

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

UNDER SECTIONS 11(1), 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF URO AUTOTECH LIMITED IN RESPECT OF

SL.	NOTICEE	PAN	CIN/DIN
1.	URO Autotech Ltd	N.A.	U15132WB2011PLC164044.
2.	Biswapriya Giri	AIXPG7534N	02831730
3.	Prasun Mondal	ALFPM5139C	06568526
4.	Sanjoy Chowhan	N.A.	06568541
5.	Sachindra Nath Bhattacharya	AAJPB4769J	00559781
6.	Ipsita Das Giri	AILPD1367L	02877459

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a reference dated December 30, 2013 from the Ministry of Corporate Affairs ("MCA") regarding the complaints received against 'chit fund companies operative in the State of West Bengal - in respect of URO Autotech Limited (Noticee No.1/ Company) & its group companies'. A Report from the Office of Regional Director, Eastern Region, MCA, inter alia alleging violation of sections 60, 73 read with 67(3) of the Companies Act, 1956 by URO Autotech Limited, was also enclosed with the reference.
2. Pursuant to the same, SEBI conducted a preliminary examination of the said allotment of shares, with a view to ascertain possible violations of the provisions of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”), Companies Act, 1956 and the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations”).

3. SEBI vide letter dated April 24, 2014 *inter alia* advised the Company to submit the following information and documents:
- i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Copy of annual accounts of the company for the last 3 years
 - iii. Name, addresses and occupation of all the promoters/directors of the company;
 - iv. Names and details of the Key Managerial Personnel of the company;
 - v. Other information in respect of securities issued by the company, viz. –
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("RoC") for issuance of the shares/debentures.
 - b. Date of opening and closing of the subscription list;
 - c. Details regarding the number of application forms circulated inviting subscription;
 - d. Details regarding the number of applications received;
 - e. Details regarding the number of allottees and list of such allottees;
 - f. Number of shares/debentures allotted and value of such allotment against each allottee's name.
 - g. Details regarding subscription amount raised; Date of allotment of securities.
 - h. Copies of the minutes of Board/Committee meeting in which the resolution was passed for allotment.
 - i. Date of dispatch of share/debenture certificates, etc.
 - j. Details of the total number of applicants for each of the Company's scheme besides the list of final allottees.
 - k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of securities.

- l. Terms and conditions of the issue of shares/debentures.
 - m. Whether the company has applied for listing of its securities with any of the stock exchanges
 - n. Copy of Form 2 and Form 10 filed with the ROC (along with attachments)
4. As the information sought by SEBI was not furnished by the Company, the documents pertaining to the Company available on the 'MCA21' Portal was perused. From the information available on the portal, the following was noted:
- i. URO Autotech is an unlisted company and the CIN of the company is U15132WB2011PLC164044. The Registered Office of the Company is situated at 94, Matheswartala Road, P.S. Tiljala, Kolkata- 700046, West Bengal.
 - ii. It was noticed from the Form-2 (Return of Allotment) filed by the Company, that the company had allotted 17,50,000 equity shares of Rs.10/- each for Rs. 1,75,00,000/- to a total of 1000 investors in the Financial Year 2011-2012.
 - iii. It was also noticed that the Company did not file Prospectus for the said allotment.
 - iv. The directors of the Company (including past directors who were in charge at the time of the issue) were, -

Table 1				
Sl. No.	Name of the Director	DIN	Date of appointment	Date of Resignation
1.	Biswapriya Giri	02831730	June 27, 2011	
2.	Mr. Sachindra Nath Bhattacharya	00559781	June 27, 2011	April 29, 2013
3.	Ipsita Das Giri	02877459	June 27, 2011	April 29, 2013
4.	Sanjoy Chowhan	06588541	April 29, 2013	
5.	Prasun Mondal	06568526	April 29, 2013	

5. An SCN dated September 01, 2014 was issued to Noticees No.1 to 4 and a SCN dated June 07, 2019 was issued to Noticees 5 and 6. The proof of delivery of the SCN by post to Noticee No. 6 is available on record. The SCN could not be served by post on the other Noticees at their address which was available on the MCA Portal. All the Noticees were subsequently informed about the issuance of the SCN through newspaper advertisements.
6. Thereafter, an opportunity of personal hearing was granted to the Noticees on January 09, 2020. Proof of Delivery of the hearing notice to Noticee 3, 5 and 6 is available on record. The hearing notice addressed to Noticee No. 3, Prasun Mondal, was received by one Ms. Nivedita Mondal who produced a copy of the death certificate of Prasun Mondal dated November 1, 2017 issued by the Kolkata Municipal Corporation, in reply. All the Noticees were also informed of the date of hearing by way of newspaper publication.
7. In response to the notice, only Noticee No. 5 and 6 i.e Sachindra Nath and Ipsita Das Giri responded. Mr. Sougata Sarkar, Advocate, appeared on behalf of Noticee no. 5 on January 09, 2020; whereas Noticee No. 6 appeared in person through video conferencing from the Eastern Regional Office of SEBI at Kolkata. Mr. Sougata Sarkar sought additional time to make submissions and accordingly another opportunity of hearing was granted on January 22, 2020. Mr. Sougata Sarkar appeared on the said date and made submissions on behalf of Noticee No. 5.
8. Summary of the submissions made by Noticees 5 and 6 is provided below,-

Noticee No. 5

- i. The Noticee is a peace loving and law abiding citizen of India who is a senior citizen aged about 84 years.
- ii. The Noticee was never in contact with any board member of the company

- iii. Noticee's signature on the consent form agreeing to act as the director of the Company is forged.
- iv. When the Noticee became aware of his name being included as part of the Board of Directors of the Company, he had approached Noticee No. 2, Mr. Biswapriya Giri, who threatened to frame and implicate him in legal actions and further made him sign blank resignation letter proformas.
- v. Holding the Noticee liable for the unlawful actions of the Company would be a gross contravention of the principles of natural justice.

Noticee No. 6

- i. The Noticee submitted that she had never signed on any papers related to the Company and her signatures appearing on various documents related to the company were forged by her husband, Noticee no. 2, who was a director in the company.
- ii. Her husband, Noticee No. 2, had forcibly taken away her identity papers like Voter's ID, PAN Card etc. in 2009 and these documents must have been used by Noticee No. 2 for showing her as a director in the Company.
- iii. The Noticee also submitted that she had filed for divorce from her husband and would submit papers related to the same by January 30, 2020.
- iv. SEBI, thereafter, received a letter dated February 15, 2020, from Fox and Mandal, Advocates, seeking three weeks' time for making additional submission on behalf the Noticee. Subsequently, vide email dated April 24, 2020, Noticee made additional written submissions. She reiterated the submissions made during the hearing and made following additional submission,-
- v. Mr. Biswapriya Giri had in his statement before the CID, Bhidannagar Commissionerate, Kolkata accepted that signatures of Noticee were forged by him. However, the Noticee failed to provide a copy of the said statement.

CONSIDERATION

9. As stated in Para 4(ii), it is noted that the Company had allotted 17,50,000 equity shares to 1000 persons in the Financial Year 2011-2012. It is therefore important to refer to section 67(1) & (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) ...

(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)."

10. A reading of the above provisions, makes it clear that in terms of the first proviso to section 67(3), the provisions of Section 67(3) shall not apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more.
11. Therefore, if an offer is made to 50 persons or more, then such offer becomes a 'public offer'. The Company is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and

therefore, is not covered under the second proviso to Section 67(3) of the Companies Act, 1956.

12. As per the documents, the Company had made an offer and allotted equity shares to 1000 persons. Accordingly, this allotment of shares would qualify as a 'public offer' of equity shares in terms of the first proviso to section 67(3).
13. In this context, I refer to the below mentioned observation made by the Hon'ble Supreme Court of India in the matter of Sahara India Real Estate Corporation Limited & Ors.Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011)(hereinafter referred to as the 'Sahara Case'):
"... ... that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."
14. As it is noticed that the Company has offered and issued equity shares during FY 2011-2012 to more than 49 persons, the company was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956 including sections 56, 60 [read with section 2(36)] and 73 of the Companies Act, 1956. 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, and contains disclosures as specified. 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.

15. There is no record to suggest that the Company has filed a Prospectus and complied with the above provisions.
16. Further, by issuing equity shares to more than 49 persons, the Company had to compulsorily list such securities in compliance with 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. The Company appears to have contravened the said provisions as it has neither made an application seeking listing permission nor refunded the amounts on account of such failure. The Company has also not complied with the provisions of section 73(3) as it has not kept the amounts received from investors in a separate bank account and failed to repay the same in accordance with section 73(2) as observed above.
17. I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 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 India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012) (hereinafter referred to as the "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."*

18. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI in the case of companies who intend to get their securities listed. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("the ICDR Regulations") also govern and regulate the issuance of equity shares under the category specified securities. Therefore, the Company was also mandated to comply with the provisions of the ICDR Regulations relating to public issue of securities.
19. In terms of Section 73(2) of the Companies Act, 1956, the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). As per the information available on the MCA Portal, Noticee Nos. 2 to 4 are the present directors of the company and Noticee 5 and 6, were directors of the Company during the offer and allotment of securities.
20. At this point, I take note of the main submission furnished by Noticee No. 5 and 6 i.e. Sachindra Nath Bhattacharya and Ipsita Das Giri, that their signatures on the consent form to act as the director of the company was forged. Table 1 above is an extract of records made available from MCA-21 portal (being the online repository of information from the Registrar of Companies (RoC)). Perusing the same, it becomes clear that the allotment of shares clearly fell within the period when Noticee Nos.5 and 6 held directorship in the Company. In the absence of any forensic evidence submitted by Noticees to rebut the information available on the MCA portal and to support their contention that their signatures were forged, I cannot but draw an adverse inference against Noticee Nos. 5 and 6. SCN was served on Noticee No.4, through substituted service. However, he did not file a reply or appear for the SEBI proceedings.
21. I further note that in the instant matter before me, there is no material to show that any of the officers was specifically entrusted to discharge the functions under Section 73 of the

Companies Act or that any director was designated as as set out in clauses (a) to (c) of Section 5.

22. In this context, I refer to the findings of the Hon'ble SAT in the matter of in the Manoj Agarwal Vs. SEBI dated July 14, 2017 wherein the Hon'ble Tribunal observed as follows:
- “11. Argument of the appellant that he could not be said to be an “officer in default” is without any merit. 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.** Therefore, decision of the WTM that all directors of BREDL including the appellant would constitute “officer in default” cannot be faulted.”*
23. In view of the above, the current directors of the Noticee Company and the persons who were directors of the Company during the offer and allotment of securities, ie Biswapriya Giri, Sanjoy Chowhan, Sachindra Nath Bhattacharya and Ipsita Das Giri are jointly and severally liable along with the Noticee Company (in terms of section 73(2) of the Companies Act, 1956) to make refund of monies raised by way of the offer and allotment of shares. The proceedings against Noticee No. 3, Mr. Prasun Mondal is being dropped as a copy of his death certificate was produced during the course of the proceedings.

DIRECTIONS

24. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions:-

- i. Noticee No. 1 i.e. URO Autotech Ltd (PAN-not available) shall refund a sum of Rs. 1,75,00,000, which is the money collected through the offer and allotment of shares of URO Autotech Ltd. [as indicated in Para 4(ii)] with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment) within a period of 90 days from the date of receipt of this Order;
- ii. In case the Noticee Company fails to comply with the direction made in para 24(i), then its present and past Noticee directors namely, Biswapriya Giri (PAN - AIXPG7534N), Sanjoy Chowhan (PAN -not available), Sachindra Nath Bhattacharya (PAN-AAJPB4769J), Ipsita Das Giri (PAN -AILPD1367L), shall be liable for refunding the amount along with interest as provided in the said para within a period of 90 days from date of expiry of the period provided to Company for making the refund under para (i).
- iii. The refund as directed hereinabove shall be made through banking channels such as demand draft or electronic mode of transfer and a trail of such refunds shall be maintained by the Noticees for verification, if necessitated at a later date;
- iv. Within seven days of completion of refund as directed hereinabove, the Noticee Company/ present and past Noticee directors namely, Biswapriya Giri , Sanjoy Chowhan, Sachindra Nath Bhattacharya, Ipsita Das Giri, shall file a certificate

of such completion with SEBI from two independent Chartered Accountants after proper verification of the details of such refunds from records including bank accounts of the Noticees and after being satisfied that the refund has actually been made.

v. Till the refund, as directed above, is complete the Noticees Nos. 1, 2, 4,5 and 6 are hereby—

- a. restrained from accessing the securities market;
- b. prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
- c. restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

25. For a period of four years from the date of completion of the refund, as directed in para 21 above, the Noticees Nos 1, 2, 4,5 and 6 are hereby—

- i. restrained from accessing the securities market;
- ii. prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
- iii. restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

26. In the event of the Noticees 1, 2, 4,5 and 6 failing to comply with the directions of refund stated in para 21 above, SEBI shall initiate recovery proceedings in accordance with the provisions of the SEBI Act, 1992.

27. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.

28. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be

forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

Place: Mumbai
Date: May 18, 2020

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