

**WTM/ AB / DDHS / LO-Ranchi/ 02 /2018-19**

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**BEFORE WHOLE TIME MEMBER: ANANTA BARUA**

**INTERIM ORDER**

**Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Rainbow Industries And Constructions Limited**

In respect of:

<b>Noticee No.</b>	<b>Name of the Noticees</b>	<b>CIN/ DIN</b>	<b>PAN</b>
1	Rainbow Industries And Constructions Limited	U45201JH2010PL C013940	AAECR6197A
2	Mr. Dhiren Rawani	02080899	AGWPR6262R
3	Mr. Nand Lal Koiree	02115233	AREPK5807E
4	Mr. Ashok Saw	02784354	BLXPS0512A
5	Mr. Mukesh Singh	02785940	BNVPS8079L
6	Mr. Ganesh Thakur	02785963	AFOPT8328K
7	Ms. Nidhi Yogendra	02785982	Not Available
8	Mr. Barun Kumar Rawani	02333896	AFPPR5448M
9	Mr. Bisun Rawani	03548280	ANDPR8996C
10	Ms. Mohini Devi	Not Available	Not Available

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***Background:***

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) was in receipt of a complaint dated March 27, 2018 in relation to money mobilization by Rainbow Industries And Constructions Limited (hereinafter referred to as “RIACL/ company”). As the complaint contained copies of Redeemable Preference Share (hereinafter referred to as “RPS”) issued by RIACL, examination was initiated against RIACL to ascertain if the company has issued redeemable preference shares to the public in violation of the public issue requirements.

2. Details of the company were obtained from MCA 21 portal. The following relevant information was taken note of:

i) Date of Incorporation : 15/01/2010

ii) Type of the company : Public and Unlisted

iii) CIN : U45201JH2010PLC013940

iv) PAN: AAECR6197A

v) Registered Office Address: 1st Floor Balaji Majestic Mithu Road Bank More, Dhanbad JH 826001. Old Registered Office address: 2nd Floor, Ozone Plaza, Bank More, Dhanbad-826001.

vi) Correspondence Address: NA

vii) **Details of present and past directors/Promoters:**

Sl. No	Name	Current Designation	DIN	PAN	Original date of appointment	Date of Cessation
<b>Details of Directors cum Promoter</b>						
1	Mr. Dhiren Rawani	Director and Promoter	02080899	AGWPR6262R	15/01/2010	18/08/2014
2	Mr. Nand Lal Koiree	Director and Promoter	02115233	AREPK5807E	15/01/2010	18/08/2014
3	Mr. Ashok Saw	Director and Promoter	02784354	BLXPS0512A	15/01/2010	-
4	Mr. Mukesh Singh	Director and Promoter	02785940	BNVPS8079L	15/01/2010	-
5	Mr. Ganesh Thakur	Director and Promoter	02785963	AFOPT8328K	15/01/2010	25/07/2016
6	Ms. Nidhi Yogendra	Director and Promoter	02785982	Not Available	15/01/2010	-
<b>Details of Directors</b>						
7	Mr. Barun Kumar Rawani	Director	02333896	AFPPR5448M	20/01/2012	-
8	Mr. Bisun Rawani	Director	03548280	ANDPR8996C	20/01/2012	-
<b>Details of Promoters</b>						
9	Ms. Mohini Devi	Promoter	-	-	-	

viii) Date of filing of last Annual Accounts: 31/03/2014

ix) Return of allotment (**Form 2**) - Total capital of the company (Break-up of issues and authorized capital)

**a.** Issued capital: Taking into consideration the Company Master Data, Form 2 and Annual Return filed by RIACL with RoC

I. Equity Capital: Rs. 20,00,000/-

II. Preference Capital : Rs. 11,35,69,500/-

**b.** Details of allotment of RPS (as per Form 2)

Year	Date of allotment	Type	No. of allottees	Face Value (Rs.)	Premium Amount (Rs.)	Total Amount (Rs.)
2011-12	30/03/2012	Preference Shares	5378	100	Nil	6,00,00,000
2012-13	20/02/2013	Preference Shares	488	100	Nil	57,40,000
	31/03/2013	Preference Shares	4184	100	Nil	4,78,29,500
<b>Total</b>			10050			11,35,69,500

**c.** Details of allotment of RPS (as per complaint)

Complainant had attached nine copies of RPS certificates issued by RIACL, the details of two certificates were not found in the preference shareholders list attached in form 2 and Form 20B mentioned above. The details of the same are as under:

