

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:

S.No.	Name of the Entity	DIN	PAN
	Shri Amit Mishra	00317047	AIEPM2608Q

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) passed an interim order dated August 05, 2015(hereinafter referred to as “**Interim Order**”) in the matter of Togo Retail Marketing Limited (Earlier Known as “M/s Multi-Ex Marketing & Communication Limited) (hereinafter referred to as “**TRML**”/ “**the Company**”) and issued directions contained therein against the Company and its directors including Shri Amit Mishra (hereinafter referred to as “**Noticee**”) for the alleged *Offer of Equity Shares* which was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. I note that the Company and its directors including the Noticee were given opportunity to file replies within 21 days and also to avail personal hearing upon specific request in this regard. I note that despite being given adequate opportunity to the Noticee, he failed to file any reply nor availed the opportunity of hearing granted to him. Therefore, SEBI passed a final Order dated July 11, 2019 *inter alia*, in respect of Shri Amit Mishra. The said Order, *inter alia*, made the following findings qua

Order in respect of Shri Amit Mishra in the matter of Togo Retail Marketing Limited

the Noticee:

“59. 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.

60. At paragraph 21 above I held that TRML had issued and allotted Equity Shares to 8,424 investors during the FYs 2003-04, 2004-05 and 2008-09 and mobilized funds to the tune of Rs. 7,74,10,000. As per MCA records, at the time of issuance and allotment of Equity Shares in the FY 2003-04 and 2004-05, TRML did not have any Managing Director and in the FY 2008-09. 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 2003-04 and 2004-05, 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 obligation 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 Equity Shares in the FY 2003-04 and 2004-05, Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi and Shri Narayan Jay Tripathi are “officer in default” under Section 73(2) read with Section 5 of the Companies Act, 1956 and are liable to make refund of the money collected during their tenure in the FY 2003-04 and 2004-05, 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 2008-09 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 Equity Shares in the FY 2008-09. Therefore, Shri Amit Mishra being managing director in the FY 2008-09 who is

officer in default, is liable to make refund of the money collected during his tenure in the financial year 2008-09, 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.

61. 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 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 and Shri Amit Mishra, are jointly and severally liable to refund the amounts collected from the investors for the respective period mentioned in above paragraph, with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions..."

2. In the light of the above findings, vide final Order dated July 11, 2019 the following directions were issued against the Noticee and other entities:

"77.1. TRML alongwith Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi 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 Equity Shares (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.

77.2. 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.

77.3. *Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi 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.*

...

77.6. *Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi 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.*

77.7. *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 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.*

77.8. *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 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.

77.9. *In case of failure of TRML, Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi 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 77.1 of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.*

...

77.11. *Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi 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.*

...”

3. The Noticee challenged the Final Order dated July 11, 2019 before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “SAT”) *inter alia*, on the grounds that he had become the victim of fraud played by the Company and its Promoter and he was an employee of the Company and never consented to act as a director of the Company. The Hon’ble SAT vide Order dated January 17, 2020 quashed the Final Order dated July 11, 2019 qua the Noticee and remitted the matter to pass a fresh order in accordance with law after giving an opportunity to the Noticee to place his contention and after making due enquiries from the relevant records. Further, the Hon’ble SAT also directed the Noticee to appear on February 14, 2020 and file a reply and WTM will proceed from there onwards

and pass appropriate orders after giving an opportunity of hearing to the Noticee.

4. Pursuant to the Order of the Hon'ble SAT, vide hearing notice dated January 27, 2020, the Noticee was granted an opportunity of hearing on February 14, 2020 at SEBI, Mumbai.

Hearing and submissions:

5. On February 14, 2020, Mr. Amit Agrawal and Mr. Sumit Agrawal, Advocates, Regstreet Law Advisors, authorized representatives (ARs) on behalf of the Noticee appeared before me and *inter alia* made the following submissions:
 - i. The ARs submitted that the Noticee is not so well-versed with the securities markets and accepted that casual approach of the Noticee in availing the hearing opportunity granted pursuant to the Interim Order, which lead to the passing of final order without hearing the case of the Noticee.
 - ii. The ARs further submitted that:
 - a. When the Noticee joined the company, he was made to sign certain documents and standard forms, which he signed in good faith.
 - b. The Noticee worked as a Sales Manager for Togo Retail and was promoted in due course to Zonal Manager. Form 16 shows his designation. The Form 16 for AY 2011-12 shows designation as Director. He was never on the Board of Directors, nor attended any Board meeting and never received agenda for the Board meeting.
 - c. He asked the company for an explanation and was not given any clear answer. Subsequently he realized that his name was used in various companies.
 - d. He made an application in March 2019 for cancelation of his DIN.
 - e. He has also filed an FIR in this matter.
 - iii. The ARs were asked about his educational qualifications and why he signed forms consenting to be a Director. The ARs submitted that he signed these forms in good

faith but he never consented to becoming a Director.

- iv. The ARs submitted that weight must not be given to the MCA records due to the discrepancies present in the filings. MCA does not verify what is uploaded but merely acts as a storehouse of data.
 - v. As per the Companies Act, for a Managing Director, there is need of agreement to act as a MD, Board resolution to act as MD and shareholder resolution to act as MD.
 - vi. As per the Final order, Mr. PPS Sethi is designated as the Executive Director and he ought to be held as the officer in default and not the Noticee for the DPI done in 2008-09. As per the Noticee, the mastermind behind the entire scheme is Mr. PPS Sethi.
 - vii. The ARs were asked if the Noticee has any documents to show that Mr. PPS Sethi is the MD. The ARs submitted that they will revert.
 - viii. The ARs submitted that as per the SAT order, Form 32 has a lot of discrepancies and SEBI has been directed to pass fresh order after making due enquiries from the relevant records and not to rely on MCA records.
 - ix. The ARs further submitted that they required inspection of documents. However, it was informed that as all documents were already available with the Noticee, there is no need for inspection. Additional time was provided till February 22, 2020, for further submissions, if any.
6. After, the hearing the ARs of the Noticee submitted the reply on merits to the findings in the Final Order qua the Noticee. The submissions in brief are as under:
- (a) Our Client is a resident of the city of Prayagraj (earlier, Allahabad) where he was appointed as 'Manager Sales' in TRML in 1999. He was designated as zonal manager of the Allahabad region for retail insurance business of TRML. A copy of the employee identity card issue on 11.05.2011 and the visiting card of the

Noticee submitted.

- (b) Mr. Prithi Paul Singh Sethi (“**PPS Sethi**”) is the founder member and promoter of TRML and he looked after all the affairs of the Company. He was blindly trusted by, and was also followed in terms of his instructions by all the employees of the Company as he was the all-encompassing senior and management in the Company.
- (c) In the year 2005, the employees at TRML’s Allahabad office, including Our Client were directed to fill up certain blank forms by Mr. PPS Sethi being the promoter of the said Company. Considering that all the managers were directed to fill in such forms, the forms were filled by Our Client too. Our Client had knowledge about similar forms being circulated at other offices of the Company and assumed the same to be part of his work. Our Client reiterates that he has never executed any document as a director of TRML (except the resignation letter dated 16.04.2012)
- (d) Our Client used to regularly file his Income Tax Returns and for the same, he was issued Form 16 by the Company, in which Our Client was being shown as the ‘Zonal Manager’ of the Company. The copy of Form 16 for the Assessment years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 are enclosed.
- (e) In 2011, when Our Client received the Form 16 from the Company, he was shown as a ‘director’ of TRML, and accordingly he sought clarifications from the management of TRML i.e. Mr. PPS Sethi. None of the previous Form 16 showed him a director. Upon queries made, he was informed that this must have been a mistake, and that it will be rectified. Our Client never consented to be appointed as a director, and in fact he did not ever discharge any duties at the Company apart from those as the manager of the insurance business of the Company. Furthermore, Our Client was neither informed nor was he aware of any board meetings nor attended any such meetings. It is relevant to note that Our Client never held any position as a director in the Company, did not ever receive any notice of any board

meetings, did not sign any resolutions of board minutes etc. At no point had Our Client discharged any duties of a director of the Company.

- (f) Our Client's name had been used fraudulently and illegally by TRML/Mr. PPS Sethi/Other persons such as Mr. Giriraj Vashisht.
- (g) A bare perusal of the Form 32 (in relation to appointment as a director) will also show that a dummy email id came to be created by the compliance team/management of the Company i.e company@rediffmail.com to prevent any kind of information exchange with Our Client in this regard. No specific email id of Our Client was used.
- (h) Our Client tendered his resignation as director from the Company on 16.04.2012 and insisted that the same be taken on record. Our Client did not want to immediately confront the management of the Company and needed to earn his livelihood for the sake of his family so he continued thereafter as an employee.
- (i) Subsequently, he had tendered his resignation from employment in a letter to the directors of TRML dated 28.08.2012 and the same was accepted w.e.f 30.09.2012 by the directors of the Company. Pursuant to an enquiry by the Income Tax Department, Our Client also intimated the Assistant Director of Income Tax (Investigation), Allahabad of his cessation of employment from TRML *vide* letter and Affidavit dated 24.01.2018.
- (j) After his abovementioned resignation from the Company, Our Client came to know some of the extent of fraud perpetrated on him by Mr. PPS Sethi as his Director Identification Number ("DIN") 00317047, Digital Signature Certificate ("DSC") as well as Permanent Account Number ("PAN") were used to make him a director in about fifteen (15) companies, all of which were founded by Mr. PPS Sethi. It is submitted that Our Client was not even aware that he possessed a DIN or a DSC until the receipt of Form 16 for the year 2011-12. Subsequently, Our Client cancelled his DIN after consulting with a Chartered Account, to prevent any

further misuse of his DIN without his consent or knowledge.

- (k) Upon coming to know about the fraud and manipulation committed by Mr. PPS Sethi through his numerous companies, Our Client proceeded to file a criminal complaint with the Prayagraj Police against TRML and Mr. PPS Sethi *inter alia* regarding the misuse of his DIN, DSC, PAN and forgery committed by Mr. PPS Sethi and others.
- (l) Our Client also wrote to SEBI *vide* letter dated 13.09.2019 informing them of the fraudulent creation and use of his DIN and DSC in issue of securities. Our Client also informed SEBI that he has filed a police complaint in this regard. A copy of this communication was also sent to ROC, New Delhi, ROC, Kanpur and Insurance Regulatory and Development Authority of India.
- (m) Our Client has falsely been shown as a director/Managing Director of TRML. Our Client never attended any board meeting or functioned as any director/MD as such. His name and DIN and other details have been completely misused by Mr. Prith Pal Singh Sethi.
- (n) Our Client was never involved in and had no role in the matter of 'public issue', or affairs of the Company as such, except being an employee. TRML was a company whose promoter and key person was Mr. PPS Sethi. He is presently believed to be in jail for various criminal cases against him. Mr. PPS Sethi was the whole and sole of TRML
- (o) As per the SEBI Order, Mr. PPS Sethi was the Executive Director of the company for 2008-2009 and in particular on 31.03.2009 when the issue/allotment of shares to persons more than 50 was purportedly made by the Company. The resolution dated 31.03.2009 for allotment of shares also, as per the MCA record and also SEBI Order, has been signed by Mr. PPS Sethi alone. There is no reason for Mr. PPS Sethi to not be fastened with the liability in this regard.
- (p) MCA records are just the words of a private individual in a public place and not

the words of a public authority. The information/documents are neither verified nor approved as such by MCA.

- (q) A closer look at false/fabricated Form 32 filed with MCA/ROC showing Our Client to be Managing Director since 09.10.2007 will reveal various inherent contradictions and falsities, as also noted by Hon'ble SAT in order dated 17.01.2020, exemplifying that the MCA record is totally unreliable for the purposes of fastening liability on Our Client. Amongst others, as per the said document:
- a) Our Client is appointed as "independent" director, and also as "managing director". The same is patently contradictory.
 - b) The purported consent form for appointment of Our Client as an MD of TRML is signed by one Kishan Pal Singh, and not Our Client.
 - c) The purported extract of the shareholder resolution approving the appointment of Our Client as an MD approves the appointment of Our Client as an Managing Director only with effect from 09.10.2009 (and not from 09.10.2007).(Assuming this document to be correct, the appointment by the shareholder of TRML was made/approved for a period commencing from 09.10.2009 being much beyond the date of purported public issue, i.e. 31.03.2009.
- (r) It is reiterated that Our Client never carried out any duties as a director, managing director or any other designation apart from carrying out his duties as an employee. Our Client did not function as a director or as a Managing Director. However, SEBI has fastened liability on Our Client merely by relying upon Form 32 filed with the Ministry of Corporate Affairs for appointment of Our Client as the Managing Director of the Company.
- (s) Further, as per Section 269(2) of the Companies Act, 1956, every public company or a private company which is a subsidiary of public company is required to file a

return of appointment of Managing Director/Whole-time director/Manager in Form 25C within ninety days of appointment of an individual as a Managing Director/Whole-time director/Manager. However, no such return has been filed in respect of appointment of the Our Client as the Managing Director. Our Client in fact was never a managing director (or even a director) and even in law in the absence of compliance of Section 269 (2), Our Client could not have been considered as such to be the MD.

(t) Further, as per Section 215(1)(ii) of the Companies Act, 1956, the balance sheet and the profit and loss account of every company, other than a banking Company, is required to be signed by manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director.

(u) However, the Balance Sheets and the Profit and Loss Accounts for Financial Years from 2007-08 to 2011-12 i.e. the alleged tenure of Our Client as Managing Director do not contain his signatures. This further enunciates the fact that Our Client was not involved in the day to day functioning of the Company.

7. Subsequently, vide letter dated February 17, 2020 the ARs of the Noticee filed the additional written submissions. In addition to the submissions made vide reply dated February 14, 2020, the Noticee's submissions in brief are as under:

- a) Before the Hon'ble SAT, submission of SEBI that Our Client should get an appropriate order from the court of law if he finds that the entries in MCA records are incorrect was not accepted by SAT. SAT specifically directed for "due enquiry" to be made by SEBI. This effectively requires SEBI to go beyond the MCA record, if any.
- b) It has been recorded in SEBI order that Mr. PPS Sethi (Mr. Prithi Paul Singh Sethi) was the Executive Director of TRML since 29.09.2008 (See para 52 of SEBI Order). The said finding has not been challenged by anyone and as such is final. Mr. PPS Sethi was the person in control and command of TRML and all concerned

used to act under his directions and supervision. Various other noticees have also submitted the same as is reflected from SEBI Order. SEBI should have no doubts on the same.

- c) It is submitted that no liability should be fastened on Our Client even in light of Sayanti Sen v. SEBI (SAT decision dated 09.08.2019). In the said case, Ms Sayanti Sen who was a receptionist and appointed as a director was not held liable in connection with violation of issuance of securities (inter alia under Section 56 and Section 73 of the Companies Act, 1956) by the concerned company merely by virtue of her purported position as a director of the concerned company. (In the instant case, Our Client was not even a director as such and his name has clearly been used to perpetuate fraud)
- d) Entire edifice of the SEBI Order of deemed public issue made in 2008-09 is premised on above referred Form 2 containing signatures of Mr. PPS Sethi on the resolution. Except placing reliance on Form 2 for purported allotment on 31.03.2009 recording allotment of shares to 61 persons there is no mention of any document having been examined or being in existence such as, register of members/shareholders, the advertisements/brochure/offer to more than 50 persons, Subscription form/applications made by more than 50 persons and Actual instruments of security/ share certificate evidencing allotment to more than 50 persons.
- e) The said Form 2 cannot be stated to be admitted by or binding on Our Client. Even if the above-said document is considered admitted by Mr. PPS Sethi or TRML, the same cannot be considered to be reflecting a true state of affairs so as to even bind our client to the same. One specific error/falsity that Our Client points out herein is that the said Form 2 shows allotment having been made to 61 persons including in the name of Our Client. Our Client never applied for any shares or securities to be allotted which allegedly came to be allotted on 31.03.2009 by TRML. Record

of TRML, including these forms in particular the above-said Form 2, are false and fabricated and specifically point out that reliance on the same cannot be placed for any reason whatsoever. Whether there was in fact any public issue or not needs to be examined and established going much beyond one form i.e. the Form 2. In any case, the above-said Form 2 cannot be pressed against Our Client without Our Client being given an opportunity to cross-examine the maker of it, if SEBI seeks to reply upon the same.

Consideration of Issues & Findings

8. I note that vide Order dated July 11, 2019 it was held that TRML had come out with an offer of equity shares and allotted the shares in various tranches and had mobilized funds to the tune of Rs. 7,74,10,000 from 8,424 allottees during the Financial Year (FY) 2003-04, 2004-05 and 2008-09 in violation of provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956 and relevant provisions pertaining to the DIP Guidelines read with ICDR Regulations. I note that the same has become final against TRML and other directors. I note that despite given sufficient opportunities, the Noticee failed to file any reply or avail personal hearing. In view of the same, I was constrained to pass the Order dated July 11, 2019 without the Noticee's case on record. Vide the said Order the Noticee was found to be the Managing Director of the Company during the FY 2008-09 and held liable for the issuance of Equity shares. Therefore, the consequential directions of refund and debarment was issued in respect of the Noticee vide Order dated July 11, 2019.
9. As the findings qua the Noticee in the Order dated July 11, 2019 was quashed by the Hon'ble SAT and the SAT remanded the matter for fresh consideration qua the Noticee, I have considered the allegations and materials available on record such as Interim Order, Order dated July 11, 2019, SAT Order dated January 17, 2020, reply and additional written submissions filed by the Noticee along with the documents contained therein, oral submissions made by the Noticee during the personal hearing and documentary evidence

available on MCA21 portal, etc. On perusal of the same, I note that the following issue arises for consideration in the present matter:

Whether the Noticee is liable for the violation of deemed public issue norms for the Financial year 2008-09?

10. In this regard, I note that the interim order proceeded on the basis of existence of various circumstances, the existence of which gave rise to a reasonable belief that the Noticee being the Director is *prima facie* liable for collection of money from the investors in violation of deemed public issue norms. I note that the Noticee had never submitted any reply to the interim order nor appeared before me during the proceedings which culminated in the Order dated July 11, 2019. Now that he has submitted his reply/objections to the findings qua him, the same need to be considered in the present proceedings. In these circumstances, it needs to be considered at first, whether the circumstances considered by the interim order still holds good or the explanations and evidences given by the Noticee takes away the incriminating nature of some of the circumstances or materially alters the existence of the circumstances considered in the interim order as basis for the *prima facie* findings. It is noted that in order to test whether there is a reasonable belief, the totality of the circumstances have to be considered before arriving at a conclusion. In the facts and circumstances of the case, one or a few of the circumstances may have more weightage in view of its degree of influence on the inference to a relevant fact than others. Therefore, in assessment of inference that has been drawn out of various circumstances, emphasis has to be laid not on the independent assessment of individual circumstances but on the joint assessment of various circumstances and the collective analysis of those circumstances resulting in a cumulative finding.

11. It is noted that the liability of the Noticee arises, if the issue, *prima facie* found to be “deemed public issue” in the interim order is found to be so in the present proceedings on

consideration of the Noticee's reply and other evidences on record. In case such issue is determined as deemed public issue, then the question, inter alia, as to whether the Noticee was officer in default arises. Since the Noticee primarily challenged his directorship, among other things, I proceed to determine on the contention of the Noticee on this aspect of his directorship at first instance. In case, if the issue is found against the Noticee, the other issues on merits raised by the Noticee would also be determined.

12. In the present matter, from the perusal of the material available on record such as MCA records, the following details of the appointment and resignation of the Noticee are observed:

Name of the Director	Date of Appointment	Date of Cessation
Shri Amit Mishra	July 12, 2006	October 08, 2007
	October 09, 2007	April 16, 2012

12. From the MCA records, it was noted that the Noticee was appointed as a director on July 12, 2006 of TRML and became Managing Director on October 9, 2007. In this regard, I note the contention of the Noticee that he has become a victim of fraud played by the Company and its promoter PPS Sethi. It is further contended that he was only an employee being the sales/Zonal manager in the Company and was never appointed as a Director or Managing Director. It was contended that he had never given any consent to be Director or Managing Director nor his signatures are on any of the documents.
13. I note that the Noticee had never appeared before me nor submitted any reply during the proceedings which resulted in the Order dated July 11, 2019. Subsequently, he has appeared before me and made his oral submissions as well as written submissions along with documentary evidences. Therefore, vide the extant proceedings, the subject matter of the allegations/interim findings qua the Noticee made in the interim Order needs to be

adjudicated again in the light of the contentions/objections raised by the Noticee in respect to the same. Considering the contention of the Noticee regarding the discrepancies in the MCA records, I have perused Form 32 available on record. The following facts have been noted from the same:

13.1.As per the Form 32 filed on October 17, 2006 I note that Shri Amit Mishra was designated as 'Director' with a date of appointment shown as July 12, 2006 under the category shown as 'Independent' and again mentioned as 'Executive Director'. From the perusal of the consent letter dated October 9, 2007, allegedly given by the Noticee for becoming the Managing Director of the Company, attached with the said Form 32, I note that the same is not signed by the Noticee rather it is signed by one Shri Kishan Pal Singh, director of TRML.

13.2.As per the Form 32 filed on October 09, 2007 for the purpose of change of designation, I note that Shri Amit Sharma was designated as 'Managing Director' of TRML as on October 09, 2007 and the category mentioned as 'Independent' and again as mentioned as 'Executive Director'. The extract of the minutes of the Board of Directors of the Company held on October 9, 2007 which is annexed with the Form 32 shows that the Noticee was appointed as Managing Director of the Company for a period of 5 years with effect from October 9, 2009.

13.3.I note that there are many inconsistencies in the Form 32 filed by the Company. There is inconsistency as to the date of the appointment i.e. whether the Noticee was appointed as Managing Director with effect from October 9, 2007 or from October 9, 2009. Another inconsistency noted was with respect to his category as director. At one place he has been shown as 'Executive Director' in 'Independent' category and again in the same Form he has been shown as a 'Managing Director'. Thus, there are contradictory entries in Form 32. Further, the consent letter has been signed by some other person and not by the Noticee. On the other hand, the Noticee contended that he was merely an employee and was never a Director and had no involvement in the

day-to-day affairs of the running of the Company. In this regard, he has submitted the Identity card and Form 16 during the relevant period. Perusal of the same shows that he was Zonal head of the Company during the relevant period.

13.4. Further, the Noticee contended that as per Section 269(2) of the Companies Act, 1956, every public company or a private company which is a subsidiary of public company is required to file a return of appointment of Managing Director/Whole-time director/Manager in Form 25C within ninety days of appointment of an individual as a Managing Director/Whole-time director/Manager. However, he contended that no such return has been filed in respect of appointment of the Noticee as the Managing Director hence he contended that in law in the absence of compliance of Section 269 (2), the Noticee could not have been considered as such to be the MD. From the perusal of MCA records, there is no such return filed by the Company in respect of Shri Amit Sharma in compliance of Section 292 (2) of the Companies Act. I note that this requirement is only a requirement for disclosure to ROC. Failure to disclose the fact of appointment under this Provision does not have a concluding effect that one has not been appointed as Managing Director. However, this can be one of the circumstances to consider in the totality of the case.

13.5. Further, as per Section 215(1)(ii) of the Companies Act, 1956, the balance sheet and the profit and loss account of every company, other than a banking Company, is required to be signed by manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director. However, the Balance Sheets and the Profit and Loss Accounts for Financial Years from 2007-08 to 2011-12 i.e. the alleged tenure of the Noticee as Managing Director do not contain his signatures. From the perusal of the documents, I note that the same is signed by other directors of the Company and not by the Noticee. I note that the fact that his signature is not present in the above mentioned documents cannot be the sole reason to conclude that he has not been appointed as a Managing Director. However, given the fact that in the consent letter instead of his signature someone else has signed, i.e.

the absence of signature in these documents also becomes one of the relevant circumstances.

13.6. I note that the Noticee claims that he is a victim of the fraud perpetrated by the Company and its Promoter PPS Sethi. In this regard, I note that the Noticee has submitted a copy of the Complaint filed against TRML and PPS Sethi before the Civil Lines Police Station, Prayagraj, Uttar Pradesh. The Complaint was lodged by the Noticee, as stated by him, after he became aware of the extant proceedings to take corrective steps. I note that this fact also cannot be a conclusive evidence, as no order from the competent court in respect of the Complaint has been produced before SEBI. However, given the presence of all other above mentioned circumstances, the fact that the complaint has also been filed becomes one of the relevant circumstances for consideration.

13.7. Primarily, among other factors, the liability of the Noticee arises out of his position as an officer in default in the company at the relevant period of money collection. The cumulative effect of circumstances enumerated above, make it difficult to render a positive inference that he was in fact the Director of the company on the basis of preponderance of probability test. Thus, taking into consideration all the attending circumstances as detailed in paragraph 13 above, in the given facts and circumstance of the matter, a benefit of doubt can be given to the Noticee based on the test of preponderance of probability as there is doubt that Noticee was an officer in default at the relevant point of time during the issue period. Therefore, the Noticee cannot be held as Officer in Default.

Therefore, the contention of the Noticee on other aspects of the merits including contention on deemed public issue and consequently with respect to his liability arising out of failure to comply with the deemed public issue norms does not arise.

14. In view of the discussion above, the directions issued with respect to the Noticee viz., Shri Amit Mishra vide interim Order dated August 05, 2015 need not be continued and hence are liable to be revoked.
15. 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 revoke the directions issued in respect of the Noticee viz., ShriAmit Mishra. The interim order dated August 5, 2015 stands revoked qua the Noticee.
16. Copy of this order shall be sent to the Noticee.
17. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.

DATE: March 23, 2020

MADHABI PURI BUCH

PLACE: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA