

WTM/AB/EFD-1/DRA-3/22/2019-20

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER**

ORDER

Under Sections 11(1) and 11B of the Securities and Exchange Board of India Act, 1992 and Regulation 65 of SEBI (Collective Investment Schemes) Regulation, 1999 in the matter of Zeestar Limousines Ltd.

In respect of: -

Noticee No.	Name of the Noticee	PAN	DIN
1	Ms. Reena Atal	AGOPA6418L	02268028
2	Mr. Surendra Kumar	ASHPK4559K	02268134
3	Mr. Deepak Kumar Goswami	Not Available	02335687
4	Mr. Mrinal Atal	AGKPA9503C	02268049
5	Mr. Rahul Chauhan	Not Available	03025300

The aforesaid entities are hereinafter individually referred to by their respective names/noticee numbers and collectively as “the Noticees”.

1. Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) received a complaint that one Star Auto Cabs (hereinafter referred to as “**Star**”), a unit of Zeestar Limousines Limited (hereinafter referred to as “**Zeestar**”/“**the Company**”) having its registered office at A-116, Ground Floor, Lajpat Nagar, Part-1, Delhi-24, was collecting money from the public. On examination of the matter, SEBI *prima facie* found that the scheme/arrangement of Star were in the nature of collective investment scheme (hereinafter referred to as “**CIS**”), as defined under Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”). Accordingly, SEBI initiated proceedings under Sections 11 and 11B of the SEBI Act, 1992 against the Company.

2. Above proceedings culminated into passing of a final order dated December 11, 2015 against the Company. Regarding scheme/arrangement of the Company, the said order *inter alia* observed as under:

“7. Now I proceed to deal with the charges levelled against the Company and also to test the characteristics of the impugned schemes/ plans floated and carried on by the Company against the four conditions under Section 11AA(2) of the SEBI Act as alleged in the SCN. To conclude whether a scheme is a CIS or not, all the four conditions under Section 11AA(2) of the SEBI Act should be satisfied.

- i. *The first condition is that the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement. The Company had accepted money from the public under its various schemes/ plans which entails payment of booking amount towards purchase of vehicles. The investor earns monthly income besides resale amount. The Company issues receipt in respect of the amount received from the investor towards purchase of the opted vehicle. As per the scheme, the Company purchases the vehicles by using the booking amount and availing finance from the banks. It is important to note that the Company had not mentioned the specification/ registration details of the vehicle (i.e. make, color, engine number, chasis number, registration number, etc.) in the agreement. Further, there is no document on record to show that the Company had provided the vehicle details to its investors. In view of the same, it can be said that the vehicle said to be allotted to the customers were unidentified. Further, the Company had advertised about its ‘radio taxis’ business and for the same it had started mobilizing funds from the investors. From the same, it can be inferred that the funds so mobilized were pooled and utilized*

for the purchase of the vehicle. The 'agreement' also states that in case, the documents submitted by the investors are not sufficient to get assistance from the financial institutions for the balance amount in respect of the purchase of vehicle then the entire amount is utilized by the Company in its finance and investment scheme. From the discussion, it can be concluded that the 'contributions, or payments made by the investors, are pooled and utilised by Zeestar for the purposes of the scheme or arrangement'. Thus, satisfying the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act.

- ii. The second condition is that the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement. The 'details of the investment options' as seen from the pamphlet (Table A) clearly states the per month income for the 48 month period of the scheme for respective category of the vehicle. From the said table, it is also seen that the same also provides for resale amount to be provided at the end of the term. The Company also issued postdated cheques to the investors and provided bank guarantees for the respective investors. Therefore, it is concluded that the contributions or payments are made to the scheme of the Company with a view to receive profits, income, produce or property from such scheme. The scheme of the Company therefore satisfies the second condition under Section 11AA(2) of the SEBI Act.*
- iii. The third condition is that the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors. The fourth condition is that the investors do not have day to day control over the management and operation of the scheme or arrangement.*