Certificate No.	Financial Year	Date	No. of allottees	Amount (Rs.)
100111110005	2011-12	Issue date not mentioned, however, deposit date mentioned is 21/11/2011	1	5,000
109112030057	2012-13	14/04/2012	1	50,000

**d.** Combined year-wise details of no. of persons to whom RPS were issued and amount involved, based on tables at b & c above:

Financial Year	No. of allottees	Amount (Rs.)
2011-12	5379	6,00,05,000
2012-13	4673	5,36,19,500
<b>Total</b>	<b>10052</b>	<b>11,36,24,500</b>

- x) Details of any Board meetings held by the company as per RoC record which indicate with respect to the issue: Not Available
3. Based on the information gathered from the MCA portal, SEBI issued a letter dated May 30, 2018 to RIACL and its present directors, advising it to furnish the following information latest by June 14, 2018.
- i. Copy of Audited Annual Accounts and Annual Returns of the company for last 3 years.
  - ii. Name, addresses, PAN and occupation of all the promoters/directors and Key Managerial Personnel of the company.
  - iii. Nature of Business and PAN of the company.
  - iv. **Information in respect of issue of shares**
    - a. Copy of Prospectus / Red Herring Prospectus/ Statement in lieu of prospectus/ Information memorandum filed with RoC for issuance of Shares /Debentures.
    - b. Date of opening and closing of the subscription list for the said Shares/Debentures
    - c. Number of application forms circulated inviting subscription for Shares/Debentures and number of applications received
    - d. Details of allottees in the format provided
    - e. Copies of the minutes of Board/committee meeting in which the resolution has been passed for raising such additional capital and also for allotment of shares/debentures.
    - f. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of Shares/ Debentures.
    - g. Terms and conditions of the issue of Shares/Debentures.
    - h. Whether the company has applied for listing of its securities with any of the stock Exchanges.
    - i. Copies of Form 2 and Form 10 filed with the RoC.
    - j. Details of debenture trustee viz. name, address, board resolution authorizing their appointment etc.
4. Letter dated May 30, 2018 addressed to the company returned undelivered with the comment “Addressee Left”. Letter dated May 30, 2018 addressed to present directors namely, Mr. Barun Kumar Rawani, Mr. Ashok Saw, Mr. Mukesh Singh, Mr. Ganesh Thakur and Mr. Bisun Rawani was neither returned undelivered nor was a reply received. Letter dated May 30, 2018 issued to Ms. Nidhi Yogendra returned undelivered with the comment “Due to insufficient address”.
5. SEBI issued a reminder letter dated June 19, 2018 to Mr. Barun Kumar Rawani, Mr. Ashok Saw, Mr. Mukesh Singh, Mr. Ganesh Thakur and Mr. Bisun Rawani advising them to furnish the

aforesaid information latest by June 27, 2018. The said letter was delivered to Mr. Bisun Rawani and he replied on behalf of RIACL on the company's letter head vide letter dated June 26, 2018 and requested for allotting a future date for submissions of documents. The letters to other directors neither returned undelivered nor was a reply received.

6. As the letter received on June 26, 2018 on behalf of the company mentioned an alternate address in the letter head, letter dated July 03, 2018 was issued to the company to provide the aforesaid documents. However, the same returned undelivered with the comment, "Addressee Left". A physical verification at the company's registered address and the alternate address on August 27, 2018 revealed that the company had left both the addresses long back.
7. Letters issued to the directors including the past directors namely, Mr. Dhiren Rawani returned undelivered with the comment "Left RTS" and Mr. Nand Lal Koiree were neither returned undelivered nor was a reply received.
8. Therefore, I note that till date no replies have been received from RIACL or the other noticees to the letters sent by SEBI seeking information in relation to the company particularly with regard to issuance of capital.
9. In the context of the details of the offer and allotment of RPS mentioned in paragraph 2 (ix) (d) above (hereinafter referred to as "the offer and allotment of RPS"), the issue for determination in the instant matter is whether the mobilization of funds by RIACL during the years 2011-12 and 2012 -13 is in accordance with the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter, "SEBI Act") and Companies Act, 1956.
10. Section 67 of the Companies Act, 1956 deals with the conditions/circumstances under which an offer of shares/debentures by a company would be construed as made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced 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) 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 non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”*

11. For ascertaining whether the offer and allotment of preference shares by RIACL would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the company is relevant. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. Based on information obtained from MCA21 Portal and the documents received from the complainant, preliminary examination conducted by SEBI revealed that the company has issued RPS to 5379 persons amounting to Rs. 6,00,05,000/- during F.Y. 2011-12 and to 4673 persons amounting to Rs. 5,36,19,500/- during F.Y. 2012-13.

12. In the instant case, offer of RPS was made by RIACL to more than forty nine persons as shown in para 2 (ix) (d) and para 11 of this order. Therefore on the basis of complaint received and available information recorded above, I note that the offer and allotment of RPS by RIACL *prima facie* qualifies to be an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

13. Any company making a public issue is required to comply with the mandate of Section 73 of the Companies Act, 1956. Relevant extract of Section 73 of the Companies Act, 1956, is reproduced as under:

*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.*

*(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 subsection (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.*

14. The company having made a public issue of RPS was required to comply with section 73 of the Companies Act. Therefore, the requirement for such shares to be dealt on a recognized stock exchange in terms of Section 73 of the Companies Act, 1956 is attracted. Further, there is no evidence on record to indicate whether or not funds received from the investors under the offer and allotment of RPS have been kept in separate bank account by the company. In view of the aforesaid, I find that RIACL has *prima facie* contravened section 73 (1) and (3) of the Companies Act, 1956.
15. Further, in connection with the public issue, Section 56 of the Companies Act, 1956 mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the Registrar of Companies (ROC). The company and directors vide letter dated May 30, 2018 and July 10, 2018 were advised

to furnish a copy of the Prospectus / Red Herring Prospectus/ Statement in lieu of prospectus/ Information Memorandum. However, till date no documents have been received in this regard. I find that there is no evidence on record to indicate that RIACL has complied with the provisions of Sections 56 and 60 of Companies Act, 1956, in respect of the offer and allotment of RPS. In view of the same, it appears that RIACL has *prima facie* contravened the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the said offer and allotment of RPS.

16. In terms of Section 73(2) of the Companies Act, 1956, the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). Section 5 of the Companies Act defines the expression ‘officer who is in default’ to mean the officers named therein. Section 5 (g) provides that where any company does not have any of the officers specified in clauses (a) to (c) of section 5, then all the directors would be “officer who is in default”. Section 5 is reproduced as under:

*5. Meaning of “officer who is in default”: For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression " officer who is in default" means all the following officers of the company, namely:-*

*(a) the managing director or managing directors;*

*(b) the whole- time director or whole- time directors;*

*(c) the manager;*

*(d) the secretary;*

*(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;*

*(f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board;*

*(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors: Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.*

17. As per the information available on the MCA Portal, the details of the directors of RIACL, including the dates of appointment/cessation as directors, are as under:

Sl.No.	Name	Date of appointment	Date of Cessation
1	Mr. Dhiren Rawani	15/01/2010	18/08/2014

2	Mr. Nand Lal Koiree	15/01/2010	18/08/2014
3	Mr. Ashok Saw	15/01/2010	-
4	Mr. Mukesh Singh	15/01/2010	-
5	Mr. Ganesh Thakur	15/01/2010	25/07/2016
6	Ms. Nidhi Yogendra	15/01/2010	-
7	Mr. Barun Kumar Rawani	20/01/2012	-
8	Mr. Bisun Rawani	20/01/2012	-

18. In the instant case, there is no *prima facie* material to show that any of the officers set out in clauses (a) to (c) of section 5 of the Companies Act, 1956 or any specified director of RIACL was entrusted to discharge the obligation contained in section 73 of the Companies Act, 1956. The noticees at sr. no. 1 to 8 of the above table were directors when amounts were collected by RIACL in contravention of the public issue norms. Therefore, I find that all directors (past and present) of RIACL are *prima facie* liable for action under section 73 (2) of the Companies Act.

19. SEBI vide letter dated July 02, 2018, received a communication from SSP-Dhanbad of Police Inspector cum Thana Prabhari, Bankmore informing SEBI that Mr. Dhiren Rawani passed away in August 2017. However, in this regard, no copy of death certificate of Mr. Dhiren Rawani has been received. Letter dated July 10, 2018 issued to Mr. Dhiren Rawani returned undelivered with the remark, "Left RTS". Depending on the liability of Mr. Dhiren Rawani, his legal representatives may be served with a copy of this order.

20. I also note that the complainant in his complaint dated March 27, 2018 had attached nine copies of RPS certificates issued by RIACL. Details of two certificates enclosed with the aforesaid complaint were not found in the list of preference shareholders enclosed with Form 2 and Form 20B filed by the company. The details of the said two certificates are as under:

<b>Certificate No.</b>	<b>Financial Year</b>	<b>Date</b>	<b>No. of allottees</b>	<b>Amount (Rs.)</b>
100111110005	2011-12	Issue date not mentioned, however, deposit date mentioned is 21/11/2011	1	5,000
109112030057	2012-13	14/04/2012	1	50,000

The company has failed to file annual accounts from financial year 2015 and the company is not responding to any of the letters issued by SEBI. In view of the above, the quantum of funds mobilized by the company could be much more. Therefore, other investors may also fall prey to the company's such offerings.

21. As per the requirement under law, in case of public issue, the issuer company has to normally observe requirements such as obtaining rating, preparing and filing the prospectus with required disclosures, listing of securities on stock exchange etc. It is *prima facie* observed that the company has failed to comply with the aforesaid requirements.
22. As per Section 55A of the Companies Act, 1956, the provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall – (i) in case of listed public companies and (ii) in case of those public companies which intend to get their securities listed on any recognized stock exchange in India, be administered by SEBI. Section 11A of the SEBI Act inter alia allows SEBI to issue order prohibiting any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, sub-section (4) of section 11 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 11B 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 person associated with the securities market or to any company in respect of issue of capital, transfer of securities etc.
23. In view of the above alleged violations committed by RIACL in raising money from the public through the issue of RPS, it becomes necessary for SEBI, as the regulator for the securities market, to intervene and issue suitable directions including restraining the company from mobilizing funds from the public. Further, the interest of the investors also need to be protected to ensure that public funds are not diverted and misappropriated. 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, which shall remain in force until further orders:-

- a) RIACL [PAN: AAECR6197A] and its promoters and directors including Mr. Ashok Saw [PAN: BLXPS0512A], Mr. Mukesh Singh [PAN: BNVPS8079L], Ms. Nidhi Yogendra [PAN: Not Available], Mr. Barun Kumar Rawani [PAN: AFPPR5448M] and Mr. Bisun Rawani [PAN: ANDPR8996C] are restrained from mobilizing funds through the issue of RPS or through any other form of securities, to the public and/ or invite subscription of securities from the public, in any manner whatsoever, either directly or indirectly till further directions;
- b) RIACL and its promoters and directors including Mr. Ashok Saw, Mr. Mukesh Singh, Ms. Nidhi Yogendra, Mr. Barun Kumar Rawani and Mr. Bisun Rawani 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 directions;
- c) RIACL and the other noticees namely Mr. Ashok Saw, Mr. Mukesh Singh, Ms. Nidhi Yogendra, Mr. Barun Kumar Rawani, Mr. Bisun Rawani, Mr. Ganesh Thakur [PAN: AFOPT8328K], Mr. Dhiren Rawani [PAN: AGWPR6262R] including his legal representatives, Mr. Nand Lal Koiree [PAN: AREPK5807E] and Ms. Mohini Devi [PAN: Not Available] shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public, till further directions;
- d) RIACL and the other noticees namely Mr. Ashok Saw, Mr. Mukesh Singh, Ms. Nidhi Yogendra, Mr. Barun Kumar Rawani, Mr. Bisun Rawani, Mr. Ganesh Thakur, Mr. Dhiren Rawani including his legal representatives, Mr. Nand Lal Koiree, Ms. Mohini Devi shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through the offer and allotment of RPS;
- e) RIACL and its present directors shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of RPS sought vide letters dated May 30, 2018 and July 10, 2018.

The preliminary findings contained in paragraphs 10 to 20 of this Order are made on the basis of the complaint received and information obtained from MCA21 portal.

24. RIACL and the noticees are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, namely:-

- a) The Noticees to jointly and severally refund money collected from the public without complying with the public issue norms through the offer and allotment of RPS, 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), supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and
- b) The Noticees to be refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, for an appropriate period.

25. The Noticees, may, within 21 days from the date of receipt of this interim order - cum- show cause notice, file their respective replies. The Noticees are directed to furnish an inventory of their assets in their reply. In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 45 days from the date of receipt of this Order. In the event of the Noticees failing to file replies within 21 days or requesting for an opportunity of personal hearing within the said 45 days, the preliminary findings at paras 10 to 20 of this Order and directions at para 23 (a) to (d) above shall become final and absolute against the Noticees automatically, without any further orders. The Noticees shall comply with the directions at para 24 above within a period of 90 days from the date of this Order becoming final. Upon the expiry of a period of 90 days from the date of this Order becoming final, SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution in addition to making a suitable reference to State Government / Local Police. However, as regards, the amount to be refunded will depend upon the actual amount raised from the public which may not be limited to the amount filed by the company or as observed in para 2 (ix) (d) and 11 above. To that extent the order will be subject to the aforesaid.

26. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
27. Copy of this Order shall be forwarded to the recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.

**Sd/-**

**Place: Mumbai**

**Date: November 22, 2018**

**ANANTA BARUA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**