

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Cybermate Infotek Limited.

Background of case:

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) was in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “MCA”) vide which MCA had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had also annexed the letter of Serious Fraud Investigation Office (hereinafter referred to as “SFIO”) dated May 23, 2017 which contained the data base of shell companies along with their inputs.
2. SEBI as a market regulator is vested with the duty under section 11(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) to protect the interests of the investors in securities and to promote the development of and regulations of securities markets by appropriate measures as deemed fit.
3. SEBI was of the view that the companies identified as shell companies by SFIO and MCA were potentially involved in:
 - (a) Misrepresentation including that of their respective financials and businesses and possible violations of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or

- (b) Misusing their respective books of accounts/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP)
4. SEBI was also of the view that investors should be alerted on the possible enforcement actions by various authorities leading to potentially significant impact on the price of the stock.
 5. Therefore, in the interest of investors, SEBI took the pre-emptive interim measures under section 11(1) of SEBI Act in respect of listed shell companies including Cybermate Infotek Limited (hereinafter referred to as "CIL" / "Company"), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions on promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trades and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the stock exchanges, including by way of audit and forensic audit, if necessary. The measures also envisaged, on the final determination, delisting of companies from the stock exchange, if warranted. By virtue of these measures, trading in the scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions till SEBI and stock exchanges complete their detailed examination of such companies.
 6. Pursuant to the above, BSE vide notice dated August 7, 2017, addressed to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies as identified by MCA and communicated by SEBI, with effect from August 8, 2017.
 7. On August 09, 2017, SEBI further advised the Stock Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of the company like company's compliance with Companies Act,

whether company is a going concern, its business model, status of compliance with listing requirements, etc.

8. Vide its letter dated August 18, 2017, CIL made a representation, *inter alia*, submitting as under:

- a) *The company denied that it is a "Shell Company" as alleged in the SEBI letter and is a healthy profit making company having annual revenue of Rs. 53.48 crore and net worth of Rs. 16.12 crores in financial year 2016-17.*
- b) *It has paid a sum of Rs. 56.98 lakhs towards taxes in the year 2016-17.*
- c) *The depreciated value of the tangible fixed assets of the Company as on March 31, 2016 was approx. Rs. 2.98 crore.*
- d) *Balance in the profit and loss account of the Company, as on March 31, 2017 was approximately Rs. 1.67 crore.*
- e) *The Diluted EPS of the company for the year ended March 31, 2017 was Rs. 0.23 per share of Rs. 2 each.*
- f) *Value of ongoing contracts of the company is approx. Rs. 39.46 Crore for services such as development of software products, staff augmentation services, etc.*
- g) *The shares of company are actively traded on BSE and the company has ensured due compliances of various requirements arising out of the listing agreement and other relevant laws.*
- h) *The company had duly submitted all the requisitioned documents to BSE.*

In view of its representation, the company requested to withdraw the directions issued against the Company and place the Company under normal trading on the BSE platform.

9. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, CIL filed an appeal No. 198 of 2017 before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). Hon'ble SAT vide order dated August 24, 2017 directed the following:-

"2. As the appellant has already made a representation to SEBI against the said ex-parte order dated 7th August, 2017, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.

3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of four weeks from today. It is made clear that passing of any order on the representation made by the appellant would not preclude SEBI from further investing the matter and initiate appropriate proceedings if deemed fit."

10. Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* (order dated August 10, 2017) held that the measure taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order and the same has been passed without investigation. Without prejudice to the powers enumerated in section 11(1) of SEBI Act, SEBI has been granted power under section 11(4) and 11B of SEBI Act, 1992 to pass order in the interests of investors or securities market by taking any of the measures enumerated therein either pending investigation or inquiry or on completion of such investigation or inquiry. The inquiry under section 11B of the SEBI Act can also be caused to be made by SEBI.
11. Pursuant to above mentioned SEBI's letter dated August 9, 2017 (mentioned above), BSE has submitted its report on August 31, 2017 wherein it has *inter alia* observed the following:

"Company vide its letter dated August 16, 2017 and August 28, 2017 submitted auditor certificates issued by M/s. P Murali & Co, Chartered Accountant ... certifying the following:

- a) Company has filed annual income tax return for last 3 years upto AY 2016-17. Further, the auditor has intimated that a dispute pending for 8 different Assessment Years between 2004-05 to 2014-15 aggregating to Rs. 17.75 Crs is outstanding against which CIT (A) is pending.*
- b) Company is upto date with the compliance requirements of the Companies Act and Annual returns filing during last three years.*
- c) Company is a going concern and will be able to continue operating for a period of time that is sufficient to carry out its commitments, obligations and objective.*
- d) Company does not have any dues to Banks/ Financial Institutions. Further, the company has disputed the SARFAESI proceedings with regard to the lease*

rental discounting facility availed from M/s. DHFL and matter is pending before the Debts Recovery Tribunal, Hyderabad.

- e) Company is upto date with the compliance requirements of listing regulations for the last 3 years*

Based on the above, barring the pending dispute with the income tax department and disputed the SARFAESI proceeding, prima facie the submission made by the company appears to be in order.”

Hearing and Reply:

12. Pursuant to the decision of Hon'ble SAT, an opportunity of personal hearing was granted to CIL on September 8, 2017 when its authorized representative appeared and made oral submissions. CIL was asked to provide the information / response on the following points (supported by documentary evidence) as early as possible and latest by September 13, 2017:

- 1) Statement of writing off Rs. 26 crore as indicated in Financial Statement 2015-16 which ARs claims to be on account of writing off applications and the revenue generated from these applications.*
- 2) Break-up of the Exceptional Items of Rs. 60crore approximately appearing in the profit and Loss statement for the year ended 31 March 2016, with all the supporting documents.*
- 3) Sequence of capital formation of the company*
- 4) With respect to point iii. a in the Annexure A of the Auditor's Report of the year 2015-16, kindly provide the explanation with all supporting documents of Rs. 51 lacs interest free loan approximately (substitution of creditor with loan).*
- 5) Kindly provide the details along with necessary documents of the amount of Rs. 3 crore approximately appearing as Current Maturities of Long Term Liabilities in the Other Current Liabilities of year 2015-16 Financial Results.*
- 6) Copy of Auditor Certificate on Statutory dues.*

7) With respect to Rs. 40 crore approximately shown as Trade Receivables in financial statements for the year ended 2016-17, kindly provide the bank statement highlighting the amounts received from the said receivable.

SEBI also sent an e-mail to the company on September 8, 2017 asking for the above information.

13. CIL filed its response to the queries / information sought from it during the hearing on September 13, 2017. The company filed its response to the aforesaid 7 points along with separate annexures in support thereof. In view of its submissions, the company prayed that it should not be categorized as a shell company and the restrictions on its trading be lifted.

Consideration of issues:

14. On perusal of the material available on record, the following issues arise for consideration.
- (a) Whether there is *prima facie* evidence of misrepresentation by CIL including that of its financials and/or its business and is there any possible violation of LODR Regulations by the company.
 - (b) Whether there is *prima facie* evidence to show that the company is misusing the books of accounts / funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.
 - (c) In view of the determination on the above issues and the order of SAT in the aforesaid appeal, whether, in light of the representation of the company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.
15. On the basis of documents available on record, my observations on above issues are as under:

Issue No. 1. *Whether there is prima facie evidence of misrepresentation by CIL including that of its financials and/or its business and is there any possible violation of LODR Regulations by the company.*

Issue No. 2. *Whether there is prima facie evidence to show that the company is misusing the books of accounts / funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.*

16. Based on the material available on record, *prima facie* observations are as under:

- i) With regard to the statement of writing off Rs. 26 crore as indicated in Financial Statement of 2015-16, I note that as per the reply of the company, it appears that the expenditure incurred on the upgradation and maintenance of the software is being added to the inventory over the year and the inventory work-in progress is capitalized in the year 2014-15. The company has provided the schedule with respect to expenses incurred on these software products over the year, and also the revenue generated from sale of these products over years. Company has also provided the statement of revenues realized from product revenues in the last 10 years which has shown the decrease in product revenues on account of technical advancements and changes in product specifications.
- ii) With respect to break-up of the Exceptional Items of Rs. 60 crore approx appearing in the profit and Loss statement for the year ended 31 March 2016, the company has provided for the following:

Sr No.	Write off of	(Amount in crore)
1.	Intangible Assets	21.53
2.	Investment in Subsidiary	38.17
	Total	59.70

As per the company, impairment on intangible assets was recognized due to the technological advances over a decade and change in requirement of customers,

changes in costs due to competition from global players and start-ups who are providing Software as a Service (SaaS). Company has provided the statement of revenues realized from product revenues in the last 10 years which has shown the decrease in product revenues on account of technical advancements and changes in product specifications. Further, it is observed that the company has also highlighted the write-off of the Software in Annual Report 2015-16 Board's Report. For writing off of the Investment in subsidiary, the company has submitted that last available consolidated financial statements and notes in the Annual Report for the year 2015-16. Further, the justification for write offs has been provided in the Scheme of Arrangement of the company for its capital reduction

In the year 2010-11, the company in its notes to accounts had highlighted that *"Since the Company has suspended operations of its US and UAE subsidiaries in which the company has made huge investments, upon review, auditors have recommended for recognition of diminution in value of the investments totally in the current period. However the management has decided to charge off the said investments on a linear basis at the rate 15 % per annum."* Over the years the company has mentioned this in its notes to accounts and has been systematically recognizing the diminution in the value of investments.

From the annual report for the year ended March 31, 2015 the company has mentioned about the write-offs in the Management Discussion and Analysis, Board Report and Notes to Account. In-principle approval has been given by BSE, SEBI and also Telangana High Court to the Scheme of Arrangement of the company in Feb 2017.

- iii) The Company has given sequence of its capital formation. From the same, it appears that all the issues made by the company from incorporation including allotments to Promoters, family members & associates, Depository Receipt Holders, permanent employees, etc. have been at face value/par value except for a preferential issue in 1999 and an Allotment to employee under employee stock purchase scheme in 2001, where issue was made at premium. The rationale for the same was explained in detail at the time of hearing.

- iv) The company has informed that the interest free advance of Rs. 51 lacs appearing as pending to be recovered from Related Party in the Annual Report and also qualified by the auditor in his audit report for the year ended March 31, 2016, has been recovered in full by the Company, As per the Auditors Report 2016-17, there is no interest free advance pending to be recovered.
 - v) With respect to the amount of Rs. 3 crore approximately appearing as Current Maturities of Long Term Liabilities in the Other Current Liabilities of year 2015-16 Financial Results, the company has provided the supporting loan agreement with Dewan Housing Finance Limited with respect to which the amount of Rs. 3 crore approximately appearing as Current Maturities of Long Term Liabilities in the Other Current Liabilities of year 2015-16. From the annual report 2016-17, it is observed that the auditor has also mentioned in Notes to Accounts about Secured Loan from Housing Finance Company.
 - vi) As regards statutory dues, the company submitted that Amount of Rs. 13.01 lakhs are outstanding statutory liabilities due for more than 6 months as on March 31, 2017 and also mentioned in the Auditor's Report for the year 2016-17. The company made submissions at the time of hearing explaining the difficulties faced by it which resulted in cash flow crunch leading to accrual of the outstanding statutory liabilities. As per the Auditor's Certificate dated September 12, 2017, out of the total outstanding liability the company has paid dues of around Rs. 7.35 lakhs after March 31, 2017.
 - vii) The trade receivables of the company as per the Financial Statement of 2016-17 are around Rs. 39.87 crore. The company has submitted (along with bank statement) that an amount of Rs. 28.23 crore has been recovered till July 31, 2017 from the total recoverable amount of Rs. 39.87 crore.
17. In view of substantive documentation and the disclosures in the Annual Report and explanations provided by the company during the hearing in respect of all the queries, I do not find any *prima facie* evidence of misrepresentation by the company, misuse of books of accounts / funds of the company or violation of LODR Regulations.

Issue No. 3. *In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

18. In absence of *prima facie* evidence of misrepresentation by the company, misuse of the books of accounts / funds of the company or violation of LODR Regulations, there is no reasonable ground to further verify the financials of the Company warranting an audit. I am, therefore, of the considered view that the actions envisaged in SEBI's letter dated August 7, 2017 against CIL are liable to be revoked.

Order

19. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby, revoke the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges against Cybermate Infotek Limited.

20. Accordingly, the representation dated August 18, 2017 made by CIL is disposed of.

21. Copy of this Order shall be forwarded to the recognized stock exchanges for information and necessary action.

22. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

Sd/-

DATE: SEPTEMBER 21, 2017

PLACE: MUMBAI

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**