

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11, 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF NEESA TECHNOLOGIES LIMITED IN RESPECT OF MR. NIMAIN CHARAN BISWAL.

1. Mr. NimainCharan Biswal had filed an appeal (Appeal No. 204/2016) before Hon'ble Securities Appellate Tribunal ("SAT") against the order of SEBI dated June 2, 2016 in the matter of Neesa Technologies Limited ("NTL"). Vide order dated July 14, 2016, Hon'ble SAT quashed the said order *qua* Mr. Biswal (the appellant) and observed the following:

"1. This appeal is filed to challenge the order passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) on June 2, 2016. By that order several entities including the appellant have been restrained from accessing the securities market for a period of 4 years from the date specified therein. It is not in dispute that in so far as appellant is concerned the decision of the WTM of SEBI travels beyond the Show Cause Notice ('SCN' for short) and beyond the interim order passed against the appellant.

2. Where the impugned order goes beyond the SCN then, that order cannot be sustained and in such a case, the proper course is to set aside the said order and restore the matter to the file of WTM of SEBI for passing fresh order on merits and in accordance with law.

*3. Accordingly, the impugned order dated June 2, 2016 is quashed *qua* the appellant and restored to the file of WTM of SEBI for fresh decision on merits and in accordance with law.*

4. The WTM of SEBI is directed to hear the appellant and pass order thereon as expeditiously as possible and in any event within a period of two months from today."

2. Pursuant to the directions of Hon'ble SAT, an opportunity of hearing was provided to Mr. Biswal on August 18, 2016 when he appeared in person and made submissions in line with his reply which he submitted during the course of hearing. Thereafter, vide his letter dated August 19, 2016, he filed an affidavit in support of his submissions. In the said reply and affidavit, Mr. Biswal, *inter alia*, submitted the following:

- i) He was appointed as a director of NTL on November 7, 2013 and had resigned and fully relinquished the said office on and effective from March 6, 2014.

- ii) His resignation letter was delivered to the board of directors of NTL by e-mail and also by speed post.
- iii) As per law, he had done all the compliances regarding his resignation by notifying the Registrar of Companies, Ahmedabad within the stipulated time and filing the prescribed form DR-11 on the web portal of Ministry of Corporate Affairs by paying the prescribed fees.
- iv) The Regional Director, North Western region, MCA who was appointed as an inspecting officer by the Central government to conduct inspection of NTL (under section 206(5) of the Companies Act, 2013) in his inspection report dated July 7, 2015 has made confirmatory observation regarding his resignation from NTL.
- v) Since he had not attended any board meeting of NTL during his tenure of 4 months, by virtue of section 283(1)(g) of the Companies Act, 1956, his directorship with NTL stood automatically vacated.
- vi) His arrival in NTL was theoretical and incidental without any involvement in its affairs and without any intention to defraud any public investor in any way.
- vii) No salary or remuneration was paid to him by NTL during his tenure as a director.
- viii) During his tenure of directorship with NTL, he was not noticed of any board meeting by NTL. He also did not attend any board meeting of NTL nor did he sign any board resolution or any decision of NTL related to the matter of Non-Convertible Debentures (“NCDs”).
- ix) He had practically no involvement in the operational and financial matters of NTL and the whole NCD subject matter of NTL remained outside his knowledge.
- x) SEBI had issued the show cause notice in the matter on June 3, 2015. As on that date, section 74 of the Companies Act, 2013 had come into effect. In the aforesaid inspection report dated July 7, 2015, at observation no 13, the Regional Director has noted that NTL has already complied with section 74(1)(a) of the Companies Act, 2013 by filing the requisite documents and therefore, NTL had already availed the statutory deferment of default liability of NCD payment for 1 year. Thus, SEBI while passing an order could not withdraw the deferment allowed by the Companies Act, 2013 to apply as a lapse on Mr. Biswal. His directorship period with NTL was within this one year statutory deferment period and therefore, any default of liability of NCDs of NTL (whether principal or interest) could not apply to him as the NCD liability was *de facto* not due during the said period.

3. I have considered the reply/submissions of Mr. Biswal, the allegations against him in the *interim order cum show cause notice* dated June 3, 2015 and other material on record. The

question for consideration before me is whether in the facts and circumstances of the case, any directions need to be issued against Mr. Biswal and if so, what should be the nature of the directions.

4. In terms of the order of Hon'ble SAT, the order of SEBI dated June 2, 2016 has been quashed *qua* Mr. Biswal and SEBI has been directed to give a fresh decision on merits and in accordance with law. Hon'ble SAT in its order has observed that the decision of WTM of SEBI (contained in the order dated June 2, 2016) *qua* Mr. Biswal travels beyond the *show cause notice* and the *interim order*. In this regard, the following findings in the *interim order cum show cause notice* dated June 3, 2015 are relevant:

"6. Shri Nimain Charan Biswal, who was earlier a Director in NTL (appointed on November 7, 2013), has since resigned w.e.f. March 6, 2014. From the material available on record, it is noted that under the Offer of NCDs, NTL had made allotments to 341 individual/investors during the Financial Year 2013–14 i.e. between April 8, 2013 to August 22, 2013. It is also noted that NTL defaulted in payment of interest in respect of the aforesaid NCDs during the Directorship of Shri Biswal."

5. I note that in the *interim order* dated June 3, 2015, the main allegation levelled against NTL and other entities is that NTL had engaged in fund mobilizing activity from the public, through its offer and issue of NCDs and violated the provisions of sections 56, 60, 73 and 117C of the Companies Act, 1956 and the relevant provisions of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008. In this regard, I note from the record that Mr. Biswal was a director of NTL only for a period of approximately 4 months i.e. from November 7, 2013 to March 6, 2014. Further, it is also a matter of record that the allotment of NCDs by NTL was completed on August 22, 2013 i.e. before Mr. Biswal joined NTL as a director. In view thereof, I find that Mr. Biswal became a director of NTL after the offer, issue and allotment of NCDs by NTL was complete and therefore, he cannot be held responsible for violations of NTL regarding offer, issue and allotment of NCDs.
6. It is also alleged in the *interim order* that NTL defaulted in payment of interest in respect of NCDs during the directorship of Mr. Biswal, however, the corresponding provisions of law violated by NTL on account of such default in payment of interest have not been alleged in the *interim order*. It is noted that details / particulars regarding such default in payment of interest on NCDs have also not been brought out in the *interim order*. Thus, the charge against Mr. Biswal in the *interim order* is vague. Mr. Biswal in his reply/submissions has also submitted that he did not attend any board meeting

during his directorship tenure with NTL nor did he receive any notice regarding any board meeting from NTL. He also submitted that during his tenure with NTL, he was not a part of the decision making process related to the NCDs of NTL and did not sign any board resolution / decision relating to the matter of NCDs. In this regard, the documents on record do not show the contrary. It is also noted that NTL appointed Mr. Biswal in an executive capacity but there is nothing on record to suggest the extent of his involvement in the affairs of NTL. Considering the above, I give the benefit of doubt to Mr. Biswal with respect to the allegation regarding the default in payment of interest by NTL during his directorship with NTL.

7. In view of the submissions of Mr. Nimain Charan Biswal and the facts and circumstances of the case discussed hereinabove, I do not find the need to issue any directions against him in this matter.
8. These proceedings against Mr. Nimain Charan Biswal are disposed off accordingly.

Sd/-

DATE: September 7th, 2016

PLACE: MUMBAI

**RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**