

PDL/SEC/ SE/2018-19/

January 5, 2019

National Stock Exchange of India Limited
"Exchange Plaza"
Bandra-Kurla Complex, Bandra (E),
Mumbai – 400 051

BSE Limited
Phiroze Jeejeebhoy Tower
Dalal Street,
Mumbai – 400 001

Dear Sirs,

Scrip Code No. : PARSVNATH – EQ (NSE); 532780 (BSE)

Sub: Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations")

Pursuant to the provisions of Regulation 30 of the Listing Regulations, please find attached a copy of the Order No. WTM/MPB/ISD/01/2019 dated January 4, 2019 passed by Whole Time Member of Securities and Exchange Board of India, which is self-explanatory.

This is for your information and record.

Thanking you,

Yours faithfully,
For Parsvnath Developers Limited


(Sanjeev Kumar Jain)
Managing Director & CEO



Enclosed : As above

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

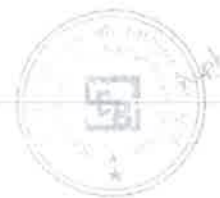
Sl. No.	NAME	PAN
1.	Parsvnath Developers Limited	AAACP0743J

In Re: SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015

Background of the case:

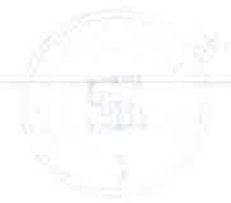
1. Securities and Exchange Board of India (hereinafter referred to as "SEBI"), in the interest of investors, vide its letter dated August 7, 2017 took the pre-emptive interim measures under section 11(1) of SEBI Act, 1992, in respect of certain listed companies identified as "shell companies" by the Ministry of Corporate Affairs (hereinafter referred to as "MCA") including M/s Parsvnath Developers Limited (hereinafter referred to as "PDL" / "Company" / "Noticee"). 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 of PDL 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 the company from the stock exchange, if warranted. By virtue of these measure, trading in scrip was not suspended but

Order in the matter of M/s Parsvnath Developers Limited



allowed under strict monitoring so that investors could take informed investment decisions, till SEBI and Exchanges complete their detailed examination of such companies.

2. Aggrieved by the aforesaid letter dated August 7, 2017 issued by SEBI and consequent actions of Stock Exchanges, PDL filed an appeal No. 175 of 2017 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"). The Hon'ble SAT vide order dated August 11, 2017 had stayed direction 1(a) & (b) contained in the impugned communication of SEBI dated August 07, 2017 qua the Notice and had noted that PDL had made representation to SEBI and directed SEBI to dispose of the representation made by PDL in accordance with law. Hon'ble SAT also held that its order dated August 11, 2017 shall not come in the way of SEBI as well as the stock exchanges to investigate the case of PDL and initiate proceedings if deemed fit.
3. 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, in the interest of natural justice, an opportunity of personal hearing was granted to PDL on January 17, 2018. The authorized representative of PDL had appeared for hearing and made submissions.
4. Thereafter, SEBI vide Interim Order dated August 08, 2018 (hereinafter referred to as "**Interim Order**"), had directed, against M/s Parsvnath Developers Limited that:
"25.
 - i. *Exchange shall appoint an independent forensic auditor inter alia to further verify:*
 - a. *Misrepresentation including of financials and/or business by PDL, if any, in the context of the transactions referred in paragraph 20 above including the role of KMPs, Directors and Promoters in those transactions;*
 - b. *Misuse of the books of accounts / funds including facilitation of accommodation entries or compromise of minority shareholder interest, if any, in the context of*



the transactions referred in paragraph 20 above including the role of KMPs, Directors and Promoters in those transactions.

- ii. *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 Parsvnath Developers Limited.....*

Observations in Interim Order:

5. The *prima facie* observations in the Interim Order were as under:

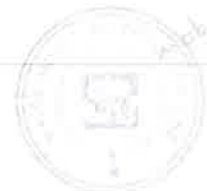
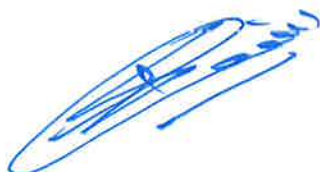
“

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

- (a) *PDL, in its reply, had submitted the amount of sub-contracts received and given by/from various entities alongwith profit made. With respect to (w.r.t.) details of Sub-contracts received and Sub-contracts given by PDL during the financial year (FY) 2009-10, 2010-11 and 2011-12, PDL vide its reply dated September 26, 2017 has submitted the bill amount for sub-contract received and sub-contract given and the profit earned.*

Further, during the course of hearing ARs of PDL was advised to submit the documentary evidence of actual work done like visit report of engineer, computation of cost, site photographs, travel expenses, actual working papers with respect to contracts / sub-contracts undertaken during the F.Y. 2009-10, 2010-11 and 2011-12 and transaction relating to PACL. In reply to it, PDL vide letter dated March 14, 2018 has submitted the invoices raised and received to/from the entities, ledger statements, agreements, for the contracts/sub-contracts undertaken during the F.Y. 2009-10, 2010-11 and 2011-12. Upon analysis of said documents following is noted:

- (i) *The total amount of contracts/sub-contracts undertaken by the company are tabulated below:-*



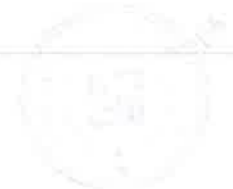
<i>Financial Year</i>	<i>Contract receipt amount</i>	<i>Contract given amount</i>	<i>Income</i>
2009-10	67,82,36,978	56,67,09,674	11,15,27,304
2010-11	19,89,96,060	17,82,17,740	2,07,78,320
2011-12	64,97,99,754	58,19,38,270	6,78,61,484
TOTAL	1,52,70,32,792	1,32,68,65,684	20,01,67,108

(ii) *On analysis of invoices, it is noted that PDL had purportedly inter alia undertaken following types of work on contract/sub-contract:*

- *Civil work of Dam*
- *Land Levelling*
- *Road construction*
- *Rock blasting, site clearing*
- *Excavation, laying of MM dia, MS pipes, Jointing of trenches and hydro testing*

(iii) *The agreements and invoices of the above contracts/sub-contracts undertaken by PDL with respect to land levelling specifies the names of the village without any reference to the identifiable land records (for e.g. khasra number/plot number, date of actual details of the commencement of work and completion of work etc.) except some kila numbers in one of the contract amounting to Rs. 6.75 crores received from AMR Construction Limited for 10.041 hectares in village Tikri Tehsil and district Gurgaon of Haryana which was further sub-contracted to Totem Infrastructure Limited for Rs. 5.62 crores in the F.Y. 2009-10.*

(iv) *Upon analysis of invoices on a sample basis, it is noted that the invoices raised on the clients (i.e. Advance Construction Limited, J Kumar Infraprojects Limited) was on the same date when the invoices were received from the sub-contractor (i.e. Totem Infrastructure Limited). Some of the instances are tabulated below:-*



<i>Invoices raised by PDL on client</i>			<i>Invoices received by PDL from Contracts / Sub-Contracts</i>		
<i>Invoice Date</i>	<i>Name of Entity</i>	<i>Amount of Invoices in Rs.</i>	<i>Invoice Date</i>	<i>Name of Entity</i>	<i>Amount of Invoices in Rs.</i>
22/07/2009	Advance Construction Ltd	1,17,50,000	22/07/2009	Totem Infrastructure Ltd	79,50,000
22/06/2009	J Kumar Infraprojects Ltd	98,49,000	22/06/2009	Totem Infrastructure Ltd	80,85,000
23/06/2009	J Kumar Infraprojects Ltd	1,03,85,000	23/06/2009	Totem Infrastructure Ltd	85,25,000
24/06/2009	J Kumar Infraprojects Ltd	1,19,26,000	24/06/2009	Totem Infrastructure Ltd	97,90,000
25/06/2009	J Kumar Infraprojects Ltd	83,08,000	25/06/2009	Totem Infrastructure Ltd	68,20,000
26/06/2009	J Kumar Infraprojects Ltd	76,48,050	26/06/2009	Totem Infrastructure Ltd	62,78,250
27/06/2009	J Kumar Infraprojects Ltd	60,30,000	27/06/2009	Totem Infrastructure Ltd	49,50,000

(v) It is also noted from the company's reply dated September 26, 2017 that the sub-contracts received by PDL from J. Kumar Infraprojects Ltd., Arch Infraprojects Nirman Pvt. Ltd. and NKG Infrastructure Ltd. during the FY 2009-10 where PACL was a Principal Client amounts to Rs. 26.96 crores. In this context it is to be noted that SEBI carried out investigation in the matter of PACL and during the course of investigation, it was found that PACL had mobilized funds from its customers to the tune of Rs.49,100 crores till June 15, 2014. Further, recovery proceedings and adjudication proceedings have been initiated against PACL and its directors.

It is noted that invoices are not supported by any work completion certificates, the date of invoices raised on the client by PDL and the date of invoices received from the sub-contractors were on the same date. With respect to the invoices & agreements of land levelling contracts/sub-contracts, there are insufficient details to identify the land for which sub-contract was taken/given i.e. khasru number/plot number, date of actual details of the commencement of work and completion of work etc. The fact that PDL was given a contract in respect of lands which could not be identified for performance of the contract shows that PDL was aware at the time of receiving and granting sub



contract, that the same cannot be executed. This is further corroborated by the fact that PDL did not produce any work completion certificate, workings of the company in estimating/accepting the value of the contract/sub-contracts, visit report of engineer, computation of cost, site photographs, travel expenses, actual working papers with respect to contracts/sub-contracts undertaken during the F.Y. 2009-10, 2010-11 and 2011-12. I also note from the submission of the Company that these transactions were undertaken by the Contract Team of the Company to meet their revenue target. The Company has also clearly implied that the sub-contracting was not monitored when it clarified that the senior management of the Company had decided to stop contracting such work since the Company wants to ensure that it is able to monitor and control execution and implementation of projects handled by it. PDL also clarified that the financial year 2012-13 as a matter of policy, the Company has completely stopped carrying out such transactions. The fact that such contracts whose subject matter cannot be identified for execution were knowingly entered into by the Company raises the prima facie suspicion that the company has entered into such contracts for raising its revenue figures in order to misrepresent its financials and misuse of its books of accounts for the benefits of others.

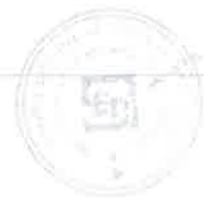
- (b) *PDL, in its reply dated September 26, 2017, had submitted that they did not go into the minute details of the contracts since it was sub-contracted to other parties. PDL also submitted that they have not received the work completion certificates from their sub-contractors.*

Para 21 of Accounting Standard 9 – Construction contracts for Recognition of Contract Revenue and Expenses, states that “When the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date. An expected loss on the construction contract should be recognised as an expense immediately in accordance with paragraph 35.” Further as per para 2 of Guidance Note on Turnover in case of Contractors, the recognition of revenue is



attributed to the proportion of work completed (referred to as percentage of completion method). The revenue from contracts are recognized as revenue in the statement of profit and loss in the accounting period in which the work is performed. The income and the expense of the contracts/sub-contracts are recognized on the basis of percentage of completion method. As stated in the previous paragraph the Company has entered into sub contracts the subject matter of which was not identifiable for execution of the contract. Consistent with this, the Company in its reply dated September 26, 2017 had submitted that they neither received work completion certificate from their sub-contractors nor they issued such certificates to their clients. In the absence of work completion certificates or percentage of completion of sub-contracts and non-identifiable nature of the subject matter of contract for execution, it raises a prima facie suspicion on how such income can be recognized in the books of accounts of PDL. However, it is observed that PDL booked income on such contracts in the F.Y. 2009-10, 2010-11 and 2011-12. Thus there arises a prima facie suspicion that its books of accounts were misused to show revenues from contracts with entities when no such contracts are prima facie intended for execution. Even if there is flow of funds, the prima facie fact that the contract was intended to be for non-execution, it shows that the books of accounts have been misused to reflect the flow of funds in order to create an appearance of revenue creation, while no such revenue could have been created for a work not intended to be done. Therefore, it raises a strong suspicion that the company prima facie, has created entries of revenue in respect of the contracts, for illegal consideration, in the books of the Company thereby also misrepresenting its financials.

- (c) In response to the query raised” If there are multiple layers of sub-contracting, then details of all the layers”, the company in its reply dated August 24, 2017 submitted that “the company has also secured few construction contracts from various Government and other entities, out of which, some have been executed through sub-contractors. However, there are no multiple layers of sub-contracting.” However, company vide its letter dated September 26, 2017 submitted that “sub-contract



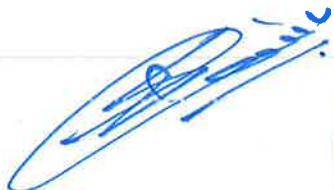
received from M/s J. Kumar Infraprojects Ltd., Arch Infraprojects Nirman Pvt. Ltd. and NKG Infrastructure Ltd., the name of PACL was mentioned as Principal Client.”

Thus, the information (with respect to multiple layers of sub-contracting) submitted by the company vide its letters dated August 24, 2017 and dated September 26, 2017 are contradictory. This constitutes a false submission to SEBI by the company either vide letter dated August 24, 2017 or vide letter dated September 26, 2017. Further, company had not submitted the details of multiple layers along with the respective role of the company and its sub-contractors.

(d) From the information submitted by the company w.r.t details of sub-contracts received and given w.r.t to the concerned entities mentioned in the SEBI's letter dated September 4, 2017, following is observed:

- (i) For FY 2009-10, all the 10 sub-contracts were given by the company to Totem Infrastructure Ltd. for Rs.56.67 crores.
- (ii) For FY 2010-11, all the 5 sub-contracts were received by the company from Totem Infrastructure Ltd. for Rs.19.89 crores
- (iii) For FY 2011-12, all 3 subcontracts were given by the company to Simplex Housing Development Pvt. Ltd. for Rs.58.19 crores.

(e) I note that company vide letter dated March 14, 2018 had submitted copy of its Annual Reports for last three years for F.Y. 2014-15, 2015-16 and 2016-17, presentation about the company overview, management, milestones, facts about the company etc, information / details of completion of various projects under the sphere of Real Estate and Construction and undertaking of Managing Director and CEO of the Company stating that since F.Y. 2012-13 as a matter of policy, the Company has completely stopped carrying out such transactions i.e. business of contracting and sub-contracting. However, I note that the present enquiry is restricted only to contracts/sub-contracts under taken by PDL during the period 2009-10, 2010-11 and 2011-12.



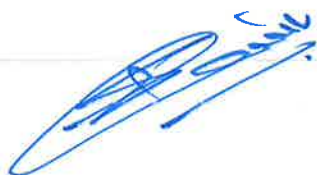
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6. Vide said interim order, SEBI had advised PDL to file its reply/objections to the said interim order within 30 days from the date of receipt of the said interim order and also to indicate in its reply whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard, if any. The said interim order also mentioned that if PDL had failed to file the reply or request for an opportunity of personal hearing within the said 30 days, the preliminary findings of the said interim order and ad-interim directions shall stand confirmed against PDL automatically, without any further orders.
 7. Vide email dated August 08, 2018 the copy of interim order was forwarded to PDL. Vide letter dated August 09, 2018, the copy of interim order was also sent to PDL at "*Parsvnath Developers Limited, 6th Floor, Arunachal Building, 19, Barakhamba Road, New Delhi - 110001*" through Speed Post and the same was delivered.

Reply to Interim Order:

8. PDL vide letter dated September 06, 2018 had acknowledged the receipt of interim order and requested for an opportunity of personal hearing and *inter alia* made following submissions:

".....

- (a) *It is humbly submitted that while there is no hesitation to undergo any scrutiny, and particularly when we have consistently maintained that there is no wrongdoing on our part, such an order, which is based on prima facie observations and prima facie material only, is in fact detrimental to the interests of Company and its stakeholders including shareholders and small investors.*
- (b) *It is humbly submitted that the prima facie observations made in the Interim Order need to be reconsidered in the view of the submissions herein below.*
- (c) *In the Interim Order, it has been observed that the total income from the contracts/sub contracts for the financial years 2009-10, 2010-11 and 2011-12 is INR 11,15,27,304/-, INR 2,07,78,320/-, INR 6,78,61,484/- respectively. The entire Interim Order is based on doubts regarding genuineness of these transactions. However, while considering the*



same, it should also have to be kept in mind that the contracting and sub-contracting of these transactions by the Company only accounted for 4.14%, 1.16% and 1.80% of the EBIDTA of the Company for the financial years 2009-10, 2010-11 and 2011-12 respectively.

- (d) Therefore, we submit with all respect, that even assuming but not admitting that there were accommodation entries, then also it would be incorrect to say that there was any material misrepresentation of accounts, which can be said to be detrimental to the interest of any minority shareholders or any other stakeholders.
- (e) Further, in the Interim Order it has been stated that the Company was aware at the time of receiving and granting sub-contracts, that the same cannot be executed. It is submitted that receiving such contracts and subcontracting to other entities in the construction industry is a market norm. For inferring awareness, one would need a lot more evidence, and a forensic accounting audit cannot bring this out. There are no malafides involved in such sub-contracting of works and the Company has only acted as per industry norms. As stated in previous representations, primarily, these transactions were undertaken by the Contract Team of the Company to meet their revenue targets. However, when it came to the knowledge of senior management and it was realized that the Company would not be able to monitor and control execution and implementation of such projects, it immediately stopped undertaking such assignments.
- (f) In fact, in the undertaking submitted to SEBI on 14th March, 2018, it was specifically stated that since Financial Year 2012-13, as a matter of policy, the Company had completely stopped carrying out such Projects. Therefore, it is incorrect to suggest that the Company was aware at the time of receiving and granting sub-contracts, that the same cannot be executed, otherwise, there was no reason for the Company to take such a decision to stop undertaking such contracts. Further, as stated above, since these were not very huge or material contracts, the senior management was not involved. Therefore, no malafides could be attached to senior management especially Key Managerial Persons of the Company.
- (g) The Company had also given an undertaking that it is ready to submit a report of Statutory Auditors of the Company to this effect, if directed. Therefore, the purpose of appointment of forensic auditor can also be achieved by a report of Statutory Auditor. Thus it is humbly submitted that that the direction of appointment of forensic auditor may kindly be dispensed with. We are taking care to ensure that the regulatory objective of SEBI is protected and yet, given the minuscule nature of what is suspected, the same objective can be achieved without calling for a "forensic audit" which has serious connotations and gives a wrong impression to investors.



- (h) Further, it is submitted that the Company did not submit any contradictory information vide letters dated 24th August, 2017 and 26th September 2017. It is submitted that on the first occasions while responding to the query of SEBI in the letter dated 16th August, 2017, the officers of the Company failed to understand the exact nature of query and information sought. However, when exact information was sought by SEBI, the Company forthwith provided the same. There were no malafides while responding to any queries/information sought by SEBI.
- (i) It is submitted that several documents as mentioned in the order could not be provided because the information sought was more than 6 to 9 years old. There is a high possibility that such old documents have been discarded/destroyed by the Company, being old and also it would be very difficult to trace these documents due to change in heads of departments as a result of lapse of substantial time. Therefore, taking adverse inference of such non-availability of documents while passing the Interim Order is severely prejudicing the interest of the Company and its stakeholders.
- (j) Also, it is submitted that for the purpose of Interim Order, reliance ought to have been placed on NSE's report dated 12th September, 2017, wherein it has recommended that as per compliance record and other details the Company's share should be allowed to be traded on NSE.
- (k) Lastly, it is also submitted that even though the entire process of investigation was initiated based on the list of companies, which Ministry of Corporate Affairs ("MCA") had identified as suspected Shell Companies, however, in Para 20(e) of Interim Order, it has been recorded that the present enquiry is restricted only to contracts/sub contracts undertaken by the Company during the period 2009-10, 2010-11 and 2011-12. It is our humble submission that such an action of the part of SEBI may not be appropriate and the Company reserves its right to object to the same at an appropriate stage.
- (l) It is submitted that the Company always believed that the present investigation is in pursuance of the original letter dated 7th August, 2017, and always made detailed representations so as to prove that it is not a 'Shell Company'. As and when information was sought by SEBI, the Company provided the same. It is only on 4th September, 2017, SEBI sought specific information relating to contracts/sub contracts undertaken by the Company during the period 2009-10, 2010-11 and 2011-12.
- (m) Thereafter, during the personal hearing, when submission were made regarding our credentials as our company did not fall under the purview of 'Shell Company', the representatives of Company were asked to provide specific information regarding the aforesaid transactions only. Therefore, it is assumed that SEBI is satisfied with the fact



that the Company is not a Shell Company and the Company's name has incorrectly been included in the list of suspected Shell Companies by MCA.

(n) In view of the submission made herein above, it is humbly prayed that:

(i) Direction for appointment of Forensic Auditor may be dropped and the Company may be permitted to cause an audit by the Statutory Auditor in lieu of appointment of Forensic Auditor; and

(ii) No further orders be passed until the final investigation/inquiry is concluded by SEBI.

(iii) We be granted an opportunity to explain our case in person.

.....”

Hearing:

9. In the interest of natural justice, SEBI vide communication dated October 03, 2018 granted PDL an opportunity of personal hearing on November 20, 2018 at Head Office, Mumbai. On November 20, 2018, Mr. Somasekhar Sundaresan, Advocate, Mr. Vijay Nair, Advocate, Mr. Pradeep Jain, Chairman of PDL, Mr. V Mohan, Company secretary & Compliance Officer of PDL, Authorized Representatives (hereinafter referred to as “ARs”) on behalf of PDL had appeared for hearing and made oral submissions which are as under:

“.....

(a) ARs reiterate the submission made by PDL dated September 06, 2018.

(b) In financial years 2009-10, 2010 -11 and 2011 – 12, we are in line of business of third party contracts/sub-contract in construction industry. The suspected contract/subcontracts were miniscule component. This line of business was stopped in year 2012, therefore the scope of abuse of similar nature, however miniscule it is, does not appear today.

(c) SEBI vide order dated August 08, 2018 had given the direction for the appointment of forensic auditor. In response to this, it is submitted that company is ready to submit a report of statutory auditor / internal auditor of the company to this effect, if directed. Therefore, the purpose of appointment of forensic auditor can also be achieved by a report of statutory auditor. Thus, the regulatory objective of SEBI can be achieved without calling for a forensic audit which has serious connotations and gives wrong



impression to investors. Thus, it is submitted that the direction of appointment of forensic auditor may kindly be dispensed with.

ARs, have no further submission to make in the matter. Accordingly, hearing in respect of Parsvnath Developers Limited is concluded.....”

Consideration and Findings:

10. In light of the observations of the interim order and submission made by PDL, the following issue arises for consideration:

Issue: Whether in light of the facts and circumstances of the case, the findings of the interim order and the submissions of the company in response thereto, the directions issued in the Interim Order need to be continued, revoked or modified in any manner?

11. Considering the above mentioned facts and circumstances and reply of PDL to the findings of the interim order, I observe the following:

(a) At paragraph 20(a) in the interim order, with respect to details of Sub-contracts received and Sub-contracts given by PDL during the financial year (FY) 2009-10, 2010-11 and 2011-12, it was noted that invoices are not supported by any work completion certificates, the date of invoices raised on the client by PDL and the date of invoices received from the sub-contractors were on the same date. With respect to the invoices & agreements of land levelling contracts/sub-contracts, there are insufficient details to identify the land for which sub-contract was taken/given i.e. khasra number/plot number, date of actual details of the commencement of work and completion of work etc.

In response to the above PDL stated that “.....*The entire Interim Order is based on doubts regarding genuineness of these transactions. However, while considering the same, it should also have to be kept in mind that the contracting and sub-contracting of these transactions by the Company only accounted for 4.14%, 1.16% and 1.80% of the EBIDTA of the Company for the financial years 2009-10, 2010-11 and 2011-12 respectively.*



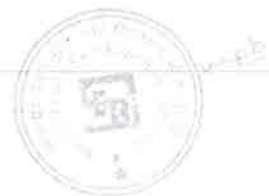
Therefore, we submit with all respect, that even assuming but not admitting that there were accommodation entries, then also it would be incorrect to say that there was any material misrepresentation of accounts, which can be said to be detrimental to the interest of any minority shareholders or any other stakeholders....

I am of the view that the concept of materiality does not apply to the intentional misrepresentation of accounts. Wherever it is applicable, it applies to the case of disclosures. In other words, materiality principle suggests whether a transaction/item needs to be disclosed on the basis of materiality. It does not apply to positive misrepresentation of figures. If the principle of materiality is applied to such misrepresentation, this would tantamount to legitimizing the misrepresentation if the same is on a small scale. Needless to say, this goes against the very spirit of investor protection who are entitled to protection from misrepresented financial figures howsoever small the impact of the same may be.

Without prejudice to the above, even assuming that the principle of materiality is applicable as argued by the Noticee, I note that the contribution to the total revenue of PDL from the total revenue of contracts/sub-contracts was approximately 7%, 2% and 7% for the financial years 2009-10, 2010-11, 2011-12 respectively which cannot be considered as immaterial.

It is noted that PDL has not submitted any plausible explanation for the observation made in the interim order and also not provided any documents to rebut the doubts on the genuineness of the transactions. Thus, in the absence of any documentary evidence, I do not find any merit in the said submission of PDL. Therefore, I find that there is no evidence on this point to contradict the prima facie findings.

- (b) At paragraph 20(a) in the interim order it was noted that PDL was given a contract in respect of lands which could not be identified for performance of the contract shows that



PDL was aware at the time of receiving and granting sub contract, that the same cannot be executed.

In response to the above PDL stated that “.....It is submitted that receiving such contracts and subcontracting to other entities in the construction industry is a market norm. For inferring awareness, one would need a lot more evidence, and a forensic accounting audit cannot bring this out. There are no malafides involved in such sub-contracting of works and the Company has only acted as per industry norms. As stated in previous representations, primarily, these transactions were undertaken by the Contract Team of the Company to meet their revenue targets. However, when it came to the knowledge of senior management and it was realized that the Company would not be able to monitor and control execution and implementation of such projects, it immediately stopped undertaking such assignments. In fact, in the undertaking submitted to SEBI on 14th March, 2018, it was specifically stated that since Financial Year 2012-13, as a matter of policy, the Company had completely stopped carrying out such Projects. Therefore, it is incorrect to suggest that the Company was aware at the time of receiving and granting sub-contracts, that the same cannot be executed, otherwise, there was no reason for the Company to take such a decision to stop undertaking such contracts. Further, as stated above, since these were not very huge or material contracts, the senior management was not involved. Therefore, no malafides could be attached to senior management especially Key Managerial Persons of the Company....”

It is noted that PDL has not submitted any new explanation to the observation made in the interim order and also not provided any documents to substantiate its contention regarding industry norm. In the absence of any documentary evidence, I do not find any merit in the said submission of PDL. Therefore, I find that there is no evidence on this point to contradict the prima facie findings. Thus, in my view forensic audit is required to establish/verify the facts.

- (c) At paragraph 20(c) in the interim order, it was noted that PDL has made a false submission to SEBI by the company either vide letter dated August 24, 2017 or vide letter dated



September 26, 2017 and PDL had not submitted the details of multiple layers along with the respective role of the company and its sub-contractors.

In response to the above PDL stated that ".....it is submitted that the Company did not submit any contradictory information vide letters dated 24th August, 2017 and 26th September 2017. It is submitted that on the first occasions while responding to the query of SEBI in the letter dated 16th August, 2017, the officers of the Company failed to understand the exact nature of query and information sought. However, when exact information was sought by SEBI, the Company forthwith provided the same. There were no malafides while responding to any queries/information sought by SEBI.

With respect to the explanation given by PDL regarding false submissions made to SEBI, I find merit in the said explanation. However, I note that PDL once again has not submitted the details of multiple layers along with the respective role of the company and its sub-contractors.

(d) With respect to the observation made out at paragraph 20(b) and 20(d) of Interim order, PDL has not submitted any reply / explanation or documents. Therefore, in the absence of any explanation / documentary evidence, I find that there is no evidence on this point to contradict the said prima facie findings.

(e) In reply to the interim order, PDL further submitted that ".....several documents as mentioned in the order could not be provided because the information sought was more than 6 to 9 years old. There is a high possibility that such old documents have been discarded/destroyed by the Company, being old and also it would be very difficult to trace these documents due to change in heads of departments as a result of lapse of substantial time. Therefore, taking adverse inference of such non-availability of documents while passing the Interim Order is severely prejudicing the interest of the Company and its stakeholders....."



It is noted that as per Section 209 (4A) of the Companies Act, 1956: *"The books of account of every company relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books of account shall be preserved in good order; Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year together with the vouchers relevant to any entry in such books of account shall be so preserved"* and now, as per Sec 128(5)(a) of the Companies Act, 2013: *"The books of account of every company relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books of account shall be preserved in good order."*

I am of the view that not maintaining the information/documents in terms of stipulated timelines, did not appear to be in line with provisions of Section 209 (4A) of the Companies Act, 1956 and now as per Section 128(5)(a) of the Companies Act, 2013. Thus, PDL by not preserving the information/documents for a period of 8 years are appear to be in non-compliance of aforesaid provisions of Companies Act, 1956 and Companies Act 2013.

Hence, PDL has not submitted any plausible explanation and also not provided any documents to substantiate its contention. In the absence of any documentary evidence, I do not find any merit in the said submission of PDL. Therefore, I find that there is no evidence on this point to contradict the prima facie findings. Thus, in my view forensic audit is required to establish/verify the facts/observations made in the interim order.

- (f) In response to the SEBI's direction of forensic audit of PDL ordered vide interim order, PDL stated that *".....The Company had also given an undertaking that it is ready to submit a report of Statutory Auditors of the Company to this effect, if directed. Therefore, the purpose of appointment of forensic auditor can also be achieved by a report of Statutory Auditor. Thus it is humbly submitted that that the direction of appointment of forensic auditor may kindly be dispensed with. We are taking care to ensure that the regulatory objective of SEBI is protected and yet, given the minuscule nature of what is suspected, the*



same objective can be achieved without calling for a "forensic audit" which has serious connotations and gives a wrong impression to investors...."

I am of the view that Statutory Audit is an audit which is done for compliance with a statute or an Act, for example, Companies Act requires an audit of all companies. Statutory audit is done with the objective as to whether the accounts are prepared in compliance with the applicable laws and to represent a true and fair view/presentation along with a duty to disclose fraud. It is pertinent to note that the skill sets of the forensic auditor is very different and specialized such as investigative, tracing of transactions and data analytical skills to note a few. Such specialized skills are pre-requisite for accomplishing the purpose of directions mentioned in the interim order.

I note that, in the present case, vide interim order, the direction of forensic audit of PDL was ordered to verify misrepresentation including of financials and/or business by PDL and misuse of the books of accounts / funds including facilitation of accommodation entries or compromise of minority shareholder in the context of the transactions referred in paragraph 20 of interim order including the role of KMPs, Directors and Promoters in those transactions. I am of the view that the said directions are for the purpose of fact finding and the same may require physical access to premises of third parties and information from third parties other than the Noticee, which can only be achieved through forensic auditor empowered in this behalf and the same cannot be achieved by a statutory auditor in this case. Hence, I am unable to accede the said request of the Noticee.

(g) PDL vide letter dated September 06, 2018 stated that "*... ..Lastly, it is also submitted that even though the entire process of investigation was initiated based on the list of companies, which Ministry of Corporate Affairs ("MCA") had identified as suspected Shell Companies, however, in Para 20(e) of Interim Order, it has been recorded that the present enquiry is restricted only to contracts/sub contracts undertaken by the Company during the period 2009-10, 2010-11 and 2011-12. It is our humble submission that such an action of the part of SEBI may not be appropriate and the Company reserves it right to object to the same at an appropriate stage.*



It is submitted that the Company always believed that the present investigation is in pursuance of the original letter dated 7th August, 2017, and always made detailed representations so as to prove that it is not a 'Shell Company'. As and when information was sought by SEBI, the Company provided the same. It is only on 4th September, 2017, SEBI sought specific information relating to contracts/sub contracts undertaken by the Company during the period 2009-10, 2010-11 and 2011-12.

Thereafter, during the personal hearing, when submission were made regarding our credentials as our company did not fall under the purview of 'Shell Company', the representatives of Company were asked to provide specific information regarding the aforesaid transactions only. Therefore, it is assumed that SEBI is satisfied with the fact that the Company is not a Shell Company and the Company's name has incorrectly been included in the list of suspected Shell Companies by MCA.....".

In this regard, it is observed that that a Government Agency categorizing a company as a Shell Company was a trigger for SEBI that these companies may possibly have misrepresented their financials or misused their books of accounts and thereby may have violated the securities laws. The same was also explained to the Authorized Representatives of PDL during the course of hearing held on December 19, 2017.

Further, I note that interim order dated August 08, 2018 was passed on the basis of *prima facie* findings/suspicion arising out of SEBI's independent enquiry based on the PDL's own Annual Reports and written submissions/replies, for which PDL was given an opportunity of hearing on November 20, 2018 and to submit its reply and explain its case. Thus, it is noted that SEBI is not identifying/determining that the company is a shell company or not, whereas SEBI is looking into the possible violation of securities laws by such company.

12. In view of the above, I note that PDL, at this stage, has failed to submit any documentary evidence in support of its claims and has also failed to give a plausible reason/explanation



alongwith documentary evidences for the charges /allegations / prima facie findings as described in the interim order.

13. Therefore, in order to protect the interest of investors, based on the *prima facie* findings brought out in the interim order, I note that the entire extent of violations can be unearthed only by means of forensic audit. In view of the above, I find that the facts and circumstances of the case as brought out in the Interim Order have not changed, justifying the dis-continuation or modification or revocation of the directions passed in the Interim Order.

ORDER

14. In view of the foregoing, I, in exercise of the power 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 confirm the directions issued vide Interim Order dated August 08, 2018.

15. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories 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.

DATE: JANUARY 04, 2019

PLACE: MUMBAI



Madhabi Puri Buch
MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

