

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

UNDER SECTIONS 11(1), 11(4) and 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

S. No.	Name of the Entity	PAN
1.	Aman Kumar	CBCPK8700N

In the matter of Trustline Realty Infra India Limited

A. BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had passed an Interim Order dated April 5, 2017 (hereinafter referred to as “**Interim Order**”) in respect of Trustline Realty Infra India Limited (hereinafter referred to as “**TRIL/ Company**”) for issuance of Redeemable Preference Shares (hereinafter referred to as “**the RPS**”). The said issuance of RPS was deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956 (hereinafter referred to as “**the Companies Act**”). Accordingly, the resultant requirements under Section 60 read with 2(36), Section 56, Section 73(1), 73(2) and 73(3) read with Section 27(2) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) were not complied by the Company in respect of the issuance of the RPS. The Interim Order was passed against the Company and its directors/ promoters, including Mr. Aman Kumar (hereinafter referred to as “**the Noticee**”).
2. Pursuant to the Interim Order, the Noticee filed its reply before SEBI, vide letter dated May 2, 2017. Taking into account the submissions of the Noticee, an opportunity of hearing was provided to the Noticee on May 15, 2018 which was *not* availed by the Noticee. Thereafter, a final order dated July 13, 2018 (hereinafter

referred to as “**Final Order**”), in respect of the Noticee (Mr. Aman Kumar) was passed by SEBI. The Final Order passed by SEBI, *inter alia*, observed that the Noticee was one of the directors of the Company during the time when the company offered and issued RPS to the public.

3. Vide the said Order, *inter alia*, the following directions were issued:

- “a. Mr. Aman Kumar shall, jointly and severally, with other Noticees as per Order dated April 5, 2017 refund money collected through the offer and allotment of preference shares, 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, 1956 till the date of actual payment) within a period of 180 days from the date of receipt of this Order, supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI.*
- b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.*
- c. In case of failure of Mr. Aman Kumar to comply with the aforesaid applicable directions, SEBI, on the expiry of three months and seven days from the date of this Order may recover such amounts, from the company and the directors and promoters liable to refund as specified in paragraph 17(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.*
- d. Mr. Aman Kumar is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above.”*

4. On account of failure on the part of the Noticee to comply with the aforesaid directions, recovery proceedings were initiated against him. Aggrieved by the same, the Noticee approached the Hon’ble Securities Appellate Tribunal

(hereinafter referred to as “**the SAT**”) and appealed against the Order. The Noticee, *inter alia*, contended before Hon’ble SAT that he was one of the directors and all acts and deeds were done by the Promoter-Managing Director, Mr. Mohammad Qamar. It was also contended that since the Noticee was not the Promoter-Director of the Company, the Order was not maintainable *qua* the Noticee. In view of the same, the Hon’ble SAT, vide order dated September 13, 2024 (hereinafter referred to as “**the SAT Order**”), remitted the matter to SEBI for reconsidering the matter afresh.

B. HEARING AND SUBMISSIONS OF THE NOTICEE:

5. Pursuant to the SAT Order, the Noticee was granted an opportunity of hearing on November 26, 2024. However, vide email dated November 25, 2024, the Noticee sought an adjournment in the matter. The request made by the Noticee was acceded to and the hearing was adjourned to December 19, 2024. The Noticee, vide letter dated December 3, 2024, made his written submissions in the matter.
6. On the scheduled date of hearing, the AR of the Noticee appeared through WEBEX platform and made oral submissions. The hearing in the matter was concluded, and as requested, the Noticee was granted 14 days’ time to file its post-hearing written submissions.
7. Thereafter, vide email dated January 20, 2025, the AR of the Noticee filed post-hearing written submissions in the matter. The submissions made by the Noticee vide emails dated December 3, 2024 and January 20, 2025 are summarized as under:
 - a. The Order passed did not specify the role of the Noticee or produce any document/ resolution which was signed by the Noticee for issuance of the RPS;
 - b. The Interim and Final Orders have been passed on the presumption that the Noticee was a promoter in the Company with effect from February 4, 2011, with the director identification number 03376344. However, the said presumption is incorrect as the date of incorporation of the Company is February 17, 2011 and

only three persons are shown as directors (i.e., Mohammad Qamar, Susweta Dutta, Md. Mojahd) with effect from February 17, 2011.;

- c. The Noticee was neither a promoter nor a director in the Company and thus, he cannot be held liable for the violations committed by the Company.
- d. Since the date of incorporation of the Company is February 17, 2011, the Noticee could not have become a director in the Company on February 4, 2011;
- e. In terms of section 5(g) of the Companies Act, the Managing Director shall be the *officer in default* and not everyone can be dragged into litigation. In this regard, reliance is placed on the decision of the Hon'ble SAT in the matter of ***Sayanti Sen Vs. SEBI (Appeal No. 163 of 2018)***;
- f. The Noticee was an employee of the Company at a nominal salary of ₹5000/- and was discharging clerical work like arranging papers and files, etc.;
- g. Although the SCN is based on complaints received by SEBI, details of the said complaints have not been shared with the Noticee. The SCN has also failed to disclose any unresolved grievance of the allottees;
- h. A First Information Report (FIR) was registered by the Bankmore Police Station, Dhanbad, Jharkhand. However, the same was disposed of by the concerned judicial magistrate as no case was made out *qua* the Noticee;
- i. The Noticee has not made any monetary gains and has not gained any unfair advantage. The SCN has also failed to attribute quantifiable unlawful gains to the Noticee;
- j. There is no provision in law to debar an entity from the capital markets for violation of section 73 of the Companies Act. The Noticee was debarred on July 13, 2018 and has not been able to access the securities market till date (i.e., 2025).

C. CONSIDERATION OF ISSUES AND FINDINGS:

- 8. In the above disused factual background, the issue that arises for consideration is whether the Noticee is liable for the contraventions committed by the Company.
- 9. In this context, I find it pertinent to highlight that there is a variance in the submissions made by the Noticee before Hon'ble SAT (as recorded in the order of

Hon'ble SAT dated September 13, 2024) and the submissions made before me dated December 3, 2024. While before the Hon'ble SAT, Noticee submitted that he was one of the directors (but not the Managing Director), before me he has submitted that he was never a promoter or a director of the Company.

10. Separately, the common submission made by him before Hon'ble SAT and me is that all the deeds and acts of the Company were done by its Promoter - Managing Director. It has also been submitted that the direction to repay the amount raised by a company can only be issued to the company itself and the officer in default.

11. In this regard, as noted earlier, the Interim and the Final Orders were passed in respect of TRIL and its directors/promoters, for raising money through offer and issue of RPS to the public, in contravention of the provisions of Sections 56, 60 read with 2(36), 73, and Section 67(3) of the Companies Act, 1956. In this context, the relevant extract of Section 73 of the Companies Act, 1956 is reproduced as under:

"Allotment of shares and debentures to be dealt in on stock exchange.

73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) ...

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money."

12. From a perusal of Section 73(2) of the Companies Act, it is clear that where the company, which intends to offer shares to the public for subscription, has not done it by issue of a prospectus or where permission has not been sought from the stock exchange, the company and other directors of the company who are officers in default shall be jointly and severally liable to repay the money collected from applicants, along with interest at such rate as may be prescribed. From the aforesaid, it is clear that the liability to repay the amount is upon that director of the company *who is an officer in default*. The term '*Officer who is in default*' has been defined under Section 5 of the Companies Act, 1956 which reads as follows.

"5. Meaning of "officer who is in default".

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely :

- (a) the managing director or managing directors;*
- (b) the whole-time director or whole-time directors;*
- (c) the manager;*
- (d) the secretary;*
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;*
- (f) any person charged by the Board with the responsibility of complying with that provision:*
Provided that the person so charged has given his consent in this behalf to the Board;
- (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:*

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form."

13. A perusal of the aforesaid provision indicates that the expression '*Officer who is in default*' would mean managing director or managing directors, whole time director or whole time directors, the manager, the secretary or any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act and would also include any person charged by the Board with the responsibility of complying with the provisions of the Companies Act.

Section 5(g) of the Companies Act further stipulates that where the company does not have any of these officers specified in clauses (a) to (c), all the directors would be deemed to be *officers in default*.

14. In view of the above, regardless of the variance in the submission made by the Noticee before Hon'ble SAT and me (as noted earlier in paragraph 9), the fact regarding the presence of a designated managing director, needs to be analyzed through the lens of the aforesaid provisions. It is noted that the Noticee failed to avail the opportunity of hearing provided at the time of passing of the Final Order. The said order did not identify any '*officer in default*' and held all the directors/promoters liable for issuance of the RPS. However, on the basis of the information obtained from Ministry of Corporate Affairs' website, it is noted that Mr. Mohammad Qamar was the Managing Director of TRIL for the relevant period (2011-12). Further, the Final Order does not bring forth the involvement of the Noticee in the issuance of RPS as a director or otherwise. In addition thereto, the material on record also does not show the involvement of the Noticee in the issuance of the RPS during the relevant period.

15. At this juncture, I deem it fit to place reliance on the decision of the Hon'ble SAT in the matter of ***Pritha Bag vs Sebi***¹ wherein it was observed as under:

"12. Unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) cannot be invoked against the appellant. In the instant case, the appellant has annexed documents to indicate that the company had a managing director...

...

13... In the instant case, there is sufficient material on record to show that there was a managing director and in the absence of any finding that the appellant was entrusted to discharge the application contained in Section 73 of the Companies Act, the direction to refund the amount alongwith interest from the appellant is wholly illegal."

¹ (Appeal No. 291 of 2017 decided on February 14, 2019)

16. In the Final Order (or in other material available on record) there is no mention that the Noticee was the Managing Director or Whole Time Director or was a person charged by the Board with the responsibility of complying with the provisions of the Companies Act. Consequently, he could not have been made responsible for refunding the amount under Section 73(2) of the Companies Act, 1956. In other words, without any finding that the Noticee is an officer in default, the liability imposed under Section 73(2) cannot be invoked on him. Consequently, the question of violations by the Noticee of Section 60 read with 2(36), Section 56, 73(1), 73(3) of the Companies Act read with Section 27(2) of the SEBI Act does not arise. Thus, the present proceedings against the Noticee are liable to be disposed of.

17. As noted above, since the Noticee was not an *officer who is in default*, and is not liable for the alleged violations, I am of the view that the remaining submissions made by the Noticee do not require further consideration.

D. ORDER:

18. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the SEBI Act, hereby dispose of the present proceedings against the Noticee, without issuance of any direction.

Sd/-

AMARJEET SINGH

DATE: APRIL 23, 2025

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA