

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 107 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 against Target People Social Security Scheme Micro Finance Limited, Mr. Mariaponnusamy Moyeeson, Mr. Joseph Johnson Savarimuthu and Mr. Arockiasamy Judi Gerald Paulraj

In the matter of issuance of equity shares by Target People Social Security Scheme Micro Finance Limited

Appearances for Noticees:

Mr. Aloyce Franklin Fernandez, Chartered Accountant, M/s. Frank & Co.

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1. Securities and Exchange Board of India ("SEBI") received a reference dated July 24, 2014 from Reserve bank of India ("RBI") regarding the issuance of equity shares made by Target People Social Security Scheme Micro Finance Limited (hereinafter referred to as "TPSSSMFL"). It was *inter alia* stated in the reference that TPSSSMFL has applied for certificate of registration under section 45-I of Reserve bank of India Act, 1934 ("RBI Act") for commencing business as Non-banking Finance Company - Micro Finance Institution ("NBFC-MFI"). It is also stated that while processing the said application, RBI had observed that TPSSSMFL has made issuance of shares to more than 50 persons. Along with the said reference, RBI also enclosed copies of the share allotment forms and letters issued by TPSSSMFL to the allottees.
 2. In order to examine the matter, the documents/forms filed by TPSSSMFL with Registrar of Companies, Chennai (hereinafter referred to as "ROC") were also examined. From these documents and the documents forwarded by RBI, the following was observed:
 - a. TPSSSMFL (CIN U67190TN2013PLC091198) was incorporated on May 17, 2013 and is having its registered office at; 2A, St. Mark Street, Palayamkottai, Tirunelveli, Tamilnadu – 627 002;

- b. The details of the directors of TPSSSMFL (as per MCA- 21 Portal) are as follows:

Name of the Director	DIN	Date of appointment as Director
(i) Mr. Rayans Pillai Joshua	00045589	April 28, 2014
(ii) Mr. Mariaponnusamy Moyeeson	06556231	May 17, 2013
(iii) Mr. Joseph Johnson Savarimuthu	06556234	May 17, 2013
(iv) Mr. Gnanaprasam	06556239	May 17, 2013
(v) Mr. Arockiasamy Judi Gerald Paulraj	06627515	June 26, 2013

- c. The Main Object of TPSSSMFL as per its Memorandum of Association is as follows:

“To carry on the business of Non-Banking Financial Company-Micro Finance Institution as defined by Reserve Bank of India from time to time and to carry on the activities of lending money or providing credit or such other financial assistance as contemplated in the Non banking Financial Company Micro Finance direction issued by the RBI.”

- d. As per Form 2 and list of allottees filed by TPSSSMFL with ROC, it allotted 7,000 equity shares of ₹1,000 to 1,973 allottees on May 29, 2013 aggregating to ₹70.00 Lakh; Further, TPSSSMFL also allotted 44,921 equity shares of ₹1,000 to 9,285 allottees on August 21, 2013 aggregating to ₹4.49 Crore;
- e. It was observed that TPSSSMFL did not file any prospectus for the aforesaid issues with ROC or with SEBI.
- f. TPSSSMFL was not registered as NBFC as on the date of said allotments.
3. In view of the above, SEBI issued a Show Cause Notice dated September 29, 2014 (hereinafter referred to as "the SCN") to TPSSSMFL and its aforesaid directors (hereinafter collectively referred to as "the Noticees" and individually by their respective names) under sections 11(1), 11(4)(b), 11A(1)(b) and 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") read with regulation 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations") calling upon them to show cause as to why appropriate action should not be taken against them including:.

- (i) directing TPSSSMFL and its directors to refund the money collected under the above issues to the investors with interest,
 - (ii) directing TPSSSMFL and its directors not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly and
 - (iii) directing TPSSSMFL and other companies, in which its directors hold substantial or controlling interest not to access the capital market for a particular period as well as to initiate prosecution proceedings under section 621 of the Companies Act, 1956.
4. It was alleged in the SCN that the Noticees have violated sections 56 (1), 56 (3), 60 and 73 of the Companies Act, 1956 and regulations 4, 5, 6, 7, 8, 9, 26, 32, 36, 37, 46, 47, 49, 57, 58 and 63 of ICDR Regulations.
5. TPSSSMFL filed a reply dated October 07, 2014 for itself and its directors, *inter alia*, submitting the following:
- a. Mr. Gnanapragasam, one of the directors of TPSSSMFL expired on July 15, 2014;
 - b. Apart from subscription to memorandum, TPSSSMFL has made the following allotments of equity shares:

Date of allotment	No. of allottees	No. of shares allotted
June 29, 2013	758	7000
July 25, 2013	1215	8000
August 01, 2013	1186	4000
August 14, 2013	3594	17000
August 21, 2013	3290	15921
Total	10043	51921

- c. The object of TPSSSMFL is only to run as micro finance institution to carry on activities of lending or providing credit within the parameters laid down by RBI and accordingly, it has duly applied for license to function as NBFC to carry on business as micro finance lending institution. Therefore, TPSSSMFL is a NBFC and has not yet commenced its business of micro finance, as issue of Certificate of Registration from RBI is yet pending.
- d. The second proviso to section 67 (3) of the Companies Act, 1956 excludes the operation of first proviso thereof to a company, which is non-banking financial company. Similar provisions are also there in the Companies Act, 2013 read with

- Companies (Prospectus and allotment of Securities) Rules, 2014. TPSSSMFL, which is an NBFC, is thus entitled for the exemption under said section. Therefore, none of the aforesaid allotments can be construed as public offer and does not hit public issue guidelines.
- e. Since the provisions of section 42 and section 23 (1)(b) of the Companies Act, 2013 are applicable only from April 01, 2014, the allotment made by TPSSSMFL would solely be governed by the provisions of section 67 of the Companies Act, 1956. The difference in the language of the provisions of section 67 of the Companies Act, 1956 and section 42 of the Companies Act, 2013 read with Rules made hereunder is that under the Companies Act, 1956, if a company is merely a NBFC, the offer or invitation through private placement to more than 50 persons does not constitute public offer, whereas under the provisions of section 42 of the Companies Act, 2013 read with Rules, to avail the benefit of exemption, NBFC should be registered with RBI.
 - f. Since the offer/allotment of shares by TPSSSMFL (which is a NBFC) to more than 50 persons is not a public offer within the meaning of section 67 of the Companies Act, 1956, section 60 (requirement to file Prospectus) and section 73 (application to stock exchange to list) will not be applicable to the said issue.
 - g. For the aforesaid reasons, the Noticees have not violated the provisions of section 56 (1), 56 (3), 60 and 73 of the Companies Act, 1956 and regulations 4, 5, 6, 7, 8, 9, 26, 32, 36, 37, 46, 47, 49, 57, 58 and 63 of ICDR Regulations.
 - h. Since TPSSSMFL has not violated any provisions of the Companies Act, 1956/2013 and SEBI Regulations, action under sections 11(1), 11(4)(b), 11A(1)(b) and 11B SEBI Act, 1992 read with Regulation 107 of the ICDR Regulations is not warranted.
6. The Noticees were afforded an opportunity of personal hearing in the matter on December 16, 2014 when their authorized representative appeared and made submissions on their behalf in line with their written reply. Pursuant to the hearing, the authorized representative submitted certain documents i.e. Certificate of incorporation, Memorandum of Association, Certificate of Commencement, acknowledgement of receipt of application with Reserve Bank of India for Certificate of Registration as NBFC-MFI, copy of balance sheet, excerpts of Companies Act, 1956/2013 and Rules made thereunder containing the relevant provisions thereof.
7. I have carefully considered the SCN, the reply of the Noticees and other relevant material available on record.

8. Before proceeding further with consideration of contentions raised by the Noticees in the present case, it is pertinent to note that the questions of law with regard to number of allottees exceeding more than 49 in an issue of securities, intention of the issuer company to list, interpretation of section 67(3) of the Companies Act, 1956, SEBI's jurisdiction in such matters, etc. have been settled by the Hon'ble Supreme Court of India in its judgment and order dated August 31, 2012 *in matter of Sahara India Real Estate Corporations Limited & Ors. Vs SEBI & Anr.* [(2013) 1 SCC 1] (hereinafter referred to as the "*Sahara Order*"). It is important to note that the Hon'ble Supreme Court in the *Sahara Order* has categorically held that every issue of securities made to fifty or more persons would be treated as a public issue by virtue of the first proviso to section 67(3) of the Companies Act, 1956.
9. In the present case, it is an admitted fact that TPSSSMFL made series of allotments of equity shares between June 29, 2013 and August 21, 2013 to 10,043 persons aggregating to ₹ 5.19 Crore. The details of the said allotments as per TPSSSMFL's submissions are as under:

Date of allotment	No. of allottees	No. of shares allotted
June 29, 2013	758	7000
July 25, 2013	1215	8000
August 01, 2013	1186	4000
August 14, 2013	3594	17000
August 21, 2013	3290	15921
Total	10043	51921

10. In order to deal with the allegations levelled against the Noticees and their contentions in respect thereof, I deem it necessary to refer to the provisions of section 67 of the Companies Act, 1956 as it applied at the relevant time and provided as under:-

"67. Construction of references to offering shares or debentures to the public, etc.

(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 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 the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956.

(3A) Notwithstanding anything contained in sub-section (3), the Securities and Exchange Board of India shall, in consultation with the Reserve Bank of India, by notification in the Official Gazette, specify the guidelines in respect of offer or invitation made to the public by a public financial institution specified under section 4A or non-banking financial company's referred to in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934)."

11. The Noticees have contended that TPSSSMFL is a NBFC as its object is only to run as a micro finance institution to carry on activities of lending or providing credit within the parameters laid down by RBI and accordingly it has duly applied for license to function as NBFC to carry on business as micro finance lending institution. They have further contended that the second proviso to section 67(3) of the Companies Act, 1956 exempts all NBFCs (whether registered with RBI or not) from the applicability of the first proviso to section 67 (3). In this regard, I note that in the present case, it is undisputed that as on the dates of allotments under consideration (i.e. all dates from July 29, 2013 to August 21, 2013)) TPSSSMFL was not registered with RBI as a NBFC. In fact, as on the dates of these allotments, it had not even made an application for obtaining the certificate of registration from RBI, which it eventually did on October 7, 2013 as per its own submission. I note that NBFC has been defined under clause (f) of section 45-I of RBI Act, a reference whereof has also been made in section 67(3A) of the Companies Act, 1956. As per section 45-IA of the RBI Act, notwithstanding anything contained in any other law, such an NBFC cannot

commence or carry on its business without obtaining a certificate of registration from RBI. Thus, if TPSSSMFL could not commence the business of an NBFC as it had not obtained the certificate of registration from RBI, it could not even be treated as an NBFC under the provisions of second proviso to section 67(3). I note that recognizing an unregistered entity as an NBFC for the purposes of the RBI Act and the Companies Act, 1956, merely on the basis that its object is to carry out activities as that of an NBFC, would defeat the very purpose of registration and regulation of NBFCs under the law. In view of the above, I reject the contentions of the Noticees in this regard and find that the aforesaid issuances of shares by TPSSSMFL to 10043 persons were public issues by virtue of the first proviso to section 67(3) of the Companies Act, 1956.

12. Even assuming that TPSSSMFL was a NBFC, it could not have made the allotment of shares to more than 49 persons by virtue of the legal provisions framed by RBI applicable to NBFCs. I note that all the NBFCs are subject to the Circulars issued by RBI from time to time. On June 27, 2013, RBI had issued a Circular on *"Raising Money through Private Placement by NBFCs-Debentures etc."* and the same was in operation as on the date of allotments under consideration. Vide the said Circular, RBI had put in place *"Guidelines on Private Placement by NBFCs"* compliance whereof has to be ensured by every NBFC intending to make an issue of capital by way of private placement. Clause 2(iv) of these Guidelines stipulates that private placement by all NBFCs shall be restricted to not more than 49 investors identified upfront by the NBFC. In view thereof, even if TPSSSMFL is treated as an NBFC, it could not have allotted shares to more than 49 persons as the same is prohibited under the Guidelines for private placement issued by RBI.
13. In view of the foregoing I find that in the present case, since the issuances of equity shares by TPSSSMFL on all the aforesaid dates between June 2013 to August 2013 were made to more than 49 allottees, the said issuances were "public issues" and were subject to the applicable provisions of the Companies Act, 1956 and ICDR Regulations.
14. Under section 56(1) of 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 to Companies Act, 1956. In terms of section 56(3) of the Companies Act, 1956, it is mandatory for the company to issue the application forms for shares or debentures accompanied by a memorandum containing the salient features of the prospectus which complies with the Companies Act and Form 2A prescribed under rule

4CC of the Companies (Central Government's) General Rules and Forms, 1956. In the present case, I note that TPSSSMFL did not issue any prospectus nor were the application forms circulated by TPSSSMFL accompanied by such memorandum. I therefore find that TPSSSMFL violated section 56(1) and 56(3) of the Companies Act, 1956.

15. As per section 60 of the Companies Act, 1956, a company needs to register its Prospectus with Registrar of Companies, before making a public offer/issuing the prospectus. Section 2(36) of Companies Act, 1956 defines "prospectus" *inter-alia* as any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate. In the present case, it is an undisputed fact that TPSSSMFL has not issued any prospectus with respect to the aforesaid public issues nor has it filed any Prospectus with ROC and SEBI. I, therefore, find that TPSSSMFL violated section 60 of Companies Act, 1956 with respect to the aforesaid issuances of equity issues.
16. I note that Hon'ble Supreme Court in the *Sabara Order* has held that listing is a mandatory obligation and legal responsibility of the company which offers securities to the public, provided offers are made to 50 or more persons and the company cannot be heard to contend that it has no such intention or idea to make an application to the stock exchange. Hon'ble Supreme Court has held in the said *Sabara Order* as under:

*"section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. **Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts.** Sub-section (1A) of section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of section 73 or not granting of permission is clearly stipulated in sub-section (3) of section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per section 73(2) of the Act."*

17. In this case, since TPSSSMFL had allotted shares to more than 49 persons and these allotments were deemed to be "public issues", it was under a mandatory obligation to make

an application to a recognized stock exchange for listing of those shares under section 73 which it failed to make. I, therefore, find that in this case, RDL has contravened the provisions of section 73 of the Act since it did not apply for listing of its shares on any recognized stock exchange.

18. It is important to mention that SEBI Act is a special legislation to deal with the matters relating, *inter alia*, to the protection of interests of investors in securities. I note that SEBI had notified the ICDR Regulations with effect from August 28, 2009 and all the public issues are required to comply with the ICDR Regulations which lay down the eligibility norms, disclosure norms and other procedural requirements, for ensuring investor protection in case of issue of securities. The ICDR Regulations operate as reasonable safeguards for the investors who subscribe or intend to subscribe in the public issues of securities. In this regard, I observe that TPSSSMFL has admittedly not complied with the following clauses of the ICDR Regulations:

S. No.	Regulation	Requirements
1	Regulation 4(2))	To apply for listing of specified securities on one or more recognized stock exchange and to enter into an agreement with Depositories to issue securities in Dematerialized mode
2	Regulation 5	To appoint merchant banker and other intermediaries and enter into agreement with Intermediaries as prescribed
3	Regulation 6	To file draft offer document with SEBI and the designated stock exchange and RoC
4	Regulation 7	To obtain in-principle approval from the recognized stock exchanges on which the specified securities are to be listed
5	Regulation 8	To submit Permanent Account Number, bank account number and passport number of its promoters to such stock exchange
6	Regulation 9	To issue public advertisement regarding filing of draft offer documents with SEBI
7	Regulation 26	To satisfy the conditions of initial public offer
8	Regulation 32	To ensure Minimum Contribution by Promoters
9	Regulation 36 and	To ensure Lock-in of specified securities held by

	37	promoters and persons other than promoters
10	Regulation 46	To keep the public issue open for the specified period
11	Regulation 47	To issue pre issue advertisement for public issue
12	Regulation 49	To ensure that the minimum application value is ten thousand rupees to fifteen thousand rupees
13	Regulation 57, 58	To adhere to the manner of disclosures in the offer documents and abridged prospect
14	Regulation 63	To appoint Compliance Officer

