

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4) and 11B of Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, in respect of Interim Order cum Show Cause Notice dated July 15, 2014 in the matter of Remac Realty India Limited.

In respect of:

SR. No.	NOTICEE	PAN
1.	Debapratim Mazumder	AMYPM6746R

Background:

1. Securities and Exchange Board of India (SEBI), after a preliminary enquiry, had passed an *ex-parte* interim order cum show cause notice dated July 15, 2014 (Interim Order), wherein it had *prima facie* observed that Remac Realty India Limited (**Remac Realty / the company**) was involved in illegal mobilization of funds from the public through schemes in the nature of Collective Investment Schemes ("CIS") without obtaining certificate of registration from SEBI and thus had contravened section 12(1B) of the Securities and Exchange Board of India

Act, 1992 ("the SEBI Act") read with Section 11AA of the SEBI Act, 1992 and Regulation 3 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 ("the CIS Regulations"). The activity of illegal mobilization of funds by Remac Realty was also *prima facie* found to be a fraudulent practice in terms of Regulation 4(2)(t) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 ("the PFUTP Regulations"). Accordingly, the following directions *inter alia* were issued against Remac Realty and its directors, including Shri Debapratim Mazumder (**Noticee**), vide the abovementioned interim order cum show cause notice:

- a. *not to collect any money from investors from its existing "schemes"/plans or to launch any new "scheme"/plan;*
- b. *to immediately submit the full and detailed inventory of the assets owned by Remac Realty out of the amounts collected from the "applicants"/investors under its existing "schemes"/plans;*
- c. *not to dispose of any of the properties or alienate the assets of the existing "schemes"/plans;*
- d. *not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company;*
- e. *to furnish the following information with regard to its various "schemes"/plans, including the scheme for advance booking of solar products,*

- i. *scheme-wise list of "applicants"/investors, their contact numbers and addresses along with the details of amount mobilized and refunded till date.*
 - ii. *separate list of the "applicants"/investors, their contact numbers and addresses, who have, opted for the delivery of solar products and list of the "applicants"/investors who have availed the refund facility offered by Remac Realty, along with the list of solar products delivered by Remac Realty, till date,*
 - f. *details of expenditure incurred under the head "Administration Overheads" (mentioned in the Paragraph No. 3.1 (xi) of the interim order), duly certified by an auditor.*
2. Subsequently, vide a final order dated March 19, 2018 (Final Order) SEBI *inter alia* found that the company and its directors had failed to address and refute the *prima facie* inferences drawn in the Interim Order regarding the nature of mobilization of funds under various schemes. Accordingly, SEBI concluded that the activities of the company as described in the interim order constituted Collective Investment Schemes in terms of section 11AA of the SEBI and the same had been carried out by the company without seeking a registration from SEBI, thereby contravening section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the PFUTP Regulations. Further, SEBI held the then directors of the company, including the Noticee, accountable for such contraventions. In view of the same, SEBI vide the Final

Order issued *inter alia* the following directions against the company and its directors, including the Noticee:

(a) *Remac Realty and its directors, namely Shri Partha Pratim Tewari, Ms. Leena Tewari, Ms. Reena Vijay, Shri Sandip Chattopadhyay and Shri Debapratim Mazumder (i.e. Noticee nos. 1-2 & 5-8), are jointly and severally liable to wind up its existing collective investment schemes and refund the money collected by it under the schemes with returns which are due to the investors as per the terms of offer within a period of three months from the date of this order. The refund shall be made through 'Bank Demand Draft' or 'Pay Order'. Upon completion of the refund as directed above, within a further period of seven days, Remac Realty and its present directors, namely Shri Partha Pratim Tewari, Ms. Leena Tewari, Ms. Reena Vijay, Shri Sandip Chattopadhyay and Shri Debapratim Mazumder, shall submit a winding up and repayment report (WRR) to SEBI in accordance with the CIS regulations. The WRR shall be supported by the proof of the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds along with a certification of such repayment from two independent Chartered Accountants. In the event of failure by Remac Realty and its directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the company and above named directors.*

- (b) *Remac Realty and its above named directors (i.e. Noticee nos. 1-2 & 5-8) shall not alienate or dispose of or sell any of the assets of Remac Realty and any other asset acquired out of funds of Remac Realty, except for the purpose of making refunds to its investors as directed above.*
- (c) *Remac Realty and its above named directors (i.e. Noticee nos. 1-2 & 5-8) shall with immediate effect be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to investors are complied with, as directed at sub-paragraph (a) above to the satisfaction of SEBI and WRR is submitted to SEBI and for a further period of four years from the date of completion of the refund, as directed above.*
- (d) *The above named directors (i.e. Noticee nos. 2 & 5-8) of Remac Realty shall be restrained from holding position as directors or key managerial personnel of any listed company for a period of 4 years from the date of this Order.*

3. Subsequently, the Noticee preferred an appeal against the Final Order before the Hon'ble Securities Appellate Tribunal (SAT) wherein he *inter alia* contended that he was unaware of the entire proceedings before the WTM as he was taken in judicial custody on December 09, 2015 and remained in jail till October 04, 2018 when he was granted bail by Orissa High Court on October 16, 2018. He contended that he came to know about the Final Order only when he received the notice of demand dated November 26, 2019 issued by the Recovery Officer, SEBI, on or around December 07, 2019, based on which his accounts were

frozen. Thereafter, he filed the said appeal. The Hon'ble SAT, after considering the facts and circumstances of the case, held vide its order dated September 11, 2020 that the Noticee had no knowledge of the proceedings before the WTM. In view of the same, the Hon'ble SAT *inter alia* held that the ex-parte proceedings and the ex-parte Final Order dated March 19, 2018 in so far as it related to the Noticee could not be sustained and was quashed. The SAT remitted the matter to WTM to decide the matter afresh and also directed that the Noticee would appear before the WTM either personally or through his advocate on September 25, 2020 and thereafter, the WTM would grant an opportunity to the Noticee to file an appropriate reply to the show cause notice and would proceed thereafter in accordance with law.

Reply and personal hearing:

4. Pursuant to the above, an opportunity of personal hearing was fixed on October 16, 2020, since hearing could not be held on September 25, 2020 due to certain office exigencies. In the meantime, the Noticee filed his reply dated October 15, 2020. The personal hearing on October 16, 2020 was attended by Shri Saurabh Bachhawat, Advocate, on behalf of the Noticee. During the hearing on October 16, 2020, the Noticee was granted a week's time to file additional written submissions. However, vide email dated November 07, 2020, the Noticee's advocate, Shri Saurabh Bachhawat submitted that the Noticee would not be filing any additional submissions in the matter and requested SEBI to consider his reply along with documents relied upon therein while passing the Order.

5. The Noticee vide his reply dated October 15, 2020 has submitted *inter alia* the following:

- (a) At the outset, the Noticee submits that he is not dealing with the allegation as to whether or not the “schemes”/plans offered by Remac Realty were in the nature of CIS as specified under Section 11AA of the SEBI Act, 1992. He is only dealing with his role in the affairs of Remac Realty.
- (b) He had joined a company by the name, Remac Marketing Pvt. Ltd. as a sales executive on October 06, 2003. Remac Marketing Pvt. Ltd. was in the business of real estate marketing and consultancy.
- (c) From time to time, the Noticee was being promoted in Remac Marketing Pvt. Ltd. His last post in Remac Marketing Pvt. Ltd. was as the General Manager – Marketing (promoted on April 16, 2010).
- (d) Another group company was incorporated by Mr. Partha Pratim Tewari (Managing Director cum Chairman of Remac Marketing Pvt. Ltd.) on January 15, 2009 by the name of Remac Realty India Limited.
- (e) Thereafter in April 2010, on resignation of two directors (Mr. Ganesh Bagaria and Mr. Arnab Roy) of Remac, Mr. Partha Pratim Tewari directed the Noticee to become the director of Remac Realty. As a huge chunk of salary was due from Remac Marketing Pvt. Ltd., the Noticee was forcefully inducted as a director in Remac Realty.
- (f) The Noticee was made a director in Remac Realty only for namesake and in fact he had no control in any manner over the affairs or functioning of the

company. Mr. Partha Tewari, his wife (Mrs. Leena Tewari) and his sister-in-law (Mrs. Reena Vijay) were the authorized signatories of the company and also the bank accounts of all the group companies of Remac Realty. The said fact is also confirmed by the branch manager of Axis Bank and also the accountant of Remac Group in the statement recorded before CBI, Kolkata.

- (g) After a lot of resistance by the Noticee, in August 2013, Mr. Partha Tewari finally accepted his resignation and thus the Noticee returned all the official items and documents which he was having in his professional capacity. He was assured by Mr. Partha Tewari that all the necessary steps would be taken by him to remove his name as the director of Remac Realty. During the same time, he received the SCN from SEBI.
- (h) Thereafter, the Noticee was taken into judicial custody on December 08, 2015 and was finally released on bail on October 04, 2018. Even the High Court while granting bail to the Noticee had observed that he was merely a sales manager at the start of his career with Remac Marketing Ltd. and that Mr. Partha Tewari and his wife were the main operators of the company / Remac Realty.
- (i) In the charge sheet filed by the CBI, it is noted that Mr. Partha Tewari was the Managing Director of Remac Realty. Even the Hon'ble High Court, Orissa, also noted that the company / Remac Realty was under the control of Mr. Partha Tewari and his wife.
- (j) The Noticee was not in day-to-day control of the affairs of Remac Realty and was merely an employee of the company who was handling the

marketing department. Mr. Partha Tewari never conducted any board meeting of the company and used to take all decisions unilaterally. The Noticee was not involved with the launch of any scheme / plan by Remac Realty.

(k) Based on the above facts, it is clear that the Noticee was not an “officer in default” as defined under Section 5 of the Companies Act and therefore he cannot be held jointly and severally responsible with the other directors to repay the money collected by the company from its applicants / investors. In this regard, the Noticee draws the attention towards the judgments passed by the Hon’ble SAT in the matters of Pritha Bag vs. SEBI (Appeal No. 291 of 2017, Date of Decision: 14.02.2019); Sayanti Sen vs. SEBI (Appeal No. 163 of 2018, Date of Decision: 09.08.2019); Adi Cooper vs. SEBI (Appeal No. 124 of 2019, Date of Decision: 05.11.2019) and G. Unnikrishnan Nair vs. SEBI (Appeal No. 05 of 2018, Date of Decision: 27.11.2019).

(l) In view of the submissions made above, the Noticee prays that the directions contained in the SCN may be set aside and the present proceedings be disposed of against him without any adverse directions.

Consideration and findings:

6. I have gone through the facts of the case, the charges against the Noticee as stated in the Interim Order and the submissions made by him in respect of the said charges. At the outset, I note that the Noticee has categorically stated in

his reply that he is not dealing with the allegation made by SEBI regarding the company's fund raising activities being in the nature of CIS, as mentioned in the Interim Order. He has stated that his submissions are limited to dealing with his role in the affairs of the company. Considering the same, I do not deem it necessary to decide afresh the said issue of whether the activities of the company were in the nature of CIS or not and the findings on this issue as given in the Final Order would suffice. Accordingly, the findings given in the Final Order on this issue may be referred to. Having observed as above, I now proceed to decide whether the Noticee is accountable for the contraventions of the company or not.

7. I note that the Noticee had primarily based his defense on the contention that he was merely an employee of the company who was forcefully inducted as a director of the company. He has contended that he was working as an employee of Remac Marketing Pvt. Ltd. Since October 06, 2003 as a Sales Manager and was inducted as a director in Remac Realty in April 2010 only for namesake. In fact, he had no control in any manner over the affairs or day to day functioning of the company. Mr. Partha Pratim Tewari, Chairman cum Managing Director (CMD) of Remac Realty, his wife (Mrs. Leena Tewari) and his sister-in-law (Mrs. Reena Vijay) were the authorized signatories of the company and also for the bank accounts of all the group companies of Remac Realty. He has further contended that after a lot of resistance by him, in August 2013, Mr. Partha Pratim Tewari finally accepted his resignation, whereupon the

Noticee returned all the official items and documents which he was having in his professional capacity. He was assured by Mr. Partha Tewari that all the necessary steps would be taken by him to remove the Noticee's name as a director of Remac Realty. During the same time, he received the SCN from SEBI. Thereafter, he was taken into judicial custody on December 08, 2015 and was finally released on bail on October 04, 2018. The Noticee has further contended that Mr. Pratha Pratim Tewari never conducted any board meeting of the company and used to take all decisions unilaterally. The Noticee was also not involved with the launch of any scheme / plan by Remac. The Noticee has submitted that based on the above facts, it is clear that he was not an "officer in default" as defined under Section 5 of the Companies Act, 1956 and therefore he cannot be held jointly and severally responsible with other directors to repay the money collected by the company from its applicants / investors. The Noticee has also relied on various decisions of the Hon'ble SAT in support of his contentions. The names of such cases are already mentioned above under the submissions of the Noticee.

8. As regards the Noticee's contention that he, as a director, did not have any control in the company and was not involved into day-to-day affairs of the company, I note that while the material available on record does not throw much light on the exact role and responsibility of the Noticee in the company as a director, the documents attached with the Noticee's Memorandum of Appeal (appeal memo) filed in the Hon'ble SAT show the following:

- (a) There is a copy of Form 32 filed with RoC showing appointment of the Noticee as a non-executive director of Remac Realty India Pvt. Ltd. with effect from 02/04/2010.
- (b) Page 42 of the Noticee's appeal memo contains a copy of letter dated July 01, 2011 written by Mr. Partha Pratim Tewari and addressed to the Noticee on the letterhead of Remac Realty wherein the Noticee's "Compensation and benefit structures" are mentioned. The same mentions a special allowance of Rs.2000 per month and Rs.24,000 per year as "Director's Remuneration" for the Noticee. Page 43 of the appeal memo, which appears to contain the details of Noticee's yearly CTC in Remac Realty, also mentions an amount of Rs.18,000 as "*Director Remuneration from Remac Realty India Pvt. Ltd. @ Rs.1500/- p.m.*"
- (c) From the statement dated 12.02.2018 of Shri Kaushik Chakraborty (Accountant in Remac Realty), recorded by DSP, CBI, EO.IV, Kolkata (available on page 72-99 of the appeal memo), it is noted that there were various bank accounts which were opened in the name of Remac Realty India Limited. The authorized signatories of all such bank accounts were Shri Partha Pratim Tewari and Smt. Leena Tewari. Shri Kaushik Chakraborty has stated (ref: page 75 of the appeal memo) that for one such bank account (A/c no. 910020026407111) maintained at Axis bank, Guwahati Branch, Partha Pratim Tewari and Leena Tewari were appointed

as authorized signatories, based on the resolution passed on 21.07.2010, signed by Shri PP Tewari, Sandeep Chattopadhyay and Deba Pratim Majumdar (the Noticee).

(d) In the bail application filed before the Hon'ble High Court of Orissa, a copy of which is attached to the appeal memo as Exhibit J (page no. 188-197 of the appeal memo), the Noticee on one hand has contended that he was inducted as an additional director of Remac Realty only as paper formality by allotting a token quantity of 5 shares of the company, out of total 50,000 shares, and that he was not involved in the financial matters or the fundraising activities of the company as a director, on the other hand, the Noticee has also admitted that he was assigned the duty to oversee the real estate business of the company and to oversee after office administration (ref.: page 193 of the appeal memo).

(e) The Noticee has contended that he had resigned as a director of the company which was accepted by Mr. Partha Pratim Tewari in August 2013. In this regard, it is noted from the copies of correspondence between the Noticee and Shri Partha Pratim Tewari (MD of the company), which is available as Exhibit F of the appeal memo (page no. 100-155 of the appeal memo), that the Noticee had written a letter dated July 03, 2013 (page no. 100 of appeal memo) addressed to the Group Chairman, Remac, whereby he had notified his desire to discontinue his service from Remac Realty India

Ltd. and resign from his current assignments with effect from August 01, 2013. The Noticee in his reply dated October 15, 2020 has contended that his resignation was accepted in August 2013. However, the record of correspondence between the Noticee and Shri Partha Pratim Tewari, the Group Chairman, Remac, (Exhibit F of the appeal memo) including email dated June 10, 2014 (page no.102-103 of appeal memo) indicate that the Noticee's association with Remac Realty had continued even beyond August 01, 2013. Further, it is noted from the information available on the MCA21 website that the Noticee's name continues to be shown in the list of directors of the company as on date.

- (f) It is noted that the Noticee in his email dated July 17, 2014 (page 111-113 of the appeal memo), apparently sent to Partha Pratim Tewari, has mentioned *inter alia* the following:

“Things handed over to you on the same date at your residence:

- 1. All photocopies of the agreements and letter executed with business Developers at different point of times.*
- 2. All data (Soft Copy) related to the reports, contact details (both external and internal), venture related work which I did during my tenure of association with your esteem organizations, important mails, current status of each zone – branch and all other relevant information which will help you to operate..... ..*

3. As instructed by you, a brief details related to Money market operation and status, Details of customers of Prayas (who were following me up), details related to the new module of Real Estate, point of discussion which I had with both Mr. Dipak Majumder and Mr. Subrata Basu as your residence and the things that is required from Delhi for smooth operations has been updated on the new note book.

... ..

... .. “

- (g) It is further noted that the Noticee vide email dated July 23, 2014 (page 114 of the appeal memo) had written to Shri Partha Pratim Tewari regarding his release from the company and settlement of his dues. In response to the same, Shri Tewari vide email dated 28/07/2014 (page 115 of the appeal memo) had written to the Noticee stating the following:

“Dear Deb,

We have received ur resignation letter where by u hv shown medical grounds. But at the moment after SEBI order has come we seek full cooperation and information from all key persons involved during the last 4 yrs of remac realty operation. You and Sandip have been handling the operations. Therefore I wd request you to support and cooperate us and sebi. Regarding pending salary since company has been under huge loss last 2 yrs it won't be possible to pay directors such huge perks and salaries. Regarding intimating Roc you may discuss with your CA our KaushiK Chakraborty.”

9. From the above observations, I note that the Noticee has been a director of the company since April 02, 2010. It is noted from available records that the company had raised funds under its various schemes during the period covered by FY 2010-11 to FY 2014-15. Thus, it appears that the Noticee has been a director since the company began its fund raising activities. Further, from the details of “compensation and benefit structures” as referred to above, it is also apparent that the Noticee had also received monetary benefits from the company in the form of “Director’s Remuneration”.
10. As regards the Noticee’s contention that he was not involved in day-to-day functioning of the company, I note that the facts as appearing from the available records speak otherwise. I note from the observations listed at para 8 above that the Noticee had signed a company resolution dated 21.07.2010 along with other directors, whereby Shri Partha Tewari and Leena Tewari were appointed as authorised signatory for Remac Realty’s bank account no. 910020026407111. This indicates that contrary to his claim, the Noticee was involved in the affairs of the company and was signing documents and records on behalf of the company. Further, the Noticee in his abovementioned bail application has also admitted that he was assigned the duty to oversee the real estate business of the company and to see office administration. Even further, the Noticee in his email dated July 17, 2014, as referred to above under para 8, has stated to have handed over records to Mr. Partha Tewari, which include (a) photocopies of the agreements and letter executed with business

developers at different point of time (b) all data (soft copy) related to the reports, contact details (both external and internal), venture related work which the Noticee did during his tenure of association with Remac Group, important mails, current status of each zone – branch and all other relevant information (c) details related to money market operation and status and details related to the new module of Real Estate. The fact that the Noticee was having the records and data being referred to referred to in the said mail, which include photocopies of various agreements, reports, current status of zones and branches, *prima facie* indicates the nature of Noticee's direct involvement in the running of the company and this fact cannot be overlooked. Further, it is seen from the email dated July 28, 2014 of Shri Partha Tewari, addressed to the Noticee, that Shri Tewari has referred to the Noticee as one of the key persons who had been handling the operations of Remac Realty. The above reference clearly indicate that the Noticee was indeed involved in the affairs and day-to-day-functioning of the company and was not merely an employee.

11. The Noticee's involvement in the fund raising activities of the company is also bolstered by the fact that apart from being a director of the company, the Noticee was also an employee of the company who was very much involved in the operations of the company. In this regard, I note that Page 42 of the Noticee's appeal memo contains a copy of letter dated July 01, 2011 written by Mr. Partha Pratim Tewari and addressed to the Noticee on the letterhead of Remac Realty wherein the Noticee's "Compensation and benefit structures" are

mentioned. In the said letter, it is mentioned that the Noticee would get Rs.10 Lakh as performance bonus if he achieved a business amount of Rs.50 Crores during the period from 01.07.2011 to 31.03.2012. Thus, it appears that the Noticee was not only involved as a director of the company, he was also directly involved in the business of the company through which money was raised.

12. The Noticee has contended that he had resigned from the directorship of the company in August 2013. In this regard, I note that the Noticee's name is still appearing on MCA21 Portal as one of the directors of the company. In any case, even if the Noticee's resignation in August 2013 is taken as valid, the Noticee still remains liable as a director since the company had started raising money prior to his purported resignation in August 2013.
13. Once it is established as above that the Noticee was a director of the company when the company was raising money under CIS Schemes and that the Noticee as a director was involved in the day-to-day affairs and operations of the company, he cannot escape the liability for the contraventions done by the company. Considering the same, I conclude that the Noticee, along with the company and its other directors against whom directions were issued vide the Order dated March 19, 2018 (Final Order), is accountable for the contravention of Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the PFUTP Regulations by the company. The same renders the Noticee liable for appropriate action, in line with the directions

issued against the company and its directors vide SEBI Order dated March 19, 2018.

Directions:

14. In view of the foregoing and in the interest of investors and the securities market, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11B and 11(4) thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:

(a) The Noticee, along with entities named in para 15(a) of the SEBI Order dated March 19, 2018, is jointly and severally liable to wind up the company's existing collective investment schemes and refund the money collected by it under the schemes with returns which are due to the investors as per the terms of offer within a period of three months from the date of this order. The Noticee shall follow the same procedure of making the refund and submitting a winding up and repayment report (WRR) as has been prescribed in para 15(a) of the SEBI Order dated March 19, 2018.

(b) The Noticee shall not alienate or dispose of or sell any of the assets of Remac Realty and any other asset acquired out of funds of Remac Realty, except for the purpose of making refunds to its investors as directed above.

(c) The Noticee shall, with immediate effect, be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to investors, as mentioned at sub-paragraph (a) above, are complied with to the satisfaction of SEBI and WRR is submitted to SEBI and for a further period of four years from the date of completion of the refund, as directed above.

(d) The Noticee shall be restrained from holding position as director or key managerial personnel of any listed company for a period of 4 years from the date of this Order.

15. This order shall come into force with immediate effect. A copy of this Order shall be forwarded to all the recognized stock exchanges and registered depositories for necessary compliance with the above directions; and the Ministry of Corporate Affairs for information.

DATE: JULY 02, 2021

G. MAHALINGAM

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA