

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 in respect of interim order cum show cause notice dated January 21, 2015 in the matter of Aapna Pariwar Agro Farming Developers India Ltd.

In respect of: -

Sl. No.	Noticees	PAN
	Company	
1	Aapna Pariwar Agro Farming Developers India Limited	AAHCA8718R
	Directors and Promoters	
2	Mr. Rejaul Karim	Not Available
3	Mr. Partha Gope Mazumder	AJHPG9603K
4	Mr. Swaminath Singha	AQFPS6151H

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- Securities and Exchange Board of India ("SEBI") passed an *ad interim ex-parte order* dated November 9, 2015 (hereinafter referred to as "*interim order*") against the Noticees in view of the *prima facie* findings that Aapna Pariwar Agro Farming Developers India Limited (Aapna Pariwar Agro) and its directors/promoters were engaged in the activity of raising money through offer and issue of equity shares to the public in contravention of the provisions of sections 56, 60 and 73 of the Companies Act, 1956 and several provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations). In view of this, the interim order, inter alia, restrained the Noticees from mobilising funds from the public through issue of equity shares. The

order also required them to show cause as to why direction to jointly and severally refund the money collected through the issue of equity shares to the public along with interest and other appropriate directions be not passed against them.

2. In this matter, prior to passing of the interim order, SEBI conducted an examination into the money mobilisation activity of the company. From the details gathered from MCA 21 portal, it was observed that:

- (a) The Company (CIN - U74999WB2009PLC137489) is a public unlisted company, incorporated on August 05, 2009, having its registered office at Maheshmati Sankopara, Near Malda Merchant Chamber of Commerce, Malda, West Bengal.
- (b) The authorized capital of the Company is Rs.2,50,00,000/- and the paid-up capital is Rs.95,35,000/-.
- (c) Rejul Karim is the managing director of the company from August 5, 2009. The other two directors of the company are Swaminath Singha (appointed on August 5, 2009) and Partha Gope Mazumder (appointed on June 19, 2010).
- (d) The details of allotment of shares, including the number of persons to whom shares were allotted, as per various return of allotments (i.e. Form-2) filed by the company with ROC Kolkata are as follows:

Sl. no.	Date of return (e-filing date)	Date of allotment and Board Resolution for allotment	No. of persons to whom allotments made	No. of shares (face value of Rs.10/-) allotted	Amount raised (Rs.)
1		01.03.2010	15	55,000	5,50,000/-
2	21.06.2010	31.03.2010	13^	1,00,000	10,00,000/-
3	-	31.03.2010	16	50,000	5,00,000/-
4	-	31.03.2010	33	1,00,000	10,00,000/-
5	10.12.2010	05.08.2010	7	57,500	5,75,000/-
6	10.12.2010	30.08.2010	9	52,000	5,20,000/-

7	10.12.2010	24.09.2010	18@	1,83,500	18,35,000/-
	10.12.2010	30.10.2010	19#	1,25,500	12,55,000/-
	-	18.09.2012 ^{\$}	3*	35,000	3,50,000/-

**Rejaul Karim (MD) was one of the allottees, having been allotted 25,000 shares.*

^Partha Gope Mazumder (Director) was one of the allottees, having been allotted 25,000 shares.

@ Rejaul Karim (MD) was one of the allottees, having been allotted 1,20,000 shares.

Rejaul Karim (MD) was one of the allottees, having been allotted 25,000 shares.

\$ It appears that there is one allotment of 35,000 shares, however, two Form-2 has been filed by the company – one with Board resolution for 30,000 shares and revised board resolution for 35,000 shares. Allottees are identical.

(e) The Company has mobilized funds from 77 persons in financial year 2009-2010 and from 53 persons during the financial year 2010-2011.

(f) The last filing made by the Company with the RoC was its Balance Sheet for the year ended March 31, 2012.

3. It has been ascertained from the records that the interim order was served upon the directors of the company by hand delivery. The interim order sent to the company returned undelivered, therefore, intimation about the interim order was also published in the newspaper. No reply was received from the Noticees. In order to proceed further in the matter an opportunity of hearing was given to the noticees on August 23, 2017. The hearing notice was delivered by speed post to the directors of the company. Intimation about date of hearing was given to the company by publishing about it in the Kolkata edition of the newspapers, Anand Bazar Patrika and The Statesman on June 29, 2017. Partha Gope Majumdar (Noticee No. 3) appeared for the hearing. He submitted reply dated August 23, 2017 and stated that Mr. Rejaul Karim, the Managing Director of the company, has died on March 7, 2015. He and one another director namely, Swaminath Singha did not have much knowledge about the affairs and property/assets of the company. They are in the process of collecting records of property/assets of the company so that

they may pay the dues of investors in terms of the interim order. On being asked about his role in the company, he stated that as a director of the company, he was mainly handling accounts related to sale and purchase of agricultural commodities. He also stated that most of the money transactions of the company were done by the Managing Director of the company and Mr. Swaminath Singha. It was also stated that he had done some banking transactions on behalf of the company. Partha Gope Majumdar was advised to submit his reply on merits, if any. He was also asked to furnish the following details/documents:

- i. Details of investors/shareholders and details of money collected from them.
 - ii. Details of properties/assets of the company.
 - iii. Death certificate of Mr. Rejaul Karim, Managing Director of Aapna Pariwar Agro.
 - iv. A detailed plan on how the company proposes to refund the money due to the investors.
4. Partha Gope Mazumdar was granted time till September 30, 2017 to furnish the above details/documents and his reply. The aforesaid details were not received. Therefore, an email dated October 30, 2017 was sent to him advising him to furnish the details/documents. However, no reply has been received till date.
5. The other director of the company, namely, Swaminath Singha vide letter dated July 15, 2017 stated that because of his old age and ill health, he may not be able to appear for hearing and may only send a written representation. His representation was received on August 31, 2017. He has provided sketchy details of some lands belonging to the company and it has been also stated that the other director, Partha Gope Mazumdar, is not co-operating with him.
6. I have considered the documents available on record. The issue that arises for determination in the present case is whether the offer and issuance of equity shares by Aapna Pariwar Agro to 77 persons in financial year 2009-2010 and 53 persons during financial year 2010-2011 was a public issue. In this regard, it is observed that section 67 of the Companies Act, 1956 dealt with the conditions and circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. The extract of the relevant provisions of section 67 are as under:

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

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of subsection (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to nonbanking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."

7. Hon'ble Supreme Court of India in Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011) has examined the scope of Section 67 of the Companies Act, 1956. In para 86 of the judgement it has been observed by the Supreme Court that "*... if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation.*". Thus, an offer of shares or debentures to fifty or more persons would be deemed to be a public issue. It is observed from the interim order that the company issued and allotted equity shares to 77 persons in financial year 2009-2010 and mobilised an amount of Rs.30,50,000/-. Further, in the financial year 2010-2011, the company issued and

allotted equity shares to 53 persons and mobilised an amount of Rs.41,85,000/-. The number of investors to whom equity shares were allotted during these financial years are in excess of 49. The Noticees have not disputed the number of allottees, nor have they put forth any defence. Therefore, I do not find any reason to differ with the prima facie findings in the interim order that the offer was a deemed public issue.

8. In view of the above conclusion, it was obligatory on the part of Aapna Pariwar Agro to comply with the provisions of sections 56, 60 and 73 of the Companies Act, 1956. As per section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Section 56(3) of the Companies Act, 1956, mandates that an application form for shares in the company must be accompanied by an abridged prospectus. Section 60 of the Act mandates a company to register its 'prospectus' with the ROC before making a public offer. I find that there is nothing on record to show that Aapna Pariwar Agro has filed a prospectus. Thus, the Noticees have not complied with the above provisions.
9. Further, by issuing equity shares to more than 49 persons, Aapna Pariwar Agro was also required to compulsorily list such securities on at least one stock exchange in compliance with the provisions of section 73 of the Companies Act, 1956. Relevant provisions of the section are reproduced hereunder:

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

(1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) ...

(2) Where the permission has not been applied under sub-section (1), or, such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received

from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.
(2A) ...”

10. As per section 73(1) and (2) of the Companies Act, 1956, a company offering shares and debentures to the public, is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. The noticees have never stated that Aapna Pariwar Agro had made any such application seeking listing permission to any stock exchange or that they have made refunded the money due to the investors.
11. I note that the Company had allotted equity shares to the public during the financial years 2009-2010 and 2010-2011 and the company has failed to make refund to the investors in terms of provisions of section 73(2) of the Companies Act, 1956. As per information available in MCA21 portal, Noticee Nos. 2 to 4 were directors of the Aapna Pariwar Agro during the relevant time and were involved in the mobilisation of funds from the public through the issue of equity shares without complying with the applicable law, as discussed above. Therefore, I am inclined to hold them responsible for the contravention of section 73(2) of the Companies Act, 1956. Incidentally, with respect to Rejul Karim (Noticee No. 2), it is noted that though the other directors have stated that he died on March 7, 2015, no death certificate has been submitted even after reminder.
12. As regards the company, it is also pertinent to mention that a public issue ought to be made in compliance with the ICDR Regulations which lay down the eligibility norms, disclosure norms and other procedural requirements for ensuring investor protection. Therefore, Aapna Pariwar

Agro was mandated to comply with the provisions of the ICDR Regulations including the following:

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

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

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

- i. Aapna Parivar Agro and its promoters and directors including Rejul Karim, Swaminath

Singha and Partha Gope Mazumder shall jointly and severally refund the money collected through the offer and allotment of equity shares, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment) within a period of 90 days from the date of receipt of this Order.

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

15. In the event of the Noticees failing to comply with the directions of refund stated in the para above, SEBI shall initiate recovery proceedings in accordance with the provisions of the SEBI Act, 1992.
16. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
17. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

-Sd.-

Date: May 3, 2018

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER