

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

Under Sections 11(1), 11(4), 11A, 11B and of the Securities and Exchange Board of India Act, 1992

In the matter of MICRO FINANCE LIMITED

In respect of Micro Finance Limited and its Promoters and Directors, viz. Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmanada Swain, Dr. Jugal Kishore Satapathy and Mr. Bijoy Kumar Routray.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received an investor complaint dated August 05, 2013, against Micro Finance Limited (hereinafter referred to as 'MFL' or 'the Company'), alleging therein that the Company has defaulted in the payment of interest on the investments. A perusal of the share certificate submitted along with the complaint revealed that MFL has issued Cumulative Convertible Preference shares (hereinafter referred to as 'CCPS'). SEBI also received a reference dated September 12, 2013, from the Economic Offence Wing - Odisha Police, which stated that MFL has collected huge funds from thousands of investors on the pretext of issuance of CCPS through its 33 branches in Odisha.
2. In the meantime, SEBI in order to examine the nature of CCPS, initiated a preliminary examination into the activities of MFL and asked the Company vide a letter dated August 30, 2013 to *inter alia* furnish the following information/ documents:
 - i. Copy of Prospectus/ Red herring Prospectus/ Statement in lieu of the prospectus/ Information memorandum filed with RoC for issuance of debentures/ preference shares.
 - ii. Copy of the Memorandum and Articles of Association of the Company
 - iii. Copy of the audited Balance Sheet and Profit and Loss account of the Company for the last 3 years
 - iv. Name, addresses and occupation of all the promoters/ directors of the Company.
 - v. Names and details of the Key Managerial Personnel of the Company.
 - vi. Information in respect of every series of debentures/ Preference shares issued by the Company, as given below:
 - a. Date of opening and closing of the subscription list for the said debentures / preference shares.

- b. Details regarding the number of application forms circulated inviting subscription for debentures/ preference shares.
 - c. Details regarding the number of applications received.
 - d. Details regarding the number of allottees and list of such allottees.
 - e. Number of debentures/ preference shares allotted and value of such allotment against each allottee's name.
 - f. Details regarding subscription amount raised.
 - g. Date of allotment of the debenture/ preference shares.
 - h. Copies of the minutes of Board/ committee meeting in which the resolution has been passed for allotment.
 - i. Date of dispatch of debenture/ preference shares certificates etc.
 - j. Details of the total number of applicants for each of its scheme besides the list of final allottees.
 - k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of debentures/ preference shares.
 - l. Terms and conditions of the issue of debentures/ preference shares.
3. MFL vide its letter dated September 19, 2013 submitted the following information/ documents:
- i. Copy of the Memorandum and the Articles of Association of the Company,
 - ii. Copy of audited Balance Sheet and Profit and Loss account of the Company for the financial years 2009-2010, 2010-2011 and 2011-2012.
 - iii. Name, addresses and occupation of all the promoters/ directors of the Company.
 - iv. Names and details of the Key Managerial Personnel of the Company.
 - v. Copies of the Board Resolutions for allotment of CCPS by the Company.
 - vi. List of allottees of CCPS.
 - vii. Copies of the Application forms

Vide this letter, MFL also submitted that "*The Company has not filed any prospectus/ RHP/ Statement in lieu of prospectus etc. with ROC as the Preference Shares were raised by way of private placement ...*"

4. Meanwhile, SEBI also sought information from Registrar of Companies (hereinafter referred to as 'RoC'), Cuttack vide letter dated September 25, 2013, in order to ascertain whether MFL has filed any Pamphlets/ Prospectus/ Information Memorandum with RoC or furnished the necessary statutory declaration in consonance with the Schedule 2 of the Companies Act, 1956. In response, RoC vide letter dated November 28, 2013, *inter alia* provided the copies of the Memorandum and Articles of Association, copies of the annual return and balance sheet, etc.
5. Thereafter, SEBI received a copy of the letter dated July 15, 2014, from the Reserve Bank of India, intimating therein about the cancellation of 'Certificate of Registration' of MFL to function as a non-deposit taking Non Banking Finance Company (hereinafter referred to as

'NBFC'). The reason stated for cancellation was that the 'Certificate of Registration' granted to MFL was being misused by another entity namely 'Micro Leasing and Funding Limited', promoted by some of the directors of MFL. The letter also stated that 'Micro Leasing and Funding Limited' had applied for a new 'Certificate of Registration' to function as an NBFC, which was rejected by Reserve Bank of India in May 2014.

6. On examination of the various documents such as those submitted by MFL, the complaint received by SEBI, the letter from Economic Offences Wing, Odisha Police, the letter from RoC, the information obtained from the 'MCA - 21' portal maintained by Ministry of Corporate Affairs, etc., I note the following:
 - a. MFL was originally incorporated on July 25, 1983, as 'Suman Finance Syndicate Limited' with RoC. Later on, the name was changed to MFL and a new certificate of incorporation was issued on June 26, 1991. The CIN No. of MFL is U65923OR1983PLC001232 and its registered office is at Plot No. 68 (P), Annapurna House NH-5, Rasulgarh, Bhubaneswar - 751010, Odisha, India. MFL was registered with RBI as a 'non deposit taking NBFC'.
 - b. The directors in MFL are Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Mr. Dharmananda Swain, Dr. Jugal Kishor Satapathy and Mr. Bijoy Kumar Routray. Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik and Mr. Haricharan Jena are the promoters in MFL.
 - c. From the extract of the minutes of meetings of the Board of Directors of MFL held between September 30, 2005 - March 25, 2013, it is *prima facie* noted that the Company has allotted CCPS (Cumulative Convertible Preference shares) of 100 each on several occasions, the details of which are as follows:

Table A

Sr. No.	Date of Allotment of CCPS	No. of CCPS Allotted	No. of Allotees	Value of such Allotment	Amount of Subscription
1	30-09-2005	42,386	469	42,38,600	42,38,600
2	21-12-2005	1,80,150	1,226	1,80,15,000	1,80,15,000
3	30-06-2006	41,000	789	41,00,000	41,00,000
4	16-04-2007	20,817	546	20,81,700	20,81,700
5	27-04-2007	34,699	954	34,69,900	34,69,900
6	30-04-2007	45,542	941	45,54,200	45,54,200
7	17-07-2007	46,861	3,089	46,86,100	46,86,100
8	24-07-2007	91,210	6,703	91,21,000	91,21,000
9	22-09-2007	3,35,398	8,443	3,35,39,800	3,35,39,800
10	26-03-2008	4,27,429	11,171	4,27,42,900	4,27,42,900
11	24-06-2008	7,65,664	19,279	7,65,66,400	7,65,66,400
12	05-09-2008	5,49,637	13,762	5,49,63,700	5,49,63,700
13	18-09-2008	1,94,272	4,605	1,94,27,200	1,94,27,200
14	20-10-2008	1,94,696	4,733	1,94,69,600	1,94,69,600
15	30-01-2009	6,32,640	15,764	6,32,64,000	6,32,64,000

16	17-07-2009	2,66,043	1,989	2,66,04,300	2,66,04,300
17	27-07-2009	47,916	768	47,91,600	47,91,600
18	19-10-2009	2,19,732	1,677	2,19,73,200	2,19,73,200
19	26-12-2009	1,63,379	1,676	1,63,37,900	1,63,37,900
20	15-02-2010	37,141	403	37,14,100	37,14,100
21	06-03-2010	36,612	307	36,61,200	36,61,200
22	29-03-2010	36,035	342	36,03,500	36,03,500
23	11-05-2010	40,180	412	40,18,000	40,18,000
24	17-07-2010	53,795	587	53,79,500	53,79,500
25	21-08-2010	30,550	289	30,55,000	30,55,000
26	22-09-2010	41,250	388	41,25,000	41,25,000
27	30-10-2010	35,075	304	35,07,500	35,07,500
28	16-12-2010	1,68,171	1,247	1,68,17,100	1,68,17,100
29	28-02-2011	2,71,167	1,376	2,71,16,700	2,71,16,700
30	12-04-2011	1,29,566	659	1,29,56,600	1,29,56,600
31	20-05-2011	1,38,569	881	1,38,56,900	1,38,56,900
32	12-08-2011	1,10,833	643	1,10,83,300	1,10,83,300
33	25-10-2011	2,97,283	1,325	2,97,28,300	2,97,28,300
34	21-03-2012	2,68,235	1,074	2,68,23,500	2,68,23,500
35	31-03-2012	3,76,574	1,553	3,76,57,400	3,76,57,400
36	18-06-2012	9,92,371	4,798	9,92,37,100	9,92,37,100
37	17-08-2012	6,65,366	2,829	6,65,36,600	6,65,36,600
38	25-03-2013	8,63,740	3,221	8,63,74,000	8,63,74,000
Total		88,91,984	1,21,222		88,91,98,400

From the above, it is seen that MFL had issued CCPS in various tranches and had mobilized funds to the tune of 88,91,98,400 from 1,21,222 allottees till March 25, 2013. I note that the number of allottees is substantial. It is also noted that the number of allottees in each of the offer and allotment is more than 50.

- d. I have perused the copy of the 'application form' for CCPS as provided by the Company and note that 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 set of persons. The terms and conditions as noted from the 'application form' are as under:

"

10. Each CCPS is compulsorily convertible after expiry of a period of 2/3/4/5 years from the date of allotment into one Equity Share of 100 each.

... ..

WHO CAN BUY

12. Units of the CCPS Scheme can be purchased by: (a) Adult individuals, either single or jointly (not exceeding three), resident in India (b) Parents/Guardians on behalf of minors, (c) Registered Partnership Firms/Trusts, (d) Companies, (e) Domestic, and Public Sector Undertakings registered in India, (f) Registered Societies, Association of Persons, body of individuals, clubs, trusts, etc. (g) Such other individuals/institutions/body corporate, etc. as may be allowed under the provisions of law of the land and as decided by the management of Micro Finance Limited from time to time."

- e. As per the financial statement of MFL as on March 31, 2013, MFL had the authorised equity share capital of 50,00,00,000. The authorized compulsorily convertible preference shares capital of MFL is 80,00,00,000. I note that as on March 31, 2013, the issued equity share capital of MFL is 57,63,05,800 and the compulsorily convertible preference shares capital is 63,50,12,400.

On reconciliation of the shares outstanding at the beginning and at the end of the reporting period (in the annual report for the year 2012-2013), it is noted that MFL has converted 2,94,483 preference shares into equity and shares outstanding as on March 31, 2013 are 63,50,124 valuing 63,50,12,400. The year wise capital of MFL is tabled below for reference:

Table B

Item	As on 31.03.2009	As on 31.03.2010	As on 31.03.2011	As on 31.03.2012	As on 31.03.2013
Paid up Capital (Equity)	22,25,10,200	22,25,10,500	24,47,64,100	28,18,22,800	57,63,05,800
Paid up Capital (CCPS)	20,13,58,200	27,29,85,000	31,47,50,200	62,39,78,100	63,50,12,400

From the audited accounts of MFL, it is observed that MFL had issued equity shares to the tune of 22.25 crores in year 2008-09, which increased to 57.63 crores in the year 2012-13. MFL has also issued CCPS valuing 20.14 crores in 2008-09, which increased to 63.50 crores in the year 2012-13.

- f. A further scrutiny of the Annual Report of MFL for the year 2012-2013, *prima facie* indicates that the Company has made investment of 27,00,000 in the equity shares of its subsidiaries and has given loans and advances to related parties to the tune of 73,25,41,252.
7. Having noted the above details, I proceed further with the matter. The issue for determination in the instant matter is whether MFL had complied with the applicable provisions of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act'), the Companies Act, 1956 (since repealed) read with the Companies Act, 2013 and the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations') in respect of its issuance of Cumulative Convertible Preference shares

(CCPS). As the CCPS have been issued since September 30, 2005 and the last tranche was issued on March 25, 2013, the Companies Act, 1956 (since repealed) would be applicable. According to the Section 86 of the Companies Act, 1956 read with Section 2(46) thereof, the share capital of a company limited by shares, comprises of equity shares and preference shares issued, if any. Cumulative convertible preference shares is a sub category of 'preference shares'.

8. As per the available details, MFL has issued CCPS during 2005 - 2013 to 1,21,222 persons. In view of the same, the provisions of sub-sections (1), (2) and (3) of the Section 67 of the Companies Act, 1956 are applicable to the allotments made by MFL. 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 shares/ debenture have been allotted becomes relevant to judge whether an issue of shares is made to public or made on a private placement basis.
9. MFL has issued CCPS to 1,21,222 persons and mobilized funds to the tune of 88,91,98,400. It is observed that the Board of Directors of MFL have allotted CCPS of 100 each on various dates between September 30, 2005 - March 25, 2013, as noted in table A above. 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. In this case, the number of investors to whom the CCPS were allotted are substantial and in excess of 49. Therefore, the offer and issue of CCPS by the Company cannot *prima facie* be said to be a 'private placement'. Hence, the issue made by MFL prima facie is nothing but public offer of securities. I note that the

application form for the CCPS circulated by MFL does not contain the name of the person to whom it is issued; the same corroborates the fact 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 CCPS made by MFL were deemed public issues. While examining the scope of section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the matter of *Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the '*Sahara Case*'), had 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. ...

... 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]

10. Having observed that the CCPS issued by MFL 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), 56(1), 56(3) and Section 73, 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 MFL has not filed any prospectus with respect to the said issue of CCPS.

Having made the public offer as discussed above, MFL ought to have filed the Prospectus with RoC under Section 60 of the Companies Act, 1956. Consequentially, MFL 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 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 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. From the material available on record, MFL, do not appear to have done so and thus, contravened the said provisions. It *prima facie* neither made an application seeking listing permission nor refunded the amounts on account of such failure. MFL has 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 MFL has 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, in respect of its collection of public funds towards the issuance of unsecured CCPS.

12. 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, 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 'shares'. I observe that Sections 67 and 73 of the Companies Act, 1956 are included in the list of the sections as mentioned in Section 55A of the Companies Act, 1956, and therefore, such sections are to be administered by SEBI.
13. As per the provisions of Section 55A of the Companies Act, 1956, 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, 11A and 11B of the SEBI Act read with Section 55A of the Companies Act, 1956, over companies who issue equity shares to fifty persons or more, but fail to comply with the applicable provisions of the aforesaid statutes. As mentioned in the application form, the CCPS is compulsorily convertible into equity share. Such convertible preference shares are therefore 'specified securities' within the ambit of regulation 2(1)(zi) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations'). Therefore, in addition to the compliance with the provisions of the Companies Act, 1956, the Company was mandated to comply with the applicable provisions of the ICDR Regulations.
14. 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 which made public offer. 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 'Cumulative Convertible Preference shares' (CCPS) in the year 2005, the relevant clauses of the DIP Guidelines (as applicable till the date ICDR Regulations came into effect) which had to be complied by MFS in respect of its alleged issuance of CCPS are:

- 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 CCPS in the years 2009, 2010, 2011, 2012 and 2013, during which the provisions of ICDR Regulations were in force, the CCPS issue of MFL was required to comply with the ICDR Regulations which lays down the eligibility norms, disclosure norms and other procedural requirements, for ensuring protection of investor in the case of issue of securities. The relevant clauses of the ICDR Regulations, which had to be complied by MFS in respect of its alleged issuance of CCPS are:

- *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)*

MFL is therefore alleged to have not complied with the relevant provisions of ICDR Regulations.

15. I have perused the Auditor's Report dated August 20, 2013 and annexure thereto. The auditor, at point no. 6 of Annexure-I to the Report, has certified that the Company has complied with the directives issued by Reserve Bank of India and the provisions of Section 58A and 58AA of the Act and the Companies (Acceptance of Deposits) Rules, 1975 with regard to the deposits accepted from public, as applicable to the Company. The auditor has certified that fresh capital has been raised by way of preference share on private placement. However, the issue of CCPS as demonstrated above was *prima facie* a public offer. Further,

the report also states that the Company has not raised any money by public issue during the year.

The auditor, at point no. B(i) of Annexure-II to the Report, has certified that the Company has not accepted public deposits during the year. At point C(ii) the auditor has also certified that the Company has not accepted any public deposits during the financial year 2012 - 2013. At this stage, I refer to the letter of Reserve Bank of India dated July 15, 2014, intimating thereby about the cancellation of Certificate of Registration of MFL mainly for the reason of its misuse by an entity namely 'Micro Leasing and Funding Limited', promoted by some of the directors of MFL.

The auditor's report also states that MFL has made investment of 27,00,000 in the equity shares of its subsidiaries and has given loans and advances to its three subsidiary companies covered in the register maintained under Section 301 of the Companies Act, 1956 to the tune of 73,25,41,252. The aforesaid advances as noted from the annual report are related party transactions and it *prima facie* appears that MFL has siphoned off the funds raised to the group companies. As the rate of interest and other terms and conditions of such advances, whether prejudicial or not to the Company, cannot be determined in the absence of the agreements for the said loans given/ taken by the Company. It cannot also be ascertained whether the Company has complied with Section 370 (loans, etc., to companies under the same management) of the Companies Act, 1956.

16. I note that the Company had commenced allotment of CCPS allegedly to the public since September 2005. Thus, it can be reasonably inferred that the directors of the Company namely Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Mr. Dharmananda Swain, Dr. Jugal Kishor Satapathy and Mr. Bijoy Kumar Routray were instrumental in the formulation of the alleged plan of mobilisation of public funds through the allotment of CCPS without complying with the applicable law as discussed above. In addition to the same, I note that Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik and Mr. Haricharan Jena were the initial subscriber to the share capital of the Company and the promoters of the MFL.
17. In view of the above alleged violations committed by MFL in raising money from public through the issue of CCPS and to restrain the Company from carrying on such activities, if any, done allegedly in contravention of the law, it becomes necessary for SEBI, as the

regulator for the securities market, to intervene and issue suitable directions. Further, the interest of the investors also need to be protected to ensure that public funds are not diverted and misappropriated. Accordingly, I, in exercise of the powers conferred under Sections 11(1), 11(4), 11A(1)(b) and 11B of the Securities and Exchange Board of India Act, 1992 read with Section 19 thereof and Regulation 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions :

- a. The Company, namely, Micro Finance Limited [CIN No.: U65923OR1983PLC001232] and its promoters and directors including Mr. Durga Prasad Misra [DIN: 00627749 & PAN: AATPM7049N], Mr. Ashok Kumar Patnaik [DIN: 00622238 & PAN: ABMPP5207H], Mr. Baikuntha Nath Patnaik [DIN: 01666591 & PAN: AAQPP3037J], Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain [PAN: AXRPS2952F], Dr. Jugal Kishor Satapathy [PAN: AOEPS8695B] and Mr. Bijoy Kumar Routray [DIN: 02382909 & PAN: AIBPR3316B] are restrained from mobilizing funds through the issue of cumulative convertible preference shares or through the issuance of equity shares or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.
- b. Micro Finance Limited and its promoters and directors including Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain, Dr. Jugal Kishor Satapathy and Mr. Bijoy Kumar Routray 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. Micro Finance Limited and its promoters and directors including Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain, Dr. Jugal Kishor Satapathy and Mr. Bijoy Kumar Routray shall not dispose of any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.

- d. Micro Finance Limited and its promoters and directors including Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain, Dr. Jugal Kishor Satapathy and Mr. Bijoy Kumar Routray shall not divert any funds raised from public at large through the issuance of the impugned cumulative convertible preference shares, kept in its bank accounts and/or in the custody of the Company without prior permission of SEBI until further orders.
 - e. Micro Finance Limited and its promoters and directors including Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain, Dr. Jugal Kishor Satapathy and Mr. Bijoy Kumar Routray are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.
 - f. Micro Finance Limited and its promoter and directors including the above named persons shall co-operate with SEBI and shall furnish all the documents.
 - g. Micro Finance Limited, its promoters and directors 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.
18. The above directions shall come into force with immediate effect.
19. Micro Finance Limited and its promoters and directors including Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain, Dr. Jugal Kishor Satapathy and Mr. Bijoy Kumar Routray 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 convertible 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 access the capital market for an appropriate period.
20. Micro Finance Limited and its promoters and directors including Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain, Dr. Jugal Kishor Satapathy and Mr. Bijoy Kumar Routray may file their replies/ submissions within a period of 21 days from the date of receipt of this Order and may also indicate whether they desire to avail an opportunity of personal hearing in the matter.
21. This Order is without prejudice to the right of SEBI to take any other action including prosecution proceedings under Section 24 of the SEBI Act and Section 621 of the Companies Act, 1956 read with the relevant provisions of the Companies Act, 2013 and adjudication proceedings under the SEBI Act, against Micro Finance Limited and its promoters and directors including Mr. Durga Prasad Misra, Mr. Ashok Kumar Patnaik, Mr. Baikuntha Nath Patnaik, Ms. Padmabati Patnaik, Ms. Santilata Patnaik, Ms. Sashi Patnaik, Mr. Haricharan Jena, Mr. Dharmananda Swain, Dr. Jugal Kishor Satapathy and Mr. Bijoy Kumar Routray, in accordance with law.

Place: Mumbai
Date: January 14, 2015

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA