

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

FINAL ORDER

UNDER SECTIONS 11(1), 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECTION 73 OF COMPANIES ACT, 1956

In respect of:

S. No.	Name of the entity	PAN No.
1.	Mr. Nand Lal Koiree	AREPK5807E
2.	Mr. Ashok Saw	BLXPS0512A
3.	Mr. Mukesh Singh	BNVPS8079L
4.	Mr. Ganesh Thakur	AFOPT8328K
5.	Mr. Barun Kumar Rawani	AFPPR5448M
6.	Mr. Bisun Rawani	ANDPR8996C
7.	Ms. Mohini Devi	NOT AVAILABLE

In the matter of Rainbow Industries and Constructions Ltd.

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

1. SEBI had passed an ex-parte *Interim Order* dated November 22, 2018 (hereinafter referred to as "**Interim Order**") against Rainbow Industries and Constructions Ltd. (hereinafter referred to as "**RIACL/Rainbow/Company**") and its Directors/Promoters for violation of public issue norms by the *Company*. The *Company* was found to have issued Redeemable Preference Shares (hereinafter referred to as "**RPS**") to at least 10,052 investors during the Financial Years 2011-13 and raised at least INR 11,36,24,500.00 through the said RPS issue.

2. The *Interim Order* has recorded that the *Company* has *prima facie* violated Sections 56, 60, 67(3), 73(1) and 73(3) of Companies Act, 1956 hence, it was thought fit to take certain measures on imminent basis to protect the interest of investors and that of Securities Market



and accordingly the following directions were issued to the Company, its Directors and Promoters:

- a) *RIACL [PAN: AAECR6197A] and its Promoters and Directors including Mr. Ashok Saw [PAN: BLXPS0512A], Mr. Mukesh Singh [PAN: BNVPS8079L], Ms. Nidhi Yogendra [PAN: Not Available], Mr. Barun Kumar Rawani [PAN: AFPPR5448M] and Mr. Bisun Rawani [PAN: ANDPR8996C] are restrained from mobilizing funds through the issue of RPS or through any other form of securities, to the public and/ or invite subscription of securities from the public, in any manner whatsoever, either directly or indirectly till further directions;*
- b) *RIACL and its Promoters and Directors including Mr. Ashok Saw, Mr. Mukesh Singh, Ms. Nidhi Yogendra, Mr. Barun Kumar Rawani and Mr. Bisun Rawani are prohibited from issuing Prospectus or any Offer Document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further directions;*
- c) *RIACL and the other Noticees namely Mr. Ashok Saw, Mr. Mukesh Singh, Ms. Nidhi Yogendra, Mr. Barun Kumar Rawani, Mr. Bisun Rawani, Mr. Ganesh Thakur [PAN: AFOPT8328K], Mr. Dhiren Rawani [PAN: AGWPR6262R] including his legal representatives, Mr. Nand Lal Koiree [PAN: AREPK5807E] and Ms. Mohini Devi [PAN: Not Available] 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, till further directions;*
- d) *RIACL and the other Noticees namely Mr. Ashok Saw, Mr. Mukesh Singh, Ms. Nidhi Yogendra, Mr. Barun Kumar Rawani, Mr. Bisun Rawani, Mr. Ganesh Thakur, Mr. Dhiren Rawani including his legal representatives, Mr. Nand Lal Koiree, Ms. Mohini Devi 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 RPS;*

e) *RIACL and its present Directors shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of RPS sought vide letters dated May 30, 2018 and July 10, 2018.*

3. The *Interim Order* further called upon *Rainbow* and its abovementioned Directors and Promoters, to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act, 1992 should not be issued/imposed, including the following directions, namely:

a) *The Noticees to jointly and severally refund money collected from the public without complying with the public issue norms through the offer and allotment of RPS, 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*

b) *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, either directly or indirectly, for an appropriate period.*

4. I note that *Rainbow* and its Directors and Promoters were given 21 days' time from the date of receipt of the *Interim Order*, (in the form of *Show Cause notice*) to file their replies and 45 days' time from the date of receipt of the *Interim Order* to seek an opportunity of Personal Hearing, failing which, the findings recorded in the *Interim Order* with respect to violation of public issue norms and the directions contained therein (mentioned at paras 23 (a) to (d) and 24 of the *Interim Order*) shall become final and absolute against the *Noticees* therein.

5. I note that all the *Noticees* in the *Interim Order*, except for *Rainbow*, Mr. Dhiren Rawani and Ms. Nidhi Yogendra (i.e. *Noticees* no. 1, 2 and 7 to the *Interim Order*) have furnished their written replies after receipt of the *Interim Order* cum show cause notice. Under the circumstances, I observe that in terms of the *Interim Order*, directions issued in the *Interim Order* as quoted at paras 2 and 3 above, have become final and absolute against *Rainbow*, Mr. Dhiren Rawani and Ms. Nidhi Yogendra (i.e. *Noticees* no. 1, 2 and 7 to the *Interim Order*).



Accordingly, the scope of the present proceedings is confined to examine the role and responsibilities of the seven (07) *Noticees* only named in the beginning of this order.

6. I note that *Noticees no. 1 to 7* in the present proceedings (who were *Noticees no. 3, 4, 5, 6, 8, 9 and 10* to the *Interim Order*) have filed written replies which were received on December 27, 2018 and January 7/15, 2019. All of them, while requesting me to dispose of the proceedings in their favour, have made almost identical submissions in their written replies, as highlighted below:

- a) That Mr. Dhiren Rawani (expired) was the in- charge of the RPS issue and they cannot comment any more about the matter.
- b) Further, Mr. Nand Lal Koiree (*Noticee no. 1*) has submitted that he was the Director of the *Company* from January 15, 2010 to August 18, 2014 and that Mr. Dhiren Rawani was the Chairman cum Managing Director from January 15, 2010 and was the *whole & sole* in-charge of the RPS issue. He has pleaded that he has not committed any default as alleged in the *Interim Order* which are completely baseless, concocted and that he has no liability.
- c) Mr. Barun Rawani (*Noticee no. 5*) has admitted that he is the Director of the *Company*, however, since his joining he was deputed in the '*packaged drinking water-Rainbow Neer*' unit and that this unit has been sold in June 2017. Similarly, Mr. Bisun Rawani (*Noticee no. 6*) has also admitted his directorship in the *Company*, however has submitted that he was deputed in the '*Hotel Rainbow Regency*' unit since joining. They also submitted that they do not have concrete information about the RPS issue and Mr. Nand Lal Koiree along with Mr. Dhiren Rawani were in-charge of RPS.

7. After perusing the written replies, an opportunity of Personal Hearing was granted to the *Noticees* on December 17, 2019, but none of the *Noticees* appeared before me. However, the *Noticees* have filed affidavits dated December 12, 2019 (received on December 19, 2019) requesting for another opportunity for Personal Hearing. In their affidavits the *Noticees no. 1 to 6* have also admitted holding directorship in the *Company* and have stated that they will be furnishing the audit report and other documents by March 15, 2020. Ms. Mohini Devi (*Noticee no. 7*) has submitted that she was the Promoter of the *Company* but has left the *Company* on



April 10, 2013. Acceding to the request of the *Notices* and in the interest of natural justice, another opportunity of Personal Hearing was accorded to all of them on March 24, 2020.

8. I find that *Noticee no. 7* (Ms. Mohini Devi) vide another affidavit dated March 19, 2020 has submitted that she is not concerned with the *Company* as she is the Ex-Director and has resigned from the *Company*. Mr. Ashok Saw (*Noticee no. 2*) and Mr. Mukesh Singh (*Noticee no. 3*) have submitted similar affidavits dated March 19, 2020 stating that they have not been able to submit the necessary documents by March 2020 due to unavoidable circumstances and have requested for additional three months to produce the relevant documents. Further, *Noticee no. 4* (Mr. Ganesh Thakur) has submitted an affidavit dated March 19, 2020 stating that he has resigned from the *Company* in July 2016 and his resignation has been accepted by the Chairman of the *Company*. Therefore, he is not concerned with the *Company* nor has any liability towards the *Company*. I also note that Mr. Mukesh Singh vide email dated March 21, 2020 (on behalf of *Notices no. 1,2,3,4 and 7* herein) has requested for adjournment of the Personal Hearing due to COVID-19 pandemic. Keeping the aforesaid submissions in view, and in the interest of justice, another opportunity of Personal Hearing was accorded to the *Notices* on August 4, 2020. They were informed through available email address and also by way of newspaper publication to attend the Hearing by using alternative virtual modes including video-conference. However, none of the *Notices* has attended the Hearing or nor has submitted any of the documents despite requesting them to submit documents for which they were also granted extension of time, since December 2019. Considering the fact that the present proceedings involve a sensitive issue of raising of money from the public, I deem fit to proceed to dispose of the present proceedings on the basis of facts on record and the submissions already received from the *Notices*, as adequate opportunities have already been granted to the *Notices* to appear for hearing and also to submit details / documents in support of their earlier submissions.

9. I find that, the only question that merits consideration before me is whether *Notices no. 1 to 7* in the present proceedings, as Directors/Promoters of *Rainbow*, are liable for issuance of directions against them as contemplated at para 24 of the *Interim Order* which have been reproduced at para 3 above in this order.

10. While considering the liability of the above *Notices*, the available records on MCA 21 Portal show that *Notices no. 1 to 6* were Directors of the *Company* during the period of



mobilization of money through RPS issue (FY 2011-13). Their directorship on the Board of the *Company* including tenure thereof has already been elucidated in the *Interim* Order and none of these Directors has disputed the same. The main submissions made on behalf of these *Noticees* are that Mr. Dhiren Rawani (*Noticee no. 2* to the *Interim* Order), was the Managing Director of the *Company* and was the sole in-charge of the RPS issue while the above seven *Noticees* had no say in the management of affairs of the *Company*. The *Noticees* have submitted that even though they were holding the post of Directors, they were not associated with the *Company* in conducting and managing its the affairs. However, these *Noticees* have not been able to produce any documents to substantiate their claim of non-involvement in managing the affairs of the *Company* or to substantiate that Mr. Dhiren Rawani was indeed the Managing Director of the *Company*. Similarly, it has also been submitted by two of the *Noticees* that Mr. Nand Lal Koiree was also in-charge of the RPS issue along with Mr. Dhiren Rawani, but again, no documents have been submitted to substantiate such claims made by them.

11. In any case, the *Noticees no. 1 to 6* have been admittedly holding the post of Directors of the *Company* during the relevant period, when funds were mobilized through RPS issue and therefore are liable for appropriate action against them for the violations and default as alleged against them in the *Interim* Order. The argument of Mr. Nand Lal Koiree (*Noticee no. 1*) and Mr. Ganesh Thakur (*Noticee no. 4*) that they have resigned from the *Company* in 2014 and 2016 respectively and were not concerned with the management of the affaires of the *Company* hence no liability can be fastened on them, would not come to their rescue in the absence of any documents to show that they had indeed no role to play in the mobilization of the fund during the period when they were Directors of the *Company* or that they had actually no role in managing the affairs of the *Company* during the relevant period. It has been submitted that Mr. Dhiren Rawani was the Chairman cum Managing Director of the *Company*, who was entirely managing the issue of RPS, however, as pointed out about the said claim is not supported by any verifiable evidence.

12. In the *Interim* Order, the *Company* and *Noticees* have been found to have indulged in activities in violations of Section 56, 60, 67(3), 73(1) and 73(3) of Companies Act, 1956. The said *Interim* Order also spells out in clear and unambiguous terms, that in the event of the *Noticees* not furnishing of any rebuttal within the specified period, the observations made under the *Interim* Order shall become final and absolute against them. The *Interim* order also



records that based on information obtained from MCA21 Portal and the documents received from the complainant, the *Company* has issued RPS to 5379 persons amounting to Rs. 6,00,05,000/- during F.Y. 2011-12 and to 4673 persons amounting to Rs. 5,36,19,500/- during F.Y. 2012-13. I find that the *Company* has not till date filed any reply rebutting the allegations and observations made in the *Interim* Order pertaining to the mobilization of the above cited amounts of funds through the issuance of RPS from more than 49 persons, I further note that even the *Notices* before me have not denied the issuance of RPS and mobilization of funds as mentioned above. Therefore, based on the material available on record and having considered the submissions advanced by the *Notices*, I have no hesitation in holding that issuance of the above noted RPS by the *Company* remains undisputed and falls squarely within the scope of Section 67 of the Companies Act, 1956 since, 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 and in this case, undisputedly the *Company* has on record issued RPS to more than 49 persons.

13. As stated above, the *Company* till date has not preferred to file any reply nor has chosen to avail the opportunities of Personal Hearing granted to it in the matter. The above *Notices*, have also not disputed the observations recorded in the *Interim* Order with respect to the mobilization of fund in violation of the aforesaid provisions of Companies Act, 1956. However, the submissions of the *Notices* center around the contentions that despite holding the post of Directors, they were not involved in the management and other business affairs of the *Company* and that the entire work of mobilization of fund through the issuance of RPS was done by Mr. Dhiren Rawani, hence, they should not be held accountable for the alleged violations committed by the *Company* while mobilizing funds through issuance of RPS. Against the aforesaid background, the limited issue that requires consideration here is the determination of liability of the *Notices*, in their respective capacity of Director of the *Company*, in the matter of mobilizing funds for the *Company* by acting against the norms and rules of the Companies Act, 1956.

14. It is noted that the MCA Records *prima-facie* mention the names of the *Notices* no. 1 to 6 as Directors of the *Company* but do not specifically state the type of directorship that was being held by these *Noticee* Directors. However, on a careful perusal of Form 32, I note that the *Notices* no. 1 to 4 have been shown therein to be holding the post of Executive Directors of the *Company* which has not been contradicted by these *Notices*. In addition, Mr. Dhiren



Rawani and Ms. Nidhi Yogendra (*Notices no. 2 and 7 to the Interim Order*) qua whom the directions have become final and absolute, have also been mentioned as Executive directors in the Form 32 filed with MCA. It will be relevant herein to refer to Rule 2(1)(k) of the Companies (Specification of definitions details) Rules, 2014 which states that an “Executive Director” means a Whole Time Director as defined in clause (94) of Section 2 of the Companies Act, 2013. Therefore, in the absence of any material to the contrary, these Directors i.e. the *Notices no. 1 to 4* can be held to be performing as Whole Time Directors of the *Company* during the relevant period of fund mobilization.

15. The record before me (Form 1 filed with ROC) further shows that the *Notices no. 1 to 4* are also the Promoters of the *Company*. As far as the *Notices no. 5 and 6* are concerned, it is noted that, though these two *Notices* have not disputed their appointment as Directors of the *Company*, however, have emphatically stated that they were deputed to work in different units of the *Company* since the time of their joining and were not responsible for the business management of the *Company*. In this respect, from the perusal of Form 32 as available with MCA records, it is observed that *Notices no. 5 and 6* were appointed as Independent Non-Executive Directors of the *Company*.

16. Further, from a conjoint reading of the priorities of law prescribed under Sections 56, 60, 67 and 73 of the Companies Act, 18956, it is noted that in case of public offer, the provisions relating to public issue such as filing of prospectus, listing of securities and consequence of failure to get the securities listed on the Stock Exchange etc, as provided under Section 73 of the Companies Act, 1956 come into play. Section 73 provides that where the permission has not been applied for, or such permission having been applied for has not been granted, a company shall forthwith repay without interest all the moneys received from the 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, become jointly and severally liable to repay that money with interest.

17. Having considered the above facts and provisions of relevant law governing public issues in Companies Act, I find it appropriate to get guided by the law as enunciated through judicial decisions. As the issue in hand pertains to mobilization of fund in contraventions of provisions as stated above, as a consequence, the matter views towards refund of the funds so



mobilized, and the relevant provisions of law dealing with the same are provided under Section 73(2) read with Section 5 of the Companies Act, 1956. In this regard, the issue of liability of Officer in Default as provided under Section 5 of the Companies Act, 1956 also came up for consideration before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in the matter of *Pritha Bag v. SEBI* [Appeal no. 291/2017 – DoD February 14, 2019] wherein it has been held that,

"....Unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) cannot be invoked against the appellant. In the instant case, the appellant has annexed documents to indicate that the company had a managing director, namely, Mr. Indranath Daw and, therefore, as per the provisions of Section 5 the managing director would be an officer in default. We also find that there is no finding given by the WTM that the appellant was the managing director or whole time director or was a person charged by the Board with the responsibility of compliance with the provisions of the Companies Act and, consequently, could not be made responsible for refunding the amount under Section 73(2).

...Reliance on the judgment of this Court by the respondent in the case of Manoj Agarwal vs. SEBI in Appeal No. 66 of 2016 decided on July 14, 2017 is not applicable and is distinguishable. The Tribunal in the case of Manoj Agarwal found that there was no material to show that any of the officers set out in clauses (a) to (c) of Section 5 or any specified director of the said company was entrusted to discharge the application contained in Section 73 of the Companies Act. In the instant case, there is sufficient material on record to show that there was a managing director and in the absence of any finding that the appellant was entrusted to discharge the application contained in Section 73 of the Companies Act, the direction to refund the amount along with interest from the appellant is wholly illegal.... "

18. I find that in the instant matter, the records before me don't specify the appointment and holding of the post of Managing Director by any persons. The *Noticees*, though have submitted that Mr. Dhiren Rawani was acting as the Managing Director, however, none of the *Noticees* has produced any documents in support thereof to substantiate the claim of Mr. Dhiren Rawani acting as Managing Director. Therefore, I am constrained to hold that since the *Noticees no. 1 to 4* were holding the post of Executive Director of the *Company* during the



relevant period of issuance of RPS and mobilization of funds from public, being Whole Time Director of the *Company*, they were in charge of management of the *Company* and would fall squarely in the category of Officer in Default as defined under Section 5 of the Companies Act, 1956.

19. Having said that the *Noticees no. 1 to 4* were the Officer in Default, with a view to ascertain their liability to refund the funds to the Investors, I further find it pertinent to refer and rely on to the observations of Hon'ble SAT in its Order dated July 17, 2017 passed in Appeal no. 66 of 2006 in the case of *Manoj Agarwal v. SEBI* wherein Hon'ble SAT has held that liability [under Section 73(2) of the Companies Act, 1956] of the appellant Director therein would be restricted to refund the amount which was collected during the period of his directorship in the company, jointly and severally with the company and other Directors.

20. In view of the aforesaid observations of Hon'ble SAT and considering the fact that *Noticees no. 1 to 4* in the present proceedings were the Whole Time Directors of the *Company* during the period of unauthorized mobilization of funds from public through RPS, I hold them to be Officers in Default and therefore, liable to make refund jointly and severally along with the *Company*, the money so collected during their respective period of directorship as mentioned in the *Interim Order*.

21. Further, following the proposition of law as laid down by Hon'ble SAT in the matter of *Pritha Bag (supra)* I am of the view that Mr. Barun Rawani (*Noticees no. 5*) and Mr. Bisun Rawani (*Noticee no. 6*) were not occupying the post of Director on whole time basis but were associated with *Company* as Independent Director. Therefore, considering the materials on record and propositions of law as referred to above, in my view, the *Noticees no. 5 and 6* deserve benefit of doubt from the liability of refund of money as there is documentary evidence available on record indicating that *Rainbow* was being managed by its Whole Time Directors (who are Officers in Default as per Section 5(b) of Companies Act, 1956) during the relevant time of fund mobilization through RPS.

22. Notwithstanding the above, the *Noticees no. 5 and 6* can't be exonerated from the charge levelled against them in the *Interim Order* completely. It is undisputed that they were Directors of the *Company* during the relevant period and while holding the post of Director, though in Independent and Non-Executive capacity, these two *Noticees* have not made any submissions and have not produced any evidence to suggest that they were diligent in their



duty as Independent Directors and have performed their role of Independent Director diligently so as to protect the interest of investors.

23. Undeniably, the two *Noticees* i.e *Noticee no. 5* and *6* were associated with the *Company* at the time of issuance of RPS and the records of MCA still show them to be associated with the *Company*. These two *Noticees* through their failure to act diligently and by giving their consent for the RPS issue made by the *Company* in non-compliance with the public issue norms and rules have rendered themselves, liable for directions u/s 11 B of the SEBI Act. As noted above, apart from the *Noticees no. 2* and *3*, the *Noticees no. 5* and *6* are still continuing their association with the *Company* in the capacity of Directors and they have failed to produce any document or material to show that sufficient steps have been taken by them to ensure compliance with the directions issued in the *Interim Order* including the direction to ensure refund of the money to the investors and also to submit a report as called for in the said *Interim Order*.

24. Now moving on to the determination of the role and liability of *Noticee no. 7* (Ms. Mohini Devi), it is noted that she has submitted vide her letter received on January 15, 2019 and affidavit dated December 12, 2019 that she was the Promoter of the *Company*, but, vide a subsequent affidavit dated March 19, 2020 has stated that she was the Ex-Director and has resigned from the *Company*. Her submissions appear to be prima facie contradictory and ambiguous, although as per the *Interim Order* and MCA records, she has been mentioned as the Promoter of the *Company*. She has also submitted that she is not concerned with the *Company* anymore and has left the *Company* on April 10, 2013 hence has no liability towards the *Company*. This is a grossly implausible argument taken by *Noticee no. 7* who was admittedly a Promoter of the *Company* during the period when money was raised by the *Company* (*Rainbow*) from public through issue of RPS, hence as a Promoter of the *Company*, she cannot evade her responsibilities and liabilities associated with the said issue of RPS.

25. The role of Promoter in the fund raising by a company through the issue of Prospectus, is highlighted in Section 62 of the Companies Act, 1956 which provides for civil liability for mis-statements in the Prospectus, the relevant extract whereof is reproduced hereunder:

“62. Civil Liability for mis-statements in Prospectus

(1) Subject to the provisions of this section, where a Prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be



liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say,

(a) every person who is a Director of the company at the time of the issue of the Prospectus; (b) every person who has authorised himself to be named and is named in the Prospectus either as a Director, or as having agreed to become a Director, either immediately or after an interval of time;

(c) every person who is a Promoter of the company; and

(d) every person who has authorised the issue of the Prospectus :

Provided that where, under section 58, the consent of a person is required to the issue of a Prospectus and he has given that consent, or where, under sub-section (3) of section 60, the consent of a person named in a Prospectus is required and he has given that consent, he shall not, by reason of having given such consent, be liable under this subsection as a person who has authorised the issue of the prospectus except in respect of an untrue statement, if any, purporting to be made by him as an expert.

(2) No person shall be liable under sub-section (1), if he proves –

(a) that, having consented to become a Director of the company, he withdrew his consent before the issue of the Prospectus, and that it was issued without his authority or consent ; (b) that the Prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent ;

(c) that, after the issue of the Prospectus and before allotment there under, he, on becoming aware of any untrue statement therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason therefor; or (d) that –

..... ”

26. In terms of the aforesaid Section, every Promoter of the company is liable to pay compensation to every person who subscribes for any shares or debentures by reposing faith in the said Prospectus, for any loss or damage sustained due to any untrue/ false statement made in the Prospectus. Thus, the law recognizes the role & possible /complicity of the Promoter in the issue of securities through Prospectus and fastens on him / her, liability for any wrongful statement made in the prospectus. The said Section 62 of the Companies Act, 1956, also provides that no person shall be liable for any untrue statement in the Prospectus, if he/she proves *inter alia* that the Prospectus was issued without his/her knowledge or consent, and that on becoming aware of its issue, he/she forthwith gave reasonable public notice that it was issued without his/her knowledge or consent. Applying the same principle



underlying Section 62 of the Companies Act to the present case, I note that the *Noticee no. 7* has failed to prove that she was unaware of the RPS issue or that she had given a reasonable public notice that the said RPS were issued without her knowledge or consent. Thus, the contention of the *Noticee no. 7* is found to be grossly untenable hence rejected.

27. In view of the above findings, I, in exercise of powers conferred upon me under Sections 11, 11A and 11B of the SEBI Act, 1992 read with Section 19 thereof dispose of the present proceedings by issuing following directions:

- a) *Noticees no. 1 to 4* are directed to refund money jointly and severally collected by *Rainbow* from the public through the offer and allotment of RPS without complying with the prescribed public issue norms, 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).
- b) *Noticees no. 1 to 4* are directed to provide within a period of one (01) month, 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, held in physical form and demat form. They are further 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 such sale proceeds in an Escrow Account opened with a nationalized Bank. The sale proceeds shall be utilized for the sole purpose of making refund/repayment to the investors/applicant till the full refund/repayment as directed above is made.
- c) The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments.
- d) After completing the aforesaid repayments to the investors, *Noticees no. 1 to 6* shall file a report of completion of repayment with SEBI by addressing their communication to the Division Chief, Division of Regulatory Action-4, Enforcement Department-1, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla



Complex, Bandra (East) Mumbai –400051, within a period of three (03) months from the date of this Order. The report of repayment shall be duly certified by two independent Chartered Accountants licensed by the Institute of Chartered Accountants of India (ICAI).

- e) *Notices no. 1 to 6* are restrained/prohibited from accessing the Securities Market by issue of Prospectus/Offer Document/advertisement or otherwise in any manner whatsoever, and are also refrained/prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four (04) years from the date of this Order or till the completion of refund to the investors of Rainbow, in terms of the *Interim Order*, whichever is later. During the aforesaid period of debarment or prohibition, the *Notices* are also restrained from associating with any company whose securities are listed on a recognized stock exchange and any company which intends to raise money from the public, or any other intermediary registered with SEBI in the capacity of Director/Promoter/Senior Management.
- f) *Noticee no. 7* is restrained/prohibited from accessing the Securities Market by issue of Prospectus/Offer Document/advertisement or otherwise in any manner whatsoever, and are also refrained/prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four (04) years from the date of this Order.
- g) During the aforesaid period of debarment/restrain or prohibition, the *Notices are* also restrained from associating with any company whose securities are listed on a recognized stock exchange and any company which intends to raise money from the public, or any intermediary registered with SEBI in the capacity of Director/Promoter/Senior Management.
- h) It is clarified that during the period of restraint, the existing holding of securities of the *Notices* including units of mutual funds, shall remain frozen and can be utilized only for the repayment to the investors as directed above.

28. The Order shall come into force with immediate effect.



29. Obligation of the aforesaid *Noticees*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the aforesaid *Noticees* in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

30. Copy of this Order shall be forwarded to the *Noticees*, recognized stock exchanges, depositories and RTA's of all Mutual Funds for information and necessary action.

31. 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 *Noticees*.

DATE: SEPTEMBER 25, 2020

PLACE: MUMBAI


S. K. MOHANTY

**WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

