

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 G R Agro Project Limited

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN
1.	G R Agro Project Limited	AAECG6103D	U01403WB2011PLC169169
2.	Shri Sachin Kumar Thakur	AJUPT3341C	06560350
3.	Shri Mrinal Barman	AJLPB3664K	06983811
4.	Shri Tapash Kumar Raha	ADUPR4603B	06983825
5.	Shri Ram Kumar Sinha	APYPS1402F	02460975
6.	Shri Raju Ghosh	AOWPG5672E	03354113
7.	Munmun Ghosh	APAPG8731K	03355796
8.	Shri Himadri Bag	AJXPB3796L	02729318
9.	Shri Abhijit Maity	BNOPM7520F	06643551
10.	Shri Avijit Chowdhury	APEPC8255N	05358817
11.	Shri Bibekananda Jana	AMKPJ8034F	05358821

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1. G R Agro Project Limited (hereinafter referred to as “GRAPL”/ “the Company”) is a Public company incorporated on November 08, 2011 and registered with Registrar of Companies–Kolkata with CIN: U01403WB2011PLC169169. Its registered office is at 1/27, Baishnabghata, Patuli Township, Block Q - 27, Ground Floor, P.O. - Panchasayar,
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Order in the matter of M/s G R Agro Project Limited

Kolkata - 700094, West Bengal, India.

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) in respect of issue of Redeemable Preference Shares (“RPS”) undertook an enquiry to ascertain whether GRAPL 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 GRAPL had made an offer of RPS in the financial years 2012-2013 (hereinafter referred to as “**Offer of RPS**”).
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 December 03, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against GRAPL and its Directors viz. Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha and Shri Ram Kumar Sinha (hereinafter collectively referred to as “**Noticees**”)
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. GRAPL had made an *Offer of RPS* during the financial years 2012-2013 . The details are as shown below:

Year of Issue	Security Issued	Number of allottees
2012-2013	RPS	302
Total		302

6. The above *Offer of RPS* and pursuant allotment 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 GRAPL 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 December 03, 2015 with immediate effect.
- i. *“GRAPL 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. *GRAPL and its Directors, viz. Shri Sachin Kumar Thakur (DIN: 06560350), Shri Mrinal Barman (DIN: 06983811), Shri Tapash Kumar Raha (DIN: 06983825) and Shri Ram Kumar Sinha (DIN: 02460975), 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. *GRAPL 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. *GRAPL shall provide a full inventory of all its assets and properties;*
 - v. *GRAPL's abovementioned Directors shall provide a full inventory of all their assets and properties;*
 - vi. *GRAPL 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. *GRAPL 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 GRAPL;*
 - viii. *GRAPL 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.”*

8. The interim order also directed the GRAPL and its Directors viz. Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha and Shri Ram Kumar Sinha 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, GRAPL, its abovementioned Directors viz. Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha and Shri Ram Kumar Sinha 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 December 15, 2015. The copy of interim order was once again sent to GRAPL vide letter dated May 06, 2016 and to Shri Mrinal Barman and Shri Tapash Kumar Raha vide letters dated May 20, 2016 and same were delivered. Subsequently, vide notification dated November 09, 2016 published in newspaper *Times of India* , and notification dated November 08, 2016 published in newspaper *Anand Bazar Patrika*, GRAPL, Shri Mrinal Barman and Shri Tapash Kumar Raha were notified by SEBI, that interim order dated

December 03, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.

Submissions:

11. Ram Kumar Sinha had submitted his reply dated January 11, 2016. The brief of his reply is as under:

- (a) He had received the interim order dated December 03, 2015 on December 31, 2015.
- (b) The allegations leveled against him are false, frivolous and vague. He was additional director in GARPL only for a period of approximately 3.5 month i.e. from August 08, 2014 till November 20, 2014.
- (c) He submitted that he was neither a director at the time of issue of RPS in the year 2012-13 nor at any time after his resignation. He was not related to GRAPL in any manner and was not associated with GRAPL before the said period starting of appointment from August 08, 2014 or after his resignation. He denied that he is not the person in-charge of and responsible to the company for the conduct of business.
- (d) He further stated that after his joining on August 08, 2014 as additional director, he was getting acquainted with day-to-day working of the company and found that there is very casual approach towards the work. Therefore, he was unsatisfied with the working style of GRAPL and after working for a period of approx 3.5 months, he tendered his resignation as an additional director of GRAPL w.e.f November 20, 2014. He tendered his resignation via hand delivery dated November 10, 2014. His resignation was accepted by GRAPL in its Board meeting dated November 20, 2014. He submitted the copy of Board Resolution of Board meeting dated November 20, 2014.
- (e) After receipt of interim order dated December 03, 2015, he appointed a professional to inspect the documents of the GRAPL available on the website of MCA. After scrutinizing the documents of GRAPL, he found that his resignation

was filed by GRAPL vide e-Form DIR-12, the said Form DIR-12 states that his date of cessation/resignation is with effect from November 20, 2014. The copy of e-Form DIR-12 is submitted.

- (f) Further on inspection of documents, he came to know that he was re-appointed as a director by GRAPL on August 05, 2015 whereas he never came in contact with GRAPL after resigning from the said company on November 20, 2014. He further states that GRAPL has with ulterior motives and malafide intentions have wrongfully re-appointed him without his prior consent and communication to him. He submitted that in e-form DIR 12 filed by GRAPL on August 05, 2015 his signatures have been forged, fabricated and concocted.
- (g) He requested that he may be allowed to inspect the documents on the basis of which SEBI has made allegations against him and barred him from dealing in securities market.
- (h) He requested that he may be allowed to redeem his other investments in shares and mutual funds etc.

- 12. One Baidurya Ghosal vide letter dated January 25, 2016 had filed a vakalatnama dated January 25, 2016 stating that he has been authorized by GRAPL, Shri Tapash Kumar Raha and Shri Mrinal Barman to appear on their behalf. Vide said letter Baidurya Ghosal had requested one month time to submit the reply in the matter. It is noted that till date no reply was received from GRAPL, Shri Tapash Kumar Raha and Shri Mrinal Barman.
- 13. Shri Sachin Kumar Thakur till date had not submitted any reply in the matter.

Hearing:

- 14. Vide notifications all dated June 10, 2017 published in newspapers *Times of India*, Kolkata, *The Pioneer*, Ranchi, *Times of India*, Patna, *Anand Bazar Patrika*, Kolkata, *Prabhat Khabar*, Jharkhand and *Hindustan*, Bihar, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on July 12, 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.

15. None of the Noticees appeared for hearing scheduled on July 12, 2017.
16. Vide notice dated July 24, 2017, Shri Ram Kumar Sinha was granted an opportunity of inspection of documents on August 10, 2017. It is noted that Shri Ram Kumar Sinha did not appear for inspection of documents scheduled on August 10, 2017. Further, vide notice of hearing dated October 04, 2017, Shri Ram Kumar Sinha was granted an opportunity of hearing on October 24, 2017. It is noted that Shri Ram Kumar Sinha did not appear for hearing scheduled on October 24, 2017.

Findings:

17. 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.

18. I have perused the interim order dated December 03, 2015 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.
19. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other

documents available on records. As per Form-2 filed with Ministry of Corporate Affairs (MCA), the date of allotment was September 30, 2012, the number of shares allotted was 6,53,100 shares, the nominal amount per share was Rs. 10/- and premium amount paid per share was Rs. 90/-. Therefore, as per Form-2 the amount raised by GRAPL was Rs. 6.531 Crores [No. of shares allotted * (nominal amount per share + premium amount paid per share)]. Therefore it is found that GRAPL has issued and allotted RPS to 302 investors during the financial years 2012-2013 and raised an amount of Rs. 6.531 Crores.

20. I therefore conclude that GRAPL 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.

21. 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).”

22. 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.”

23. 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.

24. In the instant matter, I find that RPS were issued by GRAPL to 302 investors in the financial years 2012-2013 and raised an amount of Rs. 6.531 Crores as per Form -2 obtained from MCA 21 Portal. The above findings lead to a conclusion that the *Offer of RPS* by GRAPL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
25. I find that GRAPL 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 GRAPL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
26. Neither GRAPL nor its directors have contended that the *Offer of RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.
27. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that “In terms of Section 67(3) of the Companies Act any issue to ‘50 persons or more’ is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning”.

28. Therefore, in view of the material available on record, I find that the *Offer of RPS* by GRAPL 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 GRAPL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
29. 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.
30. The allegations of non-compliance of the above provisions were not denied by GRAPL 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 GRAPL has contravened the said provisions. GRAPL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that GRAPL 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.
31. 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, GRAPL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that GRAPL

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 GRAPL has not complied with the provisions of section 60 of the Companies Act, 1956.

32. 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 GRAPL 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, GRAPL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

33. 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"

34. 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..."

35. In view of the above findings, I am of the view that GRAPL 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?

36. Shri Ramkumar Sinha had stated that he was an additional director of GRAPL for a period of 3.5 months i.e. with effect from (w.e.f.) August 08, 2014 till November 20, 2014 and he was appointed subsequent to the period of issuance of RPS. He further stated that he resigned as director of GRAPL on November 20, 2014 and submitted a copy of e-form

DIR 12 in support of his date of cessation/resignation is w.e.f. November 20, 2014. He also submitted the copy of resolution passed at the meeting of the board of directors held on November 20, 2014 wherein the board of directors of GRAPL had accepted his resignation. Further, Shri Ramkumar Sinha has stated that his re-appointment as director of GRAPL w.e.f August 05, 2015 was without his knowledge & consent and his documents for re-appointment as director of GRAPL was forged, fabricated & concocted. As far as the first stint of directorship is concerned there is no dispute. The DIR 12 which is required to be filed by the company to MCA also shows the date of resignation as November 20, 2014. However the second stint starting from August 05, 2015 is disputed by Shri Ramkumar Sinha on the basis of claim of forgery. I note that Shri Ramkumar Sinha submitted in support of his claim of forgery copy of the Legal Notice sent by him to the company. I note the legal notice only records his claim. However Shri Ramkumar Sinha did not submit any document or report evidencing the proof of forgery. Therefore, the claim of forgery is not substantiated by any credible documentary evidence. In view of this the further question that arises for consideration is whether Shri Ramkumar Sinha has tendered his resignation to the company subsequently. I have perused the copy of his resignation letter dated March 03, 2016, after his appointment in the second stint, to the board of directors of GRAPL. However, the same was not delivered to the company which is evidenced by the fact that Shri Ramkumar Sinha in email dated March 12, 2016 to dasubrata@gmail.com, (claimed to have been sent to the company) stated that the said resignation letter dated March 03, 2016 was returned undelivered. The said e-mail has attachment of the resignation letter.

I note that during March 2016, there was no one named dasubrata as director of GRAPL. Therefore, resignation letter has not been sent to the director or the company. I have already noted that his resignation letter was not delivered to GRAPL. As per Section 168 of the Companies Act, 2013 the resignation of a director shall take effect from the date on which the notice of resignation is received by the company (i.e. GRAPL) or the date, if any, specified by the director in the said notice. Since there is no proof of receipt of

communication of resignation by the company or the directors, in the eye of law, the resignation cannot be said to have taken effect. Therefore, Shri Ram Kumar Sinha is deemed to continue as director of the company. MCA record dated February 22, 2018 also shows him as continuing director. In view of the above discussion I hold that Shri Ram Kumar Sinha was a director from August 08, 2014 to November 20, 2014 and from August 05, 2015 is continuing till date, though his period of continuing directorship is after the issuance period. Therefore, I am of the view a director who has become the part of a company's board cannot absolve himself from the responsibility and liability for all acts carried out by a company and upon becoming a director, he should have taken all diligent steps and care in the affairs of the company. Further, the role of Shri Ram Kumar Sinha in the present matter is discussed at para 43 & 44 below.

37. From the documents available on record, I find that the present Directors in GRAPL are Shri Sachin Kumar Thakur , Shri Mrinal Barman, Shri Tapash Kumar Raha, Shri Ram Kumar Sinha. I also note that Shri Raju Ghosh, Munmun Ghosh, Shri Himadri Bag, Shri Abhijit Maity, Shri Avijit Chowdhury, Shri Bibekananda Jana, who were earlier Directors in GRAPL, 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 Sachin Kumar Thakur	November 20, 2014	Continuing
Shri Mrinal Barman	March 13, 2015	Continuing
Shri Tapash Kumar Raha	March 13, 2015	Continuing
Shri Ram Kumar Sinha	August 08, 2014	November 20, 2014
	August 5, 2015	Continuing
Shri Raju Ghosh	November 08, 2011	July 24, 2013
Munmun Ghosh	November 08, 2011	April 16, 2013
Shri Himadri Bag	May 09, 2014	July 19, 2014

Shri Abhijit Maity	July 24, 2013	August 26, 2014
Shri Avijit Chowdhury	August 18, 2012	March 27, 2015
Shri Bibekananda Jana	August 18, 2012	October 25, 2014

38. 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, GRAPL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
39. 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%.
40. From the material available on record and the details of the appointment and resignation of the directors of GRAPL as reproduced in paragraph 37 of this Order, it is noted that Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana 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 GRAPL 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 GRAPL, 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. 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 GRAPL and its Directors, viz. Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana 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.

41. I note that during the financial years 2012-2013, GRAPL through Offer of RPS, had collected at least an amount of Rs. 6.531 Crores from various allottees. I note that Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury and Shri Bibekananda Jana were the directors of GRAPL during financial years 2012-2013. 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 GRAPL and other directors are limited to the extent of amount collected during his/her tenure as director of GRAPL.
42. In this regard, I note that Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha, Shri Ram Kumar Sinha was appointed as a director of GRAPL only on November 20, 2014, March 13, 2015, March 13, 2015, August 08, 2014 respectively i.e. after the period of issuance of RPS. Shri Himadri Bag was appointed on May 09, 2014 &

resigned on July 19, 2014 and Shri Abhijit Maity was appointed on July 24, 2013 & resigned on August 26, 2014 i.e. appointed after the period of issuance of RPS. Therefore, following the reasoning as provided in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha, Shri Ram Kumar Sinha, Shri Himadri Bag and Shri Abhijit Maity are not liable for refund of money as they were not a director during the relevant time of fund mobilization. Further, Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha, Shri Ram Kumar Sinha, Shri Himadri Bag and Shri Abhijit Maity had the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs. Registrar of Companies* (2002 108 Cas 1 Mad):

" 13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956. "

43. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. The director cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha, Shri Ram Kumar Sinha, Shri Himadri Bag and Shri Abhijit Maity were also be responsible

for all the deeds/acts of the Company during the period of his directorship and was obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Sachin Kumar Thakur , Shri Mrinal Barman, Shri Tapash Kumar Raha, Shri Ram Kumar Sinha, Shri Himadri Bag and Shri Abhijit Maity are liable to be debarred for an appropriate period of time.

44. 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 GRAPL and its Directors, viz. Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury and Shri Bibekananda Jana 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 its directors namely, Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha, Shri Ram Kumar Sinha, Shri Himadri Bag and Shri Abhijit Maity .
45. I also note that, vide the interim order dated December 03, 2015, GRAPL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of GRAPL, namely, Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha and Shri Ram Kumar Sinha, 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. However, I find that no such inventory has been provided either by GRAPL or its directors, namely Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha and Shri Ram Kumar Sinha despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 10 of this Order.

46. In view of the discussion above, appropriate action in accordance with law needs to be initiated against GRAPL and its Directors viz. Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha, Shri Ram Kumar Sinha, Shri Raju Ghosh, Munmun Ghosh, Shri Himadri Bag, Shri Abhijit Maity, Shri Avijit Chowdhury and Shri Bibekananda Jana.
47. 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. GRAPL, Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury and Shri Bibekananda Jana 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. 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 clearly identified beneficiaries.
 - c. Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury and Shri Bibekananda Jana 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.
 - d. GRAPL and Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha, Shri Ram Kumar Sinha, (on behalf of GRAPL) are directed to provide a full inventory of all the assets and properties 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.

- e. GRAPL and Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha, Shri Ram Kumar Sinha, (on behalf of GRAPL) 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.
- f. Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury and Shri Bibekananda Jana 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.
- g. GRAPL and, on its behalf the present directors who joined subsequent to the issues (Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha and Shri Ram Kumar Sinha) and Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, 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.
- h. After completing the aforesaid repayments, GRAPL and on its behalf the present directors who joined subsequent to the issues (Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha and Shri Ram Kumar Sinha) and Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana 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”) holding such certificate.

- i. In case of failure of GRAPL, Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury and Shri Bibekananda Jana to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from the company and the directors liable to refund as specified in paragraph 47(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- j. GRAPL, Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury and Shri Bibekananda Jana 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.
- k. Shri Himadri Bag, Shri Abhijit Maity, Shri Sachin Kumar Thakur, Shri Mrinal Barman, Shri Tapash Kumar Raha and Shri Ram Kumar Sinha 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 for a period of 4 (four) years from the date of this

Order. The above said persons 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 for a period of 4 (four) years from the date of this order.

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

48. I find that Interim Order dated December 03, 2015 has not been passed in respect of the six past directors of GRAPL namely Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, Shri Himadri Bag and Shri Abhijit Maity. In view of this, the above directions mentioned at para 47 will take effect as final order against Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, Shri Himadri Bag and Shri Abhijit Maity on the expiry of 45 days from the date of service of this, unless any of Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, Shri Himadri Bag and Shri Abhijit Maity, within such period of 45 days from the date of service of this order files their objections. If objections are filed by any of Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, Shri Himadri Bag and Shri Abhijit Maity, the following directions shall be applicable qua that person till disposal of the said objections qua that person, after which this order shall come into effect:

- (a) Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, Shri Himadri Bag and Shri Abhijit Maity, 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;
- (b) Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, Shri Himadri Bag and Shri Abhijit Maity, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly;
- (c) Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, shall provide full inventory of all their assets and properties;

(d) Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, 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 GRAPL;

49. The directions mentioned in paragraph 47 in respect of Shri Raju Ghosh, Munmun Ghosh, Shri Avijit Chowdhury, Shri Bibekananda Jana, Shri Himadri Bag and Shri Abhijit Maity shall take effect as per paragraph 48.

50. I note that the proof of delivery of interim order dated December 03, 2015 in respect of Shri Sachin Kumar Thakur is not available on record. Therefore, this order will take effect as final order against Shri Sachin Kumar Thakur only on the expiry of 45 days from the date of service of this order against Shri Sachin Kumar Thakur, unless Shri Sachin Kumar Thakur, within such period of 45 days from the date of service of this order files reply or seeks for personal hearing vide written letter, receivable by SEBI within said 45 days. If no reply/request for personal hearing is filed, the interim directions vide Interim order dated December 03, 2015 shall continue against Shri Sachin Kumar Thakur till the time of said 45 days period, after which this order will come into effect. If reply/request for personal hearing is filed by Shri Sachin Kumar Thakur, the interim directions vide Interim order dated December 03, 2015 shall continue qua Shri Sachin Kumar Thakur till disposal of the said reply after affording opportunity of personal hearing, if sought and the directions passed herein against Shri Sachin Kumar Thakur shall be made applicable subject to the determination on the objections/reply.

51. The directions mentioned in paragraph 47 in respect of Shri Sachin Kumar Thakur shall take effect as per paragraph 50.

52. Hon'ble Calcutta High Court has passed order dated January 15, 2016 in W.P. 11795(W) of 2015 - Sumita Chakraborty & Anr Vs. Union of India & Ors. alongwith W.P. 31611(W) of 2014 and W.P. 34339(W) of 2014 in respect of G R Agro Project Limited and its directors. Therefore, the effect and implementation of the aforesaid directions stated in paragraph 47 excluding para 47 (c), (d), (j) and (k) shall be subject to the directions passed by the Hon'ble High Court in its Order dated January 15, 2016 or any further orders passed therein.
53. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
54. 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.
55. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

-Sd-

DATE: MARCH 22, 2018

PLACE: MUMBAI

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