BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
EASTERN REGIONAL OFFICE (KOLKATA)

ORDER

Application / Petition dated 15.02.2019

Mr. Rajesh Kumar Agarwal

Recovery Certificate no. 1450 of 2018 dated 25.05.2018

[Under Section 28A of the Securities and Exchange Board of India Act, 1992 read with Sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income Tax (Certificate Proceeding) Rules, 1962]

in the matter of **Prism Infracon Limited**

Background:

1. Recovery proceedings were initiated against (1) Prism Infracon Limited (AAFCP1275L) (hereinafter referred to as **PIL**) and its Directors (2) Mr. Rajesh Kumar Agarwal (AFAPA9440H), (3) Mr. Koushik Ghosh (AHLPG4351N) and (4) Mr. Navin Pratap Singh (AVUPS8738C) (hereinafter collectively referred to as **defaulters**) vide Certificate no. 1450 of 2018 dated May 25, 2018, as the aforementioned entities failed to comply with the directions issued by SEBI vide order no. WTM/PS/160/IMD/ERO/FEB/2016 dated February 18, 2016 (hereinafter referred to as **the WTM / SEBI order)** to, *inter-alia*, refund investors in the matter of PIL.

2. The Recovery Officer, vide notice of attachment no. 3627 & 3628 of 2018 dated June 11, 2018 directed attachment of Bank & Demat accounts and Mutual Fund Folios of the said defaulters for recovery of a sum of Rs. 59.37 crores collected through the issuance of Non-Convertible Debentures (hereinafter referred to as **NCDs**) (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956 and ILDS Regulations), to the investors including the money collected from investors, till February 18, 2016, pending allotment of securities, if any, with an interest of 15 % per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73 (2) of the

Companies Act, 1956) to the investors till the date of actual payment, along with further interest, all costs, charges and expenses etc.

3. In this regard, Shri. Rajesh Kumar Agarwal (hereinafter referred to as **Mr. Agarwal / petitioner**) through his advocate, Joby Mathew & Associates (hereinafter referred to as **the Advocate / petitioner**), vide letter dated February 15, 2019 made submissions and sought an opportunity of personal hearing before the Recovery Officer. Accordingly, Mr. Agarwal was granted an opportunity of personal hearing before Recovery Officer on April 26, 2019.

Submissions of Petitioner:

4. Mr. Agarwal and the Advocate appeared before Recovery Officer and reiterated their submissions made vide letter dated February 15, 2019. Further, as agreed upon during the personal hearing, they provided additional submissions in writing vide letter dated May 06, 2019.

5. The submissions made by the petitioner are briefly under.

   i. Mr. Agarwal resigned as a director of PIL w.e.f. July 10, 2012. Subsequent to filing of Form DIR 11 with the ROC on May 22, 2017, the present records of the PIL do not show Mr. Agarwal as a Director of PIL. Since Mr. Agarwal resigned as a Director of PIL even before the complaint was received by SEBI on August 17, 2012 and during the pendency of the proceedings and even now, Mr. Agarwal ought not to have been made jointly and severally liable for refund of monies to Debenture Holders.

   ii. There is discrepancy in the calculation of the total amount raised by PIL in the *ad interim ex parte* order dated November 24, 2014 and in the confirmatory order dated February 18, 2016.

   iii. Mr. Agarwal continues to be liable for the total liability of PIL, as mentioned in SEBI's order and / or the Recovery Certificate, even though PIL has pleaded before the Whole Time Member and in the appeal filed before the Hon'ble SAT, as recorded in the respective orders, that it has refunded/repaid some of the Debenture Holders and, therefore, the liability of PIL stand reduced.

   iv. The present recovery proceedings are rendered superfluous and redundant as NCLT has appointed Interim Resolution Professional (hereinafter referred to

IRP) for carrying out Corporate Insolvency Resolution Process (hereinafter referred to as **CIRP**).

v. Mr. Agarwal does not possess sufficient assets or wealth for recovery of the amount mentioned in the Recovery Certificate. To substantiate the same, copies of the Income Tax Returns filed by Mr. Agarwal for past 3 financial years are provided.

vi. The continuing freeze on operation of bank/demat accounts of Mr. Agarwal amounts to the violation of his fundamental right to life assured to him under the Constitution of India as he is prevented from using his fund to meet even the basic requirements of life including purchase of food and paying for utilities and for maintaining his family.

6. In view of the foregoing submissions, the petitioner prayed that the attachment on operation of his bank and demat accounts may be lifted immediately and the Recovery proceedings may be quashed qua the petitioner and justice may done to him.

Consideration of the submissions:

7. I have carefully considered the submissions made by petitioner and also the other material available on records. I find that the issues raised by the petitioner at paragraphs 5 (i) & (ii) pertain to and emanate from the cited order of WTM. As Recovery proceedings are a corollary to non-compliance to the order of WTM to refund investors, seeking relief before the RO on the contents of the order of WTM, instead of filing appeal before the competent authority, is infructuous.

8. As regards the liability of the petitioner to refund, at paragraph 5 (iii) I note that there is specific direction at paragraph 26 (e) of WTM's order to furnish certificate of completion of repayment to investors from two independent peer reviewed Chartered Accountants. I find from the material on record that that the petitioner / PIL have not furnished the completion certificate w.r.t. the amount claimed to have been refunded to investors.

9. As regards the contention of the petitioner on the proceedings before the NCLT under the Insolvency and Bankruptcy Code, 2016 (hereinafter, **IBC**) I note that the Hon'ble NCLT, Kolkata, vide its order C.P. (IB) No. 762/KB/2017 dated September 06, 2018, allowed the IRP *"to appoint the SEBI as one of the representatives to monitor this*

process". Accordingly, this office is representing SEBI as a monitoring agency of the Committee of Creditors under the IBC. Hence, the task of recovering money from the defaulters and refunding the investors, along with interest and cost shall continue, as aforesaid, against all the defaulters named in the cited SEBI's order.

10. As regards the relief sought for operating savings bank account and demat account, I note that other than the specified exceptions available for salary account or pension account or joint accounts, there is no provision under Section 28A of SEBI Act, 1992, for the Recovery Officer to grant relief in this regard.

Order:

11. The petition of Mr. Rajesh Kumar Agarwal is disposed off in terms of the above order. Copy of this order shall be served on the petitioner.

Given under my hand and seal at Kolkata this 4th **day of June, 2019**

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India
Recovery Division
वसूली प्रभाग

RECOVERY OFFICER
मंजेश एस. रॉय / MANJESH S. ROY
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