19. In view of the foregoing, I find that in respect of the allotments of equity shares dated June 29, 2013, July 25, 2013, August 1, 2013, August 14, 2013 and August 21, 2013, TPSSSMFL violated the provisions of section 56 (1), 56(3), 60 and 73 of the Companies Act, 1956 and regulations 4, 5, 6, 7, 8, 9, 26, 32, 36, 37, 46, 47, 49, 57, 58 and 63 of ICDR Regulations.
20. I note that Mr. Gnanapragasam expired on July 15, 2014 and therefore, these proceedings against him have abated and the SCN dated September 29, 2014 as against him is disposed of accordingly. I further note that Mr. Rayans Pillai Joshua (who is a Noticee in the present case) was appointed as a director of TPSSSMFL only on April 28, 2014, whereas the allotments of equity shares under consideration were made by TPSSSMFL from June to August, 2013. I, therefore, find that Mr. Rayans Pillai Joshua cannot be held responsible for the acts and omissions of TPSSSMFL prior to the date of his appointment as a director of TPSSSMFL.
21. In view of the above and as per the information available on MCA-21 portal, Mr. Mariaponnusamy Moyeeson, Mr. Joseph Johnson Savarimuthu and Mr. Arockiasamy Judi Gerald Paulraj were part of the board of directors of TPSSSMFL as on the dates of allotments under consideration. Thus, these directors being in control of the affairs of TPSSSMFL at the time of issuances of shares under consideration, were under an obligation to ensure that these issuances were in compliance with all the applicable provisions of the Companies Act and SEBI Regulations. In my view, these three directors of TPSSSMFL as on the date of the above mentioned issuances of shares are also "*officers in default*" as defined under section 5 of the Companies Act, 1956. I, therefore, find that they are also responsible for the acts and omissions of TPSSSMFL in this case.

22. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11 (1), 11(4), 11A and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 107 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 hereby issue the following directions:

- i. Target People Social Security Scheme Micro Finance Limited (CIN U67190TN2013PLC091198/ PAN AAECT6457B) and its directors at the time of issuance of equity shares between June 2013 to August 2013 *viz.* Mr. Mariaponnusamy Moyeeson (DIN 06556231/PAN ALAPM5204H), Mr. Joseph Johnson Savarimuthu (DIN 06556234/PAN AJSPJ5395G) and Mr. Arockiasamy Judi Gerald Paulraj (DIN 06627515/ PAN AWDPJ0144R), shall within three months from the date of this order, jointly and severally refund the money collected pursuant to the allotments of shares dated June 29, 2013, July 25, 2013, August 1, 2013, August 14, 2013 and August 21, 2013 to the allottees along with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund.
- ii. Such refund shall be made only in cash through a Demand Draft or Pay Order.
- iii. Target People Social Security Scheme Micro Finance Limited shall issue a public notice, in all editions of one English national daily and one vernacular newspaper with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this order coming into effect.
- iv. Within seven days of completion of refund as directed hereinabove, Target People Social Security Scheme Micro Finance Limited shall file a certificate of such completion with SEBI from 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.
- v. Target People Social Security Scheme Micro Finance Limited and its directors, Mr. Mariaponnusamy Moyeeson, Mr. Joseph Johnson Savarimuthu and Mr. Arockiasamy Judi Gerald Paulraj are directed not to, directly or indirectly, access the capital market by issuing prospectus, any offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner till the refund of the money is made to the allottees as directed hereinabove.

- vi. Mr. Mariaponnusamy Moyeeson, Mr. Joseph Johnson Savarimuthu and Mr. Arockiasamy Judi Gerald Paulraj are further restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, till the refund of the money is made to the allottees as directed hereinabove.
23. The above directions are without prejudice to the right of SEBI to take any other appropriate action for the violations found in this case or to initiate any action in case of failure to comply with the above directions, in accordance with the provisions of applicable laws.
24. The order shall come into force with immediate effect. A copy of the order shall be served upon the Noticees to ensure compliance with the above directions.

Sd/-

Date: March 4th, 2015

Place: Mumbai

**RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**