

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 and regulation 107 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009

In the matter of Moonlight Associates Limited

In respect of:

1. Moonlight Associates Limited [PAN: AACCD2359Q],
2. Mr. Nityananda Nath [PAN: AEUPN2924A],
3. Mr. Abu Sadeque Ishtiaque Ahmed Choudhury [PAN: AETPC8946C],
4. Ms. Ferdousi Begum Choudhury [PAN: AJJPC2251P],
5. Mr. Samsul Islam [PAN: AAKPI6206L]
6. Mr. Nizam Uddin Ahmed,
7. Mr. Kanai Lal Nath,
8. Mr. Abdul Jalil Choudhury and
9. Mr. Md. Abdul Muktadir.

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted a preliminary examination into the fund raising activity of **Moonlight Associates Limited** (hereinafter referred to as 'Moonlight' or 'the Company'). SEBI asked Moonlight and its directors namely Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury and Ms. Firdousi Begum Choudhury, vide letter dated August 27, 2015, to *inter alia* furnish the following information/ documents:
 - i. Registered office address, corporate office address and PAN of the Company.
 - ii. Copies of the Memorandum and Articles of Association of the Company.
 - iii. Name, addresses, PAN and contact details of the past and present directors, Key Managerial Personnel and subscribers to the Memorandum of Association of the Company.
 - iv. Information/ documents in respect of issue of securities (i.e. shares, debentures, etc.)—

- a. Copy of Prospectus/ Red Herring Prospectus/ Statement in lieu of Prospectus/ Information Memorandum filed with RoC for issuance of securities (i.e. shares, debentures, etc.);
- b. Copy of audited Balance Sheets and Profit and Loss accounts of the Company for the last 3 years;
- c. Date of opening and closing of the subscription list for the said securities;
- d. Details regarding the number of application forms circulated inviting subscription for securities (i.e. shares, debentures, etc.);
- e. Details regarding the number of applications received and subscription amount raised;
- f. Details of allottees (i.e. name and address of allottees, number of shares/ debentures allotted and value of such allotment against each allottee's name) for each allotment of securities;
- g. Copies of the minutes of Board/Committee meeting in which the resolution were passed for raising such additional capital and/ or loan;
- h. Date of dispatch of shares / debenture certificates, etc.
- i. Details of the total number of applicants for each of its scheme besides the list of final allottees.
- j. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/ debentures.
- k. Terms and conditions of the issue of shares/ debentures.
- l. Copies of Form 2 and Form 10 filed with RoC.
- m. Details of Debenture Trustee viz. name, address, board resolution authorizing the appointment, etc.

Moonlight was advised to provide the above required information and the documents by September 04, 2015.

2. The letter issued to Moonlight returned undelivered. As regards the letters forwarded to the directors of the Company, the same were delivered except that of Ms. Ferdousi Begum Choudhary. However, no reply was received from any of the directors. Thereafter, SEBI vide respective letters dated October 12, 2015, issued reminder letters to the directors of the Company.

3. As no reply/ information was forthcoming from Moonlight or its directors, SEBI examined the matter based on the material available on record, including the filings made by Moonlight with the RoC as available in the 'MCA – 21 portal' maintained by Ministry of Corporate Affairs (MCA). The same revealed that the Company had issued *equity shares*, without complying with the regulatory requirements.
4. From an examination of the documents available on record, I note the following:
 - a. The Company was originally incorporated on February 19, 2004 as Daffodil Associates Limited [CIN U85110AS2004PLC007336]. The name of the Company was subsequently changed to Moonlight Associates Limited on June 02, 2011. The Company has its registered office at 66, J. S. Complex, G. S. Road, Ulubari, Guwahati, Assam - 781007.
 - b. A site visit at the registered office of the Company revealed that the Company does not exist at the said address.
 - c. As per the information obtained from 'MCA 21' portal, the present directors of the Company are Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury and Ms. Ferdousi Begum Choudhury. Mr. Samsul Islam is a past director of the Company who ceased to be a director w.e.f. August 06, 2010.
 - d. The subscribers to the Memorandum of Association of the Company were Mr. Abu Sadeque Ishtiaque Ahmed Choudhury, Mr. Nityananda Nath, Mr. Samsul Islam, Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath, Mr. Abdul Jalil Choudhury and Md. Abdul Muktedir.
 - e. From a perusal of the balance sheet of the Company as on March 31, 2013 and the annual returns filed by the Company upto September 30, 2014 with RoC, it is seen that the Company has the authorised share capital of ₹2,70,00,000 which consists of equity share capital of ₹2,55,00,000 (25,50,000 equity shares of ₹10 each) and preference share capital of ₹15,00,000 (1,50,000 preference shares of ₹10 each). It is also seen that the Company has issued, subscribed and paid up share capital of ₹2,65,91,200 which consists of equity share capital of ₹2,55,00,000 (25,50,000 equity

shares of ₹10 each) and preference share capital of ₹10,91,200 (1,09,120 preference shares of ₹10 each).

- f. A perusal of the 'return of allotment' (Form 2) filed by the Company with RoC, revealed that that the Company had issued *equity shares* during 2007-08 and 2009-10. A summary of the same is as under.

Table A

Financial Year	Date of Allotment	Type of Securities	No of Securities issued	No. of Allottees	Total Amount (₹)
2007-08	18/03/2008	Equity Shares	20,00,000	580	2,00,00,000
2009-10	29/04/2009	Equity Shares	5,00,000	115	50,00,000
Total			25,00,000	695	2,50,00,000

5. Having observed the above, I proceed further with the matter and note that the issue for determination in the instant matter is whether Moonlight 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, the SEBI (Disclosure and Investor Protection) Guidelines 2003 (hereinafter referred to as 'DIP Guidelines') read with the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations') in respect of its issuance of the *equity shares*.
6. As the *equity shares* had been issued to the public during the year 2007-08 and 2009-10, 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 the Company. 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 have been allotted becomes relevant to judge whether an issue of shares is made to public or made on a private placement basis.

7. As noted from the 'table A' above, the Company had allotted *equity shares* to 580 investors on March 18, 2008 and to 115 investors on April 29, 2009. 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 view of the same, the offer and allotment of *equity shares* by Moonlight on March 18, 2008 and April 29, 2009 is alleged to be made to public. Thereby making such offer and allotment as public offer of securities. 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 observed that the aforesaid issues of *equity shares* made by Moonlight were deemed public issues. I now place my reliance on the order of Hon'ble Supreme Court of India in the matter of *Sabara India Real Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the '*Sabara Case*'), wherein the Hon'ble Court *inter alia* observed as under:

"... after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.

...

90. ... 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]

8. Having observed that the *equity shares* issued by Moonlight are 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* 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. Further, in terms of Section 60B(2) of the Companies Act, 1956, a company inviting subscription by an information memorandum is bound to file a prospectus prior to the opening of the subscription lists, at least three days before the opening of the offer. While Section 60B(3) of the Companies Act, 1956, stipulates that the 'Information Memorandum' shall carry the same obligations as are applicable in case of prospectus. Section 60B(9) required Moonlight to file a final prospectus with SEBI/ 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 a body corporate. As per the information available on record, it did not file any prospectus/ information memorandum with respect to the said issues of *equity shares* and had also *prima facie* not complied with the above discussed provisions of the Companies Act, 1956.
9. By issuing *equity shares* to more than 49 persons, the Company had to compulsorily list such securities in compliance with Section 73 of the Companies Act, 1956, in order to ensure liquidity and exit opportunity to the subscribers to the shares. 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, the Company, does not appear to have done so and thus, contravened the said provisions. It neither made an application seeking listing permission nor refunded the

amounts on account of such failure. The Company has also not complied with the provisions of Section 73(3) of the Companies Act, 1956, as it had 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 the Company had contravened the provisions of the Companies Act, 1956, which regulates the public issue of securities, including Sections 60B(2), 60B(9) read with Sections 2(36), 56(1), 56(3) and 73 of the Companies Act, 1956, in respect of its collection of public funds towards the issue of equity shares.

10. Considering the discussion above, now I discuss the regulatory powers and the jurisdiction of SEBI on the company 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, in 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.

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(1), 11A, 11B and 11(4) 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. 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 DIP Guidelines and ICDR Regulations.

11. 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 *Sahara Case* has also 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 26, 2009) had replaced the DIP Guidelines and all public issues are now required to comply with the ICDR Regulations. The DIP Guidelines (as applicable at the relevant time) operated 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 Moonlight has not complied with the following clauses of DIP Guidelines:

- 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)

12. I note that the Company had allegedly commenced allotment of *equity shares* to the public since March 2008. It can reasonably be inferred that the directors/ promoters of the Company namely Moonlight Associates Limited, Mr. Nityananda Nath, Mr. Abu Sadeque Ishtiaque Ahmed Choudhury, Ms. Ferdousi Begum Choudhury, Mr. Samsul Islam, Mr. Nizam Uddin Ahmed, Mr. Kanai Lal Nath, Mr. Abdul Jalil Choudhury and Mr. Md. Abdul Muktedir were *prima facie* instrumental in the formulation of the plan/ scheme of the mobilisation of public funds through the issue of *equity shares* without complying with the applicable law, as discussed above. In view of the same, it is alleged that the above stated directors/ promoters of Moonlight, being the persons responsible for the conduct of the business, are responsible under Section 27(2) of the SEBI Act, for the contraventions committed by Moonlight in its offer and issue of *equity shares*.
13. Considering the above, I find that there is no other alternative but to take recourse through an *ex-parte interim* action against Moonlight and its directors/ promoters, for preventing these from further carrying on with its fund mobilizing activity under the 'offer of equity shares' or any other securities. Further, the interest of the investors also need to be protected to ensure that public funds are not diverted and misappropriated. In the absence of such preventive action, irreparable loss and damage could be caused to shareholders and investors at large.
14. Accordingly, I, in exercise of the powers conferred under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 read with Section 19 thereof and Regulation 107 read with Regulation 111 of the SEBI (Issue of

Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions:

- a. The Company namely **Moonlight Associates Limited [PAN: AACCD2359Q]** and its promoters/ directors (present and past) including **Mr. Nityananda Nath [PAN: AEUPN2924A]**, **Mr. Abu Sadeque Ishtiaque Ahmed Choudhury [PAN: AETPC8946C]**, **Ms. Ferdousi Begum Choudhury [PAN: AJJPC2251P]**, **Mr. Samsul Islam [PAN: AAKPI6206L]**, **Mr. Nizam Uddin Ahmed**, **Mr. Kanai Lal Nath**, **Mr. Abdul Jalil Choudhury** and **Mr. Md. Abdul Muktadir** are restrained from mobilizing funds through the issue 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. Moonlight Associates Limited and its promoters/ directors including the above named persons 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. Moonlight Associates Limited and its promoters/ directors including the above named persons shall not dispose off any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.
- d. Moonlight Associates Limited and its promoters/ directors including the above named persons shall not divert any funds raised from public at large through the issuance of the impugned equity shares, kept in its bank accounts and/ or in the custody of the Company without prior permission of SEBI until further orders.
- e. Moonlight Associates Limited and its promoters/ directors including the above named persons 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. Moonlight Associates Limited and its promoters/ directors including the above named persons shall co-operate with SEBI and shall furnish all the documents that they have been or shall be required to furnish.
 - g. Moonlight Associates Limited and its promoters/ directors including the above named persons 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.
15. The above directions shall come into force with immediate effect and shall continue to be in force till further directions.
16. Moonlight Associates Limited and its promoters/ directors including the above named persons shall show cause as to why suitable directions/ prohibitions, under the Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with 73(2) of the Companies Act, 1956 and the DIP Guidelines, 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 *equity shares* that are impugned in this Order, along with interest at 15% per annum from the date when the refunds became due to the investors till the date of repayment;
 - b. directing them 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.

17. Moonlight Associates Limited and its promoters/ directors including the above named persons 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.
18. 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 Moonlight Associates Limited and its promoters/ directors including the above named persons, in accordance with law.

Date : December 15th, 2015

Place : Mumbai

**PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**