

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11, 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF –

1. URO AGRO INDIA LIMITED (PAN: AABCU1364K).
2. ITS DIRECTORS/PROMOTERS, VIZ.
 - a. SHRI BISWAPRIYA GIRI(PAN: AIXPG7534N; DIN: 02831730).
 - b. SHRI PRASUN MONDAL(PAN: ALFPM5139C; DIN: 06568526).
 - c. SHRI SANJOY CHOWHAN(DIN: 06568541).
 - d. SHRI SACHINDRA NATH BHATTACHARYA(PAN: AAJPB4769J; DIN: 00559781).
 - e. SMT IPSITA DAS GIRI(PAN: AILPD1367L; DIN: 02877459).
 - f. SHRI AJIT KUMAR ROUTH(PAN: APXPR7152Q; DIN: 03506274).
 - g. SHRI BIBEKANANDA MAITI(PAN: AQSPM6019P; DIN: 03499013).
 - h. SHRI PRADIP KUMAR MAITI (PAN: AMABM4674J).
 - i. SHRI PARTHA PRATIM MAITY (PAN: AYKPM2356F).
 - j. SHRI MUNSUR ALI MALLICK (PAN: BJXPM3673E).
 - k. SHRI NABARUN BHATTACHARYA.
3. ITS DEBENTURE TRUSTEE, VIZ.
 - a. TRUSTEES OF SECURED DEBENTURES TRUST OF URO AGRO INDIA LIMITED(REPRESENTED BY ITS TRUSTEES, VIZ. SHRI RAM SUNDER BHATTACHARYA AND SMT PRATIMA ROY).

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1. Securities and Exchange Board of India (“SEBI”) received a letter dated September 10, 2012, from the Office of the Director: Bureau of Investigation (E.O.), Guwahati-Assam, alleging that URO Agro India Limited(“UAIL”) was raising money from investors through issue of *Non-Convertible Debentures* (“NCDs”). Thereafter, several complaints were received by SEBI, against UAIL.

- 2.1 Thereafter, SEBI vide letter dated November 6, 2012, sought the following information from UAIL, viz. –
- i. Copy of Audited Annual Accounts and Annual Returns of the company for the last 3 years;
 - ii. Name, addresses and occupation of all the Promoters/Directors and Key Managerial of the company;
 - iii. Other information in respect of issue of debentures 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, etc.;
 - f. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for raising such additional capital and also for allotment;
 - g. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/debentures;
 - h. Terms and conditions of the issue of shares/debentures.
- 2.2 The abovementioned letter to UAIL was delivered. However, no reply was received from UAIL.
- 2.3 As no information was forthcoming, reminder letters dated April 26, 2013 and July 9, 2013, were issued to UAIL. A letter dated September 20, 2013, was also forwarded to UAIL at its alternate address. However, the same returned undelivered with remarks *Left*.
- 2.4 Subsequently, letters dated January 31, 2014, were issued to the Directors of UAIL at the relevant time, viz. Shri Biswapriya Giri, Shri Prasun Mondal and Shri Sanjoy Chowhan, advising them to submit the abovementioned information. The letter sent to Shri Biswapriya Giri returned undelivered with remarks *Left*. The letters were received by the other two Directors of UAIL. However, no reply was received from them.

- 2.5 Reminder letter dated June 23, 2014, was again sent to UAIL and its Directors, advising them to submit the abovementioned information. The letters sent to UAIL returned undelivered with remarks *Left/Intimation Served*. The letter sent to Shri Biswapriya Giri returned undelivered with remarks *Left*. The letters were received by the other two Directors of UAIL, viz. Shri Prasun Mondal and Shri Sanjoy Chowhan. However, no reply was received from them.
- 2.6 A physical verification of the Registered Office address of MIL i.e. 94 Matheswartala Road P. S. – Tiljala, Kolkata–700046, West Bengal, India, was conducted on March 30, 2016. However, it was found that MIL was not available at the said address.
- 3.1 Having regard to the non-cooperation of UAIL and its Directors in submitting requisite information to SEBI, vide an Order dated October 30, 2014 read with Order dated November 23, 2015, an Investigating Authority (“IA”) was appointed for investigating possible violations by UAIL of the SEBI Act, 1992 (“**SEBI Act**”); Securities Contracts (Regulations) Act, 1956 (“**SCRA**”); the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 (“**Debt Securities Regulations**”); the provisions specified in Section 55A of the Companies Act, 1956 or the Rules or Regulations made or directions issued by SEBI thereunder.
- 3.2 Summons dated January 9, 2015, were issued by the IA to UAIL and all its Directors (past and present) for production of documents and to appear in person before her under Section 11C(3) & 11C(5) of the SEBI Act on January 21, 2015.
- 3.3 The status of compliance of summons is given as under:
- i. UAIL, Shri Biswapriya Giri and Smt Ipsita Das Giri – The summons issued to the aforesaid entities were returned as undelivered with the remarks *Left*.
 - ii. Shri Prasun Mondal, Shri Sanjoy Chowhan and Shri Ajit Kumar Routh –The summons issued to the aforesaid entities were delivered. However, they failed to appear before the IA.

- iii. Shri Sachindra Nath Bhattacharya appeared in person before the IA and filed his reply. He submitted a copy of Form 32 filed for his resignation with the ROC, copy of his resignation letter submitted to UAIL.
 - iv. Shri Bibekananda Maiti appeared before the IA through his advocate. The authorised representative submitted copy of the resignation letter of Shri Bibekananda Maiti. Shri Bibekananda Maiti filed a reply vide letter dated January 30, 2015.
- 3.4 On completion of investigation, the IA submitted an Investigation Report.
4. Upon a consideration of the Investigation Report, it is observed that –
- i. UAIL was incorporated on December 22, 2009, with the ROC, Kolkata with CIN as U01400WB2009PLC140455. Its Registered Office is at 94 Matheswartala Road P. S.– Tiljala, Kolkata–700046, West Bengal, India.
 - ii. The present Directors of UAIL are Shri Biswapriya Giri, Shri Prasun Mondal and Shri Sanjoy Chowhan.
 - iii. Shri Sachindra Nath Bhattacharya, Smt Ipsita Das Giri, Shri Ajit Kumar Routh and Shri Bibekananda Maiti, who were earlier Directors in UAIL, have since resigned.
 - iv. The Promoters of UAIL are Shri Biswapriya Giri, Smt Ipsita Das Giri, Shri Sachindra Nath Bhattacharya, Shri Pradip Kumar Maiti, Shri Partha Pratim Maity, Shri Nabarun Bhattacharya and Shri Munsur Ali Mallick.
 - v. UAIL had last filed its Annual Accounts and Annual Returns for the Financial Year 2011–12. The aforesaid fact was brought to the notice of the ROC vide SEBI's letter dated July 30, 2014.
 - vi. From the documents annexed with the complaints received against UAIL and also from information obtained from the *MCA21 Portal*, it is observed that –

- a. UAIL issued NCDs (“**Offer of NCDs**”) during the Financial Years 2011–12, 2012–13 and 2013–14, details of which are provided below –

Type of Security	Year	No. of persons to whom NCDs were allotted	Amount (in Lakhs)
Secured Non-Convertible Redeemable Debentures	2011–12	#39	22.37
	2012–13	81	40.29
	2013–14	11	11.41
Total		*131	^74.07

Statutory filings made by the company with the ROC were perused. The Annual Accounts/Returns filed by the company with the ROC were downloaded from MCA21 Portal. On a perusal of the latest Balance Sheet filed for the year ended 31.03.2012, it was observed the company has issued debentures amounting to 5 Lakhs. On a perusal of the latest Annual Return filed for the year ended 31.03.2012, it was observed that the debentures amounting to 5 Lakhs have been issued to five persons. However, on checking it was observed that there were few complaints received from investors other than the above-mentioned five persons shown by the company.

#The number of allottees has been arrived at after adding five number of debenture holders who have been allotted debentures amounting to 5 Lakhs as per details provided in the Annual Return for the year ended 31.03.2012 to the complaints received in SEBI.

With respect to filing of incorrect information by the company with the ROC for the F.Y. 2011-12 as brought out above, the same has been referred to the ROC vide letter dated April 07, 2016.

**^The number of allottees and the respective amount mobilized by the company from them have been arrived at after physical counting the number of debenture certificates attached with the respective complaints (excluding the count of five debenture holders as mentioned above). It may be noted that complaints are continuously being received in SEBI and the amount given above is therefore approximate.*

- b. UAIL created a charge for an amount of 15.46 Crores on February 17, 2010 and appointed *Trustees of Secured Debentures Trust of URO Agro India Limited (represented by its Trustees, viz. Shri Ram Sunder Bhattacharya and Smt Pratima Roy)* as Debenture Trustee for the *Offer of NCDs* by that company.

5.1 In the context of the abovementioned details of the *Offer of NCDs*, the issue for determination in the instant matter is whether the mobilization of funds by UAIL through the aforesaid, is in accordance with the provisions of the SEBI Act read with the Debt Securities Regulations and the Companies Act, 1956.

5.2 I note that the jurisdiction of SEBI over various provisions of the Companies Act 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. 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:**

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

5.3 In this regard –

- i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced as under:

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

67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sahara Case* observed:

"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. ...

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

- iii. In the instant matter, for ascertaining whether the *Offer of NCDs* is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.

- a. Under the *Offer of NCDs*, it is observed from the copies of *Non-Convertible Debenture Certificates* made available by complainants, that the same were issued by UAIL during the Financial Years 2011–12, 2012–13 and 2013–14, to at least 131 individuals/investors and funds amounting to 74.07 Lakhs (Table at paragraph 3(vi)(a) of page 5) were mobilized by that company. The number of investors to whom allotments were made under the *Offer of NCDs* during the Financial Year 2012–13 *prima facie* indicate that the number of persons to whom such *Offer* was made, was above the limit of forty-nine persons as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956.
- b. However, it is important to note that the number of allottees and funds mobilized under the *Offer of NCDs* for the Financial Years 2011–12 and 2013–14, have only been taken from the documents submitted with the complaints received by SEBI, against UAIL. Therefore, the actual number of allottees could be many more times than the figures indicated in the Table at paragraph 3(vi)(a) of page 5.
- c. UAIL is not stated to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that UAIL is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.
- d. In view of the above, the *Offer of NCDs* by UAIL, would *prima facie* qualify as public issue under the *first proviso* to Section 67(3) of the Companies Act, 1956. 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.

5.4 I note that –

- i. From the abovementioned, it will follow that since the *Offer of NCDs* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard,

reference is made to Sections 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which is reproduced as under:

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

(1A) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognized stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1 [until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2)]; and if default is made in complying with this sub- section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees."

- ii. In the *Sahara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that –

"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.

... Section 73(2) says that every company and every director of the company who is an officer in default, shall be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed. The scope of the above mentioned provisions came up for consideration before this Court in Raymond Synthetics Ltd. & Ors. V. Union of India (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since Saharas had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."

- iii. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, since the *Offer of NCDs* is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956 and also compliance with the provisions of Sections 73(2) and 73(3) of that Act.

iv. In the facts of the instant case, it *prima facie* appears that UAIL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.

5.5 Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the ROC, before making a public offer or 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. As mentioned above, the *Offer of NCDs* was a public issue of securities. Having made a public issue, UAIL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. I find that there is no evidence on record to indicate whether or not UAIL has complied with the provisions of Section 60 of Companies Act, 1956, in respect of the *Offer of NCDs*. In view of the same, I find that UAIL has *prima facie* not complied with the provisions of Section 60 of Companies Act, 1956.

5.6 Under 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 or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that UAIL has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

5.7 Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. Further, under Section 117C of the Companies Act, 1956, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. Based on the material available on record, I find that UAIL has

not complied with the provisions of Sections 117B–117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions in respect of the *Offer of NCDs*.

5.8 In addition to the above, reference may be made to the Debt Securities Regulations, which were framed by SEBI in exercise of its powers under Section 30 of the SEBI Act and are applicable to the public issue and listing of debt securities. It may be relevant to note that under the aforesaid Regulations, '*debt securities*' have been defined as '*non-convertible debt securities which create or acknowledge indebtedness, and include debenture...*' In this context, I find that UAIL, through the *Offer of NCDs*, which is a public issue of debt securities, has *prima facie* violated the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- i. Regulation 4(2)(a) – *Application for listing of debt securities*
- ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
- iii. Regulation 4(2)(c) – *Credit rating has been obtained*
- iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
- v. Regulation 4(4) – *Appointment of Debenture Trustees*
- vi. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- vii. Regulation 6 – *Filing of draft Offer Document*
- viii. Regulation 7 – *Mode of disclosure of Offer Document*
- ix. Regulation 8 – *Advertisements for Public Issues*
- x. Regulation 9 – *Abridged Prospectus and application forms*
- xi. Regulation 12 – *Minimum subscription*
- xii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiii. Regulation 15 – *Trust Deed*
- xiv. Regulation 16(1) – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

5.9 Upon a consideration of the aforementioned paragraphs, I am of the view that UAIL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCDs* and as a result of the aforesaid activity has violated the aforementioned provisions of the

Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Sections 117B–117C) read with the Debt Securities Regulations.

- 5.1 From the material available on record, it is observed that UAIL created a charge for an amount of 15.46 Crores on February 17, 2010 and appointed *Trustees of Secured Debentures Trust of URO Agro India Limited (represented by its Trustees, viz. Shri Ram Sunder Bhattacharya and Smt Pratima Roy)* as Debenture Trustee for the *Offer of NCDs* by that company..
- 5.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*".
- 5.3 In addition, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("**Debenture Trustees Regulations**"), provides that: "*no person should act as a debenture trustee unless he is either –*
- i. a scheduled bank carrying on commercial activity; or*
 - ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
 - iii. an insurance company; or*
 - iv. body corporate."*
- 5.4 Based on the material available on record, I find that *Trustees of Secured Debentures Trust of URO Agro India Limited (represented by its Trustees, viz. Shri Ram Sunder Bhattacharya and Smt Pratima Roy)*, has acted as unregistered Debenture Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the provisions of Debenture Trustee Regulations.
6. I note that under the *Offer of NCDs*, UAIL allotted *NCDs* to the public during the Financial Years 2011–12, 2012–13 and 2013–14. The past and present Directors and Promoters of UAIL were/are Shri Biswapriya Giri, Shri Prasun Mondal, Shri Sanjoy Chowhan, Shri Sachindra Nath Bhattacharya, Smt Ipsita Das Giri, Shri Ajit Kumar Routh, Shri Bibekananda Maiti, Shri Pradip Kumar Maiti, Shri Partha Pratim Maity, Shri Nabarun Bhattacharya and Shri Munsur Ali Mallick. It is alleged that the aforementioned Directors and Promoters are responsible under Section 73(2) of the Companies Act,

1956, read with Section 27(2) of the SEBI Act, for the *prima facie* contraventions committed by UAIL through the *Offer of NCDs*.

7. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956, administrative authority on the subjects relating to public issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 (as mentioned in paragraphs 5.1–5.7 above). It is pertinent to note that UAIL's Directors, viz. Shri Prasun Mondal, Shri Sanjoy Chowhan and Shri Ajit Kumar Routh, have failed to co-operate with the Investigation conducted by SEBI and have not appeared before the IA in compliance with the summons issued against them under Sections 11C(3) and (5) of the SEBI Act [Paragraph 3.3(i) at page 4]. Further, UAIL and its Directors, viz. Shri Biswapriya Giri and Smt Ipsita Das Giri, was not found to be existing at the registered addresses submitted by them in regulatory filings. Although Shri Sachindra Nath Bhattacharya and Shri Bibekananda Maiti have submitted that they had resigned from UAIL, it is observed from the material on record that they were Directors during the period when funds were mobilized by UAIL. Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by UAIL and no investors are defrauded. In light of the facts in the instant matter, I find that there is no other alternative but to take recourse through an interim action against UAIL and its Directors and Promoters, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.
8. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions –
 - i. UAIL (PAN: AABCU1364K) shall forthwith cease to mobilize fresh funds from investors through the *Offer of NCDs* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - ii. UAIL and its present/past Directors and Promoters, viz. Shri Biswapriya Giri (PAN: AIXPG7534N; DIN: 02831730), Shri Prasun Mondal (PAN: ALFPM5139C; DIN:

06568526), Shri Sanjoy Chowhan (DIN: 06568541), Shri Sachindra Nath Bhattacharya (PAN: AAJPB4769J; DIN: 00559781), Smt Ipsita Das Giri (PAN: AILPD1367L; DIN: 02877459), Shri Ajit Kumar Routh (PAN: APXPR7152Q; DIN: 03506274), Shri Bibekananda Maiti (PAN: AQSPM6019P; DIN: 03499013), Shri Pradip Kumar Maiti (PAN: AMABM4674J), Shri Partha Pratim Maity (PAN: AYKPM2356F), Shri Munsur Ali Mallick (PAN: BJXPM3673E) and Shri Nabarun Bhattacharya, 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;

- iii. UAIL and its abovementioned past and present Directors and Promoters, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
- iv. UAIL shall provide a full inventory of all its assets and properties;
- v. UAIL's abovementioned past and present Directors and Promoters shall provide a full inventory of all their assets and properties;
- vi. UAIL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company, without prior permission from SEBI;
- vii. UAIL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of NCDs*, which are kept in bank account(s) and/or in the custody of UAIL;
- viii. UAIL and its abovementioned past and present Directors and Promoters shall co-operate with SEBI and shall furnish all information/documents sought vide letter dated November 6, 2012;
- ix. The Debenture Trustee, viz. *Trustees of Secured Debentures Trust of URO Agro India Limited (represented by its Trustees, viz. Shri Ram Sunder Bhattacharya and Smt Pratima Roy)*, is prohibited from continuing with its assignment as debenture trustee in respect of the *Offer of NCDs* of UAIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this Order till further directions.

9. The above directions shall take effect immediately and shall be in force until further orders.

- 10.1 The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. the abovementioned complaints received by SEBI and information obtained from the *MCA 21 Portal*. In this context, UAIL and its abovementioned Directors and Promoters are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act and Section 73(2) of the Companies Act, 1956, read with Section 27(2) of the SEBI Act including the following, should not be taken/imposed against them:
- i. Directing them jointly and severally to refund money collected through the *Offer of NCDs* alongwith interest, if any, promised to investors therein;
 - ii. Directing them 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;
 - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
- 10.2 UAIL and its abovementioned Directors and Promoters, may, within 21 days from the date of receipt of this Order, file their replies, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
- 10.3 Similarly, the Debenture Trustee, viz. *Trustees of Secured Debentures Trust of URO Agro India Limited (represented by its Trustees, viz. Shri Ram Sunder Bhattacharya and Smt Pratima Roy)*, is advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining it from accessing the securities market and further restraining it from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
- 10.4 The Debenture Trustee, viz. *Trustees of Secured Debentures Trust of URO Agro India Limited (represented by its Trustees, viz. Shri Ram Sunder Bhattacharya and Smt Pratima Roy)*, may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether it desires to avail itself an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

11. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against UAIL and its abovementioned Directors and Promoters; its Debenture Trustee, viz. *Trustees of Secured Debentures Trust of URO Agro India Limited (represented by its Trustees, viz. Shri Ram Sunder Bhattacharya and Smt Pratima Roy)*, in accordance with law.

Place: Mumbai
Date: July 7, 2016

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA