

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 March 16, 2016 in the matter of Rising Agrotech Limited.

In respect of: -

Sl. No.	Noticees	PAN
	Company	
1	Rising Agrotech Limited	AAECR8598R
	Promoters and Directors	
2	Siddhartha Kayal	AFCPK5677G
3	Bikash Bhandary	ANFPB7121D
4	Sushovan Roy	AMAPR4988C
5	Santosh Kumar Dwivedi	ADNPD6019L
6	Dipan Kumar Sen	BUIPS8288K
7	Binay Kumar Shaw	BMGPS2259Q
8	Lina Kayal	ANHPK8201D
9	Awadhesh Kumar Singh	ARBPS6180P
10	Amaresh Pandey	AFKPP7191Q

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1. Securities and Exchange Board of India ("SEBI") passed an ad interim ex-parte order dated March 16, 2016 (hereinafter referred to as "interim order") against Rising Agrotech Limited (RAL) and its directors/promoters (hereinafter collectively referred to as the 'Noticees') in view of the prima facie findings that they 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). The interim order, interalia, restrained the Noticees from mobilising funds from the public. The order also required them to show cause as to why direction to refund the money collected through the issue of equity shares to the public along with interest and other appropriate directions be not passed against them.

2. In this matter, prior to passing of the interim order, SEBI had received an investor complaint dated May 3, 2013. In order to examine the matter, a letter dated July 29, 2013 was sent by SEBI to the company and its directors seeking details and information about the company and its directors, details of securities issued by the company, copy of prospectus, details application forms circulated/received, number of allottees, amount of money raised etc. The noticees did not provide any information or document despite reminders. The documents pertaining to the company as available in the MCA21 portal and the documents (brochures, application form) forwarded by the complainant were examined. On an examination of the documents forwarded by the complaint and the information gathered from MCA 21 portal, it was observed that:
 - i. RAL was incorporated on July 13, 2010 with the RoC, Kolkata. The Registered Office of the company is situated at 35/1, 3rd Floor, Kali Temple Road, Kolkata.
 - ii. Siddharth Kayal, Sushovan Roy, Bikas Bhandary, Santosh Kumar Dwivedi, Dipan Kumar Sen, Binay Kumar Shaw, Lina Kayal, Awdhesh Kumar Singh and Amresh Pandey were/are the directors of RAL.
 - iii. As per return of allotment (E-Form 2) obtained from MCA 21 Portal, the company had raised an amount of Rs.108.09 lakh from 1460 investors during the Financial Years 2010-2011 and 2011-12. The date-wise details of allotment of equity shares is given below:

Date of allotment	Number of shares allotted	Number of allottees
16.11.2010	1,72,050	117

31.12.2010	75,200	69
28.02.2011	52,933	94
31.03.2011	1,73,100	250
30.04.2011	1,42,200	297
30.06.2011	1,90,680	311
23.09.2011	84,900	135
31.10.2011	54,870	59
05.12.2011	1,35,000	128
Total	10,80,933	1460

- iv. During the financial year 2010-11, RAL allotted equity shares to 530 investors and raised an amount of Rs.47.33 lakh. During the financial year 2011-12, it allotted equity shares to 930 investors and raised an amount of Rs.60.77 lakh.
- v. The brochure/application form published by the company shows that money was mobilized by issuance of equity shares under investment plans offered by the company. The details of the investment plan are mentioned below:

No. of Shares Applied	Face Value (Rs.)	Growth after 6 Years (Rs.)	Growth after 10 Years (Rs.)
300	3,000/-	6,000/-	12,000/-
600	6,000/-	12,000/-	24,000/-
900	9,000/-	18,000/-	36,000/-
1200	12,000/-	24,000/-	48,000/-

3. It has been ascertained from the records that the interim order was served upon the company and its directors. Replies have been received from eight directors. Dipan Kumar Sen vide letter dated April 5, 2016 has replied that he was not involved in any activity of the company other than looking after agricultural projects of the company. Bikash Bhandary (reply dated April 7, 2016) stated that he was appointed as director on June 24, 2013 to fill the vacancy created by resignation of Lina Kayal. He has also stated that he was not involved in any activity of the company. Santosh Kumar Dwivedi, vide reply dated April 8, 2016, has stated that he has resigned from the position of

director of the company. In this regard, copy of Form 32 filed by the company with RoC has been furnished. It has been also submitted that he was not involved in any activity of the company. Awadhesh Kumar Singh (reply dated April 9, 2016), Amaresh Pandey (reply dated April 2, 2016) and Binay Kumar Shaw (reply dated April 8, 2016) have filed replies which are similar to that of Santosh Kumar Dwivedi. They have also stated that they resigned from the position of director of the company and were not involved in any activity of the company. Lina Kayal (vide reply dated April 11, 2016) has stated that she was not involved in any activity of the company other than opening bank accounts in the name of the company. It has been also submitted that as she was unable to take care of her ailing husband, Siddharth Kayal, so she resigned from the company. Sushovan Roy (reply dated April 11, 2016) has stated that he had never participated in any activity of the company. No reply has been received from the company and Siddhartha Kayal.

4. An opportunity of hearing was granted to the company and its directors on March 09, 2017. The hearing notice was delivered to the company and its directors by way of speed post and hand delivery. Intimation of date of hearing was also given to the entities by publishing about it in the Kolkata edition of the English daily 'Times of India' on March 3, 2017 and the Bengali newspaper 'Anand Bazar Patrika' on March 4, 2017. No one appeared for hearing. However, Awadhesh Kumar Singh, Bikash Bhandary, Binay Kumar Shaw, Amaresh Pandey and Santosh Kumar Dwivedi requested that they may be granted an opportunity of hearing at Kolkata. Accordingly, an opportunity of hearing was granted to them at Kolkata on May 5, 2017, which was subsequently rescheduled to November 13, 2017. Shri Shiva Nand Chaubey, Chartered Accountant, appeared for hearing on behalf of Awadhesh Kumar Singh, Binay Kumar Shaw, Amaresh Pandey and Santosh Kumar Dwivedi on November 13, 2017 and made submissions. It was submitted that these four entities joined the company at the insistence of Siddharth Kayal, who was known to them. However, as there was no clear picture on how the company would be functioning, they resigned from the directorship of the company in August 2010, i.e., within one month of joining the company. Letters of resignation written by the entities and received by the company have been furnished. As the company did not get the RoC records updated regarding their resignation, they again submitted their resignation to the company in November 2010. The company accepted the resignation and updated the records with RoC by filing form 32 on December 7, 2010. It was also

stated that they have not attended any board meeting or participated in any activity of the company. Other noticees did not appear for hearing. As sufficient opportunities have been granted to all the noticees to file their replies and appear for hearing, it would be appropriate to decide the matter on the basis of material available on record.

5. 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 Rising Agrotech Ltd to 530 investors during the financial year 2010-11 and 930 investors during the financial year 2011-12 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)."

6. For ascertaining whether the issuance of equity shares by RAL would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the company is crucial. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. It is observed from the return of allotment filed by the company that on November 16, 2010, the company issued and allotted equity shares to 117 persons. It is observed from the details mentioned in para 2 (iii) above that the company has also issued and allotted equity shares to more than 49 persons on December 31, 2010, February 28, 2011, March 31, 2011, April 30, 2011, June 30, 2011, September 23, 2011, October 31, 2011 and December 5, 2011. The company issued and allotted equity shares to 530 investors during the financial year 2010-11 and 930 investors during the financial year 2011-12 and the total amount mobilized by the company by allotment of equity shares was Rs.108.09 lakh. The number of investors to whom equity shares were allotted in each allotment during the financial year 2010-11 and 2011-12 is in excess of 49. Thus, the offer and allotment of equity shares by RAL on different occasions were public issue.
7. In view of the above conclusion, it was obligatory on the part of RAL to list such securities on at least one stock exchange in compliance with the provisions of section 73 of the Companies Act, 1956. Relevant provisions of the section are reproduced hereunder:

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

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

(1A) ...

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

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

(2A) ...”

8. As per section 73(1) and 73(2) of the Companies Act, 1956, a company offering shares and debentures to the public, is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. I find that no material or record is available to indicate that RAL had made any such application seeking listing permission to any stock exchange. Further, noticees have never represented that they have made any refund of money due to the investors. In terms of Section 73(2), the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1).

9. It is noted from the record that that the Company had allotted equity shares to the public during the period November 16, 2010 to December 5, 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 10 are/were directors of RAL during the relevant time. The details are as under:

Sl. No.	Name	Designation	Date of appointment	Date of resignation
1	Siddhartha Kayal	Director	July 13, 2010	--
2	Sushovan Roy	Director	February 20, 2013	--
3	Bikash Bhandary	Director	June 24, 2013	--

4	Santosh Kumar Dwivedi	Director	July 13, 2010	December 7, 2010
5	Dipan Kumar Sen	Director	July 13, 2010	February 21, 2014
6	Binay Kumar Shaw	Director	July 13, 2010	December 7, 2010
7	Lina Kayal	Director	July 13, 2010	June 24, 2013
8	Awadhesh Kumar Singh	Director	July 13, 2010	December 7, 2010
9	Amaresh Pandey	Director	July 13, 2010	December 7, 2010

10. Noticee Nos. 5, 7, 9, 10 (Santosh Kumar Dwivedi, Binay Kumar Shaw, Awadhesh Kumar Singh and Amaresh Pandey) have stated that they had resigned from the company in August 2010, i.e., before the allotment of shares to the public on November 16, 2010. In this regard, copies of resignation letters signed by these directors and received by the company have been submitted as evidence. It is observed that the subsequent resignation letters, which were sent by these directors to the company in November 2010 and on the basis of which Form 32 has been filed by the company with RoC, do not make a reference to the earlier resignation claimed to have been given by these directors to the company in August 2010. Thus, the arguments put forward by these directors that they had resigned earlier (i.e. in August 2010) does not appear credible. I am inclined to accept the dates of resignation shown in the official filings made by the company to the RoC in Form 32. Thus, I find that the said directors have officiated so in the company during the relevant period of issue of securities, as observed in the interim order.

11. One of the directors, namely, Siddhartha Kayal, has not replied. All other directors have submitted that they were not involved in any activities of the company or have never participated in any activity of the company. In this connection, it needs to be stated that these directors were entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. In view of the findings that Noticee Nos. 2 and 5 to 10 were directors of the RAL during the time when the offer and allotment of equity shares were made in violation of provisions of section 73(1) of the Companies Act, 1956. I am inclined to hold that the company and its directors (Noticee Nos. 2 and 5 to 10), by not refunding the money collected from the investors within the

stipulated time have contravened the provisions of section 73(2) of the Companies Act, 1956.

12. With respect to Noticee No. 3 & 4, it is noted from the record that though they are at present directors of the company, they were not the directors of the company when the equity shares of the company were issued and allotted. Therefore, appropriate direction with respect to debarment is issued in this order against them.

13. In this regard, it is also pertinent to mention that a public issue ought to be made in compliance with the ICDR Regulations which lay down the eligibility norms, disclosure norms and other procedural requirements for ensuring investor protection. Therefore, RAL 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).

14. I am, therefore, of the view that RAL and its 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.

15. Having decided as above, I now proceed to decide the next issue which pertains to refund of the money mobilized by RAL from investors. I observe that as per the provisions of Section 73 (2) of the Companies Act, in case of company not having applied for permission for listing of shares or debentures on a stock exchange, the amount mobilized from the applicants for issuance of such shares or debentures has to be refunded to the applicants within eight days. Further, the said clause provides that in case of any delay in refund beyond eight days, 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 being 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. As no steps have been taken by the company and its directors to make refund despite the interim order, I am of the view that the refund is to be effected with interest at the rate of 15% per annum. Accordingly, I hold that noticee nos. 1, 2 and 5-10 are jointly and severally liable to refund the principal amount along with 15% interest per annum calculated from the date of deposit with company till the date of refund.

16. 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 ICDR Regulations, hereby issue the following directions, which shall come into effect immediately.

- i. Rising Agrotech Ltd. and its directors, namely, Siddhartha Kayal, Santosh Kumar Dwivedi, Dipan Kumar Sen, Binay Kumar Shaw, Lina Kayal, Awadhesh Kumar Singh and Amaresh Pandey shall forthwith 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.

- 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 three months 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, Rising Agrotech Ltd., Siddhartha Kayal, Santosh Kumar Dwivedi, Dipan Kumar Sen, Binay Kumar Shaw, Lina Kayal, Awadhesh Kumar Singh and Amaresh Pandey 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, Rising Agrotech Ltd., Siddhartha Kayal, Santosh Kumar Dwivedi, Dipan Kumar Sen, Binay Kumar Shaw, Lina Kayal, Awadhesh Kumar Singh and Amaresh Pandey 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.

- vi. Bikash Bhandary and Sushovan Roy are directed not to, directly or indirectly, access the securities market 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 three months from the date of this Order. They 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 three months from the date of this order.
17. 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. It is clarified that this is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
18. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

Date: July 9, 2018

Place: Mumbai

**G. MAHALINGAM
WHOLE TIME MEMBER**