

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 respect of URO Walkers Limited (PAN: AABCU3310M) and its directors,

Mr. Biswapriya Giri (PAN- AIXPG7534N; DIN- 02831730),

Mr. Prasun Mondal (PAN-ALFPM5139C; DIN- 06568526),

Mr. Sanjoy Chowhan (PAN- Not Found; DIN- 06568541),

Mr. Sachindra Nath Bhattacharya (PAN- AAJPB4769J; DIN- 00559781) and

Smt. Ipsita Das Giri (PAN- AILPD1367L; DIN- 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 & its group companies*' and for examining the same. The above reference enclosed 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 and requesting for referring the matter to SEBI.

2. SEBI initiated an inquiry and in pursuance thereof noticed that **URO Walkers Limited** ("the **Company**") was one of the companies of the 'URO Group'.

3. SEBI vide letter dated June 23, 2014 advised the Company and its directors Mr. Biswapriya Giri, Mr. Prasun Mondal and Mr. Sanjoy Chowhan, to *inter alia* furnish the following information in respect of issuance of securities :

- i. Copy of the Memorandum and Articles of Association of the company;
- ii. Audited Annual Accounts of the company for the last 3 years;
- iii. Annual Returns of the company for last 3 years;
- iv. Name, addresses and occupation of all the promoters/directors of the company;
- v. Names and details of the Key Managerial Personnel of the company;
- vi. Other information in respect of preference shares/debentures:

- a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("RoC").
- 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 equity shares allotted and value of such allotment against each allottee's name;
- g. Details regarding subscription amount raised;
- h. Date of allotment of preference shares/debentures;
- i. Copies of the minutes of Board/Committee meeting in which the resolution was passed for allotment;
- j. Date of dispatch of certificates, etc.;
- k. Details of the total number of applicants for each of the schemes besides the list of final allottee;
- l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of preference shares/debentures;
- m. Terms and conditions of the issue of preference shares/debentures;
- n. Whether the company has applied for listing of its securities with any of the stock exchanges;
- o. Copy of Form 2 and Form 10 filed with the RoC;
- p. Details of debenture trustee viz. name, address, board resolution authorizing their appointment etc.

4. The letters sent to the Company and Mr. Biswapriya Giri were returned undelivered to SEBI. No replies were received from the other two directors, Mr. Prasun Mondal and Mr. Sanjoy Chowhan.

5. SEBI perused the documents pertaining to the Company available on the 'MCA21 Portal'. From the information available, the following are also noticed:

- i. The Company was incorporated on June 16, 2011 with the RoC, Kolkata. The CIN of the company is U19200WB2011PLC163852. The Registered Office of the Company is situated at 94, Matheswartala Road, P.S. Tiljala, Kolkata- 700046, West Bengal.
- ii. The Directors of the Company are Mr. Biswapriya Giri (DIN- 02831730), Mr. Prasun Mondal (DIN- 06568526), and Mr. Sanjoy Chowhan (DIN- 06568541). Mr. Sachindra Nath

Bhattacharya (DIN- 00559781) and Smt. Ipsita Das Giri (DIN- 02877459) were found to be the directors of the Company during June 16, 2011 to April 29, 2013 i.e, during the period when the above equity shares were issued by the Company.

- iii. As per Form-2 (Return of Allotment), it was noticed that the Company had on March 31, 2012 (i.e., Financial Year 2011-2012), allotted 4,00,000 equity shares of Rs.10/- each for Rs. 40,00,000/-. It was also noticed that such equity shares were issued to a total of **228 persons**.
- iv. It was also noticed that the Company did not file Prospectus.
- v. The last filing made by the Company with the RoC were its Annual Accounts and Annual Return for the year ended March 31, 2012.

6. In view of the allegations of contravention of section 60 and 73 read with 67(3) of the Companies Act, 1956 alleged against the URO group of companies in the MCA reference, it needs to be seen whether the offer and allotment of the aforesaid equity shares were done in accordance with the provisions of the Companies Act, 1956, the SEBI Act, 1992 and the relevant regulations framed thereunder.

7. As it is noticed that the Company had allotted 4,00,000 shares to 228 persons on March 31, 2012, it is 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).”

A reading of the above provisions, makes it clear that in terms of the first *proviso* to section 67, 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. 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. As per the documents, the Company had made an offer and allotted equity shares to 228 persons. Accordingly, it is alleged that the Company has made a 'public offer' of equity shares in terms of the first proviso to section 67.

8. 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. ..."

9. As it is noticed that the Company has offered and issued equity shares during FY 2011-2012 to more than 49 persons, it had allegedly made a public offer of such securities and 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, contain 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.

There is no record to suggest that the Company has filed a Prospectus and complied with the above provisions.

10. 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.

11. 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."

12. 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 (specified securities). Therefore, the Company was also mandated to comply with the provisions of the ICDR Regulations including the following:

- *Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)(d)),*
- *Appointment of merchant banker and other intermediaries (Regulation 5),*
- *Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),*
- *Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),*
- *Satisfy the conditions of initial public offer (Regulation 25 and 26),*
- *Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)*
- *Keeping the public issue open for the specified period (Regulation 46),*
- *Pre issue advertisement for public issue (Regulation 47)*
- *Manner of disclosures in the offer documents (Regulation 57)*
- *Refrain from offering any incentive to any person making application for allotment of specified securities (Regulation 59).*

13. On a consideration of the aforementioned observations, I am of the view that the Company is *prima facie* engaged in fund mobilizing activity from the public, through the offer and issuance of equity shares and has contravened the provisions of sections 56, 60 and 73 of the Companies Act, 1956 read with section 67(3) thereof and the provisions of the ICDR Regulations. Accordingly, the directors of the Company namely **Mr. Biswapriya Giri** (DIN- 02831730), **Mr. Prasun Mondal** (DIN- 06568526) and **Mr. Sanjoy Chowhan** (DIN- 06568541) and the former directors, **Mr. Sachindra Nath Bhattacharya** (DIN- 00559781) and **Smt. Ipsita Das Giri** (*who were the directors during the relevant period when the impugned shares were offered and allotted*), being the 'officers in default', are found responsible for the alleged contraventions committed by the Company. The Company and the aforesaid persons are also alleged to have failed to make repayments to the investors (*from whom monies were mobilized through issue of equity shares*) in accordance with section 73(2) of the Companies Act, 1956. It therefore becomes necessary for SEBI, as the regulator for the securities market, to intervene and issue suitable directions in order to ensure that the Company and its promoters/directors do not continue to collect public funds in contravention of the law. Further, the interest of the investors also need to be protected to ensure that public funds are not diverted.

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

(a) The Company, namely, URO Walkers Limited and its promoters/directors including Mr. Biswapriya Giri (DIN- 02831730), Mr. Prasun Mondal (DIN- 06568526) and Mr. Sanjoy Chowhan (DIN- 06568541) and its former directors Mr. Sachindra Nath Bhattacharya (DIN- 00559781) and Smt. Ipsita Das Giri (DIN- 02877459) are restrained from mobilizing funds through the issue of equity shares or through the issuance of equity shares or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.

(b) URO Walkers Limited and its promoters/directors including Mr. Biswapriya Giri, Mr. Prasun Mondal and Mr. Sanjoy Chowhan, and its former directors Mr. Sachindra Nath Bhattacharya and Smt. Ipsita Das Giri are prohibited from issuing 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, till further orders.

(c) URO Walkers Limited and its promoters/directors including Mr. Biswapriya Giri, Mr. Prasun Mondal and Mr. Sanjoy Chowhan, and its former directors Mr. Sachindra Nath Bhattacharya and Smt. Ipsita Das Giri shall not dispose of any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.

(d) URO Walkers Limited and its promoters/directors including Mr. Biswapriya Giri, Mr. Prasun Mondal and Mr. Sanjoy Chowhan, and its former directors Mr. Sachindra Nath Bhattacharya and Smt. Ipsita Das Giri shall not divert any funds raised from public at large through the issuance of the impugned equity shares, kept in its bank accounts and/or in the custody of the company without prior permission of SEBI until further orders.

(e) URO Walkers Limited and its promoters/directors including Mr. Biswapriya Giri, Mr. Prasun Mondal and Mr. Sanjoy Chowhan, and its former directors Mr. Sachindra Nath Bhattacharya and Smt. Ipsita Das Giri are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.

(f) URO Walkers Limited and its promoters/directors including Mr. Biswapriya Giri, Mr. Prasun Mondal and Mr. Sanjoy Chowhan, and its former directors Mr. Sachindra Nath Bhattacharya and Smt. Ipsita Das Giri shall co-operate with SEBI and shall furnish documents, as required by SEBI vide letter June 23, 2014.

(g) URO Walkers Limited and its promoters/directors including Mr. Biswapriya Giri, Mr. Prasun Mondal and Mr. Sanjoy Chowhan, and its former directors Mr. Sachindra Nath Bhattacharya and Smt. Ipsita Das Giri are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

15. The above directions shall come into force with immediate effect and shall continue to be in force till further directions.

16. URO Walkers Limited and its promoters/directors including Mr. Biswapriya Giri, Mr. Prasun Mondal and Mr. Sanjoy Chowhan, and its former directors Mr. Sachindra Nath Bhattacharya and Smt. Ipsita Das Giri are advised to show cause as to why suitable directions/prohibitions, under the sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the ICDR Regulations, including the following, should not be taken/imposed against them :

- a) directing them jointly and severally to refund the money collected through the issue of equity shares that are impugned in this Order, along with interest at 15% per annum from the date when the refunds became due to the investors till the date of repayment ;
- b) directing them to 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, for an appropriate period;

- c) directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;
- d) directing them and other companies in which their directors hold substantial or controlling interest, to not to access the capital market for an appropriate period.

17. URO Walkers Limited and its promoters/directors including Mr. Biswapriya Giri, Mr. Prasun Mondal and Mr. Sanjoy Chowhan, and its former directors Mr. Sachindra Nath Bhattacharya and Smt. Ipsita Das Giri may file their replies/submissions within a period of 21 days from the date of receipt of this Order and may also indicate whether they desire to avail an opportunity of personal hearing in the matter.

18. This Order is without prejudice to the right of SEBI to take any other action including prosecution proceedings under section 24 of the SEBI Act and section 621 of the Companies Act, 1956 read with the relevant provisions of the Companies Act, 2013 and adjudication proceedings under the SEBI Act, against URO Walkers Limited and its promoters/directors including Mr. Biswapriya Giri, Mr. Prasun Mondal and Mr. Sanjoy Chowhan, and its former directors Mr. Sachindra Nath Bhattacharya and Smt. Ipsita Das Giri, in accordance with law.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : March 19th, 2015
Place: Mumbai