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

In the matter of ERIL Mutual Benefit India Limited

In respect of (1) ERIL Mutual Benefit India Limited (CIN - U65991JH2013PLC001114) and its directors (2) Mr. Biplab Kumar Dey (DIN - 02550446), (3) Ms. Juthika Ghosh (DIN - 02888132) and (4) Mr. Chandan Sinha Roy (DIN - 03459797)

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1. Securities and Exchange Board of India ("**SEBI**") received a reference dated November 12, 2014 from M/s. Universal Human Rights Association, which had forwarded an undated complaint from an investor, Mr. Bhola Nath Das. The complainant stated that he had invested Rs.3,06,000/- in the 'MIS/RD' of the company Everlight Realcon Infrastructure Limited and requested the assistance of the aforesaid Association in getting back his invested money. The complainant had enclosed copies of two Deposit Certificates issued by ERIL Mutual Benefit India Limited ("the **Company**"). As per the first Deposit Certificate, it is recorded by the Company that the complainant had deposited Rs.3,12,000/- (on September 16, 2013) and the maturity amount would be Rs.4,82,991/- due on September 16, 2018. The second certificate records that the complainant had deposited Rs.1,49,500/- and maturity amount would be Rs.2,31,433/- due on September 16, 2018.

2. In view of the above reference and the complaint, SEBI initiated an examination into the affairs of the Company related to mobilization of public funds through issue of securities or schemes and whether the same were in conformity with the applicable securities laws. In pursuance of the examination, SEBI vide letters dated November 24, 2014 sought the following details from the **Company** and its **directors**, namely, **Mr. Biplab Kumar Dey, Ms. Juthika Ghosh and Mr. Chandan Sinha Roy**, *inter alia* with respect to the issuance/launch of securities/schemes by it:

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. Name, addresses and occupation of all the promoters/directors of the company;
iv. Names and details of the Key Managerial Personnel of the company;

v. Other information in respect of securities issued by the Company, viz.,

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 securities;

i. Copies of the minutes of Board/Committee meeting in which the resolution was passed for allotments;

j. Date of dispatch of certificates etc.;

k. Details of the total number of applicants for each of the Company's schemes besides the list of final allottees;

l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of securities.

m. Terms and conditions of the issue of securities.

3. The above letters returned undelivered. Another letter dated December 15, 2014, sent to the Company and its directors advising them to submit relevant information, also returned. Simultaneously, efforts were made to obtain information pertaining to the Company and its directors from the portal of Ministry of Corporate Affairs ("MCA"). The following documents/information were *inter alia* accessed from the MCA portal:

(a) **Certificate of Incorporation** issued by the Registrar of Companies, Jharkhand - the Company was incorporated on April 05, 2013 with Corporate Identity Number - **U65991JH2013PLC001114**;

Form-2 (Return of allotment) with respect to the allotment of equity shares on June 30, 2013 - the Company had issued 519 equity shares of face value Rs.100/- aggregating Rs.51,900/-. As per this Form, the registered office of the Company is situated at 1st Floor, Amba Tower, Steel Gate, Saraidhela, Dhanbad, Jharkhand, Pin Code - 828127;

(b) **List of allottees** - as per this list, the Company had allotted the above said equity shares to 519 persons;

(c) Extract of **Resolution** passed in the meeting of Board of Directors of the Company on **June 30, 2013**. All the directors of the Company are signatories to this Resolution.

(d) There is no record (*no filing in the MCA portal and no response from the Company as the SEBI letters have returned*) to suggest that the Company had filed Prospectus/Offer Document with respect to above issuance of equity shares.

4. In view of the allegation in the complaint and taking note of the above allotment of equity shares made by the Company, it needs to be seen whether the offer and allotment of the aforesaid equity shares by the Company were done in accordance with the provisions of the Companies Act, 1956, the SEBI Act, 1992 and the relevant regulations framed there under. As it is noticed that the Company had allotted equity shares to 519 persons on June 30, 2013, it is important to refer to section 67(1) & (3) of the Companies Act, 1956 to first ascertain whether the issue could be termed as 'public' or done on 'private placement':

"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'. There is no record to state that the Company is 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 available documents mentioned above, the Company had made an offer and allotted equity shares to 519 equity shares of Rs.100/- each to 519 persons. This number is more than the threshold of 49, in terms of section 67 of the Companies Act, to consider the same as a 'private placement' of such securities.

Accordingly, it is alleged that the Company made a 'public offer' of equity shares on June 30, 2013 in terms of the first *proviso* to section 67(3) of the Companies Act, 1956.

5. 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. …"

6. As it is noticed that the Company has offered and issued equity shares on June 30, 2013 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.

7. Further, by issuing equity shares to more than 49 persons, the Company had to compulsorily list such equity shares in compliance with section 73 of the Companies Act, 1956. Listing is not an optional obligation but a mandate to a company which intends to list its securities. The 'intent' lies not in the contention of a company that it never intended to list such securities but the same arises out of the nature of offer and allotment made to the public. Whether offer was made to the public or not would be determined in accordance with the provisions of section 67 of the Companies Act, 1956. Therefore, even if a company having made an offer and allotted securities to more than 49 persons did not have any intent to list, it had to compulsorily list due to the very nature of the offer being a public offer and made to more than 49 persons.

8. 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 directors of the company are also jointly and severally liable for making the refunds as directed in section 73(2) of the Companies Act. 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. The following observations made by 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***") is important to note:

"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. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

9. 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 the *Sahara Case,* had observed the following:

"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."

10. 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 be administered by SEBI in the case of listed companies and companies who intend to get their securities listed. Further, section 11A of the SEBI Act, 1992 empowers SEBI to regulate the matters relating to issue of capital, transfer of securities and other

incidental matters. This provision also empowers SEBI to (i) prohibit any company from issuing propectus/offer document or advertisement soliciting money from the public for the issue of securities and (ii) specify the conditions subject to which the prospectus, offer document or advertisement, if not prohibited may be issued. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("the ICDR Regulations"), issued in exercise of powers conferred on SEBI under regulation 30 of the SEBI Act, 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 with respect to its offer and issue of equity shares:

- *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).*

11. 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.

12. It is noted from the MCA portal that the following are the directors of the Company :

List of Signatories

DIN/DPIN/PAN	Full Name	Present residential address	Designation	Date of Appointment
02550446	**BIPLAB KUMAR DEY**	KALIKAPUR SAYAR PARA 1, ASANSOAL (DAKSHIN), BURDWAN, 713304, West Bengal, INDIA	Director	05/04/2013
02888132	**JUTHIKA GHOSH**	PART NO.62, NORTH 24 PARGANAS, HABRA, 743271, West Bengal, INDIA	Director	05/04/2013
03459797	**CHANDAN SINHA ROY**	12, DHAKURIA EAST ROAD, 2ND FLOOR, FLAT - 9, KOLKATA, 700078, West Bengal, INDIA	Director	05/04/2013

As can be, seen the above directors were appointed on April 05, 2013. The equity shares, which are the subject matter in this proceeding, were issued on June 30, 2013, after these directors assumed charge as directors of the Company. From the Board Resolution dated June 30, 2013, it can be inferred that all the above directors were present and had approved the allotment of the same to 519 persons. Accordingly, they are liable for the violations committed by the Company, as alleged above. As mentioned above, section 73(2) of the Companies Act, 1956 casts responsibility on the directors that if the Company fails to repay within the period of 8 days, the Company and every director of the company who is an officer in default shall on and from the expiry of the 8th day, be jointly and severally be liable to repay that money with interest. The directors, **Mr. Biplab Kumar Dey, Ms. Juthika Ghosh and Mr. Chandan Sinha Roy** are alleged to be the officers in default and liable for the default in initiating action as stipulated in section 73(2). Further, in view of the considerable time period that has elapsed i.e., from the date of allotment (on June 30, 2013) in making the repayments, it would be appropriate to advise the Company and its directors to show cause as to why the rate of interest be fixed at 15% as provided for in section 73(2) of the Companies Act.

13. I also note that the Company was incorporated on April 05, 2013. Within a short span of two months (*i.e., June 30, 2013, when it had issued equity shares to more than 50 persons*), the Company has, allegedly in contravention of the above provisions of law, mobilized public funds through offer and issue of equity shares. It is also noted from the MCA portal that the Company had not filed its Annual Accounts.

14. In view of the above alleged violations committed by the Company and its directors and their alleged default in making repayments in accordance with law, it 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.

15. 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 regulation 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions :

(a) **ERIL Mutual Benefit India Limited (CIN - U65991JH2013PLC001114)** and its promoters/directors including **Mr. Biplab Kumar Dey (DIN - 02550446), Ms. Juthika Ghosh (DIN - 02888132) and Mr. Chandan Sinha Roy (DIN - 03459797)** -

(i) are restrained from mobilizing funds through the issue 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;

(ii) 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 directions,

(iii) 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;

(iv) 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;

(v) 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;

(vi) shall co-operate with SEBI and shall furnish documents, as sought vide SEBI letter dated November 24, 2014;

(vii) shall 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.

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

16. ERIL Mutual Benefit India Limited and its promoters/directors including **Mr. Biplab Kumar Dey, Ms. Juthika Ghosh and Mr. Chandan Sinha Roy** 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. ERIL Mutual Benefit India Limited and its promoters/directors including Mr. Biplab Kumar Dey, Ms. Juthika Ghosh and Mr. Chandan Sinha Roy 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. It appears from the complaint received that apart from raising funds through offer and issuance of equity shares, the Company has been mobilizing funds from the public by soliciting/accepting deposits by way of MIS/RD. SEBI has referred the matter to the Registrar of Companies and the Reserve Bank of India for their information and necessary action.

19. 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 **ERIL Mutual Benefit India Limited** and its promoters/directors including **Mr. Biplab Kumar Dey, Ms. Juthika Ghosh and Mr. Chandan Sinha Roy**, in accordance with law.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : March 27, 2015
Place: Mumbai