

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 107 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 in respect of:

- 1) Yash Dream Real Estate Limited
- 2) Mr. Amit Kumar Shrivastava
- 3) Ms. Neeta Shrivastava
- 4) Mr. Nitin Shrivastava
- 5) Ms. Reebha Shrivastava
- 6) Ms. Sindhu Singadhe
- 7) Mr. Deepak Singare
- 8) Ms. Pooja Tandan

In the matter of issuance of Unsecured Optionally Fully Convertible Bonds by Yash Dream Real Estate Limited

Appearances for Noticees:

1. Mr. G. Kumar, Chartered Accountant
 2. Mr. P. Jesus Moris Ravi, Advocate
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1. Securities and Exchange Board of India (“SEBI”) conducted a preliminary inquiry into the issuances of *unsecured optionally fully convertible bonds* (hereinafter referred to as “OFCBs”) by Yash Dream Real Estate Limited (hereinafter referred to as “Yash” / “the Company”) with a view to ascertain the possible non-compliances with the public issue norms stipulated under the provisions of Companies Act, 1956/2013 and other applicable laws including the SEBI Regulations/Guidelines. Pursuant to the preliminary inquiry, SEBI passed an *ad interim ex parte* order dated December 16, 2014 in respect of Yash and its promoters/directors namely, Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava, Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr. Deepak Singare and Ms. Pooja Tandan (hereinafter collectively referred to as “the Noticees” and individually by their respective names) in view of the following: -

“In the instant matter, it is noted that Yash has issued unsecured OFCBs to 45,005 persons and mobilized funds to the tune of ₹76,34,19,703. It is noted that Yash has mobilised funds

under its sixty eight (68) schemes. It is observed that the Board of Directors of Yash have approved the resolution to raise the funds by issuing OFCB on August 11, 2008. With this single resolution, the company has admittedly raised funds from 45,005 persons and the mobilization still continues.

As per the first proviso to section 67(3) of the Companies Act, 1956, where the “offer” or “invitation to subscribe for shares or debentures” is made to fifty persons or more, then it has to be construed as a public offer. Hence, the issue made by Yash prima facie is nothing but an offer of debentures and appear to be a public offer of securities. By writing 'private not for circulation', the company appears to be giving a picture that the issue is a private placement. I note that the application form for the unsecured OFCBs as circulated by Yash does not contain the name of the person to whom it is issued; the same indicates that the issue is not a private placement. In case of private placement to less than fifty persons, legislation casts an obligation on the part of the Company to ensure that the offer does not result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation. All mobilisation of funds from fifty or more investors should be classified as a public issue requiring the company to make an application to list its securities. In view of the foregoing, it could be prima facie observed that the aforesaid issue of unsecured OFCBs made by Yash were deemed public issue.”

2. By the *interim* order following interim directions were issued against the Noticees:
 - a. *The Company, Yash Dream Real Estate Limited and its promoters and directors including Mr. Amit Kumar Shrivastava [PAN No.: BBNPS3367M; DIN No. : 02084464], Ms. Neeta Shrivastava [PAN No : BIPPS9476L; DIN No. : 02084489], Mr. Nitin Shrivastava [PAN No : AWJPS7878P; DIN No. : 02135639], Ms. Reebha Shrivastava [PAN No. : AXYP57773H; DIN No. : 02087236], Ms. Sindhu Singadhe [PAN No. : CFKPS3490F], Mr. Deepak Singare [PAN No. : AYNPS9873J] and Ms. Pooja Tandan [PAN No. : ADNPT5796Q] are restrained from mobilizing funds through the issue of 'unsecured optionally fully convertible bonds', equity shares, debentures, preference shares or through issuance of any kind of security to the public and/ or invite subscription or deposit, in any manner whatsoever, either directly or indirectly, till further directions.*
 - b. *The Company and its promoters and directors including Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava, Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr. Deepak Singare and Ms. Pooja Tandan are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders.*
 - c. *The Company and its promoters and directors including Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava, Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr.*

Deepak Singare and Ms. Pooja Tandan shall not dispose off any of the properties or alienate the assets of the Company or dispose of any of their properties or alienate their assets.

- d. The Company and its promoters and directors including Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava, Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr. Deepak Singare and Ms. Pooja Tandan shall not divert any funds raised from public at large through the issuance of unsecured optionally fully convertible bonds, kept in its bank accounts and/or in the custody of the company without prior permission of SEBI, until further orders.*
 - e. The Company and its promoters and directors including Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava, Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr. Deepak Singare and Ms. Pooja Tandan are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions.*
 - f. The Company and its promoters and directors including Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava, Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr. Deepak Singare and Ms. Pooja Tandan shall co-operate with SEBI and shall furnish documents, that are in their possession, which may be required by SEBI in the course of its examination. The Company, its promoters and directors shall provide a full inventory of all their assets and properties;*
 - g. The Company shall furnish all the information with regard to scheme wise list of investors, contact details, address along with details of investment and maturity. The Company shall also provide details of refund, if any.*
 - h. The Company and its promoters and directors including Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava, Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr. Deepak Singare and Ms. Pooja Tandan shall not promote any new company to mobilize fresh funds.*
3. Vide the *interim order*, the Noticees were also called upon to show cause as to why appropriate action under sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) read with the provisions of SEBI (Issuance of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations”) including the following, should not be taken against them:
- a. directing them jointly and severally to refund the money collected through the issue of redeemable preference shares that are impugned in this Order, along with interest that is promised to the investors;*
 - b. directing them to not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;*
 - c. directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;*

- d. *directing them and other companies in which their directors hold substantial or controlling interest, to not to access the capital market for an appropriate period.*
4. The Noticees vide two letters (received by SEBI on January 9, 2015 and February 2, 2015), *inter alia*, submitted the following :-
- i. They have given effect to all the restrictions and directions issued under the *interim order*. They are not going to access the securities market and deal in securities as directed vide the order.
 - ii. They are not mobilizing any fresh funds from investors through the issue of OFCBs or through the issue of any other securities and they are also not issuing any prospectus or any other offer documents.
 - iii. The company has completely stopped collection of money under OFCBs issue from January 7, 2015. They have not launched any fresh scheme for collection in their name or by any other means.
 - iv. They assured that they would not dispose off any property which belongs to the company and also will not divert any funds raised from public at large through the issuance of OFCBs that are kept in bank accounts.
 - v. They are in the process to refund the money collected through the issue of OFCBs.
 - vi. They assured that they would complete settlement of all dues of investors by the end of August, 2015.
 - vii. They would arrange to provide inventory of the assets brought out of the proceeds of the scheme and also the details of the repayments made to the various stakeholders.
5. An opportunity of personal hearing was granted to the Noticees on March 23, 2015 which was re-scheduled to April 07, 2015. Thereafter, at the request of the Noticees, the hearing was further rescheduled to May 13, 2015 when their authorized representatives appeared and made submissions on their behalf. Pursuant to the hearing, the Noticees filed their written submissions (received by SEBI on July 1, 2015), *inter alia*, stating the following:
- a) The company had promptly submitted the information and details as and when sought by SEBI.
 - b) The company had stopped the collections from January 7, 2015 upon receipt of SEBI order and completed a detailed exercise to embark on a comprehensive plan to refund all the monies with the promised return either through allotment of land or through refund of cash.
 - c) The company has been carrying on activity of making refunds even prior to the receipt of SEBI order which is a conclusive proof that there was no intent to cheat

the investors even though the methodology adopted for collection was not in sync with existing regulations.

- d) The issuance of OFCBs without compliance of the SEBI Regulations and Companies Act was because of inadequate appreciation and lack of proper professional guidance.
- e) The Noticees submitted the details of amount collected, amount refunded, interest paid thereupon and the balance amount in the following tabular form:

Year	Amount Collected ₹	Total refunded ₹	Interest paid ₹	Balance ₹
2008-09	2,51,94,450	0	0	2,51,94,450
2009-10	2,68,70,500	32,21,514	2,48,214	4,90,91,650
2010-11	15,36,80,571	1,50,17,225	11,54,667	18,89,09,663
2011-12	22,95,82,586	4,00,87,129	28,85,256	38,12,90,376
2012-13	28,07,35,347	5,84,48,835	44,73,299	60,80,50,187
2013-14	27,08,81,216	12,43,26,195	88,14,495	76,34,19,703
2014-15	27,12,23,748	29,60,86,095	3,65,79,549	77,51,36,905
2015-16	0	5,64,54,194	87,57,576	72,74,40,827
Total	1,25,81,68,418	59,36,41,187	6,29,13,056	Balance ₹72,74,40,827

- f) From the date of receipt of the order the company has refunded an amount of ₹17.12 crore (up to June 13, 2015). In total, the company has already refunded about ₹59.36 crore out of the total collections and has a balance of ₹72.74 crore (inclusive of interest at contracted rates) is to be redeemed.
- g) The company would be able to complete the redemption in about 36 to 48 months in any manner acceptable to SEBI.
- h) The Noticees also submitted the details of the assets held by the company and their realizable value in tabular form noted as under:

S. No.	Land Area (in Sq.ft)	Total Development area 40% in sq.ft	Saleable Plotting area 60% in sq.ft	Total Saleable Amount in ₹
1	2,85,244	1,14,098	1,71,146	14,54,74,950
2	96,660	38,664	57,996	5,65,46,100
3	4,800	1,920	2,880	84,00,000
4	45,174	18,070	27,104	1,24,67,250
5	2,152	861	1,291	17,21,600

6	4,000	1,600	2,400	70,00,000
7	38,734	15,494	23,240	69,72,300
8	1,96,02,000	78,40,800	1,17,61,200	107,02,69,200
				130,88,51,400

6. I have carefully considered the SCN, the replies / written submissions of the Noticees and other material available on record. It is noted that the Noticees have neither disputed any of the findings of the *interim order* nor have they made any submissions on merit. They have merely submitted that the issuance of OFCBs without compliance of the SEBI Regulations and Companies Act was because of inadequate appreciation and lack of proper professional guidance.
7. As noted in the *interim order*, *Yash* introduced as many as sixty eight (68) schemes under 'SWARNIM BONDS' in different categories viz. *Bachat*, *Bhavishya*, *MIS*, *Swarnim Plus*, *Sanchay*, *Sankalp*, *New Sankalp*, *Education & Marriage*, etc. with the tenure of such schemes ranging from 1 year to 21 years. It was also noted in the *interim order* that as on March 31, 2014, *Yash* had issued unsecured OFCBs in the name of various schemes / plans to 45,005 persons thereby raising funds to the tune of ₹76,34,19,703. However, as per Noticees' own admission, *Yash* had issued OFCBs to 107098 investors (multiple accounts) and collected amount of ₹98,69,44,670 during the period from October, 2008 to March, 31, 2014 under its various schemes. Further, during the period April 01, 2014 to January 07, 2015, *Yash* collected funds amounting to ₹27,12,23,748/- for which investor details have not been provided the Noticees. Thus, admittedly, during the period October 2008 to January 7, 2015, *Yash* mobilized funds to the tune of ₹1,25,81,68,418 by series of issuances of OFCBs.
8. It is noted that *Yash* admittedly issued and allotted OFCBs to 107098 investors during the period October, 2008 to January, 2015. Thus by virtue of the proviso to section 67(3) of the Companies Act, 1956 and section 42 of the Companies Act, 2013 read with rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the issuances of OFCBs by *Yash* were public issues. In this regard, it is important to mention that all the controversies with regard to questions such as whether an offer to 50 persons or more is a public issue or private placement, SEBI's jurisdiction on issuance of securities including OFCBs, intention/obligation to list such securities, etc. have been settled by the Hon'ble Supreme Court in its judgment and order dated August 31, 2012 in the matter of *Sahara India Real Estate Corporation Limited & Ors. Vs SEBI & Anr. - Civil Appeal No. 9813 and 9833 of 2011 [(2013) 1 SCC 1]* (hereinafter referred to as "the *Sahara Order*").

9. I note that since the issuances of OFCBs by *Yash* during the period October, 2008 to January, 2015 were public issues, it ought to have complied with the applicable provisions of the Companies Act, 1956/2013 and SEBI (Disclosure and Investor Protection) Guidelines, 2000 (“DIP Guidelines”) and the ICDR Regulations as found in the *interim order*. In the present case, there is no dispute as to the fact that *Yash* while making the aforesaid “public issues” of OFCBs has not complied with the provisions of section 60 read with section 2(36), 56(1), 56(3), section 73 and 117B of the Companies Act, 1956, sections 29, 33 (1) and 40 of the Companies Act, 2013, 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, 5.10, 5.12.1, 6.0 to 6.15, 6.16 to 6.34, 8.3, 8.8.1, 9, 10.1 and 10.5 of the DIP Guidelines and regulation 4, 5, 6, 7, 25, 26, 32, 36, 37, 46, 47, 57 and 63 of the ICDR Regulations. Since the requirements of these applicable provisions and the relevant observations of the Hon’ble Supreme Court in the *Sabara Order* have been clearly stipulated in the *interim order*, I do not deem it necessary to reiterate the same and burden this order with the same findings.
10. I note that according to Noticees’ submissions, Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava, Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr. Deepak Singare and Ms. Pooja Tandan were the directors of *Yash* at the relevant point of time and authorized the aforesaid issuances of OFCBs. The board of directors of *Yash*, at the time of the above mentioned issuances of OFCBs, being in control of the affairs of *Yash*, was under an obligation to ensure that these issuances were in compliance with all the applicable provisions of the Companies Act, 1956/2013 and SEBI Act/Regulations/Guidelines. In my view, the above named directors of *Yash* at the time of the above mentioned issuances of OFCBs are also “officers in default” as defined under section 5 of the Companies Act, 1956 and section 2(60) of the Companies Act, 2013. I, therefore, find that the above named directors of *Yash* are also responsible for the acts and omissions of *Yash* in this case.
11. In view of the foregoing, I find that in respect of the allotment of OFCBs during the period October, 2008 to January, 2015, the Noticees have failed to comply with the above mentioned provisions of Companies Act, 1956, Companies Act, 2013, DIP Guidelines and ICDR Regulations.
12. The Noticees have submitted that they are willing to refund the monies collected from the investors. For this purpose, they have proposed to redeem the outstanding amounts by offering proportionate piece of lands to its investors. In this regard, it is important to mention that one of the consequence of the aforesaid non-compliance/violations is refund/repayment of subscription money to the allottees with interest as provided in clause 17 of DIP Guidelines / regulation 18 of ICDR

Regulations read with section 73 (corresponding section 40 of Companies Act, 2013) and section 56 of the Companies Act, 1956 (corresponding section 26 of Companies Act, 2013). With regard to liability to pay interest on the subscription money, I note that as per section 73 (2) of the Companies Act, 1956 read with section 40(3)(b) of the Companies Act, 2013, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I further note that in terms of rule 4D of the Companies (Central Government's) General Rules and Forms, 1956 read with rule 3(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the rate of interest prescribed in this regard is 15%. Accordingly, the Noticees are liable to pay interest to the subscribers at such statutory rate of interest, and therefore the above proposal of the Noticees cannot be accepted.

13. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11, 11(4), 11A and 11B read with section 19 of the SEBI Act and regulation 107 of the ICDR Regulations hereby issue the following directions:
 - i. The Noticees i.e. Yash Dream Real Estate Limited and its promoters/directors, Mr. Amit Kumar Shrivastava (PAN BBNPS3367M), Ms. Neeta Shrivastava (PAN BIPPS9476L), Mr. Nitin Shrivastava (PAN AWJPS7878P), Ms. Reebha Shrivastava (PAN AXYPS7878P), Ms. Sindhu Singadhe (PAN CFKPS3490F), Mr. Deepak Singare (PAN AYNPS9873J) and Ms. Pooja Tandan (PAN ADNPT5796Q) shall within a period of three months from the date of this order, jointly and severally refund ₹1,25,81,68,418, collected through issuances of OFCBs in 2008-09, 2009-2010, 2010-2011, 2011-12, 2012-13, 2013-14 and 2014-15 to the subscribers/allottees of OFCBs with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund or the redemption value as promised and accrued till the date of refund, whichever is higher.
 - ii. Such refund shall be made only in cash through a Demand Draft or Pay Order.
 - iii. The Noticees shall within fifteen days from the date of this order produce to the satisfaction of SEBI, documentary evidence to show that ₹ 59,36,41,187 have been refunded/repaid by *Yash*, as claimed by them. In the event, SEBI is satisfied with the documentary evidence so produced by the Noticees, ₹ 59,36,41,187 shall be deducted from the amount refundable/repayable by the Noticees calculated in terms of the direction given in paragraph 15(i). For the purpose of this direction, the documentary evidence shall be certified by a peer reviewed Chartered Accountant.

- iv. The Noticees shall within fifteen days from the date of this Order submit to SEBI complete details of their assets (alongwith proofs thereof) certified by a peer reviewed Chartered Accountant.
- v. The Noticees shall utilize the assets of the company for the sole purpose of making the refund/repayment to the subscribers/allottees till the full refund/repayment as directed hereinabove is made.
- vi. The Noticees shall issue a public notice, in all editions of one English national daily and one vernacular daily with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this order.
- vii. Within seven days of completion of refund/repayment as directed hereinabove, the Noticees shall file a certificate of such completion with SEBI from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. Such certificate shall be issued by the Chartered Accountants after verifying the relevant documents including bank accounts of the Noticees and satisfying themselves that the refund has actually been made.
- viii. For the purpose of this order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India.
- ix. The Noticees are restrained from, directly or indirectly, accessing the capital market by issuing prospectus, any offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in whatsoever manner for a period of three years or till the date of refund of money to the allottees whichever is later.
- x. Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava, Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr. Deepak Singare and Ms. Pooja Tandan are also restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, for a period of three years or till the date of refund of money to the allottees whichever is later.
- xi. For the purposes of paragraphs 13(ix) and 13(x), the period of restraint shall be counted from the date of the *interim order*.

14. The interim order cum show cause notice dated December 16, 2014 is disposed off accordingly. The above directions are without prejudice to the right of SEBI to take any other appropriate action for the violations found in this case or to initiate any action in case of failure to comply with the above directions, in accordance with the provisions of applicable laws including the proceedings under the provisions of section 28A of the SEBI Act.
15. The order shall come into force with immediate effect. A copy of the order shall be served on the Noticees to ensure compliance with the above directions. A copy of this Order shall also be forwarded to the recognised stock exchanges and depositories for information and necessary action.

Sd/-

DATE : October 15th, 2015

PLACE: MUMBAI

RAJEEV KUMAR AGARWAL

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA