

**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, in the matter of Amrit Projects Ltd. and its Directors, viz. Shri Kailash Chand Dujari (DIN: 00628742; PAN: ACVPD0419R), Shri Sasanka Roy Sarkar (DIN: 03345064; PAN: BJKPS6178P), Shri Barun Kumar De (DIN: 05195240; PAN: ACNPD1278L), Shri Ranjan Kumar Chowdhury (DIN: 06519275; PAN: ACOPC0503E) and Shri Kali Kishore Bagchi (DIN: 00601879; PAN: ACUPB9253E).

1. Securities and Exchange Board of India ("**SEBI**") was in receipt of complaint alleging illegal mobilization of funds by Amrit Projects Ltd. ("**APL**"), through the issue of debentures/preference shares.
- 2.1 SEBI vide letter dated November 2, 2012, advised APL to furnish the following information within 15 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 debentures/preference shares;
 - ii. Copy of the Memorandum and Articles of Association of the company;
 - iii. Copy of 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 debentures/preference shares 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 debentures/preference shares allotted and value of such allotment against each allottee's name.
- f. Details regarding subscription amount raised;
- g. Date of allotment of debentures/preference shares;
- h. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
- i. Date of dispatch of debenture/preference share Certificates;
- j. Details of the total number of applicants for each of APL's scheme besides the list of final allottee;
- k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of debenture/preference shares;
- l. Terms and conditions of the issue of debenture/preference shares.

2.2 APL replied vide letter dated November 12, 2012, *inter alia* submitting: *"The company has never offered its shares to the public for subscription vide any sort of Prospectus or Red Herring Prospectus and whatever money has been raised are strictly on private placement basis to meet the demand of long – term capital requirement of the Company. The Company has issued Preference Shares to its selected investors whenever the need for raising fund arises for its various provisions of the Companies Act, 1956 and accordingly, all the forms and returns as required to be filed within the provisions of the said Act have been filed with the concerned authority i.e. Office of the ROC, West Bengal. ... Shares of our company are not listed in any Stock Exchange. ... The Preference Shares issued by us are strictly on Private Placement basis and they are not listed on any Stock Exchange and we do not have any intention to get these privately issued Preference Shares listed on any Stock Exchange..."* APL also provided the following documents vide its aforesaid reply, viz. –

- a. Copy of the Memorandum and Articles of Association of the company;
- b. Copy of Balance Sheet and Profit & Loss Account of the company for the last 3 years;
- c. Name, addresses and occupation of all the promoters/directors of the company;
- d. Statement of mobilization and deployment of funds duly certified by the Statutory Auditors of the Company;
- e. Application form, details in respect of issue of preference shares.

2.3 During the intervening period, SEBI received a complaint dated February 11, 2013 [as forwarded by the Reserve Bank of India's ("**RBI**") letter dated July 12, 2013], wherein it

was alleged that APL was illegally mobilizing funds from the public. Vide the aforesaid letter dated July 12, 2013, it was also stated that APL was not registered with RBI.

2.4 Thereafter, vide letter dated April 30, 2013, SEBI sought *inter alia* the following information from APL (to be submitted to SEBI latest by May 7, 2013) –

- a. Details of every series of debentures/preference shares issued (year – wise 2009 to 2013);
- b. Copy of bank statement highlighting the entries for receipt of proceeds for the issue.
- c. Certificate from the Company Secretary or a practicing Company Secretary certifying that the issue of debentures/preference shares was not in violation of Section 67(3) of the Companies Act.

2.5 APL replied to SEBI vide letter dated May 4, 2013, seeking a weeks' extension of time to submit the abovementioned information. Thereafter, vide letter dated May 14, 2013, APL while providing copy of Audited Balance Sheet and Profit & Loss Account for the last 3 years, *inter alia* submitted:

- a. *"We humbly submit that the Company is an unlisted public company and does not have any external source of funds and has not accepted any kind of deposits or issued any debentures till date. We state that our Company being an unlisted company is outside the purview or jurisdiction of SEBI.*
- b. *The offer to issue preference shares was made to particular addresses and was meant to be accepted only by the said addressees. Thus, there were as many number of applications received as there were number of allottees.*
- c. *It is humbly submitted that the offer of preference shares were the domestic concern of the Company and was meant only for those people to whom it was intended. In other words, it was made to a particular addressee and was meant to be accepted only by the said addressee. Thus, the offer was a private offer within the meaning of Section 67(3) of the (Companies) Act. It is humbly submitted that the shares of the Company were offered and allotments were made on private placement basis in due compliance with the provisions of the Companies Act, 1956 and the provisions as contained in Section 73 of the (Companies) Act, was not applicable to the Company."*

2.6 SEBI, vide letter dated February 2, 2014, once again sought the information (sought vide its letter dated April 30, 2013) from APL. In this regard, APL replied vide letter dated

February 25, 2014, wherein it *inter alia* submitted: "*Since the [Securities and Exchange Board of India (Issue and Listing of Non – Convertible Redeemable Preference Shares) Regulations, 2013] have been notified and made effective from June 12, 2013, it clearly indicates that prior to June 12, 2013, there was no such regulation in force. The issue of preference shares by the Company were thus, not regulated by SEBI in any manner.*"

- 2.7 SEBI also received several complaints against APL, which were forwarded vide Government of West Bengal, Finance Department's letter dated January 20, 2014; RBI's letter dated March 10, 2014 and the Office of the Director, Economic Offences Investigation Cell, Finance Department, Govt. of West Bengal ("**EOW**") letters dated April 7, 2014 and April 16, 2014.
3. The material available on record i.e. correspondences exchanged between SEBI and APL alongwith the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*' alongwith complaints forwarded by the RBI and EOW, etc. have been perused. On an examination of the same, it is observed that –
- i. APL was incorporated on November 20, 1990, with the ROC, Kolkata, West Bengal with CIN No. as U65922WB1990PLC050197. APL's Registered Office is at 9, Syed Amir Ali Avenue, 4th Floor, Kolkata–700017, West Bengal, India.
 - ii. The Directors in APL are Shri Kailash Chand Dujari, Shri Sasanka Roy Sarkar, Shri Barun Kumar De, Shri Ranjan Kumar Chowdhury and Shri Kali Kishore Bagchi.
 - iii. APL issued "*Redeemable Preference Shares*" ("**Offer of RPS**") in accordance with *inter alia* the following terms and conditions –
 - a. "*The Offer is being made on a private placement basis and cannot be accepted by any person other than to whom it has been offered. Further, this Offer cannot be transferred or renounced in anyone's favour.*"
 - b. "*This application is not an offer to the public in general to subscribe and this document is must for private circulation only for issue of instruments on private placement basis.*"
 - c. "*The payment of maturity amount and all the returns as mentioned in the documents are tentative in nature.*"

iv. The details of plan launched by APL in respect of the *Offer of RPS* are as under –

PLAN	H2	A2	B2	C2	D2	E2	F2	G2
Issue Price per share (₹)	100	100	100	100	100	100	100	100
Redemption Period	1 Year	3 Years 6 Months	5 Years 6 Months	6 Years 3 Months	7 Years 6 Months	10 Years 6 Months	12 Years 6 Months	15 Years 9 Months
Redemption Value	109	130	170	200	250	380	500	800

v. It is observed from the information submitted by APL that it passed the following resolutions at its Extra Ordinary General Meetings, for issuance of *RPS*.

Date of Resolution	Type of Meeting	No. of <i>RPS</i> to be issued	Face Value of Share (₹)	Amount (₹ in Crores)
05-04-2004	Extra Ordinary General Meeting	210000	100	2.90
		8000	1000	
08-04-2005	Extra Ordinary General Meeting	800000	100	11.00
		30000	1000	
03-04-2006	Extra Ordinary General Meeting	1700000	100	20.50
		35000	1000	
02-04-2007	Extra Ordinary General Meeting	560000	100	8.30
		27000	1000	

vi. APL issued *RPS* during the Financial Years 2006–07, 2007–08, 2008–09, 2009–10 and 2010–11, details of which are provided below -

Year	Date of Allotment	No. of Securities	Amount Per Share (₹)	No. of persons to whom issued (Approx.)	Total Amount Raised (₹ in Crores)
2006-07	31.05.2006	87921	100	2371	0.88
	31.07.2006	5230	1000	77	0.52
		133851	100	1159	1.33
	31.08.2006	151974	100	578	1.52
	30.09.2006	8765	1000	128	0.88
	28.02.2007	7796	1000	97	0.78
		151631	100	3861	1.52
	Total	547168	1000/100	8271	7.43
2007-08 & 2008-09	Details Not Available	77434	1000	936	7.74
		1418523	100	Details Not Available	14.18
	Total	1495957	1000/100	936 (Approx.)	21.92
2009-10	Details Not Available	50000	1000	Details Not Available	5.00
		155000	100		1.55
	Total	205000	1000/100		6.55
2010-11	Details Not Available	450000	100	Details Not Available	4.50
Total		2698125	100	##9207	40.40
##Details in respect of the total number of allottees under the Offer of RPS for the Financial Years 2006–07, 2007–08, 2008–09, 2009–10 and 2010–11, is not available. Therefore, the number of allottees has been tentatively indicated as <u>at least 9207</u> on account of available information.					

- 4.1 In the context of the abovementioned details of the *Offer of RPS*, the issue for determination in the instant matter is whether the mobilization of funds by APL through the aforesaid, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**"); the Companies Act, 1956 read with the Companies Act, 2013; the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("**DIP Guidelines**") read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**").

- 4.2 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."

- 4.3 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 RPS* 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. Under the *Offer of RPS*, it is observed that during the Financial Year 2006–07, APL allotted *RPS of ₹ 100 each* to 7969 individuals/investors and *RPS of ₹ 1000 each* to 302 individuals/investors. For the aforesaid allotments, APL mobilized funds amounting to approximately ₹ 7.43 Crores. These facts *prima facie* indicate that the *Offer of RPS* was a public issue of securities since the number of persons to whom such *Offer* was made, was above the limit of forty–nine persons as prescribed under Section 67(3) of the Companies Act, 1956.
- b. It is also observed that during the Financial Years 2007–08, 2008–09, 2009–10 and 2010–11, APL mobilized funds under the *Offer of RPS* amounting to approximately ₹ 32.97 Crores. However, details in respect of the number of allotments made during the aforesaid Financial Years (except in respect of allotment of *RPS of ₹ 1000 each* to 936 individuals/investors during the Financial Years 2007–08 and 2008–09), were not made available to SEBI, by APL. In view of how the *Offer of RPS* has been handled by APL (*i.e. during the Financial Year 2006–07 itself, the no. of allotments of RPS of ₹ 100/1000 each were made to 8271 individuals/investors*), I feel it is an eminently reasonable conclusion to draw from the facts in the instant matter that such *Offer* during the aforementioned Financial Years, would have also been subscribed several times over the threshold for a private placement.
- c. APL is not registered with the RBI as a non-banking financial company nor is it stated to be 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.
- d. In view of the above, the *Offer of RPS* by APL, 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.

4.4 I note that –

- i. From the abovementioned, it will follow that since the *Offer of RPS* 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 Sections 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 *Sahara 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 RPS* was made to fifty persons or more by APL, 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 APL 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 RPS*.
- 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 RPS* is mandatory on APL. In this regard, there is no evidence on record to indicate whether or not APL has paid interest to the investors where such *RPS* are not allotted within 8 days, as per the aforesaid Section. In view of the same, I find that APL 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, says that all moneys 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 RPS* has been kept in separate bank account by APL. In view of the same, I find that APL has *prima facie* not complied with the provisions of Section 73(3) of Companies Act, 1956.

4.5 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 RPS* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, APL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. Based on the material available on record, I find that APL has not complied with the provisions of Section 60 of Companies Act, 1956.

4.6 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 APL 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.

4.7 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;"

4.8 I also note that SEBI framed the DIP Guidelines, in exercise of the powers conferred under the SEBI Act. In the words of the Hon'ble Supreme Court in the *Sahara Case*, "*DIP Guidelines had statutory force since they were framed by SEBI in exercise of its powers conferred on it under Sections 11 and 11A of the SEBI Act. Powers have been conferred on SEBI to protect the interests of the investors in securities and regulate the issue of prospectus, offer documents or advertisement soliciting money through the issue of prospectus. Section 11 of the Act, it may be noted has been*

incorporated, evidently to protect the interests of investors whose securities are legally required to be listed. DIP Guidelines were implemented by SEBI with regard to the listed and unlisted companies, which made public offer, until it was replaced by ICDR 2009". In this regard, I observe prima facie that the Company has not complied with the provisions of the DIP Guidelines including the following clauses:

- a. Clause 2.1.1. – *(Filing of offer document)*
- b. Clause 2.1.4 – *(Application for listing)*
- c. Clause 2.1.5 – *(Issue of securities in dematerialized form),*
- d. Clause 2.8 – *(Means of finance),*
- e. Clause 4.1 – *(Promoters contribution in a public issue by unlisted companies),*
- f. Clause 4.11 – *(Lock-in of minimum specified promoters contribution in public issues),*
- g. Clause 4.14 – *(Lock-In of pre-issue share capital of an unlisted company)*
- h. Clause 5.3.1 – *(Memorandum of understanding),*
- i. Clause 5.3.3 – *(Due Diligence Certificate)*
- j. Clause 5.3.5 – *(Undertaking),*
- k. Clause 5.3.6 – *(List Of Promoters Group And Other Details),*
- l. Clause 5.4 – *(Appointment of intermediaries)*
- m. Clause 5.6 – *(Offer document to be made public)*
- n. Clause 5.6A – *(Pre-issue Advertisement)*
- o. Clause 5.7 – *(Despatch of issue material)*
- p. Clause 5.8 – *(No complaints certificate)*
- q. Clause 5.9 – *(Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)*
- r. Clause 5.10 – *(Authorised Collection Agents)*
- s. Clause 5.12.1 – *(Appointment of compliance officer)*
- t. Clause 5.13 – *(Abridged prospectus)*
- u. Clause 6.0 – *(Contents of offer documents)*
- v. Clause 8.3 – *(Rule 19(2)(b) of SC(R) Rules, 1957)*
- w. Clause 8.8.1 – *(Opening & closing date of subscription of securities)*
- x. Clause 9 – *(Guidelines on advertisements by Issuer Company)*

- y. Clause 10.1 – (*Requirement of credit rating*)
- z. Clause 10.5 – (*Redemption*)

4.9 As per Regulation 111(1) of the ICDR Regulations, the DIP Guidelines, "*shall stand rescinded*". However, Regulation 111(2) of the ICDR Regulations, 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 observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations."

4.10 In addition to the above, the following may also be noted –

- i. From the information available on the '*MCA 21 Portal*', it is observed that APL has not filed the Return on Allotments (Form 2) for the Financial Years 2007–08, 2008–09, 2009–10 and 2010–11. Further, it is observed that APL has not filed its Balance Sheet for the Financial Years 2006–07, 2007–08 and 2008–09.

4.11 Upon a consideration of the aforementioned paragraphs, I am of the view that APL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of RPS* and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73,) read with Section 465 of the Companies Act, 2013; the DIP Guidelines read with ICDR Regulations.

5. SEBI has a statutory duty to protect the interests 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 thinks 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 *preference shares* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts; the DIP Guidelines read with ICDR Regulations (as mentioned in paragraphs 4.1–4.11 above). Steps, therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by APL 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 APL and its Directors, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of RPS*.

6. 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 and Clause 17 of the DIP Guidelines read with Regulation 111 of the ICDR Regulations, hereby issue the following directions –
 - i. APL shall not mobilize funds from investors through the *Offer of RPS* 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. APL and its Directors, viz. Shri Kailash Chand Dujari (DIN: 00628742; PAN: ACVPD0419R), Shri Sasanka Roy Sarkar (DIN: 03345064; PAN: BJKPS6178P), Shri Barun Kumar De (DIN: 05195240; PAN: ACNPD1278L), Shri Ranjan Kumar Chowdhury (DIN: 06519275; PAN: ACOPC0503E) and Shri Kali Kishore Bagchi (DIN: 00601879; PAN: ACUPB9253E), 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. APL and the abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
 - iv. APL shall provide a full inventory of all its assets and properties;
 - v. The abovementioned Directors of APL shall provide a full inventory of all their assets and properties;

- vi. APL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of RPS*, without prior permission from SEBI;
 - vii. APL and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of RPS*, which are kept in bank account(s) and/or in the custody of APL.
 - viii. APL and its abovementioned Directors shall, within 21 days from the date of receipt of this Order, provide SEBI with all relevant and necessary information, as sought vide SEBI letter dated February 2, 2014.
7. The above directions shall take effect immediately and shall be in force until further orders.
8. 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 APL alongwith the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*' alongwith complaints forwarded by the RBI and EOW, etc. In this context, APL and its abovementioned Directors 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.
9. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against APL and its abovementioned Directors in accordance with law.

Place: Mumbai
Date: September 9, 2014

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