

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, 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 Wasankar Wealth Management Limited and its Promoters/Directors, viz. Prashant Jaidev Wasankar (DIN: 02222183; PAN: 11IPW1864A), Mithila Vinay Wasankar (DIN: 02748336; PAN: ANFPM0123J), Vinay Jaidev Wasankar (DIN: 02217889; PAN: AALPW3215A), Bhagyashree Prashant Wasankar (DIN: 02737738; PAN: AALPW3274H) and Abhijeet Jayant Chaudhari (DIN: 02745525; PAN: AIUPC8611M).

1. Securities and Exchange Board of India ("**SEBI**") received a complaint dated December 12, 2013, *inter alia* alleging illegal mobilization of funds by the Wasankar Group, which comprised of three companies i.e. Wasankar Investments, Wasankar Wealth Management Limited ("**WWML**") and Wasankar Agro Wealth Management Private Limited.
2. Thereafter, SEBI vide letter dated April 2, 2014, advised WWML to furnish the following information within fifteen days from the date of receipt of the aforesaid letter *inter alia* in respect of issue of *Non-Convertible Preference Shares* ("**NCPS**"), viz. –
 - i. Date of incorporation and history of change in constitution, if any.
 - ii. Details of Promoters of the company: Name, address, number of shares held, etc.
 - iii. Details of Group companies (that are controlled directly or indirectly by the Promoters), Subsidiaries and Associates.
 - iv. Details of the Board of Directors, including their name, address, DIN number, PAN number, etc. and changes thereof for the period April 1, 2011 to March 1, 2014. Also provide details of directorship held by these persons in other companies.
 - v. Copies of the Annual Reports filed with Registrar of Companies ("**ROC**") for the immediately preceding three financial years. If incorporated within three years before the date of the letter, Annual Reports since incorporation.
 - vi. Details of the name and designation of the key management personnel.

- vii. Details of the shareholders of the company (i) as on date, (ii) as on the date of Prospectus/issue of *NCPS* and (iii) as on two months prior to such issue, including details regarding name, address, number of shares held etc.
- viii. Copy of the Prospectus filed with concerned Registrar of Companies alongwith acknowledgment.
- ix. Copies of Board resolution/General meeting resolution authorizing such *NCPS* issue.
- x. Details regarding number of application forms circulated and to whom circulated by name and address and contact telephone numbers, inviting subscription for *NCPS* issued by WWML;
- xi. The number of applications and subscription amount received for *NCPS*;
- xii. Date of opening and closing of the subscription list for the said *NCPS*;
- xiii. Number and list of successful allottees (name and address), alongwith the number of *NCPS* allotted and value of such allotment against each allottee's name, type and maturity of *NCPS*, terms of issue, date of application and date of allotment, etc.
- xiv. Copies of the minutes of Board/Committee Meeting in which the resolution was passed for allotment;
- xv. Date of dispatch of *NCPS* certificate, etc.
- xvi. Copy of the statement filed with the respective ROC w.r.t. closure of Issue of *NCPS*.
- xvii. The Board resolution for appointment of Auditor for certifying payment received for issue of *NCPS*.
- xviii. Copy of the Auditor Certification certifying that payment has been received by WWML.
- xix. Proposal for listing of *NCPS*, if any.

3.1 WWML, vide letter dated April 16, 2014, *inter alia* submitted that –

- i. "There was no Prospectus of the Company filed with ROC since this is a private placement and not intended for public issue.*
- ii. Total no. of application for NCPS was 169 and the amount received for NCPS was ₹8,03,47,000.*
- iii. The placement was private to pre-identified persons, hence there was no opening and closing of list.*
- iv. Since there have been no redemption from the date of allotment, hence no statement is filed with ROC."*

3.2 In addition to the above, WWML submitted the following information to SEBI, viz. –

- a. Certificate of Incorporation;*
- b. Name, addresses and number of shares held by the promoters of the company;*

- c. *Details of Group companies;*
- d. *Details of the Board of Directors alongwith their directorship in other companies;*
- e. *Copy of Annual Report filed with RoC from Financial year 2010-11 to Financial year 2012-12;*
- f. *Name and designation of Key Management Personnel;*
- g. *Details of Equity and Preference Share Holders as on April 16, 2014;*
- h. *Notice and certified true copies of resolutions passed by the company;*
- i. *Minutes of the Board Meeting.*

4.1 Vide letter dated July 16, 2014, SEBI once again advised WWML to submit the following information by July 21, 2014, viz. –

- i. Details of the Board resolution/General meeting resolution authorizing such *NCPS* issue.
- ii. Number and list of successful allottees (name and address), alongwith the number of *NCPS* allotted and value of such allotment against each allottee's name, type and maturity of *NCPS*, terms of issue, date of application and date of allotment, etc.
- iii. Copies of the minutes of Board/Committee Meeting in which the resolution was passed for allotment;
- iv. Details of redemption of such *NCPS*.

4.2 WWML submitted the abovementioned information to SEBI vide e-mail dated July 24, 2014.

5.1 The material available on record i.e. correspondences exchanged between SEBI and WWML alongwith the documents contained therein, have been perused. On an examination of the same, it is observed that –

- i. WWML was incorporated on July 16, 2008, as Wasankar Wealth Management Private Limited, with the ROC, Mumbai, Maharashtra, with CIN No. as U74140MH2008PTC184729, having its Office at 47, Hill Road, Neena Apartments, Shivaji Nagar, Nagpur-440010, Maharashtra, India. Subsequently, WWML converted itself into a public limited company on April 1, 2010.
- ii. The Promoters/Directors in WWML are Prashant Jaidev Wasankar (DIN: 02222183; PAN: 11IPW1864A), Mithila Vinay Wasankar (DIN: 02748336; PAN: ANFPM0123J),

Vinay Jaidev Wasankar (DIN: 02217889; PAN: AALPW3215A), Bhagyashree Prashant Wasankar (DIN: 02737738; PAN: AALPW3274H) and Abhijeet Jayant Chaudhari (DIN: 02745525; PAN: AIUPC8611M).

- iii. While WWML vide letter dated April 16, 2014, submitted that: "*Total no. of application for NCPS was 169 and the amount received for NCPS was ₹8,03,47,000*"; however, upon further verification in respect of *allotment of NCPS* from the documents submitted by it (vide letter dated July 24, 2014), it is observed that it had made the following allotments under the *Issue of NCPS* –

Year	Type of Security	No. of persons to whom <i>NCPS</i> were allotted	Total Amount (₹ in Crores)
2009 – 10	12% Redeemable Preference Shares	21	1.30
2010 – 11		##38	3.56
2012 – 13		^^169	8.03
Total		228	12.89
##On September 17, 2010, allotment was made to 24 persons thereby raising ₹ 1.56 Crores while on February 15, 2011, allotment was made to 14 persons thereby raising ₹ 2 Crores.			
**WWML also partly redeemed and partly converted <i>NCPS</i> issued by it in Financial Year 2009-10 and 2010-11.			
^^WWML allotted <i>NCPS</i> to 169 investors on August 18, 2012.			

5.2 In the context of the abovementioned details, the issue for determination in the instant matter is whether the mobilization of funds by WWML through the *issue of NCPS*, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**"); the Companies Act, 1956 read with the Companies Act, 2013.

5.3 I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in ***Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)*** (hereinafter referred to as the "**Sahara Case**"), had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

5.4 In this regard –

- i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced as under:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) ...

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to 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; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sahara Case* observed that:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to 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 or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more.

...

Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ...

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

- iii. For ascertaining whether the *issue of NCPS* is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.

- a. In the facts of the instant case, it is observed that WWML allotted *NCPS* to a total of 228 investors and mobilized funds amounting to approximately ₹ 12.89 Crores during the Financial Years 2009–10, 2010–11 and 2012–13, respectively.
- b. It is observed from the Notice of Extra-ordinary General Meeting (EGM) held on August 18, 2012, that WWML proposed to convene an EGM for obtaining consent for issue of *NCPS* for an amount not exceeding ₹ 9 Crores and the same was consented to through a special resolution passed at that EGM. Although the *issue of NCPS* is stated to have been made on a private placement basis, yet, through the same, it is observed that during the Financial Year 2012–13, WWML exceeded the threshold for a private placement through the allotment of *NCPS* to 169 investors and for such allotment, it admittedly mobilized an amount of ₹ 8.03 Crores on August 18, 2012. In addition, The aforesaid facts clearly indicate that the number of persons to whom the *issue of NCPS* was made by WWML during the Financial Year 2012–13, was beyond the limit of forty–nine persons as prescribed under Section 67(3) of the Companies Act, 1956.
- c. In addition, WWML is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act and therefore, is not covered under the *second proviso* to Section 67(3).
- d. In view of the above stated facts, the *issue of NCPS prima facie* qualifies as a public issue under the first proviso to Section 67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the *Sahara Case*. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI in the case of companies who intend to get their securities listed.

5.5 I note that –

- i. From the abovementioned, it will follow that since the *issue of NCPS* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard, reference is

made to Sections 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which is reproduced as under:

"73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) ...

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1 [until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2)]; and if default is made in complying with this sub- section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees."

- ii. In the *Sabara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that –

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated

in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

- iii. In the facts of the instant case, since the *issue of NCPS* was made to fifty persons or more by WWML, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956. It therefore *prima facie* appears that WWML has violated the provisions of Section 73(1) of the Companies Act, 1956, since it has failed to ensure listing with a recognised stock exchange of the securities issued under the *issue of NCPS*.
 - iv. As per Section 73(2) of the Companies Act, 1956, the obligation to refund the amount with interest that was collected from investors under the *issue of NCPS* is mandatory on WWML. In this regard, there is no evidence on record to indicate whether or not WWML has paid interest to the investors where such *NCPS* were not allotted within 8 days under the *issue of NCPS*, as per the aforesaid Section. In view of the same, I find that WWML has *prima facie* not complied with the provisions of Section 73(2) of the Companies Act, 1956.
 - v. Section 73(3) of Companies Act, 1956, states that all monies received shall be kept in a separate bank account maintained with a Scheduled Bank and if default is made in complying with this sub-Section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees. In the instant case, there is no evidence on record to indicate whether or not funds received from the investors under the *issue of NCPS* have been kept in separate bank account by WWML. In view of the same, I find that WWML has *prima facie* not complied with the provisions of Section 73(3) of Companies Act, 1956.
- 5.6 Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the ROC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, since the *issue of NCPS* was made to fifty persons or more, it has to be construed as a public offer. Having

made a public offer, WWML was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. In this regard, WWML in its letter dated April 16, 2014, submitted: *"There was no Prospectus of the Company filed with ROC since this is a private placement and not intended for public issue."* In view of the same, I find that WWML has not complied with the provisions of Section 60 of Companies Act, 1956.

5.7 Under Section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that WWML has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

5.8 As per Section 465(1) of the Companies Act, 2013, the Companies Act, 1956, *"shall stand repealed"*. However, Section 465(2)(i) of the Companies Act, 2013, provides that:

"(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;"

5.9 Upon a consideration of the aforementioned paragraphs, I am of the view that WWML is *prima facie* engaged in fund mobilising activity from the public, through the *issue of NCPS* and a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73) read with Section 465 of the Companies Act, 2013.

6. SEBI has a statutory duty to protect the interest of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956 read with Section

465 of the Companies Act, 2013, administrative authority on the subjects relating to public issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 and Section 465 of the Companies Act, 2013, over companies who issue securities to fifty persons or more, but fail to comply with the applicable provisions of the aforesaid Companies Acts.

7. Protecting the interests of investors is the foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by WWML and no investors are defrauded. In light of the facts in the instant matter, I find that there is no other alternative but to take recourse through an interim action against WWML and its Promoters/Directors, for preventing that company from further carrying on with its fund mobilising activity under the *issue of NCPS*.
8. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions –
 - i. WWML shall not mobilize funds from investors through the *issue of NCPS* or through the issue of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - ii. WWML and its Promoters/Directors, viz. Prashant Jaidev Wasankar (DIN: 02222183; PAN: 11IPW1864A), Mithila Vinay Wasankar (DIN: 02748336; PAN: ANFPM0123J), Vinay Jaidev Wasankar (DIN: 02217889; PAN: AALPW3215A), Bhagyashree Prashant Wasankar (DIN: 02737738; PAN: AALPW3274H) and Abhijeet Jayant Chaudhari (DIN: 02745525; PAN: AIUPC8611M), 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;
 - iii. WWML and its abovementioned Promoters/Directors, 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;
 - iv. WWML shall provide a full inventory of all its assets and properties;
 - v. WWML's abovementioned Promoters/Directors shall provide a full inventory of all their assets and properties;

- vi. WWML and its abovementioned Promoters/Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *issue of NCPS*, without prior permission from SEBI;
 - vii. WWML and its abovementioned Promoters/Directors shall not divert any funds raised from public at large through the *issue of NCPS*, which are kept in bank account(s) and/or in the custody of WWML.
9. The above directions shall take effect immediately and shall be in force until further orders.
10. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondences exchanged between SEBI and WWML alongwith the documents contained therein. In this context, WWML and its abovementioned Promoters/Directors, may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
11. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against WWML and its abovementioned Promoters/Directors, in accordance with law.

Place: Mumbai
Date: July 31, 2014

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CORRIGENDUM

TO THE ORDER NO. WTM/SR/IMD/DOF-1/38/07/2014 DATED JULY 31, 2014.

1. Securities and Exchange Board of India ("**SEBI**") vide an Order bearing no. WTM/SR/IMD/DOF-1/38/07/2014 dated July 31, 2014 ("**Order**"), passed certain directions as mentioned at **paragraph 8** thereof, against Wasankar Wealth Management Limited and its Promoters/Directors including Mr. Prashant Jaidev Wasankar.
2. SEBI has noticed an error in the PAN of Mr. Prashant Jaidev Wasankar, as mentioned in the Order. Accordingly, the PAN of Mr. Prashant Jaidev Wasankar, as mentioned in the Order, shall now be read as mentioned in the fourth column of the Table below –

Sr. No	Name	PAN as mentioned in the Order	Correct PAN
<i>1.</i>	<i>Mr. Prashant Jaidev Wasankar</i>	<i>11IPW1864A.</i>	<i>AAIPW1864A</i>

3. The Order shall be read with this Corrigendum. A copy of this Corrigendum shall be served on all recognized stock exchanges and depositories for necessary action.

Place: Mumbai
Date: August 4, 2014

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA