BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/HP/2021-22/13633]

UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

Prakash Industries Limited (PAN: AABCP6765H) having address at - 15 Km Stone, New Delhi Road, Hisar - 125044, Haryana.

In the matter of Prakash Industries Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as, '**SEBI**'), initiated adjudication proceedings under section 23E of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as, '**SCRA**') against Prakash Industries Limited (hereinafter referred to as, '**Noticee/PIL/Company/You**') for alleged violation of section 21 of SCRA read with Clause 36 of Listing Agreement.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') under Section 23-I of SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and imposing penalties) Rules, 2005 (hereinafter referred to as '**Adjudication Rules**'), *vide* order dated November 23, 2020 to inquire into and adjudge under Section 23E of SCRA the aforesaid

alleged violations against the Noticee. The appointment of the AO was communicated *vide* order dated November 26, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/HP/585/2021 dated January 08, 2021 (hereinafter referred to as '**SCN**'), was issued to the Noticee in terms of Rule 4(1) of the Adjudication Rules read with Section 23-I of SCRA to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of Section 23E of SCRA for the aforesaid alleged violations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

5. SEBI received a reference dated September 18, 2019 from Cyril Amarchand Mangaldas on behalf of their client Peter Beck and Partner Vermoegensverwaltung GmbH stating that the Noticee has breached their contract in relation to the issued Foreign Currency Convertible Bonds (FCCBs) including failure to pay the instalments of interest due on the FCCBs.

6. During the course of examination, comments were sought from the Noticee regarding the above allegations. It was observed that the said FCCBs were originally issued in 2009-10 in two tranches and later restructured in 2015 and 2018 due to the company's failure to redeem the FCCBs on their maturity date of April 30, 2015. It was further observed that CARE Ratings had been issuing 'Issuer Ratings' to the company from 2012-2016. The ratings had been downgraded to 'CARE D (IS)' on October 19, 2015. This rating is issued to the Issuers who are in default or are expected to be in default soon. Pursuant to this, the rating was suspended on December 08, 2016 due to non-cooperation by the company. It was observed that the company had not made any disclosures regarding the downgrade of credit ratings at the time when they were restructured in 2015-16.

7. Noticee *vide* various emails between March 16, 2020 and July 10, 2020 had *inter-alia* clarified that the company did not make any disclosures regarding the credit ratings at the time of restructuring of FCCBs during 2015-16 as the aforementioned offering circulars dated April 26, 2010 and September 30, 2015 stated that 'the bonds are not, and are not expected to be, rated by any rating agency'.

8. The timeline of the ratings issued by CARE Ratings is given below -

Date	Rating Assigned	Remarks	Disclosures
20 March 2012	CARE BBB− (IS)	Issuer Rating Assigned	-
08 March 2013	CARE BBB− (IS)	Reaffirmed	-
31 December 2013	CARE BBB− (IS)	Reaffirmed	-
04 August 2014	CARE BB+ (IS) Under Credit Watch	Downgrade and put under credit watch	-
27 May 2015	CARE B (IS)	Downgrade	-
19 October 2015	CARE D (IS)	Downgrade	-
08 December 2016	Rating Suspended	Suspended	-
30 March 2018	CARE BB; Stable	BLR Assigned	Disclosure made on April 05, 2018
04 September 2018	CARE BB; Stable	Reaffirmed	-
28 September 2019	CARE BB; Stable	Reaffirmed	Disclosure made on October 04, 2019

9. Since, the downgrade of the Issuer Rating to 'Default' grade is a significant event, notwithstanding the fact that obtaining a Credit Rating is not a mandatory requirement for the companies, Noticee was required to disclose this information to the public in terms of Clause 36 of the Listing Agreement.

10. It was also observed that the Noticee chose to suspend the credit rating post the downgrade to CARE D rating on October 19, 2015, while it resumed making disclosures related to Assignment of Credit Ratings in the years 2018 and 2019.

As prescribed in Clause 36 of Listing Agreement, these disclosures were mandated on listed entities to enable the shareholders and the public to be appraised of the position of the company and to avoid the establishment of a false market in its securities. Therefore, the said information was required to have been disclosed to the investors for enabling them to make judicious investment decisions.

11. In view of the above, it was alleged that the company is in violation of Section 21 of SCRA read with Clause 36 of Listing Agreement which mandates disclosure to Stock Exchange(s), of all events which have bearing on the performance/operations of the listed entity as well as 'price sensitive information' including revision in ratings.

12. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 23E of SCRA.

13. In response to the SCN, Noticee filed its reply vide email dated January 21, 2021. Opportunity of hearing was provided to the Noticee through video conferencing. Authorized Representatives (AR) of the Noticee, Mr. Rohit Choudhary and Mr. Ashwini Kumar appeared for the hearing on April 09, 2021 on behalf of the Noticee. AR of the Noticee reiterated the submissions made in its reply. Further, Noticee also requested for another opportunity of hearing after making additional submissions. Noticee filed its additional submissions vide email dated June 16, 2021. Accordingly, another opportunity of hearing was provided to the Noticee through video conferencing. Authorized Representatives (AR) of the Noticee, Mr. Rohit Choudhary and Mr. Ashwini Kumar appeared for the hearing on June 22, 2021 on behalf of the Noticee. AR of the Noticee reiterated the submissions made in its reply dated January 21, 2021 and June 16, 2021. Noticee also filed additional submissions vide email dated June 25, 2021.

14. The submissions of the Noticee are summarized as below:

a) Noticee submitted that the the gist of the alleged violation is that the SCN is issued to the Company to show cause for not disclosing a non-mandatory requirement to the Stock exchanges.

b) The said SCN is based on a reference of SEBI received from Cyril Amarchand Mangaldas on behalf of their Client Peter Beck Vermogensver Waltung GmbH (PBP) on September 18, 2019. No where in the email dated September 18, 2019 there is any mention of the non-disclosure of Credit Rating. In fact, in the mails dated March 12, 2020 and July 08, 2020 of SEBI, the query raised were with respect to the alleged delay in conversion of the FCCB and non-payment of Interest as raised by PBP in its letter dated September 18, 2019.

c) Noticee stated that the alleged delay in conversion of FCCB and non-payment of interest were matters which were pending adjudication in High Court of Justice, Business and Property Courts of England and Wales Commercial Court in London.

d) As per Clause 8 of Guidance Note on Clause 36 of the Listing Agreement, in case of Revision in Ratings, *"The Listed Entity shall promptly notify the Exchange, but not later than 24 hours, the details of any rating or revision in rating assigned to any debt or equity instrument of the Listed Entity or to any fixed deposit programme or to any scheme or proposal of the Listed Entity involving mobilization of funds whether in India or abroad provided the rating so assigned has been quoted, referred to, reported, relied upon or otherwise used by or on behalf of the Listed Entity"*.

e) Noticee submitted that no such rating was reported or otherwise used by or on behalf of the Listed entity M/s Prakash Industries Limited during 2015-16 i.e. at the time of restructuring of Bonds as mentioned in the SCN and hence no disclosure for general public/investors were mandatorily required to disseminated as per guidance note of clause 36 of the Listing agreement.

f) In case of FCCB issued by the Company, there is no such mandatory pre-condition of rating of Bonds or its restructuring as *'the bonds are not, and are not expected to be, rated by any rating agency'* as per Offering Circular dated April 26, 2010 and offering circular dated September 30, 2015. Noticee has submitted the relevant extracts of aforesaid offering circulars.

g) Noticee stated that PBP was already the holder of the Bonds at the time when his bonds were reissued after taking necessary permission of RBI and the public at large as investors were not involved in the offer for issuance of said Bonds as the offer of restructuring was limited only to the existing bondholders and no offer to public was there.

h) Although, no disclosures were required to be made by the Company regarding credit rating for restructuring of Bonds in 2015-16, the Company had disclosed on its own the outcome of exchange offer to FCCB Bondholders to Stock exchanges on August 05, 2015 in order to apprise the general public/shareholders.

i) Noticee submitted that the provision of Clause 36 of Listing Agreement provides only "indicative list of the material events on which listed entities are required to make disclosure to the Exchange". SEBI vide its letter/circular dated 30.09.2014 issued ***"Guidance Note On Clause 36 of The Listing Agreement"***. SEBI issued the said Guidance Note upon observing that " in the absence of any standard or guidance on fair disclosures for the appreciation/assessment of the event by investor/ shareholders, companies are furnishing varying details in their disclosures far similar events. Such variations are not helpful to investors to set their expectation on the information contents in the disclosures under Clause 36 and therefore it is felt necessary to issue this guidance note to help companies to make comprehensive disclosures relating to indicative list of material events given in current Clause 36". As per the said Guidance the revisions and ratings were to be disclosed only on a situation as contemplated in Clause (8) of the Guidance Note. That the said Clause B(8) reads as under: "8.Revision in Ratings: *"The listed Entity shall promptly notify the Exchange, but not later than 24 hours, the details of any rating or* *revision in rating assigned to any debt or equity instrument of the Listed Entity or to any fixed deposit programme or to any scheme or proposal of the Listed Entity involving mobilization of funds whether in India or abroad provided the rating so assigned has been quoted, referred to, reported, relied upon or otherwise used by or on behalf of the Listed Entity.*

In case of downward rating, the disclosure may include reasons published by rating agency for such downward rating."

j) Bare perusal of the provisions of above Clause would reveal that same has no application to the instant case in as much as the Noticee and or any person on behalf of Noticee (read as Lead Manager to the issue of FCCB) had utilized any such rating or for that matter any such rating were ever assigned to the said FCCB issue. There was no obligation even otherwise to disclose to the Stock Exchanges any subsequent revision in ratings even if such ratings revisions had happened on account of change in status and or alleged default in complying with term of issuance of FCCB in as much as no such ratings was utilized at the time of issuance of FCCB as aforestated.

k) Noticee stated that the very premise of issuance of SCN is in stark contradiction of very Guidance issued by the SEBI in order to resolve anomalous disclosures arising out of compliance of provisions of Clause 36 of Listing agreement in absence of any specific Guidance.

l) Bare perusal of SCN reveals that it is show causing the Company for non-compliance of provisions which is admittedly a non mandatory provision. No penalty can be imposed on any party for alleged non compliance of a non mandatory provision which can lead to imposition of penalty. The very word penalty is suggestive of penal action which by no stretch of imagination can arise as a consequence of non compliance of non mandatory provision.

Additional Submssions:

a) Noticee submitted that the FCCBs in question were never rated by any Credit Rating Agency nor was there any requirement vis-a-vis rating of the FCCB/Bonds.

b) Noticee has submitted a copy of the letter dated October 23, 2015 issued by CARE. Noticee stated that the said letter reveals the rationale in re-rating of the Company that the rating agency has essentially done re-assessment on account of impact of the order of the Hon'ble Supreme Court on coal extraction. The said Letter also refers to "proposed restructuring of FCCBs." The said restructuring was done vide Offer Document dated September 30, 2015. The Noticee never raised any finance, particularly, FCCBs by citing the said Credit Rating, and/or any downgrade thereof. That being so, such downgrade was not required to be disclosed to the Stock Exchanges.

c) Noticee stated that there was no statutory requirement, as such for obtaining any credit rating and as such the Company in their wisdom had discontinued to be rated by any credit rating agency.

d) The Noticee sought rating of the banking facilities of the Company and as such entered into a Rating Agreement dated March 08, 2018 by and between the Noticee and CARE. Even as per the said agreement, it specifically records that such facilities were obtained only for the purpose of *"Rating of Bank Facilities of Prakash Industries Limited aggregating 1000 crores."* Further, such rating was always treated as *"initial rating"*.

15. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

16. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee has violated Section 21 of SCRA read with Clause 36 of Listing Agreement.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 23E of SCRA.

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 23J of SCRA read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether the Noticee has violated Section 21 of SCRA read with Clause 36 of Listing Agreement.**

17. The allegations against the Noticee pertain to non-disclosure of downgrade of credit rating, being price sensitive information, to the stock exchanges. I note that CARE Ratings had been issuing 'Issuer Ratings' to the company from 2012-2016. The ratings had been downgraded to 'CARE D (IS)' on October 19, 2015. Pursuant to this, the rating was suspended on December 08, 2016 due to non-cooperation by the company.

18. Relevant portion of Clause 36 of listing agreement reads as, *"The Company will promptly notify the Exchange, the details of any rating or revision in rating assigned to any debt or equity instrument of the Company or to any fixed deposit programme or to any scheme or proposal of the Company involving mobilisation of funds whether in India or abroad provided the rating so assigned has been quoted, referred to, reported, relied upon or otherwise used by or on behalf of the Company."*

19. Noticee in its submission stated that as per the offering circular of FCCBs, there was no such mandatory pre-condition of rating the Bonds or its restructuring. Thus, the main argument given by the Noticee for not disclosing the downgrade is that the issuance of FCCBs did not require a rating and that the rating was not used while issuing the FCCBs to investors. On perusal of the material on record, I find that the Noticee had taken an Issuer rating from CARE in 2012. This rating was not assigned to or used for any debt or equity instrument of the Company or to any fixed deposit programme or to any scheme or proposal of the Company involving mobilisation of funds. From the BSE website as well as material on record, I further note that the Noticee had not disclosed the rating to the stock exchange at any stage.

20. As far as the FCCBs are concerned, I note from the offering circular dated April 26, 2010 that on the Rating of Bonds, the circular states that “The Bonds are not and are not expected to be rated by any rating agency”. Thus, the FCCBs did not refer to or use the Issuer rating issued by CARE. I note from disclosures available on BSE that the Noticee made other relevant disclosures on FCCB restructuring/ repayment and cannot be alleged to have suppressed any relevant information regarding the FCCB repayments. The Noticee has disclosed several information with respect to FCCBs from the issuance of the bonds to the restructuring of the bonds. Further, Noticee also disclosed the outcome of exchange offer to FCCB Bondholders, to the stock exchanges on August 05, 2015.

21. While downgrade in credit rating is price sensitive information as mentioned in clause 36 of listing agreement and is material information in perspective of investors/shareholders/public and therefore, I note that Clause 36(6) on revision of ratings, as quoted above, specifically states that revision in rating is to be notified to the exchange “*provided the rating so assigned has been quoted, referred to, reported, relied upon or otherwise used by or on behalf of the Company”.* From the material placed before me, and the reply made by the Noticee, as brought out above, it is clear that the Noticee did not quote, refer to,

report or disclose this rating to the exchange at any stage. It is also clear that the rating was not assigned to or used for any debt or equity instrument of the Company or to any fixed deposit programme or to any scheme or proposal of the Company involving mobilisation of funds. In view of this, I find that there was no obligation on the company to disclose the downgraded rating to the stock exchange.

22. In view of the above, I find that the allegation of violation of Section 21 of SCRA read with Clause 36 of Listing Agreement by the Noticee is not established.

23. As the violations alleged against the Noticee are not established, issues II and III do not merit consideration.

ORDER

24. In view of the findings noted in the preceding paragraphs, the adjudication proceeding initiated against the Noticee i.e. Prakash Industries Limited vide SCN dated January 08, 2021 is disposed of.

25. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: September 30, 2021
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER