of Sections 205(1A) and 207; and

- d. Considering the above, the Noticees were asked to show-cause as to why proceedings u/s 11 and 11B of the SEBI Act, 1992 should not be initiated against them.

3. Relevant Provisions –

3.1. The relevant provisions in this regard are as under :

Section 205 (1A), Companies Act, 1956

205. DIVIDEND TO BE PAID ONLY OUT OF PROFITS

“1 ...

(1A) The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend.”

Section 207, Companies Act, 1956

207. PENALTY FOR FAILURE TO DISTRIBUTE DIVIDENDS WITHIN THIRTY DAYS

“Where a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within thirty days from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to a fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues:

Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provisions in the following cases, namely: -

- (a) where the dividend could not be paid by reason of the operation of any law ;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with ;
- (c) where there is a dispute regarding the right to receive the dividend ;
- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder ; or
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company.”

4. Personal Hearing, and Replies and Written Submissions from the Noticees –

4.1. After the issuance of the SCN, opportunities of personal hearing were granted to the Noticees on September 13, 2019; October 15, 2019, February 04, 2020; and December 23, 2020.

4.2. Noticee No. 2, M. Madan Mohan Reddy, who is the Managing Director of the Company appeared for personal hearing on February 04, 2020 and December 23, 2020 representing himself and Noticee No. 1, Midfield Industries Limited. He also represented Noticee No. 4 (Ashok Kumar Kolla); Noticee No. 5 (Raja Raju Kothapalli); and Noticee No. 6 (Kamlesh Kumar Bhargava). Authorisation letters from Noticee Nos. 4, 5 and 6, authorising M. Madan Mohan Reddy to represent them in the present proceedings have been submitted by M. Madan Mohan Reddy in this regard.

4.3. In this regard, a summary of the replies and submissions made by the Noticee Nos.

1, 2, 4, 5 and 6 in the matter is as under:

- a. the Company was a thirty year old company and was involved in the business of industrial packaging;
- b. the Company was not able to pay the dividend, as declared, owing to the attachment of the company's properties by the Income Tax Department;
- c. the Banks have also attached the personal home of the Authorised Representative, who is the MD of the Company, for debts of the Company to the tune of Rs. 25 crore; and
- d. 60 per cent of the Company was held by shareholders who are relatives and 30 per cent of the shareholding was held by close friends.

4.4. Along with the above submissions, the above Noticees have provided the following documents:

- a. ***Notice dated November 07, 2012 issued by the Deputy Commissioner of Income Tax Circle - 16(2), Hyderabad to the State Bank of Hyderabad***
– The Notice was issued by the Deputy Commissioner of Income Tax under Section 226 (3) of the Income Tax Act, 1961 asking the Bank to pay the amount of Rs. 15,70,31,187 held or which may be subsequently held by it on account of the assessee, Midfield Industries Limited.
- b. ***Order dated August 01, 2019 passed by the Hon'ble High Court of Telangana in IA No. 2 of 2019 in WP No. 9375 of 2019*** – In the matter, State Bank of India had filed a petition under Section 151 of CPC praying that the Hon'ble High Court direct the Sub Registrar, Banjara Hills SRO,

Hyderabad to receive and register the Sale Certificate that may be submitted by SBI and the prospective auction purchaser upon the auction sale of the property bearing description— Flat No. 005, 2nd Floor of Mohan Villa admeasuring 2350 sq. ft. with car parking bearing H.No. 8-2-293/82/L/99/A/5 in Sy. No. 102/1 situated within the layout of Sree Venkateswara Corporation House Building Society, MLAs Colony, Road No. 12, Banjara Hills, Hyderabad. In this regard, by way of the Order dated August 01, 2019, the Hon’ble Court has directed the Sub Registrar, Banjara Hills SRO, Hyderabad to receive, process and release sale certificate submitted by the bank and the auction purchaser for registration; though the sale proceeds shall be kept by the Bank in a separate non-lien account so that the larger question as to the apportionment thereof can be decided in due course.

4.5. Noticee Nos.3 and 7 neither availed the opportunity of personal hearing nor filed any reply. The details with respect to the service of the SCN and Hearing Notices to the said Noticee are provided hereunder:

Table-1

Sl. No.	Noticee	Details
1.	Ashok Sagar Mudumba (Noticee No. 3)	The SCN dated October 20, 2016 was sent by speed post to the said Noticee at the address: Plot No. 6, Phase-IV Extn., IDA., Jeedimetla, Hyderabad – 500 055. The same was returned undelivered

		▪ Hearing Notice dated August 20, 2019 was issued by speed post at the above-mentioned address intimating the personal hearing scheduled for September 13, 2019. The same was returned undelivered. ▪ Newspaper publication was carried out intimating the personal hearing scheduled for September 13, 2019 in the Hyderabad edition of the Times of India. ▪ Hearing Notice dated September 16, 2019 was issued by speed post at the above-mentioned address intimating the personal hearing scheduled for October 15, 2019. The same was returned undelivered. ▪ Hearing Notice dated November 15, 2019 was issued by speed post at the above-mentioned address intimating the personal hearing scheduled for February 04, 2020. The same was returned undelivered. ▪ Hearing Notice dated November 20, 2020 was issued by speed post at the above-mentioned address intimating the personal hearing scheduled for December 23, 2020. The same was returned undelivered. ▪ Newspaper publication was carried out intimating the personal hearing scheduled for December 23,
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		2020 in the Hyderabad editions of the Telugu daily, Sakshi and the English daily, Times of India.
2.	Vegulla Gopala Krishna Rao (Noticee No. 7)	▪ The SCN dated October 20, 2016 was sent by speed post to the said Noticee at the address: Plot No. 6, Phase-IV Extn., IDA., Jeedimetla, Hyderabad – 500 055. The same was returned undelivered ▪ Hearing Notice dated August 20, 2019 was issued by speed post at the above-mentioned address intimating the personal hearing scheduled for September 13, 2019. The same was returned undelivered. ▪ Newspaper publication was carried out intimating the personal hearing scheduled for September 13, 2019 in the Hyderabad edition of the Times of India. ▪ Hearing Notice dated September 16, 2019 was issued by speed post at the above-mentioned address intimating the personal hearing scheduled for October 15, 2019. The same was returned undelivered. ▪ Hearing Notice dated November 15, 2019 was issued by speed post at the above-mentioned address intimating the personal hearing scheduled

		for February 04, 2020. The same was returned undelivered. ▪ Hearing Notice dated November 20, 2020 was issued by speed post at the above-mentioned address intimating the personal hearing scheduled for December 23, 2020. The same was returned undelivered. ▪ Newspaper publication was carried out intimating the personal hearing scheduled for December 23, 2020 in the Hyderabad editions of the Telugu daily, Sakshi and the English daily, Times of India.
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5. Consideration and findings –

5.1. As already stated, the present proceedings have arisen pursuant to the complaints received from the shareholders for non-payment of dividend. From a perusal of the replies and submissions of Noticee Nos. 1, 2, 4, 5 and 6, it is clear that the payment of dividend for the year 2011-12, declared on September 27, 2012, has not been made by the Company to the shareholders.

5.2. In this regard, it is stated that the SCN had included a list of investor complaints received against Midfield Industries as on February 13, 2013 as Annexure- I. The details of the said complaints are provided hereunder:

Table-2

Sl. No.	Complainant Registration No.	Date of Complaint (MM/DD/YYYY)	Name of the Complainant	Pending days	Nature of Complaint
1	SEBIE/AP12/0000350/1	11/2/2012	Vishal Ashwin Shah	103	Others
2	SEBIE/AP12/0000367/1	11/10/2012	Saroj Bhagwanji Waghela	95	Non-receipt of dividend
3	SEBIE/AP12/0000409/1	12/05/2012	Madhya Pradesh Stock exchange	70	Non-receipt of dividend
4	SEBIE/AP12/0000420/1	12/14/2012	Yogesh Varnagar	61	Non-receipt of dividend
5	SEBIE/AP12/0000427/1	12/17/2012	Uttam Chand Dersaria	58	Non-receipt of dividend
6	SEBIE/AP12/0000441/1	12/24/2012	Kamlesh Patel	51	Others
7	SEBIE/AP12/0000467/1	12/29/2012	Kalpana B Mistry	46	Non-receipt of dividend
8	SEBIE/AP12/0000473/1	12/30/2012	Aditi Mistry	45	Non-receipt of interest for delay in dividend
9	SEBIE/AP12/0000476/1	12/31/2012	Praful C Patel	44	Non-receipt of dividend

10	SEBIE/AP13/0000006/1	1/1/2013	Falguni Praful Patel	43	Non-receipt of dividend
11	SEBIE/AP13/0000063/1	1/16/2013	Naresh Kumar Bhatt	28	Non-receipt of dividend
12	SEBIE/AP13/0000067/1	1/17/2013	Siddharth Oberoi	27	Non-receipt of dividend
13	SEBIE/AP13/0000150/1	2/2/2013	Sulachana Soni	11	Non-receipt of dividend
14	SEBIE/AP13/0000159/1	2/5/2013	Manisha Ashwin Jain	8	Non-receipt of dividend
15	SEBIE/AP13/0000160/1	2/5/2013	Ashwin C Jain HUF	8	Non-receipt of dividend
16	SEBIE/AP13/0000189/1	2/11/2013	Samir Ganu	2	Non-receipt of dividend
17	SEBIE/AP13/0000191/1	2/11/2013	Sankarachari	2	Receipt of refund/dividend in physical mode instead of electronic mode

5.3. The status of the above mentioned complaints filed on SEBI's SCORES system was checked. It was observed that the said complaints have been closed with the assurance that the dividend would be paid in a short while. So, clearly the dividend declared has not been paid to the shareholders.

Invocation of SEBI Act for Violations of Provisions of the Companies Act, 1956

5.4. A preliminary ground of objection taken by the Noticees is that the invocation of provisions of SEBI Act is untenable in the present matter. It has been submitted that the SCN has been issued by SEBI by virtue of section 55A of Companies Act, 1956 for non-compliance as required of obligations and duties as enumerated under section 205(1A) and 207 of the Companies Act, 1956. Administration of these sections does not include imposition of new penalties that are not prescribed in the Companies Act 1956. Also, the above Noticees have submitted that the aforesaid position is reinforced by the fact that Section 24 of the Companies Act, 2013 expressly empowers SEBI to invoke powers under SEBI Act to take enforcement actions for violations of the provisions mentioned therein.

5.5. In this regard, it is relevant to place hereunder the provisions of Section 24 of the Companies Act, 2013:

“24. Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.

- (1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—*
- (a) in so far as they relate to —*
 - (i) issue and transfer of securities; and*
 - (ii) non-payment of dividend,*
- by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered*
- by the Securities and Exchange Board by making regulations in this behalf;*
- (b) in any other case, be administered by the Central Government.*

Explanation.—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

(2) The Securities and Exchange Board shall, in respect of matters specified in subsection (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992.”

Similarly Section 55A of the Companies Act, 1956 states,

55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA

“ The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, - (a) in case of listed public companies ; (b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India ; and (c) in any other case, be administered by the Central Government. Explanation. - For the removal of doubts, it is hereby declared that all powers relating to all other matters including the matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares shall be exercised by the Central Government, the [Tribunal] or the Registrar of Companies, as the case may be].”

5.6. The submission that SEBI could not have initiated the instant proceedings under the powers conferred on it under the Companies Act, 1956 is incorrect. Reference in this regard is drawn to Section 55A of the Companies Act, 1956, which provides powers to SEBI to administer certain provisions of the Companies Act, 1956. In this context, the relevant part, with respect to the non-payment of dividend is highlighted hereunder: *“The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121,*

122, 206, 206A and 207, so far as they relate to issue and transfer of securities and **non-payment of dividend** shall, - (a) in case of listed public companies ; (b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India”. Section 55A of the Companies Act, 1956 read with Sections 207 and 621 confer power on SEBI to prosecute the offence of non-payment of dividend. As such, when non-payment of dividend by a listed company is raised as an investor grievance, the same squarely falls within the ambit of the SEBI Act, in terms of Section 15 C thereof. Thus, I do not find any merit in the contention of the Noticee that SEBI had no explicit powers under the Companies Act, 1956 to deal with non-payment of dividend.

5.7. It is relevant to mention here that SEBI has initiated prosecution in respect of delay in payment of dividend by way of C.C. Sr. no. 1621/2020 (SEBI vs. Midfield Industries Ltd. & Ors.) before the Special Court for Economic Offences, Hyderabad for offence punishable under section 207 of the Companies Act, 1956. Further, multiple Orders have been passed by SEBI against the Company. A list of such Orders is provided hereunder:

Table-3

<i>Sl. No.</i>	<i>Order</i>	<i>Penalty Imposed</i>
1.	ADJUDICATION ORDER NO. PJ/JAK/7/2015 dated 29.09.2015 in the matter of Midfield Industries Limited. The AO in the said order found the Company	Rs. 1,00,000 under Section 15 A(a) and Rs. 1,00,000 under Section 15 C.

	liable for having failed to resolve within 30 days the twenty one investor complaints made by the investors through SCORES.	
2.	ADJUDICATION ORDER NO. AO/JS/VRP/29-30/2017 dated December 27, 2017 in respect of Madhu Mohan Reddy and Pramod Kumar Reddy, in the matter of Midfield Industries Limited. The AO in the said Order concluded that Madhu Mohan Reddy had violated the provisions of: ▪ Regulation 29(2) read with 29(3) of SAST Regulations, 2011; ▪ Regulation 31(1) read with 31(3) of SAST Regulations, 2011; ▪ Regulation 31(2) read with 31(3) of SAST Regulations, 2011; ▪ Regulation 13(3) of PIT Regulations, 1992; and ▪ Regulations 13(4) and (4A) read with 13(5) of PIT Regulations, 1992.	Rs. 7,50,000 under Section 15 A(b)
3.	ADJUDICATION ORDER NO. AO/JS/VRP/83/2018 dated January 31, 2018 in respect of Madhu Mohan Reddy, in the matter of Midfield Industries Limited. The AO in the said Order concluded that Madhu Mohan Reddy had violated Section 11C(2) read with Section 11C(3) of SEBI	Rs. 25,00,000 under Section 15A(a).

	Act, 1992 by not providing information sought vide summons dated October 06, 2015 and October 26, 2015 to SEBI.	
4.	ADJUDICATION ORDER NO. AO/JS/VRP/ 84/2018 dated January 31, 2018 in respect of Midfield Industries Limited, in the matter of Midfield Industries Limited. The AO in the said Order concluded that the Noticee had violated Regulation 7(3) of listing Regulations, 2015; ▪ Regulation 13 (3) of Listing Regulation, 2015; ▪ Regulation 27(2)(a) Listing Regulations, 2015 (Erstwhile clause 49 of Listing Agreement); ▪ Regulation 31(1) of Listing Regulations, 2015 (Erstwhile clause 35 of Listing Agreement); ▪ Regulation 33 (Erstwhile clause 41 of Listing Agreement); ▪ Regulation 34 of Listing Regulation, 2015 (Erstwhile clause 31 of Listing Agreement); ▪ Clause 31 of listing agreement; ▪ Regulation 40(9) of Listing Regulation, 2015 (Erstwhile clause 47C of Listing Agreement);	Rs. 20,00,000 is imposed under Section 23E of SCR Act

	▪ Regulation 42 of Listing Regulation (Erstwhile clause 15/16 of Listing Agreement); ▪ Regulation 46(1) of the Listing Regulations, 2015 (Erstwhile clause 54 of Listing Agreement); and ▪ Clause 43(a) & 43(b) of Listing Agreement read with Section 21 of SCR Act, 1956.	
5.	ADJUDICATION ORDER NO. EAD-7/BD/NR/2019-20/7083-85 dated February 28, 2020 in respect of Midfield Industries Limited, Madhu Mohan Reddy and Ashok Sagar Mudumba, in the matter of Midfield Industries Limited. The AO in the said Order concluded that Midfield Industries Limited, Madhu Mohan Reddy and Ashok Sagar Mudumba had violated the provisions of Regulations 3 (b), (c), (d), 4(1), 4 (2) (f) and (k) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992 and Regulation 57(1) of SEBI (ICDR) Regulations.	Midfield Industries Limited – Rs. 25,00,000 Madhu Mohan Reddy– Rs. 10,00,000 Ashok Sagar Mudumba – 5,00,000

5.8. It is further mentioned that SEBI has initiated multiple recovery proceedings for the recovery of penalties imposed by way of the above orders. A list of such proceedings is provided hereunder:

Table-4

<i>Sl. No.</i>	<i>Recovery Proceedings</i>	<i>Recovery Amount</i>
1.	Recovery Certificate No. RC 1483/2018 dated June 01, 2018 in Attachment Proceeding No. 3633 of 2018 against Madhu Mohan Reddy with respect to the non-payment of penalty imposed in ADJUDICATION ORDER NO. AO/JS/VRP/83/2018 dated January 31, 2018 on Madhu Mohan Reddy, in the matter of Midfield Industries Limited.	Rs. 26,00,452 Penalty: Rs. 25,00,000 Interest: Rs. 99,542 Recovery Cost: Rs. 1,000
2.	Recovery Certificate No. RC 1496/2018 dated July 02, 2018 in Attachment Proceeding Nos. 3665 and 3666 of 2018 against Midfield Industries Limited with respect to the non-payment of penalty imposed in ADJUDICATION ORDER NO. AO/JS/VRP/ 84/2018 dated January 31, 2018 on Midfield Industries Limited, in the matter of Midfield Industries Limited.	Rs. 20,87,795 Penalty: Rs. 20,00,000 Interest: Rs. 86,795 Recovery Cost: Rs. 1,000

5.9. It is seen from the above that the Company and its executive-directors, namely Madhu Mohan Reddy and Ashok Sagar Mudumba have a history of securities law violations and disregard for Orders passed pursuant to adjudication of such violations. As a consequence of this, SEBI had to initiate recovery proceedings as detailed above.

5.10. Furthermore, it is seen from the BSE website that the last Annual Report filed by the Company was for the financial year ending March 31, 2011. No Annual Report subsequent to this date has been filed by the Company. Also, as per the records available on the Ministry of Corporate Affairs' (MCA) website, the last filed balance sheet of the Company is for the year ending March 31, 2011. Thus, it appears that after the financial year 2010-11, no documents have been filed by the Company either with the exchanges or the MCA that could reflect the financial condition of the Company.

5.11. It is stated that the complaints received by SEBI were in respect of non-payment of dividend declared for the financial year 2011-12. In this regard, reference is drawn to SEBI's letter dated February 13, 2013 and the reply of the Company dated February 25, 2013. From the above two letters, it is clear that the Company declared a total dividend of Rs. 3,20,53,128 for the financial year 2011-12 on September 27, 2012. Further, as per Section 205 (1A) and 207 of the Companies Act, 1956 the following schedule should have been followed by the Company:

Table- 5

Date by which dividend should have been transferred to a separate bank account	October 02, 2012
Date by which dividend should have been paid	October 27, 2012
Dividend Amount (Rs.)	Rs. 3,20,53,128

5.12. It is clear that the dividend declared by the Company for the year 2011-12 should have been paid by October 27, 2012. However, the same was not done. The complaints which were lodged on SEBI's SCORES system were closed by the Company by stating that they were in the process of paying the dividend. This was in 2013. However, no document has been provided by the Company till now to show that any payment of dividend has been made to the shareholders. Thus, even after the lapse of more than 8 years, it appears that the shareholders have not been paid the dividend due to them.

5.13. The Company has taken the defence that its inability to pay dividend to the shareholders was due to the attachment of its properties and bank accounts. It is seen from the documents submitted by the Company that a notice dated November 07, 2012 was issued by the Deputy Commissioner of Income Tax Circle – 16(2), Hyderabad to the State Bank of Hyderabad claiming rights over the proceeds which may be received by the bank in furtherance of its own recovery proceedings against the Company. The Company was required to pay the dividend by October 27, 2012. The said event happened later than the date by which the Company was required to make dividend payment. Thus, I do not find it relevant

to consider subsequent events that may have caused certain constraints in the Company's ability to make the dividend payment. Furthermore, Section 205 of the Companies Act, 1956, as reproduced hereunder, provides necessary guidance regarding the declaration and payment of dividend:

“205. DIVIDEND TO BE PAID ONLY OUT OF PROFITS

(1) No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2) or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government :

Provided that –

- (a) if the company has not provided for depreciation for any previous financial year or years which falls or fall after the commencement of the Companies (Amendment) Act, 1960, it shall, before declaring or paying dividend for any financial year provide for such depreciation out of the profits of that financial year or out of the profits of any other previous financial year or years ;*
- (b) if the company has incurred any loss in any previous financial year or years, which falls or fall after the commencement of the Companies (Amendment) Act, 1960, then, the amount of the loss or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or against the profits of the company for any previous financial year or years, arrived at in both cases after providing for depreciation in accordance with the provisions of sub-section (2) or against both ;*
- (c) the Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation :*

Provided further that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year is declared or paid out of the profits of any previous financial year or years which falls or fall before the commencement of the Companies (Amendment) Act, 1960.

(1A) The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend.

(1B) The amount of dividend including interim dividend so deposited under sub-section (1A) shall be used for payment of interim dividend.

(1C) The provisions contained in sections 205, 205A, 205C, 206, 206A and 207 shall, as far as may be, also apply to any interim dividend.

(2) For the purpose of sub-section (1), depreciation shall be provided either -

(a) to the extent specified in section 350 ; or

(b) in respect of each item of depreciable asset, for such an amount as is arrived at by dividing ninety-five per cent of the original cost thereof to the company by the specified period in respect of such asset ; or

(c) on any other basis approved by the Central Government which has the effect of writing off by the way of depreciation ninety-five per cent of the original cost to the company of each such depreciable asset on the expiry of the specified period ; or

(d) as regards any other depreciable asset for which no rate of depreciation has been laid down by this Act or any rules made thereunder, on such basis as may be approved by the Central Government by any general order published in the Official Gazette or by any special order in any particular case:

Provided *that where depreciation is provided for in the manner laid down in clause (b) or clause (c), then, in the event of the depreciable asset being sold, discarded, demolished or destroyed the written down value thereof at the end of the financial year in which the asset is sold, discarded, demolished or destroyed, shall be written off in accordance with the proviso to section 350.*

(2A) Notwithstanding anything contained in sub-section (1), on and from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent, as may be prescribed :

Provided *that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher percentage of its profits to the reserves in accordance with such rules as may be made by the Central Government in this behalf.*

(2B) A company which fails to comply with the provisions of section 80A shall not, so long as such failure continues, declare any dividend on its equity shares.

(3) No dividend shall be payable except in cash :

Provided *that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.*

(4) Nothing in this section shall be deemed to affect in any manner the operation of section 208.

(5) For the purposes of this section -

(a) "specified period" in respect of any depreciable asset shall mean the number of years at the end of which at least ninety-five per cent of the original cost of that asset to the company will have been provided for by way of depreciation if depreciation were to be calculated in accordance with the provisions of section 350;

(b) any dividend payable in cash may be paid by cheque or warrant sent through the post directed to the registered address of the shareholder entitled to the payment of the dividend or in the case of joint shareholders, to the registered address of that one of the joint shareholders which is first named on the register of members, or to such person and to such address as the shareholder or the joint shareholders may in writing direct.

From the above, it is clear that dividend (including interim dividend) can be paid only out of current profits or profits accumulated of earlier years. From the fact that the Company had declared dividend, it is assumed that the Company had adequate profits to pay the dividends. That being the case, the Company's claim that it did not have the ability to pay the dividends as a notice had been served by the Income Tax Department and recovery proceeding had been initiated by the State Bank of Hyderabad for loan given by them, almost two months after the declaration of dividend, cannot be accepted.

5.14. Thus, upon a consideration of the above facts, it is clear that the Company and its Chairman and MD, Noticee No. 2, M. Madan Mohan Reddy have consciously avoided paying dividend to the shareholders. Further, Noticee No.3, Ashok Sagar Mudumba was an executive and non-independent director and as provided in the annual report for the year ending March 31, 2011, was heading the marketing operations of the Company. Noticee No. 3 has neither appeared before me during the opportunities of personal hearing granted, nor submitted any written reply to the SCN. In this regard, it is stated that in a civil proceeding, as contemplated in Section 11B of the SEBI Act, SEBI is not loaded with the burden of adducing such proof, which beyond reasonable doubt establishes the role of a director in the affairs of the Company. Considering the above, I find that in the present circumstances the fact that Noticee No.3 was an executive and non-independent director in Midfield, during the relevant time, is sufficient to draw the inference that he was complicit in the non-payment of dividend by the Company to the shareholders. In view of the same, Noticee No. 3 is also liable for the non-payment of dividend to shareholders even after more than 8 years from its declaration.

5.15. With respect to Noticee Nos. 4, 5, 6 and 7, it is seen from the Annual Report ending March 31, 2011 that Noticee No. 4, Ashok Kumar Kolla; Noticee No. 5, Raja Raju Kothapalli; Noticee No. 6 Kamlesh Kumar Bhargava; and Noticee No. 7, Vegulla Gopala Krishna Rao were non-executive independent directors. Further, authority letters have been received from Noticee Nos. 4, 5 and 6 authorizing Noticee No. 2 to appear on their behalf in the present proceeding. Also, Noticee No. 7 has neither submitted any reply in response to the SCN nor appeared before

me. I note that Noticee Nos. 4, 5, 6 and 7 were non-executive independent directors. The SCN has not brought out any specific role of these directors in the decision leading to the declaration of dividend and the non-payment thereof. In this regard, reference is drawn to the Order dated November 27, 2019 of the Hon'ble SAT in *G. Unnikrishnan Nair and Others V. SEBI (Appeal No. 05 of 2018)* wherein it was held that “*an independent director shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, consent or connivance or where the independent director had not acted diligently.*” The said principle was reiterated by the Hon'ble SAT in its Order dated February 07, 2020 in *Dr. Venkadasamy Venkataramanujan V. SEBI (Appeal No. 254 of 2019)*. Going by the jurisprudence cited above, I do not find any reason to pass directions against the said directors in the instant case.

6. Directions —

6.1. I, in exercise of powers conferred upon me under sections 11(1), 11 (4) and 11B the Securities and Exchange Board of India Act, 1992 hereby pass the following directions:

6.1.1. Noticee Nos. 1, 2 and 3 shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner for a period of two years from the date of this Order.

6.1.2. Noticee Nos. 2 and 3 shall also be restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI for a period of two years.

6.1.3. The SCN dated October 20, 2016 stands disposed of in respect of Noticee Nos. 4, 5, 6 and 7 without any directions.

6.2. The directions contained in 6.1.1 and 6.1.2 above shall run concurrently with other debarment/restraints that Noticee Nos. 1, 2 and 3 may be undergoing, in terms of other SEBI orders.

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

6.4. A copy of this order shall be served upon the Noticees immediately. A copy shall be served on the recognised Stock Exchanges and the Depositories for necessary action.

Place: Mumbai

Date: February 09, 2021

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA