

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4) and 11B of Securities and Exchange Board of India Act, 1992 in respect of Interim Order cum show cause notice dated March 27, 2015 in the matter of ERIL Mutual Benefit India Limited.

In respect of:

SR. NO.	NOTICEES	PAN	CIN / DIN
COMPANY			
1.	ERIL Mutual Benefit India Limited	AADCE3304M	U65991JH2013PLC001114
PROMOTER(S) / DIRECTOR(S)			
2.	Biplab Kumar Dey	AHXPDP7948N	02550446
3.	Juthika Ghosh	-	02888132
4.	Chandan Sinha Roy	AJGPR9741N	03459797

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') passed an interim order- cum-show cause notice dated March 27, 2015 ("interim order") against the noticees i.e. ERIL Mutual Benefit India Limited ("ERIL" or "the company" in short) and its promoters / directors, namely Shri Biplab Kumar Dey, Ms. Juthika Ghosh and Shri Chandan Sinha Roy, wherein it was prima facie concluded that ERIL had made a public offer and allotment of equity shares in contravention of the first proviso to section 67(3) of the Companies Act, 1956 (the Companies Act) and without having complied with the provisions of Sections 73, 60 and 56 of the Companies Act and Regulations 4(2)(d), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the SEBI (Issue of Capital and Disclosure Requirements), Regulations, 2009 (ICDR Regulations). Accordingly, the noticees, vide the abovementioned interim order cum show cause notice, were directed:

- (a) not to mobilize funds through the issue of equity shares or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
- (b) not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further directions,
- (c) not to dispose of any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets;
- (d) not to divert any funds raised from public at large through the issuance of the impugned equity shares, kept in its bank accounts and/or in the custody of the company without prior permission of SEBI until further orders;
- (e) not to access the securities market and not to buy, sell or otherwise deal in securities in any manner whatsoever, either directly or indirectly, till further directions;
- (f) to co-operate with SEBI and to furnish documents, as sought vide SEBI letter dated November 24, 2014; and
- (g) to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

2. The interim order came into force with immediate effect. The noticees, vide the interim order, were also advised to show cause as to why suitable directions/prohibitions, under the sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the ICDR Regulations, including the following, should not be taken/imposed against them:

- (a) directing them jointly and severally to refund the money collected through the issue of equity shares, as alleged in the interim order, along with interest at 15% per annum from the date when the refunds became due to the investors till the date of repayment ;
- (b) directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;

- (c) directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;
 - (d) directing them and other companies in which the directors hold substantial or controlling interest, not to access the capital market for an appropriate period.
3. Prior to the passing of interim order, SEBI had sent letters to the noticees, seeking information regarding mobilization of funds from public, all of which returned undelivered. Since no information was received from the noticees, information was obtained from MCA21 portal. As per the information contained in Form-2 filed by the company with Registrar of Companies (RoC) which is available on MCA21 portal, ERIL has allotted a total of 519 equity shares of Rs.100 each to 519 persons on 30/06/2013 (hereinafter referred to as “*the offer and allotment of equity shares*”).
4. The interim order was served on ERIL and Shri Chandan Sinha Roy by affixing a copy of the interim order at their respective last known addresses. The service of interim order on Ms. Juthika Ghosh and Shri Biplab Kumar Dey was done by way of newspaper publication on September 08, 2016 in Times of India (English, Kolkata Edition) and Anandbazar Patrika (Bengali, Kolkata Edition). However, none of the noticees has filed any reply / submission to SEBI in this regard. An opportunity of personal hearing was granted to the noticees on June 16, 2017. Notice of hearing was served on ERIL and Shri Chandan Sinha Roy by affixture and on Shri Biplab Kumar Dey by hand delivery. The notice was sent to Ms. Juthika Ghosh by SPAD which returned undelivered. None of the noticees appeared at the personal hearing scheduled on June 16, 2017. I find that all the noticees, except Ms. Juthika Ghosh, have been served with the interim order and the notice of hearing but have failed to respond to the same. Further, in case of Ms. Juthika Ghosh, even though the notice of hearing has returned undelivered, she has been served with interim order but she has failed to reply or respond in any manner. In view of these facts and circumstances, I find that sufficient opportunities have been provided to each of the noticees to respond to the interim order and rebut the *prima facie* findings of the interim order. However, the noticees have failed to avail themselves of such opportunities, and thus, I deem it appropriate to decide the matter *ex-parte* on the basis of material available on record.

5. It is noted from the copy of Memorandum of Association (MoA) of ERIL, as obtained from MCA21 portal, that the company has mentioned the following as its main objects to be pursued on its incorporation:

“1. To encourage and afford all facilities for cultivating thrift, saving habits and to render all financial assistance to its members only by receiving long and short term deposits and in particular recurring, fixed and other deposits, not being current account from the members as are allowed by law for Nidhi or Mutual Benefit Companies. The company shall also not carry on chit fund business, insurance business, hire purchase finance business and business of trading in shares and securities.

2. To lend, grant loans to the shareholders or members only as against securities of immovable properties, and/ or on the security of deposits, movables such as gold, silver, jewellery, Kisan Vikas Patra, National Saving Certificates Scheme, insurance policies and other government securities up on such terms and conditions as may from time to time prescribed in law for Nidhi or Mutual Benefit Companies.”

6. From the above, it is apparent that the company was incorporated with the main object of operating as a *Nidhi or Mutual Benefit Company*. From the information available on MCA21 portal, it is observed that ERIL was incorporated on April 05, 2013. I note that Section 620A of the Companies Act, 1956, as prevailing at the relevant time, provided the following in respect of a Nidhi or Mutual Benefit Society:

620A. POWER TO MODIFY ACT IN ITS APPLICATION TO NIDHIS, ETC

(1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification -

(a) shall not apply to any Nidhi or Mutual Benefit Society ; or (b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3)

7. It is observed that Section 620A of the Companies Act, 1956 provided for granting certain exemptions from the provisions of the said Act to a company, declared as a Nidhi or Mutual Benefit Society by the Central Government. Further, under the Companies Act, 2013 (new Companies Act), Section 406 (which corresponds to Section 620A of the previous Act), provides the following:

406. Power to modify Act in its application to Nidhis.— (1) *In this section, “Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.*

(2) *Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any Nidhi or Nidhis of any class or description as may be specified in that notification.*

(3)

8. I further note that the Central Government, vide Notification No. GSR 258(E) dated 31-03-2014 has notified Nidhi Rules, 2014 with effect from April 01, 2014. Rule 2 of the Nidhi Rules provide the following:

2. Application.—*These rules shall apply to,—*

(a) *every company which had been declared as a Nidhi or Mutual Benefit Society under sub-section (1) of Section 620A of the Companies Act, 1956;*

(b) *every company functioning on the lines of a Nidhi company or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under sub-Section (1) of Section 620A of the Companies Act, 1956; and*

(c) *every company incorporated as a Nidhi pursuant to the provisions of Section 406 of the Act.*

9. From a reading of the above provisions as provided under the old and new Companies Act, it emerges that a Nidhi is a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit. It further emerges that after coming into effect of Section 406 of the Companies Act, 2013 and Nidhi Rules, 2014, for a company to qualify as a Nidhi, there is no requirement of declaration by the Central Government and mere functioning on the lines of a Mutual Benefit Society would suffice for the said purpose.
10. I note that as per the provisions of Nidhi Rules, 2014, which has come into effect on April 01, 2014, every Nidhi has to ensure that it has not less than two hundred members. I also note that even under the previous Companies Act, 1956, for a company to be declared as a Nidhi or Mutual Benefit Society under Section 620A, the company had to submit Form 63 which provided that the company should have not less than 500 members. Thus, it emerges that a company, in order to even be eligible for being declared as a Nidhi Company under Section 620A of the old Act, had to have a membership of not less than 500. It is observed that membership of a Nidhi company is granted by way of issuance of equity shares to the applicant. In such a scenario, the issue which arises for consideration is whether the issuance of equity shares by a company incorporated / functioning as a Nidhi, can be treated as a deemed public issue for the purposes of section 67(3) of the Companies Act, 1956 read with ICDR Regulations.
11. I note that vide Notification No. F. No. 2/11/2014-CL.V, dated 5-6-2015, the Central Government has *inter alia* provided that Section 42 of the Companies Act, 2013, except sub-section (1), *Explanation (II)* to sub-section (2) and sub-sections (4), (6), (8), (9) and (10) shall not apply to a Nidhi. It is pertinent to note that Section 42 of the Companies Act, 2013 corresponds to Section 67 of the Companies Act, 1956 which deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one made to the public.
12. I note from the records available on the MCA portal i.e. Form 2 filed by the company with RoC, that ERIL has allotted 519 equity shares to a total of 519 persons on 30/06/2013,

which shows that the company has issued only one share of Rs.100 to each of the 519 allottees, thereby collecting Rs.51900. I note that the nature of allotment of equity shares appears to be aimed at making the allottees a member of the company rather than mobilizing money through such issuance per se. I am of the view that a company, which has been incorporated with the object of functioning as a Nidhi and which issues equity shares primarily to make members, has to be treated on a different footing than a company which issues securities primarily to raise money through such issuance per se. Having analysed the legal position as explained above, I am of the view that in respect of the aforesaid allotment of securities by ERIL, which has been incorporated with the object of functioning as a Nidhi Company, the *prima facie* findings of violations of the provisions of the Companies Act read with ICDR Regulations, made against ERIL and its promoters, as contained in the interim order dated March 27, 2015 cannot be confirmed against them.

13. I note that the complaints received by SEBI against ERIL, as referred to in the interim order, pertain to deposits accepted by the company. I note that the Nidhi companies come under the regulatory purview of the Ministry of Corporate Affairs and the Reserve Bank of India. I, thus, deem it fit to refer the complaints received against ERIL to these authorities for appropriate action, if any, at their end.

DIRECTIONS

14. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions:-
- (a) The directions issued vide the interim order dated March 27, 2015 against the Noticee nos. 1 to 4 i.e. ERIL and its promoters / directors, namely Shri Biplab Kumar Dey, Ms. Juthika Ghosh and Shri Chandan Sinha Roy shall stand revoked; and
 - (b) SEBI shall make a reference to the Ministry of Corporate Affairs and the Reserve Bank of India for taking suitable action, as deemed appropriate, under the laws administered by them.

15. The direction as provided under para 14(a) above shall have no bearing on the directions issued by SEBI against ERIL or its abovementioned directors/promoters, in any other proceedings / matter.
16. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action.

Place: Mumbai

Date: October 18, 2017

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA