

**WTM/AB/SEBI/19/2020-21**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**EXPARTE-AD-INTERIM ORDER CUM SHOW CAUSE NOTICE**

**UNDER SECTIONS 11(1), 11(4), 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992**

**In respect of:**

<b>Sr. No</b>	<b>Name of the Noticee</b>	<b>DIN/CIN</b>	<b>PAN</b>
1.	Rakhal Bharoti Fish and Food Processing Limited	U15139JH2011PLC015092	Not available
2.	Ranjit Kumar Baidya	01671669	Not available
3.	Sujit Baidya	01723330	Not available
4.	Koushik Baidya	02011631	Not available
5.	Swapna Baidya	01671773	Not available
6.	R. B. Horticulture and Animal Project Limited	U01122WB2007PLC112359	Not available
7.	Chandana Sardar	Not available	CYUPS9717E
8.	Rabin Chatterjee	Not available	ARQPC7442M
9.	Jayanta Bera	Not available	AWNPB7079H
10.	Gautam Banopadhyay	Not available	Not available

*(The aforesaid entities are hereinafter individually referred to by their respective names/notice numbers and collectively as “the Noticees”.)*

**In the matter of:**

**Rakhal Bharoti Fish and Food Processing Limited**

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1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received multiple complaints against various companies including Rakhal Bharoti Fish and Food Processing Limited (hereinafter referred to as “**RBFFPL**” or “**the company**”)

stating that RBFFPL had mobilized funds through certain schemes. The complainants had afterwards also forwarded the copies of certificates of secured redeemable debentures (hereinafter referred to as “**SRD**”) and brochures issued by RBFFPL. Therefore, an examination was initiated by SEBI against the company to ascertain if RBFFPL has issued SRD to the public in violation of the public Issue requirements.

2. From the information obtained from Ministry of Corporate Affairs website (MCA 21 portal) and Registrar of Companies, Ranchi (hereinafter referred to as “**RoC**”) and other material available on record, the following were observed:

2.1. The details of the company are as follows:

- i) Date of Incorporation: September 21, 2011
- ii) Type of the company: Public and Unlisted
- iii) CIN: U15139JH2011PLC015092
- iv) PAN: Not Available
- v) Registered Office Address: Treary Lane Near Co Office Madhupur, P.O.- Madhupur Madhupur Deoghar JH 815353 IN
- vi) Correspondence Address: Not Available.
- vii) Details of present and past directors/ promoters are as follows:

Sl .N o.	Name	Current Designation	DIN/ CIN	PAN	Address	Date of appointment	Date of Cessation
<b>Details of Director cum Promoter</b>							
1	Ranjit Kumar Baidya	Director and Promoter	01671669	N/A.	Village- Amalni, P. O. Hasnabad, P. S. Hasnabad, 24 Pgs. (N) Hasnabad, West Bengal Pin- 743426	21/09/2011	-
2	Sujit Baidya	Director and Promoter	01723330	N/A.	Village + Post + P.S. -Hasnabad, 24 Parganas (N), West Bengal, Pin- 743426	21/09/2011	-
3	Koushik Baidya	Director and Promoter	02011631	N/A.	Vill+P.O.- Hasnabad, 24 Parganas (N), Hasnabad, West	21/09/2011	-

					Bengal, Pin-743426		
4	Swapna Baidya	Director and Promoter	01671773	N/A.	Village-Hasnabad, P. O. Hasnabad, P. S. Hasnabad, 24 Pgs. (N) Hasnabad, West Bengal, Pin-743426	21/09/2011	12/04/2013
<b>Details of Promoters</b>							
5	R B Horticulture And Animal Project Limited	Promoter	U01122WB2007PLC112359	N/A.	At : Hasnabad, 24 Parganas, Hasnabad, West Bengal, Pin-743426	-	-
6	Chandana Sardar Baidya	Promoter	N/A.	CYUPS9717E	Vill+PO+PS-Hasnabad (Near Ps), Dist- North Twenty Four Parganas Hasnabad, West Bengal, Pin-743426	-	-
7	Rabin Chatterjee	Promoter	N/A.	ARQPC7442M	Vill+Po+Ps-Hasnabad, Dist-North Twenty Four Parganas Hasnabad, West Bengal, Pin-743426	-	-
8	Jayanta Bera	Promoter	N/A.	AWNPB7079H	Vill- Mamudpur, P.O.- Taki Mamudpur, P.S.- Hingaljanj, Dist-(N) 24 Parganas, Hasnabad , West Bengal, Pin- 743426	-	-

viii) Date of filing of last Annual Accounts: As per MCA website company has not filed Annual Accounts.

ix) Total capital of the company (Break-up of issues and authorized capital) was as follows:

- a. Issued capital: Taking into consideration the Company Master Data, Authorized Capital and Paid up Capital: Rs. 10,00,000/-

2.2. Details of the Board meeting held by the company as per RoC record with respect to the issue of SRD is as follows:

- (i) Date of the Board Meeting: November 10, 2011
- (ii) Resolution passed at the above meeting: raising an amount of Rs. 15 crores through issuance of debentures by private placement
- (iii) Amount of charge created for issuance of debentures: Rs. 15,00,00,000/-
- (iv) Date of creation of charge: January 10, 2012
- (v) Charges created against, details thereof:

**Details of properties Mortgaged for securing debentures:**

SI No.	Deed No.	Mouza	Dag No./ Khatian No.	Area	Ownership
1	103116 dated 27.07.2009	Amlani P.O & P.S. Hansabad 24-Pgs (N), West Bengal	517 (Hal) Khatian No. 49	10 satak (6.06 cottahs)	R.B. Horticulture & Animal Project Ltd. (Holding Co.)
2	152898/11 Dated 13.7.2011	Malta P.O & P.O. Canning 24- Pgs (South) West Bengal	Dag No. 5682/5718 Khatian No. 1336 and L.R. Dag No. 4876 under L.R. Khatian No. 4834	15.82 decimals 9 cottahs 9 chittack	R.B. Horticulture & Animal Project Ltd. (Holding Co.)
3	5288/1 Dated 13.7.2011	Satjalia P.S. Sunderban Kostal 24-Peg (S)	372 & 373, J.L. No. 97, Hal-45 No. 3039	148.5 Stak 4 Bigha 10 cottahs	R.B. Horticulture & Animal Project Ltd. (Holding Co.)
4	3528 Dated 16-6-2006 (owned), 1636 Dated 18.3.2007 (leased), 1534 Dated 16.03.2006 (leased), 1533 Dated 16.03.2006 (leaed)	Amlani P.O & P.S. Hansabad 24- Pgs (N), West Bengal	J.L. No. 46, Dag No. 622 (Hal) (owned) 613, 604, 600, 599, 598, 61, 8, 617, 566, 568, 569, 570 (leased) Khatian No. 49 and 363 (leased)	18 Bighas (leased), 14.55 Cottah (Owed)	Owned by Ranjit Kr. Baidya, Swapna Baidya and Sujit Baidya all are Directors and Promoters
5	13432 Dated 20.5.2011	Amlani P.O. & P.S. Hansabad 24- Pgs (N), West Bengal	J.L. No. 46, Dag No. 620 and 622, Khatian No. 500/47/1, 55/2, 593/1 (L.R.)`	17.27 decimal, 10.,45 cottah (M/C)	Ranjit Kr. Baidya Promoters
6	11449/9, 18.11.2009, 10850/9, 03.11.2009, 1484/11, 17.01.2011, 1246/10	Khaspur, Sonarpur Municipality 24- Peg (S)	J.L. No. 29, R.S. No. 45/47 R.S. No. 329 & 491, L.R. No. 500	11 Cottah 4 Chittack 115 sq. ft.	Sujit Baidya Promoter and Directors

- (vi) Details of the Debenture Trustee:

Name of the Trustee	Address of the Trustee	Date of appointment of Trustee
Shri Gautam Banopadhyay	Devi More, Hasnabad, 24-Parganas (North) West Bengal	January 10, 2012

3. The complainants had submitted copies of SRD certificates issued by RBFFPL. Combined Financial year-wise details of the number of persons to whom SRD were issued by RBFFPL is as follows:

Financial Year	No. of allottees	No. of Debentures	Amount (Rs.)
2012-13	82	11,335	11,33,500/-
2013-14	1	70	7,000/-
<b>Total</b>	<b>83</b>	<b>11,405</b>	<b>11,40,500</b>

4. From the above, it was noted by SEBI that the company had issued secured redeemable debentures to more than 49 persons in F.Y. 2012-13.

5. In this regard, information was sought by SEBI from the company and its directors/promoters in respect of issuance of SDR by the company. The details of correspondences sent to company and its directors/promoters on the address as available on MCA portal are as follows:

Name of Entity/ Director/Promoter	Designation	Letter Dated	Letter Status (Returned/ Delivered)
Rakhal Bharoti Fish And Food Processing Limited	Company	September 25, 2020	Undelivered.
Ranjit Kumar Baidya	Present Director & Promoter	September 25, 2020	Undelivered with the comment "Insufficient Address".
Sujit Baidya	Present Director & Promoter	September 25, 2020 and November 12, 2020	1st letter returned undelivered with the comment "Addressee Moved". 2nd letter issued in different PIN Code, as per Indian Post website, letter returned undelivered.
Koushik Baidya	Present Director & Promoter	September 25, 2020	Undelivered with the comment "Addressee Moved".
Swapna Baidya	Past Director & Promoter	September 25, 2020	Undelivered with the comment "Addressee Moved".
R B Horticulture And Animal Project Limited	Promoter	September 25, 2020	Undelivered with the comment "Insufficient Address".
Chandana Sardar Baidya	Promoter	September 25, 2020	Undelivered with the comment "Addressee Moved".
Rabin Chatterjee	Promoter	September 25, 2020	Undelivered with the comment "Insufficient Address".

Jayanta Bera	Promoter	November 12, 2020	As per Indian Post website item redirected to Hingalganj due to Insufficient Address. No updates after November 21, 2020 available at Indian Post website
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6. Emails were also sent to the company at the email IDs available in company Master Data, Form 1 and Forms 32 on November 11, 2020, however, all the emails bounced back. Since the letters/emails sent to the company and its directors were either returned undelivered or no replies were received from the company, directors or promoters, a physical verification was conducted by SEBI on November 10, 2020 at the registered office address of the company available on record. The company was not found at its registered address. On local enquiries, no information could be gathered about the company. Vide communication dated November 11, 2020 information was sought from RoC regarding *inter alia* the details of total allottees to whom debentures have been issued by the company and the PAN details of the present/past, directors/promoters of the company. Further, the RoC was also *inter alia* informed that the company has not filed its Annual Accounts>Returns and that the company was not present at its registered office address as per MCA portal. RoC vide its letter received by SEBI on December 21, 2020 has given the certified copies of the documents which were downloaded by SEBI from MCA portal. However, details of the total allottees to whom SRD were issued by RBFFPL were not available.
7. In view of the aforesaid, examination by SEBI found that the Noticees no. 1 to 5 have *prima facie* violated provisions of Sections 56, 60, 62, 67, 73 and 117C of the Companies Act, 1956, and provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”), Noticees no. 6 to 9 have *prima facie* violated provisions of Sections 62 of the Companies Act, 1956 and Noticee no. 10 has *prima facie* violated provisions of the SEBI Act, 1992 and SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as “**DT Regulations**”), by making the public issue of SRD of RBFFPL.
8. Before proceeding further with the matter, it would be expedient to refer to the relevant provisions of the laws which the Noticees have *prima facie* been found to

be in violation of. The relevant extract of such provisions of Companies Act, 1956 and SEBI Act, 1992 is reproduced below:

**Relevant extract of provisions of Companies Act, 1956:**

***“56. Matters to be stated and reports to be set out in Prospectus***

*(1) Every prospectus issued - (a) by or on behalf of a company, or (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.*

*(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.*

*(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed which complies with the requirements of this section:*

*Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:*

*Provided further that this sub-section shall not apply if it is shown that the form of application was issued either –*

*(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or*

*(b) in relation to shares or debentures which were not offered to the public.*

*If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to fifty thousand rupees.*

*(4) A director or other person responsible for the prospectus shall not incur any liability by reason of any noncompliance with, or contravention of, any of the requirements of this section, if –*

*(a) as regards any matter not disclosed, he proves that he had no knowledge thereof;*  
*or*

*(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or*

*(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:*

*Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Schedule II, unless it is proved that he had knowledge of the matters not disclosed.*

.....

**60. Registration of Prospectus**

*(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto –*

*(a) any consent to the issue of the prospectus required by section 58 from any person as an expert; and*

*(b) in the case of a prospectus issued generally, also –*

*(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and*

*(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.*

*(2) Every prospectus to which sub-section (1) applies shall, on the face of it, -*

*(a) state that a copy has been delivered for registration as required by this section; and*

*(b) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.*

*(3) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and subsections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if*



*any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.*

*(4) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration; and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.*

*(5) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to fifty thousand rupees.*

**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.*

.....

**67. Construction of reference to offering shares or debentures to the public, etc.**

*(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) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended 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.*

*(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 the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).*

.....

### **73. Allotment of shares and debentures to be dealt in on stock exchange.**

*73(1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.*

*(1A) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:*

*Provided that where an appeal against the decision of any recognised stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts*

*(Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.*

*(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from 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, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.*

*(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2); and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees.*

*.....”*

**117C. Liability of company to create security and debenture redemption reserve**

*(1) Where a company issues debentures after the commencement of this Act, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed.*

*(2) The amounts credited to the debenture redemption reserve shall not be utilised by the company except for the purpose aforesaid.*

*(3) The company referred to in sub-section (1) shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.*

*(4) Where a company fails to redeem the debentures on the date of maturity, the Tribunal may, on the application of any or all the holders of debentures shall, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith by the payment of principal and interest due thereon.*

*(5) If default is made in complying with the order of the Tribunal under sub-section (4), every officer of the company who is in default, shall be punishable with*

*imprisonment which may extend to three years and shall also be liable to a fine of not less than five hundred rupees for every day during which such default continues.*

**Relevant extract of provisions of SEBI Act, 1992:**

***Registration of stock brokers, sub-brokers, share transfer agents, etc.***

*12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the 53[regulations] made under this Act:*

.....

9. The relevant provisions of ILDS Regulations, as attracted in the matter, are as follows:

**Relevant provisions of ILDS Regulations, 2008:**

<b><i>Regulation of ILDS Regulations, 2008</i></b>	<b><i>Dealing With</i></b>
<i>Regulation 4(2)(a)</i>	<i>Application for listing of debt securities</i>
<i>Regulation 4(2)(b)</i>	<i>In-principle approval for listing of debt securities</i>
<i>Regulation 4(2)(c)</i>	<i>Credit rating has been obtained</i>
<i>Regulation 4(2)(d)</i>	<i>Dematerialization of debt securities</i>
<i>Regulation 4(4)</i>	<i>Appointment of Debenture Trustee</i>
<i>Regulation 5(2)(b)</i>	<i>Disclosure requirements in the Offer Document</i>
<i>Regulation 6</i>	<i>Filing of draft Offer Document</i>
<i>Regulation 7</i>	<i>Mode of disclosure of Offer Document</i>
<i>Regulation 8</i>	<i>Advertisements for Public Issues</i>
<i>Regulation 9</i>	<i>Abridged Prospectus and application forms</i>
<i>Regulation 12</i>	<i>Minimum subscription</i>
<i>Regulation 14</i>	<i>Prohibition of mis-statements in the Offer Document</i>
<i>Regulation 15</i>	<i>Trust Deed</i>
<i>Regulation 16(1)</i>	<i>Debenture Redemption Reserve</i>
<i>Regulation 17</i>	<i>Creation of security</i>
<i>Regulation 19</i>	<i>Mandatory Listing</i>
<i>Regulation 26</i>	<i>Obligations of the Issuer, etc.</i>

10. The relevant provisions of the DT Regulations, 1993, as attracted in the matter, are as follows:

**Relevant extract of provisions of DT Regulations, 1993:**

***Eligibility for being debenture trustee.***

*7. No person shall be entitled to act as a debenture trustee unless he is either—*

- (a) a scheduled bank carrying on commercial activity; or*
- (b) a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
- (c) an insurance company; or*
- (d) body corporate.*

11. I note that Section 67(3) of the Companies Act, 1956 provides for situations when an offer or invitation is not considered as offer or invitation made to public even though it has been made to a section of public. As per the said sub section, if the offer is one which is not 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, if the offer is the domestic concern of the persons making and receiving the offer, the same is not considered as public offer. Under such circumstances, in ordinary parlance, such offer or invitation is considered as private placement of shares or debentures. The scheme of Section 67(3) envisages the raising of funds by a company, privately, from informed and sophisticated investors or relatives/friends of promoters, who are capable of taking informed decisions on the basis of Letter of Offer or Information Memorandum issued by the company. The overarching intent of Section 67(3) is not to burden such private placements with regulatory supervision and compliances, since, the number of investors involved is restricted to 49 known / pre-identified persons and the public at large is not involved. However, first proviso to Section 67(3) restricts this private placement only to 49 persons and once, the offerree or invitees exceeds 49 persons, then such a private placement is also deemed as public issue. In such case, the regulatory supervision becomes more stringent and hence, the requirement in respect of contents of prospectus, filling of draft prospectus with Stock Exchanges, registration of prospectus with RoC, mandatory listing of securities on stock exchange etc. come into picture. In this regard, it would be

appropriate to refer to the judgment of Hon'ble Supreme Court of India in *Sahara Real Estate Corporation and Others Vs. SEBI (2013) 1 SCC1*, wherein while examining the scope of Section 67 of the Companies Act, 1956, it was observed as follows:

*"85. 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.*

....

*86. Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.*

....

*90. 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. ..."*

12. Once an offer or invitation is a public offer, then the provisions relating to public issue such as prospectus, listing etc. including Section 73 of the Companies Act, 1956 come into play and the company making such offer or invitation to public is required to make application for listing of shares or debentures offered to the public, to one or more recognized stock exchanges. Section 73 further provides that where the permission has not been applied or, such permission, having been applied for, has not been granted, the company shall forthwith repay without interest all moneys received from 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. A company making a public issue of shares or debentures is also required to comply with provisions of SEBI Act, 1992 and the regulations/guidelines made thereunder, in this regard.

13. I note that from the copies of SRD certificates submitted by the complainants, RBFFPL has issued SRD to 83 persons cumulatively amounting to Rs. 11,40,500/- during F.Y. 2012-13 and 2013-14, the details of which are as under:

<b>Financial Year</b>	<b>No. of allottees</b>	<b>No. of Debentures</b>	<b>Amount (Rs.)</b>
2012-13	82	11,335	11,33,500/-
2013-2014	1	70	7,000/-
<b>Total</b>	<b>83</b>	<b>11,405</b>	<b>11,40,500/-</b>

14. Therefore, such issue of SRD by RBFFPL to more than 49 persons would *prima facie* qualify as a public issue, as contemplated under proviso to Section 67(3) of the Companies Act, 1956. In such a scenario, in terms of Section 73 of the Companies Act, 1956, RBFFPL was required to make an application to one or more recognized stock exchanges for permission for the debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange. I note that in the present case there is no evidence on record to indicate that RBFFPL had made any application to recognized stock exchange(s) for listing of its SRD on such stock exchange and therefore, based on the material available on record, I find that RBFFPL has not *prima facie* complied with the provisions of Section 73(1) of Companies Act, 1956.

15. Since, Section 73(1) of the Companies Act, 1956 was not complied with in this case, therefore, the amounts collected through these issues had to be forthwith repaid under Section 73 (2) of the Companies Act, 1956 and if such refund was not made within eight days the company and every director of the company who is an officer in default was liable to repay the amount raised with interest. Since, there is no evidence on record to indicate that the amounts collected from the investors have been forthwith repaid in terms of Section 73 (2) of the Companies Act, 1956, therefore, I find that the company and every director who is an officer in default has *prima facie* violated the provisions of Section 73 (2) of the Companies Act, 1956.

16. I also note that there is no evidence on record to indicate that funds received from the investors by issuing SRD have been kept in separate bank account. Hence, I find that RBFFPL and its every officer who is in default have *prima facie* not complied with the provisions of Section 73 (3) of the Companies Act, 1956.

17. In addition to the above requirements, I note that if a company issues debentures to public, it has to *inter alia* follow other compulsory requirements pertaining to

public issues viz: filing of draft offer document with Stock Exchanges, issuance of Prospectus with required disclosures, registering of final Prospectus with RoC and listing of securities issued through the prospectus on a recognized stock exchange, etc. In terms of Section 56 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. Section 56(3) further provides that no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed. The liability for compliance of this section is on the company as well as the directors, promoters and other persons responsible for the prospectus. I note that in this matter the material available on record does not provide any evidence regarding Prospectus with requisite disclosure in terms of Section 56 of the Companies Act, 1956 and ILDS Regulations was filed with Stock exchanges and finally with RoC with respect to public issues of SRD made by RBFFPL. Therefore, I find that RBFFPL and its directors/promoters have *prima facie* not complied with Section 56 of the Companies Act, 1956 and relevant provisions of ILDS Regulations.

18. Further, in terms of Section 60(1), a prospectus is required to be signed by every director of the company concerned. Section 60(5) of the Companies Act, 1956 makes the company, and every person who is knowingly a party to the issue of the prospectus liable if there is a failure to file the Prospectus before RoC and the required disclosures are not made in the Prospectus. I note that the material available on record does not provide any evidence of RBFFPL having filed a prospectus with the RoC with respect to its issue of SRD, as detailed above. Therefore, I find that RBFFPL and its directors/promoters have *prima facie* violated Section 60 of the Companies Act, 1956.

19. I also note that in terms of Section 117C of the Companies Act, 1956, the company must create a debenture redemption reserve for the redemption of the SRD. I note that the material available on record does not provide any evidence of RBFFPL having created a debenture redemption reserve. Therefore, I find that RBFFPL and its directors have *prima facie* violated Section 117C of the Companies Act, 1956.



20. RBFFPL has made a public issue of SRD in the financial year 2012-13. Therefore, a public issue of SRD by RBFFPL ought to have been made in compliance with the relevant provisions of ILDS Regulations, as mentioned para 9 above. Based on the material available on record, I find that the issue of SRD by RBFFPL was *prima facie* made without complying with the relevant provisions of ILDS Regulations, as mentioned in para 9.
21. The importance of role of the directors/promoters of a company, in case of inviting of subscription to its shares or debentures by a company through issue of prospectus, can be understood from Section 62 of the Companies Act, 1956 which provides that where a prospectus invites persons to subscribe for shares in or debentures of a company, the persons who were directors, promoters and persons responsible at the time of issue of prospectus 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. Regarding the liability of the directors in case of RBFFPL i.e. Noticee no. 2 to 5, for the issues of SRD to the public by RBFFPL in violation of the provisions of law, as discussed above, I note that Ranjit Kumar Baidya (Noticee no. 2) has been the Managing Director (hereinafter referred to as “MD”) of the company. He was the MD during the period of mobilization of funds through issue of SRD. I note that Ranjit Kumar Baidya has signed on the Debenture Certificates, issued by RBFFPL, as the Chairman and Managing Director of the company. Hence, he would be “Officer in default” under Section 73(2) read with Section 5 of Companies Act, 1956 and hence, is *prima facie* liable for making refund along with company in terms of Section 73(2) of the Companies Act, 1956. I note that Sujit Baidya (Noticee no. 3) and Koushik Baidya (Noticee no. 4) were directors of the company at the time of raising money through issue of SRD by RBFFPL and continue to hold their position as directors even today. Therefore, Noticees no. 2, 3 and 4 are *prima facie* liable for violation of Section 56, Section 60 and Section 117C of the Companies Act, 1956 and relevant provisions of ILDS Regulations, regarding public issue of SRD by RBFFPL. I note that Swapna Baidya (Noticee no. 5) resigned from the Directorship w.e.f. April 12, 2013 but since she was a director of the company at the time of allotment of SRD in FY 2012-13, therefore, she is *prima facie* liable for violations of Section 56, Section 60 and

Section 117C of the Companies Act, 1956 and relevant provisions of ILDS Regulations, regarding public issue of SRD by RBFFPL. I also note that M/s R.B. Horticulture and Animal Project Limited (Noticee no. 6), Chandana Sardar (Noticee no. 7), Rabin Chatterjee (Noticee no. 8) and Jayanta Bera (Noticee no. 9) as the promoters of the company are *prima facie* liable for violations of Section 56 and Section 60 of the Companies Act, 1956, regarding public issue of SRD by RBFFPL.

22. I note that SEBI's examination had found that Noticee no. 10 acted as a Debenture Trustee for issue of SRD by RBFFPL. I note that as per Section 12 of the SEBI Act, 1992, no Debenture Trustee shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under the SEBI Act, 1992. In this regard, I find that no such certificate of registration has been granted by SEBI to Gautam Banopadhyay (Noticee no. 10) to act as a Debenture Trustee. Further, from Regulation 7 of the DB Regulations, I note that he is not even eligible to apply for a certificate of registration as a Debenture Trustee. Therefore, he is *prima facie* liable for violations of Section 12(1) of the SEBI Act, 1992 and Regulation 7 of the DT Regulations for acting as an unregistered debenture trustee in the issue of SRD to more than 49 persons by RBFFPL in F.Y. 2012-13.

23. Section 55A of the Companies Act, 1956, conferred jurisdiction on SEBI to administer provisions specified therein, *inter alia* in relation to public issue of securities. Section 11 (1) of the SEBI Act, 1992 empowers SEBI to take such measures, as it deems fit, *inter alia*, to protect the interests of investors in securities. Section 11(4) of the SEBI Act, 1992 lists measures that SEBI may take, by an order in writing, either pending or on completion of investigation or inquiry, in the interest of investors in the securities market. Section 11A of the SEBI Act, 1992 empowers SEBI to *inter alia* prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities, by general or special orders. Section 11B of SEBI Act, 1992 empowers SEBI to issue such directions as may be appropriate, in the interest of investors in securities and the securities market, *inter alia*, to any company in respect of issue of capital, transfer of securities etc.

24. I note that the company has issued SRD to 83 persons cumulatively amounting to Rs. 11,40,500/- during financial year 2012-13 and 2013-14. Moreover, I observe that the company have not filed any Annual Reports or Annual Accounts and the company is not available at its registered address. Moreover, the liability of the company to repay under Section 73(2) of the Companies Act, 1956, is a continuing one and the same continues till all the repayments are made to the investors/public. Since, RBFFPL made public issues of SRD without following the issue and listing norms, the same is detrimental to the interest of investors. In view of the same, the present matter is a fit case for issuance of immediate ex-parte directions under Sections 11B and 11(4) of the SEBI Act, 1992.

**Directions:**

25. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions:

- i) RBFFPL i.e. Noticee no. 1, shall cease to mobilize fresh funds from investors through the offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly;
- ii) RBFFPL and its directors/promoters and debenture trustee i.e. Noticees no. 2 to 10, shall not buy, sell or otherwise deal in the securities (including units of mutual funds), either directly or indirectly, or associate themselves with securities market, any listed company or company intending to raise money from the public in any manner whatsoever;
- iii) RBFFPL and its directors shall not dispose of, alienate or encumber any of its/their assets or divert any funds raised from public through the offer and allotment of SRD;
- iv) RBFFPL and its directors shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of SRD;
- v) Gautam Banopadhyay (Noticee no. 10), the trustee of Rakhal Bharoti Fish and Food Processing Debenture Trust, shall henceforth not act as Debenture Trustee in respect of debentures of RBFFPL and shall not take

up any new assignment or involve himself in any new issue of securities in a similar capacity.

26. The directions contained in para 25 comes into force with immediate effect and shall remain in force till passing of any further order by SEBI or coming into force of the directions given in para 27 below.

27. The *prima facie* observations contained in this order are made on the basis of the material available on record, information obtained from MCA 21 Portal and complaints received. Noticees no. 1 to 10 are also called upon 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:

- (i) RBFFPL (Noticee no. 1) and Ranjit Kumar Baidya (Noticee no. 2), to jointly and severally refund money collected through the offer and allotment of SRD, including the application money collected from investors, pending allotment of securities, if any, 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). Noticee no. 1 and 2 shall file a report of such completion of refund with SEBI addressed to the Division Chief, Department of Debt and Hybrid Securities, SEBI Bhavan, Plot No. C4 A, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051, within a period of 180 days from the date of this decision being effective, duly certified by an independent Chartered Accountant licensed by the Institute of Chartered Accountants of India (ICAI). It is clarified that the restraint imposed on the sale of assets at para 25 (iii) and sale of securities at para 25 (ii), shall not operate if the sale of assets is made for the sole purpose of making refund to the investors by depositing the proceeds of sale in an Escrow Account with a nationalized bank. It is further clarified that the present directors of RBFFPL shall ensure and facilitate the compliance of this direction by RBFFPL;

- (ii) RBFFPL (Noticee no. 1) and its directors/promoters and debenture trustee i.e. Noticee no. 2 to 10, be refrained/prohibited from accessing the securities market by issue of prospectus/offer document/advertisement or advertisement soliciting money from the public and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, from the date of this decision being effective, till the expiry of a period of three years from the date of effecting the refund as directed in para 27 (i) above; and
- (iii) Noticee no. 2 to 10 above shall also be restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this direction becoming effective till the expiry of a period of three years from the date of completion of refunds to investors as directed at para 27(i) above.

28. The Noticees no. 1 to 10, may, within 30 days from the date of this interim order - cum-show cause notice, file their respective replies. RBFFPL and its above named directors are also directed to furnish an inventory of their assets in their reply. In the event the aforementioned persons intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same, within 90 days. In the event of the aforementioned persons failing to file replies or requesting for an opportunity of personal hearing, within the said 90 days, the *prima facie* findings regarding the violations at paragraphs 11 to 24 of this order shall become final and absolute, without any further orders. Consequentially, the respective Noticees, shall automatically be bound by the directions contained in paragraph 27 above till the expiry of a period of three years from the date of repayment.

29. In case of failure to comply with the aforesaid directions, appropriate enforcement actions as deemed fit, in terms of the SEBI Act, 1992, shall be initiated including reference to the State Government/ Local Police, within a period of one hundred eighty (180) days from the date of receipt of this order by the Noticees.

30. Copy of this order shall be forwarded to the Noticees, recognized stock exchanges and depositories for information and necessary action. A copy of this order may also be forwarded to MCA/RoC, Ranchi for their information and necessary action with respect to the directions imposed on company and directors.

**Date: December 31, 2020**

**Place: Mumbai**

Sd/

**ANANTA BARUA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**