

National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/55503	Date: February 03, 2023
Circular Ref. No: 31/2023	

To All NSE Members

Sub: Final order in respect of Shree Krishan Choudhary in the matter of Togo Retail Marketing Limited

This is with reference to NSE Circular no. NSE/INVG/30317 dated July 22, 2015 in respect of SEBI Order No. WTM/SR/SEBINRO: LLO/IMD/149/07/2015 dated July 22, 2015 and NSE Circular no. NSE/INVG/41447 dated June 28, 2019, in respect of SEBI Order no. WTM/MPB/EFD-1-DRA-IV/53 /2019 dated June 27, 2019 and NSE Circular no. NSE/INVG/54577 dated November 23, 2022 in respect of SAT order dated November 23, 2022.

SEBI now vide its order no. WTM/AN/IMD/DoF-1/23525/2022-23 dated February 03, 2023 hereby directed that “revoke the directions issued in respect of the entity viz., Shree Krishan Choudhary (PAN: AAYPC2158F) vide the SEBI order dated July 22, 2015.”

The detailed order is available on SEBI website (<http://www.sebi.gov.in>).

Further, the consolidated list of such entities is available on the Exchange website <http://www.nseindia.com> home page under “Home-Regulation-Members-Action against Members-Regulatory Actions”.

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Apurv Garg (Extension: 24546), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

National Stock Exchange of India

For and on behalf of

National Stock Exchange of India Limited

**Anand Jangir
Manager**

Annexure: Final order in respect of Shree Krishan Choudhary in the matter of Togo Retail Marketing Limited.

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

**Under Sections 11(1), 11(4), 11A and 11B (1) of the Securities and Exchange
Board of India Act, 1992**

In respect of:

S. No.	Name of the Entity	PAN
1.	Shree Krishan Choudhary	AAYPC2158F

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

Background:

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had passed an Interim order cum show cause notice dated July 22, 2015 (hereinafter referred to as “**Interim order**”) in respect of deemed public issue of Redeemable Cumulative Preference Shares (“**RCPS**”) by Togo Retail Marketing Limited (Earlier known as “M/s. Multi-Ex Marketing & Communications Limited) (“**TRML**”/ “**the Company**”). The order was passed against the Company and its directors including Shree Krishan Choudhary (hereinafter referred to as the “**Noticee**”). The Company and its directors including the Noticee were given an opportunity to file their replies and also to avail personal hearing. SEBI passed a Final Order dated June 27, 2019 (“**2019 Final Order**”) *inter alia*, recording that Shree Krishan Choudhary had neither filed any reply nor availed of the opportunity of hearing. In the context of the allegation that the Noticee, as a director of TRML, was liable for violations of the Companies Act, 1956 committed by TRML, the said order, *inter alia*, made the following findings qua the Noticee:

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

Upon perusal of said notices, I do not find the date on which Shri S.K. Chaudhary retired from the Company. Hence, I am of view that date of retirement / resignation of Shri S. K. Chaudhary can be taken as date of notice dated August 23, 2006. Further, I am also of the view that Shri Shree Kishan Chaudhary and Shri S. K. Chaudhary appear to be the same person.

...

54. At paragraph 17 above I held that TRML had issued and allotted RCPS to at least 10,759 investors in the FYs 2005-06, 2006-07 and 2009-10 and as on March 31, 2010 TRML had outstanding amount of 9.21 Crores. As per MCA records, at the time of issuance and allotment of RCPS in the FY 2005-06 and 2006-07, TRML did not have any Managing Director and in the FY 2009-10 Shri Amit Mishra was the Managing Director of TRML from October 09, 2007. Further, in view of Hon'ble SAT order in the matter of Manoj Kumar Agarwal and Pritha Bag and considering

the facts and circumstances of case, I note that in the present matter, during the FY 2005-06 and 2006-07, there is no material available on record which show that any of the officers specified in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of the TRML entrusted to discharge the application contained in Section 73 of the Companies Act, 1956. Therefore, in the absence of such, as per Section 5(g) of the Companies Act, 1956, I am of the view that at the time of issuance and allotment of RCPS in the FY 2005-06 and 2006-07, Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra are “officer in default” under Section 73(2) read with Section 5 of the Companies Act, 1956 and are liable to make refund, the money collected during their tenure in the FY 2005-06 and 2006-07, jointly and severally, along with interest at the rate of 15% per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions....”.

2. In light of the above findings, the 2019 Final Order *inter alia* issued the following directions against the Noticee and other entities:

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

...

71.6 Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical

form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

...

71.11 Shri Rajit Ram Maurya, Shri Girraj Vashistha, Shri Prithi Paul Singh Sethi, Shri Narayan Jay Tripathi, Shri Shree Kishan Chaudhary, Shri Shailendra Kumar Prajapati and Shri Amit Mishra are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors”.

3. As a side note, I observe that the 2019 Final Order identified one Amit Mishra as the Managing Director and an officer in default and he had filed an appeal against the said order, which was remanded back to SEBI. Subsequently, SEBI vide an order dated August 12, 2020 held that it was doubtful that he was a director of TRML during the impugned period and revoked the directions issued against him vide the Interim Order.
4. The Noticee challenged the 2019 Final Order before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**SAT**”) *inter alia*, on the grounds that the Interim order dated July 22, 2015 was never served on him. The Hon’ble SAT vide order dated November 15, 2022 quashed the 2019 Final Order qua the Noticee and remanded the matter back to SEBI to pass a fresh order after serving the Interim order on the Noticee. Further, the Hon’ble SAT also directed the Noticee to appear before the WTM on December 01, 2022 on which date the Interim order

would be served and the matter would proceed from there onwards in accordance with law.

5. Pursuant to the order of the Hon'ble SAT, vide email dated November 25, 2022, the Noticee *inter alia* requested that the Interim order be provided to him through email. Accordingly, the Interim order dated July 22, 2015 was served on the Noticee through email dated November 28, 2022 and the Noticee was advised to file his reply within 21 days. The Noticee vide his letter dated December 18, 2022 submitted his reply to the Interim order.
6. Thereafter, the Noticee was granted an opportunity of personal hearing on January 25, 2023 through video conferencing. On the said date, the Noticee appeared before me and reiterated the submissions made vide his written reply dated December 18, 2022. Pursuant to the hearing, vide email dated January 30, 2023, the Noticee forwarded his additional submissions. Along with these submissions, *inter alia*, he has provided a copy of his PAN and Aadhar by way of Proof of Identity and Proof of Address.

Consideration of issues and findings:

7. I note that the 2019 Final Order held that TRML had come out with an *Offer of RCPS* and allotted the shares and mobilized funds amounting to INR 9,21,00,000 from 10,759 investors during the Financial Years (FYs) 2005-06, 2006-07 and 2009-10 in violation of provisions of sections 56(1), 56(3), 2(36) read with sections 60, 73(1), 73(2) and 73(3) of the Companies Act, 1956. I note that the same has become final against TRML and other directors but set aside only qua the Noticee vide SAT order dated November 15, 2022. I note that vide the 2019 Final Order, the Noticee was found to be one of the directors of the company during FYs 2005-06 and 2006-07 and was held liable for the issuance of RCPS along with other directors. Therefore, *inter alia*, directions for refund of monies collected and restraint from dealing in securities were issued in respect of the Noticee vide Final order dated June 27, 2019. The Noticee has repeatedly contended in his submissions that he was never a director of TRML and that he has been allegedly

presumed to be a director of TRML on the basis of forged and fabricated documents.

8. Therefore, the only issue that requires to be addressed in the present matter is whether the Noticee is liable as a director of TRML for the violation of the aforesaid provisions of the Companies Act, 1956 for the FYs 2005-06 and 2006-07.
9. In this regard, I note that the Interim order and the 2019 Final Order was passed on the basis of available records wherein *inter alia*, it was noted that the Noticee was appointed as a director of TRML w. e. f. July 23, 2005 and ceased to be a director w. e. f. August 23, 2006. The Noticee had neither submitted any reply to the Interim order nor appeared for the personal hearing prior to the 2019 Final Order having been passed. Now that he has submitted his reply to the findings against him, the same needs to be considered in the present proceedings. Accordingly, it needs to be determined whether the submissions made by the Noticee materially alter the findings of the 2019 Final Order.
10. As noted earlier, the core issue to be decided in this case is whether the Noticee was a director of TRML during the impugned period and if so, whether he was an officer in default as defined in section 5 of the Companies Act, 1956 thereby *inter alia* rendering him jointly and severally liable for making refund in accordance with section 73(2) of the Companies Act, 1956.
11. The 2019 Final Order and the Interim Order refer to “material available on record” and does not specifically mention the documents relied upon except for the two notices of Annual General Meeting with respect to the Noticee as a Director in TRML. I have perused the documents available on record and only Form – 32 relating to director’s appointment is available in addition to the aforesaid notices for AGMs. Therefore, the conclusion that the Noticee was a director and an officer in default was based on the following documents:
 - i. Form – 32 for appointment as Director
 - ii. Notice of 6th Annual General Meeting of TRML

iii. Notice of 8th Annual General Meeting of TRML

FORM – 32:

12. The submissions of the Noticee in respect of Form – 32 with respect to his alleged appointment as a director in TRML are as summarized below:
- 12.1. Form – 32 does not bear the Noticee’s signature or consent and the email id mentioned in Form – 32 does not pertain to him. Two persons not known to him have digitally signed the said Form – 32. The digital signature of one of the said person, Pawan Kumar Sharma reveals that he is an official of ROC but he has signed on behalf of the company. Further, the Form – 32 wrongly mentions his name as “Shree Kishan Chaudhary”.
- 12.2. The Noticee was never associated with TRML. He did not obtain the DIN – 00077002 mentioned in Form – 32. The correct DIN issued to him is 01559695 and he was a Director of SKS Express Marketing Limited since 2008. He has been allegedly presumed to be a director of TRML on the basis of forged and fabricated documentation.
- 12.3. As per MCA records, the name associated with the DIN – 00077002 is “Sri Krisan Choudhary” whereas the Noticee’s name is “Shree Krishan Choudhary”. Someone has forged and fabricated a DIN in his name which has been used to register him as a Director of TRML.
13. Considering the contention of the Noticee regarding the discrepancies in MCA records, I have perused the Form – 32 which is publicly available on the MCA website. A screenshot of the first and last pages of the said Form – 32 is reproduced below:

(Continued on the next page)

IMAGE 1 (First Page)

FORM 32

[Pursuant to sections 303(2), 264(2) or 266(1)(a) and 266(1)(b)(iii) of the Companies Act, 1956]

Particulars of appointment of managing director, directors, manager and secretary and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and/ or undertaking to take and pay for qualification shares

Note - All fields marked in * are to be mandatorily filled.

1. *This form is for ☐ New company ☒ Existing company

2(a). *Corporate identity number (CIN) of company or Form 1A reference number

(b). Global location number (GLN) of company

3(a). Name of the company

(b). Address of the registered office of the company

4. *Number of managing director, director(s), manager, secretary (Enter here the total number of managing director, directors, manager and secretary for which the form needs to be filed. If the number is more than three, use the Form 32 Addendum for filing the particulars of the other managing director, director(s), manager, secretary)

Particulars of managing director or director(s) or manager or secretary - I

Part I

Director identification number (DIN) or income-tax permanent account number (PAN)
(Please provide DIN in case of Director)

*Name

* ☒ Appointment ☐ Cessation ☐ Change in designation of director

* ☒ Father's name ☐ Husband's name

*Nationality *Designation

DIN of the director to whom the appointee is alternate

Name of the director to whom the appointee is alternate

IMAGE 2 (Last Page)

VERIFICATION

- ☒ 1. "I confirm that the information given in Part I and II above is true to the best of my knowledge and belief.
- ☒ 2. It is also hereby confirmed that the consent of the appointee managing director, director(s), manager or secretary has been filed as an attachment to this e-Form.

Attachments:

1. Evidence of payment of stamp duty where qualification shares is involved
(This will be mandatory only if the director giving consent agrees to pay for at least one share)
2. Consent(s) of the appointee managing director, director(s), manager or secretary
3. Declaration regarding qualification shares
4. Evidence of cessation
5. Optional attachment(s) - If any

Attach

Attach

Attach

Attach

Attach

List of attachments

DUMMY OFFLINE FILE.pdf
DUMMY OFFLINE FILE.pdf

Remove attachment

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

- ☒ I have been authorised by the board of directors' resolution dated 23/07/2005 (DD/MM/YYYY) to sign and submit this form.
- ☐ I am authorised to sign and submit this form.

To be digitally signed by

Managing director or director or manager or secretary of the company

PRABHU
KUNJATH
SHANKAR

Certificate

It is hereby certified that I have verified the above particulars and found them to be true and correct.

Chartered accountant or cost accountant or company secretary (in whole-time practice)

PRABHU
KUNJATH
SHANKAR

Modify

Check Form

Prescrutiny

Submit

For office use only:

This e-Form is hereby registered

Digital signature of the authorising officer

CA
KUNJATH
SHANKAR

Submit to BO

14. I observe the following from the aforementioned Form – 32:

- 14.1. The name of the Noticee has been mentioned as "Shree Kishan Choudhary" whereas the Noticee's correct name as per his PAN as well as his Aadhar is "Shree Krishan Choudhary". Further, the DIN – 00077002 mentions the name as "Sri Krisan Choudhary".
- 14.2. The attachments to the Form – 32 is supposed to include the consent letter of the appointee director. However, in the aforementioned Form – 32, the

relevant attachment merely contains a document with the words “*Filing done through offline scanning mode at ESPFO – Delhi*”. The attachments themselves are named “*Dummy Offline File*”.

14.3. The Form – 32 which is supposed to be digitally signed and submitted by the MD, director, manager or secretary of the company has instead been digitally signed by one “Pawan Kumar Sharma” with the declaration that he was authorized by the Board of Directors’ resolution dated July 23, 2005. However, no such resolution has been attached with the Form – 32. Further, the email id associated with digital signature of Pawan Kumar Sharma contains the domain name - @mca.gov.in, thereby suggesting that the person who signed the document on behalf of the company was not an official of TRML.

15. I note that the Form – 32 neither has a consent letter from Shree Krishan Choudhary nor the Board of Directors’ resolution for appointment of Shree Krishan Choudhary as a Director of TRML. The Form – 32 incorrectly mentions the Noticee’s name and has a DIN which also incorrectly mentions the Noticee’s name. Further, the Form – 32 has been digitally signed by someone, who appears to be an official of MCA based on the email ID, on behalf of the company TRML. The aforesaid facts lead to the inference that the Form – 32 purportedly shown as proof of appointment of the Noticee is not a genuine official filing and cannot be relied upon to sufficiently prove the appointment of the Noticee as a director in TRML.

Notices of Annual General Meeting:

16. I note that the 6th and 8th Notice of Annual General Meeting of Members of TRML allegedly records the Noticee’s appointment and cessation as director. However, both the aforesaid notices do not specify the date of appointment of the Noticee as a director or his tenure of directorship. Both notices also record the name incorrectly or rather incompletely, as “S.K. Chaudhary”. Therefore, I do not find the said documents to be sufficient to prove that the Noticee was a Director in TRML during the impugned period.

Additional Submissions made by the Noticee:

17. The Noticee has submitted that he did not sign any documents pertaining to his appointment as Director of TRML and he has not received any remuneration as a Director of TRML.
18. The Noticee has contended that he was never associated with TRML. Further, he has stated that he was employed in Vamshi Chemicals Limited till 2011 and submitted Form ITR 4 for the F.Y. 2006-07 and Form – 16 for the F.Y. 2009-10 in support of his employment in Vamshi Chemicals Limited.
19. I note that another SEBI order dated July 11, 2019 had been passed against TRML and its directors with respect to deemed public issue of **equity shares** by TRML during FYs 2003-04, 2004-05 and 2008-09. The Noticee was found to be the director of TRML during FY 2005-06 and 2006-07. With respect to the said finding, he had contended during the course of the proceedings that the documents pertaining to his appointment as director were forged. Therefore, vide the said order dated July 11, 2019, the Noticee was directed to obtain appropriate order from the competent authority with respect to his allegation of forgery within 365 days failing which he shall be debarred for 4 years from the expiry of said 365 days. In this context of purportedly false Form – 32 and DIN, the Noticee has taken the following actions.
- 19.1. The Noticee had filed an RTI application dated November 01, 2022 with MCA requesting for documents used to create the false DIN and Form – 32 in his name but he was informed that MCA does not have any documents as the said DIN has lapsed. The Noticee has submitted to SEBI a copy of the RTI filed and the response received from MCA.
- 19.2. The Noticee has filed a complaint dated June 27, 2021 with Delhi Police in respect of the false DIN and Form – 32. He has also filed an application before the Metropolitan Magistrate, Dwarka to issue direction to the

concerned police officials to expedite the investigation. Copy of this complaint has been submitted to SEBI.

20. As noted earlier, the allegation that the Noticee was a director of TRML during the impugned period i.e. FYs 2005-06 and 2006-07 was based on material available on record – Form 32 (appointment of director) and two notices of AGMs of the company. As concluded in the preceding paragraphs, I do not find these documents sufficient to prove that the Noticee was a director of TRML during the impugned period. The errors in Form 32 dealing with the Noticee's purported appointment as a director are too material to ignore. The 2019 Final Order also records that there is no Form 32 pertaining to the Noticee's resignation as director. The reference to an abbreviated name in the notices for AGMs that was supposed to refer to the Noticee does not sufficiently evidence that the name specified therein actually refers to the Noticee. Furthermore, the incorrect spelling on the DIN purportedly belonging to the Noticee, which itself has lapsed (as per the reply by MCA to the RTI filed by the Noticee) adds to the doubt as to whether the Noticee was a director of TRML during the impugned period. No other evidence has been placed before me conclusively that suggests that the Noticee was in fact a director of TRML during the impugned period.

21. Considering the above, and my observations made in the preceding paragraphs of this Order, I find insufficient evidence to show that the Noticee was a director of TRML during the impugned period. As such, he cannot therefore be regarded as an "Officer in Default" of the company during the said period.

Order:

22. In view of the aforesaid observations and findings, I, in exercise of the powers conferred upon me under Sections 11 (1), 11(4), 11A and 11B (1) read with Section 19 of the SEBI Act, hereby revoke the directions issued in respect of the Noticee viz., Shree Krishan Choudhary (PAN: AAYPC2158F) vide the SEBI order dated July 22, 2015.

23. A copy of this order shall be served upon the Noticee, Stock Exchanges, Registrar and Transfer Agents and Depositories for necessary action and compliance with the above directions.

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

- Sd -

ANANTH NARAYAN G.

DATE: FEBRUARY 03, 2023

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA