

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

DIRECTIONS UNDER SECTION 11(1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF SURYA AGROILS LIMITED, MR. S. K. BHARGAVA, MR. AJAY JAIN, MR. M. A. MENON AND MR. RAJESH KAPUR

1. The facts giving rise to the present proceedings so far as they are relevant are summarized below. Securities and Exchange Board of India (hereinafter referred to as SEBI) noticed, through a press report in 1996, about the irregularities in the public cum rights issue of Surya Agroils Limited (hereinafter referred to as the company) which came out in the year 1993. At the time of the said issue, the company had its registered office at 1, Industrial Area, Salamatpur, District Raisen, Madhya Pradesh. The report stated that as the shares were offered at Rs.25/- each i.e. at a premium of Rs.15/- against the prevailing market price of around Rs.20/- per share, the Rights Issue had failed. It was further reported that Mr. S.K. Bhargava, the then Chairman of the company approached few financiers to bail out the aforesaid issue and the said financiers then arranged for subscription of 61,74,200 shares through stockinvests. However, it appeared that there was some dispute between the financiers and the company because of which the company did not issue share certificates to the financiers and the financiers in turn canceled the stockinvests. It was alleged that the company entered into a fresh deal with another financier and agreed to allot the said 62 lakh shares and in fact issued certificates for 30 lakh shares as fully paid-up in January, 1994. These shares were found to have been sold in the market by the said financiers. Since the quantity of shares dealt with was large, the stock brokers/sub-brokers had after verification with the company confirmed that the shares were fully paid-up and freely transferable. However, when the shares allotted/issued under the rights issue of the company were lodged for transfer, the company had refused to transfer the shares in spite of its earlier confirmation that the shares were fully paid up and transferable.

2. Pursuant to the said reports, SEBI vide order dated May 15, 1996 conducted inspection/investigation in the matter of dealing in the shares in respect of its public cum rights issue and to look into the matters concerning under-subscription to the said issue, acceptance of late and irregular applications, allotment of shares without the actual receipt of application money, listing of shares beyond stipulated period, if any, etc. SEBI had also sought information from the company, vide its various letters/summons dated June 28, 1996, January 2, 1997, January 14, 1997, January 27, 1997 and June 18, 1999. The company was *inter alia* advised to submit the list of top 100 applicants, certificates from the Registrar to the Issue stating that, it had received all the stock invest instruments alongwith the application, evidence of dispatch of share certificates to the top 100 applicants in public and rights issue etc. The company had not only failed to provide the required information as sought by SEBI, but also vide letters dated January 13, 1997 and January 20, 1997 stated that the summons issued under section 11(3) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act) was without the proper authority of law. In response, SEBI informed the company that, its interpretation of the provisions of the Act is misplaced. SEBI also brought to the notice of the company about the judgment of the Hon'ble Gujarat High Court in the matter of Karnavati Fincap Ltd and Alka Spinners Ltd Vs SEBI, wherein the Hon'ble Court *inter alia* observed that "*The words 'persons associated with the securities market' are of much wider import than intermediaries. 'Persons associated' denotes a person having connection or having intercourse with other; in the present case that 'other' with whom a person is to have connection or intercourse is the 'securities market'..... It is inconceivable to think that a buyer or seller of a scrip is not a person associated with securities market, where or through which he transacts in his business, whether as trader or as investor, of selling or buying the required scrip.*" Thereafter, the company challenged the aforesaid order of SEBI dated May 15, 1996 before the Hon'ble High Court of Delhi as Civil Writ Petition No.1268/1997. Hon'ble Delhi High Court had neither stayed the investigation proceedings nor granted any

interim relief to the company. As there was no stay of the investigation proceedings, fresh summons u/s 11(3) of the Act was issued by SEBI to the company on December 02, 1997. The company, again failed to submit the information called for and thus, failed to comply with the summons. As SEBI had not received any information from the company, vide letter dated May 14, 1998, it had again sought comments from the company on the findings of the investigations, specifically stating that, in the absence of any reply from the company, SEBI would be constrained to form an adverse inference and that it may consider appropriate action *inter alia* based on the materials available on record. The company, while referring to the aforesaid writ petition, vide letter dated May 27, 1998 chose not to respond to the comments sought by SEBI. In the meanwhile, the writ petition filed by the company was disposed of by the Hon'ble Delhi High Court vide order dated August 10, 1999. The Hon'ble Court *inter alia* observed that *"the petitioners are only being asked to clarify certain facts and the order is in the nature of an investigation of affairs of the petitioner company. The petitioners shall be at liberty to raise all these pleas before the respondents who will decide the same after hearing the petitioners in accordance with law. The present petition is, therefore, premature and is dismissed accordingly."*

3. Thereafter, the company, filed a representation before SEBI and the same was disposed of by SEBI, vide order dated November 10, 2000. In the said order, it was *inter alia* observed *"a public limited company is duty bound to conduct its affairs in a transparent manner and has obligations towards shareholders and society at large and must co-operate with the enforcement agencies looking into violations of law of land. In view of this and for completion of inquiry expeditiously SAL should render all the necessary help to the Investigating Officer of SEBI, who is probing into the alleged irregularities in arranging subscription in its public-cum-rights issue."* The aforesaid orders of SEBI dated May 15, 1996 and November 10, 2000 were challenged by the company before the Hon'ble Securities Appellate Tribunal (Hon'ble SAT), Mumbai. During the pendency of the said appeal, the representative of the company filed an affidavit before SAT on March 20, 2001 *inter alia* stating *"the*

company (the appellant) has no hesitation in providing any assistance that is required with regard to the matter under investigation.” In the light of the submissions made and the undertaking of the company, SAT vide order dated March 21, 2001 disposed of the said appeal and observed that *“In the light of the submission made and undertaking given by the Appellant in the Affidavit, effectively nothing remains on which at present an order from the Tribunal is warranted.”*

4. The company had thus deliberately neglected to submit the information called for by SEBI and prolonged the matter for more than five years, on one pretext or the other. Various information/documents sought by SEBI as early as in the year 1999 were not submitted by the company. Subsequently, pursuant to the disposal of the aforesaid appeal of the company by the Hon'ble SAT, SEBI vide letter dated July 16, 2001 had again advised the company to send its comments/clarification to the issues raised by SEBI and which had been communicated to the company vide letter dated June 18, 1999. As the company failed to do so, SEBI had given further opportunities for compliance, vide letters dated July 30, 2001 and August 7, 2001. Thereafter, as requested by the company, the time for filing the said information was extended upto September 29, 2001. The company, vide letter dated September 26, 2001, *inter alia* stated that the communication dated June 18, 1999 was a show cause notice and was purported to have been issued based on some investigation which had already been completed. According to the company, advising it to reply to a show cause notice containing various allegations would not be justified. It further urged that, what it stated before the Hon'ble SAT was that it did not have any hesitation in providing available information for the purpose of investigation. In the facts and circumstances, a show cause notice dated January 28, 2005 was issued to the company, through its managing director asking it to show cause as to why directions under section 11(1) of the Act should not be issued. Comments were also sought from Mr. SK Bhargava (ex-Chairman of the company), Mr. Ajay Jain (ex-Managing Director of the company) and Mr. M.A. Menon (ex-Executive Director of the company) vide letter dated January 28, 2005. Subsequently, a show cause notice dated February 21, 2005 was

also issued to the then company secretary of the company namely, Mr. Rajesh Kapur. It was *inter alia* alleged that the post issue report in respect of the public cum rights issue of the company was filed subsequent to the last date. Other allegations made were that there was under subscription of rights issue and also accepted late subscription, accepted irregular subscription and allotment of shares made without application money, listing of shares beyond the specified period etc. It was further alleged in the show cause notice dated February 21, 2005 that Mr. Rajesh Kapur *inter alia* had issued certain letters to State Bank of Indore (Lead Manager to the public cum rights issue of the company) advising them to accept late applications to the rights issue.

5. Mr. Ajay Jain, vide letter dated February 4, 2005 stated that all the allegations leveled in the show cause notice were against the promoter/Chairman of the company, Mr. S.K.Bhargava. He further urged that he was only a technocrat working as a whole time director of the company and that he had no knowledge about the formalities of the public issue. He contended that he did not hold a single share in the company and was merely a salaried employee of the company. Mr. Rajesh Kapur, Company Secretary, in reply to the above show cause notice, vide letter dated March 3, 2005 requested SEBI to provide copies of various documents. In response to the said letter, SEBI vide letter dated April 28, 2005 forwarded the copies of documents to him. Mr. Rajesh Kapur, thereafter, vide letter dated May 26, 2005 *inter alia* stated that he was looking after the day to day routine secretarial work like transfer of shares, filing of various forms with the Registrar of Companies, handing of investor complaints etc. In short, Mr. Rajesh Kapur claimed that he was not involved with the financial matters of the company. He further stated that he had no reason to disbelieve the bank certificate which was duly placed and taken on record by the Board of Directors of the company. He further requested SEBI to drop the proceedings as he was neither the promoter nor a part of the management of the company to have any control over the management of the company. Neither the company nor its other directors had filed any reply to the show cause notice.

6. SEBI granted an opportunity of hearing to the company and its former directors/ company secretary as mentioned above (including Mr. Rajesh Kapur) on December 5, 2006. Mr. Rajesh Kapur attended the hearing on the said date before the then Whole Time Member. As the company and other directors had failed to appear, another opportunity was granted to them (excluding Mr. Rajesh Kapur) on August 16, 2007. The letter (regarding the hearing) sent to Mr. S. K. Bhargava and Mr. M. A. Menon was returned by the postal authorities as they had left from their last known address. Thereafter, an opportunity of hearing was granted to the company, aforesaid directors and Mr. Rajesh Kapur on October 16, 2008. However, they failed to appear on the said date. Mr. Rajesh Kapur, vide letter dated October 6, 2008 requested SEBI to exempt him from appearance considering his written submission which are already on record. I note that, SEBI granted several opportunities to the company and its directors to submit their reply. However, they failed to do so, except for the replies received from Mr. Rajesh Kapur and Mr. Ajay Jain. In the facts and circumstances, I consider that no purpose would be served in giving further opportunities in the matter, and therefore, I proceed further in the matter with the available material on record.

7. I have considered the show cause notices issued to the company, its former directors involved in the management, namely Mr. S. K. Bhargava, Mr. Ajay Jain and Mr. M. A. Menon and its former company secretary, Mr. Rajesh Kapur, the replies received from Mr. Ajay Jain and Mr. Rajesh Kapur and other materials available on record. In the above background of the case, the issues for consideration are whether the company, in respect of its public cum rights issue, had accepted late and irregular applications, allotted shares without receipt of application money, listed shares beyond stipulated period etc. The facts of the case are not in dispute before me. The public cum rights issue of the company was opened on March 15, 1993. The public issue closed on March 25, 1993 and the Rights Issue on April 13, 1993. The issue (public cum rights) size was 1,97,41,968 equity shares, of which 54,50,000

equity shares were reserved for firm allotment to promoters, Indian Directors, their friends, relatives and associates. 71,45,968 equity shares were issued to existing shareholders on rights basis in the ratio of one equity share for every two shares held on the record date. I note that, 71,46,000 equity shares were offered to the public, out of which 28,58,200 equity shares were reserved for preferential allotment to Non-Resident Indians and the remaining 42,87,600 equity shares were offered to the Resident Indian Public. At the outset, I note that the company had failed to give information/documents as sought by SEBI, despite sufficient opportunities. As per the forty five day report dated May 24, 1993 (in respect of the Public Issue), the final devolvment notices were served on the underwriters as the public issue of the company was not subscribed. In terms of the ninety day report, the said public issue was reportedly subscribed to the extent of 64,39,500 shares (90.11% of the total subscription). The ninety day report, was to be filed within three working days from the ninetieth day i.e before June 25, 1993, but was actually filed belatedly by the company on September 6, 1993. Similarly, the ninety day Report in respect of rights issue which was to be filed before July 13, 1993 was filed late on September 6, 1993. As per this report, the right issue was subscribed to the extent of 94.47%.

8. I note that, in terms of the Guidelines for Disclosure and Investor Protection (originally issued by SEBI on June 11, 1992), the minimum requirement of 90% was mandatory for each issue of capital to the public. Vide Clarification I dated June 18, 1992 to the said Guidelines, the requirement of minimum subscription was made applicable to a Rights Issue with a right of renunciation. I also note that letter of offer dated March 05, 1993 mentions that, if the company does not receive minimum subscription of 90% of the issue including devolvment and underwriters within 90 days from the closure of the issue, the company shall refund the entire subscription amount. It was also alleged that the rights issue was actually under subscribed and the company accepted applications after the closure of the rights issue. The details of the subscriptions received by the company towards its Rights Issue, as per the final certificate dated June 26, 1993 of State Bank of Indore (Lead Manager) are as

follows:-

	No. of Applications	No. of shares applied	Amount (Rs.)
Cash/Cheque	152	14,201	2,13,145
Stockinvest	04	606	9,090
Total	156	14,807	2,22,235

In the said certificate, the said Bank further stated *“We further certify that there is no pending application which remains to be accounted for in the said Issue”*. However, pursuant to filing of the above certificate, the said Bank further furnished a Revised Final Certificate dated August 18, 1993 to the Registrar to the Issue, in respect of subscriptions received by it towards the rights issue of the company. The details of the said certificate are given below:-

	No. of application	No. of shares applied	Amount (Rs.)
Cash/Cheque	152	14,201	2,13,145
Stockinvest	61	61,91,272	9,28,69,080
Total	213	62,05,473	9,30,82,225

The first certificate (dated June 26, 1993) of the aforesaid Bank indicates that there were no pending applications in respect of the rights issue of the company. However, in its subsequent certificate dated August 18, 1993, the said Bank deviated from its earlier stand and certified that the total subscription in respect of the rights issue of the company was 62,05,473 shares as against 14,807 shares as certified by it earlier.

9. Incidentally during investigations, State Bank of Indore had informed that a fraud was perpetuated upon it by some of its employees against whom Bank had taken disciplinary proceedings. It is borne out that the company, vide letter dated July 17, 1993 had advised State Bank of Indore to accept applications to the rights issue till July 28, 1993, when the said issue was closed on April 13, 1993. Further, the company, vide its letter dated August 19, 1993 requested State Bank of Indore to accept applications to the Rights Issue till August 18, 1993 as the Issue had devolved and to send them the revised certificate and applications. Needless to say, subsequent to the closure of the rights issue applications were accepted. It is not in dispute that, after the closure of the issue, 61 applications for 61,91,272 shares along

with stock invests aggregating Rs.9,28,69,090 were received on August 18, 1993(much after the closure of the issue). I note that the rights issue of the company was not underwritten and hence the subscription could not have been received beyond the closure of the issue i.e. April 13, 1993. In this context, I note that, if the application received after the closure of the issue was excluded from the total number of application, the rights issue of the company would not have reached the mandatory requirement of 90% of the total issue, as required under clause D of Guidelines for Disclosure and Investor Protection (originally issued by SEBI on June 11, 1992). Clause D (b) of the said Guidelines is extracted below for easy reference :

“if the company does not receive 90% of issued amount from public subscription plus accepted devolvement from underwriters, within 120 days from the date of opening of the issue, the company shall refund the amount of subscription.”

10. Though, the SEBI guidelines provide that 90% of issued amount should be received within 120 days from the date of opening of the issue, however the Letter of Offer provided that the minimum subscription should be received within 90 days from the date of closing of the issue. Since the Rights Issue remained open for 30 days, the terms of the Letter of Offer were in compliance with the SEBI guidelines. The Rights Issue was not underwritten and no standby arrangements were made, and hence subscriptions could not be received beyond the date of closure of the issue i.e. April 13, 1993. Even if it is assumed for argument sake, that a period of 90 days was available to the company to accept subscriptions, these could be accepted only upto July 13, 1993. The investigations conducted by SEBI revealed that the Rights Issue was kept open up to August 18, 1993 when the subscriptions were received, thereby violating the SEBI guidelines which provide that a Rights Issue should be kept open for not more than 60 days. Further, the minimum subscription of 90% was not received till the closure of the Issue and not received even upto the 90th day i.e. July 13, 1993, but only on August 18, 1993. This too was in violation of the SEBI guidelines. Therefore, I note that the issue of the company failed to attain the mandatory requirement of 90%, in accordance with law. Thus, the company violated

the aforesaid clause of the guidelines issued by SEBI on June 11, 1992. The requirement of minimum subscription is also specified under section 69 of the Companies Act, 1956. Thus, the company violated the provisions of section 69 of the Companies Act, 1956 read with Clause D (b) of Guidelines for Disclosure and Investor Protection issued by SEBI.

11. Besides, the company had not only accepted late applications, but also allotted shares without the receipt of application money, in the form of accompanying stock invests. The same is in violation of section 69(3) of the Companies Act, 1956. During investigations, State Bank of Indore informed about the enquiries made by them with the banks which had issued the stockinvests used alongwith applications received at their Mumbai branch. I note that result of enquiries by bank was also verified during investigations by SEBI. Important findings in this regard are mentioned below:-

- a) The stockinvests accompanying the applications received at State Bank of Indore, Fort branch, Mumbai were cancelled in all cases and in some cases even prior to their alleged acceptance at their Bombay branch on August 18, 1993. Independent enquiries with the banks who had issued these stockinvests had also confirmed that the stockinvests were cancelled by the applicants and in some cases even before August 18, 1993.
- b) Also, one of the allottee namely G R Magnets Ltd. which was allotted 33.33 lakhs shares had informed that it did not make any applications to Public- cum Rights Issue of the company. In fact the banker of the allottee informed that stockinvests stated to be enclosed with applications were got cancelled by GR Magnets Ltd. on the date of their purchase itself i.e. August 16, 1993.
- c) There were some namely, Smt. Kanta Devi V. Chaudhary and Smt. Karuna Chowdhry who applied for 2.70 lacs and 0.70 lac shares respectively. Stockinvests accompanying these applications were issued by State Bank of Indore, Fort, Mumbai on July 26, 1993 and July 27, 1993 against the lien on fixed deposits held by them with the bank. The lien was cancelled on September 11, 1993 at the request of the depositor. While the stockinvests issued by Fort branch was issued blank, the photocopies of stockinvest

accompanied with applications contained all relevant details. It can be reasonably inferred that photocopy of blank stockinvests were taken, particulars filled in and again photo copies taken thereof.

- d) There were 20 applications for 98 lakh shares which were accompanied by 10 stockinvests i.e. each of these stockinvests had been used along with 2 applications.
- e) Another person namely Mr. Mahesh Sodhani who had applied for 61.90 lakh shares of the company informed that stockinvests accompanying applications for these shares were cancelled.

12. I note that wrongful allotments were made in respect of the rights issue of the company by considering applications received much after the closure of the issue. These irregular applications were critical to attain the minimum mandatory requirement. In respect of the allegation of listing of shares beyond the prescribed period specified under the Companies Act, 1956, I note that the company had made the application for approval of the basis of allotment of the public issue with Madhya Pradesh Stock Exchange Limited (for short MPSE), vide letter dated June 22, 1993. The basis of allotment was approved by MPSE on June 24, 1993 and the listing permission was granted on June 25, 1993 and the shares were admitted for trading on the same day. In terms of section 73 of the Companies Act, 1956, the shares offered under the public issue were to be listed before the expiry of ten weeks from the closure of the issue, which is in the present case was June 03, 1993. As the listing permission was granted only on June 25, 1993, the listing of shares issued under the public issue of the company was not in accordance with the provisions section 73 of the Companies Act, 1956. Similarly, in the case of rights issue, application for approval of the basis of allotment was filed with MPSE by the company vide its letter dated August 21, 1993, much after the expiry of 10 weeks period from the close of the Rights Issue. The basis of allotment was approved by MPSE on August 23, 1993 and the listing permission was granted by MPSE on August 24, 1993. i.e. after the expiry of the ten weeks period from the closure of the Rights Issue. It is fairly established that the application for listing of the shares pursuant to the public cum rights issue of the company was not done in terms of the

Companies Act, 1956. As discussed in preceding paragraphs, wrongful allotments were made by considering applications received much after the close of the Rights Issue by the company. I note that the names of 46 allottees who had been cumulatively allotted 52,84,066 shares of the company were changed with that of one Mr. Mahesh Sodhani as evidenced by the information filed by the company with Delhi Stock Exchange Association Limited (DSE). Also, 10,00,000 shares were retained in the names of the original applicants who had the same address as that of one Mr. Vithal Jajoo, 39, Ramwadi, Room No.26, 1st floor, Kalbadevi Road, Mumbai-2. It has been borne out that the company did not receive the application money in respect of the said allotments. I also note that pursuant to the Board of Directors Resolution of the Company dated May 30, 1994, notices for payment of allotment money were issued to the above mentioned shareholders on May 31, 1994 calling upon them to deposit the application money within 30 days.

13. Besides, I note that the investigations conducted by SEBI revealed that the distribution schedule filed by the company with DSE showed allotments to persons from whom the consideration was not received. Section 75(1)(a) of the Companies Act, 1956 provides that a company shall not show in its Return of Allotment to be filed with the Registrar of Companies, any shares as having been allotted for cash if, cash has not actually been received in respect of such allotment. In brief, it is fairly established that the company had kept open the rights issue for more than 60 days in violation of the SEBI Guidelines. In the absence of receipt of minimum subscription in accordance with the prescribed SEBI Guidelines, the company was liable to refund the amount collected as provided in the SEBI stipulations and in accordance with the statement made in the Letter of Offer.

14. I also note that Mr. Rajesh Kapur, the then company secretary of the company had issued various certificates during the issue process of the company, some of which are mentioned below:

- a) Letter dated August 31, 1993 by the company to State Bank of Indore stating that its Public-cum-Rights Issue had been subscribed whereas investigations revealed that

the applications received at State Bank of Indore, which were considered for allotment were either not accompanied by the original stock invests or were accompanied by only the photocopy of the stock invests and allotments were made without the corresponding stock invests.

- b) Hand written letter dated August 23, 1993 to MPSE certifying that the Rights Issue had been subscribed within 90 days from the date of closure of Issue i.e. April 13, 1993 to the extent of 94.47%, which investigations have shown is factually incorrect.

15. In the present matter, the contention of Mr. Rajesh Kapur vide letter dated May 26, 2005 was that all the letters had been written based on banker's certificate dated August 18, 1993 issued by State Bank of Indore. I am unable to accept such a contention. In fact, Mr. Rajesh Kapur had not exercised proper care to inquire as to whether the facts mentioned in the certificate were correct. The company secretary must take reasonable care before he believes what he certifies to be true. He also must realize his obligations to third parties and in view of the fact that the reports made by him are likely to be relied on, he must use his utmost skill and care that the statements issued do reflect the true and accurate state of affairs and free from any ambiguity.

16. I note that during investigations, comments were sought from the directors involved in the management of the company. Mr. S. K. Bhargava, vide letter dated November 20, 1998 and August 10, 1999 informed that he was only a Honorary Chairman and that he was not involved in the day to day functioning for business or decision making of the company and had resigned in September, 1996. According to him, the Board of directors appointed Mr. Ajay Jain as Managing Director right from the start who in fact owned the company's plant alongwith his other family members/friends. He further stated that he did not possess any of the company's records and sought excuse from submission of reply to findings of investigations. It is noted that as per the Prospectus and Letter of Offer, Mr. S. K. Bhargava, Chartered Accountant has been described as the sole promoter of the company and is the only person on the Board of Directors with a financial background. These documents state

that “He acquired in 1984 under this company a Solvent Extraction Plant of 100 tpd capacity along with refinery with a capacity of 20 tpd from Central Soya Products (P) Ltd”. The documents further state that the management of the company is vested in the Board of Directors headed by Mr. S. K. Bhargava. Given the fact that the other directors of the company were only technical persons and Mr. S.K. Bhargava was the only person with a financial background, he should have exercised necessary caution and ensured that the issue process was not tampered with and the prescribed procedures are followed by the company. Thus, Mr. S.K. Bhargava being the sole promoter and the person entrusted with the responsibility of running the company in the capacity of the Chairman of the Board of Directors cannot absolve himself of his responsibilities for the lapses that were committed in the issue process of the company. His actions become even less excusable in view of the fact that he is a qualified Chartered Accountant. I further note that the company had not co-operated with SEBI during the investigation proceedings by its failure to provide information *inter alia* sought vide various letters/summons dated June 28, 1996, January 02, 1997, January 14, 1997, and January 27, 1997, December 02, 1997

17. The contention of Mr. Ajay Jain, Ex-Director vide his letter dated February 4, 2005 is that he was only a technocrat working as a whole time director of the company and that he had no knowledge about the formalities of the public issue. He further contended that he did not hold a single share in the company and was merely a salaried employee of the company. I note that these contentions of Mr. Ajay Jain are not correct. There is correspondence entered into by the company for the purposes of forfeiture of shares as available in the listing files of DSE, which were signed by Mr. Ajay Jain. I also note that Betwa Realtors Private Limited, Betwa Finlease Private Limited and Mr. Sundeep Maheswari acquired 54,50,000 equity shares of the company (17.87% of voting capital) from Mr. Ajay Jain and Tushar Capital Services Limited at a price of Re.1/- per equity share on spot delivery basis by private negotiation in pursuance of a Memorandum of understanding dated June 7, 1997. Subsequently, they also made an open offer on July 21, 1997 to acquire a

maximum of 1,01,00,000 equity shares (33.13% of voting capital) from the existing share holders of the company @ Rs.2.60 per share. Clearly, Mr. Ajay Jain's contention that he did not own a single share of the company is false. Being the whole time/Managing Director of the company, during the public cum rights issue of the company Mr. Ajay Jain was responsible for all the acts of the company.

18. I note that Mr. M. A Menon, informed SEBI that he had resigned from the company with effect from April 1, 1993. Though Mr. M.A. Menon was named in the Letter of Offer dated March 05, 1993 of the company for being involved in its management, however distribution schedule dated June 23, 1993 provided to MPSE by company for listing of shares vide its letter dated June 24, 1993 does not mention the name of Mr. M.A. Menon in its list of directors. The violations were observed in respect of the late acceptance of applications, irregular allotments pursuant to the 45/90 day report. Therefore, I do not consider it appropriate to issue directions against Mr. M.A. Menon.

19. It is reasonably established that the company had violated the SEBI Guidelines (as discussed above) issued in pursuance of Section 11(1) of SEBI Act, 1992, for the protection of the interests of investors in securities and for orderly development and growth of the securities market. The company also violated the provision of the Companies Act, 1956, as mentioned above in this order. In the facts and circumstances, it is established that the company and its directors viz. Mr. Ajay Jain, Mr. S. K. Bhargava were liable for the violations of the provisions of Guidelines for Disclosure and Investor Protection of SEBI and various provisions of the Companies Act, 1956 as stated above in this order. By issuing incorrect certificates/letters, Mr. Rajesh Kapoor facilitated the company to commit irregularities in the rights issue. Thus, he also violated the above provisions. Taking into account the totality of the facts and circumstances, I dispose of the present proceedings as ordered herein under.

20. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 read with section 11(1) of Securities and Exchange Board of India Act, 1992, hereby, restrain Surya Agroils Limited, its then whole time directors, Mr. S. K. Bhargava and Mr. Ajay Jain from accessing the securities market and prohibit them from buying, selling or dealing in securities directly or indirectly in any manner for a period of one month. Mr. Rajesh Kapoor, ex-company secretary of Surya Agroils Limited, is directed to be more cautious and careful while dealing in securities market. Any further violation committed by them in the securities market would be viewed seriously by Securities and Exchange Board of India and appropriate actions would be initiated against them in respect of any such violations, in accordance with law.

21. Proceedings against Mr. M.A. Menon are disposed of without any direction for the reasons stated above.

22. This order shall come into force with immediate effect.

DR. K.M ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: September 30, 2009