WTM/MPB/ISD/ 114 /2017

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

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 Prakash Industries Limited (PAN: AABCP6765H)

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 Prakash Industries Limited (hereinafter referred to as **"PIL" / "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, National Stock Exchange of India Limited (hereinafter referred to as **"NSE"**) vide notice dated August 7, 2017 and Metropolitan Stock Exchange of India Limited (hereinafter referred to as **"MSE"**) vide notice dated August 07, 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. PIL vide its letter dated August 08, 2017 had made a representation to SEBI submitting *inter alia* as under:

   (a) As alleged Company is not a "shell company".

   (b) PIL is a profit making Company having an annual turnover of over Rs. 2400 crores and profit of Rs. 78 crores during last year (FY2016-17).

   (c) Company has over 52,000 shareholders and is actively traded at NSE and BSE with an average daily volume of over 2 Million shares.

   (d) Company has complied with all regulations and no authorities had issued any notices in this regard. No investor complaints were pending against Company. Company has never been indulged in any kind of malpractices in stock market.

   (e) Company had paid more than Rs. 675 Crores as Excise Duty and Income Tax in the last three years.

9. In the meantime, aggrieved by the aforesaid letters dated August 7, 2017 issued by SEBI and BSE, PIL filed an appeal No. 173 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**). The Hon'ble SAT vide order dated August 10, 2017 directed the following:-

   "……..

   16. *In the facts of these two appeals, we are prima facie of the opinion, that the impugned communication issued by SEBI on the basis that the appellants are 'suspected shell*

companies' deserves to be stayed. Accordingly while staying the communication of SEBI dated 07.08.2017, qua the two appellants, we direct BSE and NSE to forthwith reverse their decisions both dated 07.08.2017 in case of these two appellants.

17. *Stand over to September 04, 2017.*

……"

10. The Hon'ble SAT vide order dated August 11, 2017 disposed the appeal No. 173 of 2017 directing the following

"……..

2. *Counsel for the parties state that in view of the fact that SEBI/Stock Exchanges are considering the representation of the appellants against the ex-parte communication of SEBI dated 7/8/2017, both the appeals may be disposed of in terms of the order passed on 10/8/2017.*
3. *Accordingly, both the appeals are disposed of in terms of the order dated 10/8/2017 with no order as to costs.*
4. *It is made clear that in our order dated 10/8/2017 we have stayed only the direction contained in para 1(a) & (b) of the impugned communication dated 7/8/2017.*

……."

11. The Hon'ble SAT in the matter of *J. Kumar Infra Projects Limited vs. SEBI* as well as in the matter of *Prakash Industries Limited vs. SEBI* both 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.

Hearing and Reply:

12. 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 August 09, 2017 granted an opportunity of hearing to PIL on August 10, 2017. On August 10, 2017, Mr. Prakash Shah, Advocate, Prakash Shah & Associates, Mr. Karan Bagga, Executive Director of PIL and Mr. Rakesh Kumar, President of PIL, Authorized Representatives (hereinafter referred to as **"ARs"**) appeared for PIL and made oral submissions and submit the written submissions dated August 09, 2017 which are as under:

(a) Company has been regularly filing its Annual Report inter alia showing financial performance of Company. As per the extant regulations; the Company has submitted its quarterly results in compliance to listing requirements and the same was disseminated on the website of NSE & BSE.

(b) Company was incorporated in the year – 1980. Company came out with Public Issue in the year – 1981. Company is into manufacturing of Steel, Power and PVC Pipes. Company's manufacturing facilities are setup at Champa and Raipur in the state of Chhattisgarh for integrated Steel & Power and Kashipur in the state of Uttarakhand for PVC Pipes and fittings.

(c) The manufacturing capacity of plants are as under:

(i) Steel: 1 million tonne per annum.

(ii) PVC: 55,000 tonne per annum.

(iii) Captive power plant: 230 MW.

(d) Total number of employees are more than 5,000.

(e) Total revenue in the financial year 2016-17 Rs. 2,414.80 crores. Total Gross Assets as on 31.03.17 Rs. 3,093.39 crores. Paid up capital of the Company as on 31 March 2017 is Rs. 139.05 crores. The Market cap is around Rs. 2100 crores.

(f) Out of the total equity 57% is held by public which is widely distributed among 52,000 shareholders, which includes FII, MF, HNI's major investors are BNP Parribas, Rakesh Jhunjhunwala, Enam Group, Dolly Khanna amongst other.

(g) The Earning per share (EPS) of our Company is Rs. 5.97 per share. Total no of shares as on date is 14.95 crores.

(h) During the last three financial years i.e. 2016-17, 2015-16 and 2014-15 company has paid Excise Tax of Rs. 241.30 Crores, Rs. 227.91 Crores and Rs. 324.26 Crores respectively.

The company was advised to provide the information / response on the following queries:

(a) The Manufacturing capacity and net worth of the Company that has been represented to the Ministry of Finance / government at the time of each application of coal mine allocations (considered as reference periods).

(b) The Manufacturing capacity and net worth of the Company that has been represented to the Stock Exchanges across the years vide Annual Reports or any other relevant reporting requirements, during the reference periods.

(c) The Manufacturing capacity and net worth of the Company that has been represented to the Banks across the years, during the reference periods.

The above information can be provided in a table summarising the details with the supporting documents annexed therewith.

(d) Summary of any dealings of the Company with or through Mr. Pankaj Chaturvedi, who was a director in the Company, either directly or indirectly, at any time during, prior and post his period of directorship, and the nature and quantum thereof.

(e) Summary of any dealings of the Company with or through Asthabhuja Deal Trade Private Limited, either directly or indirectly, and the nature and quantum thereof

13. SEBI vide letter dated August 16, 2017 has advised PIL to furnish the aforesaid information by August 24, 2017.

14. PIL vide its letter dated August 18, 2017 submitted the information sought by SEBI at the time of hearing and vide letter dated August 16, 2017 which are as under:

(a) *Manufacturing Capacity: The details of the manufacturing capacities as appearing in the Coal Mine applications and Annual Reports for the said reference period are as below:*

Date of Coal Mine Application	***Name of Coal Block***	***End Use***	***Installed Capacity***			
			As per Application		***As per relevent Annual Report***	
			Unit	***Annexure***	***Unit***	***Annexure***
12/11/2001	*Chotia*	*Sponge Iron*	*4.00 LTPA*	*A*	*4.00 LTPA*	*B*
25/09/2004	*Madanpur*	*Same as above*	*4.00 LTPA*	*C*	*4.00 LTPA*	*D*
12/01/2007	*Fatehpur*	*Thermal Power*	*65 MW*	*E*	*500 mn power units*	*F*

Net Worth: It is pertinent to mention that in the Annual Report, the "Net worth" of the company is not required to be mentioned specifically. Further we state that only in application dated 12-01-2007, we were required to mention the Net Worth which was shown as Rs. 532.73 cores as on 31-03-2006. The aforesaid Net Worth was given from the relevant balance sheet, as under:

Share Capital	*Rs 109.10 crores*
Reserve and Surplus	*Rs 423.63 crores*
Net Worth	*Rs 532.73 crores*

(b) *On verification of the available records for the reference period, the disclosures that were made to the Stock exchanges pertains to outcome of the Board meetings, shareholders meetings, financials and other compliance requirements of the Listing Agreement. However, with regard to the disclosure of the manufacturing capacities, we could not presently find any such specific disclosure. We humbly state that the aforesaid information has been collated on perusal of the available records for a period which is quite old.*

(c) *During the reference period no new loan was applied /obtained by the Company from any Bank and as such, the information asked for under this point is not applicable.*

(d) *On verification of available records with us, we state as under:*

Shri Pankaj Chaturvedi (DIN: 00003278) was an Independent Director on the Board of Directors of the Company during the period from 28/05/2014 to 06/02/2016 (a copy of form DIR 12 of his appointment and resignation is attached). During the tenure of his directorship, he was paid Rs. One lakh Sixty Thousand only as the sitting fees for attending the Board Meetings.

Further, for sake of clarity we state that for financial year 2016-17, our company has appointed M/s Chaturvedi & Co., Chartered Accountants (LLP) as Statutory Auditors with effect from the date of AGM i.e. 29/09/2016, (AGM resolution is annexed) wherein Shri. Pankaj Chaturvedi is a partner. The first statutory audit concluded by this firm was last year i.e. FY 2016-17. The fee payable to Chaturvedi & Co. for this year is Rs. Forty Six lacs, out of which Rs. Twenty Eight lacs has been paid till date.

(e) *With regard to your query for our dealings with Astbhuja Dealtrade Pvt. Ltd, on verification of the available records. we find that the Company had no financial dealings/transactions of any nature with this entity*

15. On perusal of the Company's response dated August 18, 2017, SEBI vide email dated December 14, 2017 has advised PIL to furnish the following information:

(a) *Company has stated that while applying for coal mine on 12.1.2007, its installed capacity is 65MW, however, in its Annual report for FY 2005-2006, the capacity is mentioned as 500 mn power units.*

You are advised to explain the divergence in units of thermal power installed capacity while applying for coal mine and while disclosing in Annual report and why are the units used for capacities different.

How has the installed capacity moved from the application date i.e. 2007 till now year wise. Also explanation so as to what accounts for increase or decrease in the installed capacity.

(b) *Company has mentioned in its response to question 3 in the aforesaid response that "During the reference period no new loan was applied/obtained by the company from any bank and as such, the information asked for under this point is not applicable"*
However, company did not mention about its representation to the banks across years for loans which were taken before the reference period and were yet to be repaid or were repaid during the reference period. Company may submit the Manufacturing capacity and net worth represented to the banks for these loans ongoing during the reference period (i.e. taken before reference period and were yet to be repaid or repaid during the reference period).

(c) *In addition to its response to query number 4, Company may also confirm whether, apart from the amount mentioned in its response, it had no dealings with or through Mr. Pankaj Chaturvedi, either directly or indirectly, at any time (during, prior and post his period of directorship).*
If there is any dealing, company may specify the nature, date of such dealings and quantum and documentary evidence

16. PIL vide its letter dated December 15, 2017 submitted the information sought by SEBI vide email dated December 14, 2017 which are *inter alia* as under:

"……

(a) *With respect to point no.1, we hereby submit that the Installed capacity of Power plant was represented in the application for the coal mine in MW as required in the format of the application, whereas in the Annual Report, the Company has the option to mention the capacity either in MW or in Million units. In the Annual Report for FY 2005-06, the capacity is mentioned in Million units. Further, we would like to submit that 65 MW is equivalent to 500 million units at 90% PLF on 360 working days [(65 (MW) x 1000 (units) x 24(Hrs) x 360 (days) x 90% (Plant Load Factor)].*

Further, the details of the movement in the Installed Capacity of Thermal Power plant from 2007 till date is as tabulated hereunder:

Year of Installation	***Capacity added***	***Remarks***
2011-12	*75 MW*	*Installed 3 nos. of Turbine Generators of 25 MW capacity each.*
2012-13	*25 MW*	*Installed 1 no. Turbine Generators of 25 MW capacity*
Total Addition	*100 MW*	

As such, total Installed capacity of Thermal Power of the Company has increased from 65MW in FY 2007 to 165 MW as on date.

(b) *This is to clarify that all loans taken by the Company from the banks and outstanding at the beginning of the reference period have been fully repaid by FY 2010. We further submit that the copies of the applications submitted to the banks for these loans availed over 20 years back are not available with them as there was a fire incident in 2006 in our record room, wherein all records of prior period were destroyed, receipted copy of the intimation lodged with Police Station Champa is being enclosed.*

(c) *This is to confirm that the Company, apart from the amount mentioned in its response dated 8th August, 2017* (date is incorrectly mentioned), *had no dealing with or through Mr. Pankaj Chaturvedi, either directly or indirectly, at any time during, prior and post his period of directorship.*

……"

17. Pursuant to SEBI's letter dated August 9, 2017, NSE vide its letter dated September 01, 2017 submitted its report stating as under:

(a) Company is compliant with five clauses of Standard Operating Procedures under LODR Regulations.

(b) The Auditor certified that the company is a going concern and is engaged in the manufacturing of Steel and PVP pipes and generation of Power

(c) The Auditor certified that there are no outstanding overdue payable by the Company to any Bank / Financial Institution.

(d) The Auditor certified that there are no outstanding overdue payable by the Company to any Bank / Financial Institution.

(e) Number of shareholders are 48,467 as on June 30, 2017

NSE recommended that as per the compliance record and other details submitted by the company in SEBI prescribed format, Prakash Industries Limited may be allowed to be traded on NSE.

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, observations are as under:

(a) During the course of hearing and vide letter dated August 16, 2017, SEBI had advised PIL to submit the Manufacturing capacity and net worth of the Company that has been represented to the government at the time of each application of coal mine allocations. PIL vide letter dated August 18, 2017 had submitted the details of manufacturing capacities as mentioned in the Coal Mine Application and Annual reports. The same are mentioned at para 13(a) above. Further, Company stated that net worth of the Company was not required to be mentioned earlier. Therefore, only in application dated January 12, 2007 Company was required to mention net worth, which was shown as Rs 532.73 crores as on March 31, 2006. Company has also submitted the relevant documents showing the installed capacity of the coal blocks.

(b) With regard to the query of divergence in units of the installed capacity of thermal power plant in annual report and coal mine application, PIL vide letter dated December 15, 2017 had explained the conversion factor for conversion of Mega Watts (MW) to Million units including the plant load factor and also stated that for Annual Report it had option of mentioning either in MW or Million Units while in application for the coal mine, MW was required. Based on the calculations provided by the company with respect to the conversion

of units, the units provided by the company in Annual report and the coal mine application stand reconciled.

With regard to the query of change of PIL thermal power plant capacity from 2007 till December 2017, PIL vide letter dated December 15, 2017 submitted that its total installed capacity of Thermal Power has increased from 65MW in Financial Year 2007 to 165 MW as on December 15, 2017 (the details of same are mentioned at para 16(a) above).

(c) During the course of hearing and vide letter dated August 16, 2017, SEBI had advised PIL to submit the Manufacturing capacity and net worth of the Company that has been represented to the Banks across the years, during the reference periods. PIL vide letter dated August 18, 2017 stated that during the reference period no new loan was applied/obtained by the company from any bank, therefore, the said the information is not applicable. Further, PIL vide letter dated December 15, 2017 stated that all loans taken by the Company from the banks and outstanding at the beginning of the reference period were fully repaid by Financial Year (FY) 2010. PIL also stated that the copies of the applications submitted to the banks for the loans which were availed over 20 years back are not available with them as there was a fire incident in 2006 in their record room, wherein all records of prior period were destroyed. PIL submitted the copy of intimation lodged dated 31.10.2006 with Champa Police station.

(d) During the course of hearing and vide letter dated August 16, 2017, SEBI had advised PIL to submit the summary of any dealings of the Company with or through Mr. Pankaj Chaturvedi, who was a director in the Company, either directly or indirectly, at any time during, prior and post his period of directorship, and the nature and quantum thereof. PIL vide letter dated August 18, 2017 stated that Mr. Pankaj Chaturvedi was an independent director on board of directors of the company during the period May 28, 2014 to February 6, 2016. During the tenure of his directorship, he was paid Rs. 1,60,000/- only as the sitting fees for attending the board meetings. Further, for FY 2016-17, PIL had appointed Chaturvedi & Co., Chartered Accountants (LLP) as statutory auditors with effect from date of Annual General Meeting September 29, 2016, wherein Mr. Pankaj Chaturvedi is a

partner. The first statutory audit concluded by this firm was last year i.e. FY 2016-17. The fee payable to Chaturvedi & Co. for this year is Rs. 46 lakhs, out of which Rs. 28 lakhs has been paid till August 18, 2017. Further, PIL vide letter dated December 15, 2017 stated that apart from the amount mentioned in its response dated August 18, 2017, Company had no dealing with or through Mr. Pankaj Chaturvedi, either directly or indirectly, at any time during, prior and post his period of directorship.

(e) With regard to dealings of PIL with Asthabhuja Deal Trade Private Limited (ADTPL), the Company submitted that it had no financial dealings/transactions of any nature with ADTPL. Further, it is noted that directors of ADTPL and PIL are not same (neither current nor past directors). Also, the address of ADTPL and PIL is not same. Thus, based on information available on record, there does not appear to be any connection between PIL and ADTPL.

(f) From the information submitted by the Company to NSE, the number of employees and provident fund filing details are as under:

Financial Year	No. of employees under PF Act	PF amount (in Rs. Lakhs)
2014-15	2,771	1,285.56
2015-16	2,688	1,374.06
2016-17	2,868	1,519.94

21. In view of substantive documentation and explanations provided by PIL during the hearing and in its replies in respect of all the queries, I do not find any *prima facie* evidence nor suspicion of misrepresentation of financials/business of the company nor misuse of books of accounts / funds of the company nor violation of LODR Regulations.

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 absence of *prima facie* evidence / suspicion of misrepresentation of financials/business by the company, misuse of the books of accounts / funds of the company or violation of LODR Regulations, there is no reasonable ground to further verify the financials of the Company warranting an audit. I am, therefore, of the considered view that the actions envisaged in SEBI's letter dated August 7, 2017 against PIL are liable to be revoked.

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, revoke the actions envisaged in SEBI's letter dated August 07, 2017 and the consequential actions taken by Stock Exchanges against Prakash Industries Limited.

24. Accordingly the representation of PIL is disposed of.

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

26. 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: DECEMBER 22, 2017 **MADHABI PURI BUCH**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA