

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of –

1. Rising Agrotech Limited (PAN: AAECR8598R) and its Directors,
2. Mr. Siddhartha Kayal (DIN: 02699764; PAN: AFCPK5677G),
3. Mr. Bikash Bhandary (DIN: 06613052; PAN: ANFPB7121D),
4. Mr. Sushovan Roy (DIN: 06821704; PAN: AMAPR4988C),
5. Mr. Santosh Kumar Dwivedi (DIN: 00604320; PAN: ADNPD6019L),
6. Mr. Dipan Kumar Sen (DIN: 02921533; PAN: BUIPS8288K),
7. Mr. Binay Kumar Shaw (DIN: 02902697; PAN: BMGPS2259Q),
8. Smt. Lina Kayal (DIN: 02699751; PAN: ANHPK8201D),
9. Mr. Awadhesh Kumar Singh (DIN:02468532; PAN: ARBPS6180P) and
10. Mr. Amaresh Pandey (DIN: 00615316; PAN: AFKPP7191Q).

1. The Securities and Exchange Board of India (hereinafter referred to as “SEBI”) had initiated an enquiry into the money mobilization activity of the company, **Rising Agrotech Limited** (hereinafter referred to as "RAL/ "the company") through issue of securities. In pursuance of such examination, SEBI, vide letter dated July 29, 2013 advised RAL and its directors to furnish *inter alia* the following information in respect of issuance of securities:

- i. Copy of the Memorandum and Articles of Association of the company;
- ii. 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. Other information in respect of every series of equity shares issued by the company, viz. –

- a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("RoC") for issuance of equity shares.
- 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 list of such allottees;
- f. Number of equity shares allotted and value of such allotment against each allottee's name.
- g. Details regarding subscription amount raised;
- h. Date of allotment of equity shares;
- i. Copies of the minutes of Board/Committee meeting in which the resolution was passed for allotment;
- j. Date of dispatch of equity shares certificates, etc.;
- k. Details of the total number of applicants for each of RAL's scheme besides the list of final allottee;
- l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of equity shares.
- m. Terms and conditions of the issue of equity shares.

2. As RAL did not furnish documents, SEBI vide letter dated September 23, 2013 reminded the company to furnish information and documents, as sought above. The said letter came back undelivered. Thereafter, information was sought from the directors of the company vide letters dated January 30, 2014. As no reply was received, a reminded notice dated July 25, 2014 was sent. Despite such reminder, no response was received.

3. Simultaneously, documents pertaining to the company, as available in the MCA21 Portal, were examined. The documents (brochures/application form) as forwarded by the complainant vide letter dated May 03, 2013 were also perused. On examination of such documents, the following are observed:

(a) RAL was incorporated on July 13, 2010, with the RoC, Kolkata. The CIN of the company is U01403WB2010PLC151266. The Registered Office of RAL is situated at 35/1 Kali Temple Road, 3rd Floor, Kolkata - 700026, West Bengal.

(b) The present Directors of RAL are –

- (i) Mr. Siddhartha Kayal,
- (ii) Mr. Sushovan Roy and
- (iii) Mr. Bikash Bhandary

Mr. Santosh Kumar Dwivedi, Mr. Dipan Kumar Sen, Mr. Binay Kumar Shaw, Smt. Lina Kayal, Mr. Awadhesh Kumar Singh and Mr. Amaresh Pandey were the former directors of the company, who have since resigned.

(c) RAL had made offer and allotted equity shares for Rs.108.09 lakh to **1460** investors during the Financial Years 2010-2011 and 2011-12 (**as per E-Form 2 obtained from MCA 21 portal**). The details are given below:

Year	Type of Security	Amount Raised (Rs. in lakh)	No. of Allottees
2010- 11	Equity Shares	47.33	530
2011- 12	Equity Shares	60.77	930
Total		108.09	1460

(d) The date-wise allotment of equity shares during the above said financial years as per Form-2 is given below:

Date of allotment	No. of shares allotted	No. of allottees
16.11.2010	172050	117
31.12.2010	75200	69
28.02.2011	52933	94

31.03.2011	173100	250
30.04.2011	142200	297
30.06.2011	190680	311
23.09.2011	84900	135
31.10.2011	54870	59
05.12.2011	135000	128
	Total	1460

(e) The details of the 'scheme' of equity shares, as published in the brochure/application form, are given below:

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

4. In view of the above facts, it needs to be ascertained whether the offer and allotment of aforesaid equity shares by the company was done in accordance with the provisions of the Companies Act, 1956 read with the Companies Act, 2013, the SEBI Act and the relevant regulations framed thereunder. Reference is made to section 67 of the Companies Act, 1956, which is reproduced below:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) ...

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”

A reading of the above provisions, makes it clear that in terms of the first *proviso* to section 67, 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 is made to 50 persons or more, then such offer becomes a 'public offer'. The Company is not stated to be a non-banking financial company or a public financial institution within the meaning of section 4A of the Companies Act, 1956 and therefore, is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956. As can be seen from the details mentioned above, the company had made offer and issued securities to more than 49 persons, in each of allotments as mentioned above, thereby *prima facie* making such offer a public offer.

5. 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) ("the Sahara case") had *inter alia* held 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. ...

*I may, therefore, indicate, subject to what has been stated above, **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}

6. By allegedly making a public issue of equity shares, the company was required to comply with the relevant provisions of the Companies Act, 1956 and the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. The company was mandated to comply with the 'public issue' norms as prescribed under sections 56, 60 [read with section 2(36)] and 73 of the Companies Act, 1956. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "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, or

debentures of, a body corporate. There is no record to suggest that the Company has filed a Prospectus and complied with the above provisions.

7. Further, by issuing equity shares to more than 49 persons, the Company had to compulsorily list such securities in compliance with section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. The Company appears to have contravened the said provisions as it has neither made an application seeking listing permission nor refunded the amounts on account of such failure.

8. The Company has also allegedly not complied with the provisions of section 73(3) 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) as observed above. In the Sahara Case, the Hon'ble Supreme Court of India had examined section 73 of the Companies Act, 1956, and *inter alia* made the following observations:

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

9. I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in ***Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)*** (hereinafter referred to as the "***Sahara Case***"), had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

10. In this regard, it is pertinent to note that by virtue of section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI in the case of companies who intend to get their securities listed. Under section 11A of the SEBI Act, SEBI is also empowered to regulate, by regulations/general or special orders, the matters pertaining to issue of capital, transfer of securities and matters related thereto. Accordingly, the company, having made a public offer and issue of securities, as observed above, is under the jurisdiction of SEBI. In addition to the compliance with the provisions of the Companies Act, 1956, the company was also required to comply with the following provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("the ICDR Regulations") as these regulations govern and regulate the issuance of equity shares (specified securities):

- *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).*

11. On a consideration of the aforementioned observations, I am of the view that the company is *prima facie* engaged in fund mobilizing activity from the public, through the offer and issuance of equity shares and has contravened the provisions of sections 56, 60 and 73 of the Companies Act, 1956 read with section 67(3) thereof and the aforesaid provisions of the ICDR Regulations. I also note that the company, in its brochure, is indicating '*growth*' in the equity shares. It is obvious that such tactics are meant only to mobilize money from gullible uninformed public.

12. As regards the directors of the company, I observe the following:

- (a) As per the '*Register of directors, managing directors, manager and secretary etc*', as available in the MCA portal, it is noted that Santosh Kumar Dwivedi, Dipan Kumar Sen, Binay Kumar Shaw, Siddhartha Kayal, Lina Kayal, Awadhesh Kumar Singh and Amaresh Pandey were appointed as directors on July 13, 2010 (*i.e. date of incorporation of the company*). Siddhartha Kayal continues to be one of the present directors and the others mentioned above had resigned on various dates.
- (b) Bikash Bhandary and Sushovan Roy were appointed as '*directors*' on June 24, 2013 and February 20, 2014. These persons are also the present directors in the company.

- (c) Section 56(1) and 56(3) read with section 56(4) imposes the liability for the compliance of the said provisions, on the company, every director, and other persons responsible for the issuance of the prospectus. The liability for non-compliance of section 60 of the Companies Act is on the Company, and every person who is a party to the non-compliance of issuing the prospectus as per the said section. Similarly, the company and the directors would be liable for action for not complying with the provisions of the ICDR Regulations.
- (d) The liability of the company and directors to repay under section 73(2) of the Companies Act, 1956 and section 27 of the SEBI Act, is a joint and several liability on them and is also a continuing liability and therefore such liability would be extinguished only after the repayments are made as mandated under law. Therefore, the directors (*irrespective of whether they continue or resign*) who were present during the period when the company made the offer and allotted equity shares are allegedly liable for violation of sections 56, 60 and 73 of the Companies Act, including the default in making refunds as mandated therein. Further, the persons who join the Company's Board pursuant to the offer and allotment of securities shall also be liable if the Company and the concerned directors have failed to make refunds as required under law.
- (e) In view of the above, the persons mentioned in sub-paragraphs (a) and (b) above are allegedly liable, as directors of the company, for the violations committed by the company and also for default in making the repayments mandated under section 73(2) of the Companies Act, 1956.

13. I note that SEBI had passed an interim order on September 09, 2014 and a final order on August 03, 2015 with respect to the Company's unauthorized public issue of Redeemable Preference Shares (RPS) and the Company and its directors were restrained from accessing the securities market, directly or indirectly, by issuing offer document/advertisement and were also

prohibited from dealing in securities. In view of the fact that the liability of the said company has increased by way of issue of equity shares and the names of a few more directors have come to the notice, I find it necessary to issue an interim order cum show cause notice in respect of issue of equity shares allegedly without complying with the public issue norms, as observed in this Order.

14. I also note that SEBI has, in the Order dated August 03, 2015, granted liberty to the Company and directors to sell the assets and deposit the proceeds in an escrow account with a nationalised bank for repaying the investors. The amounts in this escrow account may also be used to repay the investors to whom equity shares have been issued unauthorisedly, after the final order in this regard is passed.

15. In view of the foregoing and in the interest of the investors and the securities market, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI 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) Rising Agrotech Limited, Mr. Santosh Kumar Dwivedi, Mr. Dipan Kumar Sen, Mr. Binay Kumar Shaw, Mr. Siddhartha Kayal, Smt. Lina Kayal, Mr. Awadhesh Kumar Singh, Mr. Amaresh Pandey, Mr. Bikash Bhandary and Mr. Sushovan Roy 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) Rising Agrotech Limited and its promoters/ directors including the above named persons 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) Rising Agrotech Limited and its promoters/ directors including the above named persons shall not divert any funds raised from public at large through the issuance of the impugned equity shares, kept in its bank accounts and/ or in the custody of the Company without prior permission of SEBI until further orders.
- (d) Rising Agrotech Limited and its promoters/ directors including the above named persons 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.
- (e) Rising Agrotech Limited and its promoters/ directors including the above named persons shall co-operate with SEBI and shall furnish all the documents that they have been or shall be required to furnish.
- (f) Rising Agrotech Limited and its promoters/ directors including the above named persons 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 and shall continue till further orders. This Order shall be read harmoniously with the SEBI Orders dated August 03, 2015 (in respect of Rising Agrotech Limited and directors) and Order dated November 20, 2015 issued in respect of Ms. Lina Kayal.

17. Rising Agrotech Limited, its promoters and its directors (past and present), namely, Mr. Santosh Kumar Dwivedi, Mr. Dipan Kumar Sen, Mr. Binay Kumar Shaw, Mr. Siddhartha Kayal, Smt. Lina Kayal, Mr. Awadhesh Kumar Singh, Mr. Amaresh Pandey, Mr. Bikash Bhandary and Mr. Sushovan Roy, 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 section

73(2) of the Companies Act, 1956 and the provisions of 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 at 15% per annum from the date when the refunds became due to the investors till the date of repayment;
- b. directing them 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 these persons/directors hold substantial or controlling interest, to not access the capital market for an appropriate period.

18. Rising Agrotech Limited, its promoters and its directors (past and present), namely, Mr. Santosh Kumar Dwivedi, Mr. Dipan Kumar Sen, Mr. Binay Kumar Shaw, Mr. Siddhartha Kayal, Smt. Lina Kayal, Mr. Awadhesh Kumar Singh, Mr. Amaresh Pandey, Mr. Bikash Bhandary and Mr. Sushovan Roy 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 the provisions of the Companies

Act, 1956 read with the Companies Act, 2013 and adjudication proceedings under the SEBI Act, against Rising Agrotech Limited, its promoters and its directors (past and present), namely, Mr. Santosh Kumar Dwivedi, Mr. Dipan Kumar Sen, Mr. Binay Kumar Shaw, Mr. Siddhartha Kayal, Smt. Lina Kayal, Mr. Awadhesh Kumar Singh, Mr. Amaresh Pandey, Mr. Bikash Bhandary and Mr. Sushovan Roy, in accordance with law.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: March 16th, 2016
Place: Mumbai