

WTM/AB/EFD-1/DRA-4/24/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

Noticee No.	Noticee no. as per interim order	Name of the Noticee	PAN
1.	9	Manoranjan Roy	AROPR1716R

In the matter of LRN Finance Ltd.

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") passed an ex-parte interim order cum show cause notice in the matter of LRN Finance Ltd. (hereinafter referred to as "**LRN**"/ "**the Company**") on July 25, 2018 (hereinafter referred to as "**the interim order**") in respect of non-convertible redeemable debentures, issued by LRN in violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**"), Companies Act, 1956 and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as "**ILDS Regulations**").
2. The directions issued to the Company and its existing and previous directors in the interim order are reproduced below:

"Directions –

23. *I note that the Directorate of Economic Offences (DEO), Kolkata vide their letter dated January 04, 2018 informed SEBI that it has initiated action against Pincon Group including LRN, seized properties belonging to Pincon Group and arrested sixteen persons including two directors of LRN. Further, vide public notice dated December 16, 2017, DEO has requested depositors, secured creditors and other affected persons to furnish the necessary documents who have deposited money/invested in debentures etc. to Pincon group of companies for refund. As the proceedings to refund the investors including the debenture holders have already been initiated by the DEO, it is felt that no meaningful purpose will be served if SEBI were to initiate separate refund*

proceedings against the Noticees at this juncture. Accordingly, I direct the Noticee company i.e. LRN and its Noticee Directors to ensure refund to all the NCD holders through the process being carried out by DEO, Kolkata.

24. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-

- i. LRN and its Directors i.e. Raj Kumar Roy, Swapn Kumar Sircar, Arup Thakur, Chandan Kumar Adhikary, Diwakar Singh, Goutam Ghosh, Hari Singh, Manoranjan Roy, Sandeep Thakur, Singh Jagbahadur Negi, Subhajit Saha and Siddhartha Roy shall not mobilize fresh funds from investors through the offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly.*
- ii. LRN and its Directors named above shall not access the securities market either directly or indirectly in any manner whatsoever.*

25. The preliminary findings contained in paragraphs above are made on the basis of the information submitted by the Company, documents obtained from MCA21 Portal and other relevant material on record. LRN and its Directors named above (Collectively referred to as “Noticees”) are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, viz. –

- i. The Noticees not to mobilize fresh funds from investors through the offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly.*
- ii. The Noticees to be refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement 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 completion of refund to all the allottees of debentures described in para 14 above.*
- iii. Any other directions as may be found suitable.*

26. The Noticees may, within 21 days from the date of receipt of this Interim Order–cum–Show Cause Notice, file their respective replies. In the event the Noticees intend 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 this Order. In the event of the respective Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings mentioned at paragraphs 14-21 and directions at paragraph 25 shall become final and absolute against the respective Noticees automatically, without any further orders. SEBI may also initiate

appropriate enforcement action under SEBI Act including Prosecution in addition to making a suitable reference to State Government/Local Police against the Noticees.”

3. Three noticees to the interim order i.e. Noticee no. 6 (Shri Diwakar Singh), Noticee no. 7 (Shri Goutam Ghosh) and Noticee no. 11 (Shri Singh Jagbhadur Negi) filed their replies in terms of liberty granted in paragraph 26 of the interim order. After providing them an opportunity of personal hearing, a final order dated November 21, 2019 was passed in respect of the aforesaid three Noticees. Remaining 10 noticees to the interim order, including the Noticee no. 9 who is noticee herein, did not file any reply within 21 days of the receipt of the order or sought any opportunity of hearing within 90 days from the date of the receipt of the interim order and thus, against these noticees, directions as proposed in paragraph 25 of the interim order had become final, in terms of paragraph 26 of the interim order.
4. On August 13, 2020, Shri Manoranjan Roy who was arraigned as Noticee no. 9 in the interim order (hereinafter referred to as “**Noticee**”) and against whom interim order got confirmed in view of the para 26 of the interim order, filed a Writ Petition before Hon’ble Calcutta High Court being W. P. No. 6464 (W) of 2020 impugning the interim order and final order dated November 21, 2019, passed by SEBI. Said writ petition was disposed of by the Hon’ble High Court on September 09, 2020 giving liberty to the Noticee to avail statutory remedy of appeal.
5. On September 28, 2020, the Noticee, filed an Appeal No. 336 of 2020 before Hon’ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as “**Hon’ble SAT**”) impugning the interim order and the order dated November 21, 2019, passed by SEBI. The said appeal was disposed of by Hon’ble SAT vide its order dated October 16, 2020, directing as under:

“.....5. Considering the aforesaid, prima facie we find that a reasonable opportunity was not given to the appellant as he was in jail. However, we leave it at that and permit the appellant to file a recall application before the whole time member. If such an application is filed within four weeks from today the whole time member would consider the application and pass appropriate orders after giving an opportunity of hearing to the appellant. Any observation made by us will not come in the way of the authority in passing the order. We may also point out that the impugned order

dated 21st July, 2019, namely, the confirmatory order, does not apply to the appellant and only applies to the other noticees. In view of the aforesaid, the appeal is disposed of with no order as to costs. 6.....”

6. In view of the aforesaid order passed by Hon'ble SAT, the Noticee filed an application for recall of the interim order on November 06, 2020, before SEBI. The Noticee was given an opportunity of hearing on January 08, 2021 which was availed by the Noticee through his advocates. In his recall application and during the personal hearing, the Noticee has, *inter alia*, made following submissions:

- (i) The applicant is presently under judicial custody having been arrested on November 09, 2017 in connection with criminal case being Case No. SPL (PIDFE) 1 of 2017 arising out of Khejuri Police Station Case No. 47/17 dated February 19, 2017 under Section 406/409/420/120B of the Indian Penal Code, 1860 and Section 3 of the West Bengal Protection of Interest of Depositors in Financial Establishments Act, 2013.
- (ii) Applicant was appointed as a director on December 06, 2010, in LRN which was NBFC registered with RBI, however, on September 27, 2016, RBI cancelled registration of LRN as NBFC. The applicant ceased to be director of the company on and from August 27, 2013. However, at no point of time applicant was concerned with the day to day affairs of LRN.
- (iii) The Applicant be treated at par with Noticee no. 3, 6 and 11 and directions, as issued against these Noticees, in the order dated November 21, 2020, be issued in respect of the applicant.
- (iv) The applicant was never informed about SEBI proceedings and thus he could not respond to show cause notice or make representation before SEBI. The applicant categorically states that no notices of the proceedings so initiated by SEBI and the interim order have ever been served on him.
- (v) SEBI was well aware that the applicant has been in judicial custody, as the SEBI is a party in W. P. No. 24110 (W) of 2016 – The Investor & Marketing Members' Welfare Society & Ors. Vs. Union of India & Ors., pending before

the High Court at Calcutta. In the said writ petition, an affidavit has been filed by the director of the said company-LRN, namely, Siddhartha Roy, *inter alia*, affirming that the said company is wholly responsible for the purpose of making payments to the depositors/investors. The said affidavit further recorded that the applicant is in no way connected and liable to make payment to the depositors. It is also reiterated that the applicant was not the director of the said company at the relevant time and he resigned from the Company with effect from August 27, 2013.

- (vi) The applicant had approached the Hon'ble Calcutta High Court by way of proceedings under Article 226 of the Constitution of India challenging the aforesaid arbitrary action on the part of SEBI and praying for withdrawal and/or cancellation of the impugned order dated July 25, 2018 and November 21, 2019, being W.P.A No. 6464 of 2020 – Shri Manoranjan Roy Vs. SEBI & Ors. By an order dated September 09, 2020 passed in the said writ petition by Hon'ble Calcutta High Court, the said writ petition was disposed of as the applicant had the statutory alternative efficacious alternative remedy available.
- (vii) Pursuant to the aforesaid order passed by the Hon'ble Calcutta High Court, the applicant filed an Appeal no. 336 of 2020, before Hon'ble SAT, wherein the order dated October 16, 2020, as extracted in para 4 above came to be passed.

7. I note that the interim order had to become final against the Noticees therein, in terms of para 26 thereof, in case of failure by such Noticee, to file reply within 21 days or seek opportunity of hearing within 90 days, from the receipt of the interim order. The Noticee has contended that he has not received the interim order as he was in judicial custody. It is noted that interim order was served at the residential address of the Noticee. Therefore, there was a service of the interim order on the Noticee and the contention of Noticee that he was not served with the interim order and therefore, he could not answer the interim order and/or seek hearing, is not tenable. Be that as it may be, I am treating the recall application filed by the Noticee, as the reply of the Noticee to the interim order and deal with it as such, in deference to the direction

given by the Hon'ble SAT in its order dated October 16, 2020, relevant extract whereof has been extracted in para 4 above.

8. I note that interim order passed in the matter records that the Company had raised at least Rs. 40.60 crore by way of public issue of NCDs during 2012-13, 2013-14 and 2014-15 without complying with the specific provisions of Companies Act, 1956 and SEBI (ILDS) Regulation, 2008. In view of this, interim order was passed against LRN and its 12 directors including the Noticee/applicant herein wherein interim directions were issued to the Noticees therein, regarding prohibiting them, from raising money from investors and accessing securities market. Regarding the direction of refund, interim order observed as under:

“.....23. I note that Directorate of Economic Offences (DEO), Kolkata vide their letter dated January 04, 2018 informed SEBI that it has initiated action against Pincon Group including LRN, seized properties belonging to Pincon Group and arrested sixteen persons including two directors of LRN. Further, vide public notice dated December 16, 2017, DEO has requested depositors, secured creditors and other affected persons to furnish the necessary documents who have deposited money/invested in debentures etc. to Pincon group of companies for refund. As the proceedings to refund the investors including the debenture holders have already been initiated by the DEO, it is felt that no meaningful purpose will be served if SEBI were to initiate separate refund proceedings against the Noticees at this juncture. Accordingly, I direct the Noticee company i.e. LRN and its Noticee Directors to ensure refund to all the NCD holders through the process being carried out by DEO, Kolkata.....”

9. Thus, in the present proceedings, the issue to be determined is whether the directions contained in para 24, of the interim order, are to be continued against the Noticee. Further, whether the directions proposed in para 25, are to be issued against the Noticee. Before dealing with the case of the Noticee, it is to be made clear that interim order held LRN *prima facie* liable for raising money from the public through issue of NCDs without complying with the legal provisions pertaining to the public issue of NCDs. LRN has not controverted these findings by filing any reply or by seeking any opportunity of hearing and therefore, *prima facie* findings, contained in the interim order regarding violation of public issue have become final and absolute against LRN by virtue of para 26 of the interim order. The main contentions raised by the Noticee are dealt in the following paragraphs.

10. I note that Noticee was appointed as director in LRN on December 06, 2010 and resigned from the directorship with effect from August 27, 2013. As mentioned above impugned NCDs were issued by LRN during 2012-13 to 2014-15. In this regard, Noticee has submitted that he was not involved in the day to day affairs of the Company. From the explanatory statement to the notice dated February 10, 2011 of the EGM of LRN, held on March 15, 2011 and other records Form 32 and Form 25C, as available on MCA 21 portal, I find that Noticee was appointed as managing director of LRN with effect from February 10, 2011, for a period of 5 years and remained so till his resignation on August 27, 2013. Thus, Noticee was managing director in LRN when LRN raised money from the public through issue of NCDs in violation of public issue norms pertaining to such public issues and as such he is responsible for the violations committed by LRN during his tenure as managing director. I note that Section 73 of the Companies Act, 1956 imposes liability of refund on the company and the director who is officer in default and in terms of Section 5 of the Companies Act, 1956 if there is a managing director in the company he is termed as officer in default. Though liability of Noticee to refund is not a question in these proceedings, in view of the observations made in the interim order and quoted in para 7 above, however, treatment of managing director where there is one, as officer in default to exclusion of other functionaries of a company, shows the importance of the role of the managing director in the affairs of a company. Therefore, contention of the Noticee that he was not involved in the day to day affairs of the company is not tenable.

11. Further, Noticee has claimed that his case must be treated at par with the case of Noticee no. 3, 6 and 11, the proceedings against whom were disposed of by the final order dated November 21, 2019 issued in respect of these noticees. In this regard, I note that in the final order dated proceedings against were directed to be abated as he had died on April 26, 2018. Further, noticee no. 6 and 11 were only the independent directors of LRN during their respective tenure and therefore, having regard to 17 months debarment period undergone by them, under the interim order, further directions for debarment were not continued against them. Whereas, the Noticee's case is different as he was the managing director of LRN. Therefore,

contention of the Noticee that his case should be treated at par with Noticee no. 3, 6 and 11, is not tenable.

12. Noticee has further submitted that in W. P. No. 24110 (W) of 2016 – The Investor & Marketing Members' Welfare Society & Ors. Vs. Union of India & Ors., pending before the High Court at Calcutta, an affidavit has been filed by the director of the said company-LRN, namely, Siddhartha Roy, *inter alia*, affirming that LRN is wholly responsible for the purpose of making payments to the depositors/investors. The said affidavit further recorded that the applicant is in no way connected and liable to make payment to the depositors. It is also reiterated that the applicant was not the director of the said company at the relevant time and he resigned from the Company with effect from August 27, 2013. In this regard, I note that the affidavit filed before Hon'ble Calcutta High Court, relied on by the Noticee states that LRN is responsible for the making of payments to the depositors/investors. As stated above, in the present proceedings, the Noticee's liability for making refund is not in question, as the interim order records that refund in the matter is being undertaken by Department of Economic Offences, Kolkata. In the present proceedings, the liability of the Noticee as managing director of LRN, for the solicitation of money by LRN from public through issue of NCDs, as found in the interim order, is under consideration. Therefore, averments made in the affidavit, in this regard, are not relevant for the present proceedings. Further, I do not find any averment/statement in the affidavit, to the effect that Noticee was not director of LRN at the relevant time and he resigned from LRN on August 27, 2013. Assuming there was any such averment in the affidavit, the same cannot be taken into consideration because of the findings recorded in para 9 above, to the effect that Noticee was appointed as director of LRN on December 06, 2010, became managing director of LRN with effect from February 10, 2011 on March 15, 2011 and remained so till his resignation on August 27, 2013. The interim order records preliminary finding which have now become final and absolute in terms of para 26 of the interim order, to the effect that LRN issued NCDs in violation of public issue norms during financial years 2012-13, 2013-14 and 2014-15 i.e. during the tenure of the Noticee as managing director. Therefore, the contention based on the averments made in the affidavit, are not tenable.

13. In the facts and circumstances of the present case, I find that directions, as proposed in para 25 of the interim order need to be issued against the Noticee.

Directions:

14. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby directs that the Noticee shall not mobilize fresh funds from investors through the offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly and shall also be refrained/prohibited from accessing the securities market by issue of prospectus/offer document/advertisement 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 completion of refund to all the allottees of debenture of the Company.

15. This order comes into force with immediate effect.

16. Copy of this Order shall be forwarded to all recognized stock exchanges and all depositories for information and necessary action. A copy of this Order may also be forwarded to DEO, Kolkata.

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

Place: Mumbai

Date: February 12, 2021

SECURITIES AND EXCHANGE BOARD OF INDIA