

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
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 Regal Hitech Agro Projects (India) Limited and its Directors – Shri Subhas Sur (DIN: 03153441), Shri Sougata Das (DIN: 03531872), Shri Sandip Kodaly (DIN: 05243878) and Shri Pralayas Ghosh Mondal (DIN: 05313083)

Background

1. Securities and Exchange Board of India ("SEBI") had conducted an examination into the fund-raising activity of Regal Hitech Agro Projects (India) Limited ("RHAPL") in respect of issue of Redeemable Preference Shares (RPS) and to ascertain whether RHAPL had made any public issue of securities without complying with the provisions of the Companies Act, 1956 ("Companies Act"); SEBI Act, 1992 ("SEBI Act") and the Rules and Regulations framed thereunder.
2. Letter dated October 9, 2015, addressed to RHAPL, seeking information in this regard was returned undelivered. However, the letters issued to the directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal were delivered. In his reply, Shri Pralayas Ghosh Mondal submitted that since he was not involved in day-to-day activity of the company, he had no documents to offer. Further, he claimed to have resigned from RHAPL w.e.f. December 2012. No reply was received from Shri Sandip Kodaly. Thereafter information regarding RHAPL was obtained from the website of Ministry of Corporate Affairs, *MCA 21 Portal*.
3. From the material available on record it was observed in the interim order that RHAPL issued Redeemable Preference Shares ("*Offer of Redeemable Preference Shares*") to investors which was *prima facie* in violation of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and the Companies Act, 1956. SEBI passed an interim

order dated December 3, 2015, against RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal.

4. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings/allegation were recorded.

i. RHAPL allotted *Redeemable preference shares* to a total of 204 individuals/investors during the Financial Year 2012–2013.

ii. The above *Offer of Redeemable Preference Shares* and pursuant allotment was a deemed public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956. RHAPL 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. Accordingly, the resultant requirements under Section 60, Section 56(1) and 56(3), Sections 73(1), 73(2) and 73(3) of the Companies Act, 1956, were not complied with by RHAPL in respect of the offer of RPS.

iii. RHAPL allotted Redeemable Preference Shares to the public during the Financial Year 2012–2013. The directors of RHAPL are Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal. It is alleged that the aforementioned directors being the *persons in-charge of and responsible to the Company for the conduct of business*, 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 RHAPL through the *Offer of Redeemable Preference Shares*.

5. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated December 3, 2015 with immediate effect:

i. “RHAPL (PAN: AAFCR7244F) shall not mobilize any fresh funds from investors through the Offer of Redeemable Preference Shares 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. RHAPL and its Directors, viz. Shri Subhas Sur (DIN: 03153441), Shri Sougata Das (DIN: 03531872), Shri Sandip Kodaly (DIN: 05243878) and Shri Pralayas Ghosh Mondal (DIN: 05313083), 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. RHAPL and its abovementioned Directors, 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. RHAPL shall provide a full inventory of all its assets and properties.
- v. RHAPL's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. RHAPL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of Redeemable Preference Shares*, without prior permission from SEBI;
- vii. RHAPL and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of Redeemable Preference Shares*, which are kept in bank account(s) and/or in the custody of RHAPL;
- viii. RHAPL and its abovementioned Directors shall furnish complete and relevant information in respect of the *Offer of Redeemable Preference Shares* (as sought by SEBI letter dated October 9, 2015), within 14 days from the date of receipt of this Order.”

6. Vide the aforesaid interim order, RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal were afforded 21 days from the date of receipt of the interim order, to file their replies, if any and to seek an opportunity of personal hearing, if they so desired.
7. *Service of interim order and hearing notice:* The interim order dated December 3, 2015 was sought to be served on RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal, vide letters dated December 15, 2015. However, the same could not be served on the entities. Thereafter, it was served through substituted service upon the entities by way of notifications dated November 8 and 9, 2016, published in the newspapers, *The Times of India* and *Ananda Bazar Patrika*. Vide notification dated June 10, 2017, published in the newspapers, *The Times of India* and *Ananda Bazar Patrika*, RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal were notified by SEBI, that they would be granted an opportunity of personal hearing on July 18, 2017 at the time and venue mentioned therein.
8. *Hearing and submissions:* RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal did not avail the opportunity of personal hearing granted on July 18, 2017. Vide letter dated March 8, 2016 Shri Sougata Das and Shri Sandip Kodaly filed their reply on behalf of the Company in the matter, wherein they made the following submissions:
 - i. In the process of doing business and to meet various business objectives, Redeemable Preference Shares were issued on private placement basis. Redeemable Preference Shares were not offered to more than 50 persons on a single day although the allotments have exceeded the threshold of 50 persons.
 - ii. The Redeemable Preference Shares were issued on private placement basis after complying with the provisions of section 81(1A) of the Companies Act, 1956. The aforesaid matter has been clarified to the Registrar of Companies.

- iii. RHAPL has stopped issuing Redeemable Preference Shares since March 31, 2013.
 - iv. RHAPL has issued Redeemable Preference Shares amounting to Rs. 54,22,900/- to 210 investors.
 - v. RHAPL has started redeeming the said preference shares including the pre-mature redemption even before the interim order in the matter. RHAPL has been redeeming the said preference shares with an interest of 4% and has redeemed an amount of Rs. 46,70,796/-. A sum of Rs. 9,69,020/- is pending as on the date of the letter, inclusive of 4% of interest. This is to substantiate that RHAPL had no intention to defraud its allottees.
 - vi. RHAPL has maintained its accounts, keeping track of the funds received, invested as well as refunded/repaid to the investors. There have been no investor complaint against RHAPL.
 - vii. The repayment details of the investors were enclosed along with the reply. The said details provide the various heads in which repayment was made to the investors.
 - viii. RHAPL has been receiving applications for redemption/pre-redemption requests from its investors, but has been unable to make any payments due to the interim order. No redemption has been made after December 5, 2015.
 - ix. RHAPL be permitted to sell its immovable property and allow it to carry out the daily business activities of the company to enable it repay its investors at the earliest.
9. I have considered the allegations, and materials on record. On perusal of the materials on record, the following issues arise for consideration. Each question is dealt with separately under different headings:
- i. Whether RHAPL came out with an *Offer of Redeemable Preference Shares* as stated in the interim order.

- ii. If so, whether the said issues are in violation of sections 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of Companies Act, 1956.
- iii. If the findings on Issue No. 2 are found in the affirmative, who are liable for the violations committed?

10. *Whether RHAPL came out with an Offer of Redeemable Preference Shares as stated in the interim order:* I have perused the interim order dated December 3, 2015 for the allegation of *Offer of Redeemable Preference Shares*. I note from the material available on record such as filings in *MCA 21 Portal* that RHAPL offered and allotted Redeemable Preference Shares in the financial year 2012-2013 on the following instances:

Date of allotment	Amount paid on application (in `)	No. of investors as shown in the attached list of allottees
03/09/2012	8,77,200	42
12/10/2012	8,73,500	40
30/10/2012	6,40,000	43
08/11/2012	4,72,500	47
22/11/2012	5,55,000	48
16/01/2013	8,03,000	45
Total	42,21,200	265

11. I note that the total number of investors is erroneously mentioned as 204 in the interim order dated December 3, 2015. On perusal of respective Form 2 and the List of Allottees, as obtained from the website of MCA, as shown in the above table, I find that the total number of allottees is 265.
12. Further, in the reply dated October 19, 2015 of Shri Sougata Das, director of RHAPL had provided the list of 329 allottees of Redeemable Preference Shares issued in 2012-2013. Vide reply dated March 8, 2016, Shri Sougata Das and Shri Sandip Kodaly, directors of RHAPL have submitted that Redeemable Preference Shares were issued to 210 investors and an amount of `54,22,900/- was raised by way of such allotments. From the above, I

note that RHAPL had offered Redeemable Preference Shares in 2012-2013, and that there are discrepancies between the submissions made by the Company and the details provided in Form 2, with respect to the total number of allottees and the amount of money raised from the allottees. In view of the Company's submission in its latest reply dated March 8, 2016 that it has collected `54,22,900/- from the investors, I find that the Company has admittedly collected `54,22,900/- from 329 allottees.

13. *If so, whether the said issues of Redeemable Preference Shares are in violation of sections 56(1), 56(3), 2(36) read with sections 60, 73(1), 73(2), 73(3) of Companies Act, 1956:* The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to an *Offer of Redeemable Preference Shares* made to the public. Therefore the primary question that arises for consideration is whether the issue of Redeemable Preference Shares is 'public issues'. At this juncture, reference may be made to sections 67(1) and 67(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).”

14. 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, or, if the offer is the domestic concern of the persons making and receiving the offer, 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.

15. In the instant matter, I find that Redeemable Preference Shares were issued to more than 49 investors in the financial year 2012-2013. Vide its reply dated March 8, 2016, it is submitted by RHAPL that the *Offer of Redeemable Preference Shares* were not made to

more than 50 persons in a day, even though the total allotments that were made has exceeded 50 persons. It is also submitted by RHAPL that the Redeemable Preference Shares were issued on private placement basis after complying with the provisions of section 81(1A) of the Companies Act, 1956. However, no documentary evidence has been provided by RHAPL to this effect. In this respect, I am of the view that reference may be made to the *Sahara case*, wherein Hon'ble Supreme Court has held that under Section 67(3) of the Companies Act, 1956, the burden of proof is entirely on the Company to show that the offer of securities was made to persons associated with the Company through private placements. I find that RHAPL and its directors have not provided any proof to substantiate their claim that the *Offer of Redeemable Preference Shares* were made through private placements. I therefore find that RHAPL has failed to discharge its burden of proof that the offer of securities were made vide private placements.

16. Further, I am of the view that the proximity in the 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 RHAPL 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. Reference may be made to the order of Hon'ble Securities Appellate Tribunal dated April 28, 2017, in *Neesa Technologies Limited v. SEBI (Appeal No. 311 of 2016)* wherein, while rejecting the contention that in any of the tranches the allotment was not made to more than 49 persons, the Tribunal held that the “*argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning*”.

17. Therefore, in view of the material available on record, I am of the opinion that the *Offer of Redeemable Preference Shares* by RHAPL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of Redeemable Preference Shares* are deemed to be public issue and RHAPL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

18. I also find that RHAPL 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 find that RHAPL is not covered under the second proviso to Section 67(3) of the Companies Act, 1956.
19. Further, since the *Offer of Redeemable Preference Shares* 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. As per sections 73(1) and 73(2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.
20. I find that no records have been submitted to indicate that RHAPL has made an application seeking listing permission from stock exchanges. Vide its letter dated March 8, 2016, RHAPL has submitted that it has refunded a sum of `46,70,796/- to the investors by various modes of payment. RHAPL has also provided a list of such refunds. RHAPL has submitted that a sum of `9,69,020/- (which is inclusive of 4% interest) is yet to be refunded and no redemption/repayment has been made to the investors after December 5, 2015. No proof of repayments was submitted by RHAPL. Further RHAPL showed, in the list of payments, different categories of repayment such as “payment by cash”, “payment done against loan adjustment”, “repayment adjusted with property”, “repayment adjusted with providing vermicompost”. In view of the above, even assuming that RHAPL has made repayments of the money collected, I note that the same has not been made in accordance with the provisions of section 73(2) of the Companies Act, 1956. Therefore, I find that RHAPL has contravened the provisions of sections 73(1) and 73(2) of the Companies Act, 1956. RHAPL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that RHAPL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account.

21. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the Registrar of Companies (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. As the *Offer of Redeemable Preference Shares* was a deemed public issue of securities, RHAPL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that RHAPL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the *Offer of Redeemable Preference Shares*. I, therefore, find that RHAPL has not complied with the provisions of section 60 of the Companies Act, 1956.
22. 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. Neither RHAPL nor its directors produced any record to show that it has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, RHAPL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
23. I note that the jurisdiction of SEBI with respect to the aforesaid provisions of the Companies Act, 1956, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara Case*, had held that with respect to 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."

24. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, 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. While interpreting the phrase "intend to get listed" in the context of deemed public issue the Hon'ble Supreme Court in *Sahara Case* observed-

"...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, "intent" has its limitations also, confining it within the confines of lawfulness..."

"...Listing of securities depends not upon one's volition, but on statutory mandate..."

"...The appellant-companies must be deemed to have "intended" to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have "intended", what was contrary to the mandatory requirement of law..."

25. In view of the above findings, I am of the view that RHAPL was engaged in fund mobilizing activity from the public, through the *Offer of Redeemable Preference Shares* and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3).

26. If the findings on question No.2 are found in the affirmative, who are liable for the violation committed?: Sections 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 impose the liability on the company, every director, and other persons responsible for the prospectus to be issued in 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 provision. Therefore, RHAPL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

27. 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. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Government's) General Rules and Forms, 1956 read with rule 3(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the rate of interest prescribed in this regard is 15%.

28. Therefore, I find that RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

29. From the material available on record, I find the following details of tenure with respect to the directors of RHAPL:

Name of the directors	Date of appointment	Date of cessation
Shri Subhas Sur	30/09/2011	-
Shri Sougata Das	25/01/2012	-
Shri Sandip Kodaly	02/04/2012	-
Shri Pralayas Ghosh Mondal	20/06/2012	-

30. From the above table it is noted that Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal are still continuing as directors of RHAPL and all of them were directors at the time of the *Offer of Redeemable Preference Shares*. Since Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal were acting as directors during the period of issuance of RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 or any specified director of RHAPL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the directors of RHAPL as officers in default, are liable to make refund, jointly and severally, along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. They are co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956 and rule 3(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, and section 27(2) of the SEBI Act.

31. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal, to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its directors, to safeguard the interest of the investors who had subscribed to such Redeemable Preference Shares issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.

32. I also note that, vide the interim order dated December 3, 2015, RHAPL was directed to provide a full inventory of all the assets and properties belonging to the Company.

Similarly, the directors of RHAPL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. Further, RHAPL and its directors were required to furnish the complete and relevant information in respect of the *Offer of Redeemable Preference Shares* as sought for by SEBI vide letter dated October 9, 2015. Such information was required to be filed within 14 days of the receipt of the order. However, I find that the relevant complete information of the *Offer of Redeemable Preference Shares* has not been provided by RHAPL or its directors despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 7 of this order.

33. In view of the discussion above, appropriate action in accordance with law may be initiated against RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal.

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

a. RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal shall forthwith refund the money collected by RHAPL through the issuance of Redeemable Preference Shares, including the money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum, 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. If the Company, RHAPL had repaid/redeemed the Preference Shares as stated in its replies to its investors as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions from paragraphs 34(c) to 34(h), shall be applicable for the amounts due to be returned to the investors. However, such prior repayments/redemption should have been made by the Company as per the requirement laid down in paragraph 34(c) below, and

the same shall be certified by Chartered Accountants, as directed in paragraph 34(i) below.

c. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.

d. RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal, are directed to provide a full inventory of all their assets, and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities held in physical and demat form.

e. RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal, are directed to provide the complete information with respect to the Offer of Redeemable Preference Shares as sought for by SEBI vide order dated October 9, 2015.

f. RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal, are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

g. Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal, are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

h. RHAPL and its directors Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.

i. After completing the aforesaid repayments, RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal shall file a report of such completion 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").

j. In case of failure of RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralayas Ghosh Mondal, to comply with the aforesaid directions, SEBI, on the expiry of three months period 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 Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.
- iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, 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, to initiate the process of winding up of the Company.

k. RHAPL and its directors, Shri Subhas Sur, Shri Sougata Das, Shri Sandip Kodaly and Shri Pralaye Ghosh Mondal are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 years from the date of completion of refunds to investors as directed above. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 years from the date of completion of refunds to investors.

l. The above directions shall come into force with immediate effect.

35. 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 RHAPL and its promoters, directors and other key persons.

36. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and the Registrar and Transfer Agents for information and necessary action.

37. 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 Company and the individuals.

DATE: August 24, 2017

PLACE: Mumbai

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA