Order No. RO/191/2021

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

Certificate No. RC2648 of 2019

1. **Mondal Construction Company Limited**
2. **Mr. Samarjit Mondal**
3. **Mr. Swapan Kumaar Mondal**
4. **Mr. Sachi Dulal Mondal**
5. **Mr. Sanjiv Jain**
6. **Mr. Indranil Chattopadhyay**

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 Mondal Construction Company Limited (MCCL).

Facts of the case

1. Recovery proceedings were initiated against (1) Mondal Construction Company Limited **and its Directors, viz. (2) Samarjit Mondal, (3) Swapan Kumaar Mondal, (4) Sachi Dulal Mondal, (5) Sanjiv Jain and (6) Indranil Chattopadhyay** (hereinafter referred to as **defaulters**) vide Certificate No. **2648 of 2019 dated 27.11.2019**, as these defaulters failed, *inter-alia,* to comply with the direction, vide order no. WTM/PS/136/ERO/JAN/2016 dated 15.01.2016, in the matter of MCCL, to refund investors.

2. This office, vide notice of attachment nos. 5417 & 5418 of 2019 dated 27.11.2019 directed attachment of Bank, Demat & Mutual Fund accounts of the said defaulters for recovery of a sum of Rs. 2,51,94,100/- collected through the issuance of Redeemable Preference Shares (**RPS**) and all the money collected from investors till January 15, 2016, pending allotment of RPS, if any, with an interest of 15% p.a. compounded at half yearly intervals, from the date when repayments became due to the investors till the date of actual payment along with further interest, all costs, charges and expenses etc. The said notice of attachment also stated the fact that out of Rs. 2,51,94,100/- collected, an amount of Rs. 8,12,500/- has been deposited by the company with SEBI

M.D

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

in accordance with the directions of the Hon'ble Securities Appellate Tribunal vide its Order dated 28.04.2016 in Appeal No. 76 of 2016.

3. MCCL and its above-mentioned directors (hereinafter referred to as **Applicants**) through their authorized representative submitted reply dated 04.12.2019 and *inter-alia* prayed for the following major issues / relief:

i. That the Recovery Certificate issued is arbitrary and baseless and it is not in conformity with the order passed by the Securities Appellate Tribunal, Mumbai in Appeal No. 76 of 2016.
ii. That the applicants have complied with the said order passed by the Securities Appellate Tribunal and submitted all the relevant requisites as called upon by SEBI.
iii. That the Recovery notice should be withdrawn and/or quash.
iv. Report with respect to refund of Redeemable Preference Shares amounting to Rs. 2,43,81,600/- by the company was also submitted.

4. After perusal of the above-mentioned reply received, the applicants were informed vide email dated 12.12.2019 that in the report submitted, the total amount stated under the column 'Amount subscribed' is Rs.2,44,21,900/- and the total amount stated under the column 'Payment amount' is Rs.2,75,84,850/-. The report does not contain contact details of the investors. Also, necessary supporting documents like bank statements, cash vouchers, etc. that have been relied upon by the Chartered Accountants have not been forwarded. The report has not been signed by the two Peer Review Chartered Accountants. It is not clear as to whether the said Chartered Accountants are in the panel of any public authority or public institution as required vide Para No. 11.1 (f) of SEBI Order dated 15.01.2016 r/w order dated 28.04.2016 of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **SAT**). The applicants, therefore were advised to submit the following:
   i. The soft copy of the report in MS Excel.
   ii. The calculation of interest amount given to the shareholders in full and final settlement of their claim. The soft copy of the excel sheet mentioned at Sl. No. (i) should contain all the calculations.
   iii. Necessary supporting documents like bank statements, cash vouchers etc. that have been relied upon by the Chartered Accountants. Also, such bank statements should be attested/certified by the respective bank(s).
   iv. Contact details (if available) of the investors to whom refunds have been made as mentioned in the Report.
   v. All the pages of the hard copy of the report containing details of refunds made by the company duly attested/certified i.e. stamped and signed by the two Chartered Accountants.
   vi. Declaration from the two Chartered Accountants showing their empanelment with any public authority or public institution.

M.D

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

5. The Applicants through their authorized representative filed letter dated 03.01.2020 requesting for issuance of certified copy of Order dated 27.11.2019 for the purpose of taking recourse to proceedings before the Hon'ble SAT. Accordingly, certified true copies of the notice of demand and notice of attachment nos. 5417 & 5418 of 2019 dated 27.11.2019 were provided to them vide SEBI letter dated 06.01.2020.

6. The Hon'ble SAT vide its order dated 29.01.2020 dismissed the appeal filed by the applicants with as cost of Rs. 2 lakhs to be paid by the applicants to registry of the Hon'ble SAT within two weeks from the date of order failing which SEBI would recover the same from the applicants and deposit it with the Registrar. The Hon'ble SAT took note of the glaring discrepancy in the submissions made by the applicants and in particular that Swapan Mondal has committed perjury for stating false facts on oath. The Hon'ble SAT held that the directions contained in its earlier order dated 28.04.2016 in para 3(b) has not been complied with till date. The conditions stipulated in para 11.1 (e) and (f) of the order of the WTM dated 15.01.2016 was required to be complied by the applicants i.e. list/report was not signed by two peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. There is nothing to indicate that the list which has been annexed to Exhibit 'E' in the memo of appeal filed had been verified by two peer reviewed Chartered Accountants as per para 11.1(f) of the order of the WTM dated 15.01.2016. The Hon'ble SAT further took note that SEBI had issued several emails directing the applicants to file supporting documents like bank statement, cash vouchers relied upon by Chartered Accountants, contact details of the investors to whom refunds have been made etc. These documents were necessary in order for SEBI to ascertain whether the applicants were justified in contending that Rs. 2,43,81,600/- had already been refunded. No document in support of the submission made by the applicants have been found.

7. Thereafter, the authorized representative vide email dated 10.02.2020 requested the Recovery Officer, SEBI-ERO for hearing. An opportunity of hearing was granted to him on 18.02.2020.In the hearing, the authorized representative submitted written reply of company including bank statements. He also undertook to submit Peer reviewed report of two chartered accountants along with undertaking that they are in panel of public authority/institution to SEBI. The Recovery Officer, SEBI-ERO further directed to submit the details of repayment including calculation of interest paid to the shareholders duly certified by the chartered accountants in hard copy as well as soft copy (Excel Sheet).

8. The Applicants through their authorized representative vide two separate letters, both dated 15.06.2020 submitted reports of the two Chartered Accountants along-with their Peer Review Certificates.

M.D

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

9. After perusal of the above-mentioned reply received, the applicants were informed vide letter dated 22.07.2020 (a scanned copy of which was also forwarded vide email dated 23.07.2020) that full information/documents have not been submitted. Accordingly, the applicants were advised to forward/submit the following information/documents:

i. The details of repayment should include amount of interest at the rate of 15 per annum compounded at half yearly intervals paid to the shareholders (refer para nos. 11.1(a) and 11.1(g) of SEBI order dated 15.01.2016 read with Order of Hon'ble SAT dated 28.04.2016) in full and final settlement of their claims duly certified by the chartered accountants in hard copy as well as soft copy (Excel Sheet). As already informed vide SEBI letter dated 25.05.2016, it was advised that the report of the chartered accountants shall contain all necessary details like name of the investor, complete address and contact details of investor, number of shares held, amount subscribed, date of subscription, date of allotment, folio number, distinctive numbers of shares, amount of payment, date of payment, mode of payment, etc. in an excel sheet as well as hard copy evidencing payment to each and every investor to whom the payments have been made as stated in their certificates.

ii. As observed from the certificate submitted by the chartered accountants that cheques amounting to Rs. 3,46,100/- (principal) and Rs. 48,445/- (premium on redemption) have not been presented by the investors, a complete list of such investors with instrument no. and date of cheque, folio no., their investment details, contact nos., addresses, etc. duly certified by the chartered accountants.

iii. As per the certificate of the chartered accountants, since it was observed that an amount of Rs. 27,500/- has been paid out of the earmarked amount of Rs. 8,12,500/- that was deposited with SEBI, complete details of remaining investors including folio no., investment amount, contact nos., addresses, etc. who have not lodged their claims with the company duly certified by the chartered accountants.

iv. Declaration from the two Chartered Accountants showing their empanelment with any public authority or public institution as mentioned at Para No. 11.1(f) of SEBI order dated 15.01.2016.

10. The Applicants through their authorized representative vide letter dated 22.08.2020 (received in SEBI on 03.09.2020) submitted attested report of one Chartered Accountant and declaration showing their empanelment with public authority or public institution.

M.D

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

11. After perusal of the above-mentioned reply received, the applicants were informed vide letter dated 14.09.2020 (a scanned copy of which was also forwarded vide email dated 14.09.2020) that since the Chartered Accountant has stated in his report that the repayment amount does not include interest at the rate of 15 per cent per annum compounded at half yearly intervals paid to the shareholders as required by para nos. 11.1(a) and 11.1(g) of SEBI order dated 15.01. 2016 read with Order of Hon'ble SAT dated 28.04.2016, in view of such certification, it transpires that the company and its directors have not complied with the directions in respect of repayment of amounts along-with interest. Since, report of only one Chartered Accountant was submitted, the applicants were also advised to submit the report and the declaration showing empanelment with public authority/public institution pertaining to the second Chartered Accountant.

12. Thereafter, the authorized representative vide email dated 02.11.2020 requested the Recovery Officer, SEBI-ERO for hearing. As requested, hearing was granted to him on 10.11.2020.In the hearing, the authorized representative submitted report of the second Chartered Accountant for the claim of refunds made by the company. He sought one week's time to submit written submissions which was granted.

13. The authorized representative vide email dated 20.11.2020 submitted written submissions as per the minutes of the hearing held on 10.11.2020. The signed copy of the written submissions was submitted to SEBI on 23.11.2020. The authorized representative *inter-alia* prayed for the following major issues / relief:

i. In terms of the SAT order passed in Appeal No. 76 of 2016, the component of interest has to be calculated on the amount not paid to the investors.
ii. In terms of Paragraph (c) of the SAT order dated 28.04.2016, it is categorically stated that to determine the rate and quantum of interest amount payable by the appellants after taking into consideration the amount already repaid to the RPS holders in full and final settlement of their claim. The amount of interest payable by the applicants has to be assessed only after deduction of the amount paid Rs.2,51,94,100/-. The interest component involved has to be assessed by SEBI.
iii. To release the accounts of the Directors and the Company as status quo ante.

14. I have perused the above-mentioned written submissions. However, before going into the merits of the submissions made, in this context, it is pertinent to note the directions of the order of the Hon'ble SAT vide its order dated 28.04.2016 which is reproduced as under:

a) *Appellants are directed to deposit Rs. 8,12,500 with SEBI within a period of one week from today.*

M.D

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

b) *Appellants are directed to comply with the conditions set out at para 11.1(e) & (f) of the impugned order within a period of three weeks from today.*

c) *If appellants comply with the conditions set out in para 11.1 (e) & (f) of the impugned order within a period of three weeks from today, then, SEBI within a period of three weeks thereafter shall ascertain as to whether the appellants are justified in contending that Rs.2,51,94,100 has already been repaid to the concerned RPS holders and also determine the rate and quantum of interest amount payable by the appellants after taking into consideration the amount already repaid to the RPS holders in full and final settlement of their claim.*

d) *If SEBI is satisfied that Rs.2,51,94,100 has already been repaid to the concerned RPS holders, then subject to the appellants depositing the amount of Rs. 8,12,500 within one week from today and the interest amount that may be quantified by SEBI within such time as is permitted by SEBI, the impugned order shall stand complied with.*

e) *If SEBI finds that the amount of Rs. 2,51,94,100 has not been repaid to the concerned RPS holders then, the impugned order shall stand revived and SEBI shall be entitled to enforce the same in accordance with law.*

The chronology of events after the Hon'ble SAT passed its order dated 28.04.2016 is briefly summarized in the table below:

Sl. No.	Date of Communication	Particulars
1	03.05.2016	The company deposited the amount of Rs. 8,12,500/- with SEBI.
2	05.05.2016	The company and its directors through their authorized representative requested to know the details of the modalities for refund, including details of contact persons, etc. to be included in the advertisement.
3	18.05.2016	Without waiting for the reply from SEBI, the company published an advertisement in the newspapers. SEBI observed that in the said notice, the company has published the name of one Bapan Das along with address and contact details of SEBI, Eastern Regional Office. The company also forwarded certificates from two Chartered Accountants.
4	25.05.2016	1) SEBI advised the company that the modalities for refund including details of contact persons of the company responsible for refund, etc. may be decided by the company and publish the same in the corrigendum of public notice. It was advised that wherever claims are received (pursuant to public notice/corrigendum of public notice) which are to be refunded from out of Rs. 8,12,500/- deposited with SEBI, the said claims be processed at company's end. A consolidated list of claims received by the company be made. Statement certified by two independent peer reviewed Chartered Accountants

M.D

		who are in the panel of any public authority or public institution be obtained stating that the claims so received are in order. Thereafter, request to SEBI to release the necessary amount to the company for onward refunds to be made to the investors by the company out of Rs. 8,12,500/- deposited with SEBI be made. 2) As regards, the certificates from two Chartered Accountants. Forwarded vide letter dated 18.05.2016, SEBI advised the company that in order to verify the compliance on the part of the company with SEBI final order dated 15.01.2016 read with Hon'ble SAT Order dated 28.04.2016, not only certificates but report of the two Peer Reviewed Chartered Accountants who are in the panel of public authority/institution be submitted to. SEBI had also provided an illustrative list of necessary details which may be included in the report viz. name of shareholder, folio no., amount refunded, etc. for ready reference of the company.
5	30.05.2016	The company and its directors through their authorized representative submitted that a corrigendum shall be issued shortly. As regards compliance with other matters brought to their notice vide SEBI letters dated 25.05.2016, it was submitted that it is not possible to get each individual redemption certified and that at present nothing further is required to be complied by the applicants.
6	04.06.2016	Company and its directors through their advocates stated that it is not required to submit the report w.r.t. repayments amounting to Rs. 2,43,81,600/- as called upon by SEBI vide letter dated 25.05.2016 as it is not mentioned in SEBI order dated 15.01.2016. They again stated that at present nothing further is required to be complied by the applicants.
7	17.06.2016	Company issued corrigendum of public notice and forwarded copies thereof.

M.D

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

8	01.08.2016	1) SEBI clarified the objections raised by the company through their authorized representatives in their letter dated 04.06.2016 and once again advised the company to submit the reports as already informed vide SEBI letter dated 25.05.2016 without any further delay. SEBI advised the company that in case of default, they will be liable for the consequences thereof. 2) As regards, objection raised by the company through their authorized representatives in their letter dated 30.05.2016 w.r.t. submission of Chartered Accountant reports for claims received w.r.t. Rs. 8,12,500/-, it was once again advised that the same has to be done after consolidation as already mentioned in SEBI letter dated 25.05.2016. There is no requirement to submit statement for each and every redemption as stated by the authorized representative.
9	29.09.2016	SEBI sent a reminder advising the company to submit the reports within seven working days from receipt of SEBI letter.
10	01.10.2016	Company reply received stating that they would comply by 28.10.2016.
11	28.10.2016	Company reply received stating that they would submit a reply around third week of November.

Since, no reply was submitted by MCCL, SEBI held that the company has not refunded the amounts to the concerned RPS holders and hence in terms of Para (e) of the Hon'ble SAT order dated 28.04.2016, SEBI proceeded to enforce the WTM order dated 15.01.2016. Consequently, as per direction in Para No. 11.1(i), recovery proceedings in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws have been initiated.

15. Now, the applicants have failed to comply with the order dated 28.04.2016 of the Hon'ble SAT within the time period granted to it since, despite several letters and reminder, they have failed to submit required necessary reports to SEBI to enable it to ascertain whether they were justified in contending that Rs.2,51,94,100/- has already been repaid to the concerned RPS holders as directed by the Hon'ble SAT. In view of the same, the issues raised in the written submissions mentioned at Para No. 13 above w.r.t. determination of interest by SEBI do not even hold good.

16. The Hon'ble SAT vide orders dated 28.04.2016 and 29.01.2020 has also inter alia directed the company and its directors to comply with the SEBI order dated 15.01.2016. Moreover, as regards payment of interest, it is the obligation of the company and its directors to calculate the interest amount and ensure payment to the investors in terms of SEBI order dated 15.01.2016 read with the above-mentioned

M.D

orders of the Hon'ble SAT and provide certificates of peer reviewed Chartered Accountants for due payment of interest also which they have failed to do till date.

Order

17. In view of the foregoing, Recovery Proceedings shall continue as per the directions in the aforesaid WTM order dated 15.01.2016 till the applicants comply with the WTM order dated 15.01.2016 read with orders dated 28.04.2016 and 29.01.2020 of Hon'ble SAT in totality.

The applications / petitions of **Mondal Construction Company Limited, Samarjit Mondal, Swapan Kumaar Mondal, Sachi Dulal Mondal, Sanjiv Jain** and **Indranil Chattopadhyay** are disposed of in terms of the above order.

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

Given under my hand and seal at Kolkata this **25th day of May, 2021**

Mitrajeet Dey

RECOVERY OFFICER

मित्रजीत दे / Mitrajeet Dey
वसूली अधिकारी एवं उप महाप्रबंधक
Recovery Officer & Dy. General Manager
भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India
कोलकाता / Kolkata