

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of MPA Agro - Animals Projects Limited

In respect of MPA Agro - Animals Projects Limited, Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had received a reference dated March 12, 2013, from the Ministry of Corporate Affairs (hereinafter referred to as 'MCA') forwarding therewith a complaint dated February 20, 2013, *inter alia* against one MPA Agro - Animals Projects Limited (hereinafter referred to as 'MAAPL' or 'the Company'). The said complaint alleged that MAAPL is collecting monies from the public by promising huge returns.
2. SEBI initiated a preliminary examination into the money mobilization activities of MAAPL from the public. It asked MAAPL vide a letter dated April 19, 2013, to *inter alia* furnish the following information/ documents:
 - i. Copy of the Memorandum and Articles of Association of the Company;
 - ii. Copy of the audited Balance Sheet and Profit & Loss account of the Company for the last 3 years;
 - iii. Name, addresses and occupation of all the promoters/ directors of the Company;
 - iv. Names and details of the Key Managerial Personnel of the Company;
 - v. Information in respect of the securities issued by the Company, viz. –
 - a. Copy of Prospectus/ Red Herring Prospectus/ statement in lieu of Prospectus/ Information Memorandum filed with the Registrar of Companies ((hereinafter referred to as 'RoC').
 - b. Date of opening and closing of the subscription list;
 - c. Details regarding the number of application forms circulated inviting subscription;
 - d. Details regarding the number of applications received;
 - e. Details regarding the number of allottees and the list of such allottees;

- f. Number of debentures/ preference shares allotted and the value of such allotment against each allottee's name.
- g. Details regarding subscription amount raised;
- h. Date of allotment of the debentures/ preference shares;
- i. Copies of the minutes of Board/ committee meeting in which the resolution has passed for allotment;
- j. Date of dispatch of certificates, etc.;
- k. Details of the total number of applicants for each of MAAPL's scheme besides the list of final allottees;
- l. Copies of the application forms, pamphlets, advertisements and other promotional material circulated for issuance of securities.
- m. Terms and conditions of the issue of securities.

MAAPL was further advised to provide the above required information and the documents within 15 days from the date of receipt of the SEBI letter.

3. No reply/ information was received from the Company. Therefore, SEBI sent reminder letter dated July 17, 2013, to MAAPL to submit the relevant information. The said reminder letter was returned as undelivered to SEBI. Thereafter, SEBI vide separate letters all dated January 31, 2014, asked the directors of MAAPL to furnish the documents/ information sought from the Company. Reminder letters all dated July 25, 2014, were also sent to the directors of MAAPL, however, no document/ information was received from them.
4. Therefore, SEBI examined the matter on the basis of the material collected during the preliminary examination i.e. the complaint and the information from the 'MCA-21' portal maintained by MCA. The following are the preliminary observation:
 - i. MAAPL was incorporated on December 26, 2008 with the RoC, Kolkata with CIN no. as U01400WB2008PLC131530. The Registered office of MAAPL is situated at Santipur, Thanar More, Nadia, West Bengal- 741404.
 - ii. The directors of MAAPL are Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das and Mr. Surajit Paul. Another director namely Mr. Monoj Kumar Saha has resigned from the Company on March 27, 2012.

- iii. On an examination of the E-Form 2 filed by MAAPL with the RoC, it is *prima facie* noted that the Company has allotted '*equity shares*' amounting to ₹22.50 lakhs, the details of the same are as follows:

Table A

Financial Year	Date of allotment	Amount raised (in lakh)	No. of allottees
2009-10	March 25, 2010	₹22.50*	152
Total		₹22.50	152

*The amount includes the securities premium amount of ₹21 lakh

From the above, it is seen that MAAPL had allotted *equity shares* and had mobilized funds to the tune of ₹22.50 lakh from 152 persons till March 25, 2010.

- iv. It is noted that MAAPL has last filed its Annual Accounts for the year ended March 31, 2010, with the RoC.
5. Having noted the above details, I proceed further with the matter. The issue for determination in the instant matter is whether MAAPL had complied with the applicable provisions of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act'), the Companies Act, 1956 (since repealed) read with the Companies Act, 2013 and the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations') in respect of its issuance of *equity shares*. As the *equity shares* have been issued during March 2010, the provisions of sub-sections (1), (2) and (3) of the Section 67 of the Companies Act, 1956, are applicable to the allotments made by MAAPL.
6. In terms of Section 67(3), no offer or invitation shall be treated as made to the public by virtue of sub-sections (1) or (2), as the case may be, if the offer or invitation can properly be regarded, in all circumstances – (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation. In terms of the *proviso* to the aforesaid section, the provisions of Section 67(3) shall not apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. Therefore, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or

debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. The number of persons to whom the shares/ debenture have been allotted becomes relevant to judge whether an issue of shares is made to public or made on a private placement basis.

7. MAAPL has issued *equity shares* to 152 persons and mobilized funds to the tune of ₹22.50 lakh. It is observed that the Board of Directors of MAAPL have allotted *equity shares* on two dates i.e. March 20, 2010 and March 25, 2010, as noted in table A above. As per the first proviso to Section 67(3) of the Companies Act, 1956, where the “offer” or “invitation to subscribe for shares or debentures” is made to fifty persons or more, then it has to be construed as a public offer. In this case, the number of investors to whom the *equity shares* were allotted on March 25, 2010 are substantial and is in excess of 49. Therefore, the offer and issue of *equity shares* by the Company cannot *prima facie* be said to be a 'private placement'. Hence, the issue made by MAAPL *prima facie* is nothing but public offer of securities. All mobilisation of funds from fifty or more investors should be classified as a public issue requiring the company to make an application to list its securities. In view of the foregoing, it could be *prima facie* observed that the aforesaid issue of *equity shares* made by MAAPL were deemed public issues. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the matter of *Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the '*Sahara Case*'), had observed that:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the “section of the public”. Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/ invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ...
... .. that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

[Emphasis supplied]

8. Having observed that the *equity shares* issued by MAAPL are *prima facie* in the nature of public issue, the Company was required to comply with provisions of the Companies Act, 1956 and other relevant statutory provisions as applicable. I note that in the case of any public issue of securities, the relevant provisions of the Companies Act, 1956 *inter alia* Sections 60 read with Section 2(36), 56(1), 56(3) and Section 73 thereof needs to be complied with. In terms of Section 60 read with the Section 2(36) of the Companies Act, 1956, a company needs to file a prospectus with respect to its public issue with the RoC. As per Section 2(36) of the Companies Act, 1956, 'prospectus' means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in a body corporate. As per the information available on record MAAPL has not filed any prospectus with respect to the said issue of *equity shares* ('offer of shares').

Having made the public offer as discussed above, MAAPL ought to have filed the Prospectus with RoC under Section 60 of the Companies Act, 1956. Consequentially, MAAPL has also *prima facie* not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956, which refers to the matters that are to be stated in the prospectus and the documents (*i.e. the memorandum containing salient features of the prospectus*) that should accompany the application form inviting subscription.

9. By issuing equity shares to more than 50 persons, the Company had to compulsorily list such securities in compliance with Section 73 of the Companies Act, 1956, in order to ensure that the subscribers to the shares have a facility to approach a stock exchange for having their holdings converted into cash whenever they desire. The same also provides liquidity and exit opportunity to the investors. As per Section 73(1) and (2) of the

Companies Act, 1956, a company is required to make an application to one or more recognised stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. From the material available on record, MAAPL, do not appear to have done so and thus, contravened the said provisions. It *prima facie* neither made an application seeking listing permission nor refunded the amounts on account of such failure. MAAPL has also not complied with the provisions of Section 73(3) of the Companies Act, 1956 as it has not kept the amounts received from investors in a separate bank account and failed to repay the same in accordance with Section 73(2) of the Companies Act, 1956. In view of the above, it is alleged that MAAPL has contravened the provisions of the Companies Act, 1956, which regulates the public issue of securities, including Sections 60 read with Section 2(36), 56(1), 56(3) and 73 of the Companies Act, 1956, in respect of its collection of public funds towards the issue of *equity shares*.

10. I now discuss the regulatory powers and the jurisdiction of SEBI on the companies that raise funds, by issue of securities, from the public. In this regard, I refer to the Section 55A of the Companies Act, 1956. In terms of the relevant provisions of the said section, the provisions contained in Sections 55 to 58, 59 to 81 (including Sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207 of the Companies Act, 1956, so far as they relate to the issue and transfer of securities shall be in the case of listed public companies and in the case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by SEBI. The terms 'securities' as per Section 2(h) of the Securities Contracts (Regulation) Act, 1956 includes 'shares'. I observe that Sections 67 and 73 of the Companies Act, 1956 are included in the list of the sections as mentioned in Section 55A of the Companies Act, 1956, and therefore, such sections are to be administered by SEBI.
11. As per the provisions of Section 55A of the Companies Act, 1956, the administrative authority on the subjects relating to public issue of securities is SEBI. For this purpose, SEBI can exercise the jurisdiction under Sections 11, 11A and 11B of the SEBI Act read with Section 55A of the Companies Act, 1956, over companies who issue equity shares to

fifty persons or more, but fail to comply with the applicable provisions of the aforesaid statutes. Therefore, in addition to the compliance with the provisions of the Companies Act, 1956, the Company was mandated to comply with the applicable provisions of the ICDR Regulations.

12. I note that SEBI had notified the ICDR Regulations with effect from August 28, 2009 and all the public issues are required to comply with the ICDR Regulations which lays down the eligibility norms, disclosure norms and other procedural requirements, for ensuring investor protection in case of issue of securities. The ICDR Regulations operates as reasonable safeguards for the investors who subscribe or intended to subscribe in the public issues of securities. In this regard, I *prima facie* observe that MAAPL have not complied with the following clauses of the provisions of ICDR Regulations:

- *Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)(d)),*
- *Appointment of merchant banker and other intermediaries (Regulation 5),*
- *Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),*
- *Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),*
- *Satisfy the conditions of initial public offer (Regulation 25 and 26),*
- *Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)*
- *Keeping the public issue open for the specified period (Regulation 46),*
- *Pre issue advertisement for public issue (Regulation 47)*
- *Manner of disclosures in the offer documents (Regulation 57)*
- *Refrain from offering any incentive to any person making application for allotment of specified securities (Regulation 59).*
- *Issuer to appoint compliance officer who would be responsible for monitoring the compliance of securities laws and for redressal of investors' grievances. (Regulation 63)*

13. In this regard, it is important to note the following observation made by the Hon'ble Supreme Court of India in the matter of *Sahara India Real Estate Corporation Limited & Others Vs. SEBI and another* (Civil Appeal Nos. 9813 and 9833 of 2011; decided on August 31, 2012):

"90. in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue."

[Emphasis supplied]

14. I note that the Company had commenced allotment of *equity shares* allegedly to the public since March 2010. It can reasonably be inferred that the directors of the Company namely Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha were involved in the mobilisation of public funds through the issue of *equity shares* without complying with the applicable law, as discussed above.
15. In view of the above alleged violations committed by MAAPL in raising money from public through the issue of *equity shares* and to restrain the Company from carrying on such activities, if any, done allegedly in contravention of the law, it becomes necessary for SEBI, as the regulator for the securities market, to intervene and issue suitable directions. Further, the interest of the investors also need to be protected to ensure that public funds are not diverted and misappropriated. Accordingly, I, in exercise of the powers conferred under Sections 11(1), 11(4), 11A(1)(b) and 11B of the Securities and Exchange Board of India Act, 1992 read with Section 19 thereof and Regulation 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions :
- a. The Company, namely, MPA Agro - Animals Projects Limited [PAN: AAFCM8730K; CIN: U01400WB2008PLC131530] and its promoters and directors including Mr. Pintu Sen [PAN: CDUPS3365R; DIN: 02393465], Mr. Adhish Halder [DIN: 02393491], Mr. Tapan Pramanik [PAN: BASPP6084L; DIN: 02552466], Mr. Krishnadhan Das [PAN: BBPCD1190E; DIN: 06378280], Mr. Surajit Paul [PAN: BNSPP8133M; DIN: 06378285] and Mr. Monoj Kumar Saha [PAN: BCFPS8598R; DIN: 02341395] are restrained from mobilizing funds through the issue of *equity shares* or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.
- b. MPA Agro - Animals Projects Limited and its promoters and directors including Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha 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 orders.

- c. MPA Agro - Animals Projects Limited and its promoters and directors including Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha shall not dispose of any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.
 - d. MPA Agro - Animals Projects Limited and its promoters and directors including Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha shall not divert any funds raised from public at large through the issuance of the impugned cumulative convertible preference shares, kept in its bank accounts and/or in the custody of the Company without prior permission of SEBI until further orders.
 - e. MPA Agro - Animals Projects Limited and its promoters and directors including Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.
 - f. MPA Agro - Animals Projects Limited and its promoter and directors including the above named persons shall co-operate with SEBI and shall furnish all the documents.
 - g. MPA Agro - Animals Projects Limited, its promoters and directors are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form.
16. The above directions shall come into force with immediate effect.
17. MPA Agro - Animals Projects Limited and its promoters and directors including Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha are advised to show cause as to why suitable directions/ prohibitions, under the Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the ICDR Regulations, including the following, should not be taken/imposed against them :

- a. directing them jointly and severally to refund the money collected through the issue of *equity shares* that are impugned in this Order, along with interest that is promised to the investors ;
 - b. directing them to not to issue 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, for an appropriate period;
 - c. directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;
 - d. directing them and other companies in which their directors hold substantial or controlling interest, to not access the capital market for an appropriate period.
18. MPA Agro - Animals Projects Limited and its promoters and directors including Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha may file their replies/ submissions within a period of 21 days from the date of receipt of this Order and may also indicate whether they desire to avail an opportunity of personal hearing in the matter.
19. This Order is without prejudice to the right of SEBI to take any other action including prosecution proceedings under Section 24 of the SEBI Act and Section 621 of the Companies Act, 1956 read with the relevant provisions of the Companies Act, 2013 and adjudication proceedings under the SEBI Act, against MPA Agro - Animals Projects Limited and its promoters and directors including Mr. Pintu Sen, Mr. Adhish Halder, Mr. Tapan Pramanik, Mr. Krishnadhan Das, Mr. Surajit Paul and Mr. Monoj Kumar Saha, in accordance with law.

Place: Mumbai
Date: January 21, 2015

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA