

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 in respect of interim order cum show cause notice dated January 21, 2015 in the matter of MPA Agro Animal Projects Limited.

In respect of: -

Sl. No.	Noticees	PAN/DIN
	Company	
1	MPA Agro Animal Projects Limited	AAFCM8730K
	Promoters and Directors	
2	Mr. Pintu Sen	CDUPS3365R
3	Mr. Adhish Halder	DIN: 02393491
4	Mr. Tapan Pramanik	BASPP6084L
5	Mr. Krishnadhan Das	BBCPD1190E
6	Mr. Surajit Paul	BNSPP8133M
7	Mr. Monoj Kumar Saha	BCFPS8598R

1. Securities and Exchange Board of India ("SEBI") passed an *ad interim ex-parte order* dated January 21, 2015 (hereinafter referred to as "*interim order*") against the Noticees in view of the *prima facie* findings that MPA Agro Animal Projects Limited (MPA Agro) and its directors/promoters were engaged in the activity of raising money through offer and issue of equity shares to the public in contravention of the provisions of sections 56, 60 and 73 of the Companies Act, 1956 and several

provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations). In view of this, the interim order, inter alia, restrained the Noticees from mobilising funds from the public. The order also required them to show cause as to why direction to refund the money collected through the issue of equity shares to the public along with interest and other appropriate directions be not passed against them.

2. In this matter, prior to passing of the interim order, SEBI had received a reference dated March 12, 2013, from the Ministry of Corporate Affairs (MCA) forwarding therewith a complaint dated February 20, 2013 alleging that MPA Agro is collecting monies from the public by promising huge returns. In order to examine the matter, SEBI sought details and information about securities issued by the company, copy of prospectus, application forms etc. from the company and its directors. They did not provide any information or document. On an examination of the complaint and the details gathered from MCA 21 portal, it was observed that:
 - i. MPA Agro was incorporated on December 26, 2008. The directors/promoters of the company are Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha. Mr. Manoj Kumar Saha has resigned from the directorship of the company on March 27, 2012.
 - ii. As per E-Form 2 filed by MPA Agro with ROC-Kolkata, the Company has allotted '*equity shares*' amounting to ₹22.50 lakh. The details of the same are as follows:

Table A

Financial Year	Date of allotment	Amount raised (in lakh)	No. of allottees
2009-10	March 25, 2010	₹22.50	152
Total		₹22.50	152

- iii. MPA Agro has last filed its Annual Accounts for the year ended March 31, 2010 with the ROC.

3. It has been ascertained from the records that the interim order was served upon the company and its directors. Shri Pintu Sen and Shri Adhish Haldar replied vide letter dated August 2, 2016 stating that they are facing trial before the court of Chief Judicial Magistrate at Giomati in Udaipur district in Tripura. SEBI has also received on May 8, 2017 an unsigned common reply on behalf of Shri Krishnadhan Das and Shri Surajit Paul. It has been submitted that they are uneducated and that they had signed some documents written in English at the request of other four directors of the company. It has been also stated that they were working as directors of MPA Agro in Tripura. The company and its other directors have not filed their reply. In order to proceed further in the matter, an opportunity of hearing was granted to the Noticees on May 23, 2017. The hearing notice was served upon the company and its directors by hand delivery/ speed post/ affixture and newspaper publications. Shri Sadashiv Y Hatkar, Advocate, appeared on behalf of Manoj Kumar Saha and requested that another date of hearing may be granted so that Mr. Manoj Saha could appear in person for the hearing. Accordingly, another opportunity of hearing was granted to Mr. Manoj Saha on June 1, 2017. He failed to appear in person and deputed his advocate for the hearing. During the hearing, it was submitted on his behalf that the company has made refunds to more than 100 investors and that they may be granted time till June 10, 2017 to furnish the details and proof of refund, along with certificate of chartered accountant. No details and proof of refund to investors have been submitted till date.
4. I have considered the documents available on record. The issue that arises for determination in the present case is whether the offer and issuance of equity shares by MPA Agro to 152 allottees on March 25, 2010 was a public issue. In this regard, it is observed that section 67 of the Companies Act, 1956 dealt with the conditions and circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. The extract of the relevant provisions of the section 67 are as under:

"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 subsection (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 nonbanking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."

5. Hon'ble Supreme Court of India in Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011) has examined the scope of Section 67 of the Companies Act, 1956. In para 86 of the judgement it has been observed by the Supreme Court that " ... 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." Thus, an offer of shares or debentures to fifty or more persons would be deemed to be a public issue. It is observed that on March 25, 2010 the company issued and allotted equity shares to 152 persons and mobilized funds to the tune of ₹22.50 lakh. The number of investors to whom equity shares were allotted on March 25, 2010 is in excess of 49. The Noticees have not disputed the number of allottees, nor have they put forth any defence.

Therefore, I do not find any reason to differ with the prima facie findings in the interim order that the offer was a deemed public issue.

6. In view of the above conclusion, it was obligatory on the part of MPA Agro to comply with the provisions of sections 56, 60 and 73 of the Companies Act, 1956. As per 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. Section 56(3) of the Companies Act, 1956, mandates that an application form for shares in the company must be accompanied by an abridged prospectus. Section 60 of the Act mandates a company to register its 'prospectus' with the ROC before making a public offer. I find that there is nothing on record to show that MPA Agro has filed a prospectus. Thus, the Noticees have not complied with the above provisions.
7. Further, by issuing equity shares to more than 49 persons, MPA Agro was also required to compulsorily list such securities on at least one stock exchange in compliance with the provisions of section 73 of the Companies Act, 1956. Relevant provisions of the section are reproduced hereunder:

“73. Allotment of Shares and Debentures to be dealt in on Stock Exchange

(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 sub-section (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.

(2A) ...”

8. As per section 73(1) and (2) of the Companies Act, 1956, a company offering shares and debentures to the public, 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. I find that no material or record is available to indicate that MPA Agro had made any such application seeking listing permission to any stock exchange. With regard to refund to the investors, it has been submitted on behalf of Mr. Manoj Kumar Saha that the company has made refunds to more than 100 investors. In this regard, it is observed that no proof of repayment nor any certificate of chartered accountant certifying refund to investors has been furnished even after being given sufficient time to produce the same. Therefore, I am not inclined to accept that the company has refunded the money due to the investors.
9. I note that the Company had allotted equity shares to the public in March 2010 and the company has failed to make refund to the investors in terms of provisions of section 73(2) of the Companies Act, 1956. As per information available in MCA21 portal, Noticee Nos. 2 to 7 were directors of the MPA Agro during the relevant time and were involved in the mobilisation of funds from the public through the issue of equity shares without complying with the applicable law, as discussed above. Therefore, I am inclined to hold them responsible for the contravention of section 73(2) of the Companies Act, 1956.
10. In this regard, it is also pertinent to mention that a public issue ought to be made in compliance with the ICDR Regulations which lay down the eligibility norms, disclosure norms and other procedural requirements for ensuring investor protection. Therefore, MPA Agro was mandated

to comply with the provisions of the ICDR Regulations including the following:

- Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)(d)),
- Appointment of merchant banker and other intermediaries (Regulation 5),
- Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),
- Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),
- Satisfying the conditions of initial public offer (Regulation 25 and 26),
- Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)
- Keeping the public issue open for the specified period (Regulation 46),
- Pre issue advertisement for public issue (Regulation 47)
- Manner of disclosures in the offer documents (Regulation 57).

11. I am, therefore, of the view that the Noticees were engaged in fund mobilizing activity from the public, through the offer and issuance of equity shares in contravention of the provisions of sections 56, 60 and 73 of the Companies Act, 1956 and the above mentioned provisions of the ICDR Regulations.

12. In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 and sections 11(1), 11(4), 11A and 11B thereof read with regulations 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions, which shall come into effect immediately.

- i. MPA Agro Animal Projects Limited [CIN: U01400WB2008PLC131530] and its promoters and directors including Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan

- Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha shall jointly and severally refund the money collected through the offer and allotment of equity 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) within a period of 90 days from the date of receipt of this Order.
- ii. The refund as directed above shall be made through banking channels such as demand draft or electronic mode of transfer and a trail of such refunds shall be maintained by the Noticees for records.
 - iii. Within seven days of completion of refund as directed above, the Noticees shall file a certificate of such completion with SEBI from two independent Chartered Accountants after proper verification of the details of such refunds from records including bank accounts of the Noticees and after being satisfied that the refund has actually been made.
 - iv. Till the refund, as directed above, is completed, the Noticees are hereby–
 - (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.
 - v. For a period of four years from the date of completion of the refund, as directed above, the Noticees are hereby–
 - (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.

13. In the event of the Noticees failing to comply with the directions of refund stated in the para above, SEBI shall initiate recovery proceedings in accordance with the provisions of the SEBI Act, 1992.
14. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
15. 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.

Date: September 8, 2017

Place: Mumbai

**G. MAHALINGAM
WHOLE TIME MEMBER**