With respect to the above said conditions, I note that the investors of the Company were not provided with the vehicle details. The relevant clauses in the 'agreement' that the instalment for the entire loan period of vehicle and insurance/ maintenance/ fuel for such vehicle was the responsibility of the Company suggests that the management of the vehicle remains with the Company. The Company under the agreement retains the right to sublease/rent the vehicle to a third party. From the same, it can be concluded that the investors do not have day to day control over the arrangement and operation of the scheme offered by the Company. The investor only decides the scheme and has no role in the acquisition of the vehicle. The investments of the investors were managed and utilized by the Company. As per the scheme, the vehicle remains with the Company and at the end of the term of the scheme the customer only gets the resale amount in addition to the monthly rent/ hire charges as promised. Such day to day control over management and operations of such scheme were also looked and exercised by the Company and its directors. In view of the same, it can be concluded that the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors and the investors do not have day-to-day control over the management and operation of the scheme or arrangement. Thus, the scheme of the Company also satisfies the third and fourth conditions under Section 11AA (2) of the SEBI Act.

As all the four conditions specified under Section 11AA(2) of the SEBI Act are satisfied in this case, the schemes/ plans promoted, launched, carried on and operated by the Company are in the nature of CIS in terms of Section 11AA(1).

- 8. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried*

on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations. The Company has clearly failed to do so. Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'CIS'. A person can launch or sponsor or cause to sponsor a CIS only if it is registered with SEBI as a Collective Investment Management Company. Therefore, the launching/ floating/ sponsoring/ causing to sponsor any 'collective investment scheme' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. I note that Zeestar had launched CIS without obtaining certificate of registration from SEBI, it contravened the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.”

3. SEBI vide its aforesaid order dated December 11, 2015 directed *inter alia* as under:

“9. In view of the observations made.....

a. Zeestar Limouzines Limited [AAACZ3468J] shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in this Order.

b. Zeestar Limouzines Limited shall wind up the existing Collective Investment Schemes and refund the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and thereafter within a period

of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.

c. Zeestar Limouzines Limited *shall not alienate or dispose off or sell any of the assets of the Company except for the purpose of making refunds to its investors as directed above.*

d. Zeestar Limouzines Limited *are also directed 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.*

e. Zeestar Limouzines Limited *is restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market and launching any scheme for mobilization of funds in any manner for a period of four years.*

f. *In the event of failure by Zeestar Limouzines Limited to comply with the above directions, the following actions shall follow:--*

- Zeestar Limouzines Limited shall remain restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities, even after the period of four years of restraint imposed in paragraph 9(e)above, till all the Collective Investment Schemes of the Company are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.*

- *SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against Zeestar Limouzines Limited, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and*
- *SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, Zeestar Limouzines Limited.-SEBI shall initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.*

10.

11. *This Order shall be without prejudice to the right of SEBI to initiate prosecution proceedings under Section 24 and adjudication proceedings under Chapter VIA of the Securities and Exchange Board of India Act, 1992 against Zeestar Limouzines Limited including other persons who are in default, for the violations as found in this Order.*

12. *With respect to the contravention of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, SEBI may examine whether to initiate appropriate proceedings under Sections 11(4) and 11B of the SEBI Act read with Regulation 65(e) of the CIS Regulations and Chapter VI A of the SEBI Act against Zeestar Limouzines Limited.”*

4. After passing of the aforesaid directions against the Company, then Whole Time Member, SEBI advised that proceedings may be initiated against the directors of ZLL as well. Accordingly, SEBI issued show cause notice dated December 28, 2017 (hereinafter referred to as “**SCN**”) to

Noticee no. 1 to 5 who were directors of the Company, calling upon them to show cause as to why appropriate directions under Sections 11(1) and 11B of SEBI Act, 1992 may not be issued against them for contravention of Section 12(B) of SEBI Act, 1992 and Regulation 3 of SEBI (Collective Investment Scheme) Regulations, 1999 (hereinafter referred to as “**CIS Regulations**”) by ZLL.

5. The SCN and accompanying annexures were sent through speed post on the addresses of the Noticees provided at MCA 21 portal. However, all the SCN's returned undelivered. Hence, the service of SCN was completed through paper publication on September 30, 2018 in the Delhi edition of the Times of India and Dainik Jagran (Hindi).
6. An opportunity of personal hearing was granted to all the Noticees on January 11, 2019 at 3:00 PM. Since in the earlier attempts, the service of SCN through post was not successful on all the Noticees, hence, the service of the hearing notice was directly done through paper publication for all the Noticees, in the Delhi edition of The Hindustantimes and Dainik Jagran (Hindi) on December 11, 2018. I note that, none of the Noticees turned up for the scheduled hearing. I also note that none of the Noticees have filed any reply to the SCN.
7. In view of the above, I proceed to examine the violations alleged against the Noticees in the SCN, on the basis of the material available on record. As noted above, SEBI vide order dated December 11, 2015 observed that ZLL was running unregistered CIS. I also note that the findings of the said order have not been challenged within the time specified under Section 15T of the SEBI Act, 1992 for filing appeal in the appellate forum. Further, time to file such appeal has also lapsed. Hence, the finding recorded in the aforesaid order dated December 11, 2015 that ZLL was running CIS without seeking registration from SEBI, has attained finality. I have no material on record to differ from the findings recorded in the order dated December 11, 2015 passed against the Company.

8. From the documents available on record, it appears that ZLL was running CIS since the year 2010. Further, from the documents available on MCA 21 portal (as on date of this order), I note that all the Noticees (except Noticee no. 5 who joined in the year 2010) are the directors of ZLL since 2008:

DIN/PAN	Name	Begin date	End date
02268028	REENA ATAL	08/09/2008	Continuing
02268134	SURENDER KUMAR	08/09/2008	Continuing
02335687	DEEPAK KUMAR GOSWAMI	24/09/2008	Continuing
02268049	MRINAL ATAL	08/09/2008	Continuing
03025300	RAHUL CHAUHAN	30/03/2010	Continuing

9. I note that all the above directors have been arrayed as Noticee no. 1 to 5 in the present proceedings. I also note that these Noticees are not reachable at their last known addresses and hence, service of SCN and hearing notice was done through paper publication.
10. The Board of Directors is primarily responsible for management of the affairs of a company and raising and utilisation of the funds. I note that Noticee no. 1 to 5 were the incumbent directors from 2010 to 2015 i.e. during the time when ZLL was running the unregistered CIS. I also note that, as per the records available on MCA 21 portal, Noticee no. 1 to 5 are found to be holding the position of 'director' till the date of this order. I also note that none of the Noticees have filed any reply or denied any of the allegations made in the SCN. Hence, considering their directorship in ZLL during the relevant time it is reasonable to draw an inference that Noticees were the persons in-charge and in control of the day to day affairs of the Company and in the absence of any rebuttal/denial by the Noticees, for their role as director of ZLL, I find Noticees guilty as alleged

in SCN and hence, these directors are liable, jointly and severally with the Company, to make refund of the money collected by ZLL to investors, as directed in the order dated December 11, 2015.

11. Thus, I, in exercise of powers conferred upon me under Sections 11(1) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992 and Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:
 - a. All the Noticees shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in the SEBI order dated December 11, 2015, without seeking registration from SEBI;
 - b. The Noticees shall refund, the money collected by ZLL under its various CIS with returns which are due to the investors, as per the terms of offer within a period of three months from the date of this Order and thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999. The said liability of Noticees to make refund is coextensive with the liability of ZLL to refund to investors;
 - c. The Noticees shall not alienate or dispose off or sell any of their assets except for the purpose of making refunds to its investors as directed above, until the refund to the investors as referred above is complete;
 - d. The Noticees are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly in any manner, until the completion of refunds as directed above. It is clarified that during the

period of restraint, the existing holding of securities of the Noticees, shall remain frozen;

- e. The Noticees shall provide a full inventory to SEBI 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, within 15 days from the date of receipt of this order.

12. This order shall come into force with immediate effect.

13. A copy of this order shall also be forwarded to all the stock exchanges, all the depositories and all registrars of mutual funds for necessary action at their end.

Sd/-

Place: Mumbai

ANANTA BARUA

Date: September 25, 2019

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA