

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

**In respect of Interim Orders cum show cause notices dated March 19, 2015 in the matter of URO Infra Reality India Ltd., URO Infotech Lt., URO Hygienic Foods Ltd., URO Walkers Ltd., URO Lifecare Ltd.**

**In respect of:**

<b>Sr. No.</b>	<b>Noticees</b>	<b>PAN</b>	<b>DIN/CIN</b>
<b>Company</b>			
1.	URO Infra Reality India Ltd	N.A	U70109WB2009PLC140503
2.	URO Infotech Ltd.	AABCU3313	N.A.
3.	URO Hygienic Foods Ltd.	AABCU3312K	N.A
4.	URO Walkers Ltd.	AABCU3310M	N.A
5.	URO Lifecare Ltd.	AABCU3309A	N.A
<b>Director(s)</b>			
6.	Biswapriya Giri	AIXPG7534N	02831730
7.	Prasun Mondal	ALFPM5139C	06568526
8.	Sanjoy Chowhan	N.A	06568541
9.	Sachindra Nath Bhattacharya	AAJPB4769J	00559781
10.	Ipsita Das Giri	AILPD1367L	02877459
11.	Ajit Kumar Routh	APXPR7152Q	03506274
12.	Bibekananda Maiti	AQSPM6019P	03499013

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

1. SEBI had passed five separate interim orders cum show cause notices dated March 19, 2015 (“**interim orders**”) in respect of the Noticees. The noticee companies were prima facie found to have offered and allotted equity shares in contravention of the first proviso to section 67(3) of the Companies Act, 1956 thereby making them liable for not having complied with sections 73, 60 and 56 of the Companies Act, 1956 and regulations 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
2. Prior to the interim orders having been passed, letters had been sent to the noticee companies and the noticee No. 6, Biswapriya Giri who was director in all the noticee companies, seeking information, all of which returned undelivered. As per information available on MCA21 portal, details of the issue and allotment of the equity shares by each of the noticee companies (hereinafter collectively referred to as “**the offer and allotment of equity shares**”) are as follows:

**TABLE1**

<b>Company</b>	<b>FY</b>	<b>Date of Allotment</b>	<b>Amount raised</b>	<b>Number of allottees</b>
URO Infotech Ltd.	2011-12	31/03/2012	1.60 crore	1000
URO Infra Reality India Ltd	2010-11	31/03/2011	5.30 crore	2650
URO Hygienic Foods Ltd.	2011-12	31/03/2012	20 lakh	105
URO Walkers Ltd.	2011-12	31/03/2012	40 lakh	228
URO Lifecare Ltd.	2011-12	31/03/2012	20 lakh	106

3. The interim orders were delivered to all the noticees by way of speed post with acknowledgement (SPAD), affixture and newspaper publication. However except for one noticee director namely, Sachindra Nath Bhattacharya, none of the other

noticees have filed replies to the interim orders. Summary of the reply filed by Noticee No. 9 i.e Sachindra Nath Bhattacharya is as follows:

- i The SEBI letter dated June 23, 2014 to the directors had not been properly served to him as he had already resigned from directorship in 2011 itself.
- ii SEBI has no authority to try this matter since section 55A of the Companies Act does not apply.
- iii Further SEBI (issue of Capital and Disclosure Requirements) Regulations, 2009 also does not apply in the instant case.
- iv He was never actively involved in the affairs of the company and he has no knowledge of where the URO group collected money or whether they had complied with the provisions of Companies Act, 1956 or not.
- v Though the directions in the interim orders are not applicable to him, he will comply with all the said directions, but requested SEBI to accept his submission that he was not involved in the affairs of the company and also not liable to repay any money.

4. I have considered the submissions of Noticee No.9. As regards his contention that he was not a director in the noticee companies at the relevant point of time and was not responsible for the impugned issue and allotment of equity shares, I will address the same separately in this Order. With regard to his contention that SEBI has no authority in this case and that SEBI (ICDR) Regulations, 2009 do not apply, I do not find any merit in the argument. The Hon'ble Supreme Court has already made the legal position in this regard clear in the case of Sahara India Real Estate Corporation Limited & Ors. v. SEBI (*Civil Appeal no. 9813 and 9833 of 2011*) in which the following inter alia was observed:

*"I may, therefore, indicate, subject to what has been stated above, in India 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. ...*

*.....*

*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"*

5. An opportunity of personal hearing was granted to the noticees on May 11, 2017 but was subsequently adjourned to May 23, 2017. Notice of the hearing was

served on Prasun Mondal and Sanjay Chowhan by way of SPAD and on Ajit Kumar Routh by affixture on March 25, 2017. All noticees were also informed of the date of hearing by way of newspaper publication. In response to the notice, only Noticee No. 9 i.e Sachindra Nath Bhattacharya had responded. He appeared on May 11, 2017 as he was not aware of the adjournment of hearing to May 23, 2017. He further informed that his representative Sougata Sarkar would appear for the personal hearing on May 23, 2017. However on May 23, 2017, none of the noticees appeared for the hearing nor have any submissions have been received from the noticees except for the reply from Noticee No. 9 as already discussed above.

6. Section 67 of the Companies Act, 1956 deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

***"Construction of reference to offering shares or debentures to the public, etc.***

**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) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended 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.

(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)."

In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. I note from the records available on the MCA portal (*and reproduced in Table 1 above*) that each of the noticee companies has clearly exceeded allotment to more than 49 persons, a fact which has not been rebutted on merit by any of the noticees. Considering the available information on MCA21 portal and other records available with the Board, I do not find any reason to differ with the conclusions arrived at in the interim orders. The legal provisions and case law cited in the interim orders clearly render the matter within the jurisdiction of the Board. In view of the above, I am in agreement with the interim orders' prima facie conclusion that the offer and allotment of equity shares by the noticee companies qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

7. From the above, it will follow that such a public issue makes it imperative for the noticee companies to comply with the mandate of sections 73, 60 and 56 of the Companies Act, 1956 and regulations 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, none of which have been complied with by the noticees. Since the aforesaid legal provisions and relevant case law have already been discussed in detail in the interim orders, for the sake of brevity I do not find it necessary to discuss the same in this final order against the noticees. It would suffice to state the aforesaid legal provisions and case law discussed in the said interim orders would be automatically applicable since it is found that the offer and allotment of equity shares by the noticee companies qualifies to be an offer made to the public. For the sake of determining consequential measures, I draw reference to section 73 (1) & (2) of the Companies Act, 1956, extracts of which are reproduced as under:

***"Allotment of shares and debentures to be dealt in on stock exchange.***

***73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.***

***(1A) ...***

***(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to***

***repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.***

....”

(emphasis supplied)

8. 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. 6 to 10 were directors in all five noticee companies. Noticee Nos. 11 and 12 were directors only in Noticee No. 1 i.e. URO Infra Reality Ltd. The details of the directors of the noticee companies, including the dates of appointment/cessation as directors, as per information available with RoC, are as under:

**TABLE 2**

<b>Noticee Company</b>	<b>Director</b>	<b>Date of appointment</b>	<b>Date of cessation</b>
URO Infra Reality Ltd	Biswapriya Giri	30.12.2009	-
	Sachindra Nath Bhattacharya	30.12.2009	25.02.2013
	Ipsita Das Giri	30.12.2009	25.02.2013
	Prasun Mondal	29.04.2013	-
	Sanjoy Chowhan	29.04.2013	-
	Ajit Kumar Routh	04.02.2013	29.04.2013
	Bibekananda Maiti	04.02.2013	29.04.2013
URO Infotech Ltd.	Biswapriya Giri	16.06.2011	-
	Prasun Mondal	29.04.2013	-
	Sanjoy Chowhan	29.04.2013	-
	Sachindra Nath Bhattacharya	16.06.2011	29.04.2013
	Ipsita Das Giri	16.06.2011	29.04.2013
URO Hygienic Foods Ltd.	Biswapriya Giri	22.06.2011	-
	Prasun Mondal	29.04.2013	-
	Sanjoy Chowhan	29.04.2013	-
	Sachindra Nath Bhattacharya	22.06.2011	29.04.2013
	Ipsita Das Giri	22.06.2011	29.04.2013
URO Walkers Ltd.	Biswapriya Giri	16.06.2011	-
	Prasun Mondal	29.04.2013	-
	Sanjoy Chowhan	29.04.2013	-
	Sachindra Nath Bhattacharya	16.06.2011	29.04.2013

	Ipsita Das Giri	16.06.2011	29.04.2013
URO Lifecare Ltd.	Biswapriya Giri	17.06.2011	-
	Prasun Mondal	29.04.2013	-
	Sanjoy Chowhan	29.04.2013	-
	Sachindra Nath Bhattacharya	17.06.2011	29.04.2013
	Ipsita Das Giri	17.06.2011	29.04.2013

9. At this point, I take note of the reply from Noticee No. 9 i.e. Sachindra Nath Bhattacharya's contention that he was not a director in the noticee companies at the relevant point of time and was not responsible for the impugned issue and allotment of equity shares. Table 2 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 equity shares (mentioned in Table 1 above) clearly fell within the period of Noticee No.9's directorship. I note that Noticee No. 9 has submitted copies of affidavits by Biswapriya Giri , one of the directors on the board of all five noticee companies, wherein Mr. Giri has certified that the Noticee No.9 never held the position of executive director or whole time director, never took active part in the decision making process and was never assigned any financial or commercial assignment. I note that the said affidavit is general in nature and does not provide specifics such as when Noticee No. 9 was appointed as director and the date of his resignation letter, whether the same was placed before the Board of directors or in the Annual General Meeting of the respective companies etc. Noticee No. 9 has also not submitted a copy of his resignation letter, minutes of the Board meetings, copy of Articles of Association in relation to the rule on resignation of directors or copy of communication to RoC regarding his resignation etc. Infact the affidavit produced by Noticee No. 9 also records that his request for resignation was not accepted. Para 4 of the said affidavit reads as follows:

*"...However, the company could not induct any new director and hence his request was not accepted although he had submitted his resignation letter way back in 2011..."*

Even assuming that the Noticee No. 9 had produced documents proving that he had ceased to be a director in 2011, he may still be liable for the offer and allotment of shares by URO Infra Reality Ltd. which had taken place during the financial year 2010-11 as per the records of RoC, unless there is evidence to the

contrary. In the absence of adequate documents to rebut the information available on the MCA portal, I cannot but take an adverse inference against Noticee No. 9.

10. In view of the above, the current directors of the noticee companies and persons who were directors of the noticee companies during the offer and allotment of equity shares and who were directors after the offer and allotment of equity shares are Biswapriya Giri Prasun Mondal, Sanjoy Chowhan, Sachindra Nath Bhattacharya, Ipsita Das Giri, Ajit Kumar Routh, Bibekananda Maiti, and are jointly and severally liable along with the noticee companies (*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 equity shares.

### **DIRECTIONS**

11. 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 Infra Reality Ltd (PAN- not available) and its noticee directors namely, Biswapriya Giri (PAN - AIXPG7534N), Prasun Mondal (PAN - ALFPM5139C), Sanjoy Chowhan (PAN - not available), Sachindra Nath Bhattacharya (PAN- AAJPB4769J), Ipsita Das Giri (PAN - AILPD1367L), Ajit Kumar Routh (PAN - APXPR7152Q) and Bibekananda Maiti (PAN - AQSPM6019P) shall jointly and severally refund the money collected through the offer and allotment of equity shares of URO Infra Reality Ltd. (*indicated in Table 1 and in the interim order dated March 19, 2015 against URO Infra Reality Ltd.*), 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 Noticee companies Nos. 2 to 5 namely, URO Infotech Ltd (PAN: AABCU3313), URO Hygienic Foods Ltd.(PAN: AABCU3312K), URO Walkers Ltd. (PAN: AABCU3310M) and URO Lifecare Ltd. (PAN: AABCU3309A); and noticee directors Nos. 6 to 10 namely, Biswapriya Giri (PAN - AIXPG7534N), Prasun Mondal (PAN - ALFPM5139C), Sanjoy Chowhan (PAN - not available), Sachindra Nath Bhattacharya



(PAN- AAJPB4769J) and Ipsita Das Giri (PAN - AILPD1367L), shall jointly and severally refund the money collected through the offer and allotment of equity shares of Noticee companies Nos. 2 to 5 (*indicated in Table 1 and in the interim orders dated March 19, 2015 against URO Infotech Ltd, URO Hygienic Foods Ltd., URO Walkers Ltd. and URO Lifecare Ltd.*), 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;

- 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 Noticees 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- 12 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.

12. For a period of four years from the date of completion of the refund, as directed in para 11 above, the Noticees Nos. 1-12 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.

13. In the event of the Noticees failing to comply with the directions of refund stated in para 11 above, SEBI shall initiate recovery proceedings in accordance with the provisions of the SEBI Act, 1992.

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

15. 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: June 07, 2017**

**G. MAHALINGAM**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**