

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

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, against Mangalam Agro Products Limited and its Directors, viz. Shri Kamollesh Kumar Ghosh, Shri Ujjal Sikder and Shri Tapan Kumar Dey; its Debenture Trustees, viz. Mangalam Institute of Development and Research (through its Settlor viz. Shri Madhusudhan Chatterjee) and Chandani Mohta.

1. Securities and Exchange Board of India ("**SEBI**") received a letter dated June 19, 2013, from the Department of Non-Banking Supervision, Reserve Bank of India, Kolkata ("**RBI**"), forwarding a complaint dated April 30, 2013, against Mangalam Agro Products Limited ("**MAPL**") wherein it was alleged that the aforesaid entity was seeking deposits under Secured Non-Convertible Debentures ("**NCDs**") of ₹ 50 Crores. A copy of the brochure alongwith application form published by MAPL for issue of NCDs was also enclosed in the aforesaid letter from RBI.
2. Thereafter, SEBI vide letter dated July 29, 2013, while stating: *"It has come to our notice that you (MAPL) are raising funds from public by issuing Debentures ostensibly by way of private placement. No Prospectus or DRHP or statement in lieu of prospectus or information memorandum (was) filed with (SEBI)"*, advised MAPL to furnish *inter alia* the following information in respect of issuance of the said securities by that entity, within fifteen days from the date of receipt of the aforesaid letter, viz. –
 - i. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("**ROC**") for issuance of NCDs.
 - ii. Copy of the Memorandum and Articles of Association of the company;
 - iii. Audited Balance Sheet and Profit & Loss Account of the company for the last 3 years;
 - iv. Name, addresses and occupation of all the promoters/directors of the company;
 - v. Names and details of the Key Managerial Personnel of the company;
 - vi. Other information in respect of every series of NCDs issued by the company, viz. –

- a. Date of opening and closing of the subscription list;
 - b. Details regarding the number of application forms circulated inviting subscription;
 - c. Details regarding the number of applications received;
 - d. Details regarding the number of allottees and list of such allottees;
 - e. Number of NCDs allotted and value of such allotment against each allottee's name.
 - f. Details regarding subscription amount raised;
 - g. Date of allotment of NCDs;
 - h. Copies of the minutes of Board/Committee meeting in which the resolution was passed for allotment;
 - i. Date of dispatch of NCDs certificates, etc.;
 - j. Details of the total number of applicants for each of MAPL's scheme besides the list of final allottee;
 - k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of NCDs.
 - l. Terms and conditions of the issue of NCDs.
3. Since MAPL did not respond to the abovementioned letter dated July 29, 2013, SEBI vide letters dated September 25, 2013 and November 4, 2013, advised MAPL to submit the relevant information in respect of mobilization of funds from the public. MAPL replied to SEBI vide letter dated November 29, 2013, wherein it stated that it would submit the information sought vide SEBI letter dated July 29, 2013, on or before December 12, 2013.
4. However, as no information was received from MAPL before December 12, 2013, SEBI vide letter dated December 19, 2013, once again reminded that company to submit the relevant information regarding mobilization of funds from the public. MAPL replied to SEBI vide letter dated December 23, 2013, wherein while providing the Memorandum and Articles of Association, Balance Sheet and Profit & Loss Account of the company for the last 3 years, details pertaining to the Promoters/Directors/Key Managerial Personnel of the company, it *inter alia* submitted:
- i. "... We are not raising funds from public by issuing NCDs. However, in past we have issued NCDs on a private placement basis ...

- ii. *There was no requirement of filing any prospectus/ statement in lieu of prospectus for issuance of our NCDs in the past. However, all details regarding the said issuance was submitted by us with the ROC upon their enquiry.*
 - iii. *The company has not issued any NCDs post March 2012.*
 - iv. *The total amount received by the company by issuance of NCDs prior to March 2012 is ₹ 11,00,00,000 which is more than fully secured by the assets of the Company and its associates.*
 - v. *No offer made by the company in the past for subscription of its NCDs has exceeded 49 persons.*
 - vi. *The company has only circulated application forms to persons from whom subscription was received for its NCDs. No such circulation has taken place after March 2012."*
 - vii. As per the list of debenture holders (submitted by MAPL through an excel sheet), it is observed that the company made a series of offers totaling 107 (each of which were represented as Offer No. 1, 2, 3 ... Offer No. 107, etc.) during the period January 2011 to June 2012 and the company then proceeded to allot NCDs to less than 49 persons under each such offer. Further, the maturity dates of debentures extend to FY 2012 – 13. The aforesaid is illustrated below –
 - a. Under Offer No. 1, offer date was between January 01, 2011- January 11, 2011 and MAPL issued NCDs to 45 persons in this period of 11 days.
 - b. Similarly, under Offer No. 2, offer date was January 11, 2011- January 15, 2011 and MAPL issued NCDs to 45 persons in this period of 5 days.
5. SEBI also intimated several authorities, viz. Regional Director, Ministry of Corporate Affairs, Kolkata (vide letter dated March 24, 2014), Insurance Regulatory and Development Authority, Hyderabad, Andhra Pradesh (vide letter dated March 26, 2014) and the Chairman, Institute of Chartered Accountants of India, Eastern India Regional Council, Kolkata (vide letter dated March 14, 2014), regarding the issue of NCDs by MAPL.
6. Subsequently, SEBI received a copy of the Order dated May 6, 2014, passed by the Hon'ble Kolkata High Court in *CA No. 304 of 2014, CA No. 30 of 2014 – In the matter of Company Court Rules, 1959 and Mangalam Agro Products Ltd*, wherein while directing the matter to appear on June 5, 2014 and notice of the aforesaid application be given to SEBI, it held:

"By this application, the applicant herein seeks convening of a meeting of its creditors for sanction of the Scheme of Arrangement. According to the applicant, the Scheme of Arrangement postulates payment of

dues to the creditors from January, 2015 to 2017. While the intent of the applicant may be honourable it appears that there are many shortcomings in the proposed scheme, which, in fact, is no scheme in the eye of law. All that the applicant seeks to do is to make certain payment starting from January, 2015 till 2017. The names of the debenture-holders who are one group of creditors have been reflected in the petition filed but on a closer look of such petition, it appears that some of the debentures will mature in 2015 or 2016 or 2017. Some have already matured and ought to have been redeemed by the applicant in 2013. Some of them though few in number are to mature in 2014. At present the Court is not concerned with those debentures, which will mature in 2015, 2016 or 2017 but it is concerned with those debenture-holders whose monies have become due and payable by the applicant in 2013. The balance-sheet for 31-03-2013 has been annexed to the application wherefrom it appears that 50,00,000 debentures at the rate of ₹10 each are being treated as non-convertible debentures under long term borrowings, but surprisingly no trustee has been appointed in respect thereof as was done in the case of 6,00,000 debentures at the rate of ₹100 each. It appears that the sums realised from the debenture holders has been shown in the Balance Sheet of the company as loan and advance given to associate companies, which loan and advance are un-secured and interest free. Therefore, the balance sheet is misleading. Form 20B had only been filed in respect of debentures realised at ₹100 each and not for the bulk of debentures realised at ₹10 each. Therefore, prima facie, the intent of the applicant is not genuine in seeking sanction of scheme.

According to Counsel, appearing for the debenture-holders, Section 67 of the Companies Act postulates certain permission or information to be given to SEBI of which there has been no compliance. Accordingly to prevent the debenture-holders from being further defrauded by the applicant, Mr. Ramesh Sharma, Advocate, ... is appointed as Special Officer to take possession of the assets, properties and bank accounts of the applicant company. The Special Officer will also consider the list of debenture-holders at ₹10 each and at ₹1001 each. Needless to mention that there will be an order of injunction restraining the applicant from dealing with, disposing of, alienating, encumbering and/or creating third party interest in respect of its assets and properties without leave of this Court and to be dealt with only in the usual course of business ... Let the Special Officer on the next date of hearing submit a report containing the entire list, of debenture-holders, bondholders, recurring deposit holders and other creditors, if any.

The Special Officer will advertise calling the debenture-holders to present themselves before him with the original documents of debentures and ID proof. For such purpose, let advertisement be published once in "Aajkal" and once in "The Times of India", Calcutta Edition, the costs whereof be borne by the applicant. ..."

- 7.1 The material available on record i.e. correspondences exchanged between SEBI and MAPL alongwith the documents contained therein, information obtained from MCA21

Portal, the abovementioned Order of the Hon'ble Kolkata High Court dated May 6, 2014, have been perused. On an examination of the same, it is observed that –

- i. MAPL was incorporated on May 18, 2009, with the ROC, Kolkata, West Bengal with CIN No. as U01400WB2009PLC135152, having its Office at 170/3, Santosh Roy Road (James Long Sarani), Kolkata–700008, West Bengal, India. The Directors of MAPL are Shri Kamolesh Kumar Ghosh, Shri Ujjal Sikder and Shri Tapan Kumar Dey.
- ii. MAPL invited subscription for "*Secured Non-Convertible Debentures*" ("***Offer of NCDs***"), in accordance with *inter alia* the following conditions, as observed from the brochure alongwith the application form published by it for the *Offer of NCDs*, viz. -
 - a. *Authority of the Issue – The debentures are being issued pursuant to the resolution passed in the meeting of the Board of Directors of the company held on March 1, 2011.*
 - b. *Size of the Issue – The issue is for ₹ 5000 Lakhs (or ₹ 50 Crores) with an option to retain an additional ₹ 10000 Lakhs (or ₹ 100 Crores) in another 2 phases.*
 - c. *Any person (who) is Member of the Marketing Trust/NGO/Broker House (can invest).*
 - d. *The Issue is stated to have opened on July 9, 2011 and closed on April 30, 2012.*
 - e. *The following Schemes were made available for subscription to the Offer of NCDs, viz. –*

Scheme – I Multiplier Secured Non-Convertible Debenture						
Plan	A	B	C	D	E	F
Minimum Amount	1000	1000	1000	1000	1000	1000
Redemption Period	1 Year	3 Years	5 Years	7 Years 5 Months	10 Years 6 Months	14 Years
Redemption Amount	160	500	1000	2000	4000	9000
Redemption Value	1160	1500	2000	3000	5000	10000
Times	1.16 times	1.5 times	2 times	3 times	5 times	10 times

Scheme – II Regular Income Secured Non-Convertible Debenture Minimum Amount Acceptable is ₹20000						
Plan	Slab - X		Slab - Y		Slab - Z	
Less than ₹50000	36 Months	13.5% (M)	60 Months	14.5% (M)	126 Months	16.00% (M)
₹50000 and above	36 Months	14.4% (M)	60 Months	16.8% (M)	126 Months	25.20% (M)

- f. *There is a Free Gift General Insurance Benefit for Customers, which is available for the minimum investment of 3 years and above. Towards ensuring the aforesaid, MAPL collaborated with Oriental Insurance Company Limited. Details of the aforementioned arrangement (as observed from the brochure for the Offer of NCDs) are provided below –*

Deposit (₹)	Sum-Insured		Total Sum Insured (₹)
	Customer (₹)	Nominee (₹)	
1000–2999	50000	25000	75000
3000–4999	100000	50000	150000
5000–9999	Accidental Death (80,000) Hospitalization Charges (20,000)	50000	150000
10000–24999	Accidental Death (1,00,000) Hospitalization Charges (25,000)	75000	200000
25000–49999	Accidental Death (1,20,000) Hospitalization Charges (30,000)	75000	225000
50000–99999	Accidental Death (1,40,000) Hospitalization Charges (35,000)	100000	275000
Above 100000	Accidental Death (1,60,000) Hospitalization Charges (40,000)	100000	300000

- g. *As per Filings made by MAPL with the ROC, it is observed that the company created Charge under Section 125 of the Companies Act, 1956, for an amount of ₹ 60 Crores in favour of Mangalam Institute of Development and Research (through its Settlor viz. Shri Madhusudhan Chatterjee) and another Charge for an amount of ₹ 5 Crores in favour of Chandani Mohta.*

- iii. From the information submitted by MAPL to SEBI, it is observed that it issued *Secured Non-Convertible Debentures* to a large number of investors, details of which are reproduced below –

Year	Type of Security	No. of Subscribers to the Issue *	Total Amount (₹ in Crores)
2011 – 12	Secured Non – Convertible Debentures 5000000 NCDs @ ₹10 600000 NCDs @ ₹100	4820 Approx.	11
*List of subscribers also includes those investors from whom MAPL invited subscription through a series of offers made under the <i>Offer of NCDs</i> before April 1, 2011 i.e. between January–March, 2011.			

7.2 In the context of the abovementioned details of the *Offer of NCDs*, the issue for determination in the instant matter is whether the mobilization of funds by MAPL through the aforesaid Offer, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**") read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("**Debt Securities Regulations**"); the Companies Act, 1956 read with the Companies Act, 2013.

7.3 I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)* (hereinafter referred to as the "*Sahara Case*"), had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

7.4 In this regard –

- i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which 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) ...

(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).”

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sahara Case* observed 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. ..."

- iii. In the instant matter, for ascertaining whether the *Offer of NCDs* is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.
- a. As per the list of debenture holders submitted by MAPL, it is observed that the company made a series of offers under the *Offer of NCDs* totaling 107 (each of which were represented as Offer No. 1, 2, 3 ... Offer No. 107, etc.) during the period January 2011 to June 2012. The company has represented that it then proceeded to allot such NCDs to less than 49 persons under each such offer. The maturity dates of debentures extended to FY 2012 – 13. The aforesaid is illustrated below –
- Under Offer No. 1, the offer date was between January 01, 2011 - January 11, 2011; MAPL issued NCDs to 45 persons.
 - Similarly, under Offer No. 2, the offer date was between January 11, 2011- January 15, 2011; MAPL issued NCDs to 45 persons.
- b. As per the terms and conditions contained in the application form for subscription to the *Offer of NCDs*, "*The debentures are being issued pursuant to the resolution passed in the meeting of the Board of Directors of the company held on March 1, 2011.*" In addition, as per Form 10 (filed by MAPL with the ROC in accordance with the provisions of the Companies Act, 1956), it is observed that the Board of Directors of MAPL had passed another resolution on November 15, 2011, authorizing the issue of NCDs. The series of offers made under the *Offer of NCDs* have therefore originated from two resolutions passed by the Board of Directors of MAPL on March 1, 2011 (approval for issue of 5000000 NCDs @ ₹10) and November 15, 2011 (approval for issue of 600000 NCDs @ ₹100).
- c. The number of subscribers to whom allotment of NCDs was made under the *Offer of NCDs* was approximately 4820. Further, from the Balance Sheet for the year ended 2011–12, it is observed that the amount mobilized as a result of the said *Offer* was ₹11 Crores, which was recorded under the heading: '*Non–Current Liabilities: Long–Term Borrowings*'.
- d. Paragraph 7.4(iii)a–c above, *prima facie* shows that the series of offers made in tranches by MAPL under the *Offer of NCDs* during the Financial Year 2011–12,

as per approval obtained through two resolutions, resulted in allotment to approximately 4820 investors, therefore, indicating that the number of persons to whom such offer was made, was way beyond the limit of forty-nine persons as prescribed under Section 67(3) of the Companies Act, 1956. Such method adopted by MAPL for mobilization of funds under the *Offer of NCDs* (MAPL vide letter dated December 23, 2013 submitted that: *No offer was made by the company in the past for subscription of its NCDs has exceeded 49 persons*), was nothing but a device to circumvent the provisions of Section 67(3) of the Companies Act, 1956. In addition, it is observed that MAPL, in its letter dated December 23, 2013, submitted that: *"The Company has only circulated application forms to persons from whom subscription was received for its NCDs"*; however, from the brochure alongwith the application form, the invitation made by it for subscription to the *Offer of NCDs* extended to *"Any person (who) is Member of the Marketing Trust/NGO/Broker House"*. Such a generalized category of investor(s) cannot be said to satisfy the condition of specificity as required under Section 67(3) of the Companies Act.

- e. MAPL is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and therefore, is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.
- f. In view of the above, the *Offer of NCDs* made by MAPL during the financial year 2011–12, would *prima facie* qualify as a public issue under the first proviso to Section 67(3) of the Companies Act, 1956. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI in the case of companies who intend to get their securities listed.

7.5 I note that –

- i. From the abovementioned, it will follow that since the *Offer of NCDs* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard,

reference is made to Section 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which 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.

(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.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1 [until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2)]; and if default is made in complying with this sub- section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees."

- ii. In the *Sabara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that –

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not

granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

- iii. In the facts of the instant case, since the *Offer of NCDs* was made to fifty persons or more by MAPL, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956. It therefore *prima facie* appears that MAPL has violated the provisions of Section 73(1) of the Companies Act, 1956, since it has failed to ensure listing with a recognised stock exchange of the securities issued under the *Offer of NCDs* .
- iv. As per Section 73(2) of the Companies Act, 1956, the obligation to refund the amount with interest that was collected from investors under the *Offer of NCDs* is mandatory on MAPL. In this regard, there is no evidence on record to indicate whether or not MAPL has paid interest to the investors where securities are not allotted within 8 days under the *Offer of NCDs* , as per the aforesaid Section. In view of the same, I find that MAPL has *prima facie* not complied with the provisions of Section 73(2) of the Companies Act, 1956.
- v. Section 73(3) of Companies Act, 1956, states that all monies received shall be kept in a separate bank account maintained with a Scheduled Bank 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 five thousand rupees. In the instant case, there is no evidence on record to indicate whether or not funds received from the investors under the *Offer of NCDs* has been kept in separate bank account by MAPL. In view of the same, I find that MAPL has *prima facie* not complied with the provisions of Section 73(3) of Companies Act, 1956.

7.6 Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the ROC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As

mentioned above, since the *Offer of NCDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, MAPL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. In this regard, MAPL in its letter dated December 23, 2013, submitted: "*There was no requirement of filing any prospectus/statement in lieu of prospectus for issuance of our NCDs in the past.*". In view of the same, I find that MAPL has not complied with the provisions of Section 60 of Companies Act, 1956.

- 7.7 Under 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 or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that MAPL has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
- 7.8 Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. Further, under Section 117C of the aforesaid Act, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. Based on the material available on record, I find that MAPL has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
- 7.9 As per Section 465(1) of the Companies Act, 2013, the Companies Act, 1956, "*shall stand repealed*". However, Section 465(2)(i) of the Companies Act, 2013, provides that:

"(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any

operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;"

7.10 In addition to the above, reference may be made to the Debt Securities Regulations, which were framed by SEBI in exercise of its powers under Section 30 of the SEBI Act and are applicable to the public issue of debt securities and listing of debt securities issued through public issue or on private placement basis on a recognized stock exchange. It may be relevant to note that under the aforesaid Regulations, 'debt securities' have been defined as '*non-convertible debt securities which create or acknowledge indebtedness, and include debenture...*' In this context, I find that MAPL, through the *Offer of NCDs*, which is a public issue of debt securities, has *prima facie* violated the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- i. Regulation 4(2)(a) – *Application for listing of debt securities*
- ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
- iii. Regulation 4(2)(c) – *Requirement of Credit Rating*
- iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
- v. Regulation 4(4) – *Appointment of Debenture Trustee*
- vi. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- vii. Regulation 6 – *Filing of draft Offer Document*
- viii. Regulation 7 – *Mode of disclosure of Offer Document*
- ix. Regulation 8 – *Advertisements for Public Issues*
- x. Regulation 9 – *Abridged Prospectus and application forms*
- xi. Regulation 12 – *Minimum subscription*
- xii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiii. Regulation 15 – *Trust Deed*
- xiv. Regulation 16(1) – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

7.11 In addition to the above, the following may also be noted in respect of the *Offer of NCDs* made by MAPL –

- i. It is interesting to note that while the *Offer of NCDs* was made "*pursuant to the resolution passed in the meeting of the Board of Directors of the company held on March 1, 2011*", MAPL, had admittedly made a series of offers under the *Offer of NCDs* during the period January 2011 to June 2012, which would indicate that it had made an unauthorized issuance of NCDs even before the Board's approval on March 1, 2011.
- ii. In its letter dated December 23, 2013, MAPL submitted that it has not issued any NCDs post March 2012. However, as per the details of debenture holders provided by that company, it is observed that in certain cases the date of offer and allotment was after March 2012. Moreover, on examining the copy of debenture certificate as attached with the complaint forwarded by the RBI, it is also observed that the date of application therein was July 10, 2012 and the maturity date was July 10, 2017.
- iii. It is observed that in large number of cases, the maturity dates of the debentures pertain to the financial year 2012-13. However, from the unaudited Balance Sheet as on March 31, 2013 (obtained from the *MCA21 Portal*), it is observed that the company has not redeemed any NCDs during the financial year 2012-13. The Compliance Certificate submitted by the relevant Company Secretary also records that MAPL has not redeemed any NCDs during the financial year 2012-13. Therefore, it *prima facie* appears that the company has defaulted in its re-payment obligations.
- iv. Further, from the Audited Balance Sheet as on March 31, 2013 (obtained from the *MCA21 Portal*), it is noted that the company had issued two types of NCDs, viz. 5000000 NCDs @ ₹10 and 600000 NCDs @ ₹100, aggregating ₹11 Crores. However, as per the details of debenture holders provided by MAPL vide letter dated December 23, 2013, the face value of all the debentures was ₹100 each. Accordingly, the information reflected in the Audited Balance Sheet of MAPL as on March 31, 2013, is inconsistent with the record of debenture holders maintained by that company.
- v. From the Audited Balance Sheet for the year ending March 31, 2013 (obtained from the *MCA21 Portal*), it is observed that there was a significantly high Debt–Equity ratio i.e. 109:1. Such a high Debt–Equity ratio is prejudicial to the interest of the debenture holders and may significantly hamper the ability of the company to fulfill its obligation of redeeming the debentures on maturity especially since in the instant

matter, there already appears to have been a default in the redemption of NCDs by MAPL during the financial year 2012-13 (paragraph 7.11(iii) above).

- vi. It is also observed that there has been a change in the Auditors of the company. The company submitted unaudited Balance Sheet and Profit & Loss Accounts for the year ended March 31, 2013 (vide its letter dated December 23, 2013), to SEBI, which were not signed by any Auditor and only signed by the Directors; only the name of an Auditor (without signature) was printed. However, from the filings made by MAPL with the ROC, it is observed that a new Auditor has been appointed by that company, who has audited the Balance Sheet and Profit & Loss Accounts for the year ended March 31, 2013. However, no such Audited Balance Sheet and Profit & Loss Accounts for the year ended March 31, 2013, has been submitted by MAPL to SEBI.
- vii. From the Audited Balance Sheet of MAPL as on March 31, 2012, it is observed that the company received deposits and advances against its products aggregating to ₹29.55 Crores and ₹4.82 Crores respectively and the Auditor had also certified in the Companies (Auditors' Report) Order, 2003, that MAPL had complied with the provisions of sections 58A and 58AA of the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975, with regard to the deposits accepted from public. Further, on examining the unaudited (but signed by Directors of MAPL) Balance Sheet as on March 31, 2013 (submitted by the company vide their letter dated December 23, 2013), it is observed that the amount of deposits and advances was ₹33.28 Crores and ₹19.32 Crores respectively. However, on examining the Audited Balance Sheet for the year ended March 31, 2013 (obtained from the *MCA21 Portal*), it is observed that there are no amounts due against deposits and advances. In addition, in the Audit Report submitted by the new Auditor of MAPL, it has been stated that MAPL has not accepted any deposits from the public.

7.12 Upon a consideration of the aforementioned paragraphs, I am of the view that MAPL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCDs* and as a result of such activity has violated the provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Sections 117B–C) read with Section 465 of the Companies Act, 2013 and the Debt Securities Regulations.

8. SEBI has a statutory duty to protect the interest of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013, administrative authority on the subjects relating to public issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 and Section 465 of the Companies Act, 2013, over companies who issue *NCDs* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts and the Debt Securities Regulations (as mentioned in paragraphs 7.1–7.12 above).
- 9.1 From information obtained by SEBI from the *MCA 21 Portal*, it is observed that MAPL appointed *Mangalam Institute of Development and Research (through its Settlor viz. Shri Madhusudhan Chatterjee)* and *Chandani Mohita* as Debenture Trustees for the *Offer of NCDs* by that company.
- 9.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Based on the material available on record, I find that *Mangalam Institute of Development and Research (through its Settlor viz. Shri Madhusudhan Chatterjee)* and *Chandani Mohita* are not registered with SEBI as Debenture Trustee and therefore, have *prima facie* acted as unregistered Debenture Trustee, which is a violation of the abovementioned provisions of the SEBI Act.
- 9.3 Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("**Debenture Trustees Regulations**"), provides that: "*no person should act as a debenture trustee unless he is either –*
- i. a scheduled bank carrying on commercial activity; or*
 - ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
 - iii. an insurance company; or*
 - iv. body corporate."*

- 9.4 I find that the material available on record is not sufficient for me to conclude that *Mangalam Institute of Development and Research (through its Settlor viz. Shri Madhusudhan Chatterjee)* and *Chandani Mohita* have met the eligibility criteria specified under the abovementioned provisions of the Debenture Trustees Regulations and therefore, in view of the same, I find that such entities have *prima facie* violated those provisions of the aforesaid Regulations.
10. Protecting the interest of investors is the foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by MAPL and no investors are defrauded. In light of the same, I find there is no other alternative but to take recourse through an interim action against MAPL and its Directors alongwith its Debenture Trustee, viz. *Mangalam Institute of Development and Research (through its Settlor viz. Shri Madhusudhan Chatterjee)* and *Chandani Mohita*, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs* .
11. I note that the Hon'ble Kolkata High Court in its Order dated May 6, 2014, in *CA No. 304 of 2014, CA No. 30 of 2014 – In the matter of Company Court Rules, 1959 and Mangalam Agro Products Ltd, inter alia* directed as follows –
- i. "... to prevent the debenture-holders from being further defrauded by the applicant (MAPL), Mr. Ramesh Sharma, Advocate, ... is appointed as Special Officer to take possession of the assets, properties and bank accounts of the applicant company. The Special Officer will also consider the list of debenture-holders at ₹ 10 each and at ₹ 1001 each.
 - ii. ... there will be an order of injunction restraining the applicant (MAPL) from dealing with, disposing of, alienating, encumbering and/or creating third party interest in respect of its assets and properties without leave of this Court and to be dealt with only in the usual course of business."
12. 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 read with the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions –
- i. MAPL shall not mobilize funds from investors through the issue of *Secured Non-Convertible Debentures* 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. MAPL and its Directors, viz. Shri Kamollesh Kumar Ghosh, Shri Ujjal Sikder and Shri Tapan Kumar Dey, 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. *Mangalam Institute of Development and Research (through its Settlor viz. Shri Madhusudhan Chatterjee) and Chandani Mohita* are prohibited from continuing with their present assignment as debenture trustees in respect of the issue of *Secured Non-Convertible Debentures* of MAPL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.
13. The above directions shall take effect immediately and shall be in force until further orders.
14. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondences exchanged between SEBI and MAPL alongwith the documents contained therein, information obtained from *MCA21 Portal*, Order of the Hon'ble Kolkata High Court dated May 6, 2014. In this context, MAPL and its abovementioned Directors; its Debenture Trustees, viz. *Mangalam Institute of Development and Research (through its Settlor viz. Shri Madhusudhan Chatterjee) and Chandani Mohita* may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
15. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against MAPL and its abovementioned Directors; its Debenture Trustees, viz. *Mangalam Institute of Development and Research (through its Settlor viz. Shri Madhusudhan Chatterjee) and Chandani Mohita*, in accordance with law.

Place: Mumbai

S. RAMAN

Date: May 30, 2014

**WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**