

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 MPF Systems Limited (PAN: AADCM7896A)

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 MPF Systems Limited (hereinafter referred to as “MPFSL” / “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. MPFSL vide its letter dated August 14, 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, MPFSL stated that the Order affects 25696 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, MPFSL filed an appeal No. 210 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated August 29, 2017 directed the following:-

“.....

2. *As the appellant has already made a representation to BSE against the said ex-parte order dated 7th August, 2017, with a copy to SEBI, 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. 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.

Hearing and Reply:

11. 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 07, 2017, granted an opportunity of hearing to MPFSL on September 14, 2017. Mr. Ramesh Mishra, Practicing Company Secretary and Mr. Lokanath Mishra, Advocate, Authorized Representatives (collectively referred to as “ARs”) appeared for M/s MPF Systems Limited and made oral submissions in line with the SAT appeal Memo which was also submitted. The main grounds of the appeal was:

- a. That SEBI has grossly erred in classifying MPFSL as Shell Company since no criteria of Shell Company is applicable to MPFSL.
- b. That no purpose or intent of SEBI has been spelt out in the letter issued by SEBI to BSE for classifying MPFSL 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 MPFSL, without affording an opportunity to explain its case and without giving an opportunity of personal hearing to MPFSL, the securities of MPFSL has been moved to Graded Surveillance Measure (GSM).

- d. SEBI has failed to appreciate that MPFSL 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.

12. Further, during the course of hearing, ARs were advised to submit the following information along with full backup documentation /documentary evidence latest by September 19, 2017:

(a) An affidavit from current directors as well as past directors of the Company stating the following:

(i) In respect of MPF as well as any other company where they have been or are directors, whether they are aware of any investigation/inquiry by any authority including regulatory authority regarding accommodation entries.

(ii) If they were aware of any accommodation entries, what was the action taken by them after becoming aware of the same

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 a narrow legalistic manner.

(b) Number of employees including the provident fund details, if any. (The information to be provided for the F.Y. 2015-16, F.Y. 2016-17 and as on date).

(c) Details along with documentary proof of Trade Payables of Rs. 14.18 lakhs as on March 31, 2016 and link to the company's business in the context that the company have made no purchases in the year.

(d) Details of Trade receivables of Rs. 5.97 crores as on March 31, 2016 and the provision for doubtful debts shown in the F.Y. 2015-16 along with documentary proof. Board resolution and justification for the provision as submitted to the Board.

(e) Details of other income of Rs. 8.34 lakhs reported by the company during the F.Y. 2015-16.

13. SEBI vide email dated September 14, 2017 has also advised MPFSL to furnish the aforesaid information by September 19, 2017.
14. As SEBI was not in receipt of the aforesaid information by September 19, 2017, therefore, SEBI vide email dated September 21, 2017 has again advised the company to provide information sought at the time of hearing and vide email dated September 14, 2017. However, it is observed that till date MPFSL has failed to submit the required/aforesaid information.
15. Pursuant to SEBI's letter dated August 9, 2017, BSE submitted its report dated September 25, 2017 stating that, BSE vide its letter dated August 10, 2017, advised the company to submit an auditor certificate and other supporting documents. BSE again vide its letter / email dated August 23, 2017, inter alia, advised company to submit additional information w.r.t. no. of employees and provident filings and if company wishes to have personal representation. BSE further stated that, till date the company has neither provided the required information nor sought any personal hearing inspite of various reminders by BSE vide emails dated September 01, 2017, September 11, 2017 & September 15, 2017. Further, BSE in its report have mentioned that the company has not complied with filing of annual report for year ended 2015 and shareholding pattern for the quarter ending December 2014 and September 2014. However, no specific recommendation was made by BSE.

Consideration:

16. 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.

17. 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.*

18. Based on the documents available on record, prima facie observations are as under:

- (a) During the course of hearing, MPFSL was advised to submit an affidavit from current Directors as well as from past Directors of the company. However, it is observed that despite repeated reminders, MPFSL has failed to submit the affidavits from current Directors as well as from past Directors of the company.
- (b) MPFSL has failed to submit the number of employees including the provident fund details, if any, for the financial year (FY) 2015-16, F.Y. 2016-17 and as on September 14, 2017.
- (c) MPFSL has failed to submit the details along with documentary proof of Trade Payables of Rs. 14.18 lakhs as on March 31, 2016 and link to the company's business in the context that the company have made no purchases in the year.
- (d) MPFSL has also failed to submit the details of trade receivables of Rs. 5.97 crores as on March 31, 2016 and the provision for doubtful debts shown in the F.Y. 2015-16 along with documentary proof.

(e) MPFSL has also failed to submit the details of other income of Rs. 8.34 lakhs reported by the company during the F.Y. 2015-16.

19. From the above I note the followings:

- (a) That there is lack of documents to substantiate the transactions entered into by the company to establish the genuineness of those transactions.
- (b) That despite repeated reminders company had failed to submit the affidavits from current Directors as well as from past Directors of the company regarding, *inter alia*, awareness of accommodation transactions/entries.
- (c) That despite repeated reminders company had failed to submit the information along with documentary proof, sought by BSE, sought by SEBI at the time of hearing and vide email dated September 14, 2017.

20. Thus, even though there is no prima facie evidence of misrepresentation of business/financials or misuse of books of accounts/funds by the company, 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.*

21. In view of the prima facie observations regarding the authenticity of the transaction reported by the company, I find that it would be appropriate that the financials of the company be independently audited to establish their genuineness.

22. Since, there is no prima facie evidence of misrepresentation of business/financials or misuse of books of accounts/funds by the company, I find that it would be appropriate that the restrictions imposed on promoters/directors of the company be removed.

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. Further, pending enquiry/ audit, considering the interest of public shareholders involved in MPFSL, I find it is appropriate to revert the trading in the securities of MPFSL to the status as it stood prior to issuance of letter dated August 7, 2017 by SEBI.
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 MPF Systems Limited as under:
- i.* The trading in securities of MPFSL 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 *inter alia* to further verify:
 - a. Misrepresentation including of financials and/or business of MPFSL, if any;
 - b. Misuse of the books of accounts / funds including facilitation of accommodation entries, if any.
 - iii.* The limitation on the transfer of shares held by the Promoters and Directors as mentioned in para 1(b) of SEBI's letter dated August 07, 2017 is removed.

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 MPF Systems Limited.

27. Accordingly the representation of M/s MPF Systems Limited is disposed of.

28. The above directions shall take effect immediately and shall be in force until further Orders.

29. 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 MPF Systems 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 MPF Systems 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.

30. Copy of this Order shall be forwarded to the recognised stock exchanges & depositories for information and necessary action.

31. 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 26, 2017

PLACE: MUMBAI

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