

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI  
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECTION 12A OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956, IN THE MATTER OF NON-COMPLIANCE WITH THE REQUIREMENT OF MINIMUM PUBLIC SHAREHOLDING BY HRB FLORICULTURE LIMITED –

**Background –**

- 1.1 HRB Floriculture Limited (“**HRB Floriculture**”) is a company incorporated under the Companies Act, 1956, on February 20, 1995. The Registered Office of HRB Floriculture is at A-28, Ram Nagar, Shastri Nagar, Jaipur-302016, Rajasthan. The shares of HRB Floriculture are listed on BSE Limited (“**BSE**”).
- 1.2 Securities and Exchange Board of India (“**SEBI**”) received a complaint dated June 25, 2014, against HRB Floriculture alleging that the said company wrongly disclosed its Promoter shareholding from September 30, 2010, as 6 out of 8 Promoters were incorrectly classified in the ‘*public*’ category pursuant to decrease in the company’s share capital post forfeiture of partly paid-up equity shares.
- 1.3 The examination initiated by SEBI into the aforementioned allegation revealed the following –
- a. “During the period June 2006–September 2010, HRB Floriculture had 8 Promoters together holding 21,00,000 equity shares constituting 41.17% of the Company’s paid-up equity capital, as under –

TABLE I			
PERIOD – FROM JUNE 2006 TO SEPTEMBER 2010			
SR. NO.	NAME OF THE PROMOTER	SHAREHOLDING	
		SHARES	PERCENTAGE HOLDING %
1.	Krishan Kumar Parwal	8,64,400	16.95
2.	Sunita Parwal	80,100	1.57
3.	Basanti Devi Parwal	1,10,100	2.16
4.	Hansraj Parwal	2,00,100	3.92
5.	Nirmala Devi Parwal	95,100	1.86
6.	Ram Janki Devi Parwal	55,000	1.08
7.	Vinesh Kumar Bhargava	50,100	0.98
8.	Vinod Kumar Parwal	6,45,100	12.65
<b>TOTAL</b>		<b>21,00,000</b>	<b>41.17</b>

- b. Total number of shares as per the shareholding pattern of HRB Floriculture for the quarter ended September 30, 2010, was 51,00,200 shares.
- c. During October 2010, 28,23,900 partly paid-up shares were forfeited. According to HRB Floriculture (vide e-mail dated August 27, 2014) the partly paid-up equity shares were originally issued during its IPO in April 1996.
- d. Post forfeiture of equity shares, HRB Floriculture's capital was reduced and comprised of 22,76,300 equity shares.
- e. The shareholding pattern of HRB Floriculture for the quarter ended December 31, 2010, showed only 2 persons, viz. Krishan Kumar Parwal and Sunita Parwal under the 'Promoter' category holding an aggregate 9,44,500 shares (41.49%).

TABLE II			
PERIOD – DECEMBER 31, 2010 – POST FORFEITURE OF SHARES			
SR. NO.	NAME OF THE PROMOTER	SHAREHOLDING	
		SHARES	PERCENTAGE HOLDING %
1.	Krishan Kumar Parwal	8,64,400	37.97
2.	Sunita Parwal	80,100	3.52
TOTAL		9,44,500	41.49

- f. Surprisingly, the other 6 individuals who were earlier indicated as Promoters, were shown as part of the public shareholding (i.e. holding more than 1%) as under:

TABLE III			
PERIOD – DECEMBER 31, 2010 – POST FORFEITURE OF SHARES			
SR. NO.	NAME OF THE PROMOTER	SHAREHOLDING	
		SHARES	PERCENTAGE HOLDING %
3.	Basanti Devi Parwal	1,10,100	4.84
4.	Hansraj Parwal	2,00,100	8.79
5.	Nirmala Devi Parwal	95,100	4.18
6.	Ram Janki Devi Parwal	55,000	2.42
7.	Vinod Kumar Parwal	6,45,100	28.34
8.	Vinesh Kumar Bhargava	50,100	2.20
TOTAL		11,55,500	50.77

- g. On perusal of shareholding pattern of the Company from September 2012 onwards, it is noted that the name of Mr. Vinesh Kumar Bhargava (holding 2.2%) did not appear in the list of public of public shareholders holding more than 1%. The other five persons continue to hold 48.56% as part of the public shareholding. This position continues as seen from the shareholding pattern of the Company as on March 31, 2016."

- 1.4 Thereafter, vide an e-mail dated August 6, 2014, SEBI sought clarification from HRB Floriculture *inter alia* in respect of the reclassification of the abovementioned 6 entities at paragraph 1.3(f)(3)–(8). In its response vide an e-mail dated August 7, 2014, HRB Floriculture enclosed a copy of the letter dated November 22, 2010, purportedly sent to BSE, stating that the company confirmed the change in status of the abovementioned 6 entities at paragraph 1.3(f)(3)–(8) from ‘Promoter’ to ‘public’ category. HRB Floriculture also enclosed copies of letters each dated October 30, 2010, received by the company from the abovementioned 6 entities at paragraph 1.3(f)(3)–(8) in which it was stated that they were no longer associated with the Company as ‘Promoters’ and requested the Company to confirm their status as ‘public shareholders’.
- 1.5 SEBI sought comments from BSE in respect of the letter dated November 22, 2010, sent by HRB Floriculture. In its reply vide an e-mail dated July 1, 2015, BSE *inter alia* informed SEBI –
- a. *HRB Floriculture reclassified the Promoters’ shareholding during the quarter December 2010.*
  - b. *If the erstwhile Promoters would not have been classified as ‘public’, the total holding of the Promoters in December 2010 quarter would have been 92.25%.*
  - c. *The clarification letter claimed to have been provided by HRB Floriculture was not received by BSE.*
  - d. *Neither HRB Floriculture nor its Promoters submitted any disclosures under the Takeover Regulations and PIT Regulations, with respect to the change in their percentage holding.*
- 1.6 Vide letter dated October 1, 2015, SEBI informed HRB Floriculture that BSE had not received the letter dated November 22, 2010. Further, SEBI informed HRB Floriculture that the individual letters each dated October 30, 2010, received by the company from the abovementioned 6 entities at paragraph 1.3(f)(3)–(8) (and which was submitted to SEBI vide the company’s reply dated August 7, 2014 – as mentioned at paragraph 1.4) contained no reason for re-classification of the said entities from ‘Promoter’ to ‘public’ category. SEBI also informed HRB Floriculture of the following –
- a. *Basanti Devi Parwal, Hansraj Parwal and Ramjanki Devi Parwal share the same address as that of the continuing Promoters;*
  - b. *The Annual Report of HRB Floriculture for 2014 mentioned that Ramjanki Devi Parwal is a relative of a Key Management Person;*
  - c. *Further, it is seen that from the disclosures under Regulations 30(1) and 30(2) of SEBI (SAST) Regulations, 2011 that the other two entities (a) Vinod Kumar Parwal and (b) Nirmala Devi Parwal, were shown together with Krishna Kumar Parwal and Sunita Parwal.*
- 1.7 HRB Floriculture submitted its reply to SEBI vide letters dated October 26, 2015 and January 20, 2016.

**Ad-Interim Ex Parte Order dated June 15, 2016 –**

2.1 Vide an Order dated June 15, 2016 ("**Interim Order**"), SEBI issued the following directions against HRB Floriculture, –

16. *"In view of the foregoing observations and considering that the promoters and persons related to the promoters (and now re-classified as public shareholders) allegedly hold around 90.06%, they would have an unfair advantage of their disproportionate stake compared to the public in the Company and also place them in a more advantageous position as compared to the promoter/promoter groups of the compliant companies on account of violating the regulatory requirement prescribed in the SCRR by the Central Government and as specified by SEBI.*

17. ...

18. *In view of the foregoing, I, in exercise of the powers conferred upon me by virtue of Section 19 and under Sections 11(1), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") read with Section 12A of Securities Contracts (Regulation) Act, 1956 ("**SCRA**"), pending passing of the final order, hereby:*

a. *Direct freezing of voting rights and corporate benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding (including persons allegedly shown as public shareholders) in the Company, till such time the Company complies with the minimum public shareholding requirement.*

i. *For the purpose of above direction, proportionate promoter/promoter group shareholding shall be computed on the basis of the public shareholding in the company; e.g. if public shareholding in a company after the deadline is less than 25%, say 10%, in such case, the proportionate promoter shareholding would be 30% (i.e. three times the existing public shareholding). Thus the excess promoter/promoter group holding i.e. 60% shall be frozen till the minimum public shareholding requirement is complied with.*

ii. *In case of more than one entity in the promoter/promoter group in a company, the excess promoter holding for the purpose of taking action shall be computed on a proportionate basis. For illustrating the example above, if there are three promoters; A, B and C with shareholdings of 45%, 35% and 10% respectively; the excess promoter holding of 60% shall be allocated as follows:*

1. *A: (60% multiplied by  $[45\%/45\%+35\%+10\%]$ ) = 30.00%*

2. *B: (60% multiplied by  $[35\%/45\%+35\%+10\%]$ ) = 23.33%*

3.  $C: (60\% \text{ multiplied by } [10\%/45\%+35\%+10\%]) = 06.67\%$

Total = 60.00%

Based on the above, the excess shareholding of the promoters (including persons allegedly shown as public shareholders) of the Company that should be frozen is presented in the following table:

SL. NO.	NAME OF THE PROMOTER / SHAREHOLDER	SHAREHOLDING (AS ON MARCH 31, 2016)	EXCESS SHAREHOLDING TO BE FROZEN (%)
1.	Krishna Kumar Parwal	37.97	25.40
2.	Sunita Parwal	3.52	2.35
3.	Vinod Kumar Parwal	28.34	18.96
4.	Nirmala Devi Parwal	4.18	2.80
5.	Basanti Devi Parwal	4.84	3.24
6.	Ramjanki Devi Parwal	2.42	1.62
7.	Hansraj Parwal	8.79	5.88
	<b>TOTAL</b>	<b>90.06</b>	<b>60.24</b>

- b. Prohibit the promoters/promoter group including persons allegedly shown as public shareholders, as mentioned in sr. nos. 3 to 7 in the Table in sub-paragraph (a) above and the directors of the Company from buying, selling or otherwise dealing in securities of Company, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time the Company complies with the minimum public shareholding requirement.
  - c. Restrain the shareholders forming part of the promoter/promoter group including persons allegedly shown as public shareholders, as mentioned in the Table in sub-paragraph (a) from holding any new position as a director in any listed company, till such time the Company complies with the minimum public shareholding requirement;
  - d. Restrain the directors of Company from holding any new position as a director in any listed company, till such time the Company complies with the minimum public shareholding requirement.
19. This order is without prejudice to the right of SEBI to take any other action, including the following against the Company, their promoters and directors including persons allegedly shown as public shareholders, as mentioned in the Table in paragraph 16(a), or issuing such directions in accordance with law:
- a. Levying monetary penalty under adjudication proceedings;
  - b. Initiating criminal proceedings by way of prosecution proceedings;
  - c. Moving the scrip to trade – to – trade segment;

- d. *Excluding the scrip from F&O segment;*
- e. *Any other action/direction as may be deemed appropriate.*

*For the above purpose, this Order shall be treated as a show cause notice and the above persons may show cause as to why such proposed action should not be initiated against them.*

20. *The Board/Audit Committee of these non-compliant companies shall, at the end of each quarter, submit compliance report to the stock exchanges where the shares of company are listed, giving the extent to which compliance has been achieved and the efforts taken therefor. ...*

21. *...*

22. *The persons against whom this Order is being passed may file their replies, if any, within 21 days from the date of this order. The persons mentioned herein may also, if they so desire indicate in their replies whether they wish to avail of the opportunity of personal hearing before the Securities and Exchange Board of India at its Head Office at SEBI Bhavan, Plot C4-A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051 on a date and time to be fixed on a specific request."*

#### **Proceedings pursuant to the Interim Order dated June 15, 2016 –**

2.2 Vide a letter dated July 7, 2016, HRB Floriculture *inter alia* requested for an opportunity of personal hearing.

2.3 During the intervening period, SEBI received confirmation from BSE vide its e-mail dated October 10, 2016, stating:

*"It may be noted that the holdings of the persons named in the (Interim Order dated June 15, 2016) is the same as that mentioned in the said Order and the aggregate of these holdings is 90.06%. Further, it may be noted that, till date, the company has not specifically informed the Exchange of any steps taken by it to achieve minimum public shareholding requirement."*

2.4 Accordingly, an opportunity of personal hearing was granted to HRB Floriculture on November 10, 2016, which was attended by the authorised representatives of the said company.

2.5 During the course of the hearing, HRB Floriculture submitted the following written submissions –

1. *“That the present dispute relates to the shareholding of the Promoters, which was disclosed to the BSE on 22-11-2010 and has further been acknowledged and admitted vide Notice dated 21-8-2012 while revoking the suspension in trading of equity shares of the respondent company. The aforesaid notice issued by the BSE categorically records that the Promoters’ shareholding i.e. 944500 equity share shall remain in lock in period upto 31-12-2012. A bare perusal of the shareholding pattern of the company would go to show that the aforesaid shares belong to Mr. Krishan Kumar Parwal and Sunita Parwal. The rest of the persons who were excluded from the Promoters’ category in the year 2010 have not been included by BSE. The change in the Promoters’ category was therefore known to the BSE since 22-11-2010 and the present impugned Order having been passed on 15-6-2016 is clearly time barred and suffers from the vice of gross delay, laches and acquiescence.*
2. *That the SEBI vide its letter dated 17-10-2016 issued in response to the request by M/s Alembic Pharmaceuticals Limited has approved the reclassification of the Promoters Group which was essentially on the basis of the submission by the company that some of the shareholders who earlier were classified under the Promoter category have expressed their desire for reclassification of their shareholding in the company from Promoter Group to public category. The basis of the submission given is that the aforesaid shareholders even though related to the other Promoters of the company are leading their lives and occupations independently and are not connected, directly or indirectly, whatsoever with any activity of the company. Further, the other persons in the Promoter Group of the company do not have any control over the affairs or the decision making process of the above relative of the Promoter. It has further been submitted that the persons included in the Promoter category do not directly or indirectly, exercise control, over the affairs of the company nor hold any position of the Manger (Personnel) in the company. The aforesaid request of the company was accepted by the SEBI by observing that the company may not be required to obtain approval of the shareholders for the proposed reclassification. However, such classification may be allowed by the Stock Exchanges as per the listing regulations subject to the compliance of Regulation 31(A). This approval by SEBI, if viewed in the facts and circumstances of the present controversy relating to the respondent company clearly goes to show that the BSE accepted and acknowledge the reclassification of the Promoters Group by the respondent company. Further, as per the Family Settlement arrived between the family members belonging to the Promoters Group, the persons who have been excluded from the Promoters and included in the public category have given their affidavits to the effect that*

*they do not hold any position in the management company nor they are connected directly or indirectly with the activity of the respondent company.*

- 3. That it is pertinent to note that a family settlement qua the management of the respondent company was arrived between the family members. The aforesaid settlements resulted in the management of the respondent company coming into the shares of Krishan Kumar Parwal. In accordance with the family settlement, the family members started living separately and assets were also divided/exchanged. As a sequel thereto and in order to avoid future dispute, the immovable property belonging to the family members were also exchanged and Sale Deed/Gift Deed were executed within the family members. Since it was decided that the management of the respondent company will go to Krishan Parwal as per the settlement, therefore, the other members of the family expressed their desire to step out of the Promoter's category of the respondent company.*
- 4. That as a result of the desire of the other family members and in compliance of the aforesaid family settlement, the company received letters from Hansraj Parwal, Basanti Devi Parwal, Vinod Kumar Parwal, Nirmala Devi Parwal, Vinesh Kumar Bhargava and Ram Janki Devi Parwal intimating that they no longer were associated with the company as a Promoter and as such requested the company to change their status from Promoter category to public category.*
- 5. That since as per the settlement, the division of the family was not only of business but also at personal level as the family members started living separately at different addresses and had separate electricity and gas connection, as such there was a complete partition of the family members and accordingly, the management of the company decided to change the category of the aforesaid shareholders in the company while reporting to the stock exchange.*
- 6. That the aforesaid change in the shareholding pattern was duly informed to the BSE vide letter dated 22-11-2010, wherein the respondent company informed the BSE about the change in status from Promoter category to Public category. It is pertinent to note that after the receipt of the aforesaid letter no query was raised by the BSE and therefore, the respondent company remained under the impression that it had complied with all the provisions of the listing agreement as well as the SCRA.*
- 7. That in 2010, the management of the company decided to apply for revocation of suspension of trading of equity shares to the BSE and accordingly an application was made to the BSE for revocation of suspension of trading of equity shares in 2011.*
- 8. That in response to the application the BSE sought certain explanation on forfeiture of equity shares from the respondent company which were duly replied with by the respondent company.*
- 9. That it is relevant to note that after the revocation of suspension of trading of equity shares by BSE, the fact of change of status of Hansraj Parwal, Basanti Devi Parwal, Vinod Kumar*



*Parwal, Nirmala Devi Parwal, Vinesh Kumar Bhargava and Ram Janki Devi Parwal is being displayed on the website of BSE and the shareholding pattern depicting change in Promoter category is being filed with BSE since October 2010 to till date.*

- 10. That at the time of revocation of suspension of trading of equity shares by the BSE, a condition was imposed by the BSE that the entire promoter's holding of the company shall remain under lock in for a period of three months from the date of revocation. As per the notice dated 21-8-2012 issued by the Department of Corporate Services, BSE, and the details of the Promoter's shareholding which was directed to remain under lock – in period was the shareholding belonging to Krishan Kumar Parwal and his wife. The aforesaid shareholding belonging to Krishan Kumar Parwal did not include the shareholding of the other family members who were reclassified in the public category in the year 2010.*
- 11. That since there has been no change in the status of shareholding from October 2010 to till date therefore, the same shareholding pattern is being sent to BSE from time to time in compliance of the listing agreement and therefore, the fact regarding the change in Promoter category is known to BSE from 22-11-2010.*
- 12. That the respondent company was shocked to see the letter dated 06.08.2014 as to why the BSE has failed to inform to SEBI about the receipt of the letter dated 22.11.2010. However, after the aforesaid letter was replied, no more query was raised by SEBI regarding the change in category but by an email dated 26.08.2014, queries were raised regarding the forfeiture of the shares which was duly answered by the Respondent Company.*
- 13. Thus on enquiring from post office in 2015 regarding delivery certificate for 22-11-2010 letter to BSE vide receipt no. ER07338293IN, post office replied "the complaint is time barred".*
- 14. That thereafter, suddenly on 7-10-2015, Mr. Krishan Kumar Parwal, Managing Director of the respondent company received a letter from SEBI wherein it was informed that BSE has clarified that they have not received any letter from the company. It is humbly submitted that the response of the BSE was contrary to its notice dated 21-8-2012 and letter dated 29-6-2012.*
- 15. That it is further pointed out that there is presumption of delivery in the matter of speed post and therefore, the onus is on the BSE to show that a speed post article was not delivered particularly when the effect of the letter was given by the BSE while displaying the shareholding pattern as filed by the respondent company and while revoking the suspension of trading of equity shares of the respondent company. It was further submitted that Hansraj Parwal, Basanti Devi Parwal, Vinod Kumar Parwal, Nirmala Devi Parwal, Vinesh Kumar Bhargava and Ram Janki Devi Parwal have different address than Mr. Krishan Kumar Parwal. The fact of family settlement arrived between the members of the family was also stated and in this connection various documentary proof including Ration Card, Electricity Bill, Gas*

*connection, Voter ID were annexed in order to demonstrate that the aforesaid three persons has no relation qua the promoter category of the respondent company.*

16. *Further, it is requested that in case the adjudicating authority requires any other documents/information, the same may be summoned from the respondent company.*

17. *In view of the aforesaid submission, the impugned (Interim) Order dated 15-6-2016 may kindly be quashed and set aside.”*

### **Consideration of Issues and Findings –**

3.1.1 In the instant proceedings, the issues for consideration are as under –

- a. Whether HRB Floriculture is now compliant with the requirement of minimum public shareholding as stipulated under Rule 19(2)(b) and Rule 19A of the SCRR?*
- b. Whether any other action as contemplated under the Interim Order dated June 15, 2016, is warranted against HRB Floriculture?*

3.1.2 I have considered the written submissions submitted by HRB Floriculture during the hearing held on November 10, 2016, alongwith all relevant material available on record. I shall now proceed to deal with the issues as under –

**3.1.3 *Whether HRB Floriculture is now compliant with the requirement of minimum public shareholding as stipulated under Rule 19(2)(b) and Rule 19A of the SCRR?***

3.1.4 Vide Notifications dated June 4, 2010 and August 9, 2010, the Ministry of Finance amended the SCRR to provide for minimum and continuous public shareholding requirements in listed companies as it was felt that a dispersed shareholding structure was essential for the sustenance of a continuous market for listed securities, to provide liquidity to the investors and to discover fair prices.

3.1.5 The amended provisions of Rule 19(2)(b) and the newly inserted Rule 19(A) of the SCRR are reproduced below for reference:

***“Requirements with respect to the listing of securities on a recognised stock exchange.***

***19 (2) ...***

***(b) (i) At least twenty five per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document; or***

(ii) At least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document if the post issue capital of the company calculated at offer price is more than four thousand crore rupees:

**Provided** that the requirement of post issue capital being more than four thousand crore rupees shall not apply to a company whose draft offer document is pending with the Securities and Exchange Board of India on or before the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, if it satisfies the conditions prescribed in clause (b) of sub-rule 2 of rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement:

**Provided** further that the company, referred to in sub clause (ii), shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India.

#### **Continuous Listing Requirement.**

**19A. (1)** Every listed company [other than public sector company] shall maintain public shareholding of at least twenty five per cent.:

**Provided** that any listed company which has public shareholding below twenty five percent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.

**Explanation:** For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.

(2) Where the public shareholding in a listed company falls below twenty five per cent at any time, such company shall bring the public shareholding to twenty five per cent within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India. [Emphasis supplied]

(3) Notwithstanding anything contained in this rule, every listed public sector company shall maintain public shareholding of at least ten per cent.:

**Provided** that a listed public sector company-

(a) which has public shareholding below ten per cent, on the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board

*of India, within a period of three years from the date of such commencement;*  
*(b) whose public shareholding reduces below ten per cent, after the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2010 shall increase its public shareholding to at least ten per cent, in the manner specified by the Securities and Exchange Board of India, within a period of twelve months from the date of such reduction.”*

3.1.6 A result of the aforementioned Notifications was that all listed companies (other than PSUs) were mandated to have minimum public shareholding of 25%. Further, in listed companies where the public shareholding was less than 25%, such companies were mandated to raise the same to the minimum of 25% by June 3, 2013.

3.1.7 The methods by which listed companies could ensure compliance with the requirement of 25% minimum public shareholding were specified by SEBI under the erstwhile Clause 40A of the Listing Agreement [presently Regulation 38 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**Listing Regulations**”); See also SEBI Circular no. CIR/CFD/CMD/14/2015 dated November 30, 2015], one of which included the following (introduced vide *Clause 2(vii) of the* –

- a. Issuance of shares to public through prospectus;*
- b. Offer for sale of shares held by Promoters to public through prospectus;*
- c. Sale of shares held by Promoters through the secondary market i.e. OFS through Stock Exchange;*
- d. Institutional Placement Programme (IPP);*
- e. Rights Issues to public shareholders with Promoters/Promoter Group shareholders foregoing their rights entitlement;*
- f. Bonus Issues to public shareholders with Promoters/Promoter Group shareholders foregoing their bonus entitlement;*
- g. Any other method as may be approved by SEBI on a case-to-case basis.*

3.1.8 The shareholding patterns of HRB Floriculture (as obtained from the BSE website) as on December 31, 2016, is as under –

<b>TABLE IV</b>			
<b>PERIOD – DECEMBER 31, 2016</b>			
<b>SR. NO.</b>	<b>NAME OF THE PROMOTER</b>	<b>SHAREHOLDING</b>	
		<b>SHARES</b>	<b>PERCENTAGE HOLDING %</b>
<b>A.</b>	<b>PROMOTER SHAREHOLDING</b>		
1.	Krishan Kumar Parwal	8,64,400	37.97
2.	Sunita Parwal	80,100	3.52
	<b>TOTAL</b>	<b>9,44,500</b>	<b>41.49</b>
<b>B.</b>	<b>PUBLIC SHAREHOLDING</b>		
3.	Basanti Devi Parwal	1,10,100	4.84
4.	Hansraj Parwal	2,00,100	8.79
5.	Nirmala Devi Parwal	95,100	4.18
6.	Ram Janki Devi Parwal	55,000	2.42
7.	Vinod Kumar Parwal	6,45,100	28.34
8.	HUF & Others	2,26,400	9.94
	<b>TOTAL</b>	<b>13,31,800</b>	<b>58.51</b>
	<b>TOTAL (A + B)</b>	<b>22,76,300</b>	<b>100.00</b>
* Vinesh Kumar Bhargava is not shown in the list of public shareholders since September 2012. It is therefore inferred that he is no longer a shareholder in HRB Floriculture.			

3.1.9 From BSE's e-mail dated October 10, 2016, it is noted that HRB Floriculture has not informed the Exchange of any steps taken by it to achieve minimum public shareholding requirement.

3.1.10 On a consideration of the aforementioned in light of the shareholding at Table IV, it is observed that Promoters and persons related to the Promoters (entities at serial no. 3–7 of Table IV, who were re-classified as 'public shareholders') continue to hold 90.06% of the total shareholding in HRB Floriculture (see also paragraph 16 of the Interim Order dated June 15, 2016, reproduced at paragraph 2.1 of page 4).

3.2.1 In the instant proceedings, I note that HRB Floriculture has submitted copies of Affidavits of the family members endorsing the stand taken by the company. In this regard and upon a consideration of the aforementioned Affidavits, I find myself in agreement with the following observations contained in the Interim Order dated June 15, 2016, –

*"In the present case, promoter and managing director Mr. Krishan Parwal has stated that as part of their internal family settlement, he and his family took over the management and accordingly the other family members and Vinesh Kumar Bhargava were re-classified as public shareholders. In*

*this regard, it is relevant to note that no document to this effect has been produced. Further, assuming but not agreeing that the family settlement was indeed true, the same would have triggered open offer obligations under the Takeover Regulations, 1997, for acquisition of control by Mr. Krishan Parwal, his wife and son. However, there is no record that an open offer was made in this regard. Further, the agreements that were produced pertain to sale/gift of property/land. Therefore, giving credence to the 'family settlement' would be difficult."*

- 3.2.2 As regards the submission made by HRB Floriculture regarding the Informal Guidance given by SEBI vide letter dated "17-10-2016 issued in response to the request by M/s Alembic Pharmaceuticals Limited", I note that the aforesaid letter clearly stated:

*"4. ... Without necessarily agreeing with your analysis given in your abovementioned letter, our view is that the company may not be required to obtain approval of the shareholders for the proposed reclassification. However, such reclassification may be allowed by the stock exchanges under Regulation 31A(2) and 31A(3) of the Listing Regulations subject to compliance of Regulation 31A. 5. The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the question referred."*

- 3.2.3 Further, as per Regulation 31A(2) of the Listing Regulations: "(2) The stock exchange, specified in sub-regulation (1), shall allow modification or reclassification of the status of the shareholders, only upon receipt of a request from the concerned listed entity or the concerned shareholders along with all relevant evidence and on being satisfied with the compliance of conditions mentioned in this regulation."

- 3.2.4 In view of the above, I find that the abovementioned Informal Guidance given by SEBI vide letter dated October 17, 2016, is not applicable to the facts of the instant proceedings.

- 3.2.5 Incidentally, Regulation 31A(7)(b) of the Listing Regulations, states:

*"(7) Without prejudice to sub-regulations (5) and (6), re-classification of promoter as public shareholders shall be subject to the following conditions:*

*(b) Increase in the level of public shareholding pursuant to reclassification of Promoter shall not be counted towards achieving compliance with minimum public shareholding requirement under Rule 19A of the Securities Contracts (Regulation) Rules, 1957, and the provisions of these Regulations."*

3.2.6 From the preceding paragraph, it is observed that HRB Floriculture continues to remain non-compliant with the requirement of minimum public shareholding as stipulated under Rule 19(2)(b) and Rule 19A of the SCRR.

**4.1.1 *Whether any other action as contemplated under the Interim Order dated June 15, 2016, is warranted against HRB Floriculture, its Promoters and Promoter Group alongwith its Directors?***

4.1.2 As per the Notifications dated June 4, 2010 and August 9, 2010, which amended the SCRR, all listed companies were required to have minimum public shareholding of 25% and where the public shareholding in such companies was less than 25%, the same was required to be raised to the minimum of 25% by June 3, 2013. As stated at paragraph 3.1.12, HRB Floriculture continues to remain non-compliant with the requirement of minimum public shareholding as stipulated under Rule 19(2)(b) and Rule 19A of the SCRR.

4.1.3 The non-compliance by HRB Floriculture with the minimum public shareholding requirement, till date, is in breach of Rule 19(2)(b) and Rule 19A of the SCRR and Clause 40A of the Listing Agreement [presently Regulation 38 of the Listing Regulations; See also SEBI Circular no. CIR/CFD/CMD/14/2015 dated November 30, 2015] read with Section 21 of the SCRA. Such non-compliance being continuous in nature and in light of the fact that no concrete steps towards compliance of minimum public shareholding requirement was taken by the company, it becomes necessary, for the proper regulation of the securities market, to confirm the directions issued vide the Interim Order against HRB Floriculture, its Directors and Promoters/Promoter Group.

**Order –**

5. In view of the foregoing and in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11 and 11B of the SEBI Act and Section 12A of the SCRA hereby confirm the directions issued vide the Interim Order dated June 15, 2016, against **HRB Floriculture Limited**.

Place: Mumbai  
Date: April 7, 2017

S. RAMAN  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA