

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 M/s SQS India BFSI Limited (PAN: AABCT0976G)

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 has annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA has 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 SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) of protecting 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 companies whose names are included as shell companies by SFIO and MCA, were potentially involved in
 - (a) Misrepresentation including of its financials and its business and possible violation of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “**LODR Regulations**”) and/or

- (b) Misusing the books of accounts/funds of the company 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 action 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, 1992, in respect of listed shell companies including M/s SQS India BFSI Limited (hereinafter referred to as “**SQS**” / “**Company**”), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions, on the 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 said letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the 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 measure, trading in scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions, till SEBI and Exchanges completed their detailed examination of such companies.
6. Pursuant to the same, Bombay Stock Exchange Limited (hereinafter referred to as “**BSE**”) vide notice dated August 7, 2017, National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) vide notice dated August 7, 2017 and Metropolitan Stock Exchange of India Limited (hereinafter referred to as “**MSE**”) vide notice dated August 07, 2017, to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in

respect of all the listed securities as identified by MCA and communicated by SEBI, with effect from August 8, 2017.

7. On August 09, 2017, SEBI further advised the 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 requirement with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.
8. SQS vide its letter dated August 08, 2017 had made a representation to SEBI submitting *inter alia* as under:
 - (a) *The Notification has been issued without following due legal process. The list of 'suspected' companies have been identified without setting out the criterion applied or even a mention of the legal provisions relevant for such identification.*
 - (b) *The issuance of the Notification has the effect of curbing trading even in genuine scrips such as SQS which is contrary to the interest of the shareholders of SQS. Such a curb on trading ought to have been effected only after allowing us an opportunity of being heard. Since neither the MCA nor SEBI has provided any notice prior to the Notification, the same will cause undue hardships and losses to the public shareholders of SQS.*
 - (c) *SQS is the leading business assurance and testing specialist focusing exclusively on the Financial Sector with its registered office in Chennai. With a successful track record of over 15 years, and more than 14 million person hours of testing, SQS has served more than 150 customers in APAC, USA, UK and Middle East.*
 - (d) *The shares of SQS are listed both BSE and NSE. The company is ISO 9001:2008 and ISO 27001:2013 certified, both its Chennai Test Centers are SSAE 16/ISAE 3402 compliant and one of the centers is PCI: DSS compliant.*
 - (e) *SQS has been effecting corporate actions from time to time, all of which are available on the exchanges' websites. A bare perusal of the various filings effected by SQS on the websites of the exchanges will demonstrate that SQS has substantial on-going business including declaration of dividend. In fact on July 27, 2017, an annual general meeting of*

SQS was held at Chennai which was attended by over 200 shareholders. At such meeting, amongst various regular items of business, the shareholders of SQS BFSI have also approved declaration of final dividend of Rs.20/- per share. This demonstrates beyond doubt that SQS is indeed a fully functional listed company with no suspicion about it being a 'shell company'.

(f) SQS presently has about 15,400 public shareholders, including institutional investors whose interest is being affected adversely on account of the Notification. The scrip of SQS has been traded on an average trading volume of 11,861 shares in the last 30 days thereby indicating decent public interest in the scrip.

(g) SQS Software Quality Systems AG ("SQS Software") is the parent company of SQS which is headquartered in Cologne, Germany and now employs approximately 4,400 personnel. SQS Software has offices in Germany, UK, US, Australia, Austria, Egypt, Finland, France, India, Ireland, Italy, Malaysia, the Netherlands, Norway, Singapore, South Africa, Sweden, Switzerland and UAE. In addition, SQS Software maintains a minority stake in a company in Portugal. In 2016, SQS Software generated revenues of €327.1 million.

9. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and Stock Exchanges, SQS filed an appeal No. 179 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated August 11, 2017 directed the following:-

".....

2. Similar question was raised in the case of J. Kumar Infraprojects Ltd. (Appeal No. 174 of 2017) and by our order dated 10.08.2017 we have stayed direction 1(a) & (b) contained in the impugned communication of SEBI dated 07.08.2017 qua the appellant therein.

3. In view of the facts set out in the Memorandum of Appeal and other documents tendered at the time of hearing relating to annual turnover of the appellant company for last three years, which even according to SEBI prima facie appear to be correct, we extend the

said stay to the case of the appellant company herein and direct the stock exchanges to reverse their decision in respect of the appellant company as expeditiously as possible.

4. Appellant company has already made a representation to SEBI against the impugned communication of SEBI dated 07.08.2017. SEBI is directed to dispose of the said representation in accordance with law.

5. It is made clear that this order shall not come in the way of SEBI as well as the stock exchanges to investigate the case of the appellant company and initiate proceedings if deemed fit.

.....”

10. The Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* dated August 10, 2017 held that the measures 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. SEBI vide letter dated August 16, 2017 had advised SQS to provide following information:

(a) *Connection with Mr. Atul Hiralal Shah and/or Mr. Anil Hiralal Shah and Summary of dealings of the Company with or through Mr. Atul Hiralal Shah and/or Mr. Anil Hiralal Shah, either directly or indirectly, and the nature and quantum thereof. You are advised to provide all the relevant documents with respect to the above information. Also provide the details of MoUs signed by the company with aforesaid entities/their associates.*

(b) *Further, you are also requested to furnish details of employees on the rolls of the Company, their respective roles, remuneration received qualifications and experience for the job. Details of Provident Fund contributions made by the Company for the aforesaid employees. For ease of furnishing the information, broad categories of roles: Blue collar,*

Junior management, Middle management, senior management, may be given with names and corresponding details.

12. SQS vide its letter dated August 23, 2017 submitted the information sought by the SEBI's letter dated August 16, 2017 which are as under:

(a) Reply to query 1: The Company had no dealings with or through Ar. Atul Hiralal Shah and/or Mr. Anil Hiralal Shah either directly or indirectly. We had no arrangements/agreements with any of the aforesaid entities / their associates. We would also like to bring to your kind attention that we had received communications from Assistant Commissioner of Income Tax, Central Circle 1(2), Ahmedabad dated July 25, 2016, calling for information under section 133(6) of Income Tax act, 1961 and from Deputy Commissioner of Income Tax, corporate Circle 6(2), Chennai dated July 24, 2017 in connection with the search carried out by them on Mr. Atul Hiralal Shah and Mr. Atul Hiralal Shah. The Company had replied to both the letters denying that there is any Agreement / MOU signed by the Company with the above entities / their associates. Further, there are no transactions made till date with the aforesaid parties. We have also provided necessary details as required by the respective Income Tax authorities.

(b) Reply to query 2: Details of salary paid for the year 2016-17 for those employees who were on the rolls both in India and overseas branches and details like qualification, overall experience and company contribution to PF are attached. Total no. of employees related to Financial Year (FY) 2016-17 are 1,050 domestic and 72 abroad.

Hearing and Reply:

13. Pursuant to the decision of Hon'ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of quasi-judicial order, SEBI vide communication dated September 07, 2017 granted an opportunity of hearing to SQS on September 13, 2017. On September 13, 2017, Mr. K Ramaseshan, CFO, Mr. S Santhanakrishnan, Managing Partner, PKF Sridhar &

Santhanam LLP, Chartered Accountants and Mr. R. Suriyanarayanan, Partner, PKF Sridhar & Santhanam LLP, Chartered Accountants, Authorized Representatives (hereinafter referred to as “ARs”) appeared for SQS and made oral submissions which are as under:

- (a) *In the year 2013, SQS acquired 53% stake in Thinksoft Global Services Limited (Thinksoft) and in the year 2014 the name of Thinksoft Global Services Limited was changed to M/s SQS India BFSI Limited.*
- (b) *Euro Indo investments, venture capital had invested in Thinksoft. In the year 2008-09, company had come with an IPO. During the IPO, Euro Indo had exited from the company. Thereafter, payment was made to Euro Indo investments and all its agreement with the company got terminated.*

The company was asked to provide the information / response on the following queries (supported by documentary evidence) latest by September 18, 2017:

- (a) *During the IPO a set of entities were controlling the company or were in charge of the company including the then promoters and venture capitalists. An affidavit from each of these entities who were controlling the company stating whether there was any dealing that they or the company had with or through Mr. Atul Hiralal Shah and Mr. Anil Hiralal Shah either directly or indirectly.*
- (b) *Contact details of the aforesaid entities who were controlling the company or were in charge of the company in prior period.*
- (c) *Company's cash and bank balance was Rs. 89 Crore in its Annual report FY 2016-17. Company shall submit bank statements showing balances as on March 31, 2017.*

14. SEBI vide email dated September 14, 2017 has also advised SQS to furnish the aforesaid information by September 18, 2017.

15. SQS vide its letter dated September 18, 2017 submitted the information sought by SEBI at the time of hearing and vide email dated September 14, 2017 which are *inter alia* as under:

- (a) Reply to query 1: At the time of the IPO in 2009, the following were entities/persons who were controlling the company or were in charge of the company including the then promoters:

<i>S. No.</i>	<i>Name</i>	<i>Category</i>	<i>Pre IPO holding %</i>
<i>1</i>	<i>Mr. A V. Asvini Kumar</i>	<i>Promoter</i>	<i>41.86</i>
<i>2</i>	<i>Mrs. Vanaja Arvind</i>	<i>Promoter</i>	<i>12.07</i>
<i>3</i>	<i>Mr. Mohan Parvatikar</i>	<i>Promoter</i>	<i>1.60</i>
<i>4</i>	<i>Euro Indo Investments</i>	<i>Venture Capitalist</i>	<i>28.53</i>

The above entities/ persons who were controlling the company or were in charge of the company including the then promoters are not currently continuing with the company. Subsequent to your email dated September 14, 2017, the company had contacted the said persons / entities and have elicited affidavits as required in your e-mail and we have pleasure in enclosing the affidavits issued by the following promoters

- (i) Mr. A V Asvini Kumar,*
- (ii) Mrs. Vanaja Arvind,*
- (iii) Mr. Mohan Parvatikar*

Also, we have enclosed an affidavit issued by the Company to this effect

With respect to M/s. Euro Indo Investments, venture capitalist, we enclose the email sent to them mentioning the requirement of SEBI for furnishing an affidavit on the aforesaid matter and the response received from them is also enclosed. We have included their contact details in this letter for you to contact them directly, if you so desire for any further information.

- (b) Reply to query 2: *The contact details of the entities who were controlling the company or were in charge of the company in prior period are enclosed.*
- (c) Reply to query 3: *As desired in your email, we are enclosing the bank balances and copies of the bank statements as on 31st March, 2017. On the bank balance, we would like to further give the following additional points:*

- (i) *The company operates on zero debt for working capital*
- (ii) *The company being involved in software testing, payroll costs are the largest component which involves monthly pay-outs.*
- (iii) *The amount of Rs.89 crores represents roughly the cash requirement for five months working capital.*
- (iv) *Also, after 31st March, 2017, out of this amount a sum of Rs.25 crores has been utilised for dividend and dividend tax pay-outs.*
- (v) *As of 14th September, 2017, the company's cash/bank balances were Rs.65 crores*
- (vi) *The bank balances have been built over the period from operational profits with focus on the company being a zero debt company having to provide for a safe working capital chest. The cash and bank balances moved as under in the past three years*

Amt. in Crores	2016-17	2015-16	2014-15
Opening Cash and Bank Balance	86	68	50
Net Profits	23	37	22
Closing Cash and Bank Balance	89	86	68

- (vii) *Thus, bank balances have been built over the years from profits generated from business and the company operates out of its own funds*

16. Pursuant to SEBI's letter dated August 9, 2017, NSE vide its letter dated September 21, 2017 submitted its report stating as under:

- (a) Company is compliant with five clauses of Listing Regulations specified in SEBI Circular dated November 30, 2015 on Standard Operating Procedures.
- (b) The Auditor has certified that the company is a going concern.
- (c) The Auditor has certified that the company has not defaulted in repayment of dues to Banks and the company has not availed any loans/facilities from financial institution.
- (d) Number of shareholders are 15,499 as on June 30, 2017.

NSE recommended that as per the compliance record and other details submitted by the company in SEBI prescribed format, SQS India BFSI Limited may be allowed to be traded on NSE.

Consideration:

17. On perusal of the materials available on record, the following prima facie/potential issues arise for consideration.

- (a) Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and 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 account/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, 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. 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 including of its financials and/or its business and possible of 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 account/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.*

19. Based on the replies given by the company in response to SEBI's queries, observations are as under:

- (a) During the course of hearing and vide email dated September 14, 2017, SQS was advised to submit the affidavit from each of the entities who were controlling the company at the time of IPO, stating whether there was any dealing that they or the company had with or through Mr. Atul Hiralal Shah and Mr. Anil Hiralal Shah either directly or indirectly. SQS submitted that at the time of IPO in 2009, the controlling entities were Mr. A.V. Asvini Kumar, Promoter, Mrs. Vanaja Anand, Promoter, Mr. Mohan Parvatikar, Promoter and Euro Indo Investments, Venture Capitalist. Company also stated that the said promoters are not currently continuing with the company. Further, SQS has submitted the affidavit issued by Mr. A.V. Asvini Kumar, Mrs. Vanaja Anand and Mr. Mohan Parvatikar. SQS also submitted its affidavit signed by Aarti Arvind, Managing Director & CEO on behalf of SQS.
- (b) Through their affidavit, Mr. A.V. Asvini Kumar, Mrs. Vanaja Anand, Mr. Mohan Parvatikar and Aarti Arvind, Managing Director & CEO on behalf of SQS stated as under:
 - (i) That they had no dealing with or through Mr. Atul Hiralal Shah and / or Mr. Anil Hiralal Shah either directly or indirectly.
 - (ii) That they had no arrangements / agreements with Mr. Atul Hiralal Shah and / or Mr. Anil Hiralal Shah either directly or indirectly.
- (c) With respect to Euro Indo Investment, SQS submitted an email dated September 18, 2017 from One Mr. Vinod Ganjoor. Mr. Vinod Ganjoor vide email dated September 18, 2017 stated that *"Euro Indo Investments was wound down and closed some time ago and has no ability to provide any legal documentation or for that matter any communication of any kind, in this regard"*. I note that Euro Indo Investment is no longer associated with SQS.
- (d) During the course of hearing and vide email dated September 14, 2017, SQS was advised to submit the bank statement showing the balances of Rs. 89 Crore as on March 31, 2017

for FY 2016-17. Company has submitted its bank statements including its FD and subsidiary account statements. Company stated that it operates on zero debt for working capital and this amount is its five month working capital. Also, out of this amount of Rs 25 crores is being utilized for dividend and dividend tax payouts.

Upon perusal of the bank statement and bank balance of the company, it was noted that there were few figures which were not reconciling w.r.t. the available balance in the account as on March 31, 2017. Therefore, SEBI sought an explanation from SQS re the same:

“”.....In company’s response dated September 18, 2017, in following transactions in Annexure 7 having number 11, 13, 37 and 38, it is noted that the amount in FX (third last column) is significantly different than the amount mentioned as Balance as per bank (second last column) as on March 31, 2017.

SQS INDIA BFSI LIMITED							
List of Banks							
S.No	Name of the Bank	Account No	Country	Balance as on 31st Mar 17 as per Books of Accounts		Balance as per Bank Statement as on 31st Mar 17	Ref
				Amount in INR	Amount in FX		
11	Lakshmi Vilas Bank - GBP	0434372000000017	India	5,189,419	£ 64,162	£ 218,360	A10
13	Lakshmi Vilas Bank - USD	0434371000000023	India	18,616,002	\$ 287,107	\$ 1,303,307	A12
37	ICICI Bank - UK LTD (GBP)	76111553	UK	297,857,411	£ 3,682,663	£ 3,528,510	E4
38	HSBC A/c, New york,USD	006149669	USA	248,611,458	\$ 3,834,230	\$ 2,822,580	E5

You are therefore requested to provide the explanation with backup paper, if any, for Amount in FX, as it is different than the amount mentioned in Balance as per Bank and there is no reconciliation provided for Amount in FX...”

SQS vide letter dated October 25, 2017 has provided the clarification related to transfers pending reflection in bank accounts and also submitted the bank balance confirmation from banks and the bank statement with subsequent clearance of the amounts in reconciliation.

(e) From the submission of SQS, it is noted that the total no. of employees related to FY 2016-17 are 1,050 domestic and 72 abroad and these employees are linked to the company's business activity.

20. In view of substantive documentation and explanations provided by SQS during the hearing and in its replies in respect of all the queries, I do not find any *prima facie* evidence nor suspicion of misrepresentation of financials/business of the company nor misuse of books of accounts / funds of the company nor 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.*

21. In absence of *prima facie* evidence / suspicion 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 SQS are liable to be revoked.

ORDER

22. 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 SQS India BFSI Limited.

23. Accordingly the representation of SQS is disposed of.

24. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

25. 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: DECEMBER 08, 2017

PLACE: MUMBAI

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