

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 M/s Bishal Horticulture and Animal Projects Limited

In re Deemed Public Issue Norms

In respect of:

S.No.	Name of the Entity	PAN	DIN
1.	Shri Sujit Acharjee	ASZPA9649Q	05185173
2.	Shri Sumanta Modak	AMHPM3794L	06565449

Background of the case:

1. Securities and Exchange Board of India (“SEBI”) received a complaint on September 08, 2014, against Bishal Horticulture and Animal Projects Limited (hereinafter referred to as “BHAPL/Company”). Vide the aforesaid complaint, the complainant therein *inter alia* alleged illegal mobilization of funds by BHAPL.
2. SEBI had examined the records available on MCA21 Portal and noted that BHAPL had issued and allotted Redeemable Preference Shares (hereinafter referred to as “RPS”) during the financial years 2006-2007, 2007-2008 and 2009-2010 (hereinafter referred to as “allotment years”) and raised an amount of Rs. 2.84 crores from 3,487 allottees as an offer made to the public in terms of Section 67(3) of the Companies Act, 1956 (hereinafter referred to as “Companies Act”). The Details are as follows:

ALLOTMENT DETAILS OF REDEEMABLE PREFERENCE SHARES –

FINANCIAL YEAR	NO. OF ALLOTTEES	VALUE OF ALLOTMENT (₹)
2006–2007	600	58,00,000
2007–2008	1663	1,46,00,000
2009–2010	1224	80,00,000

3. The aforementioned issue of securities by BHAPL during the Financial Years 2006–2007, 2007–2008 and 2009–2010 was determined to be an offer made to the public

in terms of Section 67(3) of the Companies Act, BHAPL and its Directors were found to have prime-facie violated the following provisions of law –

- a. *Section 56, Section 60 read with Section 2(36) and Section 73 of the Companies Act;*
 - b. *Provisions of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (“DIP Guidelines”) read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations”) as regards the Offer of Redeemable Preference Shares during the Financial Years 2006–07 and 2007–08.*
4. Accordingly, SEBI vide an Order dated May 16, 2016 (“**Final Order**”), *inter alia* directed BHAPL and its Directors –
- a. *To jointly and severally refund the money collected by the Company through the issuance of Redeemable Preference Shares (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act and SEBI regulations), to the investors including the money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act) to the investors till the date of actual payment.*
 - b. *Not to, directly or indirectly, access the capital 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 years from the date of completion of refunds to investors as directed above.*
5. It was observed that prior to the Final Order, SEBI had issued an *Ex Parte Interim Order* on May 6, 2015, against BHAPL.
6. During the course of the quasi-judicial proceedings conducted prior to the passing of the Final Order, it was brought to the Notice of the then Whole Time Member (“**WTM**”) that Shri Sujit Acharjee, Shri Ajoy Paul, Shri Kuntal Bhattacharjee, Shri Sumanta Modak and Shri Litan Shah were the past directors of the company, who were not covered in the interim order. Further, it was observed that Shri Litan Saha is one of the present directors, having been re-appointed on April 27, 2015. These Director(s) allegedly were responsible to comply with Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act in making refunds to the investors. Since the refunds were not made, SEBI was advised to examine in order to ascertain the liability of erstwhile Director(s) to refund the fund mobilized to the investors and initiate appropriate action against them, in accordance with law. The list of Director(s) as extracted from the Final Order is shown below –

	NAME OF THE PERSON	CAPACITY	DIN	PAN	DATE OF APPT.	DATE OF CESSATION
1.	SUJIT ACHARJEE	DIRECTOR	05185173	ASZPA9649Q	19.07.2012	10.10.2013
2.	AJOY PAUL	DIRECTOR	06707622	AMPPP5677D	09.10.2013	26.03.2014
3.	KUNTAL BHATTACHARJEE	DIRECTOR	06584522	AQMPB2700Q	10.02.2014	26.03.2014
4.	SUMANTA MODAK	DIRECTOR	06565449	AMHPM3794L	10.02.2014	10.06.2014
5.	LITAN SAHA	DIRECTOR	06826108	CCQPS8194F	18.02.2014	26.03.2014

7. Pursuant to the examination, SEBI passed an *Interim order cum Show Cause Notice* dated October 10, 2018, (hereinafter referred to as '**Interim Order**') *inter alia*, in respect of the Director(s) of BHAPL, Shri Sujit Acharjee, Shri Ajoy Paul, Shri Kuntal Bhattacharjee, Shri Sumanta Modak and Shri Litan Saha.
8. SEBI vide said Interim Order dated October 10, 2018, recorded that BHAPL had issued and allotted RPS during the financial years 2006-2007, 2007-2008 and 2009-2010 and raised a total amount of Rs. 2.84 crores from 3,487 allottees as an offer made to the public in terms of Section 67(3) of the Companies Act.
9. 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 requirements under Sections 56, 60 read with section 2(36), 73(1), 73(2) and 73(3) and DIP Guidelines read with ICDR Regulations were not complied with by the directors of BHAPL, namely, Shri Sujit Acharjee, Shri Ajoy Paul, Shri Kuntal Bhattacharjee, Shri Sumanta Modak and Shri Litan Saha in respect of the Offer of RPS
10. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated October 10, 2018 with immediate effect.

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- i. *The Directors of BHAPL, namely, Shri Sujit Acharjee, Shri Ajoy Paul, Shri Kuntal Bhattacharjee, Shri Sumanta Modak and Shri Litan Saha, 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. *The above-named Directors of BHAPL shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of RPS sought vide letters dated December 28, 2017. "*

11. The interim order also directed the abovementioned Director(s) of BHAPL to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following direction, viz. –

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- i. *To be restrained/prohibited from accessing the securities market 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 the Company and its Directors effecting the refund as directed in the Final Order dated May 16, 2016.*

12. *Vide the said interim order, abovementioned Directors of BHAPL 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.*

Service of Interim Order:

13. The copy of the aforesaid interim order were forwarded to the entities- Shri Ajoy Paul, Shri Sumanta Modak, Shri Sujit Acharjee, Shri Litan Saha and Shri Kuntal Bhattacharjee mentioned in the Interim Order vide letter dated October 11, 2018. The interim order sent to the entities were returned undelivered to SEBI. An attempt was made again vide letter dated November 06, 2018 to serve the interim order to the aforesaid entities. The interim order were served on Shri Ajoy Paul, Shri Sumanta Modak, Shri Sujit Acharjee. For the remaining entities Shri Kuntal Bhattacharjee, the interim order were served to the last known address through affixture dated December 23, 2018 and to Shri Litan Saha, attempt was made to affix the interim order on December 22, 2018, but the person residing in his place did not allow to affix it. A final attempt was made through local newspaper publication dated February 08, 2019 in Times of India, Anand Bazar Patrika, Sanmarg having circulation in the areas of last known addresses of the aforesaid entities.

Reply and Hearing:

14. In response to the interim order, Directors, Shri Sujit Acharjee (hereinafter referred to as “**Sujit**”) and Shri Sumanta Modak (hereinafter referred to as “**Sumanta**”) filed their reply.

Reply by Sujit:

- 14.1. Vide letter dated December 27, 2018, Shri Arindam Ghosh, Advocate on behalf of Sujit made following submission, the contents are summarized below:

- 14.1.1. *From the interim order, it came to Sujit’s knowledge that he was a Director of Bishal Group of companies viz. BHAPL and Bishal Abasan India Limited having DIN – 05185173.*
- 14.1.2. *As per SEBI record, it was shown he was appointed as a director of the BHAPL on 19/07/2012 and also resigned from the company on 10/10/2013.*
- 14.1.3. *He also came to know vide SEBI letter dated December 28, 2017, about his directorship*

and he was advised to provide some information and documents for investigation purpose.

- 14.1.4. He was appointed as a Project Manager of BHAPL on 31/03/2009 and the management of the company duly issued his appointment letter to that effect.
- 14.1.5. Sujit's father-in-law, Mr. Ratan Chowdhury was one of the directors of the Bishal Group of companies and under his reference, Sujit was appointed as a Project Manager of BHAPL and worked from the year 2009 to 2013.
- 14.1.6. In the year 2013, a dispute regarding the business and management affairs of the Bishal Group of Companies had been cropped up between the directors and also with its investors. Due to such disputes his father-in-law, Shri Ratan Chowdhury who was a director of the company, was bound to leave his directorship under the pressure of other directors and he handed over all his charges and properties of the Bishal Group to its present directors. Thereafter, in the year 2015, due to some complaints made by some of the investors of the company, few directors of the company including his father-in-law were arrested by the Chakdah Police Station, in connection Chakdah P.S. case No. 51/15, under section- 420/406/506 of the Indian Penal Code. The police authority also arrested Sujit on the basis of the information that he was also a director of the Bishal Group of Companies. At the time of his arrest he came to know that he was appointed as a director of the Bishal Group of Companies. He had neither given his consent to act as a director of the Bishal Group of Companies at any point of time and he did not receive any benefits as directors of the Bishal Group.
- 14.1.7. During the course of investigation the police authority and also the officers of the Economic Offence Wing (EOW), CID, West Bengal also asked Sujit and his father-in-law Shri Ratan Chowdhury regarding his appointment as directors of Bishal Group Companies.
- 14.1.8. During the investigation, his father-in-law pleaded that Sujit was innocent and it was not within his knowledge, that he was appointed and further resigned as directors of the BHAPL and also he came to know that his mother-in-law, Smt. Sima Chowdhury was also appointed as one of directors of the Bishal Group of Companies, which was also not known to him. After being aware with the said fact, he had been made directors of the Bishal Group of Companies and further, made him resigned from his post as directors of the above mentioned companies, without his knowledge and consent by the other unscrupulous directors of the Bishal Group, who were at that time engaged in the management affairs of the Bishal Group of Companies..
- 14.1.9. Sujit engaged a professional chartered accountant and obtained the certified copies of the documents from the Registrar of Companies (ROC) at Kolkata, his appointment and resignation as directors of the BHAPL. After perusing the documents, he was shocked to find his signature had been forged on the letter of consent to act as a Director of the company as well as on the letter of resignation.
- 14.1.10. Sujit informed the said fact of forgery of his signatures on the documents of the above mentioned companies to the concerned Jadavpur Police Station, Kolkata, where the registered office of the Bishal Group of Companies is situated and lodged a complaint against the board of management and directors of the Bishal Group of Company, who were at that time responsible for the management affairs of the Bishal Group of Companies. He submitted that the Jadavpur Police Authority, at present has been taking necessary steps for investigating the matter.
- 14.1.11. He has never acted as director of any company. He didn't sign in any papers

or documents relating to the company affairs and directorship, not attended any annual general meeting, board of directors' meeting and/or any other meetings of the Bishal Group of Companies regarding its business affairs. Furthermore, he did not take part to any business affairs of the Bishal Group of Company regarding offer and allotment of Redeemable Preference Shares and Non-Convertible Debentures and was also not involved in the affairs of raising fund of the above mentioned companies from the public.

14.1.12. That at present several writ petitions/public interest litigations have been filed against the Bishal Group of Companies as well as its directors by the depositors/investors of the company vide nos. i) W.P. 13162 (W) of 2015, ii) W.P. 18501 (W) of 2015 and iii) W.P. 29775 (W) of 2014 and the said matters are at present pending before the Hon'ble Division Bench of Hon'ble Justice Joymalya Bagchi and Hon'ble Justice Shekhar B. Saraf. In the above mentioned matters the Hon'ble Court directed the Learned Counsel Mr. Kamal Das appearing on behalf of the present directors of the company who were mainly involved in the allotment of Redeemable Preference Shares and Non-Convertible Debentures to the public at large, to make available all the original deeds concerning various properties of the Bishal Group of Companies to SEBI. In terms of the said direction of the Hon'ble High Court on March 06, 2017, the Learned Counsel Mr. Kamal Das appearing on behalf of the present directors of the Bishal Group of Company, handed over 61 nos. of original deeds, which the present directors of the company were in custody, to the Learned Advocate of SEBI and the matter is still pending.

14.1.13. Requested for hearing at Kolkata, SEBI Office, due to financial crunch unable to attend Mumbai, SEBI Office.

15. Vide letter dated December 21, 2018, Shri Prasenjit Santra, Advocate on behalf of Shri Sumanta Modak made following submission, which are broadly as follows:

- 15.1. The contravention raised against the company had been effected during the years 2006-2007, 2007-2008 and 2009-2010 and Sumanta has been appointed as director in the said company for the period between 10.02.2014-10.06.2014 and during his tenure no contravention of any kind had taken place and thus as per the Rules of equity no liability should be conferred upon him because he was not involved with that transaction.*
- 15.2. He got involved with the Bishal Group of Companies only in the year 2012 as an employee of the said company and he did not have any managerial or directorial responsibilities. Upon the insistence of CMD of Bishal Group, Shri Ratan Chowdhury he accepted the directorship only for the period. He got involved with the Bishal Group of companies only in the year 2010 as an employee of Bishal Group of the Companies.*
- 15.3. No personal liability be imposed upon him because of the absence of the involvement, personal, professional or otherwise in the above contravention. It is further submitted that he has no objection if the assets of the company are sold to pay off creditors of the company.*
- 15.4. In view of the Directors willingness to sell out the property of the company to settle the company debt the authority may kindly appoint a natural person to oversee the said sale and settlement of accounts of company.*

Entities neither filed reply nor availed the opportunity of personal hearing:

16. In case of other Director(s) namely, Shri Ajoy Paul, Shri Kuntal Bhattacharjee and Shri Litan Shah, pursuant to interim order, the entities neither filed any response nor requested for opportunity of hearing. In this context, the direction of interim order dated October 10, 2018 is reproduced below:

“13. The Noticees may, within 21 days from the date of receipt of this Interim Order-cum- Show Cause Notice, file their respective replies. 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 respective Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the findings at paragraph 10 of this order shall become final and absolute against the respective Noticees automatically, without any further orders. Consequently, the Noticees shall automatically be bound by the directions contained in paragraphs 11 and 12, as applicable.”

17. In view of the above, the directions stated in the interim order dated October 10, 2018 have already become final against Shri Ajoy Paul, Shri Kuntal Bhattacharjee and Shri Litan Shah.

18. The present proceeding shall deal with the submissions made by Sujit and Shri Sumanta (collectively referred to as “**Noticees**”) and the material available on records.

19. Before proceeding further in the matter, an opportunity of personal hearing were granted to the following Noticees:

20. **Sujit** : Vide notice of hearing dated September 26, 2019, an opportunity of hearing was granted on October 15, 2019 at SEBI, Head Office, Mumbai or through tele/video conference facility at Eastern Regional Office, Kolkata, SEBI (ERO). Shri Arindam Ghosh, Advocate on behalf of Sujit requested for adjournment of hearing for arranging the necessary documents required at the time of hearing,...

20.1. Acceding to the above request and the interest of Natural Justice, vide notice dated November 21, 2019, Sujit was granted another opportunity of hearing on December 03, 2019. Sujit and Shri Arindam Ghosh, Advocate (hereinafter referred to as “**AR**”) had appeared for hearing scheduled on December 03, 2019 and made oral submissions:

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- (a) AR reiterated the earlier submissions made by Mr. Sujit vide reply dated December 12, 2018.
- (b) In the year 2005, Shri Sujit had joined BHAPL as an employee. He was appointed as Project manager. In the year 2008 his service was terminated.
- (c) Again, in the year 2009, on 31/03/2009, he was re-appointed as Project Manager in BHAPL. He was involved in agriculture project.
- (d) He was not a director in BHAPL. He was not involved in any Managerial capacity.
- (e) In the year 2015 when police arrested him, he came to know that his name was shown as one of the directors in the company. Thereafter, from MCA website he compiled / downloaded all the documents of the company and he found his signature were forged in documents (consent letter and resignation letter) in 3 companies namely, BHAPL, Bishal Abasan India Limited and UK fin service Limited. He had never signed any consent letter and resignation letter. He was falsely appointed as director in the company. He had also made Police Complaint.
- (f) All the directors are in custody since 2016 till date.

- (g) *He is in a financial crunch and his PAN was frozen. He was not allowed to take any business due to the pendency of this proceedings. He is unemployed now.*
- (h) *He is the son-in – law of Mr. Ratan Chowdhury, who is one of the director of BHAPL . However, due to family issue he had conflict with Shri Ratan Chowdhury and did not have good relationship with Mr. Ratan Chowdhury. Mr. Sujit Acharjee was not informed of his being the director of BHAPL. He submitted that Mr. Ratan Chowdhury may be aware about the fact that he was being the director of BHAPL but Shri. Ratan Chowdhury never said to him anything about him being the director.*
- (i) *AR also submitted during the time of hearing a copy of complaint letter dated December 15, 2018 lodged at Jadavpur Police Station against Bishal Group for forgery and criminal breach of trust and misappropriation of funds and a copy of complaint letter dated October 21, 2019 addressed to the Registrar of Companies to investigate serious fraudulent activity of the Directors of Bishal Group companies.*

20.2. In his earlier reply dated December 27, 2018, 'Annexure B' of the appointment letter of Shri Sujit Acharjee as Directorship was not attached. AR was advised to submit the same. AR/ Sujit was granted time till December 10, 2019 to submit the document and it was stated that if he fails to submit the same within the said time limit, then the matter would be proceeded further on the basis of documents available on record.

20.3. Pursuant to hearing, Sujit did not forward the copy of the appointment letter stated in his submission dated December 27, 2018.

21. **Sumanta:** vide notice of hearing dated September 26, 2019, an opportunity of hearing was granted on October 15, 2019. Shri Pankaj Biswas, Advocate on behalf of Sumanta requested for adjournment of hearing and stated that his client is in judicial custody since long in connection with special case no. 04/2015 pending before the Ld. Additional District judge(4th Court), Nadia at Krishnanagar, West Bengal and is unable to attend the personal hearing.

21.1. In view of the above and the interest of Natural Justice, vide notice dated October 31, 2019, Sumanta was granted another opportunity of hearing on November 19, 2019. Shri Prasenjit Santra and Shri Pankaj Biswas, Advocates (hereinafter referred to as "AR") appeared for hearing on the schedule date through video/tele conference from ERO and made oral submission:

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- (a) *ARs submitted additional submissions dated November 19, 2019 on behalf of Sumanta.*
- (b) *Sumanta was appointed as an employee in Bishal Horticulture in the year 2012. Sumanta was appointed as director from 10/02/2014 to 10/06/2014 by Shri Ratan Chowdhury.*
- (c) *Shri Ratan Chowdhury is uncle of Shri. Sumanta and CMD of Bishal Group.*
- (d) *As per SEBI order the violation of provisions of deemed public issue has happened during the year 2006-07, 2007-08 and 2009-10.*
- (e) *During Sumanta directorship there was no violation or contravention of said provision.*
- (f) *Sumanta was regularly paying the income tax returns. The document relating to income tax return as well as bank statement is submitted*
- (g) *During the directorship period of Sumanta, he was not aware how to refund the money.*

21.2. ARs was advised to submit the reason, if any, as too why Shri. Sumanta had not refunded the money during the period when he was director of BHAPL. ARs granted one week time from the date of hearing to submit additional written submission along with the reason, if any, as too why Sumanta had not refunded the money during the period when he was

director of BHAPL. If ARs fails to submit the same within the said time limit, then the matter would be proceeded further on the basis of documents available on record.

21.3. Accordingly, hearing in respect of Sumanta was concluded.

21.4. Vide letter dated November 29, 2019, the AR made additional submissions which are summarized below:

- 21.4.1. *Sumanta during his tenure has paid money to the creditors. The statement are annexed herewith and some of those documents has been submitted/seized in connection with W.P. 13162 (W) of 2015 pending before the Hon'ble High Court at Calcutta and in Chakdaha Police Station Case no. 627/2014 and 698/2015.*
- 21.4.2. *Sumanta made declaration to return the money to the creditors. The creditors who approached before Sumanta only them it was possible to return the money.*
- 21.4.3. *Sumanta tried his level best to return the money to the creditor who did not approach before the company.*
- 21.4.4. *The liabilities of Bishal Group of companies was handed over to G.R. Agro Project Ltd with a condition to take responsibilities of all assets and liabilities including past, present and future liabilities of the Bishal Group of companies.*
- 21.4.5. *On June 13, 2014 in the Telegraph Calcutta a publication was made for return of amounts to the creditors of the Bishal Group of companies.. Beside the English daily newspaper the notice of Bishal Group of companies was published in daily Bengali newspaper also namely "Sangbad Pratidin" dated June 18, 2014 and "Bartaman" dated December 20, 2014 by G R Agro Project Ltd and Bishal Group Welfare Trust respectively.*
- 21.4.6. *The liabilities to return money to the creditors totally depends on the G R Agro Project Ltd as all liabilities was handed over to it.*
- 21.4.7. *Sumanta did not take any money of the creditor from the company for his personal purpose.*
- 21.4.8. *Sumanta has made earlier submitted his bank statement, PAN card, identity proof. Where it will be noticed no money has illegally been transacted.*
- 21.4.9. *It is found that in W.P. 13162 (W) of 2015 pending before the Honorable High Court at Calcutta 61 (Sixty One) original sale deeds was handed over to the Advocate of SEBI.*

Findings and Considerations:

22. I have perused the interim order, oral and written submissions and other materials available on record. I note that only Sujit and Sumanta have responded to the interim order and availed the opportunity of hearing. On perusal of the same, the following issues arise for consideration.

Issue No. 1: *Whether the company came out with the offer of RPS in violations Sections 56, Section 2(36) read with Section 60, 73(1), 73(2) and 73(3) and DIP Guidelines read with ICDR Regulations?*

Issue No. 2: *Whether the Noticees are liable for the offer of RPS made by BHAPL to public in violation of deemed public issue norms and the extent of their liability, if any?*

23. **Issue No. 1:** *Whether the company came out with the offer of RPS in violations Sections 56, Section 2(36) read with Section 60, 73(1), 73(2) and 73(3) and DIP Guidelines read with ICDR Regulations?*

23.1. I note that BHAPL has issued and allotted RPS to 3,487 investors during the financial year 2006-2007, 2007-2008 and 2009-2010 and raised an amount of Rs. 2.84 crore. The Noticees have not denied the allegations of deemed public

issue (offer of RPS). Further, the Noticees have not submitted any case or further evidence challenging the findings of the deemed public issue (offer of RPS) mentioned in the interim order. Therefore, I find the BHAPL offered and allotted RPS to 3,487 investors and collected an amount to the tune of Rs. 2.84 crores. The issue was made to more than 49 persons. Therefore, the said issue falls within the definition of first provision mentioned in Section 67(3) of Companies Act. In view of the said deemed public issue BHAPL had also contravened the provisions of Sections 56, 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act and the DIP Guidelines read with ICDR Regulations.

23.2. I therefore conclude that BHAPL came out with an offer of RPS as outlined in the previous paragraph. The same has already been found in the final order.

24. **Issue No. 2:** *Whether the Noticees are liable for the offer of RPS made by BHAPL to public in violation of deemed public issue norms and the extent of their liability, if any.*

24.1. Interim order has prima facie, found that Sujit was appointed as Director on July 19, 2012 and resigned from Directorship on October 10, 2013 and Sumanta was appointed as Director on February 10, 2014 and resigned on June 10, 2014. These Noticees, who were the Directors post fund mobilization in BHAPL have since resigned. Before dealing with the above issue, it would be appropriate to deal with the submissions of the Noticees.

24.2. **Sujit :**

24.2.1. Sujit has conceded that he is the son-in-law of Shri Ratan Chowdhury, who was then Chairman cum Managing Director of Bishal Group of Companies, viz. BAHPL, BAIL. Sujit has admitted that he had joined BHAPL in the year 2005 as an employee designated as Project Manager and in 2008 his service was terminated. As per him, in March 31, 2009, he was again re-appointed as Project Manager in BHAPL.

24.2.2. I note from the submission made by Sujit that he was arrested by the police in the year 2015 for being the erstwhile Directors of Bishal Group of Companies, (BHAPL being one among them) and during that time he came to know he was the Director of the company.

24.2.3. I note that Sujit in his reply has disputed about his appointment and resignation as Director in BAHPL as stated in the Interim order. He has contended that his signature was forged to submit his consent and resignation as Director of BAHPL. To substantiate about the forgery, he has submitted a copy of complaint dated December 15, 2018, lodged in Police Station and letter dated October 21, 2019 to Registrar of Companies (RoC). Pursuant to his lodging of complaint to police and RoC, I find that he has not submitted the status of the police complaint filed by him and also steps taken pursuant to informing RoC.

24.2.4. From the above, firstly, I note that Sujit has not provided any document to show that he has made any complaint to the appropriate authorities about his false

appointment as Directorship in Bishal Group of Companies and also in BHAPL immediately after his arrest in 2015. Secondly, I note that after he received letter from SEBI on December 28, 2017 to provide information and documents for investigation purpose and also after receipt of interim order dated October 10, 2018, he never lodged any complaint to the appropriate authorities about his role as Directorship in BHAPL immediately. I note from the record that Sujit lodged his complaint to Police Station about his signature forgery as Directorship in BHAPL on December 15, 2018 and to RoC on January 22, 2016 and on October 21, 2019. I find that he has lodged his complaint to police almost after 3 years of his alleged knowledge of his Directorship in BHAPL and I also observe that he has complained to RoC/ MCA, but still his name is shown as erstwhile Director of BHAPL in the records of RoC/MCA.

- 24.2.5. Sujit's claim is that his signature was forged, I note that the burden of proof is on him to prove that his signature was forged and he was made the Director of the company without his knowledge. The said principle has also been recognised by various Courts in a catena of cases. In this regard, I note the following observations of the Hon'ble Securities Appellate Tribunal in the matter of *Kalidas Dutta vs. SEBI* decided on January 23, 2018:

"...we are of the considered opinion that this appeal can be disposed of with a direction to the appellant to obtain appropriate documents/orders from the competent authority to the effect that he was fraudulently appointed as director of the company in question on 10th February, 2015. For this purpose, the appellant is granted time up to one year to do the needful and submit the same to SEBI. In the eventuality of appellant producing the documents to the satisfaction of SEBI that he was fraudulently inducted as one of the directors of the company, SEBI will pass appropriate orders as per law."

- 24.2.6. Therefore, I am of the considered view that Sujit may be granted 365 days' time to obtain appropriate order from the competent authority with respect to his allegation of forgery. The said order, if any, shall reach SEBI within 365 days from the date of this order. Till that time the directions against Sujit passed in this order shall not take effect. Pending such determination, I am compelled to accept the MCA records in respect of his tenure. This finding on the tenure will come into effect to Sujit on the expiry of 365 days of this order, if the order of the Competent Authority is not produced by Sujit within such 365 days, or, if produced within such period, and the same is not in favour of Sujit, whichever is earlier.

24.3. Sumanta:

- 24.3.1. As per his submission, I note that Shri Ratan Chowdhury is uncle of Sumanta and he was appointed as Director in BHAPL on February 10, 2014 and resigned from Director on June 10, 2014. I find that Sumanta has not disputed about his appointment as Director in the company as per MCA website, he was appointed as Director in BHAPL on February 10, 2014 and ceased to be Director on June 10, 2014. He has submitted that on behalf of the company he has tried his best

to pay the creditors whoever came to company and also tried to reach out to the creditors who did not approach to company for the claims. To support his claim, he has attached a handwritten list of entities, few statements available with him dated February 23, 2013, January 03, 2014, January 30, 2014, January 31, 2013 and an advance payment return dated November 13, 2013. He has further informed that certain statements/documents have been submitted/seized and pending before the Hon'ble High Court at Kolkata. From the documents./statements available before me, I find that these statements produced by him are prior to his appointment as Director of the company and the handwritten list is not verifiable.

24.3.2. Further, Sumanta has submitted a paper publication informing that M/s G R Agro Project Limited ("**GRAPL**") had taken all assets and liabilities including past, present and future liabilities of the Bishal Group of companies, which includes BHAPL, ownership of the company and management control with effect from June 05, 2014, therefore his contention that the liabilities to pay to the creditors are upon GRAPL. Further, he has submitted that BHAPL had published vide paper publication dated June 13, 2014 to return the amounts to the creditors of the Bishal Group of Companies. On perusal of the said copy of paper publication, I find that GRAPL has given the said public notice that it has taken all the liabilities and assets of BHAPL with effect from June 05, 2014. There is no proof that the BHAPL has made entire repayment during their tenure. The purported taking over the liability by GRAPL would also not alter/ absolve his duty as Director during his tenure to ensure that the company refunds the money to the investors.

25. I find that the liability of the Company and the concerned directors to repay is a statutory liability. I find that the legal/statutory obligations imposed under the Companies Act cannot be divested in favour of others. The statutory liability to repay the investors continues to vest on the persons liable to repay as per section 73(2) of the Companies Act. An agreement can apportion the joint and several liabilities among the persons liable to repay as per section 73(2) of the Companies Act, 1956. However, the statutory liability towards the subscribers continues to remain with all who are jointly and severally liable to repay to the subscriber. Therefore, BHAPL is required to discharge its obligation which cannot be divested by an agreement, if any. Since the company is liable for such repayment, Noticees were also liable to ensure such repayment by the Company during their tenure.

26. Thus, the contention of Sumanta that the GRAPL had taken over the charges of assets and liabilities and he cannot be liable to make the refund to the investors is not acceptable.

27. I also note that Sujit and Sumanta were appointed after the issuance of RPS and had subsequently resigned from the company as the Director(s). Therefore, though they are not personally liable to refund the money collected from the issuance of RPS, they are liable to ensure that the company refunded the money to its investors during their

period of Director(s) with the company.

28. I note that there is writ petition filed before the Hon'ble Calcutta High Court W.P. 13162 (W) of 2015 – Rumpa Biswas & ors Vs Union of India with W.P.18501 (W) of 2015 Durga Prosad Bhattacharya & ors Vs. Union of India & ors. With W.P. 29775 (W) of 2014 Anukul Ranjan Sarkar & ors. Vs State of West Bengal & ors., in respect of Bishal Group of Company. BHAPL is one of the amongst the group company of Bishal Group of company. Hon'ble Calcutta High Court vide order dated August 12, 2016 directed not to dispose of any of the movable or immovable properties till further direction of the Court. Further, the direction against the Director(s)/Partner(s) of the company not to dispose of or not to create any encumbrances of their valuable movable or immovable properties (personal) till further order was with effect from the date of the Order. In the instant case, Sujit was Director of company during the period July 19, 2012 to October 10, 2013 and Sumanta was Director of company during the period February 10, 2014 to June 10, 2014. I note during their period of Directorship there was no restriction on the company by virtue of the aforesaid order. Therefore, the Hon'ble Calcutta High Court Order does not come in the way of the Noticees ensuring the company's liability to repay during their tenure. Therefore, I find that Noticees as Director(s) did not fulfill their duty and obligations to ensure refund the money to the investors during their tenure.
29. 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. "
30. A person cannot assume the role of a Director in a company in a casual manner. The position of a 'Director' in 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 Noticees cannot therefore wriggle out from liability. Accordingly, I note that Shri Sujit Acharjee and Shri Sumanta Modak were responsible for all the deeds/acts of the company during the period of their directorship and were obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act. In view of the failure to discharge the said liability of ensuring refund Shri Sujit Acharjee and Shri Sumanta Modak during relevant time of their tenure, they are liable to be debarred for an appropriate period of time.
31. In view of the discussion above, appropriate action in accordance with law needs to

be initiated against Noticees, namely, Shri Sujit Acharjee and Shri Sumanta Modak

ORDER

32. 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:

- i. Shri Sujit Acharjee and Shri Sumanta Modak 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 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 for a period of 4 (four) years from the date of this order. It is also clarified that the period of restraint already suffered by Shri Sujit Acharjee and Shri Sumanta Modak shall be taken into account for calculating the period of restraint now imposed.
- ii. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the Noticees shall remain frozen.
- iii. This order will come into effect with respect to Shri Sujit Acharjee on the expiry of three hundred and sixty fifth (365) days of this order, if the order of the Competent Authority is not produced by Shri Sujit Acharjee within such 365 days, or, if produced within such period, and the same is not in favour of Shri Sujit Acharjee, whichever is earlier. This direction shall not take effect if the order of the Competent Authority is produced within such period and the same is in favour of Shri Sujit Acharjee. Till the time, the interim directions against Shri Sujit Acharjee shall continue.
- iv. In respect of Shri Sumanta Modak, the directions shall come into force with immediate effect.

33. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.

34. 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.

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

DATE: January 21, 2020
PLACE: MUMBAI

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