

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11A(1)(b) 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 and Regulation 25 of the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993

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

In respect of:

- a. Yash Dream Real Estate Limited,
- b. Mr. Amit Kumar Shrivastava,
- c. Ms. Neeta Shrivastava,
- d. Mr. Nitin Shrivastava,
- e. Ms. Reebha Shrivastava,
- f. Ms. Sindhu Singadhe,
- g. Mr. Deepak Singare and
- h. Ms. Pooja Tandan.

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had received a reference dated March 27, 2014, from the Office of Collector, Rajnandgaon, Chhattisgarh, *inter alia* against one Yash Dream Real Estate Limited (hereinafter referred to as 'Yash' or 'the Company'). Along with the said reference, SEBI also received the copies of brochures, application forms, etc. indicating therein that Yash is mobilising funds from the general public. SEBI also received a letter dated March 03, 2014, from Reserve Bank of India, Bhopal, forwarding therewith the reference from the Office of Collector, Durg dated January 03, 2012 alleging therein that Yash is collecting monies from the public through various schemes.
 2. SEBI initiated a preliminary examination into the money mobilization activities of Yash from the public. It asked Yash vide a letter dated April 02, 2014 to *inter alia* furnish the following information/ documents:
 - i. Copy of the Memorandum and Articles of Association of the Company.

- ii. Details of past and present Directors of the Company along with PAN and contact details.
 - iii. Brochures pertaining to schemes/offers which were made available to the public.
 - iv. Copies of application forms required to be submitted by investors/applicants to participate in the scheme.
 - v. Copies of the registration letter and allotment letter issued to the investor who subscribed to the scheme.
 - vi. Copies of the agreement letter/ contract required to be entered into by investors/ applicant under the scheme.
 - vii. Details of the scheme wise amount mobilized till date along with the number of investors under the scheme.
 - viii. Certified copy of audited financial statement for last three years.
 - ix. Copy of income tax return filed by the company for the last three years.
 - x. Details of regulatory approvals obtained, if any, for provision of accidental death/ disability benefits to investor, under the scheme.
 - xi. Details of any other similar scheme(s), if any, floated by the Company or its group/ associate company.
3. Yash vide its letter dated April 18, 2014 submitted the following information/ documents:
- i. Copy of the Memorandum and the Articles of Association of the company,
 - ii. A list of the directors of the company along with PAN and contact details,
 - iii. The brochures pertaining to the scheme/ offers,
 - iv. A copy of the application form required to be submitted by the investor/ applicant to participate in the scheme.
 - v. A copy of the registration letter issued to the investor who subscribed to the scheme (copy of Swarnim Bond Certificate)
 - vi. The details of the scheme wise fund mobilization as on March 31, 2014.
 - vii. The certified copies of audited financial statement for the financial years 2010-2011, 2011-2012 and 2012-2013.
 - viii. A copy of income tax return filed for the last three years.

The Company also submitted the bank account details of the Company and its directors vide another letter dated May 02, 2014.

4. However, the details submitted by Yash were found to be incomplete. SEBI, thus advised the Company vide its letter dated May 26, 2014, to furnish the minutes of the Annual General Meeting of the Company, wherein it was decided to collect money from the investors and the documents pertaining to such scheme. Yash vide its letter dated June 02, 2014, submitted the copy of the minutes of the Board meeting held on August 11, 2008 wherein it was resolved to issue 'Optional Fully Convertible Bonds' (hereinafter referred to as 'OFCB') to the general public in order to meet the requirement of funds for its real estate business.

5. From a perusal and examination of the documents as submitted by Yash and the documents annexed with the references as received, I note the following:

a. Yash was incorporated on June 4, 2008, with CIN number as U70100CT2008PLC020683, having its registered office at Bhilai – 490 020, Chhattisgarh. As per the Memorandum of Association of Yash, the main objects of the company, *inter-alia*, are as under:

"to evolve townships and or any residential/ commercial projects and provide required infrastructure amenities/ facilities, investment in real estates for resale and for that purpose acquire by purchase, lease, exchange, hire or otherwise develop or operate land, building and hereditaments of any tenure or description including residential land, commercial land..."

b. As per the details submitted by Yash, the directors/ promoters of the Company are Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava, Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr. Deepak Singare and Ms. Pooja Tandan.

c. It is observed from the Memorandum and Articles of the company that Mr. Amit Kumar Shrivastava and Mr. Nitin Shrivastava hold 25,500 shares and 22,000 shares respectively.

d. The Company had convened a Board of Directors meeting on August 11, 2008 and resolved to issue Optionally Fully Convertible Bonds (OFCBs) to general public to raise the funds for its real estate business. Thereafter, the Company has 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. The tenure of such schemes ranges from 1 year to 21 years.

e. From the fund mobilization details as submitted by the Company, it is noted that unsecured OFCBs in the name of various scheme/ plan have been issued to 45,005 persons and a total amount of 76,34,19,703 crore have been mobilized as on March 31, 2014.

f. As per audited financial statements of the Company, there is incremental growth in the mobilization of funds under Unsecured OFCBs, which is tabulated hereunder :

Head	As on 31/03/10 ()	As on 31/03/11 ()	As on 31/03/12 ()	As on 31/03/13 ()
Unsecured Loan	4,90,91,878	18,89,09,376	-	-
Long Term Borrowings	-	-	32,85,54,093	48,37,13,644
Short Term Borrowings	-	-	5,29,10,482	12,89,35,810

6. I have perused the copy of the 'scheme chart', 'application form', 'certificate' as submitted by Yash and a brief analysis of these is being discussed below:

- a. A copy of the scheme chart for '*Swarnim Bond*' mentions about various plans including '*Swarnim*', '*Swarnim Plus*', '*Swarnim Bhavishya*', '*Swarnim MIS*', '*Swarnim Bachat*'. The same gives the amount, duration, benefits in percentage, redemption value, etc. From the above, it can be inferred that Yash offers various plans/ schemes inviting funds from the public.
- b. The sample produced by Yash, for the 'application form' for the subscription of '*unsecured optionally fully convertible Swarnim Bond*' contains the words '*private not for circulation*'. However, the same does not contain name of the person to whom it is issued, which indicates that the issue is not a private placement. Under normal circumstances, the application forms are serially numbered and addressed to the recipients in a private placement, which means it is circulated only among a known number of persons.
- c. The terms and conditions as noted from the 'application form' are as under:

"2. Bond

(a) *Any applicant may apply for minimum of 1 bond of 1200/- each by paying 100/- per month. And each additional bond may be subscribed by paying additional 100/- per month for 12 months. In continuation with these all schemes were calculated on that basis and bond holder may apply for the bond of maximum 240 month only. However, one can make payment on monthly/ quarterly/ half yearly/ yearly basis in the same proportion.*

(b) *Any applicant may apply for minimum 1 Bond of 500/- and in multiples of 500/- thereafter.*

(c) *The Company reserves the right to reject any application for Bond(s) without assigning any reason.*

(d) *Bonds are not tradable at any of the stock exchanges in India.*

3. Option for Bond Holder

Holders(s) of these bonds may exercise option for conversion of Bond(s) against the face value of each Bond into 1 (one) fully paid Equity Share(s) of 10 each at a premium of 490 each, provided such option is exercised one month earlier to the completion of the tenure. Interest accrued thereon will be refunded to the Bond holder.

... ..

10. General Rules

... ..

(b) *The company reserves the right to redeem the Bond(s) even before the completion of the tenure by giving notice of at least one month displayed on notice board of the Company's Regd. Office and Authorised Centers.*

... ..

(e) *Register of Bond holders will be maintained as per the provisions of the Companies Act, 1956.*

... ..

(f) *In case of restructuring of the company by way of merger, de-merger, amalgamation or such other form of arrangement, by order of the competent court and/ or otherwise, or by way of any other arrangements/agreement with any other company, the Company shall have the right to transfer*

liabilities of these Bond(s) to the emerging Company or any other Company in favour of which Company has court order and/ or have any arrangement, without giving prior written notice to the Bond Holder(s) provided that the rights of the Bond Holder(s) shall remain unaffected and/ or as may be decided by the court or otherwise and the Bonds shall be suo motu treated as issued by such company. However such notice, if any shall either be notified on the notice board of Authorized Centers and/ or published in the news papers where the registered office the Company is situated.

... ..

... ..

DECLARATION

I hereby apply for and would request you to allot me unsecured optionally fully convertible SWARNIM BONDS of your Company against money tendered by me and I/ applicant agree to accept the same in terms of the Company's Memorandum and Articles of Association and terms and conditions as appearing in the application form. I authorize you to place my name/ applicant's name on the Register of Bond Holders of the Company as Holder of the Bond(s) and you are also requested to place my name/ applicant's name on the Register of Members of the Company as the Holder of equity share(s) as and when allotted to me/ applicant on my/ applicant's name exercising option for conversion of Bond(s) into equity shares as per the terms and conditions stated in this application form and to register and address stated in the application as my registered address.

... .."

From the above, it is noted that the holders of 'unsecured optionally fully convertible Swarnim Bond' are given the option for conversion of bond(s) into equity shares. The Company reserves its right to redeem the bond(s) even before the completion of the tenure. It is also noted that the Company maintains the 'register of bond holders' as per the provisions of the Companies Act, 1956. The bond holder authorises the Company (as per the application form) to place his name on the 'register of members of the Company', as a holder of equity shares, upon his exercising the option for conversion of bond(s).

- d. On perusal of the documents, an inference can be drawn that Yash is mobilizing deposits from public and issuing bonds convertible into equity to those persons from whom money is mobilised, in order to make them 'members of the Company'.
- e. I have also perused the copy of the certificate of the 'Dream Swarnim Bond' which states as under:

"... .. is the holder of ... optionally/ fully convertible paid up each in the above Company, subject to the terms and conditions on Application form and provisions of the Memorandum and Articles of Association of the Company.

... ..

Redemption Value Rs. :

Redemption Date :

... ..

Note:

1. On surrender of this at the time of redemption/ conversion, Bond holder will be entitled to receive redemption value/ share opted for subject to adjustment, if any.

... ..

OPTIONS FOR BONDHOLDER:

(i) Holder(s) of these Bonds may exercise option for conversion of Bond(s) against the face value of each Bond into 1(one) fully paid Equity Share(s) of 10/- each at a premium of 490/- each, provided such option is exercised one month earlier to the completion of the tenure. Interest accrued thereon will be refunded to the Bond Holder.

... .."

The above certificate of the '*Dream Swarnim Bond*' also bears the receipt number, certificate number, account number, plan name, redemption value, bonus, redemption date, monthly withdrawal, scheme name, etc.

7. Having considered the above stated details, I proceed further with the matter. The issue for determination in the instant matter is whether the mobilization of funds by Yash through Unsecured Optionally Fully Convertible Bonds (Unsecured OFCBs), are *prima facie* in contravention of any provisions of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act'), the Companies Act, 1956 read with the Companies Act, 2013, the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations') and the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993 (the 'Debenture Trustee Regulations'). I note that the ICDR Regulations *inter alia* deals with the issue of specified securities including equity shares and convertible securities. Therefore, the Unsecured OFCBs issued by Yash appear to be 'specified securities' within the ambit of Regulation 2(1)(zi) of the ICDR Regulations.
8. It is now necessary to refer to the provisions of the Companies Act, which are relevant to the facts of the case. Yash had got the approval for the issuance of Unsecured OFCBs in the Board meeting held on August 11, 2008. Vide letter dated April 18, 2014, Yash has submitted scheme wise fund mobilization details as on March 31, 2014. From the same, it could be inferred that Yash continues to issue unsecured OFCBs even after March 31, 2014, hence, the same needs to comply with the provisions of both the Companies Act, 1956 (since repealed) as well as the provisions of the Companies Act, 2013 as notified on September 12, 2013.

In terms of Section 67(3), no offer or invitation shall be treated as made to the public by virtue of sub-sections (1) or (2), as the case may be, if the offer or invitation can properly be regarded, in all 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. In terms of the *proviso* to the aforesaid section, the provisions of Section 67(3) shall not apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. Therefore, 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 receiving the offer or invitation. The number of persons to whom the debenture/ bond/ shares have been allotted becomes relevant to judge whether an issue of shares/ bond is made to public or made on a private placement basis.

9. 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 issues.

10. Having observed that the OFCBs issued by Yash are *prima facie* in the nature of public issue, the Company was required to comply with provisions of the Companies Act, 1956 and other relevant statutory provisions as applicable. I note that in the case of any public issue of securities, the relevant provisions of the Companies Act, 1956 *inter alia* are sections 60 read with section 2(36) [corresponding provision in the Companies Act, 2013 is section 2(70) which has been notified on September 12, 2013], 56(1), 56(3) [corresponding provision in the Companies Act, 2013 is section 33(1) which has been notified on September 12, 2013] and section 73 [corresponding provision in the Companies Act, 2013 is section 40], thereof needs to be complied with. In terms of section 60 read with the section 2(36) of the Companies Act, 1956, a company needs to file a prospectus with respect to its public issue with the RoC. As per Section 2(36) of the Companies Act, 1956 '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. Section 2 (70) of the Companies Act, 2013, also defines 'prospectus' in similar terms. As per the information available on record Yash has not filed any prospectus with respect to the said issue of unsecured OFCBs.

The raising of funds from 45,005 persons by issue of unsecured OFCBs *prima facie* has to be construed as a public offer. Having made such public offer, the Company ought to have filed the Prospectus with RoC under Section 60 of the Companies Act, 1956. Consequentially, Yash has also *prima facie* not complied with the provisions of section 56(1) and 56(3) of the Companies Act, 1956, which refers to the matters that are to be stated in the prospectus and the documents (*i.e., the memorandum containing salient features of the prospectus*) that should accompany the application form inviting subscription.

11. By issuing equity shares/ debentures to more than 50 persons, the Company had to compulsorily list such securities in compliance with section 73 of the Companies Act, 1956, in order to ensure that the subscribers to the shares/ debentures have a facility to approach a stock exchange for having their holdings converted into cash whenever they desire. The same also provides liquidity and exit opportunity to the investors. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognised stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not

granted, the company is required to forthwith repay with interest all moneys received from the applicants. Section 40 of the Companies Act, 2013 (corresponding provision to section 73 of the Companies Act, 1956 (since repealed)), applicable with effect from September 12, 2013, states that every company making public offer shall, before making such offer, make an application to one or more recognized stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges. From the material available on record, Yash appears to have not done so and contravened the said provisions as it *prima facie* neither made an application seeking listing permission nor refunded the amounts on account of such failure. Yash have also not complied with the provisions of section 73(3) of the Companies Act, 1956 as it has not kept the amounts received from investors in a separate bank account and failed to repay the same in accordance with section 73(2) of the Companies Act, 1956. In view of the above, it is alleged that Yash have contravened the provisions of the Companies Act, 1956, which regulates the public issue of securities, including sections 60 read with section 2(36), 56(1), 56(3) and 73 of the Companies Act, 1956 and section 2(70), 33(1) and 40 of the Companies Act, 2013, in respect of its collection of public funds towards the issuance of unsecured OFCBs convertible into equity shares.

12. As per section 29 of the Companies Act, 2013 (applicable from September 12, 2013), every company making public offer of securities, shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder. As per the information available on records, it can reasonably be inferred that Yash has not complied with the said provision and have *prima facie* violated section 29 of the Companies Act, 2013.
13. It may be noted that though as per section 465(1) of the Companies Act, 2013, the Companies Act, 1956, 'shall stand repealed', section 465(2) 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;

14. I now discuss the regulatory powers and the jurisdiction of SEBI on the companies that raise funds, by issue of securities, from the public. In this regard, I refer to the section 55A of the Companies Act, 1956. In terms of the relevant provisions of the said section, the provisions contained in sections 55 to 58, 59 to 81 (including Sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207 of the Companies Act, 1956 read with section 24 of the Companies Act, 2013 so far as they relate to the issue and transfer of securities shall be in the case of listed public companies and in the case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by SEBI. The terms 'securities' as per section 2(h) of the Securities Contracts (Regulation) Act, 1956 includes 'bond'/'debentures'. I observe that sections 67 and 73 of the Companies Act, 1956 are included in the list of sections as mentioned in section 55A of the Companies Act, 1956, and therefore, such sections are to be administered by SEBI.
15. As per the provisions of section 55A of the Companies Act, 1956 read with section 465 of the Companies Act, 2013, the administrative authority on the subjects relating to public issue of securities is SEBI. For this purpose, SEBI can exercise the 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 equity shares to fifty persons or more, but fail to comply with the applicable provisions of the aforesaid statutes.
16. I note that SEBI had framed the DIP Guidelines in exercise of the powers conferred upon itself under the SEBI Act. The Hon'ble Supreme Court in the matter of *Sahara India Real Estate Corporation Limited & Others Vs. SEBI and another* (Civil Appeal Nos. 9813 and 9833 of 2011; decided on August 31, 2012) has observed that:
- "DIP Guidelines had statutory force since they were framed by SEBI in exercise of its powers conferred on it under Sections 11 and 11A of the SEBI Act. Powers have been conferred on SEBI to protect the interests of the investors in securities and regulate the issue of prospectus, offer documents or advertisement soliciting money through the issue of prospectus. Section 11 of the Act, it may be noted has been incorporated, evidently to protect the interests of investors whose securities are legally required to be listed. DIP Guidelines were implemented by SEBI with regard to the listed and unlisted companies, which made public offer, until it was replaced by ICDR 2009".*
- The DIP Guidelines were applicable to all public issues by listed and unlisted companies. I note that the ICDR Regulations (which came into effect from August 28, 2009) has

replaced the DIP Guidelines and all public issues are now required to comply with the ICDR Regulations. I observe that the ICDR Regulations lays down eligibility norms, disclosure norms and other procedural requirements, for ensuring investor protection in case of issue of specified securities.

The ICDR Regulations and the DIP Guidelines (as applicable at the relevant time) operates as reasonable safeguards for the investors who subscribed or intended to subscribe in the public issues of securities. In this regard, I *prima facie* observe that the Company has also not complied with the following clauses of DIP Guidelines and the provisions of ICDR Regulations.

a. As the Company had started issuing 'unsecured OFCBs' in the year 2008, the relevant clauses of the DIP Guidelines (as applicable till the date ICDR Regulations came into effect) and that are relevant to the issue are as under:

- Clause 2.1.1 (filing of offer document)
- Clause 2.1.4 (application for listing)
- Clause 2.1.5 (issue of securities in dematerialized form),
- Clause 2.8. (means of finance),
- Clause 4.1 (promoters contribution in a public issue by unlisted companies),
- Clause 4.11 (lock-in of minimum specified promoters contribution in public issues),
- Clause 4.14 (lock-in of pre-issue share capital of an unlisted company)
- Clause 5.3.1 (memorandum of understanding),
- Clause 5.3.3 (due diligence certificate)
- Clause 5.3.5 (undertaking)
- Clause 5.3.6 (list of promoters group and other details)
- Clause 5.4 (appointment of intermediaries)
- Clause 5.6 (offer document to be made public)
- Clause 5.6A (Pre-issue Advertisement)
- Clause 5.7 (despatch of issue material)
- Clause 5.8 (no complaints certificate)
- Clause 5.9 (mandatory collection centres and Clause 5.9.1.(minimum number of collection centres)
- Clause 5.10 (authorised collection agents)
- Clause 5.12.1 (appointment of compliance officer),
- Clause 6.0 (contents of offer documents)
- Clause 6.1 to Clause 6.15 (contents of prospectus)
- Clause 6.16 to Clause 6.34 (contents of abridged prospectus) including Clause 6.17.13
- Clause 8.3 (Rule 19(2)(b) of SC(R) Rules, 1957)
- Clause 8.8.1 (Opening & closing date of subscription of securities)
- Clause 9 (guidelines on advertisements by issuer company)
- Clause 10.1. (requirement of credit rating) and
- Clause 10.5. (redemption)

b. As the Company continued to issue 'unsecured OFCBs' in the years 2009, 2010, 2011, 2012, 2013 and 2014, during which the provisions of ICDR Regulations were in force, an 'unsecured OFCB' issue of Yash was required to comply with the ICDR Regulations which lays down the eligibility norms, disclosure norms and other procedural requirements, for ensuring investor protection in case of issue of securities. Also, Yash has *prima facie* not complied with the following clauses of the provisions of ICDR Regulations:

- *Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)),*
- *Appointment of merchant banker and other intermediaries (Regulation 5),*
- *Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),*
- *Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),*
- *Satisfy the conditions of initial public offer (Regulation 25 and 26),*
- *Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)*
- *Keeping the public issue open for the specified period (Regulation 46),*
- *Pre issue advertisement for public issue (Regulation 47)*
- *Manner of disclosures in the offer documents (Regulation 57)*
- *Issuer to appoint compliance officer who would be responsible for monitoring the compliance of securities laws and for redressal of investors' grievances. (Regulation 63)*

Thus, from the information available on record, it appears that Yash has *prima facie* violated the provisions of sections 56 (1), 56 (3), 60 and 73 of the Companies Act, 1956, sections 29, 33 (1) and 40 of the Companies Act, 2013 and Regulation 4, 5, 6, 7, 25, 26, 32, 36, 37, 46, 47, 57 and 63 of the ICDR Regulations.

17. I also note that Yash has contravened section 117B of the Companies Act, 1956 which provides that no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. In my view, the provisions of section 117B of the Companies Act are mandatory and appointment of debenture trustee is a pre-requisite for issuing public issue of debentures. I, therefore, find that Yash has failed to comply with the requirements of section 117B of the Companies Act, 1956.

18. In this regard, it is important to note the following observation made by the Hon'ble Supreme Court of India in the matter of *Sabara India Real Estate Corporation Limited & Others*

Vs. SEBI and another (Civil Appeal Nos. 9813 and 9833 of 2011; decided on August 31, 2012):

"90. 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."

[Emphasis supplied]

19. In view of the above, I find that the Company has issued 'unsecured OFCBs' to public, but did not comply with any of the applicable provisions of the ICDR Regulations and the Companies Act. I, therefore, find that Yash has *prima facie* contravened the provisions of the ICDR Regulations, the Companies Act, 1956 and the Companies Act, 2013. I note that the scope of directions under sections 11, 11B and 11(4) of the SEBI Act are wide enough to include a promoter/ director or other concerned persons. Further, as per Regulation 107 of the ICDR Regulations, directions can be issued against Yash and the 'persons concerned' including its promoters/ directors. In terms of Regulation 2(1)(za) of the ICDR Regulations, the term 'promoter' includes; 'the person or persons who are instrumental in the formulation of a plan or program pursuant to which specified securities are offered'. I, therefore, am of the view that for the contravention of provisions of ICDR Regulations, the directions can be issued to the 'persons concerned' including the promoters who are instrumental in the formulation of an illegal plan or program pursuant to which the 'unsecured OFCBs' were offered to the public by Yash.
20. I observe that Yash had started issuing 'unsecured OFCBs' after the resolution dated August 11, 2008. Thus, it can be reasonably inferred that the promoters/ directors of Yash namely Mr. Amit Kumar Shrivastava, Ms. Neeta Shrivastava, Mr. Nitin Shrivastava and Ms. Reebha Shrivastava, Ms. Sindhu Singadhe, Mr. Deepak Singare and Ms. Pooja Tandan were instrumental in the formulation of the plan/ scheme of fraudulent issue of 'unsecured OFCBs' of Yash.
21. Having found that the acts of Yash is in violation of the provisions of sections 56 (1), 56 (3), 60 and 73 of the Companies Act, 1956, section 29, 33 (1) and 40 of the Companies Act, 2013 and Regulation 4, 5, 6, 7, 25, 26, 32, 36, 37, 46, 47, 57 and 63 of the ICDR Regulations, I note that such activities pose serious threat to the integrity of the securities market in India. While SEBI is endeavoring to increase investors' confidence and retail participation in the securities market, incidents of fraud inducing investors to part with

their hard earned monies under the garb of inviting investments in securities, shake the confidence of investors in the securities market. I note that 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 empowers SEBI to take such measures as it deems fit for fulfilling its legislative mandate. In view of the nature of the alleged violations and to prevent the Company from further mobilization of funds from the public under the garb of issuing equity shares or any other form of security, and in the interests of investors, it becomes necessary for SEBI to intervene at this stage by passing suitable directions.

22. Therefore, it becomes necessary for SEBI to intervene and issue suitable directions in order to ensure that Yash and its promoters/ directors do not continue to collect public funds in contravention of the law. I note that as mentioned above, protecting the interests of investors is a mandate for SEBI and therefore, immediate steps have to be taken in the instant matter to ensure that no investors are defrauded by Yash any further and also to safeguard the assets or property acquired through such public funds till the complete details are brought out and a final decision is accordingly taken in the matter. In the absence of such preventive action, irreparable loss and damage may be caused to investors.
23. In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 and sections 11(1), 11(4), 11A(1)(b) and 11B thereof read with regulations 107 and 111 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions:
 - 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. : AXYPS7773H; 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.

24. The above directions shall come into force with immediate effect and shall be in force, until further orders.
25. Yash Dream Real Estate Limited 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 advised to show cause as to why suitable directions/ prohibitions, under the sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the ICDR Regulations, including the following, should not be taken/ imposed 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.
26. Yash Dream Real Estate Limited and its abovementioned promoters and 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.
27. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Yash Dream Real Estate Limited and its promoters/ directors in accordance with law.

DATE : 16/DECEMBER/2014
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA