

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

INTERIM ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of M/s Newever Trade Wings Limited (PAN: AADCN9668B)

Background of case:

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) was in receipt of a letter no. F. No. 03/73/2017-CL-II dated June 9, 2017 from the Ministry of Corporate Affairs (hereinafter referred to as “MCA”) vide which MCA has annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA has also annexed the letter of Serious Fraud Investigation Office (hereinafter referred to as “SFIO”) dated May 23, 2017 which contained the data base of shell companies along with their inputs.
2. SEBI as a market regulator is vested with the duty under section 11(1) of the SEBI Act, 1992 (hereinafter referred to as “SEBI Act”) of protecting the interests of the investors in securities and to promote the development of and regulations of securities markets by appropriate measures as deemed fit.
3. SEBI was of the view that companies whose names are included as shell companies by SFIO and MCA, were potentially involved in
 - (a) Misrepresentation including of its financials and its business and possible violation of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or

- (b) Misusing the books of accounts/funds of the company including facilitation of accommodation entries to the detriment of minority shareholders and therefore reneging on the fiduciary responsibility cast on the board, controlling shareholders and key management person (KMP)
4. SEBI was also of the view that investors should be alerted on the possible enforcement action by various authorities leading to potentially significant impact on the price of the stock.
 5. Therefore, in the interest of investors, SEBI took the pre-emptive interim measures under section 11(1) of SEBI Act, 1992, in respect of listed shell companies including M/s Newever Trade Wings Limited (hereinafter referred to as “**NTWL**” / “**Company**”), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions, on the promoters/directors so that they do not exit the company at the cost of innocent shareholders. In view of the said objective, SEBI vide the said letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trade and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the exchanges, including by way of audit and forensic audit if necessary. The measures also envisaged, on the final determination, delisting of companies from the stock exchange, if warranted. By virtue of these measure, trading in scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions, till SEBI and Exchanges completed their detailed examination of such companies.
 6. Pursuant to the same, Bombay Stock Exchange Limited (hereinafter referred to as “**BSE**”) vide notice dated August 7, 2017 and National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) vide notice dated August 7, 2017, to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed securities as identified by MCA and communicated by SEBI, with effect from August 8, 2017.

7. On August 09, 2017, SEBI further advised the Exchanges to submit a report after seeking auditor's certificate, from all such listed companies, providing the status of certain aspects of the company like company's compliance requirement with Companies Act, whether company is a going concern and its business model, status of compliance with listing requirements, etc.
8. NTWL vide its letter dated August 10, 2017 had made a representation to BSE with a copy marked to SEBI submitting that the company has been put under surveillance grade – VI without giving any proper reason of company being involved in suspected manipulative activities, without any details of company distorting the market equilibrium or any allegation from any investor, without any pending investigation and opportunity of being heard in the matter. Further, NTWL stated that the Order affects 686 shareholders and other stake holders and thus they intend to move to Securities Appellate Tribunal for appropriate directions
9. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and BSE, NTWL filed an appeal No. 206 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated August 24, 2017 directed the following:-

“

2. As the appellant has already made a representation to SEBI against the said ex-parte order dated 7th August, 2017, Counsel for the appellant on instruction seeks to withdraw the appeal with liberty to pursue the representation filed before SEBI. Accordingly, we permit the appellant to withdraw the appeal with liberty to pursue the representation pending before SEBI.

3. SEBI is directed to dispose of the representation made by the appellant as expeditiously as possible and in any event within a period of four weeks from today. It is made clear that passing of any order on the representation made by the appellant would not

preclude SEBI from further investing the matter and initiate appropriate proceedings if deemed fit....”

10. Pursuant to the Hon’ble SAT directions, the company submitted a representation which included the memo of appeal and the annexed documents filed before SAT in the Appeal No. 206/2017. The main grounds of the appeal was that-
 - a. That SEBI has grossly erred in classifying NTWL as Shell Company since no criteria of Shell Company is applicable to NTWL.
 - b. That no purpose or intent of SEBI has been spelt out in the letter issued by SEBI to BSE for classifying NTWL as Shell Company.
 - c. The Impugned Order is *ultra vires* and bad in law on the sole ground that the SEBI has not followed principles of natural justice i.e. without first setting up a case against NTWL, without affording an opportunity to explain its case and without giving an opportunity of personal hearing to NTWL, the securities of NTWL has been moved to Graded Surveillance Measure (GSM).
 - d. SEBI has failed to appreciate that NTWL from time to time has complied with all regulatory compliances as per Listing Agreement and as on date there is no lapse of any nature of whatsoever in this regard

11. The Hon’ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* dated August 10, 2017 held that the measures taken by SEBI vide its letter dated August 07, 2017 was in the nature of quasi-judicial order and the same has been passed with out investigation. Without prejudice to the powers enumerated in section 11(1) of SEBI Act, SEBI has been granted power under section 11(4) and 11B of SEBI Act, 1992 to pass order in the interests of investors or securities market by taking any of the measures enumerated therein either pending investigation or inquiry or on completion of such investigation or inquiry. The inquiry under section 11B of the SEBI Act can also be caused to be made by SEBI.

12. SEBI vide letter dated August 28, 2017 had advised NTWL to provide following information:

- (a) Summary of dealings of the Company with or through Mr. Vikrant Kayan, either directly or indirectly, including the nature and quantum thereof. Provide details of the all transactions along with supporting documents.
- (b) Details of Association of the company, whether direct or indirect, with Mr. Mr. Vikrant Kayan.
- (c) Details of employees on the rolls of the Company, their respective roles, remuneration received qualifications and experience for the job. Details of Provident Fund contributions made by the Company for the aforesaid employees. For ease of furnishing the information, broad categories of roles: Blue collar, Junior management, Middle management, senior management, may be given in a consolidated manner.

13. NTWL vide its letter dated September 07, 2017 submitted the information sought by the SEBI's letter dated August 28, 2017, which are as under:

- (a) Reply to query 1: Mr. Vikrant Kayan is the Non-Executive Director of NTWL since 2012. He is B.Com Graduate and has more than 20 Years of Experience in various business activities like Trading & Manufacturing of Jute, Agro Products, Iron & Steel, etc. He basically looks after the day to day affairs of the Company and leads the operating management and perform such duties as may be entrusted to him by the Board from time to time and separately communicated to him and exercise such powers as may be assigned to him, subject to the superintendence, control and directions of the Board in connection with and in the best interests of the business of the Company. He is also a member of Remuneration Committee of the Company. Further apart from above there are no other dealings of the Company with or through Mr. Vikrant Kayan either directly or indirectly.
- (b) Reply to query 2: Mr. Vikrant Kayan is the Director of the Company.
- (c) Reply to query 3: There are 9 employees on the rolls of the Company. The list of employees was submitted. The Provident Fund Act is not applicable to the Company.

Hearing and Reply:

14. Pursuant to the decision of Hon'ble SAT that the communication of SEBI dated August 7, 2017 is in the nature of quasi-judicial order, SEBI vide communication dated September 05, 2017, granted an opportunity of hearing to NTWL on September 08, 2017. Mr. Ramesh Mishra, Company Secretary in practice and Mr. Lokanath Mishra, Advocate, Authorized Representatives (collectively referred to as "ARs") appeared for M/s Newever Trade Wings Limited and made oral submissions, which are summarized as under:

- (a) *NTWL is listed with BSE in SME segment. NTWL is in the business of trading of steel & bars. Approximately 30-40 companies are dealing with NTWL as buyer and seller.*
- (b) *Mr. Vikrant Kayan is a Promoter and Non-Executive Director of NTWL. Mr. Vikrant Kayan alongwith other directors are responsible for running day to day affairs of NTWL.*
- (c) *For categorizing NTWL as Shell Company, NTWL did not received any notice or letter from Income Tax Department (ITD), Ministry of Corporate Affairs (MCA), Serious Fraud Investigation Office (SFIO) and Securities Exchange Board of India (SEBI).*
- (d) *NTWL had complied with filings of annual returns, income tax returns, SEBI (LODR) Regulations.*
- (e) *ARs requests that the trading in NTWL be shifted to normal category as it was prior to SEBI's letter dated August 07, 2017 and had no objection to SEBI to continue with Investigation.*
- (f) *ARs submits the copy of SAT appeal memo dated August 14, 2017*

ARs were advised to submit the following information latest by September 13, 2017:

- (a) *An affidavit from Shri Vikrant Kayan stating the following:*
 - (i) *Whether he knows anyone by the name of Shri Rabi Shankar Shaw,*
 - (ii) *Any association of him with Shri Rabi Shankar Shaw and nature of dealings with Shri Rabi Shankar Shaw, if any.*

- (iii) *to reproduce/state his submissions made to any authority/Government agency/Income Tax Department regarding facilitating accommodation entries, either amongst entities controlled by him or not controlled by him including NTWL. It was clarified to the ARs that the term 'accommodation entries' should be interpreted in the wider context of normal English language and not in the narrow legalistic manner.*
- (b) *In terms of Trade receivables and Trade Payables during FY 2015-16 and 2016-17, NTWL are advised to provide full documents supporting the transactions including tax challans, proof of physical deliveries in the form of octroi receipt, weigh bridge receipts, Truck receipts, Tolls paid and contract agreements to demonstrate physical movement of goods.*
- (c) *As proof of movement of funds, submit bank statements for the year 2015-16 and 2016-17 with suitable annotations.*
- (d) *Regarding short term loans and advances, submit full details of documents i.e. signed contracts between the parties and corresponding bank statements showing movement of funds.*
- (e) *Name of the allottees to whom preferential allotment is made and their relationship with the company or with the promoter.*
- (f) *For how many years directors are working without remuneration/compensation? Explain.*
- (g) *Details of top 10 clients and their contribution in the sales or clients contributing at least 50 percent of sales (whichever is higher) along with the supporting sales agreements/contracts (kindly avoid submitting invoices, challans, delivery receipts etc.)*
- (h) *Details/list of all 675 shareholders of the company as on March 2017.*

15. SEBI vide email dated September 08, 2017 has also advised NTWL to furnish the aforesaid information by September 13, 2017.

16. NTWL vide its letter dated September 11, 2017 submitted the information sought by SEBI at the time of hearing and vide email dated September 08, 2017, which are *inter alia* as under:

- (a) *“An affidavit from Shri Vikrant Kayan stating the necessary facts has been enclosed.*
- (b) *Details of Trade receivables and Trade Payables during FY 2015-16 and 2016-17, alongwith supporting documents of the transactions including VAT Challans, have been enclosed.*
- (c) *Bank statements for the year 2015-16 and 2016-17 have been enclosed.*
- (d) *Details of short term loans and advances for the FY 2016-17 has been enclosed.*
- (e) *Name of the allottees to whom preferential allotment is made have been enclosed... further there was no relationship of the allottees with the company or with the promoter.*
- (f) *Directors are working without remuneration/compensation for the FY 2015-16 and 2016-17. The reason being the Company had not scaled to a level to distribute/pay/salary to the promoters. Further please note that though the Board has approved the payments, the Directors themselves volunteered not to accept remuneration for the time being. Mr. Vikrant Kayan is the Non-Executive Director of the Company. The Board of Directors of the Company entrusted him the work of office management relating to staffs and staffs welfare. Hence, he devoted some of his times sitting in the same office.*
- (g) *Details of top 10 clients and their contribution in the sales, have been enclosed....Further we also hereby submit the details of top 10 Companies contributing to purchases of the Company.*
- (h) *Please note that there were 964 shareholders as on March 31, 2017. Details/list for the same have been enclosed.”*

17. Pursuant to SEBI's letter dated August 9, 2017, BSE submitted its report dated August 31, 2017 stating that, BSE vide its letter dated August 10, 2017, advised the company to submit an auditor certificate and other supporting documents. Further, Exchange vide its letter dated August 23, 2017, *inter alia*, advised company to submit additional information w.r.t. no. of employees and provident fund filings and if company wishes to have personal representation. Till August 31, 2017, the company neither provided the required information nor sought any personal hearing. However, no specific recommendation was made by BSE. Further, BSE vide

email dated September 20, 2017 informed that NWTL had complied with LODR regulations but till date NWTL had not submitted the auditor's certificate as requested.

Consideration:

18. On perusal of the materials available on record, the following prima facie/potential issues arise for consideration.

- (a) *Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and possible violation of LODR Regulations by the company.*
- (b) *Whether there is prima facie evidence to show that the company is misusing the books of account/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.*
- (c) *In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

19. On the basis of documents available on record, my observations on above issues are as under:

Issue No. 1. *Whether there is prima facie evidence of misrepresentation including of its financials and/or its business and possible of violation of LODR Regulations by the company.*

Issue No. 2. *Whether there is prima facie evidence to show that the company is misusing the books of account/funds including facilitation of accommodation entries to the detriment of minority shareholders and therefore the board, controlling shareholders and KMP are reneging on the fiduciary responsibility cast on them.*

20. Based on the replies given by the company in response to SEBI's queries, prima facie observations are as under:

- (a) Vide affidavit dated September 12, 2017, Mr. Vikrant Kayan affirmed and declared that he used to know a person by the name of Mr. Rabi Shankar till 2012. Mr. Rabi Shankar had sought some work through him relating to accommodative facilities which he diverted to different market players where he had no interest, control or holding position. Further, he could not recall the exact nature of transactions done by the companies controlled by Mr. Rabi Shankar Shaw and the companies Mr. Rabi Shankar Shaw contacted through Mr. Kayan's reference. Mr. Vikrant Kayan also stated that he had informed the above facts to the Income Tax Department. However, he did not have any copies of the statements given to Income Tax authorities in the year 2014. Thus, *prima-facie* it appears that Mr. Vikrant Kayan had facilitated accommodation entries either directly/indirectly.
- (b) It is observed that NTWL has huge Trade Receivable and Trade Payables in the financial year 2015-16 & 2016-17. In this regard details were sought from the company with respect to Trade payables and Trade receivables along with documents supporting the transactions including tax challans, proof of physical deliveries in the form of octroi receipt, weigh bridge receipts, Truck receipts, Tolls paid and contract agreements to demonstrate physical movement of goods, however in response of it, company has provided a list sundry debtors and sundry creditors for 2015-16 and 2016-17 with book entries of debit balances and credit balances, respectively and acknowledgement slip of e-filing of return for VAT. Further, company failed to submit any evidence/supporting documents showing proof of physical deliveries in the form of octroi receipt, weigh bridge receipts, truck receipts and tolls paid to demonstrate physical movement of goods. Further, company's own Auditor's report stated that the balance of debtors, creditors and loans & advances are subject to confirmation.
- (c) The Company had submitted a list of entities to whom Loans & Advances had been granted during 2016-17, however, it has failed to submit full details of documents i.e. signed contracts between the parties and corresponding bank statements showing movement of funds.
- (d) During the course of hearing company was advised to submit the details of top 10 clients and their contribution in the sales or clients contributing at least 50 percent of sales

(whichever is higher) along with the supporting sales agreements/contracts. In response of it, company had submitted a list of seven customers and seven suppliers contributing 100 percent to the turnover/purchases. From the list of customers, it is observed that out of seven customers, one customer Kamaraj Traders is contributing 50 percent in commodity turnover and out of seven suppliers, one supplier Lokesh Nutrients & Pulses Co. contributing 50.24 percent. However, company has failed to submit any documentary evidence like business contracts/sale agreements with customers/suppliers.

- (e) From the Secretarial Audit Report in the Annual Report for 2015-16 it is noted that NTWL had taken loans from companies in which the directors are common, the company has granted interest free short term advances to related party during the year under review and the company has entered into a related party transaction for which prior board approval was not taken in the manner prescribed in Rule 15 of the Companies (meeting of boards and its powers) Rules, 2014. This prima facie raises concern as to whether the transactions were executed in the interest of shareholders.
- (f) As per the Annual Report of 2015-16, the Independent Auditor Report stated that *“As stated in the Report on the Internal Financial Control, the company has not established its internal financial control over financial reporting on criteria based on or considering the essential components of internal control stated in the Guidance Note on Audit of Internal Financial Controls over Financial Reporting issued by the Institute of Chartered Accountants of India.”*

21. I note that there is a lack of documents to substantiate the transactions entered into by the company to establish the genuineness of those transactions. I also note that significant related party transactions have been entered into without due process. I also note that Statutory Auditor has noted that the company has not established Internal Financial Control. Thus, there is prima facie evidence of misrepresentation of business/financials as well as of misuse of funds/ the books of accounts of the company including facilitation of accommodation entries. I also note that Mr. Vikrant Kayan in his affidavit confirmed the indirect facilitation of accommodation transactions albeit in entities other than this company. The directors &

KMPs have therefore *prima facie* failed to discharge their fiduciary responsibility. The company is also liable for the prima facie violations observed and it is imperative that in the interest of investors, the financials of the company be independently audited to establish their genuineness.

Issue No. 3. *In view of the determination on the above issues, pursuant to SAT Appeal and the order of SAT in the said appeal, whether, in view of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.*

22. In view of the *prima facie* evidence on the misrepresentation by the company and misusing of books / funds including facilitation of accommodation entries, the persons who are in control of the company and the directors of the company are prima facie liable for action by SEBI and should not be permitted to exit the company at the cost of innocent shareholders.
23. The findings in this order have been rendered on the basis of the prima facie evidence available at this stage. Detailed examination / forensic audit needs to be undertaken to unearth the entire extent of violations.
24. Pending, enquiry/ audit, it is appropriate to revert the scrip to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI with applicable price band.
25. In view of the above, I am of the view that following urgent interim actions are required to be taken, pending further enquiry/audit.

INTERIM ORDER

26. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby, modify, subject to para 26(iv) of this order, the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against M/s Newever Trade Wings Limited as under:

- i.* The trading in securities of NTWL shall be reverted to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
- ii.* Exchange shall appoint an independent forensic auditor *interalia* to further verify:
 - a. Misrepresentation including of financials and/or business of NTWL, if any;
 - b. Misuse of the books of accounts / funds including facilitation of accommodation entries, if any.
- iii.* The promoters and directors in NTWL are permitted only to buy the securities of NTWL. The shares held by the promoters and directors in NTWL shall not be allowed to be transferred for sale, by depositories.
- iv.* The other actions envisaged in SEBI's letter dated August 07, 2017 in para 1 (d), as may be applicable, and the consequential action taken by Stock Exchanges shall continue to have effect against M/s Newever Trade Wings Limited.

27. The 'directors' for the purpose of direction mentioned at para 26(iii) above shall mean and include:

- (a) the persons who are acting as directors on the date of this order, or
- (b) the persons who are acting as directors of this company as on August 07, 2017, who cease to be director, by way of disqualification by any other authority, or by way of resignation or by any other means, on or after August 07, 2017.

28. Accordingly the representation of M/s Newever Trade Wings Limited is disposed of.
29. The above directions shall take effect immediately and shall be in force until further Orders.
30. The prima facie observations contained in this Order are made on the basis of the prima facie material available on record. In this context, M/s Newever Trade Wings Limited is advised to file its reply/objections to this interim order. The Company, within 30 days from the date of receipt of this Order, may file its reply, if any, to this Order and may also indicate in the reply whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard, if any. In the event of M/s Newever Trade Wings Limited failing to file reply or requesting for an opportunity of personal hearing within the said 30 days, the preliminary findings of this Order and ad-interim directions at para 26 above shall stand confirmed automatically, without any further orders.
31. Copy of this Order shall be forwarded to the recognised stock exchanges & depositories for information and necessary action.
32. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs and Serious Fraud Investigation Office for their information.

-Sd-

DATE: SEPTEMBER 21, 2017

PLACE: MUMBAI

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**