

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 Basundhara Agro Resources (India) Limited

In re Deemed Public Issue Norms

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN
1.	Somenath Mukherjee	BHAPM2160H	05288122
2.	Subhash Paul	AKEPP6209Q	03558386

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1. Basundhara Agro Resources (India) Limited (hereinafter referred to as “**BARIL**”/ “**the Company**”) is a Public company incorporated on July 07, 2011 and registered with Registrar of Companies–Kolkata with CIN: U01403WB2011PLC164637. Its registered office is at A-29, Amrabati, P.O – Sodepur, Kolkata – 700110 IN.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received letter/complaints from some persons against BARIL in respect of issue of Redeemable Preference Shares (“**RPS**”) and undertook an enquiry to ascertain whether BARIL 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 BARIL had made an offer of RPS in the

financial years 2011-2012, 2012-2013 and 2013-2014 (hereinafter referred to as “**Offer of RPS**”) and raised an amount of Rs. 2.03 Crores from 1,287 allottees. The number of allottees and funds mobilized has been collated the information submitted by the Company.

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 June 07, 2017 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against BARIL and its Directors viz., Sujit Dutta, Bibhas Pal, Somenath Mukherjee and Subhash Paul (hereinafter collectively referred to as “**Noticees**”).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. BARIL had made an *Offer of RPS* during the financial years 2011-2012, 2012-2013 and 2013-2014 and raised an amount of Rs. 2.03 Crores as shown below:

Year of Issue	Security Issued	Amount raised (Rs.)	Number of allottees
2011-2012	RPS	4,255,700.00	315
2012-2013		12,332,100.00	739
2013-2014		3,786,000.00	233
Total		20,373,800.00^	1287*

[^]*^ No. of allottees and funds mobilized has been collated from information submitted by the Company. Further, it is noted from the interim order that the Company has not filed the complete details of RPS issued with RoC.

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 BARIL 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 June 07, 2017 with immediate effect.

- i. “BARIL (PAN: AAECB618213) and the abovenamed Directors namely, Sujit Dutta(PAN: ACPPD0411M), Bibhas Pal (PAN: AYKPP8684R), Somenath Mukherjee (PAN: BHAPM2160H) and Subhas Paul (PAN: AKEPP6209Q) shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;
- ii. BARIL and the abovenamed Directors shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through the offer and allotment of preference shares;
- iii. BARIL and the abovenamed Directors shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of preference shares sought vide letter dated September 28, 2015 and reminder letter dated April 08, 2016.”

8. The interim order also directed the BARIL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, should not be issued/imposed against them including the following directions viz.,:

- i. “The Noticees to jointly and severally refund money collected through the offer and allotment of preference 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), supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and
- ii. The Noticees to be refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed

above”.

9. Vide the said interim order, BARIL, 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 Noticees are directed to furnish an inventory of their assets in their reply. The order further stated the following:

“In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. In the event of the Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paras 9 to 12 of this Order and directions at para 14(i) and (ii) above shall become final and absolute against the Noticees automatically, without any further orders. The Noticees shall comply with the directions at para 14(i) above within a period of 90 days from the date of this Order becoming final. Upon the expiry of a period of 90 days from the date of this Order becoming final, SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution in addition to making a suitable reference to State Government / Local Police.”

10. *Service of interim order:* The copy of the said interim order was sent to BARIL and its directors vide letter dated June 09, 2017. The copy of the interim order was duly served on Sujit Dutta, Bibhas Pal and acknowledgment received. However, the copy of the interim order sent to the Company, Somenath Mukherjee and Subhash Paul were returned undelivered. Hence, the copy of the interim order was affixed at the last known address of the Company. Subsequently, vide notification dated October 28, 2017 published in newspaper *Times of India*, and notification dated October 28, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees viz., BARIL, Somenath Mukherjee and Subhash Paul were notified by SEBI, that interim order dated June 07, 2017 was issued against them and they were given a final opportunity to submit their reply in the matter.

11. In response, Subhash Paul vide letter dated October 31, 2017, *inter alia*, submitted the following:

“ I Subhash Paul son of late Nirmal Kumar Paul was a director of Basundhara Agro Resources India Limited Company. I had submitted my resignation letter on 22/05/2013 in the company and left the company. Then I lived in Agarpura in a rented house. But I shifted from there three years ago. So I did not receive any letter since then”.

Vide the said letter, Subhash Paul furnished his present address and contact details, resignation letter dated May 22, 2013 and Declaration letter (No objection for sale of properties of the Company).

12. Subsequently, vide hearing notice dated February 09, 2018, the Noticees were given an opportunity of being heard on April 03, 2018 at the time and the venue mentioned therein.

13. *Hearing and submissions:* On April 03, 2018, Subhash Paul and Somenath Mukherjee appeared in person before me for the hearing.

13.1 The submissions of Subhash Paul are as under :

- i. Sujit Dutta was managing the affairs of the Company and he was a sleeping partner in the Company.
- ii. He used to sign whatever documents given by Sujit Dutta.
- iii. All the documents are in the custody of Sujit Dutta including Minutes of the Meetings, Board Resolutions, Books of accounts of the Company, etc.
- iv. Bibhas Pal and Sujit Dutta signed the share certificates.
- v. Initially, he has received Rs. 4,000/- as remuneration from the Company which was later increased to Rs. 5,000/- and thereafter enhanced to Rs. 7,000/-.
- vi. He was involved in marketing, motivating people and purchase of properties for the Company.
- vii. He has stated that assets are available in the name of the Company including,

flat, office space and land etc. The entity was directed to submit the details of the assets of the Company, if any.

13.2 The submissions of Somenath Mukherjee are as under:

- i. He was in hotel business and met Sujit Dutta who made him Director in the Company. He had given Rs.3.5 lacs to Sujit Dutta to become Director cum Shareholder of the Company.
- ii. He did not receive any income or remuneration from the Company.
- iii. He did not receive the interim order cum show cause notice. He changed his address and updated the same with postal authorities.

13.3 A copy of the interim order was given to Somenath Mukherjee at the time of hearing. On perusal of the interim order, Somenath Mukherjee submitted that he has no knowledge about the charges mentioned in the interim order.

14. Pursuant to the hearing, Somenath Mukherjee, vide letter dated April 26, 2018 submitted the following documents:

- i. MCA records wherein date of cessation of Somenath Mukherjee is mentioned as April 18, 2018.
- ii. Copy of letter dated April 11, 2017 to the Post Master, Kolkata with respect to his change of address.
- iii. Copy of Bank Pass Book and Money Receipts for his investment of Rs.3.50 lacs in the Company to become Director.
- iv. Copy of Deed of Conveyance dated March 26, 2013 executed in favor of the Company represented by its Directors viz., Sujit Dutta, Bibhas Pal, Somenath Mukherjee and Subhash Paul.

15. No one appeared on behalf of BARIL, Sujit Dutta and Bibhas Pal. It is noted that BARIL and its Directors viz., Sujit Dutta and Bibhas Pal neither submitted any reply nor sought any personal hearing till date. I have perused the interim order in this regard and note that in the absence of any reply or request for personal hearing from the Company and its directors within 90 days from the date of receipt of the interim order, the preliminary

findings and directions mentioned in the interim order has become final against them. Therefore, as per Paragraph 15 of the interim order reproduced at paragraph 9 above, the *prima facie* findings against BARIL and its Directors viz., Sujit Dutta and Bibhas Pal became final and absolute, without any further orders. Since, Subhash Paul filed reply and Subhash Paul and Somenath Mukherjee appeared and made oral submissions before me, I proceed further in respect of Subhash Paul and Somenath Mukherjee (hereinafter referred to by their respective names or collectively as “the Noticees”).

16. 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.

17. I have perused the interim order dated June 07, 2017 for the allegation of *Offer of RPS*. I note that neither the company nor the directors filed any reply disputing the same.

18. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the information furnished by the Company in the matter that BARIL has issued and allotted RPS to 1,287 investors during the financial years 2011-2012, 2012-2013 and 2013-2014 and raised an amount of Rs. 2.03 Crores. I also note that the number of allottees and funds mobilized has been collated from the information submitted by the Company.

19. I therefore conclude that BARIL came out with an offer of RPS as outlined above. The same has also been determined vide Order dated June 07, 2017.

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

20. 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).”

21. 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.”

22. 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*.
23. In the instant matter, I find that RPS were issued by BARIL to 1,287 investors in the financial years 2011-2012, 2012-2013 and 2013-2014 and mobilised an amount of Rs. 2.03 Crores. The same is based on the information submitted by the Company. The above findings lead to a reasonable conclusion that the *Offer of RPS* by BARIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
24. I find that BARIL 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 BARIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

25. Neither BARIL 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.
26. 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 appellants 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*".
27. Therefore, in view of the material available on record, I find that the *Offer of RPS* by BARIL 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 BARIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
28. 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.

29. The allegations of non-compliance of the above provisions were not denied by BARIL 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 BARIL has contravened the said provisions. BARIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that BARIL 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. The same has also been determined vide order dated June 07, 2017.
30. 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, BARIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that BARIL 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 BARIL has not complied with the provisions of section 60 of the Companies Act, 1956. The same has also been determined vide order dated June 07, 2017.
31. 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 BARIL 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, BARIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956. The same has also been determined vide order dated June 07, 2017.

32. 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"

33. 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...”

34. In view of the above findings, I am of the view that BARIL 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. The same has also been determined vide order dated June 07, 2017.

ISSUE No. 3- If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?

35. Before dealing with the above issue, it would be appropriate to deal with the submissions of Subhash Paul and Somenath Mukherjee.

35.1 I note that Subhash Paul and Somenath Mukherjee admitted that they were/are directors of the Company.

35.2 Subhash Paul contended that Sujit Dutta was managing the affairs of the Company and he was a sleeping director in the Company from July 07, 2011 and resigned from the Company with effect from May 22, 2013. I note from the submissions of Subhash Paul that he used to sign documents pertaining to the Company and

received remuneration from the company and was also involved in marketing, purchase of properties of the Company, etc. Further, I also note from the resignation letter submitted by Subhash Paul that he has resigned on May 22, 2013. The said letter is bearing the acknowledgment (signature of one Dutta on May 22, 2013) and seal of the Company as a proof of receipt. Considering the same, I am inclined to accept the date of resignation of Subhash Paul with effect from May 22, 2013. However, I note that though Subhash Paul resigned from the Company on May 22, 2013, he was nonetheless a director of the Company during the period when RPS were issued by the Company.

35.3 Somenath Mukherjee submitted that he had invested Rs. 3.50 lacs in the Company to become a Director cum shareholder. Though he claimed that he has no knowledge about the affairs of the Company, I note from the land purchase documents of the Company submitted by Somenath Mukherjee that he had signed the said Deed of Conveyance in the capacity of a Director of the Company. In view of the same, I am not inclined to accept his contention. Further, I have perused the MCA records and I find that Somenath Mukherjee was a director of the company from March 15, 2013 to April 18, 2018 and it is also noted that Somenath Mukherjee was a director of the Company during the period when RPS were issued by the Company. Hence, I find that he cannot wriggle out of his responsibility as the director of the Company and plead ignorance of the affairs of the Company.

In this regard, it is pertinent to mention the Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, wherein Hon'ble SAT has considered the contentions similar to that of these directors that merely lending name to be a director and non involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act.

36. From the documents available on record, I find that the present Directors in BARIL are

Sujit Dutta and Bibhas Pal. I also note that Subhash Paul and Somenath Mukherjee, who were earlier Directors in BARIL, have since resigned. Since the present order is only against Subhash Paul and Somenath Mukherjee, the details of their appointment and resignation as directors are as under:

Name of the directors	Date of appointment	Date of cessation
Somenath Mukherjee	March 15, 2013	April 18, 2018
Subhash Paul	July 07, 2011	May 22, 2013

37. 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, the Noticees are also held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
38. 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%.

39. From the material available on record and the details of the appointment and resignation of the directors of BARIL as reproduced in paragraph 36 of this Order, it is noted that, Subhash Paul and Somenath Mukherjee 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 BARIL 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 Subhash Paul and Somenath Mukherjee being the past and present directors of BARIL, 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 the past and present directors of BARIL viz., Subhash Paul and Somenath Mukherjee are jointly and severally liable along with the entities directed vide order dated June 7, 2017 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.
40. I note that during the financial years 2011-2012, 2012-2013 and 2013-2014, BARIL through Offer of RPS, had collected an amount of Rs. 2.03 Crores from various allottees. I note that Somenath Mukherjee has been director of BARIL since financial years 2012-2013, 2013-2014 till 2018-2019. I note that Subhash Paul was director of BARIL during

financial years 2011-2012, 2012-2013 and 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 these directors to refund the amount with interest jointly and severally with BARIL and other directors are limited to the extent of amount collected during their tenure as directors of BARIL.

41. 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 the past and present directors of BARIL viz., Subhash Paul and Somenath Mukherjee to refund the monies collected, with interest to such investors. Further, in view of the violations committed by them, 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 them.
42. I also note that, vide the interim order dated June 07, 2017, the Noticees 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 by Subhash Paul and Somenath Mukherjee till date.
43. In view of the discussion above, appropriate action in accordance with law needs to be initiated against past and present directors of BARIL viz., Subhash Paul and Somenath Mukherjee.
44. 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. Subhash Paul and Somenath Mukherjee jointly and severally (with BARIL, Sujit Dutta and Bibhas Pal as mentioned in paragraph 14(i) of the Order dated June 07,

2017 and reproduced at paragraph 8 of this order) 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”.
- c. Subhash Paul and Somenath Mukherjee 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. Subhash Paul and Somenath Mukherjee 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.
- e. Subhash Paul and Somenath Mukherjee 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.
- f. After completing the aforesaid repayments, Subhash Paul and Somenath Mukherjee 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.

- g. The above said period mentioned in paragraph 44 (f) is applicable to Subhash Paul and Somenath Mukherjee. The same shall not be construed as extension of period for others (BARIL, Sujit Dutta and Bibhas Pal) who were required to make repayments as per the Order dated June 07, 2017.
 - h. In case of failure of Subhash Paul and Somenath Mukherjee to comply with the aforesaid directions mentioned at paragraph 44(a), SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from them, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - i. Subhash Paul and Somenath Mukherjee 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.
45. The above directions shall come into force with immediate effect.
46. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
47. 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.

48. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: May 31, 2018

PLACE: Mumbai

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