

**SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER CUM SHOW CAUSE NOTICE**

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

	NOTICEES	DIN/CIN	PAN
COMPANY –			
1.	Hahnemann Food Products Limited	U15410WB2008PLC122923	AABCH9985K
DIRECTORS CUM PROMOTERS –			
2.	Raja Banerjee	00447119	AJHPB0532A
3.	Goutam Banerjee	01203466	AJHPB0531D
DIRECTORS –			
4.	Santi Ranjan Banerjee	1886977	AJNPB1075C
5.	Asit Roy	03577815	AMAPR0018H
6.	Bidhan Chandra Ray	06669435	BAIPR3996K
7.	Subodh Kumar Dutta	06602943	AGWPD8963F

1. Securities and Exchange Board of India (“SEBI”) received several complaints against Hahnemann Food Products Limited (“HFPL”). From the documents received, it was observed that HFPL has mobilized funds through issuance of securities. Accordingly, an examination was initiated for possible violations regarding issuance of securities.
2. As a matter of preliminary inquiry, vide separate letters dated March 08, 2018, SEBI sought the following information from HFPL and its Directors, –
 - i. Copy of Audited Balance Sheet and Annual Returns of the company for the 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 of the company.
 - iv. Other Information in respect of issue of Shares/Debentures:
 - 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. Details regarding the number of application forms circulated inviting subscription for Shares/Debentures and number of applications received.
- d. Details of allottees in the format given below (in hard copy as well as soft copy).

SR. NO.	DATE OF ALLOTMENT (DD/MM/YYYY)	FINANCIAL YEAR	NAME OF ALLOTTEE	ADDRESS OF ALLOTTEE/ CONTACT DETAILS	AMOUNT OF SHARES / DEBENTURES ALLOTTED (₹)
TOTAL					

- v. 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.
- vi. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of Shares/Debentures.
- vii. Terms and conditions of the issue of Shares/Debentures.
- viii. Whether the company has applied for listing of its securities with any of the Stock Exchanges.
- ix. Copies of Form 2 and Form 10 filed with the RoC.

3. Details concerning the above-mentioned letters dated March 08, 2018 issued by SEBI and replies received thereto, etc. are provided as under –

TABLE-I		
Name of Entity/ Director	Letter Status (Returned/ Delivered)	Reminder Letter sent date
HFPL	Letter delivered at company's address.	17.04.2018
Raja Banerjee	Letter delivered at director's address.	17.04.2018
Goutam Banerjee	Letter delivered at director's address.	17.04.2018
Santi Rajan Banerjee	Undelivered with the comment "Left"	17.04.2018
Asit Roy	Letter delivered at director's address.	17.04.2018
Subodh Kumar Dutta	Undelivered with the comment "Refused"	17.04.2018
Bidhan Chandra Ray	Letter delivered at director's address.	17.04.2018

4. None of the above-mentioned entities have replied to SEBI. Details pertaining to HFPL were procured by SEBI from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*. The following relevant information was taken note of –
- i) Date of Incorporation : 22/02/2008
 - ii) Type of the company : Public and Unlisted
 - iii) CIN : U15410WB2008PLC122923
 - iv) PAN : AABCH9985K
 - v) Registered Office Address : Vill - Shyampur, P.O. - Beliatore, P.S. - Borjora, Bankura, West Bengal- 722203
 - vi) Correspondence Address: Vill - Shyampur, P.O. - Beliatore, P.S. - Borjora, Bankura, West Bengal- 722203.
 - vii) Details of present and past directors/ promoters are :

TABLE-II					
S. No	Name of director	Designation	Residential Address	Date of appointment	Date of cessation
1.	Raja Banerjee	Promoter and Past Director	703E, Diamond Harbour Road, Block – 'P', New Alipore, Kolkata, West Bengal - 700053	22.02.2008	11.07.2011
2.	Goutam Banerjee	Promoter and Director	703E, Diamond Harbour Road, New Alipore, Block – P, Kolkata, West Bengal – 700053	22.02.2008	-
3.	Santi Rajan Banerjee/Santi Ranjan Banerjee*	Director	21/H/10 Canal East Road, Calcutta, West Bengal- 700067	11.07.2011	-
4.	Asit Roy	Past Director	85, Sitanath Bose Lane, Howrah Municipal Corp. Golabari, Howrah, West Bengal - 711106	11.07.2011	22.06.2013
5.	Bidhan Chandra Ray	Director)	Vill – Betai Sadhubazar, P.O. Betai, P.S. Tehatta, Dist– Nadia, Betai, West Bengal - 741163	04.08.2014	-

6.	Subodh Kumar Dutta	Past Director (Additional Director)	46/23-Bmanihari Tola, Varan tar Uttar Pradesh – 221010	07.06.2013	11.08.2014
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**During the examination, it is noted that the name of one of the directors as per 'Register of Directors' obtained from RoC is Santi Rajan Banerjee. The name of the director filled in the Annual Return of the company is Santi Ranjan Banerjee. The address and date of birth is matching. Further, during the examination, while extracting PAN details from Income Tax website, no results could be found for PAN of Santi Rajan Banerjee. However, PAN for Santi Ranjan Banerjee was found. Hence, the examination construed that Santi Rajan Banerjee and Santi Ranjan Banerjee is one and same person.*

viii) Date of filing of last Annual Accounts and Annual Report: Annual Accounts - **31.03.2013**.

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 HFPL with RoC

I. Equity Capital: Rs. 260,770,200/-

Details of allotment of Equity Shares (as per Form 2).

TABLE - III					
Year	Date of allotment	No. of allottees (approx.)	Face Value (Rs)	Premium Amount (Rs)	Total Amount (Rs)
2011-12	11/07/2011	4	10	Nil	8,000/-
	03/12/2011	18,855	10	Nil	55,861,100/-
	10/12/2011	11,053	10	Nil	34,131,500/-
	17/12/2011	15,909	10	Nil	39,937,400/-
	23/12/2011	9,936	10	Nil	28,572,600/-
	24/12/2011	5,972	10	Nil	27,593,300/-
	30/12/2011	9,828	10	Nil	27,432,500/-
	03/01/2012	6,388	10	Nil	16,722,900/-
	14/01/2012	29,278	10	Nil	19,158,100/-
	19/01/2012	17,905	10	Nil	10,502,800/-
Total		125,128*			2,59,920,200/-

As per Annual Return filed by the company for the year ended 31.03.2012, it is observed that number of equity shareholders is 125,441. Details of previous allotments have been checked and it is observed that there was initial issued capital of Rs. 1,00,000/- to 2 persons and thereafter further allotment amounting to Rs. 7, 50,000/- to 1 entity in F.Y. 2010-11. **Hence, adjusting for the same, number of allottees comes to*

125,438 (125,441-2-1). *Since the number of allottees has been manually counted in Form 2, the figure of 125, 128 given in the table is approximate. **Since, the number of allottees from Annual Return after adjustments is coming higher than Form -2, the higher number of 125, 438 is taken.***

- x) Details of any Board meetings held by the company as per RoC records which indicate with respect to the issue.

Date of Board meeting	Date of passing resolution	Amount proposed to raise (Rs.)	Type of issue
Not available			

From a perusal of the records available on MCA21 Portal, it is clearly evident that HFPL has issued equity shares to more than 49 persons in F.Y. 2011-12.

ISSUE FOR DETERMINATION –

- The issue for determination in the instant matter is whether the mobilization of funds by HFPL through the *offer and allotment of Equity Shares*, as detailed at Table III, paragraph 4, is in accordance with the provisions of the SEBI Act, 1992 and the Companies Act, 1956.
- Section 67 of the Companies Act, 1956 deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one 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:

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

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 (1 of 1956).”

7. For ascertaining whether the *offer and allotment of Equity Shares* by HFPL will fall within the scope of Section 67 of the Companies Act, the number of persons to whom such offers were made by HFPL is crucial. 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*. In this context, it is noted from the information obtained from the *MCA21 Portal* that HFPL offered and allotted *equity shares* to **125,438** persons during the Financial Year 2011–12. HFPL mobilized approximately Rs. **2,59,920,200/-** through such issuance.
8. From the above, it will follow that the above issues being made to more than 50 persons would constitute an offer to public and hence makes it imperative for HFPL to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act is reproduced as under:

“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)...

(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 (Emphasis supplied) ...”**

9. As the *offer and allotment of Equity Shares* by HFPL is *prima facie* a public issue in accordance with the provisions of the Companies Act, the same will attract the requirement for such shares/debentures to be dealt on a recognized stock exchange in terms of Section 73 of the Companies Act, as stated above. I find that HFPL is *prima facie* in breach of the provisions of Section 73 as well.
10. Further, in connection with a 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 mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that HFPL has complied with the provisions of Sections 56 and 60 of Companies Act, in respect of the *offer and allotment of Equity Shares* by HFPL. In view of the same, I find that HFPL is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act in connection with the aforesaid *offer and allotment of Equity Shares*.
11. In terms of Section 73(2), 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). Further, in terms of Section 62 of the Companies Act, every person who *inter alia* is a director of the company at the time of the issue of the prospectus and every person who is a Promoter of the company, are 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.
12. Apart from the *prima-facie* contravention of Companies Act, 1956, public issue of equity shares ought to be made in compliance with the ICDR Regulations, 2009, which lay down the eligibility norms, disclosure norms and other procedural requirements for ensuring investor protection. Therefore, HFPL was mandated to comply with the provisions of the ICDR Regulations including the following:

Sl. No.	Relevant Provision	Requirements
1	Regulation 4(2) (d)	Application for listing of specified securities on one or more recognized stock exchange
2	Regulation 5	Appointment of merchant banker and other intermediaries
3	Regulation 6	Filing of draft offer document with SEBI and the designated stock exchange and RoC.

4	Regulation 7	Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed
5	Regulation 25 and 26	Satisfying the conditions of initial public offer
6	Regulation 36 and 37	Lock-in of specified securities held by promoters and persons other than promoters
7	Regulation 46	Keeping the public issue open for the specified period
8	Regulation 47	Pre issue advertisement for public issue
9	Regulation 57	Manner of disclosures in the offer documents

13. As per the information available on the MCA21 *Portal*, the details of the present and past Directors and Promoters of HFPL, including the dates of appointment/cessation as Directors, are shown at paragraph 4, Table – II. I note that the persons at serial nos. 1 to 5 in the above Table have been the directors of the company during the period of money mobilization through *offer and allotment of Equity Shares* and hence are *prima facie* responsible for contravention of the abovementioned Public Issue requirements and are also *prima facie* liable for refund of money to the investors. The persons at sl. no. 6 in the above Table became the director of the company post the money mobilization and hence, is liable for the alleged contraventions by HFPL.

Directions –

14. I note that the Directorate of Economic Offences (DEO), Kolkata vide their letter dated March 28, 2018, informed SEBI that it has initiated action against HFPL under the West Bengal (Protection of Interest of Depositors in Financial Establishments) Act. Further, Hon’ble Calcutta High Court in the matter of Md. Jakariya Hossain & Ors Vs. Union of India & Ors- in the matter of Hahnemann food Products Limited and Hahnemann Herbal Limited, WP No. 13159 (W) of 2015, vide order dated April 25, 2017, has referred the matter of repayment to the investors to Justice (Retd) S.P. Talukdar Committee. As the proceedings to refund the investors have already been initiated by Hon’ble Calcutta High Court and DEO, it is felt that no meaningful purpose will be served if SEBI were to initiate separate refund proceedings against the Noticees at this juncture. Accordingly, I direct the Noticee Company i.e. HFPL and its Noticee Directors to ensure refund to all the Equity Shareholders through the process being carried out by Justice (Retd) S.P. Talukdar Committee and DEO, Kolkata.

15. 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 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-
- i. HFPL and its Directors/Promoters i.e. Raja Banerjee, Goutam Banerjee, Santi Ranjan Banerjee, Asit Roy, Bidhan Chandra Ray and Subodh Kumar Dutta 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;
 - ii. HFPL and its Directors/Promoters named above 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 Equity Shares*;
 - iii. HFPL and its Directors/Promoters named above shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of Equity Shares* sought vide letters dated March 8, 2018.
16. The preliminary findings contained in paragraphs above are made on the basis of the documents obtained from MCA21 Portal and other relevant material on record. HFPL and its Directors named above (Collectively referred to as “**Notices**”) 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, viz. –
- i. The Notices not to mobilize fresh funds from investors through offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly.
 - ii. The Notices 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, directly or indirectly, for a period of four years, from the date of completion of refund to all the allottees of equity shares as prescribed in paragraph 7 above.
 - iii. Any other directions as may be found suitable.

17. The Noticees may, within 21 days from the date of receipt of this Interim Order–cum–Show Cause Notice, file their respective replies. 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 90 days from the date of receipt of this Order. In the event of the respective Noticees failing to file replies or requesting for an opportunity of personal hearing within the said period of 90 days, the preliminary findings mentioned at paragraphs 9,10,12 and 13 and directions at paragraph 17 shall become final and absolute against the respective Noticees automatically, without any further orders. SEBI may also initiate appropriate enforcement action under SEBI Act including Prosecution in addition to making a suitable reference to State Government/Local Police against the Noticees.
18. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
19. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to DEO, Kolkata and MCA/concerned RoC for their information and necessary action with respect to the directions imposed on HFPL and its Directors named above.

Place: Mumbai
Date: May 22, 2019

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA