

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11A(1)(b) 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 Togo Retail Marketing Limited

In respect of:

1.	Togo Retail Marketing Limited	[PAN: AADCM4340F]
2.	Mr. Jasjeet Singh Sethi	NOT AVAILABLE
3.	Mr. Rajesh Chakravarty	NOT AVAILABLE
4.	Mr. Satish Kumar	NOT AVAILABLE
5.	Mr. Vinod Kaul	NOT AVAILABLE
6.	Mr. Mukesh Mishra	NOT AVAILABLE
7.	Mr. Anil Kumar	NOT AVAILABLE
8.	Mr. Uday Pratap Singh	NOT AVAILABLE
9.	Mr. Giriraj Vashistha	[DIN: 01350554]
10.	Mr. Rajit Ram Maurya	[DIN: 00076596]
11.	Mr. Prithi Paul Singh Sethi	[PAN: AOAPS8866A]
12.	Mr. Narayan Jay Tripathi	NOT AVAILABLE
13.	Mr. Shree Kishan Chaudhary	[DIN: 00077002]
14.	Mr. Amit Mishra	[PAN: AIEPM2608Q]
15.	Mr. Shailendra Kumar Prajapati	[DIN: 00319340]
16.	Mr. Prahlad Singh	[DIN: 02330511]
17.	Mr. Munshi Lal Tiwari	[DIN: 01508499]
18.	Mr. Shaukeen Pathak	[PAN: AHYPP0297R]
19.	Mr. Manoj Joshi	[PAN: AGJPJ7853P]
20.	Mr. Sanjeev Kumar Jha	[PAN: ANAPJ5195L]
21.	Mr. Dilip Kumar Mishra	[PAN: ALCPM2699C]
22.	Mr. Ramendra Prasad Sharma	[PAN: AOBPS4499A]
23.	Mr. Gurbhej Singh Hora	[DIN: 00312542]
24.	Mr. Rajesh Kumar Sharma	[PAN: BFXPS2910E]
25.	Mr. Shiva Nand Mishra	[PAN: AJHPM9388B]
26.	Mr. Kishan Pal Singh	[PAN: AVVPS8411M]
27.	Mr. Deena Nath Maurya	[PAN: BJJPM1012K]
28.	Mr. Chhote Lal Shukla	[PAN: CLJPS2300B]
29.	Mr. Vishwa Bandhu Vashishta	[PAN: ABFPV9924N]
30.	Mr. Mukesh Kumar Khare	[PAN: BBVPK0966N]

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had received an e-mail dated April 25, 2013 from a complainant seeking information about the activities

of one Togo Retail Marketing Limited (hereinafter referred to as 'Togo' or 'the Company')(earlier known as Multi-Ex Marketing & Communications Limited).Having received the complaint, SEBI initiated a preliminary examination and asked Togo vide letter dated May 14, 2013, to *inter alia* furnish the following information/ documents:

- i. Copies of the Memorandum and Articles of Association of the Company.
- ii. Annual Returns, Balance Sheet and Profit & Loss Account of the Company since incorporation.
- iii. Name, addresses, PAN and contact details of all the past and present promoters/directors/ Key Managerial Personnel of the Company.
- iv. Brochures pertaining to the schemes/offers made available to the public.
- v. Application forms required to be submitted by investors/applicant to participate in the scheme/offers
- vi. Copies of the registration letter/certificates and allotment letter issued to the investors who subscribed to such schemes/offers.
- vii. Copies of the agreements, if any, that are required to be entered into by investors/applicants with the Company at the time of joining the schemes/offers.
- viii. Details of the scheme wise amounts mobilised by the Company along with the number of investors under the scheme/offers.
- ix. Certified copies of audited financial statements for the financial years 2009-10, 2010-11 and 2011-12.
- x. Copies of the Income Tax Return filed by the company for the last three years.
- xi. Details of the regulatory approvals obtained, if any, for the schemes.

Togo was advised to provide the above required information and the documents latest by May 31, 2013.Vide another letter dated May 21, 2013, SEBI also requested Registrar of Companies (hereinafter referred to as 'RoC'),Delhi and Haryana to provide the documents such as details of registered office of the Company, copies of the Memorandum and Articles of Association, Annual returns, etc.

2. Thereafter, SEBI also received a complaint dated May 29, 2013, alleging therein that Togo was raising money from the public through redeemable preference shares in the garb of private placement. In the meantime, RoC, vide its letter dated May 29,2013, forwarded the copy of the certificate of incorporation of the Company, Memorandum and Articles of Association of the Company, Form 32, Form 18, Annual Return and Balance Sheet for the financial year 2011-2012.

3. As information was not forthcoming, SEBI issued a reminder letter dated June 11, 2013, to the Company, which was returned undelivered. Further, based on the examination of the documents received from the RoC, SEBI vide its letter dated August 21, 2013, sought following additional information from the Company:
- i. Copy of the Memorandum and Articles of Association of the Company.
 - ii. Audited Balance Sheet and Profit & Loss Account of the Company for the last 3 years.
 - iii. Name, addresses and occupation of the promoters/directors of the Company.
 - iv. Statement of mobilization of funds through issue of preference shares, duly certified by the Statutory Auditors of the Company.
 - v. Names and details of the Key Managerial Personnel of the Company.
 - vi. Copies of the Annual Report and Annual Return filed with RoC since incorporation.
 - vii. Copies of Tax Returns filed with the Income Tax authorities since incorporation.
 - viii. Other information in respect of each and every series of preference shares issued by the Company, viz.-
 - a. Details regarding filing of the Prospectus/Red Herring Prospectus with ROC.
 - b. Date(s) of opening and closing of the subscription list.
 - c. The details of opening and closing of the issue, quantum of funds raised and proposed to be raised.
 - d. List of agents with addresses who were appointed by the company.
 - e. Details regarding the number of application forms circulated inviting subscription.
 - f. Details regarding the number of applications received and number of allottees.
 - g. The number of allottees and the list of allottees along with their name, address, number of redeemable preference shares issued, folio number, certificate number, distinctive number and amount collected from each allottee since incorporation.
 - h. Details regarding subscription amount raised.
 - i. Date(s) of allotment of the preference shares.
 - j. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for issue and allotment of preference shares.
 - k. Date(s) of dispatch of preference shares certificates, etc.
 - l. Copies of application forms, RHP, pamphlets, advertisements and other promotional material circulated for issuance of preference shares.
 - m. Terms and conditions of the issue of preference shares.

The Company was advised to provide the above required information and the documents latest by September 04, 2013.

4. SEBI vide its letter dated August 21, 2013, also forwarded a copy of the investor complaint to the Ministry of Corporate Affairs (hereinafter referred to as MCA). As no information was coming from the Company, SEBI issued a reminder letter dated October 08, 2013 to the Company. SEBI vide letter dated October 08, 2013, also sought information from the directors of the Company namely Mr. Vishwa Bandhu Vashishtha, Mr. Mukesh Kumar Khare and Mr. Deenanath Maurya. However, no reply was received from these directors.

Thereafter, SEBI vide letters dated November 07, 2013 and December 11, 2013, issued further reminders to the Company and its aforesaid directors.

5. In the meantime, the Company vide its letter dated December 11, 2013, submitted the following information:
 - i. Copy of the Memorandum and Articles of Association,
 - ii. Copy of the Audited Balance Sheet and Profit and Loss account for the last 3 years i.e. from the financial year 2009-10 to financial year 2011-12,
 - iii. Details of the promoters/directors and 'key managerial personnel' of the Company,
 - iv. Copy of the Annual Returns filed with RoC for 9 years (i.e. 2003 to 2011),
 - v. Copy of the Income Tax Return for 10 years (i.e. from 2003-04 to 2012-13).
6. As the information received from the Company was incomplete, SEBI vide its letter dated August 06, 2014, again asked the Company to provide the following information:
 - i. Audited Balance Sheet and Profit and Loss Account for the financial year ending March 31, 2013.
 - ii. Statement of mobilization of funds through issue of equity and redeemable cumulative preference shares duly certified by the Statutory Auditors of the Company.
 - iii. The documents filed in respect of the private placements made during the financial years 2009-2010 and 2010-11 and the equity shares issued during the financial year 2011-2012 with the RoC.
 - iv. Other information as earlier asked in respect of each and every series of preference shares/ equity shares issued by the Company.
7. The above said information was also sought from the directors and the auditors (i.e. Amar Tandon & Co. and S.N. Mishra & Co.) of the Company. The auditor namely S.N. Mishra & Co. vide his letter dated September 03, 2014, submitted that they had conducted statutory audit of the Company for the financial year(s) 2008-2009, 2009-2010 and 2010-2011 and thereafter, they had resigned. It was also said that they could not produce the balance sheet, profit and loss account of the company for the financial year 2012-2013, statement of mobilisation of funds and other information regarding the preference shares/ equity shares. Another auditor namely Mr. Amar Tandon vide his letter dated September 12, 2014, submitted that the desired information is not available to them as they were the statutory auditor for the financial year ending March 31, 2013. Mr. Amar Tandon vide the said letter also submitted the balance sheet as on March 31, 2012.

8. Togo vide its letter received by SEBI on September 26, 2014 submitted the audited Balance Sheet and Profit and Loss account of the Company for the year ending 2013.
9. From a perusal and examination of the documents as submitted by Togo, received from RoC, the information obtained from the 'MCA-21' portal maintained by MCA, etc., I note the following:
 - a. The Company was originally incorporated on March 12, 1999 as Multi-Ex Marketing & Communications Limited [CIN: U72900D1999PLC098804]. The name of the Company was subsequently changed to Togo Retail Marketing Limited on October 26, 2007. The registered office of the Company is located at 487/88, No. 1, First Floor, Mangal Bazar Road, Near Sidh Baba Mandir, Peera Garhi, New Delhi -110087.
 - b. A site visit at the registered office of the Company in September 2014, revealed that the premises was being used by one Vamshi Chemicals Limited (which owns 9.45% equity share capital of Togo). It was gathered that the said Vamshi Chemicals Limited had been running its business for the past 1.5 years from the said premises and Togo was functioning from the said address before two years.
 - c. As per the details submitted by the Company and information obtained from 'MCA 21' portal, the present directors of the Company are Mr. Kishan Pal Singh, Mr. Deena Nath Maurya, Mr. Vishwa Bandhu Vashistha, Mr. Chote Lal Shukla and Mr. Mukesh Kumar Khare.
 - d. The subscribers to the Memorandum of Association were Mr. Jasjeet Singh Sethi, Mr. Rajesh Chakravarthy, Mr. Satish Kumar, Mr. Vinod Kaul, Mr. Mukesh Mishra, Mr. Anil Kumar and Mr. Uday Pratap Singh.
 - e. The past directors of the Company are Mr. Jasjeet Singh Sethi, Mr. Rajesh Chakravarty, Mr. Sathish Kumar, Mr. Prithi Paul Singh Sethi, Mr. Rajat Ram Maurya, Mr. Giriraj Vashistha, Mr. Narayan Jai Tripathi, Mr. Shree Kishan Chaudhary, Mr. Amit Mishra, Mr. Munshi Lal Tiwari, Mr. Prahlad Singh, Mr. Shailandra Kumar Prajapati, Mr. Manoj Joshi, Mr. Shaukeen Pathak, Mr. Sanjeev Kumar Jha, Mr. Dilip Kumar Mishra, Mr. Gurubhej Singh Hora, Mr. Ramendra Prasad Sharma, Mr. Rajesh Kumar Sharma and Mr. Shiva Nand Mishra. The table below, shows the dates of appointment and cessation of the directors of the Company:

TABLE -B

S.No.	Name of the Director	Date of appointment	Date of Cessation
1.	Jasjeet Singh Sethi	March 12, 1999	-
2.	Rajesh Chakravarty	March 12, 1999	-
3.	Satish Kumar	March 12, 1999	-
4.	Giriraj Vashistha	June 02, 2002	July 25, 2009

5.	Rajit Ram Maurya	June 02, 2002	September 09, 2006
6.	Prithi Paul Singh Sethi	June 02, 2002	-
7.	Narayan Jay Tripathi	December 10, 2002	-
8.	Shree Kishan Chaudhary	July 23, 2005	-
9.	Amit Mishra	July 12, 2006	April 16, 2012
10.	Shailendra Kumar Prajapati	July 12, 2006	August 10, 2008
11.	Prithi Paul Singh Sethi	May 17, 2008	June 15, 2011
12.	Prahlad Singh	August 10, 2008	April 15, 2010
13.	Munshi Lal Tiwari	September 01, 2008	July 25, 2009
14.	Shaukeen Pathak	March 16, 2009	July 25, 2009
15.	Manoj Joshi	July 25, 2009	April 15, 2010
16.	Sanjeev Kumar Jha	July 25, 2009	September 24, 2009
17.	Dilip Kumar Mishra	July 25, 2009	September 24, 2009
18.	Ramendra Prasad Sharma	September 20, 2009	March 29, 2012
19.	Deena Nath Maurya	September 24, 2009	June 15, 2011
20.	Kishan Pal Singh	September 24, 2009	
21.	Gurbhej Singh Hora	April 15, 2010	September 20, 2010
22.	Rajesh Kumar Sharma	June 15, 2011	March 29, 2012
23.	Vishwa Bandhu Vashishta	June 15, 2011	
24.	Chhote Lal Shukla	March 29, 2012	
25.	Shiva Nand Mishra	March 29, 2012	April 03, 2013
26.	Deena Nath Maurya	April 16, 2012	
27.	Mukesh Kumar Khare	April 03, 2013	

- f. A perusal of the return of allotment (Form 2) as obtained from the 'MCA-21' portal maintained by Ministry of Corporate Affairs, revealed that the Company had issued equity shares on different occasions, the details of which are as follows:

TABLE -C

S.No.	Date of allotment	No. of investors	No. of equity shares	Face Value ()	Total Issued Capital ()
1.	March 31, 2004	2,767	45,50,000	10	4,55,00,000
2.	March 31, 2005	5,596	25,99,800	10	2,59,98,000
3.	March 31, 2009	61	5,91,200	10	59,12,000
	Total	8,424	77,41,000		7,74,10,000

From the above, it is seen that Togo had issued *equity shares* in various tranches and had mobilized funds to the tune of 7,74,10,000 from 8,424 allottees, till March 31, 2009. It is also noted that the number of allottees in each of the offer and allotment is more than 50.

- g. It is also noted from the balance sheet and profit and loss account that the Company had also issued 18,75,000 and 5,25,500 equity shares during the years 2011 and 2012 respectively, however, the details of the allottees is not available on record.

10. Having noted the above details, I proceed further with the matter. The issue for determination in the instant matter is whether Togo had complied with the applicable provisions of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act'), the Companies

Act, 1956 (since repealed) read with the Companies Act, 2013, the SEBI (Disclosure and Investor Protection) Guidelines 2003 (hereinafter referred to as 'DIP Guidelines') read with the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations') in respect of its issuance of the *equity shares*.

11. As the *equity shares* had been issued to the public during the year 2004, 2005 and 2009, the provisions of sub-sections (1), (2) and (3) of the Section 67 of the Companies Act, 1956, are applicable to the allotments made by the Company. In terms of Section 67(3), no offer or invitation shall be treated as made to the public by virtue of sub-sections (1) or (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. In terms of the proviso to the aforesaid section, 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 of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. The number of persons to whom the shares/ debenture have been allotted becomes relevant to judge whether an issue of shares is made to public or made on a private placement basis.
12. As noted earlier the Company had made allotments of *equity shares* to 2,767 investors on March 31, 2004; 5,596 investors on March 31, 2005 and to 61 investors on March 31, 2009. The same shows that the Company had issued equity shares to more than 49 persons. As per the first proviso to Section 67(3) of the Companies Act, 1956, where the “offer” or “invitation to subscribe for shares or debentures” is made to fifty persons or more, then it has to be construed as a public offer. In view of the same, the allotment of *equity shares* by Togo on March 31, 2004, March 31, 2005 and March 31, 2009 was public offer of securities.
13. All mobilisation of funds from fifty or more investors should be classified as a public issue requiring the company to make an application to list its securities. In view of the foregoing, it could be observed that the aforesaid issues of equity shares made by Togo

were deemed public issues. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the matter of *Sahara India Real Estate Corporation Limited & Ors. V.s. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the '*Sahara Case*'), had observed that:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is 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 otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ... 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. ..."

[Emphasis supplied]

14. Having observed that the equity shares issued by Togo are in the nature of public issue, the Company was required to comply with provisions of the Companies Act, 1956 and other relevant statutory provisions as applicable. I note that in the case of any public issue of securities, the relevant provisions of the Companies Act, 1956 *inter alia* Sections 60 read with Section 2(36), 56(1), 56(3) and Section 73 thereof needs to be complied with. In terms of Section 60 read with the Section 2(36) of the Companies Act, 1956, a company needs to file a prospectus with respect to its public issue with the RoC. As per Section 2(36) of the Companies Act, 1956, '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 a body corporate. As per the information available on record and also admitted by the Company, it did not file any prospectus/ information memorandum with respect to the said issues of equity shares.

15. Having made the public offer as discussed above, Togo ought to have filed the Prospectus with RoC under Section 60 of the Companies Act, 1956. In terms of Section 60B(2) of the Companies Act, 1956, a Company inviting subscription by an information memorandum is bound to file a prospectus prior to the opening of the subscription lists, at least three days before the opening of the offer. While Section 60B(3) stipulates that the 'Information Memorandum' shall carry the same obligations as are applicable in case of prospectus. Section 60B(9) requires the Company to file a final prospectus with SEBI/ RoC. Consequentially, Togo had also *prima facie* not complied with the above discussed provisions of the Companies Act, 1956.
16. 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, in order to ensure that the subscribers to the shares have a facility to approach a stock exchange for having their holdings converted into cash whenever they desire. The same also provides liquidity and exit opportunity to the investors. As per Section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognised 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. From the material available on record, the Company, does not appear to have done so and thus, contravened the said provisions. It neither made an application seeking listing permission nor refunded the amounts on account of such failure. The Company had also not complied with the provisions of Section 73(3) of the Companies Act, 1956 as it had not kept the amounts received from investors in a separate bank account and failed to repay the same in accordance with Section 73(2) of the Companies Act, 1956. In view of the above, it is alleged that the Company had contravened the provisions of the Companies Act, 1956, which regulates the public issue of securities, including Sections 60B(2), 60B(9) read with Sections 2(36), 56(1), 56(3) and 73 of the Companies Act, 1956, in respect of its collection of public funds towards the issue of equity shares.
17. I now discuss the regulatory powers and the jurisdiction of SEBI on the company that raise funds, by issue of securities, from the public. In this regard, I refer to the Section 55A of the Companies Act, 1956. In terms of the relevant provisions of the said section, the provisions contained in Sections 55 to 58, 59 to 81 (including Sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207 of the Companies Act, 1956, in so far as they relate to the issue and transfer of securities shall

be in the case of listed public companies and in the case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by SEBI. The terms 'securities' as per Section 2(h) of the Securities Contracts (Regulation) Act, 1956 includes 'shares'. I observe that Sections 67 and 73 of the Companies Act, 1956 are included in the list of the sections as mentioned in Section 55A of the Companies Act, 1956, and therefore, such sections are to be administered by SEBI.

18. As per the provisions of Section 55A of the Companies Act, 1956, the administrative authority on the subjects relating to public issue of securities is SEBI. For this purpose, SEBI can exercise the jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956, over companies who issue equity shares to fifty persons or more, but fail to comply with the applicable provisions of the aforesaid statutes. Therefore, in addition to the compliance with the provisions of the Companies Act, 1956, the Company was mandated to comply with the applicable provisions of the ICDR Regulations.

19. I note that SEBI had framed the DIP Guidelines in exercise of the powers conferred upon itself under the SEBI Act. The Hon'ble Supreme Court in *Sahara Case* has observed that:

"DIP Guidelines had statutory force since they were framed by SEBI in exercise of its powers conferred on it under Sections 11 and 11A of the SEBI Act. Powers have been conferred on SEBI to protect the interests of the investors in securities and regulate the issue of prospectus, offer documents or advertisement soliciting money through the issue of prospectus. Section 11 of the Act, it may be noted has been incorporated, evidently to protect the interests of investors whose securities are legally required to be listed. DIP Guidelines were implemented by SEBI with regard to the listed and unlisted companies, which made public offer, until it was replaced by ICDR 2009".

The DIP Guidelines were applicable to all public issues by listed and unlisted companies. I note that the ICDR Regulations (which came into effect from August 26, 2009) had replaced the DIP Guidelines and all public issues are now required to comply with the ICDR Regulations. The DIP Guidelines (as applicable at the relevant time) operated as reasonable safeguards for the investors who subscribed or intended to subscribe in the public issues of securities. In this regard, I *prima facie* observe that SCL has not complied with the following clauses of DIP Guidelines:

- Clause 2.1.1 (filing of offer document)
- Clause 2.1.4 (application for listing)
- Clause 2.1.5 (issue of securities in dematerialized form),
- Clause 2.8. (means of finance),
- Clause 4.1 (promoters contribution in a public issue by unlisted companies),
- Clause 4.11 (lock-in of minimum specified promoters contribution in public issues),
- Clause 4.14 (lock-in of pre-issue share capital of an unlisted company)

- Clause 5.3.1 (memorandum of understanding),
- Clause 5.3.3 (due diligence certificate)
- Clause 5.3.5 (undertaking)
- Clause 5.3.6 (list of promoters group and other details)
- Clause 5.4 (appointment of intermediaries)
- Clause 5.6 (offer document to be made public)
- Clause 5.6A (Pre-issue Advertisement)
- Clause 5.7 (despatch of issue material)
- Clause 5.8 (no complaints certificate)
- Clause 5.9 (mandatory collection centres and Clause 5.9.1.(minimum number of collection centres)
- Clause 5.10 (authorised collection agents)
- Clause 5.12.1 (appointment of compliance officer),
- Clause 6.0 (contents of offer documents)
- Clause 6.1 to Clause 6.15 (contents of prospectus)
- Clause 6.16 to Clause 6.34 (contents of abridged prospectus) including Clause 6.17.13
- Clause 8.3 (Rule 19(2)(b) of SC(R) Rules, 1957)
- Clause 8.8.1 (Opening & closing date of subscription of securities)
- Clause 9 (guidelines on advertisements by issuer company)

20. In this regard, it is important to note the following observation made by the Hon'ble Supreme Court of India in *Sahara Case*:

"90. 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 there under, the Companies Act, pertaining to the public issue."

[Emphasis supplied]

21. I note that the Company had allegedly commenced allotment of equity shares to the public since March 2004. It can reasonably be inferred that the directors/ promoters of the Company namely Mr. Jasjeet Singh Sethi, Mr. Rajesh Chakravarty, Mr. Satish Kumar, Mr. Vinod Kaul, Mr. Mukesh Mishra, Mr. Anil Kumar, Mr. Uday Pratap Singh, Mr. Giriraj Vashistha, Mr. Rajit Ram Maurya, Mr. Prithi Paul Singh Sethi, Mr. Narayan Jay Tripathi, Mr. Shree Kishan Chaudhary, Mr. Amit Mishra, Mr. Shailendra Kumar Prajapati, Mr. Prahlad Singh, Mr. Munshi Lal Tiwari, Mr. Shaukeen Pathak, Mr. Manoj Joshi, Mr. Sanjeev Kumar Jha, Mr. Dilip Kumar Mishra, Mr. Ramendra Prasad Sharma, Mr. Gurbhej Singh Hora, Mr. Rajesh Kumar Sharma, Mr. Shiva Nand Mishra, Mr. Kishan Pal Singh, Mr. Deena Nath Maurya, Mr. Chhote Lal Shukla, Mr. Vishwa Bandhu Vashishta and Mr. Mukesh Kumar Khare were involved in the mobilisation of public funds through the issue of *equity shares* without complying with the applicable law, as discussed above.

22. In the light of the above, I find that there is no other alternative but to take recourse through an *ex-parte interim* action against Togo and its directors, for preventing them from

further carrying on with its fund mobilizing activity under the 'offer of equity shares' or any other securities. Further, the interest of the investors also need to be protected to ensure that public funds are not diverted and misappropriated. In the absence of such preventive action, irreparable loss and damage could be caused to shareholders and investors at large.

23. Accordingly, I, in exercise of the powers conferred under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 read with Section 19 thereof and Regulation 107 read with Regulation 111 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions:

- a. The Company and the persons mentioned in the table below 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:

1.	Togo Retail Marketing Limited	[PAN: AADCM4340F]
2.	Mr. Jasjeet Singh Sethi	NOT AVAILABLE
3.	Mr. Rajesh Chakravarty	NOT AVAILABLE
4.	Mr. Satish Kumar	NOT AVAILABLE
5.	Mr. Vinod Kaul	NOT AVAILABLE
6.	Mr. Mukesh Mishra	NOT AVAILABLE
7.	Mr. Anil Kumar	NOT AVAILABLE
8.	Mr. Uday Pratap Singh	NOT AVAILABLE
9.	Mr. Giriraj Vashistha	[DIN: 01350554]
10.	Mr. Rajit Ram Maurya	[DIN: 00076596]
11.	Mr. Prithi Paul Singh Sethi	[PAN: AOAPS8866A]
12.	Mr. Narayan Jay Tripathi	NOT AVAILABLE
13.	Mr. Shree Kishan Chaudhary	[DIN: 00077002]
14.	Mr. Amit Mishra	[PAN: AIEPM2608Q]
15.	Mr. Shailendra Kumar Prajapati	[DIN: 00319340]
16.	Mr. Prahlad Singh	[DIN: 02330511]
17.	Mr. Munshi Lal Tiwari	[DIN: 01508499]
18.	Mr. Shaukeen Pathak	[PAN: AHYPP0297R]
19.	Mr. Manoj Joshi	[PAN: AGJPJ7853P]
20.	Mr. Sanjeev Kumar Jha	[PAN: ANAPJ5195L]
21.	Mr. Dilip Kumar Mishra	[PAN: ALCPM2699C]
22.	Mr. Ramendra Prasad Sharma	[PAN: AOBPS4499A]
23.	Mr. Gurbhej Singh Hora	[DIN: 00312542]
24.	Mr. Rajesh Kumar Sharma	[PAN: BFXPS2910E]
25.	Mr. Shiva Nand Mishra	[PAN: AJHPM9388B]
26.	Mr. Kishan Pal Singh	[PAN: AVVPS8411M]
27.	Mr. Deena Nath Maurya	[PAN: BJJPM1012K]

28.	Mr. Chhote Lal Shukla	[PAN: CLJPS2300B]
29.	Mr. Vishwa Bandhu Vashishta	[PAN: ABFPV9924N]
30.	Mr. Mukesh Kumar Khare	[PAN: BBVPK0966N]

- b. Togo Retail Marketing Limited and its promoters/ directors including the above named persons 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. Togo Retail Marketing Limited and its promoters/ directors including the above named persons shall not dispose off any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.
 - d. Togo Retail Marketing Limited and its promoters/ directors including the above named persons 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. Togo Retail Marketing Limited and its promoters/ directors including the above named persons 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. Togo Retail Marketing Limited and its promoters/ directors including the above named persons shall co-operate with SEBI and shall furnish all the documents.
 - g. Togo Retail Marketing Limited, its promoters/ directors including the above named persons 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.
24. The above directions shall come into force with immediate effect and shall continue to be in force till further directions.
25. Togo Retail Marketing Limited and its directors including Mr. Jasjeet Singh Sethi, Mr. Rajesh Chakravarty, Mr. Satish Kumar, Mr. Vinod Kaul, Mr. Mukesh Mishra, Mr. Anil Kumar, Mr. Uday Pratap Singh, Mr. Giriraj Vashishta, Mr. Rajit Ram Maurya, Mr. Prithi Paul Singh Sethi, Mr. Narayan Jay Tripathi, Mr. Shree Kishan Chaudhary, Mr. Amit Mishra, Mr. Shailendra Kumar Prajapati, Mr. Prahlad Singh, Mr. Munshi Lal Tiwari, Mr. Shaukeen Pathak, Mr. Manoj Joshi, Mr. Sanjeev Kumar Jha, Mr. Dilip Kumar Mishra, Mr. Ramendra Prasad Sharma, Mr. Gurbhej Singh Hora, Mr. Rajesh Kumar Sharma, Mr. Shiva Nand Mishra, Mr. Kishan Pal Singh, Mr. Deena Nath Maurya, Mr. Chhote Lal

Shukla, Mr. Vishwa Bandhu Vashishta and Mr. Mukesh Kumar Khareare 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 access the capital market for an appropriate period.
26. Togo Retail Marketing Limited and its directors including Mr. Jasjeet Singh Sethi, Mr. Rajesh Chakravarty, Mr. Satish Kumar, Mr. Vinod Kaul, Mr. Mukesh Mishra, Mr. Anil Kumar, Mr. Uday Pratap Singh, Mr. Giriraj Vashistha, Mr. Rajit Ram Maurya, Mr. Prithi Paul Singh Sethi, Mr. Narayan Jay Tripathi, Mr. Shree Kishan Chaudhary, Mr. Amit Mishra, Mr. Shailendra Kumar Prajapati, Mr. Prahlad Singh, Mr. Munshi Lal Tiwari, Mr. Shaukeen Pathak, Mr. Manoj Joshi, Mr. Sanjeev Kumar Jha, Mr. Dilip Kumar Mishra, Mr. Ramendra Prasad Sharma, Mr. Gurbhej Singh Hora, Mr. Rajesh Kumar Sharma, Mr. Shiva Nand Mishra, Mr. Kishan Pal Singh, Mr. Deena Nath Maurya, Mr. Chhote Lal Shukla, Mr. Vishwa Bandhu Vashishta and Mr. Mukesh Kumar Kharemay 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.
27. 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 Togo Retail Marketing Limited and its directors including Mr. Jasjeet Singh Sethi, Mr. Rajesh Chakravarty, Mr. Satish Kumar, Mr. Vinod Kaul, Mr. Mukesh Mishra, Mr. Anil Kumar, Mr. Uday Pratap Singh, Mr. Giriraj Vashistha, Mr. Rajit Ram Maurya, Mr. Prithi Paul Singh Sethi, Mr. Narayan Jay Tripathi, Mr. Shree Kishan Chaudhary, Mr. Amit Mishra, Mr. Shailendra Kumar

Prajapati, Mr. Prahlad Singh, Mr. Munshi Lal Tiwari, Mr. Shaukeen Pathak, Mr. Manoj Joshi, Mr. Sanjeev Kumar Jha, Mr. Dilip Kumar Mishra, Mr. Ramendra Prasad Sharma, Mr. Gurbhej Singh Hora, Mr. Rajesh Kumar Sharma, Mr. Shiva Nand Mishra, Mr. Kishan Pal Singh, Mr. Deena Nath Maurya, Mr. Chhote Lal Shukla, Mr. Vishwa Bandhu Vashishta and Mr. Mukesh Kumar Khare, in accordance with law.

DATE : August 05, 2015
PLACE : MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA