WTM/PS/137/ERO-GLO/JAN/2016

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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 MaxBe Green Provision Limited

In respect of:

1. **MaxBe Green Provision Limited [PAN: AAGCM6417Q],**
2. **Mr. Pradip Parua [PAN: AKVPP6223D],**
3. **Mr. Bikarna Das [PAN: AHDPD7663C],**
4. **Mr. Debabrata Halder [PAN: ACLPH4543C],**
5. **Mr. Debasis Bera [PAN: AJLPB8618F],**
6. **Mr. Makhan Lal Pramanik [PAN: AIMPP6990L],**
7. **Mr. Soumitra Chanak [PAN: AGSPC7663D],**
8. **Mr. Susanta Das [PAN: ANQPD8871K],**
9. **Mr. Souren Maity [PAN: BLIPM2215B],**
10. **Mr. Arijit Ghosh [PAN: AMVPG5780C],**
11. **Ms. Saumya Banerjee [PAN: AVAPB0986D],**
12. **Mr. Indranath Daw [PAN: AIIPD8023C],**
13. **Mr. Biswarup Santra [PAN: ATTPS0097H],**
14. **Ms. Pritha Bag [PAN: ADVPB8571D],**
15. **Mr. Souvik Sankar Roy [PAN: AHKPR7306P],**
16. **Mr. Dipanshu Acharjee [PAN: AJWPA1038P],**
17. **Mr. Subhranath Daw [PAN: AIVPD7061K] and**
18. **Mr. Kaushik Samaddar [PAN: ANZPS2208L].**

---

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), vide an *ex-parteinterim* Order dated March 13, 2015 (hereinafter referred to as 'the *interim* order') had observed that the company, **MaxBe Green Provision Limited**(hereinafter referred to as 'Maxbe' or 'the Company') is *prima facie* engaged in fund mobilising activity from the public, through the Offer of Redeemable Preference Shares (hereinafter referred to as '**RPS**') and had allegedly violated the provisions of Sections 56, 60(read with Section 2(36)), 67, 73 of the Companies Act,

1956. In order to protect the interest of investors and to ensure that only legitimate fund raising activities are carried on by the Company and its directors, SEBI had issued the following directions:

"… …

7. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions –

i. *MGPL (PAN: AAGCM6417Q) shall forthwith cease to mobilize funds from investors through the Offer of Redeemable Preference Shares or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*
ii. *MGPL and its present Directors, viz. Shri Pradip Parua (PAN: AKVPP6223D; DIN: 02617014), Shri Bikarna Das (PAN: AHDPD7663C; DIN: 03612389), Shri Debabrata Halder (PAN: ACLPH4543C; DIN: 05315563), Shri Debasis Bera (PAN: AJLPB8618F; DIN: 05315588), Shri Soumitra Chanak (PAN: AGSPC7663D; DIN: 05315646) and Shri Souren Maity (PAN: BLIPM2215B; DIN: 05319297), 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;*
iii. *The past Directors of MGPL, viz. Shri Makhan Lal Pramanik (PAN: AIMPP6990L; DIN: 05315623), Shri Susanta Das (PAN: ANQPD8871K; DIN: 05315659), Shri Arijit Ghosh (PAN: AMVPG5780C; DIN: 02987534), Shri Saumya Banerjee (PAN: AVAPB0986D; DIN: 02987547), Shri Indranath Daw (PAN: AIIPD8023C; DIN: 02987555), Shri Biswarup Santra (PAN: ATTPS0097H; DIN: 03084052), Shri Pritha Bag (PAN: ADVPB8571D; DIN: 05251278), Shri Souvik Sankar Roy (PAN: AHKPR7306P; DIN: 03587612), Shri Dipanshu Acharjee (PAN: AJWPA1038P; DIN: 05116311), Shri Subhranath Daw (PAN: AIVPD7061K; DIN: 03019906) and Shri Kaushik Samaddar (PAN: ANZPS2208L; DIN: 05116327), 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;*
iv. *MGPL and its abovementioned past and present Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*
v. *MGPL shall provide a full inventory of all its assets and properties;*
vi. *MGPL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;*
vii. *MGPL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of Redeemable Preference Shares, without prior permission from SEBI;*

viii. MGPL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares, which are kept in bank account(s) and/or in the custody of MGPL;

ix. MGPL and its abovementioned past and present Directors shall co-operate with SEBI and shall furnish all information/documents sought vide letters dated April 26, 2013, September 26, 2013 and January 30, 2014.

8. The above directions shall take effect immediately and shall be in force until further orders.

…

10. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against MGPL and its abovementioned Directors, in accordance with law."

2. The *interim* order observed that the *prima facie* observations made therein were on the basis of the information obtained from the 'MCA 21 Portal' and the complaint received by SEBI. The *interim* order advised the Company and its directors (past and present) that they may file their replies within 21 days from the date of receipt of the order and also to seek an opportunity of personal hearing. The *interim* order further advised the Company and its directors to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act should not be taken/imposed against them.

3. The *interim* order was forwarded to the Company and its directors vide letters dated March 16, 2015. The *interim* order forwarded to the Company and its directors namely Mr. Pradip Parua, Mr. Bikarna Das, Mr. Debabrata Halder, Mr. Debasis Bera, Mr., Mr. Susanta Das, Mr. Souren Maity, Mr. Arijit Ghosh, Mr. Saumya Banerjee, Mr. Indranath Daw, Mr. Biswarup Santra, Ms. Pritha Bag, Mr. Souvik Sankar Roy, Mr. Dipanshu Acharjee and Mr. Subhranath Daw had returned undelivered.Other directors of the Company namely Mr. Biswarup Santra, Ms. Pritha Bag, Mr. Souvik Sankar Roy, Mr. Arijit Ghosh, Mr. Dipanshu Acharjee, Mr. Kaushik Smaddar, Ms. Saumya Banerjee and Mr. Indranath Daw vide respective letters replied to the *interim* order.

4. Before proceeding further, an opportunity of personal hearing was granted to the Company and its directors on July 28, 2015and the intimation regarding the same was sent vide letters dated June 23, 2015. The same was also communicated vide the

public notice dated July 14, 2015,in the newspaper viz. *Times of India* and *Anand Bazar Patrika*. The directors of the Company namely Ms. Pritha Bag, Mr. Biswarup Santra, Mr. Arijit Ghosh and Mr. Dipanshu Acharjee vide respective e-mails dated July 14, 2015, July 20, 2015, July 26, 2015 and July 27, 2015 filed the written submissions and also expressed their inability to appear for the personal hearing. The written submissions were taken on record.

On the date of personal hearing, no one appeared either for the Company or for its directors. Considering the reasonable opportunities to the Company and its directors already afforded for making submissions in the matter, I note the matter could be proceeded further.

5. The submissions made by Mr. Biswarup Santra (vide letter dated April 03, 2015), Ms. Pritha Bag (vide letter dated April 03, 2015), Mr. Souvik Sankar Ray (vide letter dated April 05, 2015), Mr. Arijit Ghosh (vide letter dated April 05, 2015), Mr. Dipanshu Acharjee (vide letter dated April 03, 2015), Mr. Kaushik Samaddar (vide letter dated April 09, 2015), Ms. Saumya Banerjee (vide letter dated May 04, 2015) and Mr. Indranath Daw(vide letter dated May 06, 2015)are almost similar and the same are summarized are as under:

a. They were the erstwhile director of Maxbe. They do not have access to the documents of the Company and in the absence of the same, they are not in a position to clarify the circumstances in which the number of RPS were issued beyond the number as prescribed under the SEBI Act, 1992 and the Companies Act, 1956.

b. During the period, when they were the directors of the Company, there were no complaints by any shareholder regarding non-payment of dividend or interest. They had not received any money from the Company except the fee for attending the meeting i.e. 250 each meeting.

c. The first directors of the Company were Indranath Daw, Arijit Ghosh and Soumya Banerjee. It has been said that the Company was entitled to issue RPS to the investors which the Company did for mobilization of funds in accordance with the

provisions of the SEBI Act, 1992 and the Companies Act, 1956. The Company had sufficient bank balance and assets during the tenure when they were the directors.

d. The Board of the Company had tried to take certain decisions contrary to the provisions of the Memorandum of Association, which these persons and other directors could not bear with and had demanded for change in the management. Accordingly, a memorandum of agreement on change in management of the Company took place on July 13, 2012, between Mr. Indranath Daw, Mr. Biswarup Santra, Ms. Pritha Bag (then existing directors as the 'first part') and the present directors being Mr. Pradip Parua, Mr. Debabrata Halder, Mr. Debasish Bera, Mr. Souren Maity, Mr. Bikarana Das, Mr. Susanta Das, Mr. Makhanlal Pramanik, Mr. Soumitra Chanak (as the 'second part').

e. As per the agreement, the first part had handed over all assets and liabilities for carrying on the business to the exclusive ownership, possession and control of the parties on the second part. The first part shall deliver exclusive possession of the business including all the business assets which the second part shall use and utilize for running the business. The second part shall be entitled to operate the bank accounts in the name of the Company. From the date of signing of the said Memorandum of Agreement, the parties to the second part shall be liable for the payment of all existing and future liabilities of the said business. The second part shall have the responsibilities to discharge the obligation to complete the execution of order or contracts which have been partly executed before the ownership of the business is transferred from the parties on the first part to the parties on the second part.

f. Therefore, the erstwhile directors after handing over the charge of the Company to the incoming directors have neither any liabilities nor any responsibility in respect of the functioning of the said business even for the functions performed for the Company during their tenure.

6. Mr. Indranath Daw along with his submissions dated May 06, 2015 also filed the asset details of the Company as on July 13, 2012.The additional submissions made by certain directors of the Company are as under:

a. Ms. Pritha Bag vide letter dated July 10, 2015 and e-mail dated July 14, 2015, submitted the following:

- she was not involved in the management of the Company in any manner.
- The managing director of the Company who was known to her, had narrated the concern about the resignation of two directors from his company. He requested for her help.
- She being a housewife, had conveyed that she does not have any knowledge/ experience regarding any services of a company and she is physically very ill.
- The managing director of the Company requested only for her name and said that she need not render any services for the Company.
- In June 2012, the managing director of the Company had visited her and intimated that a group of senior people who were functioning with the Company as agents have expressed their view in taking over all the charges of the Company. Finally on July 17, 2012 an agreement was signed between the outgoing and incoming directors of the Company.
- During her tenure as director of the Company she had neither attended any board meeting nor received any sitting fees. She has not been benefitted from the Company with by direct or indirect means.

b. Dipanshu Acharjee vide e-mail dated July 27, 2015, submitted that:

- he was not part of the decision making in the Company and had no cheque signing authority for any bank account of the Company.
- the Company had reimbursed him few expenses made from time to time on Company's behalf that were absolutely necessary for the purpose of running the affairs of the Company.
- he had not taken any money for his personal benefit.

- he was looking after office administration at the Company and was making office expenses and staff salaries from his personal coffer and later the Company reimbursed him upon submitting the necessary bills and vouchers.

c. Arijit Ghosh vide e-mail dated July 26, 2015, submitted that during the course of business he had lent a loan of 40,787 to the Company in its early stage of formation, which was duly paid back to him after his resignation as director of the Company.

d. Biswarup Santra vide letter dated July 20, 2015, submitted the following:

- He is an interior designer by profession and had executed the interior work for the Company since 2010.
- The managing director of the company had requested him to join the Company and he had agreed to the proposal. He had joined the Company on October 10, 2011.
- Upon joining as director of the Company, he did not take any interior work from the Company except those which were allotted before his appointment as a director.
- As a director he had neither received any remuneration nor were any funds controlled by him.
- He had offered his suggestions only in respect of the project development and had not taken any decision in respect of other businesses of the Company.

e. Souvik Sankar Ray vide his letter dated July 22, 2015, submitted as under:

- Mr. Indranath Daw, the managing director of the Company, was known to him being a previous colleague in an insurance company during 2008 and 2009. Indranath called him and informed that a couple of the directors of the company were on the verge of resigning and the same would create casual vacancies and requested for help for a short period of time.
- He intimated Indranath about his full time job in an insurance company, however, he was carried away by giving his consent to become a director of the Company.

- On that occasion he came to know that the Company deals in edible oils, pulses and cereals, etc. for human consumption. He also came to know that the Company also has a fishery project at South 24- Parganas, West Bengal.
- During his tenure of $5^{1}/_{2}$ years, he was never involved in any kind of operation in the Company and had hardly visited the office due to his busy schedule at job. He had neither attended any board meeting nor received any sitting fee for the same.
- He had expressed his view of resignation to Indranath in February 2012 and March 2012 he visited and formally resigned from the Company.
- He was not a participant in the decision making process of any affairs of the Company. He had neither controlled any fund of the Company nor signed any cheque/ document/ correspondences, etc. of the Company.

7. I have considered the *interim* order, the submissions of Mr. Biswarup Santra, Ms. Pritha Bag, Mr. Souvik Sankar Ray, Mr. Arijit Ghosh, Mr. Dipanshu Acharjee, Mr. Kaushik Samaddar, Ms. Saumya Banerjee and Mr. Indranath Dawand the material available on record. The following are the observations from the *interim* order:

"…

i. MGPL was incorporated on June 11, 2010, with the ROC, Kolkata with CIN No. as U01403WB2010PLC150390. Its Registered Office is at KBR Complex (Ground Floor), 4 Ho–Chin–Minh Sarani, Kolkata–700071, West Bengal, India.

ii. The present Directors in MGPL are Shri Pradip Parua, Shri Bikarna Das, Shri Debabrata Halder, Shri Debasis Bera, Shri Soumitra Chanak and Shri Souren Maity.

iii. Shri Souvik Sankar Roy, Shri Saumya Banerjee, Shri Arijit Ghosh, Shri Pritha Bag, Shri Biswarup Santra, Shri Indranath Daw, Shri Dipanshu Acharjee, Shri Subhranath Daw, Shri Kaushik Samaddar, Shri Makhan Lal Pramanik and Shri Susanta Das, who were earlier Directors of MGPL, have since resigned.

*iv. Form 2 (Form for Return of Allotment – filed by MGPL with the ROC in accordance with the provisions of the Companies Act, 1956) for the Financial Year 2011–12, reveals that MGPL issued "Redeemable Preference Shares" ("**Offer of Redeemable Preference Shares**")to investors, details of which are provided below –*

Type of Security	***Year***	***No. of persons to whom preference shares were allotted***	***Total Amount (₹ in Crores)***
Redeemable Preference	*2011–12*	*560*	*0.80*

Shares	*2012–13*	*693*	*0.56*
Total		***1253***	***1.36***

…"

8. The *interim* order has alleged that the Company had issued and allotted RPS during the financial years 2011-12 and 2012-13 and had raised 1.36 crore from 1,253persons/ investors, without complying with the 'public issue' norms stipulated under Sections 56, 60 read with Section 2(36) and 73 of the Companies Act, 1956. The *interim* order had also alleged that the Company, by issuing shares to more than 49 persons, had made a public issue of RPS in terms of the first proviso to Section 67(3) of the Companies Act, 1956. I note that the Company has not replied to the *interim* order.

9. In order to ascertain whether an issue of securities is a 'public issue' or done on 'private placement', it is necessary to make a reference to Section 67(3) of the Companies Act, 1956, which reads as under:

> *"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)."*

In terms of Section 67(3), as amended by the *Companies (Amendment) Act, 2000, with effect from December 13, 2000*, 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 first *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, the number of subscribers becomes relevant to conclude whether an issue of shares are for public or on a private placement basis. In view of the same, if an offer of securities are made to fifty or more persons, it would be deemed to be a public issue. I now place my reliance on the order of 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. …"

10. Following are the details of the allotment of RPS along with the respective dates:

Date of Allotment	Year	No. of persons	Amount (□)
31/07/2011	2011–12	176	19,08,000
10/10/2011		121	13,05,500
20/01/2012		1	6,000
20/01/2012		262	48,02,000
20/04/2012	2012–13	693	56,65,500
	Total	**1,253**	**1,36,87,000**

From the above, it is noted that the Company had made allotments of RPS on July 31, 2011, October 10, 2011, January 20, 2012 and April 20, 2012. On January 20, 2012, the Company had made two continuous allotments to a total of 263 persons and the same can be presumed to be part of the same offer. The allotment of RPS made on other dates are also exceeding 49. Therefore, considering the number of persons from whom monies were mobilised by the Company by issuing RPSs, it can be concluded that the Company had made a public issue of RPS in terms of the first *proviso* to Section 67(3) of the Companies Act, 1956where 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.

11. By making a public issue of RPS, the Company was mandated to comply with all the legal provisions that govern and regulate public issue of such securities, including the Companies Act, 1956 and the SEBI Act and regulations. In this context, I refer and rely on the below mentioned observation made by the Hon'ble Supreme Court of India in the matter of *Sahara case*:

"... ... 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. In view of the above observations, by virtue of Section 55A(a) and (b), SEBI has jurisdiction and would govern the issue of RPS as the same was clearly made to more than 49 persons. As alleged in the *interim* order, the Company was mandated to comply with the provisions of Sections 56, 60, 67 and 73 of the Companies Act,

1956, in respect of its offer and issue of RPS. 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'.

13. The *interim* order has alleged that the Company had failed to comply with Section 73 of the Companies Act, 1956, in respect of its issuance of RPS. By issuing RPS to more than 49 persons, the Company had to compulsorily list such securities in compliance with Section 73(1) of the Companies Act, 1956. As per Section 73(1) 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. There is no material on record to say that the Company has filed an application with a recognised stock exchange to enable the RPS to be dealt with in such exchange. Therefore, the Company has also failed to comply with this requirement.

14. Section 73(2) of the Companies Act, 1956 states that '*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*'. As the Company failed to make an application for listing such RPS, the Company had to forthwith repay such money collected from investors. If such

repayments are not made within 8 days after the Company becomes liable to repay, the Company and every director of the Company, who is an officer in default, is jointly and severally liable to repay with interest at such rate. There is no material on record to say that the Company has complied with the provisions of Section 73(3).

19. From the foregoing, I conclude that the Company failed to comply with the stipulation under Sections 56, 60, 73 of the Companies Act, 1956 read with the Companies Act, 2013, in respect of its offer and issuance of RPS as discussed in this Order. The Company shall therefore be liable to make refunds as per the mandate under Section 73(2) of the Companies Act, 1956 and also for regulatory action for committing the above violations.

20. **Liability of Directors:** Along with the Company the *interim* order was issued against the directors of the Company namely Mr. Pradip Parua, Mr. Bikarna Das, Mr. Debabrata Halder, Mr. Debasis Bera, Mr. Makhan Lal Pramanik, Mr. Soumitra Chanak, Mr. Susanta Das, Mr. Souren Maity, Mr. Arijit Ghosh, Ms. Saumya Banerjee, Mr. Indranath Daw, Mr. Biswarup Santra, Ms. Pritha Bag, Mr. Souvik Sankar Roy, Mr. Dipanshu Acharjee, Mr. Subhranath Daw and Mr. Kaushik Samaddar.

a. The details of the appointment and resignations of the directors of the Company are as under:

Name	Date of Appointment	Date of Cession
Mr. Pradip Parua	13/07/2012	Continuing as director
Mr. Bikarna Das	13/07/2012	Continuing as director
Mr. Debabrata Halder	13/07/2012	Continuing as director
Mr. Debasis Bera	13/07/2012	Continuing as director
Mr. Makhan Lal Pramanik	13/07/2012	23/12/2013
Mr. Soumitra Chanak	13/07/2012	Continuing as director
Mr. Susanta Das	13/07/2012	23/12/2013
Mr. Souren Maity	13/07/2012	Continuing as director
Mr. Arijit Ghosh	11/06/2010	09/03/2012
Ms. Saumya Banerjee	11/06/2010	09/03/2012
Mr. Indranath Daw	11/06/2010	13/07/2012
Mr. Biswarup Santra	10/10/2011	13/07/2012

Ms. Pritha Bag	22/03/2012	13/07/2012
Mr. Souvik Sankar Roy	10/10/2011	28/03/2012
Mr. Dipanshu Acharjee	10/10/2011	01/03/2012
Mr. Subhranath Daw	10/10/2011	22/03/2012
Mr. Kaushik Samaddar	10/10/2011	22/03/2012

b. I note that the Company had commenced the offer and issuance of RPS from 2011-2012 and continued with it in the financial year 2012-13 (the last date of allotment being April 20, 2012).Section 56 of the Companies Act, 1956 imposes the liability for the compliance, on the company, every director, and persons responsible for the issuance of the prospectus. It is observed that the liability of the Company to repay under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act, is continuing and the same continues till all the repayments are made to the investors/ public. Therefore, the directors who were present during the period when the Company had made the offer and allotted RPS shall be liable for violation of Sections 56, 60 and 73 of the Companies Act, 1956, including the default in making refunds as mandated therein. As the liability to make repayments under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act is a continuing liability, the persons who joined the Company's Board pursuant to the offer and allotment of RPS shall also be liable if the Company and the concerned directors have failed to make refunds, as mandated under the discussed provisions of law.

c. As per the details available on record, Mr. Arijit Ghosh, Ms. Saumya Banerjee,Mr. Indranath Daw, Mr. Biswarup Santra, Ms. Pritha Bag, Mr. Souvik Sankar Roy, Mr. Dipanshu Acharjee, Mr. Subhranath Daw and Mr. Kaushik Samaddar were the directors of the Company at the time of impugned issue and allotment of RPS. These persons have contended that the Company was entitled to issue RPS to the investors and the mobilisation of funds was in accordance with the provisions of the SEBI Act, 1992 and the Companies Act, 1956. It has been said that the Company had sufficient bank balance and assets during which they were the directors of the Company. It has also been said that the management was changed and a memorandum of agreement was signed on July 13, 2012 and the present directors of

the Company are Mr. Pradip Parua, Mr. Bikarana Das, Mr. Debabrata Halder, Mr. Debasish Bera, Mr. Makhanlal Pramanik, Mr. Soumitra Chanak, Mr. Susanta Das and Mr. Souren Maity.

I have considered the arguments of Mr. Arijit Ghosh, Ms. Saumya Banerjee, Mr. Indranath Daw, Mr. Biswarup Santra, Ms. Pritha Bag, Mr. Souvik Sankar Roy, Mr. Dipanshu Acharjee, Mr. Subhranath Daw, Mr. Kaushik Samaddar and note that the same do not find any merits in view of the discussion in the earlier paragraphs. I note that Mr. Arijit Ghosh, Ms. Saumya Banerjee, Mr. Indranath Daw, Mr. Biswarup Santra, Ms. Pritha Bag, Mr. Souvik Sankar Roy, Mr. Dipanshu Acharjee, Mr. Subhranath Daw and Mr. Kaushik Samaddar were the directors of the Company and responsible for the affairs of the Company, when the impugned RPS were allotted and hence these are liable for the contraventions as found against the Company. I note that these persons are also jointly and severally responsible with the Company for making refunds along with interest as mandated under Section 73(2) of the Companies Act, 1956 read with Section 27 of the SEBI Act.

d. Persons namely Mr. Pradip Parua, Mr. Bikarna Das, Mr. Debabrata Halder, Mr. Debasis Bera, Mr. Makhan Lal Pramanik, Mr. Soumitra Chanak, Mr. Susanta Das, Mr. Souren Maity became the directors of the Company on July 13, 2012 i.e. after the last available date of impugned offers of RPS.

Mr. Pradip Parua, Mr. Bikarna Das, Mr. Debabrata Halder, Mr. Debasis Bera, Mr. Soumitra Chanakand Mr. Souren Maity are the present directors of the Company. I note that these persons have not submitted any reply to the *interim* order in spite of intimation about the same. It is observed that these persons have not exercised necessary diligence after becoming the directors in the Company. The inaction by these against the previous/existing management (for violating the public issue norms as stipulated under the Companies Act, 1956), even after the receipt of the *interim* order, leads one to conclude on a possible collusion with the Company and its management.

I note that Mr. Pradip Parua, Mr. Bikarna Das, Mr. Debabrata Halder, Mr. Debasis Bera, Mr. Makhan Lal Pramanik, Mr. Soumitra Chanak, Mr. Susanta Das and Mr. Souren Maity have not reported the violations committed by the Company. As discussed earlier, the liability to refund is a continuous liability and would be discharged only when the repayments are done. Mr. Pradip Parua, Mr. Bikarna Das, Mr. Debabrata Halder, Mr. Debasis Bera, Mr. Makhan Lal Pramanik, Mr. Soumitra Chanak, Mr. Susanta Das and Mr. Souren Maity did not take any steps to remedy the violations committed. Accordingly, I hold these persons responsible for the same.

21. I note that the Company and its directors namely Mr. Pradip Parua, Mr. Bikarna Das, Mr. Debabrata Halder, Mr. Debasis Bera, Mr. Makhan Lal Pramanik, Mr. Soumitra Chanak, Mr. Susanta Das, Mr. Souren Maity, Mr. Arijit Ghosh, Ms. Saumya Banerjee, Mr. Indranath Daw, Mr. Biswarup Santra, Ms. Pritha Bag, Mr. Souvik Sankar Roy, Mr. Dipanshu Acharjee, Mr. Subhranath Daw and Mr. Kaushik Samaddar were required to provide full inventory of the assets and properties within 21 days from the date of receipt of *interim* order. However, no such details have been filed till date. In view of the discussion above, appropriate action in accordance with law needs to be initiated against the Company and the directors/ promoters in charge of the affairs of the Company during the relevant period.

22. Therefore, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11 and 11B thereof hereby issue the following directions:

a. The Company, **MaxBe Green Provision Limited [PAN: AAGCM6417Q], Mr. Pradip Parua [PAN: AKVPP6223D], Mr. Bikarna Das [PAN: AHDPD7663C], Mr. Debabrata Halder [PAN: ACLPH4543C], Mr. Debasis Bera [PAN: AJLPB8618F], Mr. Makhan Lal Pramanik [PAN: AIMPP6990L], Mr. Soumitra Chanak [PAN: AGSPC7663D], Mr. Susanta Das [PAN: ANQPD8871K], Mr. Souren Maity [PAN: BLIPM2215B], Mr. Arijit Ghosh [PAN: AMVPG5780C],**

Ms. Saumya Banerjee [PAN: AVAPB0986D], Mr. Indranath Daw [PAN: AIIPD8023C], Mr. Biswarup Santra [PAN: ATTPS0097H], Ms. Pritha Bag [PAN: ADVPB8571D], Mr. Souvik Sankar Roy [PAN: AHKPR7306P], Mr. Dipanshu Acharjee [PAN: AJWPA1038P], Mr. Subhranath Daw [PAN: AIVPD7061K] and Mr. Kaushik Samaddar [PAN: ANZPS2208L]jointly and severally, shall forthwith refund the money collected by the Company through the issuance of Redeemable Preference Shares (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956), to the investors including the money collected from investors, till date, pending allotment of RPS, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.

b. The repayments to investors shall be effected only in cash through Bank Demand Draft or Pay Order.

c. The Company and the above directors are permitted to sell the assets of the Company only for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalised Bank.

d. The Company and the above directors shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including details on contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.

e. After completing the aforesaid repayments, the Company and its directors shall file a certificate of such completion with SEBI, within a period of three months from the date of this Order, from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant,

who has been categorized so by the Institute of Chartered Accountants of India ('ICAI').

f. In case of failure of MaxBe Green Provision Limited and its directors namely Mr. Pradip Parua, Mr. Bikarna Das, Mr. Debabrata Halder, Mr. Debasis Bera, Mr. Makhan Lal Pramanik, Mr. Soumitra Chanak, Mr. Susanta Das, Mr. Souren Maity, Mr. Arijit Ghosh, Ms. Saumya Banerjee, Mr. Indranath Daw, Mr. Biswarup Santra, Ms. Pritha Bag, Mr. Souvik Sankar Roy, Mr. Dipanshu Acharjee, Mr. Subhranath Daw and Mr. Kaushik Samaddarin complying with the aforesaid directions, SEBI, on expiry of three months from the date of this Order -

- **i.** shall recover such amounts in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws.
- **ii.** may initiate appropriate action against the Company, its promoters/ directors and the persons/ officers who are in default, including adjudication proceedings against them, in accordance with law.
- **iii.** would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
- **iv.** would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.

g. The **Company** is directed not to, directly or indirectly, access the capital market by issuing prospectus, offer document or advertisement soliciting money from the public and is further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order till the expiry of four years from the date of completion of refunds to investors, made to the satisfaction of SEBI, as directed above.

h. The **directors** of MaxBe Green Provision Limited namely Mr. Pradip Parua, Mr. Bikarna Das, Mr. Debabrata Halder, Mr. Debasis Bera, Mr. Makhan Lal Pramanik, Mr. Soumitra Chanak, Mr. Susanta Das, Mr. Souren Maity, Mr. Arijit Ghosh, Ms. Saumya Banerjee, Mr. Indranath Daw, Mr. Biswarup Santra, Ms. Pritha Bag, Mr. Souvik Sankar Roy, Mr. Dipanshu Acharjee, Mr. Subhranath Daw and Mr. Kaushik Samaddar are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, with immediate effect. They are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, with immediate effect. This restraint shall continue to be in force for a further period of four years on completion of the repayments, as directed above.

i. The above directions shall come into force with immediate effect.

23. This Order is without prejudice to any action, including adjudication and prosecution proceedings, that might be taken by SEBI in respect of the above violations committed by the Company, its promoters, directors and other key persons.

24. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

25. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/concerned Registrar of Companies, for their information and necessary action with respect to the directions/restraint imposed above against the Company and the individuals.

DATE :January 15th, 2016
PLACE : Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA