

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Togo Retail Marketing Limited (Earlier Known as “M/s Multi-Ex Marketing & Communications Limited”)

In re Deemed Public Issue Norms

In respect of:

Sr. No.	Name of the Entity	DIN / CIN	PAN
1	Togo Retail Marketing Limited (Earlier Known as “M/s Multi-Ex Marketing & Communication Limited)	U72900DL1999PLC098804	AADCM4340F
2	Shri Jasjeet Singh Sethi	Not Available	Not Available
3	Shri Rajesh Chakravarty	Not Available	Not Available
4	Shri Satish Kumar	Not Available	DNFPK8894D
5	Shri Rajit Ram Maurya	00076596	AHUPM0896M
6	Shri Girraj Vashistha	01350554	ADHPV6732E
7	Shri Prithi Paul Singh Sethi	00076689	AOAPS8866A
8	Shri Narayan Jay Tripathi	Not Available	Not Available
9	Shri Shree Kishan Chaudhary	00077002	AAYPE2158F
10	Shri Shailendra Kumar Prajapati	00319340	AGXPP6559J
11	Shri Amit Mishra	00317047	AIEPM2608Q
12	Shri Prahlad Singh	02330511	AWWPS4378K
13	Shri Munshi Lal Tiwari	01508499	AEAPT9771K
14	Shri Shaukeen Pathak	01612838	AHYPP0297R
15	Shri Manoj Kumar Joshi	02722133	AGJPJ7853P
16	Shri Sanjeev Kumar Jha	02699677	ANAPJ5195L

Order in the matter of M/s Togo Retail Marketing Limited (Earlier Known as "M/s Multi – Ex Marketing & Communications Limited")

17	Shri Dilip Kumar Mishra	02699649	ALCPM2699C
18	Shri Kishan Pal Singh	02350363	AVVPS8411M
19	Shri Deena Nath Maurya	02824654	BJJPM1012K
20	Shri Gurbhej Singh Hora	00312542	ATUPS5689Q
21	Shri Ramendra Prasad Sharma	02518373	AOBPS4499A
22	Shri Vishwa Bandhu Vashishta	02707338	ABFPV9924N
23	Shri Rajesh Kumar Sharma	01731816	BFXPS2910E
24	Shri Chhotelal Shukla	02706032	CLJPS2300B
25	Shri Shiva Nand Mishra	02706697	AJHPM9388B
26	Shri Mukesh Kumar Khare	06400147	BBVPK0966N

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1. Togo Retail Marketing Limited (Earlier Known as “M/s Multi-Ex Marketing & Communication Limited) (hereinafter referred to as “**TRML**”/ “**the Company**”) is a Public company incorporated on March 12, 1999 and registered with Registrar of Companies – New Delhi with CIN: U72900DL1999PLC098804. Its registered office is at 487/88, No - 1, First Floor, Mangal Bazar Road, Near Sidh Baba Mandir, Peera Garhi, New Delhi – 110087.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a email / complaint in April 2013 against TRML in respect of issue of Redeemable Cumulative Preference Shares (“RCPS”) and undertook an enquiry to ascertain whether TRML had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder.
 3. On enquiry by SEBI, it was observed that TRML had made an offer of RCPS during the financial years 2005-06, 2006-07 and 2009-10 (hereinafter referred to as “**Offer of**”
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RCPS”) and raised at least an amount of Rs. 9.19 Crores from at least 10,759 allottees. The number of allottees and funds mobilized has been collated from documents obtained from MCA 21 portal i.e. FORM 2 (Return of allotment) and audited financial statements.

4. As the above said *Offer of RCPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated July 22, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against TRML and its Directors viz. Shri Jasjeet Singh Sethi, Shri Rajesh Chakravarty, Shri Satish Kumar, Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati, Shri Amit Mishra, Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Shaukeen Pathak, Shri Manoj Kumar Joshi, Shri Sanjeev Kumar Jha, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Ramendra Prasad Sharma, Shri Vishwa Bandhu Vashishta, Shri Rajesh Kumar Sharma, Shri Chhotelal Shukla, Shri Shiva Nand Mishra, Shri Mukesh Kumar Khare (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded: TRML had made an *Offer of RCPS* to 10,759 investors and mobilized funds amounting to at least Rs. 9.19 Crores during the financial year 2005-06. TRML had also issued *RCPS* to investors during the financial years 2006-07 and 2009-10. The details are as shown below:
 - 5.1. From FORM 2 (Return of allotment) of TRML obtained from MCA 21 Portal, it is observed that in the financial year 2005-06, TRML had issued 91,953 Redeemable Cumulative Preference Shares @ Rs.1,000 each to 10,759 investors amounting to Rs.9.19 Crores on 31.03.2006.
 - 5.2. As per the audited financial statements of TRML, it is observed that Redeemable

Cumulative Preference Shares were issued in the series of 11%, 11.50% and 12.50%. Since 2005-06, TRML was issuing and redeeming Redeemable Cumulative Preference Shares as follows:

Amount in Rupees							
Series	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
11%	3,47,89,000	4,13,48,000	4,13,48,000	2,99,48,000	3,75,08,000	3,75,08,000	3,75,08,000
11.50%	3,25,95,000	3,68,38,000	3,68,38,000	2,65,83,000	3,21,48,000	3,21,48,000	3,21,48,000
12.50%	2,45,69,000	2,74,49,000	2,74,49,000	1,93,73,000	2,24,98,000	2,24,98,000	2,24,98,000
Total	9,19,53,000	10,56,35,000	10,56,35,000	7,59,04,000	9,21,54,000	9,21,54,000	9,21,54,000

**Redeemable Cumulative Preference Shares converted to equity shares during the financial year 2012-13
Redeemable Cumulative Preference Shares outstanding as on March 31, 2013 – Rs. NIL*

5.3. As per the details above, it is observed that TRML issued and allotted Redeemable Cumulative Preference Shares ("Offer of RCPS") during the financial years 2005-06, 2006-07 and 2009-10 and further TRML is stated to have redeemed some Redeemable Cumulative Preference Shares in 2008-09. FORM 2 (Return of Allotment) shows that TRML had issued and allotted 91,953 Redeemable Cumulative Preference Shares to 10,759 investors in the financial year 2005-06 and mobilised an amount of approximately Rs.9.19 Crores.

6. The above *Offer of RCPS* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) of Companies Act, 1956 were not complied with by TRML in respect of the *Offer of RCPS*.

7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated July 22, 2015 with immediate effect.

i. “TRML shall forthwith cease to mobilize fresh funds from investors through the Offer

of RCPS or through any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly, till further directions;

- ii. *TRML (CIN: U72900D1999PLC098804; PAN: AADCM4340F) and its Directors, viz. Shri Kishan Pal Singh (DIN – 02350363; PAN: AVVPS8411M), Shri Deena Nath Maurya (DIN – 02824654; PAN: BJJPM1012K), Shri Vishwa Bandhu Vashistha (DIN – 02707338; PAN: ADFPV9924N), Shri Chhotelal Shukla (DIN – 02706032; PAN:CLJPS2300B), Shri Mukesh Kumar Khare (DIN– 06400147; PAN: BBVPM0966N), Shri Jasjeet Singh Sethi (DIN/PAN: Not Available), Shri Rajesh Chakravarty (DIN/PAN: Not Available), Shri Satish Kumar (DIN/PAN:Not Available), Shri Prithi Paul Singh Sethi (DIN: 00076689; PAN: AOAPS8866A), Shri Rajit Ram Maurya (DIN: 00076596; PAN: Not Available), Shri Girraj Vashistha (DIN: 01350554; PAN: Not Available), Shri Narayan Jay Tripathi (DIN/PAN: Not Available), Shri Shree Kishan Chaudhary (DIN: 00077002; PAN: Not Available), Shri Amit Mishra (DIN: 00317047; PAN: AIEPM2608Q), Shri Munshi Lal Tiwari (DIN:01508499; PAN: Not Available), Shri Prahlad Singh (DIN: 02330511; PAN: Not Available), Shri Shailandra Kumar Prajapati (DIN: 00319340; PAN: Not Available), Shri Manoj Kumar Joshi (DIN: 02722133; PAN: AGJPJ7853P), Shri Shaukeen Pathak (DIN: 01612838; PAN: AHYPP0297R), Shri Sanjeev Kumar Jha (DIN: 02699677; PAN: ANAPJ5195L), Shri Dilip Kumar Mishra (DIN: 02699649; PAN:ALCPM2699C), Shri Gurbhej Singh Hora (DIN: 00312542; PAN: Not Available), Shri Ramendra Prasad Sharma (DIN: 02518373; PAN: AOBPS4499A), Shri Rajesh Kumar Sharma (DIN: 01731816; PAN: BFXPS2910E) and Shri Shiva Nand Mishra (DIN: 02706697; PAN: AJHPM9388B) are prohibited from issuing 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 orders:*
- iii. *TRML and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the*

- securities market, either directly or indirectly, till further directions;*
- iv. TRML shall provide a full inventory of all its assets and properties;*
 - v. The Directors of TRML shall provide a full inventory of all their assets and properties;*
 - vi. TRML and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the offer of RCPS, without prior permission from SEBI;*
 - vii. TRML and its abovementioned Directors shall not divert any funds raised from public at large through the Offer of RCPS, which are kept in bank account(s) and/or in the custody of TRML;*
 - viii. TRML and its abovementioned Directors shall, within 21 days from the date of receipt of this Order, provide SEBI with all relevant and necessary information as sought by SEBI.*
 - ix. TRML shall provide to SEBI:*
 - The full list of allottees to whom Redeemable Cumulative Preference Shares were issued along with their names, addresses, telephone numbers, number of preference shares issued, amount collected from each allottee, dates of allotment, promised maturity amount with date of maturity, etc.;*
 - All information regarding redemption/repayments made to the holders of Redeemable Cumulative Preference Shares including as to how these preference shares were redeemed, viz. whether by cash or by issuance of fresh equity shares, dates of such redemption, names of the preference shareholders, addresses, etc.;*
 - DIN and PAN of all its Directors- both past and present.*

8. The interim order also directed the TRML and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:

- i. “Directing them jointly and severally to refund money collected through the Offer of Redeemable Cumulative Preference Shares along with interest, if any, promised to*

investors therein;

- ii. 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;*
- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.”*

9. Vide the said interim order, TRML and its abovementioned Directors were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard. The copy of the said interim order was sent to all the Noticees vide separate letter dated July 29, 2015.

10. **Submissions:**

10.1. Shri Dilip Kumar Mishra vide letter dated August 18, 2015 (in hindi) submitted his reply in the matter, which are as under:

- 10.1.1. That Interim order dated July 22, 2015 had shown him as additional director in TRML from July 25, 2009 to September 24, 2009, which he came to know after the receipt of interim order and thereafter from MCA website.
- 10.1.2. That he had neither been called for any board meeting of TRML nor been informed about the same.
- 10.1.3. That the information sought by SEBI vide its notices are not available with him.

- 10.1.4. That he was working with M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”), Lucknow as a Senior Associate and he was receiving salary from Vamshi.
- 10.1.5. That he had been told that there is a group company of Vamshi and he was made to sign on some documents.
- 10.1.6. That after the appointment of additional director in TRML, his signature was forged on other documents and fake documents were submitted in Registrar of Companies (**ROC**). His signature was taken in a fraudulent manner.
- 10.1.7. He has submitted the copy of his appointment letter dated January 16, 2008 and TDS certificate Form 16 for FY 2009-10 and FY 2010-11 issued by Vamshi. He also submitted the copy of his resignation letter to Vamshi.
- 10.2. Shri Vishwa Bandhu Vashista vide letter dated September 25, 2015 (in hindi) submitted his reply in the matter, which are as under
- 10.2.1. That interim order dated July 22, 2015 had shown him as Director of TRML.
- 10.2.2. That he works in M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”) from year 2004 to July 2012. After 2012 he had never worked in any company. He had never worked in TRML, therefore question of being a director in TRML does not arise.
- 10.2.3. That the Chairman and MD of Vamshi Shri Prithi Paul Singh Sethi had misused his documents and for some fraudulent motive, he had been made director in some companies.
11. **Hearing**: Vide notification dated June 10, 2017 published in newspaper *Times of India* and notification dated June 10, 2017 published in newspaper *Navbharat Times*, all the Noticees were notified by SEBI that they will be given the final opportunity of being heard on June 29, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to appear for the personal hearing before SEBI on the aforesaid

date, then the matter would be proceeded *ex-parte* on the basis of material available on record.

11.1. On June 29, 2017 Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Manoj Kumar Joshi, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Vishwa Bandhu Vashishta, Shri Chhotelal Shukla and Shri Shiva Nand Mishra appeared for themselves.

11.1.1. The above mentioned persons made a common submission that they were merely the employees of TRML or Vamshi Chemicals Limited (a group company of TRML) and were not aware how their names were added as directors in the Company. They also submitted that they did not knowingly sign any document relating to appointment as director in the company. It was also submitted by all of them that Shri Prithi Paul Singh Sethi was the owner of TRML and their Form-16s were also signed by Shri Prithi Paul Singh Sethi.

11.1.2. During the course of hearing Shri Munshi Lal Tiwari, Shri Dilip Kumar Mishra, Shri Gurbhej Singh Hora, Shri Vishwa Bandhu Vashishta, and Shri Shiva Nand Mishra submitted their respective replies. All the entities were given 15 days' time to file their written submissions in the matter.

11.2. On June 29, 2017 Shri Ram Alok Singh, Advocate, Authorized Representative (AR) appeared on behalf of Shri Prithi Paul Singh Sethi. AR submitted that Shri Prithi Paul Singh Sethi was a director in TRML for the period May 17, 2008 to June 15, 2011 and during his directorship he only used to handle technical matters of the company and was not responsible for its financial matters.

11.3. Shri Prithi Paul Singh Sethi was given 15 days' time to file his written submissions in the matter along with the following documents/information:

11.3.1. Relevant MCA records relating to his appointments and resignation as a director in the company.

11.3.2. His role and ownership in the company before, during and after his directorship with the company.

- 11.3.3. List of preference shareholders along with their addresses.
- 11.3.4. Response as to whether the consent of preference shareholders was taken when the preference shares converted into equity shares.
- 11.3.5. List of properties held by the company.
- 11.3.6. Company's and Shri Prithi Paul Singh Sethi Bank account details along with bank statements.

12. **Additional Written Submissions:**

- 12.1. **Shri Prithi Paul Singh Sethi** vide letter dated June 23, 2017 submitted his reply, which are as under:
 - 12.1.1. That he had been the director of TRML from May 17, 2008 to June 15, 2011 and has been looking after of the technical aspect of the proposed projects of TRML.
 - 12.1.2. That he had never been involved in the marketing activities of TRML of any of the product or any other scheme.
 - 12.1.3. That he had not been involved with marketing team for fund collection or other scheme.
- 12.2. **Shri Shiva Nand Mishra** vide affidavit dated June 24, 2017 submitted his reply, which are as under:
 - 12.2.1. That he was working as Senior Executive Commercial in the group company M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”) having its manufacturing activities at Jahangirabad Road, Barabanki, U.P.
 - 12.2.2. That he was only a dummy director in TRML from 29.03.2012 to 03.04.2013 as the owner Dr. Prithi Paul Singh Sethi has entered him to become director in TRML.
 - 12.2.3. That he had never attended any board meeting and had never signed any

financial statement or instrument during his tenure of Directorship in TRML.

12.2.4. That he had neither approached anyone to invest in TRML nor attended any public meeting to motivate for investment.

12.2.5. That he was not associated with day to day activities of TRML.

12.2.6. That he was not aware that TRML was making funds by way of issuing preference shares.

12.2.7. That he was only aware of the Industrial activities and was working for the unit situated at Barabanki.

12.2.8. That he was used as a director in TRML to fulfill the quorum.

12.2.9. That he has submitted copy of his appointment letter dated December 08, 2003 of Vamshi, copy of TDS certificate Form 16 for the period FY 2008-09 to FY 2010-11 and FY 2012-13 issued by Vamshi.

12.3. **Shri Munshi Lal Tiwari** vide affidavit dated June 27, 2017 submitted his reply (in hindi), which are as under:

12.3.1. That from newspaper publication dated June 10, 2017, he came to know that he was appointed as director in TRML.

12.3.2. That he was working as Purchase Executive in the company M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”) having its manufacturing activities at Barabanki and Lucknow, U.P.

12.3.3. That he has submitted copy of TDS certificate Form 16 for the period FY 2007-08 to FY 2009-10 and copy of salary slip issued by Vamshi.

12.4. **Shri Vishwa Bandhu Vashista** vide letter dated June 29, 2017 submitted his additional reply in the matter, which are as under:

12.4.1. That since 2006 he was working in Dr. P P S Sethi Company.

12.4.2. That he had never been the director of any Company.

12.4.3. That he had neither signed any Form -16 of any employee nor signed on any

cheque.

- 12.4.4. That he had never made his signature on any debenture or share certificates.
- 12.4.5. That he had never done any accounts related work.
- 12.4.6. That he had retired in the year 2014 and received the retirement benefits.
- 12.4.7. That he is 63 year old poor person and a patient and requested for exoneration.
- 12.4.8. That he has submitted copy of TDS certificate Form 16 issued by Vamshi for the period FY 2005-06 to FY 2012-13 and copy of bank pass book.

12.5. **Shri Gurbhej Singh Hora** vide affidavit dated June 24, 2017 and vide letter dated June 29, 2017 submitted his additional reply, which are as under:-

- 12.5.1. That he was working as Transport Manager from June 01, 2004 to February 2012 in the group company M/s Vamshi Chemical Limited (hereinafter referred to as “**Vamshi**”) having its manufacturing activities at Jahangirabad Road, Barabanki, U.P.
- 12.5.2. That Dr. Prithi Paul Singh Sethi, owner of Vamshi had ordered him to become dummy director in its subsidiary company, TRML from April 15, 2010 to September 09, 2010. Dr. Prithi Paul Singh Sethi had pressurized him to sign documents for directorship in TRML.
- 12.5.3. That he had never attended any board meeting and had never signed any financial statement or instrument during his tenure of Directorship in TRML.
- 12.5.4. That he had neither approached anyone to invest in TRML nor attended any public meeting to motivate for investment.
- 12.5.5. That he was neither associated with day to day activities of TRML nor involved in any kind of financial activities of TRML.
- 12.5.6. That he was not aware that TRML was making funds by way of issuing preference shares.
- 12.5.7. That he had never taken any amount from TRML in any mode, his salary was disbursed from the account of Vamshi during that period.

12.5.8. That he was only aware about the industrial activities and transport department of Vamshi.

12.5.9. Submits the copy of affidavit dated October 03, 2015 which states that September 2011, he has no connection with M/s Vamshi Chemical Limited, where he was employed as Transport Manager from June 2004 to September 2011. He also states that he had never been involved in its financial, commercial and administrative decisions.

12.5.10. He has submitted the copy of salary slip issued by Vamshi of few months, copy of employee attendance register of Vamshi for the month of February 2009 and September 2011, Copy of Provident fund statement for the FY 2005-06, 2006-07 and 2008-09 in which he is shown as employee of Vamshi, copy of TDS certificate Form 16 issued by Vamshi for the period FY 2004-05, 2006-07, 2007-08, and 2010-11.

12.6. **Shri Dilip Kumar Mishra** vide affidavit dated June 22, 2017 submitted the copy of his earlier reply dated August 18, 2015 (in hindi) and same have been reproduced above.

13. It is noted that Shri Prahlad Singh, Shri Manoj Kumar Joshi, Shri Kishan Pal Singh, Shri Deena Nath Maurya and Shri Chhotelal Shukla have not submitted their written submission as directed during the course of hearing held on June 29, 2017. Further, it is also noted that till date Shri Prithi Paul Singh Sethi has not submitted the documents / information sought by him during the course of hearing held on June 29, 2017 i.e. documents / information mentioned at paragraph 11.3.1 to 11.3.6 above.

Consideration of Issues and Findings

14. I have considered the allegations and materials available on record. On perusal of the

same, the following issues arise for consideration. Each question is dealt with separately under different headings.

- (1) *Whether the company came out with the Offer of RCPS as stated in the interim order.*
- (2) *If so, whether the said offer was in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.*
- (3) *If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1- Whether the company came out with the Offer of RCPS as stated in the interim order.

15. I have perused the interim order dated July 22, 2015 for the allegation of *Offer of RCPS*. I note that neither the company nor the directors filed any reply disputing the fact of issuance.

16. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. Following is noted from the record (i.e. FORM 2 - Return of allotment and audited financial statements) with respect to the issuance of *RCPS* by TRML:

16.1. From FORM 2 (Return of allotment) of TRML obtained from MCA 21 Portal, it is observed that in the financial year 2005-06, TRML had issued 91,953 Redeemable Cumulative Preference Shares @ Rs.1,000 each to 10,759 investors amounting to Rs.9.19 Crores on March 31, 2006.

16.2. As per the audited financial statements of TRML, it is observed that Redeemable Cumulative Preference Shares were issued in the series of 11%, 11.50% and 12.50%. Since 2005-06, TRML was issuing and redeeming Redeemable

Cumulative Preference Shares. The outstanding of the same were as follows:

Amount in Rupees

Series	As on 31/03/2006	As on 31/03/2007	As on 31/03/2008	As on 31/03/2009	As on 31/03/2010	As on 31/03/2011	As on 31/03/2012
11%	3,47,89,000	4,13,48,000	4,13,48,000	2,99,48,000	3,75,08,000	3,75,08,000	3,75,08,000
11.50%	3,25,95,000	3,68,38,000	3,68,38,000	2,65,83,000	3,21,48,000	3,21,48,000	3,21,48,000
12.50%	2,45,69,000	2,74,49,000	2,74,49,000	1,93,73,000	2,24,98,000	2,24,98,000	2,24,98,000
Total	9,19,53,000	10,56,35,000	10,56,35,000	7,59,04,000	9,21,54,000	9,21,54,000	9,21,54,000

* Redeemable Cumulative Preference Shares outstanding as on March 31, 2013 – Rs. NIL

17. With respect to the period of issuance and allotment of RCPS, Interim order alleged that TRML had issued and allotted RCPS during the Financial Year (FY) 2005-06, 2006-07 and 2009-10. From paragraph 16 above, I note that with respect to the amount collected by TRML through the *offer of RCPS*, it appears that nominal amount outstanding on account of the issuance and allotment of various series of RCPS had increased from FY 2005-06 to 2006-07. There was no increase in outstanding amount in FY 2007-08 and thereafter in the financial year 2008-09, the nominal amount outstanding was shown to have come down to Rs. 7,59,04,000, it appears that decrease in outstanding amount in FY 2008-09 was due to possible redemption of RCPS. However, no proof of such redemption/repayment is available on record. Thereafter, as per audited financial statement, there was an increase in nominal amount outstanding in financial year 2009-10. It is also noted in FY 2010-11 and 2011-12 there was no increase in nominal outstanding amount. Thus, I am of the view that TRML had issued and allotted RCPS in the FYs 2005-06, 2006-07 and 2009-10. I also note that in FY 2005-06, TRML issued and allotted 91,953 Redeemable Cumulative Preference Shares to 10,759 investors. Further, I also note that as on March 31, 2010 TRML had an outstanding amount of ₹ 9.21 crores through the issuance of RCPS from atleast 10,759.

18. It is also noted that interim order dated July 22, 2015 alleged that during FY 2012-13

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TRML claimed through its annual return, that it had converted RCPS into equity shares and RCPS outstanding as on March 31, 2013 was nil. However, from the balance sheet of TRML for FY 2012-13, it is noted that during the FY 2012-13, TRML claimed to have redeemed 92,154 preference shares, even though, no proof or evidence was submitted by TRML or its directors in that regard.

19. I therefore conclude that TRML came out with an offer of RCPS as outlined above.

ISSUE No. 2- If so, whether the said offer was in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.

20. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of RCPS* made to the public. Therefore the primary question that arises for consideration is whether the issue of RCPS is ‘public issue’. At this juncture, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”

21. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the “***Sahara Case***”), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

“Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the “section of the public”. Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for

subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”

22. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956

exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

23. In the instant matter, from FORM 2 - Return of allotment and audited financial statements, I find that TRML made an issuance of RCPS to at least 10,759 investors and as on March 31, 2010 had a nominal outstanding amount of ₹ 9.21 Crores. The above findings lead to a reasonable conclusion that the *Offer of RCPS* by TRML was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956. However, the claimed entry in Annual Return of TRML for the financial year 2012-13 for the period ending on March 31, 2013 showing “Nil” RCPS cannot be considered as an evidence of repayment / redemption as no proof of payment was submitted by TRML or any of the Noticees to SEBI.
24. I find that TRML has not claimed it to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that TRML is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
25. Neither TRML nor its directors have contended that the *Offer of RCPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
26. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the *"Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged."* In respect of those issuances, the directors have not placed any material that

the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that "*In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning*".

27. Therefore, in view of the material available on record, I find that the *Offer of RCPS* by TRML falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RCPS* are deemed to be public issues and TRML was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

28. Further, since the offer of RCPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

29. The allegations of non-compliance of the above provisions were not denied by TRML or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on

account of such failure. Therefore, I find that TRML has contravened the said provisions. TRML has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that TRML has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.

30. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RCPS was a deemed public issue of securities, TRML was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that TRML has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RCPS. I, therefore, find that TRML has not complied with the provisions of section 60 of the Companies Act, 1956.

31. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Neither TRML nor its directors produced any record to show that it has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I

find that, TRML has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

32. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara Case*, had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

33. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase “intend to get listed” in the context of deemed public issue the Hon'ble Supreme Court in *Sahara Case* observed-

“...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, “intent” has its limitations also, confining it within the confines of lawfulness...”

“...Listing of securities depends not upon one’s volition, but on statutory mandate...”

“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”

34. In view of the above findings, I am of the view that TRML engaged in fund mobilizing activity from the public, through the offer of RCPS and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956,

ISSUE No. 3- If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?

35. With respect to the appointment, resignation and tenure of the directors in TRML, following submissions are made by the Noticees:

35.1. Shri Vishwa Bandhu Vashista submitted that he had never worked in TRML, therefore question of being a director in TRML does not arise. He was never been the director of any Company. He further submitted that the Chairman and MD of Vamshi, Shri Prithi Paul Singh Sethi, had misused his documents and for some fraudulent motive he had been made director in some companies.

35.2. Shri Dilip Kumar Mishra submitted that he was told that there was a group company of Vamshi and he was made to sign on some documents. He further

submitted that after the appointment of additional director in TRML, his signature was forged on other documents and fake documents were submitted in ROC. His signature was taken in a fraudulent manner.

- 35.3. Shri Prithi Paul Singh Sethi submitted that he was the director of TRML from May 17, 2008 to June 15, 2011.
- 35.4. Shri Shiva Nand Mishra submitted that he was only a dummy Director in TRML from March 29, 2012 to April 03, 2013.
- 35.5. Shri Gurbhej Singh Hora submitted that he was a dummy Director in TRML from April 15, 2010 to September 09, 2010. He further submitted that Dr. Prithi Paul Singh Sethi had pressurized him to sign documents for directorship in TRML.
- 35.6. During the course of hearing held on June 29, 2017, Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Manoj Kumar Joshi, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Vishwa Bandhu Vashishta, Shri Chhotelal Shukla and Shri Shiva Nand Mishra have stated that they were not aware how their names were added as directors in the Company and they did not knowingly sign any document relating to appointment as director in the company.
- 35.7. Shri Jasjeet Singh Sethi, Shri Rajesh Chakravarty, Shri Satish Kumar, Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati, Shri Amit Mishra, Shri Shaukeen Pathak, Shri Sanjeev Kumar Jha, Shri Ramendra Prasad Sharma, Shri Rajesh Kumar Sharma, Shri Mukesh Kumar Khare have not submitted any reply in the matter. Hence they have not disputed their appointment, resignation and tenure of their being the director in TRML.

36. I note that Shri Prithi Paul Singh Sethi has submitted that he was the director of TRML

from May 17, 2008 to June 15, 2011. However, from the copy of FORM - 32 obtained from ROC, Manesar, Haryana, I find that Shri Prithi Paul Singh Sethi was appointed as Director of TRML on June 01, 2002, whereas also from the copy of Annual Return for FY 2002-03, I find that Shri Prithi Paul Singh Sethi was appointed as Director of TRML on June 02, 2002. I also note that Shri Prithi Paul Singh Sethi in the capacity of director of TRML had signed the Annual Return of TRML for FYs 2002-03 and 2003-04. Further, there is no documentary evidence available on record which shows that Shri Prithi Paul Singh Sethi had resigned from TRML prior to May 17, 2008. Further, I find that as per MCA records, Shri Prithi Paul Singh Sethi has resigned from TRML on June 15, 2011. Hence, I do find any merit in the said submission of Shri Prithi Paul Singh Sethi that he joined as director of TRML on May 17, 2008. However the evidence as discussed above shows that he resigned from TRML as director on June 15, 2011. Thus, on the basis of aforesaid documents, I find that the tenure of the directorship of Shri Prithi Paul Singh Sethi in TRML was from June 01, 2002 to June 15, 2011.

37. I note that Shri Jasjeet Singh Sethi, Shri Rajesh Chakravarty, Shri Satish Kumar, Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati, Shri Amit Mishra, Shri Shaukeen Pathak, Shri Sanjeev Kumar Jha, Shri Ramendra Prasad Sharma, Shri Rajesh Kumar Sharma and Shri Mukesh Kumar Khare in TRML have not made any submission on their tenure of directorships and the material available on record shows their tenure of directorship as mentioned in paragraph 46.

38. From the submission of the Noticees, it appears that Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Manoj Kumar Joshi, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Vishwa Bandhu Vashishta, Shri Chhotelal Shukla and Shri Shiva Nand Mishra have alleged forgery. I have considered the submissions of the said Noticees and I also note that SEBI has sought documents for

verification of the claims of the Noticees. In cases wherein persons allege forgery, the burden of proof lies upon the person who alleges the same, in the instant case the obligation to prove the same lies upon the said Noticees. The said principle has also been recognized by various courts in a catena of cases. In this regard, I note the following observations of the Hon'ble Securities Appellate Tribunal in the matter of *Kalidas Dutta vs. SEBI* (decided on January 23, 2018 "*we are of the considered opinion that this appeal can be disposed of with a direction to the appellant to obtain appropriate documents/orders from the competent authority to the effect that he was fraudulently appointed as director of the company in question on 10th February, 2015. For this purpose, the appellant is granted time up to one year to do the needful and submit the same to SEBI*").

39. Therefore, I am of the considered view that Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Manoj Kumar Joshi, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Vishwa Bandhu Vashishta, Shri Chhotelal Shukla and Shri Shiva Nand Mishra may be granted 365 days' time to obtain appropriate order from the competent authority with respect to their allegation of forgery, for submission before SEBI by the said entities. The said order, if any, shall reach SEBI within 365 days from the date of this order. Till that time the directions against Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Manoj Kumar Joshi, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Vishwa Bandhu Vashishta, Shri Chhotelal Shukla and Shri Shiva Nand Mishra passed in this order shall not take effect and directions passed vide interim order dated July 22, 2015 shall continue to be in force. Pending such determination, I am compelled to accept the MCA records and their tenure of directorship in TRML as mentioned below.

40. From the documents available on record, I note that Shri Rajesh Chakravarty, Shri Satish

Kumar, Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Shailendra Kumar Prajapati, Shri Amit Mishra, Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Shaukeen Pathak, Shri Manoj Kumar Joshi, Shri Sanjeev Kumar Jha, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Ramendra Prasad Sharma, Shri Vishwa Bandhu Vashishta, Shri Rajesh Kumar Sharma, Shri Chhotelal Shukla and Shri Shiva Nand Mishra who were earlier Directors in TRML, have since resigned.

41. Further, from the directors report dated August 26, 2003 obtained from MCA portal / database I note that “.....*During the year Sh. J.N. Tripathi was appointed as additional director*” And also from the notice of 4th Annual General Meeting of the members of the Company dated August 26, 2003 obtained from MCA portal / database, I note that the said notice “...*Resolved that Sh, J.N. Tripathi be and is hereby appointed as Director of the Company...*”. Further From the copy of FORM - 32 obtained from ROC, Manesar, Haryana, I find that Shri J.N. Tripathy was appointed as Additional Director of TRML on December 12, 2002. With respect to the date of resignation of Shri Narayan Jay Tripathi from the post of director of TRML, I do not find from the material available on record, any resignation letter of Shri Narayan Jay Tripathi or any FORM 32(for resignation) , FORM-DIR 11, FORM-DIR 12 filed by the Company or by Shri Narayan Jay Tripathi in that regard. However, from the Directors report dated August 25, 2005 obtained from MCA portal / database, I note that “.....*Shri J.N. Tripathy has retired from the board of directors of the Company....*”. Upon perusal of said director’s report, I do not find the date on which Shri J. N. Tripathy retired from the board of directors of the Company. Hence, I am of view that date of retirement / resignation of Shri J.N. Tripathy can be taken as date of director’s report i.e. August 25, 2005. Further, I am also of the view that Shri Narayan Jay Tripathi and Shri J.N. Tripathy could be or appear to be the same person.

42. With respect to the date of resignation of Shri Shree Kishan Chaudhary from the post of director of TRML, I do not find any resignation letter of Shri Shree Kishan Chaudhary or any FORM 32, FORM-DIR 11, FORM-DIR 12 filed by the Company or by Shri Shree Kishan Chaudhary in that regard. However, from the notice of 8th Annual General Meeting of the members of the Company dated August 23, 2006 obtained from MCA portal / database, I note that the said notice is also for “...*To appoint a Director in place of Sh. S.K. Chaudhary, who retire by rotation...*”. Further, from the notice dated August 25, 2005 of 6th Annual General Meeting of the members of the Company to be held on September 30, 2005 obtained from MCA portal / database, I note that the said notice “.....*Resolved that Mr. S.K. Chawdhary, who was appointed as an Additional Director of the Company by the Board of Director and holds office up to the date of this Annual General Meeting under section 260 of the Companies Act 1956 (The Act) but being eligible, offers himself for re-appointment and in respect of whom the company has received a notice in writing under section 257 of the Act, in respect of Mr. S.K. Chawdhury as a candidate for the office of Director, be and is hereby appointed as a Director of the Company and whose term of office shall be liable to determination by retirement of the Director by rotation ...*” Upon perusal of said notices, I do not find the date on which Shri S.K. Chaudhary retired from the Company. Hence, I am of view that date of retirement / resignation of Shri S. K. Chaudhary can be taken as date of notice dated August 23, 2006. Further, I am also of the view that Shri Shree Kishan Chaudhary and Shri S. K. Chaudhary appear to be the same person.

43. With respect to the date of resignation of Shri Jasjeet Singh Sethi from the post of director of TRML, I do not find any documentary evidence available record in that regard. However, I find Shri Jasjeet Singh Sethi was the first subscriber to Memorandum of Association (MOA) dated March 09, 1999 and as per the said MOA, Shri Jasjeet Singh Sethi has taken / allotted 10 equity shares of TRML. From the Annual return for FY 2002-

03, it is noted that on March 31, 2003 Shri Jasjeet Singh Sethi has transferred his 10 equity shares to one Shri Abindra Kulshrestha. Thus, from March 31, 2003 onwards it appears that Shri Jasjeet Singh Sethi ceased to be associated as first subscriber of TRML. Further, upon perusal of Annual return for subsequent financial years i.e. for FY 2003-04 onwards, the name of Shri Jasjeet Singh Sethi does not appear in the list of directors of TRML. Hence, in view of aforesaid, I am inclined to give benefit of doubt to Shri Jasjeet Singh Sethi that he ceased to be associated in any manner either subscriber or director of TRML from March 31, 2003 onwards. Therefore, the date of resignation of Shri Jasjeet Singh Sethi from the post of director of TRML has been taken as March 31, 2003.

44. I also find Shri Rajesh Chakravarty and Shri Satish Kumar were also the first subscribers to Memorandum of Association (MOA) dated March 09, 1999 and as per the said MOA, Shri Rajesh Chakravarty and Shri Satish Kumar had taken / allotted 10 equity shares of TRML each. From the Annual return for FY 2002-03, it is noted that on March 31, 2003 Shri Rajesh Chakravarty has transferred his 10 equity shares to one Shri Atul Chaudhary and Shri Satish Kumar has transferred his 10 equity shares to one Shri Devendra Maurya. Thus, from March 31, 2003 onwards it appears that Shri Rajesh Chakravarty and Shri Satish Kumar ceased to be associated as first subscriber of TRML. I also find that Shri Rajesh Chakravarty was the director of TRML from March 12, 1999 to June 01, 2002 and Shri Satish Kumar was the director of TRML from March 12, 1999 to August 25, 2001. Further, upon perusal of Annual return from FY 2002-03 onwards, the name of Shri Rajesh Chakravarty and Shri Satish Kumar does not appear in the list of directors of TRML. Hence, in view of aforesaid, I am inclined to give benefit of doubt to Shri Rajesh Chakravarty and Shri Satish Kumar that they ceased to be associated in any manner either subscriber or director of TRML from March 31, 2003 onwards.

45. Further, from the MCA records, I find that till date Shri Mukesh Kumar Khare is

continuing to be a director of TRML.

46. Thus, the details of the appointment and resignation of the directors are as follows:

Sr. No.	Name of the Director	Date of Appointment	Date of Cessation
1	Shri Jasjeet Singh Sethi	March 12, 1999	March 31, 2003
2	Shri Rajesh Chakravarty	March 12, 1999	June 01, 2002
3	Shri Satish Kumar	March 12, 1999	August 25, 2001
4	Shri Rajit Ram Maurya	June 01, 2002	September 09, 2006
5	Shri Girraj Vashistha	June 01, 2002	July 25, 2009
6	Shri Prithi Paul Singh Sethi	June 01, 2002	
		May 17, 2008 (ED w.e.f September 29, 2008)	June 15, 2011
7	Shri Narayan Jay Tripathi	December 10, 2002	August 25, 2005
8	Shri Shree Kishan Chaudhary	July 23, 2005	August 23, 2006
9	Shri Shailendra Kumar Prajapati	July 12, 2006	August 10, 2008
10	Shri Amit Mishra	July 12, 2006	October 08, 2007
		October 09, 2007 - MD	April 16, 2012 - MD
11	Shri Prahlad Singh	August 10, 2008	April 15, 2010
12	Shri Munshi Lal Tiwari	September 01, 2008	July 25, 2009
13	Shri Shaukeen Pathak	March 16, 2009	July 25, 2009
14	Shri Manoj Kumar Joshi	July 25, 2009	April 15, 2010
15	Shri Sanjeev Kumar Jha	July 25, 2009	September 24, 2009
16	Shri Dilip Kumar Mishra	July 25, 2009	September 24, 2009
17	Shri Kishan Pal Singh	September 24, 2009	January 05, 2017
18	Shri Deena Nath Maurya	September 24, 2009	June 15, 2011
		April 16, 2012	May 02, 2017
19	Shri Gurbhej Singh Hora	April 15, 2010	September 20, 2010
20	Shri Ramendra Prasad Sharma	September 20, 2010	March 29, 2012
21	Shri Vishwa Bandhu Vashishta	June 15, 2011	May 02, 2017
22	Shri Rajesh Kumar Sharma	June 15, 2011	March 29, 2012
23	Shri Chhotelal Shukla	March 29, 2012	May 02, 2017

Order in the matter of M/s Togo Retail Marketing Limited (Earlier Known as "M/s Multi – Ex Marketing & Communications Limited")

24	Shri Shiva Nand Mishra	March 29, 2012	April 03, 2013
25	Shri Mukesh Kumar Khare	April 03, 2013	Continuing

47. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, TRML and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

48. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an *officer in default* shall, from the eighth day when the company becomes liable to repay, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an *officer in default* is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%. Therefore I hold that TRML is liable to refund the money along with interest at prescribed rate.

49. As per Section 5 of Companies Act, 1956, “*officer who is in default*” means (a) the managing director/s; (b) the whole-time director/s; (c) the manager; (d) the secretary; (e) any person in accordance with whose directions or instructions the Board of directors of

the company is accustomed to act; (f) any person charged by the Board with the responsibility of complying with that provision; (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors.

50. In this regard, I note that Hon'ble Securities Appellate Tribunal (SAT) vide order dated February 14, 2019 in the matter of *Pritha Bag Vs. SEBI* stated that “.....*Unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) cannot be invoked against the appellant. In the instant case, the appellant has annexed documents to indicate that the company had a managing director, namely, Mr. Indranath Daw and, therefore, as per the provisions of Section 5 the managing director would be an officer in default. We also find that there is no finding given by the WTM that the appellant was the managing director or whole time director or was a person charged by the Board with the responsibility of compliance with the provisions of the Companies Act and, consequently, could not be made responsible for refunding the amount under Section 73(2).*

Reliance on the judgment of this Court by the respondent in the case of Manoj Agarwal vs. SEBI in Appeal No. 66 of 2016 decided on July 14, 2017 is not applicable and is distinguishable. The Tribunal in the case of Manoj Agarwal found that there was no material to show that any of the officers set out in clauses (a) to (c) of Section 5 or any specified director of the said company was entrusted to discharge the application contained in Section 73 of the Companies Act. In the instant case, there is sufficient material on record to show that there was a managing director and in the absence of any finding that the appellant was entrusted to discharge the application contained in Section 73 of the Companies Act, the direction to refund the amount alongwith interest from the appellant is wholly illegal....”

51. Further, it is pertinent to note the observation of Hon'ble SAT vide Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, that:

"..... In view of the fact that out of the amount of Rs.99.06 lakh, amount of Rs.59.06 lakh was collected by BREDL after the appellant ceased to be a Director of BREDL, counsel for SEBI fairly stated on instruction that the obligation of the appellant to refund the amount with interest jointly and severally with BREDL and other Directors set out in the impugned order may be limited to Rs.40 lakh only, because, that was the amount collected by BREDL during the period when the appellant was a Director of BREDL....."

.....Section 5 of the Companies Act, 1956 defines the expression 'officer who is in default' to mean the officers named therein. Section 5(g) provides that where any company does not have any of the officers specified in clauses (a) to (c) of Section 5, then any director who may be specified by the Board in that behalf or where no director is so specified then all the directors would be "officer who is in default". In the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 or any specified director of BREDL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. In such a case, as per Section 5(g) of the Companies Act, 1956 BREDL and all the directors of BREDL are liable...."

Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956. Admittedly, the appellant was a director of BREDL when amounts were collected by BREDL in contravention of the public issue norms and there is nothing on record to suggest that any particular officer/director was authorised to comply with the public issue norms. In such a case, all directors of BREDL including the appellant would be "officer in default" under Section 73(2) read

with Section 5 of the Companies Act, 1956....”

52. In view of Hon’ble SAT Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the officer in default to refund the amount with interest jointly and severally with the Company and other officer in default are limited to the extent of amount collected during his/her tenure as officer in default of the Company.
53. From MCA records, I find that Shri Amit Mishra was appointed as Managing Director of TRML from October 09, 2007. Further, from FORM 32 regarding cessation of director, I note that Shri Amit Mishra resigned as Director of TRML with effect from April 16, 2012. I also note that there is no documentary evidence available on record which suggest there was change in designation of Shri Amit Mishra from Managing Director to Director, hence in the absence of documentary evidence, I conclude that Shri Amit Mishra has resigned from the post of Managing Director of TRML with effect from April 16, 2012. Thus, I find that Shri Amit Mishra was appointed as Managing Director from October 09, 2007 to April 16, 2012.
54. At paragraph 17 above I held that TRML had issued and allotted RCPS to at least 10,759 investors in the FYs 2005-06, 2006-07 and 2009-10 and as on March 31, 2010 TRML had outstanding amount of ₹9.21 Crores As per MCA records, at the time of issuance and allotment of RCPS in the FY 2005-06 and 2006-07, TRML did not have any Managing Director and in the FY 2009-10 Shri Amit Mishra was the Managing Director of TRML from October 09, 2007. Further, in view of Hon,ble SAT order in the matter of *Manoj Kumar Agarwal* and *Pritha Bag* and considering the facts and circumstances of case, I note that in the present matter, during the FY 2005-06 and 2006-07, there is no material

available on record which show that any of the officers specified in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of the TRML entrusted to discharge the application contained in Section 73 of the Companies Act, 1956. Therefore, in the absence of such, as per Section 5(g) of the Companies Act, 1956, I am of the view that at the time of issuance and allotment of RCPS in the FY 2005-06 and 2006-07, Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra are “officer in default” under Section 73(2) read with Section 5 of the Companies Act, 1956 and are liable to make refund, the money collected during their tenure in the FY 2005-06 and 2006-07, jointly and severally, along with interest at the rate of 15% per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. Further, during the FY 2009-10 in accordance with Section 5(a) of Companies Act, 1956, Shri Amit Mishra being the Managing Director of TRML is the officer in default for the period of allotment and issuance of RCPS in the FY 2009-10. Therefore, Shri Amit Mishra being managing director in the FY 2009-10 who is officer in default, is liable to make refund of the money collected during his tenure in the financial year 2009-10, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions.

55. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956. Therefore, I find that TRML and Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay

Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra, are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

56. Further, the claimed entry in Annual Return of TRML for the financial year 2012-13 for the period ending on March 31, 2013 showing “Nil” RCPS cannot be considered as an evidence of repayment / redemption as no proof of payment was submitted by any of the Noticees to SEBI.

57. From the material available on record and the details of the appointment and resignation of the directors of TRML as reproduced in paragraph 46 above, it is noted that Shri Gurbhej Singh Hora, Shri Ramendra Prasad Sharma, Shri Vishwa Bandhu Vashishta, Shri Rajesh Kumar Sharma, Shri Chhotelal Shukla, Shri Shiva Nand Mishra and Shri Mukesh Kumar Khare were appointed as director in TRML subsequent to the issuance and allotment of RCPS i.e. they were not the directors in TRML during the period of issuance and allotment of RCPS.

58. From the material available on record and the details of the appointment and resignation of the directors of TRML as reproduced in paragraph 46 above, it is noted that Shri Jasjeet Singh Sethi, Shri Rajesh Chakravarty and Shri Satish Kumar were the first subscriber to Memorandum of Association (MOA) and were appointed and resigned as director in TRML prior to the issuance and allotment of RCPS i.e. they were not the directors in TRML during the period of issuance and allotment of RCPS

59. Further, I note that during the period of fund mobilization in the FY 2009-10, Shri Prahlad

Singh, Shri Munshi Lal Tiwari, Shri Shaukeen Pathak, Shri Manoj Kumar Joshi, Shri Sanjeev Kumar Jha, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh and Shri Deena Nath Maurya were directors in TRML and Shri Amit Mishra was the Managing Director of TRML. Therefore, following the reasoning as provided by Hon'ble SAT in the matter of *Prita Bag vs. SEBI* and *Manoj Agarwal vs. SEBI*, I am of the view that for the fund mobilization in the FY 2009-10, Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Shaukeen Pathak, Shri Manoj Kumar Joshi, Shri Sanjeev Kumar Jha, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh and Shri Deena Nath Maurya are not liable for refund of money as there is sufficient documentary evidence available on record which indicate that TRML had a Managing Director namely, Shri Amit Mishra, (who is an officer in default as per Section 5(a) of Companies Act, 1956) during period of fund mobilization in the FY 2009-10.

60. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

"13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956."

61. Hon'ble Supreme Court of India vide order dated April 26, 2013 in the matter of *N Narayanan Vs. Adjudicating Officer, Sebi* observed that:

“.....

33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence.....”

62. A person cannot assume the role of a director in a company in a casual manner. The position of a ‘director’ in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The director cannot therefore wriggle out from liability. A director who is part of a company’s board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Shaukeen Pathak, Shri Manoj Kumar Joshi, Shri Sanjeev Kumar Jha, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Ramendra Prasad Sharma, Shri Vishwa Bandhu Vashishta, Shri Rajesh Kumar Sharma, Shri Chhotelal Shukla, Shri Shiva Nand Mishra and Shri Mukesh Kumar Khare was also be responsible for all the deeds/acts of the Company during the period of their directorship.

63. It is noted that the liability to repay is a statutory liability under section 73(2) of the Companies Act, 1956, which mandates the repayment to be made forthwith. The present order only enforces the pre-existing liability of the company and other officers in default to repay along with interest. It is an additional liability of every director on behalf of the company to ensure that the Company complies with the obligation under section 73(2) of the Companies Act, 1956 forthwith. One may argue that the liability of the Company is crystallised only by virtue of an Order by SEBI, therefore, till then there was no liability

on the Company and therefore, on the directors. If such argument is accepted, all the legal obligations and compliance requirements pose the risk of being not discharged or postponed on the pretext of non-crystallization. Also, it would make the compliance of regulatory/statutory requirement imposed on the Companies bereft of clarity and incentivize delay in compliance of statutory obligation by the Companies until such non-compliance is enforced through proceedings such as this. If the Board of Directors of a Company cannot be considered to be liable to ensure the legal obligations cast upon a Company, there would be no human instrumentality for discharge of such legal obligations on behalf of the company. Considering the fact that TRML has not complied with its obligation to repay the amounts collected in violation of deemed public issue and such liability is continuing, I find that the same can only be ensured by its directors.

64. It is noted in light of the continued non-compliance of refund liability by TRML, that Shri Gurbhej Singh Hora, Shri Ramendra Prasad Sharma, Shri Vishwa Bandhu Vashishta, Shri Rajesh Kumar Sharma, Shri Chhotelal Shukla, Shri Shiva Nand Mishra and Shri Mukesh Kumar Khare who joined TRML subsequent to the issuance and allotment of RCPS were obligated to ensure compliance of the refund obligation of the company during their respective tenure as director. I note Shri Mukesh Kumar Khare being a continuing director as per records, has the continuing obligation to ensure the company repay. Further, Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Shaukeen Pathak, Shri Manoj Kumar Joshi, Shri Sanjeev Kumar Jha, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh and Shri Deena Nath Maurya who were the directors of TRML during the period of issuance and allotment of RCPS but not liable for refund were also obligated to ensure compliance of the refund obligation of the Company during their respective period of directorship. The failure on the part of the directors to discharge their obligation on behalf of the company to ensure that such repayment is made by the company needs to be dealt with by way of appropriate directions against them in this regard.

65. Therefore in view of TRML's continued violation of its refund obligation, Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Shaukeen Pathak, Shri Manoj Kumar Joshi, Shri Sanjeev Kumar Jha, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Ramendra Prasad Sharma, Shri Vishwa Bandhu Vashishta, Shri Rajesh Kumar Sharma, Shri Chhotelal Shukla, Shri Shiva Nand Mishra and Shri Mukesh Kumar Khare as directors of TRML, during their tenure of directorship, were responsible to ensure that TRML makes refund to the allottees with interest. Thus, they have failed to ensure the timely refund to the investors by TRML as mandated under law during their respective tenure of directorship. Therefore, they are liable to be debarred from securities market for appropriate period of time.
66. Further, in view of the findings mentioned at paragraph 43 and 44, I note that from March 31, 2003 onwards, Shri Jasjeet Singh Sethi, Shri Rajesh Chakravarty and Shri Satish Kumar were not associated with TRML either as first subscriber to MOA or as director of TRML. I also note that period of the issuance and allotment of RCPS by TRML was during FYs 2005-06, 2006-07 and 2009-10. Since Shri Jasjeet Singh Sethi, Shri Rajesh Chakravarty and Shri Satish Kumar were not associated with TRML during the period of issuance and allotment of RCPS, therefore, the alleged violation of the abovementioned provisions of Companies Act, 1956 against Shri Jasjeet Singh Sethi, Shri Rajesh Chakravarty and Shri Satish Kumar have not been established.
67. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct TRML and its Directors, viz. Shri Rajit Ram Maurya, Shri Girraj Vashishta, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra to

refund the monies collected, with interest to such investors. Also, in order to safeguard the interests of investors, to prevent further harm to investors and to ensure orderly development of securities market, all the Noticees except Shri Jasjeet Singh Sethi, Shri Rajesh Chakravarty and Shri Satish Kumar becomes liable to be debarred for an appropriate period of time.

68. I also note that, vide the interim order dated July 22, 2015, following direction were also issued:

68.1. TRML was directed to provide a full inventory of all the assets and properties belonging to the Company.

68.2. The Directors of TRML were also directed to provide an inventory of assets and properties belonging to them.

68.3. TRML was directed to provide to SEBI:

68.3.1. The full list of allottees to whom *Redeemable Cumulative Preference Shares* were issued along with their names, addresses, telephone numbers, number of preference shares issued, amount collected from each allottee, dates of allotment, promised maturity amount with date of maturity, etc.;

68.3.2. All information regarding redemption/repayments made to the holders of *Redeemable Cumulative Preference Shares* including as to how these preference shares were redeemed, viz. whether by cash or by issuance of fresh equity shares, dates of such redemption, names of the preference shareholders, addresses, etc.

68.3.3. DIN and PAN of all its Directors- both past and present.

69. The above information were required to be filed within 21 days of the receipt of the order.

However, I find that no such information has been provided either by TRML or the other Noticees.

70. In view of the discussion above, appropriate action in accordance with law needs to be initiated against TRML and its Directors viz. Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati, Shri Amit Mishra, Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Shaukeen Pathak, Shri Manoj Kumar Joshi, Shri Sanjeev Kumar Jha, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Ramendra Prasad Sharma, Shri Vishwa Bandhu Vashishta, Shri Rajesh Kumar Sharma, Shri Chhotelal Shukla, Shri Shiva Nand Mishra and Shri Mukesh Kumar Khare.

ORDER

71. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:

71.1. TRML alongwith Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra shall forthwith refund, to the investors, the money collected by the Company, during their respective tenure of Director / Managing Director of TRML through the issuance of RCPS (including the application money collected from investors during their respective period tenure of Director / Managing Director, till date, pending allotment of securities, if any), with an interest of 15% per annum, from the eighth day of collection of funds, till the date of actual payment.

- 71.2. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or through any other appropriate banking channels with clearly identified beneficiaries.
- 71.3. Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds / shares / securities, if held in physical form and demat form.
- 71.4. TRML and its present Directors, are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds / shares / securities, if held in physical form and demat form, of the Company.
- 71.5. TRML and its present Directors are permitted to sell the assets, properties and holding of mutual funds/shares/securities held in demat and physical form, by the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund / repayment to the investors till the full refund / repayment as directed above is made.
- 71.6. Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment

to the investors till the full refund/repayment as directed above is made.

- 71.7. TRML, its present Directors (on behalf of the Company), Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- 71.8. After completing the aforesaid repayments, TRML, its present Directors (on behalf of the Company), Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India (“ICAI”) holding such certificate.
- 71.9. In case of failure of TRML, Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from the company and the directors liable to refund as specified in paragraph 71.1 of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

- 71.10. TRML is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above.
- 71.11. Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.
- 71.12. Shri Shaukeen Pathak, Shri Sanjeev Kumar Jha, Shri Ramendra Prasad Sharma, Shri Rajesh Kumar Sharma and Shri Mukesh Kumar Khare are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years from the date of this Order. The above said persons are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years from the date of this order.
- 71.13. Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Manoj Kumar Joshi, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Vishwa Bandhu Vashishta, Shri Chhotelal Shukla and Shri

Shiva Nand Mishra are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years which shall come into effect on the expiry of three hundred and sixty fifth (365) day of this order. The above said persons are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 4 (four) years which shall come into effect, subject to paragraph 71.14, on the expiry of three hundred and sixty fifth (365) day of this order.

71.14. If the order of the Competent Authority in respect of forgery, is not produced by Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Manoj Kumar Joshi, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Vishwa Bandhu Vashishta, Shri Chhotelal Shukla and Shri Shiva Nand Mishra, within such 365 days, or, if produced within such period, the same is not in favour of Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Manoj Kumar Joshi, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Vishwa Bandhu Vashishta, Shri Chhotelal Shukla and Shri Shiva Nand Mishra, then the direction as per paragraph 71.13 shall take effect on the receipt of such order by SEBI or on the expiry of 365 days, whichever is earlier. Till that time the directions passed against these entities vide the interim order dated July 22, 2015 shall be in force. The direction at paragraph 71.13 shall not take effect, if the order of the Competent Authority is produced within such period and the same is in favour of Shri Prahlad Singh, Shri Munshi Lal Tiwari, Shri Manoj Kumar Joshi, Shri Dilip Kumar Mishra, Shri Kishan Pal Singh, Shri Deena Nath Maurya, Shri Gurbhej Singh Hora, Shri Vishwa Bandhu Vashishta, Shri Chhotelal Shukla and Shri Shiva Nand Mishra. Till that time the directions passed against these entities vide the interim order dated July 22, 2015 shall be in force.

71.15. The directions issued vide interim order dated July 22, 2015 against Shri Jasjeet Singh Sethi, Shri Rajesh Chakravarty and Shri Satish Kumar are hereby revoked with immediate effect and the interim order – cum - show cause notice dated July 22, 2015 issued against them is disposed of without any directions.

71.16. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the Noticees shall remain frozen.

71.17. The above directions shall come into force with immediate effect unless otherwise specified in the sub paragraphs of paragraph 71 of this order.

72. It is pertinent to mention here that the Hon'ble High Court at Calcutta vide order dated August 30, 2017 in W.P. 28391 (W) of 2015 – Subhas Chandra Mondal & Anr Vs. Union of India has directed that *“The affairs relating to Togo Retail Marketing Limited to the extent applicable in this proceeding shall be referred to the Committee. The Committee shall ascertain the value of assets of the company and its directors and other persons in control of the affairs of the company.”*

Therefore, the effect and implementation of the aforesaid directions stated in paragraph 71 excluding paragraph 71.3, 71.4, 71.10 to 71.16 shall be subject to the directions passed by the Hon'ble High Court of Calcutta in its Order dated August 30, 2017 or any further orders passed in respect of the present subject matter or any orders / decisions of the Hon'ble Justice (Retd) S. P. Talukdar Committee appointed in this regard.

73. Copy of this order shall be sent to all the Noticees.

74. Copy of this Order shall be forwarded to the recognised stock exchanges, depositories and registrar and transfer agents for information and necessary action.

75. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action.

76. Further, a copy of this Order shall also be forwarded to Hon'ble Justice (Retd) S. P. Talukdar Committee and the Local Police/State Government for information

-Sd-

DATE: JUNE 27, 2019

PLACE: MUMBAI

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