

**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 Info-Drive Software Limited

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 had annexed a list of 331 shell companies for initiating necessary action as per SEBI laws and regulations. MCA had 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 Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) to protect 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 the companies identified as shell companies by SFIO and MCA were potentially involved in:
 - (a) Misrepresentation including that of its financials and its business and possible violation of SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 (hereinafter referred to as “LODR Regulations”) and/or
 - (b) Misusing their respective books of accounts/funds 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 in respect of listed shell companies including Info-Drive Software Limited (hereinafter referred to as "ISL" / "Company"), vide its letter dated August 7, 2017, based on the view stated at para 3 and 4 above. SEBI placed trading restrictions on 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 letter dated August 7, 2017 also placed the scrip in the trade to trade category with limitation on the frequency of trades and imposed a limitation on the buyer by way of 200% deposit on the trade value, so as to alert them on trading in the scrip. The said measures were initiated by SEBI pending final determination after verification of credentials and fundamentals by the stock 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 measures, trading in the scrip was not suspended but allowed under strict monitoring so that investors could take informed investment decisions till SEBI and stock exchanges complete their detailed examination of such companies.
6. Pursuant to the above, BSE vide notice dated August 7, 2017, addressed to all its market participants, initiated actions envisaged in the SEBI letter dated August 7, 2017 in respect of all the listed companies as identified by MCA and communicated by SEBI, with effect from August 8, 2017.
7. On August 09, 2017, SEBI further advised the Stock 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 with Companies Act, whether company is a going concern, its business model, status of compliance with listing requirements, etc.
8. Vide its letter dated August 17, 2017, ISL made a representation, *inter alia*, submitting as under:
 - i) The company clarified that it is not a shell company as inferred or otherwise. It is in the business of IT consulting, solutions and infrastructure services.
 - ii) It is a 28 years old company, listed for 22 years. It has around 9196 shareholders and 6 subsidiaries.
 - iii) It has a paid up capital of Rs. 65.52 CR, revenue and surplus of Rs. 62.71 CR and has an investment of Rs. 65.67 CR in its subsidiaries.
 - iv) As on March 31, 2017 it had a standalone income of Rs. 21.67 CR and a consolidated income of Rs. 120.45 CR. It has 20 employees in India and 118 employees abroad who are on contract. It has tangible fixed assets of 3.03 CR.
 - v) As on March 31, 2017 it had a standalone turnover of Rs. 22.28 CR and consolidated turnover of 120.25 CR.

- vi) The company was awarded contract in 2013 by state government of Tamil Nadu for implementation of web based solutions for 110 Cooperative Credit Societies in Chennai Region.
 - vii) The company has six subsidiaries across the globe – UAE, USA, Singapore, Malaysia etc.
9. In view of its representation, the company requested that its name be removed from the list of suspected companies and trading in its scrip be resumed on BSE as was taking place on August 7, 2017.
10. In the meantime, aggrieved by the aforesaid letters/notice dated August 7, 2017 issued by SEBI and BSE, ISL filed an appeal No. 197 of 2017 before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). Hon'ble SAT vide order dated August 23, 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 three 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 investigating the matter and initiate appropriate proceedings if deemed fit.

11. Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* (order 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 without 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. Pursuant to SEBI's letter dated August 9, 2017 (mentioned above), BSE has submitted its report on August 31, 2017 wherein it has *inter alia* observed the following:

"Company has submitted the auditor certificate from Anil Nair & Associates, Chartered Accountants (Copy attached as Annexure IVA & IVB) certifying that company has:

a) Filed income tax returns for last three financial years. Further, that there are disputes / appeals pending before CIT (A) / ITAT / Dispute Resolution Panel (DRP) for AY 2004-05, AY 2009-10, AY 2010-11, AY 2011-12 & AY 2013-14 aggregating to Rs.11.05 cr.

b) Not filed Annual Accounts (AOC-4) and Annual Return (MGT-9) for financial year 2015 and 2016.

c) Company is a going concern.

d) There are no default in any loans with any bank / financial institutions. Further, company has account with Axis Bank which is dormant & inoperative from the period April 01, 2016 to till date & same is under lien consequent to a garnishee order issued under section 226(3) of IT Act, 1961

e) Complied with key clauses of erstwhile listing agreement/ SEBI (LODR) Regulations, 2015 for last 3 years.

Exchange vide email dated August 30, 2017 has sought clarification from the company regarding the following:

a) Auditor's Certificate confirming description of company's business model and bank statement of an active bank account for last one year.

However, till date company has neither provided clarification nor sought any personal hearing."

Hearing and Reply:

13. Pursuant to the decision of Hon'ble SAT, an opportunity of personal hearing to was granted to ISL on September 4, 2017 when its authorized representative appeared and made oral submissions. ISL was asked to provide the information / response on the following points (supported by documentary evidence) as early as possible and latest by September 7, 2017:

- 1) Details of investments made by the company and reported in the consolidated balance sheet as on March 31, 2016.
- 2) Details of Non-current investments (shown as Rs. 95 CR) as on March 31, 2016.
- 3) Details of other advances as on March 31, 2016, to whom they have been made and their link to the Company's business.
- 4) Details of advance for investments as on March 31, 2016 (shown as Rs. 18 CR).
- 5) Details of short-term loans and advances as on March 31, 2016 (shown as rs. 67 CR).
- 6) Details of long-term loans and advances as on March 31, 2016 (shown as Rs. 58 CR).
- 7) Explain the reason for having a finance cost of Rs. 2 crores while long term borrowings stand at Rs. 112 crores as on March 31,2016.
- 8) Provident Fund contribution made by the company, if any.

The company was asked to provide the link of each entry (as mentioned in points 1 to 6) with the company's business, its benefits to the company and particulars of counter party of such transactions.

SEBI also sent an e-mail to the company on September 5, 2017 asking for the above information.

14. Vide email dated September 7, 2017, ISL requested for extension of time upto 12.09.2017 for submission of required information. The request of ISL was partially accepted and in view of the timeline stipulated by Hon'ble SAT (i.e. September 13, 2017) it was allowed to make its submissions till September 9, 2017. However, ISL did not file any submission till September 9, 2017 and instead filed its submissions vide an email on September 12, 2017. The submissions made by ISL are *inter alia* as under:

1) Details of investments made by the company and reported in the consolidated balance sheet as on March 31, 2016. Details of Non-current investments (shown as Rs. 95 CR) as on March 31, 2016.

2) Details of other advances as on March 31, 2016, to whom they have been made and their link to the Company's business.

3) Details of advance for investments as on March 31, 2016 (shown as Rs. 18 CR).

4) Details of short-term loans and advances as on March 31, 2016 (shown as Rs. 67 CR).

5) Details of long-term loans and advances as on March 31, 2016 (shown as Rs. 58 CR).

6) Out of Rs.112 Crores as long term borrowings FCCB carries 0% coupon rate while advance payments for long term contracts and JV advances do not carry any interest as they have been grouped under non-current liabilities.

7) The Company presently has 124 employees comprising of 8 direct employees and 116 onsite consultants. We have been advised that the professionals appointed for onsite work were given task based assignments and were not required to be treated as an employee and the terms of appointment were such that they were not intended to create an employer employee relationship. The consultants work on site by virtue of a work on site based on permits issued in Dubai and there are foreign passport holders and Indian passport holders. As per the provisions of the Provident Fund Act the contributions to the fund are required where there is an employer employee relationship and in the case of consultants deployed on site there is no employer - employee relationship and consequently we have been advised that the provisions of the provident fund act do not apply. Further as evident from our financials the expenditure incurred on site consultants is not charged to salary account but charged to cost of goods / services. Since onsite consultants are excluded employees and direct employees of the Company is below the statutory limit, the provisions of PF Act are not applicable.

Consideration of issues:

15. On perusal of the material available on record, the following issues arise for consideration.

- (a) Whether there is *prima facie* evidence of misrepresentation by ISL including that of its financials and/or its business and is there any 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 accounts / 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 and the order of SAT in the aforesaid appeal, whether, in light of the representation of the Company, the action envisaged in SEBI letter dated August 7, 2017 needs reconsideration.

16. 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 by ISL including that of its financials and/or its business and is there any possible 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 accounts / 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.*

17. Based on the material available on record, *prima facie* observations are as under:

- 1) The auditor in his independent report has mentioned that he has not audited the financial statements of subsidiary companies. Further, these financial statements and other financial information has been incorporated in the consolidated financial statement based on the unaudited financial statements provided by the management of the company.
- 2) From Companies (Auditor's Report) Order, 2016 (CARO) the following are noted (Page no.67 of Annual Report FY 2015-16)

- a) The Company has granted loans to three wholly owned subsidiary companies. However, no formal schedule of repayment has been made for receipt of principal amount and as such in the absence of such repayment schedule, the auditor is unable to comment if the same are being repaid timely.
 - b) The Company is not regular in depositing the Income Tax dues and Tax Deducted at Source (TDS) in to the Government Account.
- 3) The total revenue income disclosed by the company in its annual results (standalone) for the F.Y. 2016-17 is not matching with the aggregate results submitted for four quarters which were disclosed to the stock exchange. The extract of the results is tabulated below:

(Rs.in Crore)

Particulars	Jun 16	Sep 16	Dec 16	Mar 17	Total arising out of quarterly results	Annual Results
Employee benefit	4.00	4.65	4.36	11.95	24.96	16.31
Revenue	4.32	4.35	4.44	17.23	30.34	21.67
Operating Expense	4.02	4.06	4.22	16.84	29.14	21.06

- 4) As mentioned in the page no.65 & 95 point aa of notes on Consolidated Financial Statements for the year 2015-16 *"The value of investment in Info-Drive Software Inc, USA (Wholly owned subsidiary) have diminished and eroded the entire capital of the company as on the date of balance sheet"*. However, no provision for such diminution in value of investment is made in the standalone books of company.

5) Analysis of Balance Sheet

a) Reserves and Surplus

It is observed in the reserves & surplus note (4) point (c) of consolidated financial statements that the closing surplus i.e. 31.03.2015 & opening surplus as at 01.04.2015 are not matching. An amount of Rs.388.89 lacs difference is observed as noted in the table below:

(Rs. in Lacs)

Particulars	FY 2015-16	FY 2014-15	FY 2013-14
a) Share Premium Account	3,866.57	3,866.57	3,866.57
b) Capital Reserve	0.00	0.00	453.63
c) Surplus in P & L Account			
i) Opening	3,978.98	3,245.89	2,796.06
ii) Add: Current year Profit	764.39	344.20	12.68
Total of C (i+ii)	4,743.37	3,590.09	3,262.37
Total (a+b+c)	8,609.94	7,456.66	7,128.93

b) Long Term Borrowings

As per the Consolidated financial statements of FY 2015-16, there is a decrease i.e. repayment of long term borrowings of Rs.166.37 lacs as compared with previous year, however in cash flow statement an amount of Rs.170.75 lacs is shown as a repayment. Thus, a difference of Rs.4.38 lacs is observed.

Long term borrowings as on 31st March, 2016 & 31st March, 2015 are Rs.11,526.20 lacs & Rs.11,692.57 lacs, respectively. Further, despite the long term borrowings remaining almost same, as per financial statements, the company has shown only Rs.9.19 lacs as a finance cost in FY 2015-16 as compared to Rs.69.90 lacs in previous year.

c) Long Term Provisions (Note 6b)

(Rs. In Lacs)

Particulars/Year	2015-16	2014-15	2013-14
Employee Benefit Expenses (Profit & Loss Account)	52.96	70.25	225.03
Provision for Gratuity (Balance Sheet)	1.89	124.71	33.56

There is a decline in provision of gratuity from Rs.124.71 lacs as on 31st March, 2015 to Rs.1.89 lacs as on 31st March, 2016. From the above table, it is noted that there is an increase in provision for gratuity by Rs.91.15 lacs in FY 2014-15 whereas the total employee benefit expenses shown in FY 2014-15 was Rs.70.25 lacs.

d) Intangible assets

As at 31st March, 2016, the Intangible asset i.e. goodwill was shown as Rs. Nil as against of Rs.1,706.41 lacs as at 31st March, 2015. However, the impairment of goodwill was not shown in Profit and Loss account. It is noted that the goodwill was brought into books of accounts in the FY 2014-15. Further, as per notes on consolidated financial statements for the year 31st March, 2016 (page no.95 of annual report, point u), “*no impairment has been recognized in view of estimated future cash flows from activities to which goodwill has been allocated.*”

e) Non – Current Investments

The cash flow statement of company stating that an amount of Rs.5,953.99 lacs as investment advance in subsidiary company, however from the following schedule it is noted as follows:

(Rs.in Lacs)			
Particulars	FY 2015-16	FY 2014-15	FY 2013-14
Info-drive Software LLC-JV Investment, UAE	5,953.99	6,145.97	0.00
Technoprism LLC, USA	1,042.96	982.37	0.00
Info-Drive technologies Co Ltd, Bangkok	6.62	6.23	6.01
Infodrive Softwarre Sdn Bhd, Malaysia	2,509.35	0.00	0.00
Total	9,512.92	7,134.57	6.01

On analysis of consolidated financial statements for FY 2015-16, it is observed that the investment in subsidiaries have increased by Rs.2,378.35 lacs i.e. (from Rs.7,134.57 lacs to Rs.9,512.92 lacs). But in the cash flow statement it is being reported that the company had made Rs.5,953.99 lacs as investment in subsidiary companies during FY 2015-16.

- f) It is observed from the consolidated financial statements note 6(a) (Long Term Borrowings) that apart from FCCB's, advance for JV, the schedule also includes major item i.e. corporate borrowings. The corporate borrowings of the company and finance costs reported in profit and loss account for the last 3 years i.e. FY 2015-16, FY 2014-15 & FY 2013-14 are as follows:

(Rs in Lacs)

Particulars	FY 2015-16	FY 2014-15	FY 2013-14
Corporate Borrowings	1,694.08	1,191.94	1,032.60
Finance Costs	9.19	69.90	155.29

From the above table, it is noted that the corporate borrowings have increased by approx.64% from FY 2013-14 to FY 2015-16, whereas the finance costs have declined by approx.94%. Thus, prima facie raises doubt on the authenticity of the borrowings reported in the financial statements.

18. In view of the above, it is noted that there are numerous, often significant contradictions / mismatches in the books of accounts of the company, figures have been wrongly mentioned, requisite entries have not been made for certain items and financial statements of subsidiary companies have not been audited but have been included in the consolidated financial statements. I also note that during the hearing, ISL was asked certain specific queries / information (mentioned above) along with documents to substantiate the same, but it has failed to provide documentary evidence in support of its submissions and has also failed to provide the link of certain transactions with the company's business which was specifically asked during the hearing and vide the subsequent e-mail by SEBI. Thus, there is *prima facie* evidence of misrepresentation of books of accounts by the company which in turn raises suspicion regarding the misuse of books of accounts/funds by the company.

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.*

19. In view of the *prima facie* observations on misrepresentation of books of accounts by the company and the suspicion regarding the misuse of books of accounts/funds by the company, 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.
20. Further, on account of the above mentioned misrepresentation of books of accounts by the company and the suspicion regarding the misuse of books of accounts/funds by the company, it is also imperative that in the interest of investors, the financials of the company be independently audited to establish their genuineness.

21. Prior to the action as envisaged in SEBI's letter dated August 07, 2017, the scrip of ISL was trading in XD group of BSE with applicable price band. Pending enquiry/ audit, considering the interest of public shareholders involved in ISL, I find it appropriate to revert the scrip in the said XD group of BSE with applicable price band.
22. In view of the above, I am of the view that following urgent interim actions are required to be taken, pending audit/further enquiry.

INTERIM ORDER

23. 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 the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges, against Info-Drive Software Limited and direct as under:
- i. The trading in securities of ISL shall be reverted to XD group of BSE with applicable price band.
 - ii. Exchange shall appoint an independent auditor to conduct forensic audit of ISL for verification, including the credentials/financials of ISL.
 - iii. The promoters and directors in ISL are permitted only to buy the securities of ISL. The shares held by the promoters and directors in ISL 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 ISL.
24. The representation dated August 17, 2017 filed by ISL is accordingly disposed of.
25. The above directions shall take effect immediately and shall be in force until further Orders.
26. The findings in this order have been rendered on the basis of the *prima facie* evidence available at this stage. However, detailed examination / forensic audit needs to be undertaken to unearth the entire extent of violations. In this context, Info-Drive Software Limited is advised to file its reply/objections to this interim order, if any, within 30 days from the date of receipt of this Order and may also indicate 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. In the event Info-Drive Software Limited fails to file its reply or to request for an opportunity of personal hearing within the said 30 days, the preliminary findings of this

Order and ad-interim directions shall stand confirmed against Info-Drive Software Limited automatically, without any further orders.

27. Copy of this Order shall be forwarded to the recognized stock exchanges for information and necessary action. 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 13, 2017
PLACE: MUMBAI

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