

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, the Companies Act, 1956 and the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 and in continuation to Interim Order dated March 17, 2015 and Final Order dated May 12, 2016.

In respect of –

S. No.	Noticees	CIN/ DIN	PAN
1.	Cell Industries Limited	U52190WB2010PLC154842	AAECC2069A
2.	Kumar Kanti Bhattacharya	01576626	ADXPB7335B
3.	Rajesh Jaiswal	01675141	AAPPJ0891B
4.	Sekh Rezaul Karim	03410690	AKOPK3769L

1. Securities and Exchange Board of India (“SEBI”), vide Final Order dated May 12, 2016 held that Cell Industries Limited (“CIL” or “Company”) and its directors namely, Kumar Kanti Bhattacharya, Debi Prasad Mookherji, Sourav Bardhan, Ashim Gupta, Asraf Ali Shaikh, Shaikh Ajar Ali, Saik Majaffar, Rajesh Jaiswal, Sekh Rezaul Karim and Koushik Mukherjee were liable for engaging in fund mobilizing activity from the public through the offer and issuance of Redeemable Preference Shares (“RPS”) and Non-Convertible Debentures (“NCDs”) since they had contravened the provisions of sections 56, 60, 73, 117B and 117C of the Companies Act, 1956 and the provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008. The Final Order also held that the Company had appointed Ashish Kumar De Sarkar and Abdul Basad Molla, as Debenture Trustees in respect of its offer and issuance of NCDs and that the trustees did not satisfy the eligibility conditions under regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993 (“the DT Regulations”) and acted as unregistered debenture trustees in violation of section 12(1) of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”).

2. In view of the same, SEBI vide Final Order dated May 12, 2016 issued the following directions to CIL and Kumar Kanti Bhattacharya, Debi Prasad Mookherji, Sourav Bardhan, Ashim Gupta, Asraf Ali Shaikh, Shaikh Ajar Ali, Saik Majaffar, Rajesh Jaiswal, Sekh Rezaul Karim and Koushik Mukherjee to :
- (a) *CIL and others to refund the money collected by the Company through the issuance of Non-Convertible Debentures and Redeemable Preference Shares, to the investors including the money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.*
 - (b) *The Company/its present management are permitted to sell the assets of the Company only for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalised Bank.*
 - (c) *The Company and others named above shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) 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 coming into effect.*
 - (d) *After completing the aforesaid repayments, the Company shall file a certificate of such completion with SEBI, within a period of three months from the date of this Order, from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. 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 ("ICAI").*
 - (e) *Cell Industries Limited, Mr. Kumar Kanti Bhattacharya, Mr. Debi Prasad Mookherji, Mr. Sourav Bardhan, Mr. Ashim Gupta, Mr. Asraf Ali Shaikh, Mr. Shaikh Ajar Ali, Mr. Saik Majaffar, Mr. Rajesh Jaiswal, Mr. Sekh Rezaul Karim and Mr. Koushik Mukherjee are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.*

3. Against the aforesaid final order, Kumar Kanti Bhattacharya, Shaikh Rezaul Karim and Rajesh Jaiswal (hereinafter collectively referred to the “Appellants”), directors of the company preferred separate appeals before Hon’ble Securities Appellate Tribunal (SAT). All the three matters were listed before the SAT on November 09, 2016, but in the mean time Rajesh Jaiswal, one of the directors of the company vide letter dated November 08, 2016 forwarded a Demand Draft bearing number ‘216848’ dated November 07, 2016 for Rs. One crore in favour of SEBI payable at Kolkata citing it as an interim arrangement for the purpose of paying back to the investors.
4. Hon’ble SAT vide order dated November 9, 2016 permitted the appellants to file a representation before SEBI within two weeks. Accordingly, the Noticees were granted liberty to make a representation to SEBI, setting out the mode and the manner in which the refunds, as claimed by them have been made and balance refunds as contemplated, would be made to the remaining investors, in accordance with the Final Order dated May 12, 2016. SEBI was directed to consider such representation of the appellants relating to extension of time to make refunds to the investors and also reconsider the request of the appellants relating to the restraint order passed against the appellants.
5. The appellants viz. Rajesh Jaiswal and Kumar Kanti Bhattacharya vide separate letters dated November 23, 2016 filed their representations with SEBI pursuant to the above-mentioned order of Hon’ble SAT. Shaikh Rezaul Karim has not filed any representation till date. The representations submitted by Rajesh Jaiswal and Kumar Kanti Bhattacharya *inter-alia* stated that:
 - a. *That as per the adjudication done by WTM, SEBI, a total of Rs. 15.61 Crores is payable by the company and the persons named in the final order.*
 - b. *The final order directed the said sum of Rs.15.61 Crores was to be paid with interest at @15% per annum from May 12, 2016.*
 - c. *At the time when the WTM passed the interim order dated March 17, 2015 or the final order dated May 12, 2016, the payments already made by the company had not been taken into consideration by WTM.*
 - d. *That they are willing to produce the affidavits sworn in and submitted by the investors while taking their monies and giving due discharge to Cell Industries Limited and all concerned.*
 - e. *They are also ready and willing to get the accounts and transactions reviewed by a Peer Reviewed Chartered Accountant in accordance with law in order to prove his bonafides.*

6. The above named two directors had also submitted a Compact Disc (CD) along-with their individual reply having an excel sheet containing details of refunds made. On a perusal of the same, it is observed that in the aforesaid excel sheet information regarding Customer ID No., Customer Name, Deposited Amount, Deposit Date, Payment Amount, Payment Method (Cash/Bank) and Payment Financial year for 13561 entries were submitted in both the CDs.
7. Considering the representations of the two directors expressing their readiness and willingness to get the accounts and transactions reviewed by Peer Reviewed Chartered Accountant in order to prove their bonafides regarding repayment, SEBI vide letter dated July 20, 2017 directed CIL and the two directors to engage two independent peer reviewed Chartered Accountants who were in the panel of any public authority or public institution to get the fact of repayment certified, as directed in para no.33(e) of SEBI Order dated May 12, 2016. They were further directed to advise the Auditors to do an actual verification of the documents evidencing repayment by examining relevant documents, such as bank account statements of the company, full and final settlement receipts from the investors, other documents of transfer of funds with interest from the company to the investors etc.
8. In response to the SEBI letter, one of the directors of the company viz. Kumar Kanti Bhattacharya, vide letter dated January 24, 2018 submitted that :-
 - a) Despite their sincere efforts they were unable to find out Peer Reviewed Chartered Accountants empanelled with Public Authorities who were willing to undertake the responsibility of checking and certifying the payments made to the investors for quite a long time. It took a substantial time for us to complete the exercise.
 - b) Though qualified Chartered Accountants were available, yet since the requirement was of Peer Reviewed Chartered Accountants empanelled with Public Authorities, they could not request for or even suggest appointment of such Chartered Accountants. Now after being able to find out Peer Reviewed Chartered Accountants namely, M/s. Mallick, & Co. and M/s. R.S.Ray Associates, empanelled with Public Authorities, they have forwarded the aforesaid names of Peer

Reviewed Chartered Accountants empanelled with Public Authorities to SEBI, by way of the instant letter, immediately upon getting the consent from them without any delay.

9. In response to the said request, SEBI vide letters dated February 21, 2018, advised CIL and the two directors, to be guided by the directions in SEBI Final Order dated May 12, 2016 and ensure the conclusion of verification and repayment certification process within a period of four weeks from the receipt of the aforesaid letter. Apart from CIL and the two directors, the copy of the letter was also sent to the two Advocates of the directors who represented them before Hon'ble SAT. The aforesaid letters were sent by Speed Post Acknowledgement Due (SPAD) and as per the records available, the letters were served on all except CIL.
10. As no certification of repayment by Peer Reviewed Chartered Accountants was received by SEBI from the two directors, CIL and the two directors were again advised vide letters dated April 5, 2018, to submit the same immediately. The copy of the letter was also sent to the two Advocates of the directors. The aforesaid letters were sent by SPAD and as per the records the same were served on all except CIL. In spite of reminder, CIL and the two directors failed to submit the certificate of repayment by Peer Reviewed Chartered Accountants. In view of these facts and circumstances, I deem it appropriate to decide the matter on the basis of materials available on record.
11. I have considered the representation of the two directors. The third director Sekh Rezaul Karim had not filed any representation as directed by Hon'ble SAT. I note that CIL and the two directors have failed to submit certificate of repayment by Peer Reviewed Chartered Accountants as directed in the final order and in spite of their assurance to do the same. I also note that sufficient time and opportunities were granted to CIL and its two directors to submit certificate of repayment by Peer Reviewed Chartered Accountants and their failure to comply appears more like a ploy for delaying and protracting the issue.
12. Apart from the above, I have also analyzed the excel sheet submitted by the two directors. In the excel sheet submitted by the two directors, they have submitted the details of repayments to investors as follows :-

S. No	Year	Repayment by Banking Channel		Repayment by Cash	
		Amount in Rs.	No. of investor IDs	Amount in Rs.	No. of investor IDs
1.	2013-14	89,79,397	446	3,27,60,657	3,196
2.	2014-15	5,87,08,478	3,906	2,43,08,970	3,954
3.	2015-16	1,12,61,712	273	66,74,643	658
4.	2016-17	2,42,51,274	1,127	Nil	NIL
	Total	10,32,00,861	5,752	6,37,44,270	7,808

13. Thus, if the submissions of the directors are accepted for argument's sake, then more than 60% of the repayment to investors were made through the banking channel mode and I find no reason why the same if properly placed before Peer Reviewed Chartered Accountants cannot be certified. I have also noted that in the excel sheet submitted by the two directors dates of repayment are missing (financial year is submitted) though deposit date is clearly mentioned. This casts a pall of doubt on the veracity of claim of repayment.

14. At this juncture, it is also pertinent to mention that even though the two directors have submitted that they have made all the re-payments to investors as directed in the final order along with interest, SEBI is in receipt of several complaints post the passing of the final order, alleging *inter alia* that Cell Industries Limited is misguiding the customers and creating pressure to take only 60-90 percent of their invested amount in the company/take whatever the company is giving them/not honoring the maturity of their investments. I have also noted the fact that some of the investors have also filed a Writ Petition before Hon'ble High Court of Calcutta against the company and its directors, stating that they are yet to receive any amount from the company.

15. I have also noted the fact that though CIL and its directors were directed in the Final order dated May 12, 2016, to repay the investors with an interest of 15%, but there are several instances in the repayment details submitted by them in the excel sheet, which show that interest was not paid to the investors, even after the directions in the final order, as shown below :-

SL NO.	CUSTOMER ID NO.	CUSTOMER NAME	DEPOSIT AMOUNT	DEPOSIT DATE	PAYMENT AMOUNT
2756	P2577	AJAY KUMAR PAL	₹ 50,000.00	31/07/12	₹ 50,000.00
2778	P5768	AMITAVA GHOSH	₹ 1,50,000.00	28/09/12	₹ 1,50,000.00
2779	P5769	AMITAVA GHOSH	₹ 1,50,000.00	28/09/12	₹ 1,50,000.00
2758	P2591	ANIL KUMAR DOLAI	₹ 1,00,000.00	12/06/12	₹ 1,00,000.00
2760	P2902	ANIL KUMAR DOLAI	₹ 1,00,000.00	12/06/12	₹ 1,00,000.00
2752	P10996	ANITA BURNWAL	₹ 30,000.00	02/02/13	₹ 30,000.00
2874	001/54025	ASIM PAL	₹ 2,50,000.00	27/12/12	₹ 2,50,000.00
2803	14921	BHARAT SUBBA	₹ 3,00,000.00	08/03/11	₹ 3,00,000.00
2789	P6143	BINAPANI ADAK	₹ 10,000.00	19/11/12	₹ 10,000.00
2811	001/24857	BINAPANI BASU	₹ 1,00,000.00	11/08/11	₹ 1,00,000.00
2824	001/31767	BISWA DAS MODAK	₹ 30,000.00	12/12/11	₹ 30,000.00
2830	001/33905	BISWA DAS MODAK	₹ 30,000.00	30/03/12	₹ 30,000.00
2831	001/33906	BISWA DAS MODAK	₹ 30,000.00	31/03/12	₹ 30,000.00
2834	001/36127	BISWAJIT CHATTERJEE	₹ 1,00,000.00	23/11/11	₹ 1,00,000.00
2875	001/54064	BISWANATH BHATTACHARJEE	₹ 1,00,000.00	25/01/13	₹ 1,00,000.00
2835	001/36138	BRINDABAN CHANDRA PRAMANIK	₹ 1,00,000.00	30/11/11	₹ 1,00,000.00
2842	001/40966	BRINDABAN CHANDRA PRAMANIK	₹ 1,00,000.00	20/02/12	₹ 1,00,000.00
2745	P10707	CHAYANA DAS	₹ 10,000.00	10/12/12	₹ 10,000.00
2840	001/40183	CHHABI CHATTERJEE	₹ 3,00,000.00	04/02/12	₹ 3,00,000.00
2757	P2587	DILIP GHANTA	₹ 50,000.00	15/06/12	₹ 50,000.00
2794	P6889	DILIP GHANTA	₹ 50,000.00	21/12/12	₹ 50,000.00
2816	001/27134	DWIPENDRANATH GHOSH	₹ 1,00,000.00	16/08/11	₹ 1,00,000.00
2826	001/31773	GAUTAM MODAK	₹ 30,000.00	12/12/11	₹ 30,000.00
2847	001/44767	GAUTAM MODAK	₹ 30,000.00	31/03/12	₹ 30,000.00
2855	001/45764	GAUTAM MODAK	₹ 30,000.00	30/03/12	₹ 30,000.00
2784	P5866	GOUTAM KUMAR SARKAR	₹ 50,000.00	10/10/12	₹ 50,000.00
2746	P1078	GOUTAM PAUL	₹ 50,000.00	13/06/12	₹ 50,000.00
2849	001/45028	KAMAL DAS	₹ 60,000.00	31/03/12	₹ 60,000.00
2732	P0329	KUMAR SANKAR HALDER	₹ 1,00,000.00	30/03/12	₹ 1,00,000.00
2837	001/36162	MANJU SAHA	₹ 50,000.00	28/08/12	₹ 50,000.00
2807	001/23207	MAYA CHAKRABARTY	₹ 50,000.00	30/06/11	₹ 50,000.00
2808	001/23209	MAYA CHAKRABARTY	₹ 10,000.00	30/06/11	₹ 10,000.00
2809	001/23210	MAYA CHAKRABARTY	₹ 10,000.00	30/06/11	₹ 10,000.00
2781	P5776	NAYANESH CHANDRA KUNDU	₹ 50,000.00	28/07/12	₹ 50,000.00
2751	P10984	PANCHU KODALI	₹ 10,000.00	20/12/12	₹ 10,000.00

SL NO.	CUSTOMER ID NO.	CUSTOMER NAME	DEPOSIT AMOUNT	DEPOSIT DATE	PAYMENT AMOUNT
2754	P1466	PANCHU KODALI	₹ 10,000.00	31/12/12	₹ 10,000.00
2767	P3785	PANCHU KODALI	₹ 30,000.00	11/10/12	₹ 30,000.00
2788	P6140	PANCHU KODALI	₹ 10,000.00	05/10/12	₹ 10,000.00
2728	P0109	PRABIR KUMAR MONDAL	₹ 2,00,000.00	07/11/12	₹ 2,00,000.00
2727	P0108	PRAFULLA CHANDRA MONDAL	₹ 50,000.00	30/11/12	₹ 50,000.00
2787	P5905	PRATAP CHANDRA MONDAL	₹ 10,000.00	10/10/12	₹ 10,000.00
2766	P3784	PRATAP KODALI	₹ 10,000.00	19/11/12	₹ 10,000.00
2759	P2593	PULAK MAITI	₹ 10,000.00	16/03/12	₹ 10,000.00
2862	001/49217	PURABI SARKAR (MONDAL)	₹ 3,00,000.00	31/07/12	₹ 3,00,000.00
2819	001/30184	RANI BALA GANGULY	₹ 50,000.00	18/06/12	₹ 50,000.00
2797	P7230	SABITA DAS	₹ 10,000.00	04/12/12	₹ 10,000.00
2881	001/57175	SADHANA MODAK	₹ 50,000.00	28/01/13	₹ 50,000.00
2863	001/49425	SAJAL DAS	₹ 1,00,000.00	13/06/12	₹ 1,00,000.00
2761	P2933	SANAT KUMAR GUCHHAIT	₹ 1,00,000.00	08/06/12	₹ 1,00,000.00
2780	P5771	SANTANU ROY	₹ 60,000.00	19/11/12	₹ 60,000.00
2825	001/31769	SHEFALI MODAK	₹ 30,000.00	12/12/11	₹ 30,000.00
2856	001/45765	SHEFALI MODAK	₹ 30,000.00	31/03/12	₹ 30,000.00
2857	001/45924	SHEFALI MODAK	₹ 30,000.00	30/03/12	₹ 30,000.00
2827	001/31823	SHEFALI MODAK	₹ 30,000.00	16/12/11	₹ 30,000.00
2729	P0110	SHREEDHANYA MONDAL	₹ 50,000.00	07/11/12	₹ 50,000.00
2786	P5900	SHREEDHANYA MONDAL	₹ 50,000.00	08/09/12	₹ 50,000.00
2793	P6475	SK ALTAP HOSSEN	₹ 3,00,000.00	27/12/12	₹ 3,00,000.00
2817	001/28303	SMT KAMALI HANSDA	₹ 1,00,000.00	06/09/11	₹ 1,00,000.00
2854	001/45639	SOMA GANGULI	₹ 80,000.00	23/07/12	₹ 80,000.00
2725	11207	SUBHAMOY MUKHERJEE	₹ 20,000.00	29/11/12	₹ 20,000.00
2775	P4989	SUDEB KARMAKAR	₹ 10,000.00	19/12/12	₹ 10,000.00
2782	P5777	TANUSHREE MONDAL	₹ 7,50,000.00	31/07/12	₹ 7,50,000.00
2785	P5898	TANUSHREE MONDAL	₹ 50,000.00	10/10/12	₹ 50,000.00
2737	P0951	TAPAN KUMAR GHOSH	₹ 50,000.00	31/01/12	₹ 50,000.00
2764	P3782	TARAK ADAK	₹ 10,000.00	04/12/12	₹ 10,000.00
2768	P3786	TUMPA KODALI	₹ 10,000.00	30/07/12	₹ 10,000.00
2769	P3788	TUMPA KODALI	₹ 10,000.00	26/07/12	₹ 10,000.00
2770	P3789	TUMPA KODALI	₹ 20,000.00	07/06/12	₹ 20,000.00
2798	P7232	TUMPA KODALI	₹ 40,000.00	30/06/12	₹ 40,000.00
2765	P3783	UTTAM KUMAR LAHA	₹ 10,000.00	05/12/12	₹ 10,000.00

16. In this regard, it is noted that the final order had explicitly directed that in case the Company had made refunds, as claimed in its representation, it shall submit a certificate of completion of repayment by peer reviewed Chartered Accountants. However, no proof in support of this repayment has been submitted to SEBI in spite of the final order and Order of Hon'ble SAT dated November 9, 2016 to do so.
17. In the absence of any proof, no conclusion can be drawn in relation to the number of investors already repaid and yet to be repaid by the company. I am of the opinion that the company and its two directors are just engaging SEBI in correspondence with the idea of delaying and protracting compliance with the final order. This is also to avoid other actions being taken against them for the failure or delay in compliance of the final order. Hence, I am of the view that the proposal put forward by the Noticees do not merit any consideration.
18. In view of the above and in the interest of investors, I direct that Recovery proceedings be immediately initiated against CIL and its directors. SEBI may initiate any other proceedings as mentioned in para 33(g) of the final order dated May 12, 2016, as deemed fit in the facts and circumstances of the case.

Date: September 5, 2018

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA