

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

In respect of

Noticee	PAN
Durga Prasad Shadangi (also known as Durga Prasanna Sarangi)	AZAPS2983D

In the matter of issuance of Cumulative Convertible Preference Shares by Micro Finance Ltd.

Background:

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), had issued an Interim Order dated January 14, 2015 (“**Interim Order**”) followed by a Final Order dated October 27, 2016 (“**Final Order**”) against Micro Finance Ltd. (“**the Company**” / “**MFL**”) and certain promoters / directors of MFL. The aforementioned Orders were issued against MFL for violation of public issue norms stipulated under the provisions of the Companies Act, 1956, SEBI (Disclosure and Investor Protection) Guidelines, 2000 (“**DIP Guidelines**”) and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“**ICDR Regulations, 2009**”). In the Final Orders, MFL was found to have issued 88,91,984 Cumulative Preference Shares (“**CCPS**”) to 1,21,222 allottees in 38 tranches during the FYs from 2005–06 to 2012–13 and had raised a total of Rs.88,91,98,400, without following the public issue norms. The number of allottees in each tranche and each financial year was more than 50.
2. SEBI, vide the Final Order, *inter alia* directed MFL and its promoters / directors to refund the money collected through the issuance of CCPS to the allottees

with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund. SEBI also restrained MFL and its directors / promoters from accessing the securities market and further prohibited them from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly. Vide the Final Order, SEBI also observed *inter alia* that although as per the Annual Report filed by the Company with ROC after its Annual General Meeting dated September 30, 2010, Durga Prasad Shadangi (also known as Durga Prasanna Sarangi) (hereinafter referred to as “**the Noticee**”) was one of the directors of the Company when it had issued the CCPS, he had neither been named in the Interim Order nor was any show cause notice issued to him. SEBI therefore decided to examine the Noticee’s role in the public issue of CCPS by the Company and take appropriate action.

3. Accordingly, the Noticee’s role was examined and it was found that the Noticee was one of the directors on the Board of MFL from June 30, 2004 (as per the Annual Returns filled by MFL with ROC). The exact date of cessation of his directorship was not available. However, records indicated that he was a director at least till FY 2011–12. It was found that during the directorship of Shri Durga Prasanna Sarangi, MFL had made 35 allotments of CCPS to 1,10,374 allottees, thereby raising approx. Rs.63,70,50,700.
4. Since it was established vide the Final Order that MFL had issued CCPS to more than 49 persons in a financial year by inviting applications from the general public while failing to file any prospectus in connection with the issue of securities or get such securities listed with any stock exchange, etc. the Noticee was alleged to have violated the following:
 - (a) Section 56, Section 60 read with Section 2(36) of the Companies Act, 1956.
 - (b) Clauses 2.1.1, 2.1.4, 2.1.5, 2.8, 4.1, 4.11, 4.14, 5.3.1, 5.3.3, 5.3.5, 5.3.6, 5.4, 5.6, 5.6A, 5.7, 5.8, 5.9, 5.9.1, 5.10, 5.12.1, 5.13, 6.0, 6.1 to 6.15, 6.16 to 6.34 including 6.17.13, 8.3, 8.8.1, 9, 10.1 and 10.5 of the DIP Guidelines.

(c) Regulations 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 63 of the ICDR Regulations, 2009.

5. Accordingly, a show cause notice dated July 22, 2021 (“SCN”) was issued to the Noticee calling upon him to show cause as to why appropriate directions should not be issued against him under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, for the abovementioned alleged violations.
6. The Noticee replied to the SCN vide a letter dated August 14, 2021. Thereafter, a personal hearing was scheduled on April 27, 2022. However, in response to the notice of hearing, the Noticee’s wife, Smt. Jharna Mohanty, informed SEBI vide letter dated April 11, 2022 that the Noticee was in Jail at Balod, Chhatisgarh since February 5, 2022, in connection with Criminal Proceeding No. 609/2016 and would not be able to attend the hearing on April 27, 2022. Thereafter, another hearing was scheduled on September 30, 2022, by sending a letter to Jail authorities with a request for arranging the hearing from Jail through video conferencing. In the meantime, the Noticee was released from jail. Thereafter, the hearing date was advanced and the same happened on September 23, 2022. Subsequently, the Noticee submitted additional written submissions dated September 30, 2022.
7. The Noticee vide his replies dated August 14, 2021 and September 30, 2022 has *inter alia* submitted as under:
 - (a) *I am an old man of 76 years, living in a small and remote town of Bhanjanagar in Ganjam District of Odisha. I suffer from many ailments on account of my old age.*
 - (b) *I am an advocate, practising in my native town since 1972. I practice mostly in Civil, Revenue and Forest Law and have no knowledge of Company or Corporate laws.*
 - (c) *I had never allotted any CCPS to any person or mobilized funds in any manner whatsoever.*
 - (d) *The head office of MFL was at Bhubaneswar, which is about 200 KMs from my native place. I had no chance to look into the affairs of MFL and*

also never participated in the day-to-day business of the Company. I had no role to play with any policy matter of the Company. I also had no financial powers at all and remained away from the Head Office.

- (e) I was taken as a legal consultant, by MFL. I never applied to be a director of MFL nor swore any affidavit for that purpose. It appears that I was taken as a director without my knowledge. No Director Identification Number (DIN) was ever issued to me, as reflected in the SCN.*
- (f) Shri Durga Prasad Mishra (Managing Director), Shri Ashok Kumar Patnaik and Baikuntha Nath Patnaik were the founders and active directors of the Company from its inception and they managed all the affairs of the Company throughout.*
- (g) The CBI conducted a search at my house but did not find any material to file a case against me. On the other hand, CBI started cases against Durga Prasad Mishra and Ashok Kumar Patnaik, who were MDs of the Company. The CBI had filed charge sheet against them and had arrested them. Other directors, viz. Upendra Nath Mishra (Brother of Durga Prasad Mishra) and Kali Prasad Mishra (Son of Durga Prasad Mishra) are still absconding.*
- (h) Ultimately, both Durga Prasad Mishra and Ashok Kumar Patnaik were convicted and were directed to deposit Rs. 215 Crore and Rs. 105 Crore respectively, which they appear to have failed to do.*
- (i) I was imprisoned by Chhatisgarh Police for about seven months. I was released on bail by the orders of Hon'ble High Court of Chhatisgarh. Further, I had developed ailments which require urgent operation.*
- (j) I am enclosing copies of two Orders dated June 29, 2017 and July 18, 2017, passed by the Court of Special CJM (CBI), Bhubaneswar against Ashok Kumar Patnaik and Durga Prasad Mishra, in support of my contentions.*

8. Vide an e-mail dated April 18, 2023, SEBI requested the Noticee to make additional submissions, if any. However, no further response was received from the Noticee.

Consideration of issues and findings:

9. I have perused the contents of the Interim Order and the Final Order and have looked into the SCN, the Noticee's submissions in respect of the same and other material available on record.
10. I note that vide the Interim Order and Final Order, SEBI had already examined the allotment of 88,91,984 CCPS to 1,21,222 allottees in 38 tranches during the FYs from 2005-06 to 2012-13, through which MFL had raised a total of Rs. 88,91,98,400. The Final Order has already conclusively established that the abovementioned allotment by MFL had taken place without following public issue norms, resulting in the violation of various provisions of the Companies Act, 1956, DIP Guidelines and ICDR Regulations, 2009 (see paragraph 4).
11. As the Noticee has not challenged the abovementioned findings mentioned in the Final Order, the only issue which needs to be decided is whether the Noticee is accountable for the violation of public issue norms committed by MFL and whether he is jointly and severally liable, along with the Company and its directors / promoters named in the Final Order, for making refunds to the allottees of CCPS, in terms of Section 73(2) of the Companies Act, 1956.
12. I note that the SCN has alleged that the Noticee was a director of MFL for the period from June 30, 2004 till at least FY 2011–12, as per the annual returns filed by the Company with ROC. The SCN further alleges that during the period of directorship of the Noticee, MFL had made 35 allotments of CCPS to 1,10,374 allottees, thereby raising approx. Rs.63,70,50,700. Accordingly, the SCN alleges that the Noticee, who was a director of the Company during the period of money mobilization, has violated the provisions of the Companies Act, 1956, the DIP Guidelines and the ICDR Regulations, 2009. The SCN also enclosed copies of Annual returns for FYs 2004–05, 2005–06, 2006–07, 2007–08, 2009–10, 2010–11 and 2011–12 and copy of Annual Report for FY 2008–09 as annexures, in support of the allegations.

13. I note that the Noticee has *inter alia* denied that he was a director of the Company, as alleged in the SCN. He has submitted that he was taken as a legal consultant by the Company.
14. After examining the records, I note that in the Annual Returns filed by MFL with ROC, for various years starting from FY 2004–05, the Noticee's name is mentioned as a director of the Company, with his date of appointment as June 30, 2004. The Noticee's name is also mentioned as a director in various Annual Reports of the Company, including for the FY 2005–06. However, I note that there is no record of any Form-32 having been filed by the Company regarding his appointment or cessation as a director of the Company. Further, there is no record of any letter or communication from the Noticee giving his consent, express or implied, to act as a director of the Company. Further, there is also no record of any document (financial statements, annual returns and reports etc.) having been signed by the Noticee, either as a director or in any other capacity. In addition, I also note from the details of the directorship of the Noticee, as obtained from MCA Portal on the basis of Noticee's DIN (No. 06585224), that the same does not mention the name of MFL in the list of companies in which the Noticee has held the post of director at any point of time.
15. Apart from the above, I also note that even if it is established that the Noticee was a director of MFL during the relevant period of fund mobilization, in order to make the Noticee liable for making refund under Section 73(2) of the Companies Act, 1956, the other condition mentioned therein i.e. being an officer in default in terms of Section 5 of the Companies Act, 1956, still has to be satisfied. In this regard, I note that the Hon'ble Securities Appellate Tribunal (SAT) vide its Order dated June 28, 2019, in the matter of **Dr. Jugal Kishore Satapathy vs. SEBI (Appeal No. 283 of 2018)**, while allowing the appeal filed by Dr. Jugal Kishore Satapathy (the appellant), a Director of MFL who had challenged SEBI Order dated June 5, 2018, *inter alia* directing him, along with the Company and other directors, to jointly and severally refund the money collected by the Company, had observed:

“3. It was urged that the appellant was appointed as an honorary director after the issuance of the CCPS. It was urged that the appellant had never signed any resolution of the board of directors and that the main persons who were responsible in the issuance of CCPS were Mr. Ashok Kumar Patnaik and Mr. Durga Prasad Misra who have accepted their liability to repay the amount on behalf of the Company and other directors as held by the Chief Judicial Magistrate in its order dated June 29, 2017 and July 18, 2017. It was, thus, urged that the appellant should not be made responsible for refund of the money towards the CCPS which was collected by the Company and other directors.

4. Upon perusal of the record, we find that Mr. Durga Prasad Misra was a managing director of the Company and was also found to be responsible for the issuance of CCPS of the Company by the Chief Judicial Magistrate.

5. In the light of the aforesaid fact which is not disputed by the learned senior counsel for the respondent. We find that Section 5(g) of the Companies Act makes it apparently clear that if there is a Managing Director appointed in a company, he would be an officer in default. Further in the absence of a Managing Director all the Directors by a deeming fiction would be an officer in default. Since in the instant case, there is a Managing Director, the appellant cannot be deemed to be a Managing Director.

6. Consequently, the impugned order cannot be sustained and is quashed. The appeal is allowed.”

16. Considering the abovementioned observations of the Hon'ble SAT, I find that even if it is established that the Noticee had acted as a director of MFL, he cannot be deemed to be an officer in default and consequently, he cannot be directed to make refunds in terms of Section 73(2) of the Companies Act, 1956.

Directions:

17. 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, 1992 hereby dispose of the instant proceedings initiated against the Noticee vide the SCN, without any directions.
18. A copy of this Order shall be served on the Noticee and the recognized Stock Exchanges, Depositories and RTAs for ensuring compliance of this Order.

Place: Mumbai

Date: July 14, 2023

ASHWANI BHATIA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA