

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:

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

Background in respect of Offer of Equity Shares:

SEBI Interim Order dated August 05, 2015

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 dated August 05, 2015**”) 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. Vide the said interim Order 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

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

regard.

SEBI Final Order dated July 11, 2019

2. I note, from the material available on record, that despite being given adequate opportunity, the Noticee failed to file any reply nor availed the opportunity of hearing granted to him. Therefore, SEBI passed a final Order dated July 11, 2019, in respect of Shri Amit Mishra and others *inter alia* to refund the money collected from the investors along with interest @ 15% and debarred the entities mentioned in the said final order from accessing the securities market for four years as stated in the order.

Appeal before Hon'ble SAT

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.

Order of the Hon'ble SAT dated January 17, 2020

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

SEBI Order dated March 23, 2020

5. Considering the allegations and materials available on record such as Interim Order, Order dated July 11, 2019, SAT Order dated January 17, 2020, reply, additional written submissions filed by the Noticee and oral submissions made by the Noticee during the personal hearing and documentary evidence available on MCA21 portal, etc., it was held as under:

“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”.

In view of the same, the interim order qua the Noticee was revoked vide Order dated March 23, 2020.

Offer of Redeemable Cumulative Preference Shares by TRML:

SEBI Interim Order dated July 22, 2015

6. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) passed an interim order dated July 22, 2015 (hereinafter referred to as “**Interim Order dated July 22, 2015**”) against TRML and issued directions contained therein against the Company and its directors including Shri Amit Mishra/the Noticee for the alleged Offer of Redeemable Cumulative Preference Shares (“**RCPS**”) 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.

SEBI final Order dated June 27, 2019

7. I note that despite being given adequate opportunity to the Noticee, as noted from the material available on record, the Noticee failed to file any reply nor availed opportunity of hearing granted. Therefore, SEBI passed a final Order dated June 27, 2019 in respect of Shri Amit Mishra and others *inter alia* to refund the money collected from the investors along with interest @ 15% and debarred from accessing the securities market for four years.

Appeal before the Hon'ble SAT

8. The Noticee challenged the Final Order dated June 27, 2019 before the Hon'ble SAT. The Hon'ble SAT vide Order dated July 07, 2020 set aside the Final Order dated June 27, 2019 qua the Noticee and remitted the matter to decide the matter afresh after considering the order dated January 17, 2020 passed by the Hon'ble SAT and the Order passed by the WTM dated March 23, 2020 after giving an opportunity of hearing to the Noticee.

Reply of the Noticee

9. Subsequently, the Noticee filed a reply dated July 21, 2020 and *inter alia* made the following submissions:

"... It is humbly submitted that the order dated 23.03.2020 upon due consideration of the facts and material and submissions made by Our Client held that Our Client cannot be said to be a Director of the Company namely "Togo Retail Marketing Ltd." Relevant portion of the order dated 23.03.2020 holding that Our Client cannot be considered to be an Officer in default in relation to the aforesaid Company is extracted below for the ease of reference:

"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."

The above said finding exonerating Our Client in relation to the purported defaults of the Company will apply with equal force in the instant case also. The above referred order

dated 23.03.2020 was passed in connection with affairs of TRML and the order dated 27.06.2019 (relating to purported offer of redeemable cumulative preference shares) also pertains to the very same Company.

All the submissions made by Our Client previously in connection with TRML, as were made prior to passing of the order dated 23.03.2020, are reiterated hereby.

It is reiterated that Our Client was not a Director or Officer in Default of TRML and that his name was fraudulently used by the Promoters of the said Company.

It is denied that Our Client was involved in any wrongdoing with respect to the affairs of TRML, specifically, in respect of any of the purported deemed public offerings of RCPS of TRML as mentioned in SEBI Order. Detailed representation and submissions have been made by Our Client previously (refer Annexure B and Annexure C), as to why Our Client cannot be said to be concerned with or involved in the affairs of the management of TRML. 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. 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. Prith Pal Singh Sethi.

...

It is submitted that directions against Our Client in connection with purported public offer of redeemable cumulative preference shares and purported consequences of violations of law be revoked fully, as was done in the case of purported public offer of equity shares made by the Company vide order dated 23.03.2020."

10. Thereafter, the Noticee was granted an opportunity of hearing on August 04, 2020 at SEBI, Mumbai which was rescheduled to August 05, 2020.

Hearing and submissions:

11. On August 05, 2020, Mr. Amit Agrawal and Mr. Sumit Agrawal, Ms. Darsha Shetty, Ms. Radhika Yadav, Advocates, Regstreet Law Advisors, authorized representatives on behalf of the Noticee appeared before me and *inter alia* reiterated the submissions filed vide their reply dated July 21, 2020.

Consideration of Issues & Findings

12. I note that vide Final Order dated June 27, 2019 it was held that TRML had come out with an *offer of RCPS* and allotted the shares and mobilized funds to the tune of Rs. 9.21 crores from 10,759 allottees during the Financial Year (FY) 2005-06, 2006-07 and 2009-10 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. I note that the same has become final against TRML and other directors. I note that vide the said Order the Noticee was found to be the Managing Director of the Company during the FY 2006-07 and 2009-10 and held liable for the issuance of RCPS. Therefore, the consequential directions of refund and debarment was issued in respect of the Noticee vide Order dated June 27, 2019.
13. I note that whether the Noticee was an officer in default in respect of the issuance of deemed public offer of equity shares relating to TRML has been decided by SEBI vide SEBI order dated March 23, 2020. As the findings qua the Noticee in the Final Order dated June 27, 2019 were set aside by the Hon'ble SAT who remanded the matter for fresh consideration qua the Noticee, I have considered the allegations and materials available on record such as Interim Order dated July 22, 2015 , Final Order dated June 27, 2019, SEBI Order dated March 23, 2020, SAT Order dated January 17, 2020 and SAT Order dated July 07, 2020, reply 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 MCA 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 2006-07 and 2009-10?

14. In this regard, I note that the interim order dated v July 22, 2015 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. Therefore, it needs to be considered, at first, whether the circumstances considered by the interim order dated July 22, 2015 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.
12. I note that the facts and circumstances leading to the interim order dated July 22, 2015 and the explanations and evidences given by the Noticee was considered extensively in the SEBI Order dated March 23, 2020 and exonerated the Noticee. I note that the present matter is with respect to the same company, albeit but it pertains to the offer of RCPS. Remaining facts and circumstances and the contentions and the findings qua the Noticee are covered by the Order dated March 23, 2020 and the same are not repeated for the sake of brevity. Hence, I adopt the same findings qua the Noticee from the Order dated March 23, 2020. I note that there is no new evidence brought on record to alter the circumstances considered in the Order dated March 23, 2020 which resulted in Noticee being granted the benefit of doubt in respect of allegation of his being *officer in default* during the relevant period of time.
13. Thus, taking into consideration all the attending circumstances as detailed in SEBI Order dated March 23, 2020, 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 it is doubtful that Noticee has been appointed as director at the relevant point of time during deemed public issue of RCPS and consequently with respect to his liability arising out of

failure to comply with the deemed public issue norms.

14. In view of the discussion above, the directions issued with respect to the Noticee viz., Shri Amit Mishra vide interim Order dated July 22, 2015 need not be continued and hence are liable to be revoked.

Order

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(1) of the SEBI Act, hereby revoke the directions issued in respect of the Noticee viz., Shri Amit Mishra in order dated July 22, 2015. Accordingly, the interim order dated July 22, 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: August 12, 2020

MADHABI PURI BUCH

PLACE: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA