

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER cum SHOW CAUSE NOTICE

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF BASUNDARA AGRO RESOURCES (INDIA) LTD.

Sr. No.	Noticees	PAN	DIN/CIN
Company			
1.	Basundhara Agro Resources (India) Ltd.	AAECB618213	U01403WB2011PLC164637
Directors			
2.	Sujit Dutta	ACPPD0411M	03558368
3.	Bibhas Pal	AYKPP8684R	03335965
4.	Somenath Mukherjee	BHAPM2160H	05288122
5.	Subhash Paul	AKEPP6209Q	03558386

The aforesaid entities are hereinafter referred to by their respective names or collectively as "the Noticees".

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1. Securities and Exchange Board of India ("SEBI") was in receipt of complaints in relation to money mobilization by Basundhara Agro Resources (India) Ltd. ("**BARIL**"). On a perusal of the MCA21 portal it was noted that BARIL had issued Redeemable Preference Shares ("**RPS**"). Based on the complaints received, SEBI sought information pertaining to the collection of money by BARIL. Details of the correspondence with the Noticees are as under:
 - (i) SEBI issued a letter dated September 28, 2015 to BARIL and its directors seeking information with respect to the issuance of RPS. All the letters were delivered except the one addressed to Subhash Paul, Director- BARIL. Reply

dated November 23, 2015 was received from BARIL and replies were received from two directors namely, Sujit Dutta and Somenath Mukherjee, but the replies were filed with either no relevant information or partial information.

- (ii) Reminder letters dated April 08, 2016 were sent to the Noticees but no replies were received.

2. Details pertaining to BARIL were sought to be procured from the MCA21 portal.

The following relevant information was taken note of :

- (i) Date of Incorporation : 07.07.2011
- (ii) Type of the company : Public & Unlisted
- (iii) CIN: U01403WB2011PLC164637
- (iv) PAN: AAECB618213
- (v) Registered Office Address : A-29, Amrabati, P.O – Sodepur, Kolkata – 700110 IN
- (vi) Correspondence Office: same as above.
- (vii) Date of filing of the last Annual Accounts & Annual Report : Not available
- (viii) Return of allotment -

Issued capital:

- (a) Equity Capital: 5,00,000 (As per Balance sheet for 31.03.2012 submitted by the company)
- (b) Preference Capital : 96,74,100 (As calculated from Form 2 downloaded from MCA portal)
- (c) Share Premium : Nil
- (ix) Allotment details as per Form 2:

(TABLE 1)

Year	Date of allotment	Type	No of allottee	Amount (Rs.)
2011-12	19.03.2012	Preference Shares	32	597000
	20.03.2012	Preference Shares	26	363000
	21.03.2012	Preference Shares	24	252500

	22.03.2012	Preference Shares	15	373000
	23.03.2012	Preference Shares	44	264500
	24.03.2012	Preference Shares	22	575000
	26.03.2012	Preference Shares	15	173000
	27.03.2012	Preference Shares	28	548000
2012-13	21.12.2012	Preference Shares	50	2549000
	22.12.2012	Preference Shares	29	254000
	24.12.2012	Preference Shares	35	532000
	26.12.2012	Preference Shares	25	251000
	27.12.2012	Preference Shares	44	867000
	28.12.2012	Preference Shares	36	655000
	29.12.2012	Preference Shares	59	804000
	31.12.2012	Preference Shares	55	616100
2013-14	Not available in MCA 21 portal			

(x) Details of relevant board meeting: NIL

3. In BARIL's reply dated November 23, 2015, the following relevant information was received-

(a) Details of allotment of RPS is as follows:

(TABLE 2)

Year	No of RPS	Amount Raised (₹)	No. of Allottees
2011-12	4,25,570	42,55,700	315
2012-13	12,33,210	1,23,32,100	739
2013-14	3,78,600	37,86,000	233
Total	20,37,380	2,03,73,800	1,287

(b) Details of Board meetings held by the company are as follows:

(TABLE 3)

Date of Board meeting	Date of passing resolution	Amount proposed to raise (₹)	Type of issue
16.11.2012	12.12.2012	1,40,00,000/-	RPS

4. Letter dated November 21, 2016 was sent to Registrar of Companies (RoC) intimating the discrepancy between information submitted by BARIL and the information available with RoC as per the MCA website.
5. Considering the information available with the RoC as per the MCA website and the information submitted by BARIL, it is observed that BARIL had issued RPS to **1,287** persons amounting ` **2,03,73,800/-** during 2011-12, 2012-13 and 2013-14.
6. Till date no other replies have been received from BARIL or its Directors, to the letters sent by SEBI seeking information in relation to the company particularly with regard to issuance of capital.

ISSUES FOR DETERMINATION

7. In the context of the details of the offer and allotment of preference shares mentioned in paragraph 5 above (hereinafter referred to as "**the offer and allotment of preference shares**"), the issue for determination in the instant matter is whether or not such mobilization of funds by BARIL is in accordance with the

provisions of the Companies Act, 1956 read with the provisions of the SEBI Act, 1992.

RELEVANT PROVISIONS OF LAW AND PRIMA FACIE FINDINGS

8. Section 67 of the Companies Act, 1956 deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

"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).”

9. For ascertaining whether the *offer and allotment of preference shares* by BARIL would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the Company is important. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. The information submitted by BARIL indicates issuance of higher number of shares than that indicated in the MCA21 portal. However the information provided does not indicate a breakup of the dates on which all the offer and allotment of shares had taken place. From the MCA21 portal it is clear that in the Financial Year 2012-13 atleast on two occasions the offer and allotment of RPS had taken place to more than 49 persons. In other instances although BARIL may not have exceeded allotment to more than 49 persons in each allotment made, the total number of allottees exceeds 49. This pattern of repeated allotment on frequent basis within a single month appears to have been done solely for the purpose of avoiding the applicability of Section 67 (3) of the Companies Act, 1956 and consequent regulatory compliances. As is noted above, the submissions by BARIL points to a much higher number of allottees ie. **1287** allottees thereby raising ` **2,03,73,800** (Two crore three lakh seventy three thousand eight hundred rupees only). The above information leads one to draw an adverse inference against BARIL. Therefore on the basis of complaints received, and available information recorded above, the *offer and allotment of preference shares* by BARIL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

10. From the above, it will follow that such a public issue makes it imperative for BARIL to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act, 1956 is reproduced as under:

"Allotment of shares and debentures to be dealt in on stock exchange.

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) ...

(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.

....” (emphasis supplied)

As the offer and allotment of preference shares is, *prima facie*, a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement for such shares to be dealt on a recognised stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. I find that BARIL is *prima facie* in breach of the provisions of Section 73 as well.

11. Further, in connection with the public issue, Section 56 of the Companies Act, 1956 mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that BARIL has complied with the provisions of Sections 56 and 60 of Companies Act, 1956, in respect of the *offer and allotment of preference Shares*. In view of the same, I find that BARIL is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the subject offer and allotment of preference shares.

12. In terms of Section 73(2), the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). Further, in terms of Section 62 of the Companies Act, every person who *inter alia* is a director of the company at the time of the issue of the prospectus and every person who is a promoter of the company, are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein. As per the information available on the MCA Portal, the details of the directors of BARIL, including the dates of appointment/cessation as directors, are as under:

(TABLE 4)

Name of the Directors	Date of Appointment	Date of Cessation
Sujit Dutta	07.07.2011	-
Bibhas Pal	07.07.2011	-
Somenath Mukherjee	15.03.2013	-
Subhash Paul	07.07.2011	29.08.2013

From the above table, it is noted that Sujit Dutta, Bibhas Pal, Somenath Mukherjee and Subhas Paul were the directors of BARIL at the time of the offer and allotment of RPS and Sujit Dutta, Bibhas Pal and Somenath Mukherjee are also presently responsible for the affairs of BARIL.

DIRECTIONS

13. Given that the information provided to SEBI and informed to RoC appears prima facie to be inadequate, it can be reasonably inferred that the money mobilization on the part of BARIL is a continuing affair potentially placing investors at risk. In light of the facts in the instant matter, I find this to be a fit case to pass interim directions against BARIL and its abovenamed Directors. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-

- i. BARIL (PAN: AAECB618213) and the abovenamed Directors namely, Sujit Dutta(PAN: ACPPD0411M), Bibhas Pal (PAN: AYKPP8684R), Somenath Mukherjee (PAN: BHAPM2160H) and Subhas Paul (PAN: AKEPP6209Q) shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;
- ii. BARIL and the abovenamed Directors shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through *the offer and allotment of preference shares*;
- iii. BARIL and the abovenamed Directors shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* sought vide letter dated September 28, 2015 and reminder letter dated April 08, 2016

14. The preliminary findings contained in paragraphs 9 to 12 of this Order are made on the basis of the complaints received, information obtained from RoC and information provided by BARIL. BARIL and the abovenamed Directors (hereinafter collectively referred to as "**Noticees**") are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, namely:-

- i. The Noticees to jointly and severally refund money collected through the *offer and allotment of preference shares*, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment), supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and
- ii. The Noticees to be refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.

15. The Noticees, may, within 21 days from the date of receipt of this interim order - cum- show cause notice, file their respective replies. The Noticees are directed to furnish an inventory of their assets in their reply. In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. In the event of the Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paras 9 to 12 of this Order and directions at para 14(i) and (ii) above shall become final and absolute against the Noticees automatically, without any further orders. The Noticees shall comply with the directions at para 14(i) above within a period of 90 days from the date of this Order becoming final. Upon the expiry of a period of 90 days from the date of this Order becoming final, SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution in addition to making a suitable reference to State Government / Local Police.
16. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
17. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

Place: Mumbai

Date: June 07, 2017

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA