Order No. RO/14/2022

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

Certificate No. RC2999 of 2020

1. **Cell Industries Limited**
2. **Mr. Kumar Kanti Bhattacharya**
3. **Mr. Debi Prasad Mookherji**
4. **Mr. Sourav Bardhan**
5. **Mr. Ashim Gupta**
6. **Mr. Asraf Ali Shaikh**
7. **Mr. Shaikh Ajgar Ali**
8. **Mr. Saik Majaffar**
9. **Mr. Rajesh Jaiswal**
10. **Mr. Sekh Rezaul Karim**
11. **Mr. Koushik Mukherjee**

Order under Section 28A of the Securities and Exchange Board of India Act, 1992 read with Second Schedule to the Income-tax Act, 1961 and Rules framed there under in the Recovery Proceedings in the matter of Cell Industries Limited (CIL).

Facts of the case

1. Recovery proceedings were initiated against (1) Cell Industries Limited and its Directors, viz (2) Mr. Kumar Kanti Bhattacharya, (3) Mr. Debi Prasad Mookherji, (4) Mr. Sourav Bardhan, (5) Mr. Ashim Gupta, (6) Mr. Asraf Ali Shaikh,(7) Mr. Shaikh Ajgar Ali, (8) Mr. Saik Majaffar, (9) Mr. Rajesh Jaiswal, (10) Mr. Sekh Rezaul Karim and (11) Mr. Koushik Mukherjee, vide Recovery Certificate No. RC2999 of 2020 dated 25.08.2020, due to failure on their part to refund the amount of Rs. 15.61 Crores collected by the Company through the issuance of Non-Convertible Debentures and Redeemable Preference Shares (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956 and the ILDS Regulations), to the investors including the money collected from the investors, till issuance of SEBI order dated May 12, 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) as per SEBI Order no. WTM/PS/32/IMD/ERO/MAY/2016 dated 12.05.2016 read with order no. WTM/GM/EFD/52/2018-19 dated 05.09.2018.

2. Further, vide notice of attachment proceedings nos. 5896 & 5897 of 2020 dated 25.08.2020 directed Banks and Depositories to attach the Bank, Demat & Mutual Fund accounts of the said defaulters.

3. In this regard, CIL vide letter dated November 18, 2021, attaching report of repayment to investors certified by two Chartered Accountants, namely, M/s. S Mallick & Co. and M/s. R. S Ray & Associates. CIL also made the following submissions:-

   a) *Filed certificates dated 10/11/2021 from two independent Peer Reviewed Chartered Accountants, whereby it is recorded that an amount of Rs.57, 16,205/- is payable to the investors as per the SEBI Order dated May 12, 2016.*
   b) *Mr. Rajesh Jaiswal (Ex-Director) has suo moto (without any direction from SEBI or the Hon'ble Securities Appellate Tribunal) deposited a Demand Draft No. 216848 dated November 7, 2016 in favour of SEBI for a sum of Rs. 1 crore. It is a matter of record that the said amount of Rs.1 crore is a surplus amount lying with SEBI since last 5 years.*
   c) *Requested De-freezing Bank accounts considering that it had made payments to its investors and also deposited a surplus amount of Rs. 1 Crore with SEBI.*

4. Upon receipt of the aforesaid reply, an opportunity of hearing was granted to the company and directors on December 7, 2021. Hearing was attended by Mr. Deepak Dhane, Advocate, on behalf of CIL on December 7, 2021. During the hearing, he reiterated the submissions made through the letter dated November 18, 2021.

5. During the hearing, he was asked to explain how interest was calculated and paid to the investors in terms of para no. 33 (a) of SEBI order dated May 12, 2016. He sought time to submit on same.

6. Vide letter dated December 28, 2021, Mr. Rajesh Jaiswal, one of the Directors of CIL, submitted revised repayment report certified by 2 Independent Peer Review Chartered Accountants (S Mallick & Co, Chartered Accountants vide letter dated December 22, 2021 and M/s. R S Ray & Associates, Chartered Accountants vide letter December 23, 2021). On perusal of revised repayment report, the following was observed:-

   - Applicability of interest at the rate of 15% per annum on amount raised and not refunded to investor within eight days of company becoming liable to repay in terms of section 73(2) of the Companies Act, 1956 was required to be mentioned in column 10 of the said report. It is observed that the column mentions 'No' in some cases and in some cases 'Yes'. In respect of Yes, CIL had paid to investor @15% on the amount raised only for the difference period of maturity date to actual paid date, which is not in compliance of SEBI order dated May 12, 2016 .

7. Some of the instances from the said report are mentioned below to explain the same.

S. No.	Customer Id	Customer Name	Deposit Amount	No. of Units	Deposit Date	Maturity Date	Duration of the scheme (in No. of Months)	Payment Date	Whether Payment made to investors at the time of maturity (Y/N)	Interest of 15% applicability (Y/N)	Amount paid to Customers	Payment mode	Interest compounded Half-yearly as per SEBI order	Verification proof
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
5	8	Laxman Das	15,000	150	19-Feb-11	19-Feb-16	61	16-Sep-16	No	Yes	15000	Bank	1301.69	Original Bond & Affadavit
6	20	Rajiv Das	25000	250	25-Jan-11	25-Jan-16	61	04-Jul-13	Yes	No	24960	Bank	0	Bank statement
8	33	Manai Das	10000	100	02-Feb-11	02-Feb-22	134	19-Jul-16	Yes	Yes	10000	Bank	0	Original Bond & Paid receipt

a) In case of Laxman Das, deposited amount is Rs. 15,000/- and date of deposit is February 19, 2011, interest applicable on the deposit is from the eighth day of the deposit i.e. February 27, 2011. Interest amount accrues in terms of the order on the deposit for 2028 days is approx. Rs. 17,847/- whereas, CIL calculated interest amount of Rs. 1301.69/-.

b) Similarly, in case of Rajiv Das, deposited amount is Rs. 25,000/- and date of deposit is January 25, 2011, interest applicable on the deposit is from the eighth day of the deposit i.e. February 02, 2011. Interest amount accrues in terms of the order on the deposit for 883 days is approx. Rs. 10,056/- whereas, CIL had not paid any interest on the deposited amount by the investor.

c) Similarly, in case of Manai Das, deposited amount is Rs. 10,000/- and date of deposit is February 02, 2011, interest applicable on the deposit is from the eighth day of the deposit i.e. February 10, 2011. Interest amount accrues in terms of the order on the deposit for 1986 days is approx. Rs. 11,640/- whereas, CIL had not paid any interest on the deposited amount by the investor.

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8. In terms of para no. 33(a) of SEBI order dated May 12, 2016, each investor are eligible to get 15% interest from the eighth day of investment made in the company. Accordingly, it may be noted that CIL had not paid interest to all investors in terms of the said order.

9. CIL and its director, Mr. Rajesh Jaiswal, was informed vide email dated January 13, 2022 to comply with directions issued vide SEBI Order dated May 12, 2016 and submit revised repayment report.

10. Mr. Rajesh Jaiswal, Director of CIL, appealed before Hon'ble SAT against the aforesaid email communication. Hon'ble SAT vide Order dated March 3, 2022, disposed the appeal and directed the *Recovery Officer "to consider the certificate issued by the Chartered accountant and proceed from thereon and pass a reasoned and speaking order within four weeks from today after giving an opportunity of hearing to the appellant."*

11. In view of the directions of Hon'ble SAT, opportunity of hearing was granted to the appellant, namely, Mr. Rajesh Jaiswal, on March 16, 2022. He was represented through his Advocate, Mr. Deepak Dhane. He was informed that CIL had not paid 15% interest to investors in terms of para no. 33 (a) of SEBI order dated May 12, 2016, which is reproduced below:-

    Cell Industries Limited, Mr. Kumar Kanti Bhattacharya, Mr. Debi Prasad Mookherji, Mr. Sourav Bardhan, Mr. Ashim Gupta, Mr. Asraf Ali Shaikh, Mr. Shaikh Ajgar Ali, Mr. Saik Majaffar, Mr. Rajesh Jaiswal, Mr. Sekh Rezaul Karim and Mr. Koushik Mukherjee, jointly and severally, shall forthwith refund the money collected by the Company through the issuance of Non-Convertible Debentures and Redeemable Preference Shares (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956 and the ILDS Regulations), to the investors including the money collected from investors, till date, 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.

    Further, in terms of Section 73(2) of Companies Act, it states that "Where the permission has not been applied under sub section (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. During the hearing, Mr. Deepak Dhane was explained again the calculation of interest in terms of said SEBI order payable to each investor as mentioned at para no. 7 above.

13. Accordingly, he was advised to refund amount due to the investors with interest @15% in accordance with section 73(2) of the Companies Act, 1956 as mentioned in para no. 33 (a) of SEBI order dated May 12, 2016. He undertook to submit the revised repayment report certified by 2 Independent Peer Review Chartered Accountants in due course.

Order

14. In view of the foregoing, CIL and its directors are directed to submit the revised repayment report after having paid to the investors in terms of SEBI order dated May 12, 2016.

Copy of this order is being served on all the applicants.

Given under my hand and seal at Kolkata this **31st day of March, 2022**

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

31/03/22.
RECOVERY OFFICER
राज कुमार कलूरि / Raj Kumar Kaluri
वसूली अधिकारी एवं उप महाप्रबंधक
Recovery Officer & Dy. General Manager
भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India
कोलकाता / Kolkata