BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, 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 MARS Agrofarm Developers Limited

In respect of Past Directors namely:

1. **Shri Ajigul Haque [DIN: 03158904],**
2. **Shri Seikh Sarafat Ali [PAN: AGWPA0991L; DIN:03247659],**
3. **Shri Arup Bhattacharya [PAN: ASYPB9377P; DIN: 03159195] and**
4. **Shri Sheik Saukat Ali [PAN: ACOPA1462G; DIN: 03158954].**

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1. MARS Agrofarm Developers Limited (hereinafter referred to as **"MADL"** or **"Company"**), having its registered office at Vill. & P.O. - Pursurah – 712401, West Bengal, India, was incorporated on November 01, 2010, with the ROC, Kolkata, West Bengal with CIN No. as U01403WB2010PLC154384.

2. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) received a copy of complaint dated October 15, 2014, alleging mobilization of funds by MADL through issue of *redeemable preference shares* (hereinafter referred to as **"RPS"**).

3. On enquiry by SEBI, it was observed that MADL had issued RPS to 237 persons in the year 2010-11 (hereafter referred to as **"Offer of RPS"**) and collected an amount of Rs. 25 lakhs.

4. As the above said Offer of RPS was found prima facie in violation of respective provisions of the SEBI Act, 1992 (hereinafter referred to as **"SEBI Act"**), the Companies Act, 1956, SEBI passed an interim order dated March 19, 2015 and issued directions mentioned therein against MADL and its Directors, Shri Sekh Sahadat Ali, Shri Abu Taleb Mohammod, and Shri Tushar Kanti Kanti Samanta.

5. SEBI passed an Order dated February 26, 2016 (hereinafter referred to as **"Final Order"**)

against MADL and its Directors, Shri Sekh Sahadat Ali, Shri Abu Taleb Mohammod, and Shri Tushar Kanti Kanti Samanta, whereby it was held that the Company was engaged in fund mobilizing activity from the public through its offer and issuance of RPS to 237 persons during FY 2010-11 raising Rs. 25 lakh. The Final Order conclusively held that the aforesaid offer and issuance of securities was a 'public issue' and the Company had failed to comply with the public issue norms mandated under section 56, section 60 read with section 2(36) and section 73 of the Companies Act, 1956 read with section 27(2) of SEBI Act, 1992 (hereinafter referred to as **"SEBI Act"**).

6. Accordingly, SEBI passed final order issuing various directions against MADL and its Directors, Shri Sekh Sahadat Ali, Shri Abu Taleb Mohammod, and Shri Tushar Kanti Kanti Samanta including direction to refund the public funds mobilized under such offer and issuance of securities.

7. Thereafter, it came to the notice of SEBI that Shri Ajigul Haque was a director in the Company from November 01, 2010 to December 05, 2011, Shri Seikh Sarafat Ali was a director in the Company from November 01, 2010 to December 24, 2011, Shri Arup Bhattacharya was a director in the Company from November 01, 2010 to March 29, 2011 and Shri Sheik Saukat Ali was a director in the Company from November 01, 2010 to December 05, 2011.

8. Accordingly, Shri Ajigul Haque, Shri Seikh Sarafat Ali, Shri Arup Bhattacharya and Shri Sheik Saukat Ali (hereinafter collectively referred to as **"Noticees"**) were alleged to have also engaged in fund mobilizing activity from the public, in their capacity as directors during the relevant period and had violated section 56, section 60 read with section 2(36) and section 73 of the Companies Act, 1956 read with section 27(2) of SEBI Act, 1992. Accordingly, SEBI issued an interim order cum show cause notice dated July 07, 2016 (hereinafter referred to as **"interim order"**).

9. *Prima facie findings/allegations*: In the said interim order, the following prima facie findings/allegation were recorded. MADL made an Offer of RPS to 237 number of investors in the financial year 2010-11 and the same was a deemed public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirements under Section 60 read with Section 2(36), Section

56 and Section 73 of the Companies Act read with Section 27(2) of SEBI Act were not complied with by the past directors of MADL, namely, Shri Ajigul Haque, Shri Seikh Sarafat Ali, Shri Arup Bhattacharya and Shri Sheik Saukat Ali.

10. In view of the prima facie findings on the violations, the following directions were issued in the said interim order dated July 07, 2016 with immediate effect.

    i. The past Directors of MADL, viz. Shri Ajigul Haque (DIN: 03158904), Shri Seikh Sarafat Ali (PAN: AGWPA0991L; DIN: 03247659), Shri Arup Bhattacharya (PAN: ASYPB9377P; DIN: 03159195) and Shri Sheik Saukat Ali (PAN: ACOPA1462G; DIN: 03158954), 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;

    ii. The abovementioned past Directors of MADL 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;

    iii. The abovementioned past Directors of MADL shall provide a full inventory of all their assets and properties;

11. The interim order also directed the Noticees to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act should not be passed against them:

    i. Directing them jointly and severally to refund money collected through the *Offer of Preference Shares* along with 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.

12. Vide the said interim order the abovementioned past Directors of MADL were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim

Order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

13. *Service of interim order***:** The copy of the said interim order was sent to Shri Ajigul Haque, Shri Seikh Sarafat Ali, Shri Arup Bhattacharya and Shri Sheik Saukat Ali by letter dated July 08, 2016 through speed post acknowledgement due. The copy of the interim order sent to Shri Seikh Sarafat Ali and Shri Sheik Saukat Ali was delivered. The proof of delivery is available on record. The proof of delivery regarding to the delivery of copy of interim order to Shri Ajigul Haque was not received. The copy of the interim order sent to Shri Arup Bhattacharya was returned undelivered. Subsequently, vide notification dated November 08, 2016 published in newspaper *Ananda Bazar Patrika*, and notification dated November 09, 2016 published in newspaper *Times of India*, Noticees were notified by SEBI, that interim order dated July 07, 2016 was issued against them and they had given final opportunity to submit their reply in the matter.

14. Subsequently, vide notification dated June 10, 2017 published in newspaper *Ananda Bazar Patrika*, and notification dated June 10, 2017 published in newspaper *Times of India*, the Noticees were notified by SEBI, that they will be given the final opportunity of being heard on July 06, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they fail to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.

15. *Hearing and submissions*: The abovementioned past directors of MADL did not avail the opportunity of hearing held on July 06, 2017. No submissions were made by any of the Noticees.

16. I have considered the allegations and materials available on record including documents downloaded from MCA 21 Portal. On perusal of the materials available on record, the following issues arise for consideration. Each question is dealt with separately under different headings.

    (1) Whether the company came out with the Offer of RPS as stated in the interim order?

(2) If so, whether the said issues are in violation of Section 60, Section 56 and Section 73 the Companies Act, 1956?

(3) *If the findings on question No.2 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1 - Whether the company came out with the Offer of RPS as stated in the interim order?

17. I have perused the interim order dated July 07, 2016 and Final order dated February 26, 2016. I note that Noticees have not filed any reply disputing the allegation of offer and issuance of RPS.

18. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. The perusal of Form 2 filed pursuant to the allotment shows that MADL had issued and allotted RPS to 237 investors during the financial year 2010-11 and collected an amount of approximately Rs. 25 lakhs from the investors. The details series of allotment are as under:

Table No. 1

Type of Security	***Date of Allotment***	***No. of persons to whom preference shares were allotted***	***Total Amount (Rs. in Lakhs)***
Redeemable Preference Shares	06.12.2010	**1	25
	11.01.2011	49	
	05.02.2011	49	
	01.03.2011	48	
	25.03.2011	49	
	31.03.2011	41	
Total		***237***	***25***
*** The exact details of allotments on this particular date is not available on the MCA21 Portal.*			

ISSUE No. 2 - If so, whether the said issues are in violation of Section 60, Section 56 and Section 73 the Companies Act, 1956?

19. The provisions alleged to have been violated and mentioned in Issue No.2 are applicable to the offer made to the public. Therefore the primary question that arises for consideration is whether the issue of preference shares covered in Issue No 1 is 'public issues'. At this

juncture, reference may be made to section 67(1) & (3) of the Companies Act, 1956:

> *"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
>
> *(2) 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)."*

20. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real*

Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the ***"Sahara Case"***), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

> *"84.* ***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.*
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> 85. *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, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. ..."(Emphasis supplied)*

21. Section 67(3) provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not 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 {(section 67(3)(a)}, or, if the offer is the domestic concern of the persons making and receiving the offer {(section 67(3)(b)}, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

22. As per the 'Form 2' (return of allotment) for the allotment dated March 31, 2011, the Company had allotted 2,46,000 RPS and had raised Rs. 24,60,000/-. In the instant case, it is observed that the Company had allotted RPS to 237 allottees on various dates i.e. December 06, 2010, January 11, 2011, February 05, 2011, March 01 2011, March 25, 2011 and March 31, 2011.

23. The sheer proximity in time of allotment and the periodical splitting of the allotment every time, by deliberately keeping the number of allottees below the statutory minimum, shows that the Company made repeated allotments to less than fifty persons in order to make an false appearance as if offer and allotment of RPS is a private placement, to evade the process of law and detection. Therefore, I find that the offer and allotment of RPS falls within the first proviso of section 67(3) of Companies Act, 1956. Thereby, such issues are deemed to be public issues and were mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

24. Even if all the individual allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference

may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI* (Appeal No. 311 of 2016) which lays down that *"In terms of Section 67(3) of the Companies Act any issue to "50 persons or more" is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".* The final order dated February 26, 2016 also records that the issuances are deemed public issue.

25. By making a public issue of RPS, as discussed above, the Company was mandated to comply with all the legal provisions that govern and regulate public issue of such securities, including the Companies Act, 1956 and the SEBI Act and regulations. In this context, I refer and rely on the below mentioned observation made by the Hon'ble Supreme Court of India in the matter of *Sahara case*:

> *"... ... that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."*

26. In view of the above observations, by virtue of Section 55A (a) and (b), SEBI has jurisdiction and would govern the issue of RPS as the same was clearly made to more than 49 persons. As alleged in the interim order, the Company was mandated to comply with the provisions of Sections 56, 60, 67 and 73 of the Companies Act, 1956, in respect of its offer and issue of RPS. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body

corporate.

27. The allegation of non-compliance of the above provisions were not denied by the Noticees and they had not produced any record to show that MADL has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or filed a Prospectus with ROC or issued application forms accompanying the abridged prospectus. Therefore, MADL has not complied with Section 56(1), 56(3) and 60 of the Companies Act, 1956. A finding to that effect is also made in the final order dated February 26, 2016.

28. Further, by issuing RPS to 237 persons, MADL had to compulsorily list such securities in compliance with section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt within 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.

29. The allegation of non-compliance of the above provisions were not denied by the past directors of MADL. I find that no records have been submitted by the Noticees, to indicate that MADL has made an application seeking listing permission from stock exchange nor refunded the amounts on account of such failure. Further, as per Final Order dated February 26, 2016, MADL has not provided any records to show that the amount collected by MADL are kept in a separate bank account. Therefore, I find that MADL and persons responsible has also not complied with the provisions of section 73(3) of Companies Act, 1956 as it has not kept the amounts received from investors in a separate bank account and failed to repay the same in accordance with section 73(2) as observed above. A finding to that effect is also made in the final order dated February 26, 2016.

30. I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in ***Sahara Case***, had observed that:

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

" SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"

31. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed.

32. In view of the forgoing findings read with Final Order dated February 26, 2016, I am of the view that MADL was engaged in fund mobilizing activity from the public, through the offer and issuance of RPS and had contravened the provisions of sections 56, 60 and 73 of the Companies Act, 1956.

ISSUE No. 3 - If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?

33. From the documents available on record, I find that Noticees were earlier directors of MADL during the issuance of offer of RPS. The tenure of past directors are as under:

Table No. 2

Sr. no.	***Name of Directors***	***PAN***	***DIN***	***Date of appointment***	***Date of cessation***
1.	*Shri Ajigul Haque*	*Not Available*	*03158904*	*01/11/2010*	*05/12/2011*
2.	*Shri Seikh Sarafat Ali*	*AGWPA0991L*	*03247659*	*01/11/2010*	*24/12/2011*
3.	*Shri Arup Bhattacharya*	*ASYPB9377P*	*03159195*	*01/11/2010*	*29/03/2011*
4.	*Shri Sheik Saukat Ali*	*ACOPA1462G*	*03158954*	*01/11/2010*	*05/12/2011*

34. I have perused the Final Order dated February 26, 2016, considered the interim order cum show cause notice dated July 07, 2016 issued to the Noticees. The Final Order has found that the Company had made a public offer and issued RPS during FY 2010-11 and had mobilized funds to the tune of Rs.25 lakh from the general public without complying with the public issue norms as observed therein. The interim order dated July 07, 2016, passed in respect of the Noticees, has observed that the Noticees were the directors in the Company from November 01, 2010 (i.e. from date of incorporation of the Company). The tenure of Noticees are mentioned at para 33 Table no. 2. As regards the liability of the Noticees, as directors, I note that –

(a) In terms of section 291 of the Companies Act, 1956, the board of directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the board of directors being responsible for the conduct of the business of a company shall therefore be liable for any non-compliance of law and such liability is on the individual directors also.

(b) A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof.

(c) Accordingly, a director who is part of a company's board shall be responsible for all acts carried out by a company and be liable for any violations that are committed. The Noticees, in the present case, were part of the Company's Board of Directors for the period i.e. Shri Ajigul Haque from November 01, 2010 to December 05, 2011, Shri Seikh Sarafat Ali from November 01, 2010 to December 24, 2011, Shri Arup Bhattacharya from November 01, 2010 to March 29, 2011 and Shri Sheik Saukat Ali from November 01, 2010 to December 05, 2011. As mentioned in the Final Order dated February 26, 2016, the Company had made the offer and allotted preference shares during FY 2010-2011 in violation of sections 56, 60 and 73 of the Companies Act, 1956. Therefore, it can be seen that the Noticees were the directors in the

Company during the period when the RPS were offered and issued. Accordingly, the Noticees are also officers in default and shall also be responsible for the violations committed while offering and issuing the RPS.

35. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said section. The Final Order has also found the Company liable for non-compliance with the above provisions. Noticees being the directors at the relevant time are also liable for non-compliance with said sections 56 and 60 of Companies Act, 1956.

36. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. The liability of the Company/directors to refund the public funds collected through offer and allotment of the impugned securities is continuing and such liability would continue till repayments are made. Accordingly, the Noticees are also liable for making refunds of the monies collected by the Company, till such liability is discharged by making refunds by Company.

37. In view of the above discussions, I hereby find the Noticees are also liable for the violation of sections 56, 60 and 73 of the Companies Act, 1956 committed by the Company/its board of directors with respect to their offer and issue of RPS. The Noticees shall also be liable for making refunds as provided under section 73(2) of the Companies Act, 1956 read with section 27 of the SEBI Act, and shall be jointly and severally responsible along with other as directed vide the Final Order. The Order had levied an interest @ 15% p.a. on the amounts that are due to be repaid to the investors. The Noticees shall be liable to make refunds along with interest at 15%. The same is also in accordance with rule 4D (*which prescribes that the rates of interest, for the purposes of sub-sections (2) and (2A) of section 73, shall be 15 per cent per annum*) of the Companies (Central Government's)

General Rules and Forms, 1956.

38. I note that vide interim order dated July 07, 2016 Shri Ajigul Haque, Shri Seikh Sarafat Ali, Shri Arup Bhattacharya and Shri Sheik Saukat Ali were required to provide full inventory of their assets and properties within 21 days from the date of receipt of interim order. However, no such details have been filed till date.

39. In view of the above findings and observations, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1), 11(4), 11A and 11B thereof hereby issue the following directions:

(a) The Noticees, namely, Shri Ajigul Haque, Shri Seikh Sarafat Ali, Shri Arup Bhattacharya and Shri Sheik Saukat Ali shall, jointly and severally along with the Company and others as ordered vide the SEBI Order dated February 26, 2016, forthwith refund the money collected by the Company through the offer and issuance of Redeemable Preference Shares (*which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956*), to the investors including the money collected from investors, pending allotment of securities, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (*in terms of Section 73(2) of the Companies Act, 1956*) to the investors till the date of actual payment.

(b) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order

(c) Shri Ajigul Haque, Shri Seikh Sarafat Ali, Shri Arup Bhattacharya and Shri Sheik Saukat Ali shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.

(d) After completing the aforesaid repayments, Shri Ajigul Haque, Shri Seikh Sarafat Ali, Shri Arup Bhattacharya and Shri Sheik Saukat Ali, shall file a report of such completion of repayment with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order,

a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI").

(e) Shri Ajigul Haque, Shri Seikh Sarafat Ali, Shri Arup Bhattacharya and Shri Sheik Saukat Ali shall provide a full inventory of their assets and properties and details of all bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

(f) In case of failure of the Shri Ajigul Haque, Shri Seikh Sarafat Ali, Shri Arup Bhattacharya and Shri Sheik Saukat Ali to refund the monies as directed in this Order or on failure to comply with the directions, SEBI, on expiry of three months from the date of this Order -

i. may recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

ii. may initiate appropriate action against the Noticees, including adjudication proceedings, in accordance with law.

iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Noticees, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and

iv. would also make a reference to the Ministry of Corporate Affairs for necessary action.

(g) Shri Ajigul Haque, Shri Seikh Sarafat Ali, Shri Arup Bhattacharya and Shri Sheik Saukat Ali are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities, directly or indirectly, with immediate effect. They are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, with immediate effect. This restraint shall continue to be in force from the date of this Order till the expiry of four years from the date of completion of refunds to investors, as directed above.

(h) The above directions shall come into force with immediate effect.

40. This Order is without prejudice to any action, including adjudication and prosecution proceedings that might be taken by SEBI in respect of the above violations committed by

the Noticees.

41. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

42. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/concerned Registrar of Companies, for their information and necessary action with respect to the directions/restraint imposed above against the Noticees.

-Sd-

DATE: JULY 14, 2017 **MADHABI PURI BUCH**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA