

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of DGR Farms & Leisures Limited

In respect of:

1. **DGR Farms & Leisures Limited (PAN: AADCD2895N)**
2. **Shri Rakesh Kumar Gupta (PAN: AIXPG8273A; DIN: 02732171).**
3. **Shri Umesh Soni (PAN: BTKPS1732H; DIN: 02778413).**
4. **Smt Nivedita Gupta (PAN: AHLPG5454E; DIN: 003512748).**
5. **Shri Umesh Gupta (PAN: AHAPG438ON; DIN: 03521013).**
6. **Shri Alok Kumar Singh (PAN: AWJPS1018D; DIN: 03627367).**
7. **Shri Jainendra Kumar Patel (PAN: AKOPP8093N; DIN: 3627378).**
8. **Shri Sanjay Kumar Gupta (PAN: AIZPG2134Q; DIN: 03627386).**
9. **Shri Shankar Lal Gupta (PAN: AGMPG4657M; DIN: 03627395).**
10. **Shri Vijay Kumar Shukla (PAN: BLHP53014H; DIN: 06420025).**
11. **Shri Jitendra Kumar Tripathi (PAN: ADIPT4968P; DIN: 06374893).**
12. **Shri Sushil Kumar Dubey (PAN: AFAPD7831F; DIN: 02864899).**

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1. DGR Farms & Leisures Limited (hereinafter referred to as “**DGR**”/ “**the Company**”) is a Public company incorporated on October 27, 2009 and registered with Registrar of Companies–Gwalior with CIN: U01100MP2009PLC022547. Its registered office is at 8, Patrakar Colony, Link Road 3, Bhopal - 462003.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a copy of a complaint alongwith a Witness Summon in the matter of Devmuni Patel vs. Umesh Gupta & Others at Rewa Court, Madhya Pradesh. The hearing before the aforesaid Court was attended by a SEBI Officer and on that date, a copy of the petition filed by the complainant i.e. Devmuni Patel, was also obtained. On receipt of the said complaint against DGR in respect of issue of Redeemable Preference Shares (“RPS”) SEBI
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undertook an enquiry to ascertain whether DGR had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder.

3. On enquiry by SEBI, it was observed that DGR had made an offer of RPS in the financial years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 (hereinafter referred to as “**Offer of RPS**”) and raised an amount of Rs. 1.25 Crores from 191 allottees.
4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated July 30, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against DGR and its Directors, viz., Shri Rakesh Kumar Gupta, Shri Umesh Soni, Smt Nivedita Gupta, Shri Umesh Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla, Shri Jitendra Kumar Tripathi and Shri Sushil Kumar (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. DGR had made an *Offer of RPS* during the financial years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 and raised an amount of Rs. 1.25 Crores as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in crores)	Number of allottees
2009-2010	RPS	0.01	2
2010-2011		0.04	5
2011-2012		0.15	32
2012-2013		0.07	11
2013-2014		0.98	141
Total		1.25	191

6. The above *Offer of RPS* and pursuant allotments were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by DGR in respect of the *Offer of RPS*.
7. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated July 30, 2015 with immediate effect.
- i. “DGR (PAN: AADCD2895N) shall forthwith cease to mobilize fresh funds from investors through the *Offer of 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. DGR and its present/past Directors, viz. (PAN: AADCD2895N; DIN:), Shri Rakesh Kumar Gupta (PAN: AIXPG8273A; DIN: 02732171), Shri Umesh Soni (PAN: BTKPS1732H; DIN: 02778413), Smt Nivedita Gupta (PAN: AHLPG5454E; DIN: 003512748), Shri Umesh Gupta (PAN: AHAPG438ON; DIN: 03521013), Shri Alok Kumar Singh (PAN: AWJPS1018D; DIN: 03627367), Shri Jainendra Kumar Patel (PAN: AKOPP8093N; ; DIN: 3627378), Shri Sanjay Kumar Gupta (PAN: AIZPG2134Q; DIN: 03627386), Shri Shankar Lal Gupta (PAN: AGMPG4657M; DIN: 03627395), Shri Vijay Kumar Shukla (PAN: BLHP53014H; DIN: 06420025), Shri Jitendra Kumar Tripathi (PAN: ADIPT4968P; DIN: 06374893), and Shri Sushil Kumar Dubey (PAN: AFAPD7831F; DIN: 02864899), (PAN: ; DIN:), (PAN: ; DIN:), (PAN: ; DIN: 02864899), (PAN: ; DIN:), (PAN: ; DIN:), (PAN: ; DIN:), (PAN: ; DIN:), 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. DGR and its abovementioned past and present Directors and Promoters, are restrained from accessing the securities market and further prohibited from buying, selling or

otherwise dealing in the securities market, either directly or indirectly, till further directions;

- iv. DGR shall provide a full inventory of all its assets and properties;
 - v. DGR's abovementioned past and present Directors and Promoters, shall provide a full inventory of all their assets and properties;
 - vi. DGR and its abovementioned present Directors and Promoters, shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company, without prior permission from SEBI;
 - vii. DGR and its abovementioned present Directors and Promoters, shall not divert any funds raised from public at large through the *Offer of RPS*, which are kept in bank account(s) and/or in the custody of DGR;
 - viii. DGR and its abovementioned past and present Directors and Promoters, shall co-operate with SEBI and shall furnish all information/documents sought vide letters dated September 30, 2014;
8. The interim order also directed the DGR and its Directors/promoters to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act should not be passed against them:
- i. Directing them jointly and severally to refund money collected through the *Offer of RPS* 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.

9. Vide the said interim order, DGR, its abovementioned Directors 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.
10. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated July 31, 2015. The said letter along with the order was delivered on the the Noticees.
11. Vide reply dated August 20, 2015, DGR has submitted *inter alia* that:
 - a. Due to repetition, there are seven excessive names in the list of allottees. Therefore, the total number of allottees would be 184 instead of 191.
 - b. Due to typographical error, the preference shares allotted to Mr. Amit Gupta and Shri Vivek Gupta are given separately in the list of allottees. They are joint shareholders. Further, due to typographical error, name of one Mrs. Divya Dwivedi was appearing twice in the list of allottees. Due to the above typographical errors DGR has provided varying lists of allottees at different points in time.
 - c. Company has allotted preference shares by way of preferential allotment under section 81(1A) of the Companies Act, 1956, after passing special resolution in the meeting of the shareholders of DGR.
 - d. Preference shares issued under section 81(1A) of the Companies Act, 1956, are allotted to not more than 49 persons in a single allotment. Allotment to 141 persons in 2013-2014 were done in three tranches, namely; to 43 persons on 22.11.2013, to 49 persons on 11.12.2013 and to 47 persons on 31.03.2014.
 - e. In view of the above, there is no offer to public or mobilization of funds from the public, as all allotments are done within framework given under section 81(1A) of the Companies Act, 1956.

- f. Money received from the proceeds of preference shares is almost 6 times lesser than the assets of the Company. Directors of the Company have already started purchase of preference shares from the investors, although they were issued on private placement basis. Preference shares amounting to Rs. 6.35 lakh has been purchased from various preference shareholders. Copy of the list of investors who have been repaid along with the bank account details from where the payment was made, have been provided.
12. Vide reply dated October 18, 2016, Shri Umesh Gupta on behalf of himself, the Company, Shri Rakesh Gupta, Shri Sanjay Kumar Gupta, Shri Jitendra Tripathi, Shri Alok Kumar Singh and Shri Shankar Lal Gupta, submitted *inter alia* that:
- a. Company has land at Rewa, Sidhi, Beohari, and Shahdol. Company is developing a township named Gitanjali Vihar measuring 9.38 acres at Shahdol.
 - b. Out of Rs. 1.20 crores received by the Company, it has already purchased shares amounting to Rs. 30.14 lakh from the investors and Rs. 3.06 lakh was subscribed by the Directors. List of allottees from whom the Company has purchased shares has been provided.
 - c. The land of Shahdol project is valued at Rs. 17.80 crores as per valuation done in November 2015, and is sufficient to pay off all the liabilities of the Company.
13. Vide an undated reply, Shri Vijay Kumar Shukla has submitted *inter alia* that:
- a. He was an employee of the Company who started working in the Company in March 2011. Copy of the appointment letter has been provided.
 - b. He was made to sign on some documents from time to time by the Company. In June 2013, the Noticee tried to resign from all posts of the Company but the same was not accepted.
 - c. In January 2014, Shri Umesh Gupta made the Noticee sign on documents appointing him as a director of the Company. The Noticee was told that he was receiving a promotion.
 - d. He requested the Company to accept his resignation but till date his resignation was not accepted.
 - e. Finally, in June 2016 he got a job in SBI Life Insurance Company and stopped going to DGR. Copy of the said appointment letter is provided.

14. Vide undated reply Shri Umesh Soni has submitted *inter alia* that:
- a. He was a director of DGR at the time of its incorporation.
 - b. From March 2011, Umesh Soni started working as an employee of the Company and not as a director.
 - c. He resigned from all posts of the Company on July 31, 2014.
15. Vide undated reply Smt Nivedita Gupta has submitted *inter alia* that:
- a. She was an employee of DGR from March 2011. Copy of the appointment letter has been provided.
 - b. She was made to sign on some documents from time to time by the Company. In January 2014, she was made to sign on documents appointing her as a director of DGR. She was told that she was getting a promotion.
 - c. In September 2014, the Noticee submitted her resignation from all posts of the Company. However, the same was not accepted.
 - d. Finally, her resignation was accepted by the Company in December 2014.
16. Vide undated reply Shri Jainendra Kumar Patel has submitted *inter alia* that:
- a. He started working as an employee of DGR from March 2011. Copy of the appointment letter has been provided.
 - b. He was made to sign on some documents from time to time. In October 2011, he was made to sign on documents appointing him as a director of DGR. He was told that he was getting a promotion.
 - c. Vide an email dated June 14, 2013, the Noticee submitted his resignation from all posts of the Company. Copy of the said email is provided. However, his resignation was only accepted by the Company on August 10, 2015.
 - d. From July 6, 2013, he joined Star Union Dai-Ichi Life Insurance and had no further dealing with DGR. Copy of the said appointment letter has been provided.
17. Vide undated replies Shri Sushil Kumar Dubey has *inter alia* submitted that:
- a. He has resigned from the Company on May 25, 2011 and was not involved with the Company thereafter.
 - b. Preference shares allotted on November 21, 2013 and December 11, 2013 qualify as public issue under the first proviso of section 67(3) of the Companies Act, 1956. Since

the Noticee had already resigned from the Company, he is not liable for the said public issue.

18. Opportunity of personal hearing was earlier granted on October 18, 2016. The Noticees did not appear for the said personal hearing. Thereafter, vide notification dated June 10, 2017 published in newspaper *The Times of India* and notification dated June 10, 2017 published in newspaper *Dainik Bhaskar*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on August 22, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed 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.
19. *Hearing and submissions:* Smt. Nivedita Gupta appeared on August 22, 2017 and made oral submissions and submitted her written submissions in line with her earlier replies in the matter. She also handed over the written submissions of Shri Umesh Soni and Shri Vijay Kumar Shukla. The said submissions are also in line with their earlier replies on record. She was advised to provide her Income Tax Returns for the period of 2011-2014 and bank statements for the said period. No further submission has been received thereafter.
20. Vide email dated August 21, 2017, Shri Umesh Gupta requested for an adjournment of his personal hearing. Accordingly, vide letter dated September 21, 2017, personal hearing was rescheduled to October 5, 2017 for Shri Umesh Gupta, DGR, Shri Rakesh Kumar Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Jitendra Kumar Tripathi and Shri Sushil Kumar Dubey. However, none of the aforesaid Noticees appeared for personal hearing on October 5, 2017.
21. Vide reply dated September 29, 2017, Shri Shankar Lal Gupta has submitted *inter alia* that:
 - a. He joined as an employee of DGR in February 2011 and resigned from the Company in 2013 as an employee. Thereafter he joined DGR Credit Cooperative Limited from October 2013 and resigned in February 2015. Copy of the relieving letter dated February 18, 2015 has been provided.

- b. In 2012, he was told that he was appointed as a director of DGR. Upon his knowledge of such appointment, he resigned from all posts of DGR in 2013. Later he was told that he was promoted as “Development Director”. He did not know that he was a director of the Company.
22. Vide letter dated October 13, 2017, the Noticees were issued a letter advising them to submit supplementary documentary evidence in support of their written submissions. Thereafter, Shri Umesh Soni has resubmitted his earlier written submission in this matter. No other Noticee has submitted any further documentary evidence.
23. He has also submitted that despite the restraint on the Noticees from sale of any asset/property without the permission of SEBI, the Company has been selling plots of lands in defiance of the interim order.
24. I have considered the allegations and materials available on record. On perusal of the same, 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 56, Section 60 and Section 73 of Companies Act 1956.*
- (3) *If the findings on Issue 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.

25. I have perused the interim order dated July 30, 2015 for the allegation of *Offer of RPS*.
26. I note that vide reply dated August 20, 2015, DGR has submitted that due to repetition, there are seven excessive names in the list of allottees. Therefore, it has been submitted that the total number of allottees would be 184 instead of 191. It has been further submitted that due to typographical error, the preference shares allotted to Mr. Amit Gupta and Shri

Vivek Gupta are given separately in the list of allottees whereas they are joint shareholder. I find that there is no adequate documentary evidence to substantiate the above. It has been also submitted that the name of Mr. Anil Gupta is appearing twice in the list of allottees for the allotment dated 11.12.2013. I have perused the list of allotments to verify the said submission and I find that the same holds ground. I note from the records available on MCA, that the Board Resolution authorizing the share capital to include preference shares was passed only on September 19, 2011. Therefore, allotments made prior to 2011-2012 could not be said to have been redeemable preference shares. Accordingly, the number of allottees to whom RPS was issued would be 183 for the financial years 2011-2012, 2012-2013 and 2013-2014 which is proximate to the number admitted by the Company in its reply dated August 20, 2015. In view of the aforesaid material on record, I note that DGR has issued and allotted RPS to 183 investors during the financial years 2011-2012, 2012-2013, and 2013-2014 and raised an amount of Rs. 1.20 Crores.

27. I therefore conclude that DGR came out with an offer of RPS as outlined above.

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

28. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of RPS* made to the public. Therefore the primary question that arises for consideration is whether the issue of RPS is 'public issue'. 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).”

29. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. 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:-

“Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the “section of the public”. Section 67(3) states that no offer or invitation

shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, 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.”

30. Section 67(3) of Companies Act, 1956 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) of Companies Act, 1956

exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

31. In the instant matter, I note from the documents available from MCA records, that the Company was earlier a private limited company which obtained a fresh certificate of incorporation pursuant to its change of name and conversion to a public limited company. Consequently, vide Board Resolution dated September 19, 2011, the Company altered its authorized share capital to include 40,000 preference shares of Rs. 100/- each. Therefore, I find that DGR was involved in issuance of preference shares from 2011-2012.
32. In view of the above, I find that RPS were issued by DGR to 183 investors in the financial years 2011-2012, 2012-2013, and 2013-2014. I find that the Company vide its reply dated October 18, 2016 has admitted to fund mobilisation of Rs. 1.20 crores. Therefore, I find that the Company has mobilized an amount of Rs. 1.20 Crores over the financial years 2011-2012, 2012-2013, and 2013-2014.
33. I find that DGR has not claimed it to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that DGR is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
34. I have perused the submissions made by the Company and some of the Noticees, in this regard, wherein they have stated that the aforesaid allotments were made as per section 81(1A) of the Companies Act, 1956. However, no documentary evidence to that effect has been submitted. In this regard, 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 to show 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 *Offer of RPS* cannot be considered as private placement.

35. It is further submitted by the said Noticees that the allotments, were made in tranches of less than 50, and as such are not public issue. In this regard, I am of the view that even in cases where the allotments are considered separately, 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".
36. Therefore, in view of the material available on record, I find that the *Offer of RPS* by DGR falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS* are deemed to be public issues and DGR was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
37. Further, since the offer of RPS 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 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 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.
38. The allegations of non-compliance of the above provisions were not denied by DGR or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that DGR has contravened the said provisions. DGR has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that DGR 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. Therefore, I find, that section 73(2) of the Companies

Act, 1956 has not been complied with.

39. 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. As the offer of RPS was a deemed public issue of securities, DGR was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that DGR has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that DGR has not complied with the provisions of section 60 of the Companies Act, 1956.
40. 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 DGR 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, DGR has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
41. Further, 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"

42. 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..."

43. In view of the above findings, I am of the view that DGR was engaged in fund mobilizing activity from the public, through the offer of RPS and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) 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?

44. Smt. Nivedita Gupta vide her written submissions has submitted that she was appointed as an employee of DGR in March 2011, and that in January 2014, she was made to sign on certain documents appointing her as a director of the Company. She submitted that she was made to sign on the grounds that she was receiving a promotion in the Company. She has further submitted that she tendered her resignation as a director of DGR in September 2014 to the Company, which was only accepted by the Company in December 2014. However, I find there is no documentary evidence on record to show that such resignation letter had been submitted in September 2014. Therefore, from the MCA records, I find that she was appointed a director of DGR on January 25, 2014 and continued till December 18, 2014.

45. Shri Umesh Soni vide his written submission has submitted that he was a director of DGR since its incorporation, and that he transferred his shares in December 2010 and started working as an employee of the Company from March 2011. He further submitted that he resigned from the directorship of DGR on July 31, 2014. From the MCA records, I find that Shri Umesh Soni was a director of the Company from October 27, 2009 and continued till July 31, 2014.

46. Shri Vijay Kumar Shukla vide his written submission has submitted that he was appointed as an employee of DGR in March 2011 and that in January 2014, he was made to sign on certain documents appointing him as a director of the Company. He submitted that he was made to sign on the grounds that he was receiving a promotion in the Company. He further submitted that he tried to resign from the directorship of the Company on several occasions. However, till date the Company has not accepted his resignation. From the

MCA records, I find that Shri Vijay Kumar Shukla was appointed a director of DGR on January 25, 2014 and is a continuing director of the Company.

47. Shri Jainendra Kumar Patel vide his written submission has submitted that he was appointed as an employee of DGR in March 2011 and that in October 2011 he was made to sign on certain documents appointing him as a director of the Company. He submitted that he was made to sign on the grounds that he was receiving a promotion in the Company. He further submitted that he tendered his resignation from the directorship of the Company on June 14, 2013 vide an email sent to the existing directors of the Company. However, the said resignation was accepted only on August 10, 2015. On perusal of the copy of the email and other documents brought on record by the said Noticee I observe that it is not clear as to whether the said email has been delivered to the Company or its directors. Due to this ambiguity in the circumstances, I am inclined to rely on the MCA records and find that he was appointed as a director of DGR from October 20, 2011 and continued till August 10, 2015.
48. Shri Sushil Kumar Dubey vide his replies has submitted that he continued to be a director of DGR till May 25, 2011. From the MCA records, I find that Shri Sushil Kumar Dubey was a director of the Company from July 24, 2010 and continued till May 26, 2011.
49. Shri Shankar Lal Gupta has submitted that he was appointed as an employee of DGR and that he resigned from all posts of DGR in 2013. Later he was told that he had been appointed as a director of DGR since 2012. He submitted that he was informed of being promoted to the post of "Development Director" and did not realize that he was being appointed as a director of the Company. He has submitted that he resigned as a Regional Manager from the DGR Group of Companies and has provided the relieving letter received in this regard. I have perused the said letter and I note that he has been relieved only with respect to DGR CCS Company Limited and DGR Housing and Development Limited. I find that the Noticee has not submitted any documentary evidence to show that he resigned from the position of the Director of the Company, upon his knowledge that he was so appointed, as claimed by him. I therefore, find from the MCA records that Shri Shankar Lal Gupta was a director of DGR from January 25, 2012 and is a continuing

director of the Company.

50. From the documents available on record, I find that the present directors in DGR are Shri Rakesh Kumar Gupta, Shri Umesh Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla. I also note that, Shri Umesh Soni, Smt Nivedita Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Jitendra Kumar Tripathi and Shri Sushil Kumar Dubey who were earlier Directors in DGR, have since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Rakesh Kumar Gupta	October 27, 2009	Continuing
Shri Umesh Soni	October 27, 2009	August 01, 2014
Smt Nivedita Gupta	January 25, 2014	December 18, 2014
Shri Umesh Gupta	May 26, 2011	Continuing
Shri Alok Kumar Singh	October 20, 2011	August 10, 2015
Shri Jainendra Kumar Patel	October 20, 2011	August 10, 2015
Shri Sanjay Kumar Gupta	January 25, 2014	August 10, 2015
Shri Shankar Lal Gupta	January 25, 2012	Continuing
Shri Vijay Kumar Shukla	January 25, 2014	Continuing
Shri Jitendra Kumar Tripathi	January 25, 2014	February 20, 2015
and Shri Sushil Kumar Dubey	July 24, 2010	May 26, 2011

51. 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 provision. Therefore, DGR and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
52. 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 Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.
53. Shri Sushil Kumar Dubey has submitted that he was not a director of the Company during the period of Offer of Preference Shares which, according to his implication, was during the financial years 2013-2014. He has submitted that since he had resigned from the Company on May 25, 2011 he is not liable for any violation of the Companies Act, by DGR, thereafter. I find that, as discussed earlier, DGR had made public issue during the financial years 2011-2012, 2012-2013 and 2013-2014. I also note that the Board Resolution authorizing the share capital to include preference shares was passed only on September 19, 2011. As per the MCA records, Shri Sushil Kumar Dubey had already resigned from the Company. Therefore, I find that Shri Sushil Kumar Dubey is not liable for the violations of the Companies Act, 1956 committed by DGR.
54. From the material available on record and the details of the appointment and resignation

of the directors of DGR as reproduced in paragraph 50 of this Order, it is noted that Shri Rakesh Kumar Gupta, Shri Umesh Soni, Smt Nivedita Gupta, Shri Umesh Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla and Shri Jitendra Kumar Tripathi were directors at the time of the issuance of RPS. Since these persons 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 of Companies Act, 1956 or any specified director of DGR 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 past and present directors of DGR, 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. None of the Noticees disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors 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 section 27(2) of the SEBI Act. Therefore, I find that DGR and its Directors, 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.

55. I note that during the financial years 2011-2012, 2012-2013, and 2013-2014, DGR through Offer of RPS, had collected an amount of Rs. 1.20 Crores from various allottees. I note that Shri Rakesh Kumar Gupta has been director of DGR during financial years 2011-2012, 2012-2013, 2013-2014 till present date. I note that Shri Umesh Soni was director of DGR during financial years 2011-2012, 2012-2013 and 2013-2014. I note that Smt Nivedita Gupta was director of DGR during financial year 2013-2014. I note that Shri Umesh Gupta has been director of DGR during financial years 2011-2012, 2012-2013 and

2013-2014 till present date. I note that Shri Alok Kumar Singh was director of DGR during financial years 2011-2012, 2012-2013 and 2013-2014. I note that Shri Jainendra Kumar Patel was director of DGR during financial years 2011-2012, 2012-2013 and 2013-2014. I note that Shri Sanjay Kumar Gupta was director of DGR during financial year 2013-2014. I note that Shri Shankar Lal Gupta has been director of DGR during financial years 2011-2012, 2012-2013, 2013-2014 till present date. I note that Shri Vijay Kumar Shukla has been director of DGR during financial years 2013-2014 till present date. I note that Shri Jitendra Kumar Tripathi was director of DGR during financial years 2013-2014. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with DGR and other directors are limited to the extent of amount collected during his/her tenure as director of DGR.

56. 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 DGR and its Directors, viz. 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 RPS 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.
57. In this regard, I note that the Company has submitted vide its reply dated October 18, 2016, that it has refunded about Rs. 30.14 lakh to some of its investors and has provided a list of the investors and the bank account details from which such repayments were made. However, vide reply dated August 20, 2015, the Company had submitted that preference shares amounting to Rs. 6.35 lakh has been purchased by the Company from various preference shareholders. In view of the discrepancy in the aforesaid values, appropriate directions with respect to the same are being made in this order.
58. I also note that, vide the interim order dated July 30, 2015, DGR was directed to provide

a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of DGR 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. I find that the Company has provided a list of land details. However, the same appears to be unaudited and does not give the full details of the properties. I find that the other Noticees despite the delivery of the interim order as stated in paragraph 10 of this Order, have not provided an inventory of their assets and properties.

59. I note that Shri Shankar Lal Gupta has stated vide his reply dated September 29, 2017 that certain plots of land which are owned by DGR, are being sold without the permission of SEBI, even after express directions in this regard in the interim order. If true, this has very serious ramifications on the effect of directions against the Company on its liability to refund. SEBI reserves its right to take appropriate action if such violation of the interim order is observed
60. In view of the discussion above, appropriate action in accordance with law needs to be initiated against DGR and its Directors, viz., Shri Rakesh Kumar Gupta, Shri Umesh Soni, Smt Nivedita Gupta, Shri Umesh Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla, and Shri Jitendra Kumar Tripathi.
61. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:
- a. DGR and its Directors, viz. , Shri Rakesh Kumar Gupta, Shri Umesh Soni, Smt Nivedita Gupta, Shri Umesh Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla and Shri Jitendra Kumar Tripathi, shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities,

if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

- b. If DGR and its Directors, viz. , Shri Rakesh Kumar Gupta, Shri Umesh Soni, Smt Nivedita Gupta, Shri Umesh Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla and Shri Jitendra Kumar Tripathi had repaid/redeemed the Preference Shares to its investors, as submitted in its replies, as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions from paragraphs 61(c) to 61(k), shall be applicable for the amounts still 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 61(c) below, with clear identification of the beneficiaries, and the same shall be certified by Chartered Accountants, as directed in paragraph 61(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” or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.
- d. Shri Umesh Soni, Smt Nivedita Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Jitendra Kumar Tripathi 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, if held in physical form and demat form.
- e. DGR and Shri Rakesh Kumar Gupta, Shri Umesh Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla are directed to provide a full inventory of all the assets and properties, the details of the properties sold by DGR after July 30, 2015 and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the Company and their own.

- f. DGR and Shri Rakesh Kumar Gupta, Shri Umesh Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla 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. DGR and Shri Rakesh Kumar Gupta, Shri Umesh Soni, Smt Nivedita Gupta, Shri Umesh Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla and Shri Jitendra Kumar Tripathi, 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. DGR and Shri Rakesh Kumar Gupta, Shri Umesh Soni, Smt Nivedita Gupta, Shri Umesh Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla and Shri Jitendra Kumar Tripathi, in their personal capacity to make refund, 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 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, DGR and Shri Rakesh Kumar Gupta, Shri Umesh Soni, Smt Nivedita Gupta, Shri Umesh Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla and Shri Jitendra Kumar Tripathi, in their personal capacity 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 DGR and Shri Rakesh Kumar Gupta, Shri Umesh Soni, Smt Nivedita Gupta, Shri Umesh Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla and Shri Jitendra Kumar Tripathi to comply with the aforesaid directions, SEBI, on expiry of three months period from the date of this Order may recover such amounts as specified in paragraph 61(a) of this Order, in accordance with section 28A of the SEBI Act, including such other provisions contained in securities laws. Recovery proceedings may be considered against the Company first, in case sufficient assets are available, and only thereafter may be initiated against the Directors of the Company.
- k. DGR and, Shri Rakesh Kumar Gupta, Shri Umesh Soni, Smt Nivedita Gupta, Shri Umesh Gupta, Shri Alok Kumar Singh, Shri Jainendra Kumar Patel, Shri Sanjay Kumar Gupta, Shri Shankar Lal Gupta, Shri Vijay Kumar Shukla and Shri Jitendra Kumar Tripathi, 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 (four) 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 (four) years from the date of completion of refunds to investors.
- l. The directions issued against Shri Sushil Kumar Dubey are hereby revoked.
- m. The above directions shall come into force with immediate effect.

62. Copy of this Order shall be forwarded to the recognized stock exchanges, depositories and registrar and transfer agents for information and necessary action.
63. 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.
64. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: November 20, 2017

PLACE: Mumbai

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