

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

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of M/s Adorable Agrotech Limited (CIN-U01400WB2010PLC151762 ; PAN-AAICA8064D) and its Directors namely Shri Biswajit Biswas (DIN-02856091; PAN-AEGPB3449C), Shri Dilip Shaw (DIN-02861398; PAN-AKTPS7602P), Shri Bana Bihari Biswas (DIN-02861437; PAN-ADVPB9506E), Shri Dhiraj Kumar Shrivastava (DIN-03078199; PAN-CJJPS8909L), Shri Basant Kumar Singh (DIN- 02857646; PAN- BAXPS9686L); Shri Prashanta Ghosh(DIN-02861411; PAN-AJSPG1087A), Ms.Moumita Biswas (DIN- 02856110; PAN- AIOPB5379D); Shri Binod Majumder (DIN- 02991620; PAN- AWLPM7082P)

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1. Securities and Exchange Board of India ("SEBI") received a complaint dated December 24, 2013, signed by some investors, against M/s Adorable Agrotech Limited ("AAL") alleging that AAL was mobilizing funds from the public through issue of Redeemable Preference Shares ("RPS"). The complainant also forwarded a brochure and RPS certificate issued by AAL along with the complaint.
 2. In order to ascertain the nature of fund mobilizing activity of AAL, SEBI vide letter dated February 03, 2014 asked AAL to furnish the following information/documents in respect of issuance of shares/debentures/other schemes, within 15 days from the date of receipt of aforesaid letter, viz.-
 - i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Copy of Audited Annual Accounts of the company for the last 3 years;
 - iii. Name, addresses and occupation of all the promoters/directors of the company;
 - iv. Names and details of the Key Managerial Personnel of the company;
 - v. Other information in respect of issue of shares/debentures issued by the company, viz. –
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("RoC") for issuance of shares/debentures;

- b. Date of opening and closing of the subscription list;
 - c. Details regarding the number of application forms circulated inviting subscription;
 - d. Details regarding the number of applications received;
 - e. Details regarding the number of allottees and list of such allottees;
 - f. Number of shares/debentures allotted and value of such allotment against each allottee's name;
 - g. Details regarding subscription amount raised;
 - h. Date of allotment of shares/debentures ;
 - i. Copies of the minutes of Board/Committee meeting in which the resolution was passed for allotment;
 - j. Date of dispatch of debenture/share certificates etc.;
 - k. Details of the total number of applicants for each of AAL's scheme besides the list of final allottee;
 - l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/debentures;
 - m. Terms and conditions of the issue of shares/debentures;
 - n. Whether AAL has applied for listing of its securities with any of the stock exchanges;
 - o. Copy of Form 2 and Form 10 filed with "RoC" (along with all the attachments)
 - p. Details of debenture trustee viz. name , address, board resolution authorizing their appointment, etc.
- vi. Other information in respect of any other schemes launched by AAL for raising funds.
3. SEBI, vide letter dated February 03, 2014, also sought the following information/documents from Registrar of Companies, Kolkata ("RoC"):
- i. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with "RoC" for issuance of shares/debentures.
 - ii. Copy of the Memorandum and Articles of Association of the company;
 - iii. Copy of Audited Balance Sheet and Profit and Loss Account of the 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 class of shares issued by the company, viz. –
 - a. Copy of Form 2 and Form 10 filed by the company;
 - b. Date of opening and closing of the subscription list for the said securities;
 - c. Details regarding the number of application forms circulated inviting subscription for shares;

- d. Details regarding the number of applications received;
 - e. Details regarding total number of allottees and list of such allottees;
 - f. Number of shares allotted and value of such allotment against each allottee's name.
 - g. Details regarding subscription amount raised;
 - h. Date of allotment of the securities issued;
 - i. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
 - j. Date of dispatch of share certificates, etc.;
 - k. Whether the company has submitted any details of the total number of applicants for each of its scheme besides the list of final allottees;
 - l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of said securities;
 - m. Terms and conditions of the issue of shares;
4. As no reply was received from AAL, SEBI vide letter dated March 03, 2014 again sought information/documents in respect of mobilization of funds from public by issue of shares/debentures/other schemes from AAL and from the Directors of AAL, viz. Shri Biswajit Biswas, Shri Dilip Shaw and Shri Dhiraj Kumar Shrivastava. The letter issued to one director viz. Shri Biswajit Biswas was returned undelivered.
5. In reply to the aforesaid letter, AAL vide letter dated March 04, 2014, sought four weeks' time to furnish the information/ documents. Thereafter, SEBI vide letter dated March 24, 2014 again sought information/documents in respect of mobilization of funds from AAL.
6. AAL replied to SEBI vide letter dated nil received on April 10, 2014, enclosing the copies of Memorandum and Articles of Association, Dates of Allotment / List of Allottees of shares, Date of dispatch of Share Certificates, Audited Accounts for the Assessment Year 2011-12 and 2012-13, Minutes of Board/Committee Meeting in which the resolution has been passed for allotment, Application Form for Allotment of Redeemable Preference Share, List of promoter/shareholders, List of key managerial persons. AAL *inter alia* also submitted:
- "
- a) *We are in process to file Annual Accounts and Annual reports for the assessment year 2013-14.*
 - b) *Information in respect of issue of Shares and Debentures*

- i. *No such Prospectus/Red Herring Prospectus/SLP/Information Memorandum filled with ROC for issuance of shares as the company issued Preference Shares on strictly Private Placement basis to its associates only.*
- ii. *There were no opening or closing date, neither there was any offers made for subscribing shares or debentures.*
- iii. *No application forms circulated, invited, subscribed to any general public for issue of shares or debentures.*
- iv. *Except on Private placement basis to Equity & Preference Share holders, no applications received for allotment of shares/Debentures.*
- v. *Except on Private placement basis to Preference Share holders, no such allotment done.*
- vi. *The Company is into the business of trading of various Agro and FMCG products as mentioned in its Memorandum of Association and have a wide network of direct selling associates who work on a commission basis..... In order to procure this FMCG product from the company for the purpose of marketing this agent give security deposit to the company in order to procure the product for marketing. This agents demand for interest and safety on their security deposits. Thus the Company issued the preference shares against those security deposits and other than the direct selling associates of the Company, no general public has subscribed to the issue of Preference Shares...*
- vii. *No application forms, pamphlets, advertisement and other promotional materials circulated to general public for issuance of Shares/Debentures except allotment of Preference Shares on private placement basis to the associates. A sample copy of the application form is attached.....*
- viii. *There are no such terms and conditions available regarding the shares/debentures is mentioned in the Application Form of the Preference shares.*
- ix. *The Company has not applied for listing of any of the Stock exchanges and neither has the intension to list their securities in any stock exchange.*
- x. *No debenture trustee exists.*
- c) *Information in respect of schemes launched by the company for raising funds:*
 - i. *No such scheme other than the above mentioned Preference Shares exist to raise funds from public.*
 - ii. *The Company have not floated any scheme which falls under the SEBI (Collective Investment Schemes) Regulations, 1999."*

7. The material available on record i.e. the complaint received by SEBI, correspondence exchanged between SEBI and AAL along with the documents contained therein and

information obtained from the 'MCA 21 Portal', have been perused. On an examination of the same, it is observed that –

- a) AAL was incorporated on July 28, 2010 with the RoC, Kolkata, West Bengal, and was originally named as M/s Adorable Agrotech Private Limited.
- b) The Company changed its name to M/s Adorable Agrotech Limited on November 11, 2010, (CIN U01400WB2010PLC151762), having its registered office at 195, Rashbehari Avenue, 3rd Floor, Kolkata, West Bengal 700019.
- c) The present Directors of AAL are Shri Biswajit Biswas (DIN-02856091; PAN-AEGPB3449C), Shri Dilip Shaw (DIN-02861398; PAN- AKTPS7602P), Shri Bana Bihari Biswas (DIN-02861437; PAN- ADVPB9506E) and Shri Dhiraj Kumar Shrivastava (DIN-03078199; PAN- CJJPS8909L).
- d) Details obtained from 'MCA 21 Portal' indicate that Shri Basant Kumar Singh (DIN-02857646; PAN-BAXPS9686L); Shri Prashanta Ghosh (DIN-02861411; PAN-AJSPG1087A), Ms.Moumita Biswas (DIN- 02856110; PAN-AIOPB5379D); Shri Binod Majumder (DIN- 02991620; PAN- AWLPM7082P), who were earlier Directors of AAL have since resigned.
- e) As per AAL's brochure, the details of plan launched by AAL in respect of the RPS are as under –

Adorable Redeemable Preference Share

(AMI)

Deposit Term	Total Deposit	Monthly Instalment	Bonus	Bonus Amt. on Maturity	Total of Monthly Ins.	At time of Maturity	Total Benefit
18 Months (1.6 yrs)	10,000/-	80	1%	100	1,440/-	10,100/-	11,540/-
36 Months (3 yrs)	10,000/-	125	2%	200	4,500/-	10,200/-	14,700/-
60 Months (5 yrs)	10,000/-	150	5%	500	9,000/-	10,500/-	19,500/-
90 Months (7.5 yrs)	10,000/-	200	8%	800	18,000/-	10,800/-	28,800/-
120 Months (10 yrs)	10,000/-	250	12%	1200	30,000/-	11,200/-	41,200/-

(AFR)

Fixed Deposit Scheme (F.D.) (AFR)	Customer Benefit	
Deposit Term	Min Deposit (Rs.)	Total Maturity (Rs.)
1 Year	1000/-	1150/-
2 Year	1000/-	1335/-
3 Year	1000/-	1,500/-
5 Year	1000/-	2,000/-
7.5 Year	1000/-	3,500/-
10 Year	1000/-	6,000/-
12 Year	1000/-	10,000/-
14 Year	1000/-	12,000/-

Under general instructions in the brochure, it is, *inter alia* indicated:

"Who can invest - Individuals, Trusts, Corporate Bodies, Minors through guardians, Financial Institutions, HUF's and Co-operative Bodies can invest through this issue"

f) As per the Balance Sheet of AAL and Schedules forming part of the Balance Sheet for the year 2011-2012 submitted by AAL to SEBI, it is observed as follows:

i. AAL has accepted Share Application Money Pending Allotment for an amount of Rs. 5,77,67,056/-.

ii. The disclosure in the notes to accounts states that:

"The company has collected share application money from various parties numbering more than fortynine for private placement in Non-Convertible Redeemable Preference Shares during the year.

The Company has allotted 5,19,317 Redeemable Preference Shares of ₹100/- each to M/s Adorable Agency Pvt. Ltd. for consideration other than cash as per agreement entered between them for future liability if any towards M/s. Adorable Marketing Services Pvt. Ltd."

iii. The auditor in their report have certified that *".....the company has accepted Share Application Money from more than 49 applicants during the year for allotment of Non-Convertible Redeemable Preference Shares on private placement basis. The company has also collected funds for product bookings by sundry parties during the year. The Company claims that it does not amount to Public Deposit."*

g) As per Form-2 (Form for Return of Allotment) submitted by AAL to SEBI, the details of allotment made by issue of RPS (*"issue of RPS"*) such as date of allotment, the

amount raised and the number of allottees against these date of allotment obtained from 'MCA 21 Portal' are tabulated as under:

2011-12			2012-13		
Date of Allotment	No. of Allottees	Amount (₹)	Date of Allotment	No. of Allottees	Amount (₹)
15/09/2011	1470	2,84,36,000.00	10/04/2012	Not clear	#9,24,34,700.00
15/09/2011	1431	#3,00,00,000.00	15/06/2012	1324	2,83,00,000.00
14/10/2011	541	#45,10,000.00	01/08/2012	Not clear	1,69,79,100.00
15/10/2011	135	13,73,500.00			
15/12/2011	530	1,47,59,000.00			
16/01/2012	945	3,32,18,000.00			
Total	5052	11,22,96,500.00	Total	* at least 1324	13,77,13,800.00
Grand Total	* at least 6376		**₹25,00,10,300.00		

allotment of RPS also for consideration other than cash

* Details in respect of certain allotments under the Issue of RPS for the Financial Year 2012-13, are not clear. Therefore, the number of allottees has been tentatively indicated as at least on account of available information.

** amount for consideration payable in cash

- h) Further, from the information submitted by AAL to SEBI, it is observed that AAL had also allotted RPS to 169 persons and raised an amount of ₹20,30,500/- during the financial year 2010-11.
- i) As per the details indicated above, AAL had allotted RPS to approximately **6545** persons and raised an amount of approximately ₹ **25,20,40,800/-** during the financial years 2010-11, 2011-12 and 2012 -13.
- j) It is apparent from the aforesaid details that AAL had allotted RPS to more than 49 persons during the financial years 2010-11, 2011-12 and 2012-13. Further, this has been admitted by AAL as can be seen in the auditor's report for the financial year 2011-2012, wherein it is stated that " *As per information and explanations obtained, the company has accepted Share Application Money from more than 49 applicants during the year for allotment of Non-Convertible Redeemable Preference Shares on private placement basis. The company*

has also collected funds for product bookings by sundry parties during the year. The Company claims that it does not amount to Public Deposit."

8. The issue for determination in the instant matter is whether the mobilization of funds by AAL through the *issue of RPS*, is in accordance with the provisions of the SEBI Act, 1992 ("SEBI Act") and the Companies Act, 1956 read with the Companies Act, 2013.
9. I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, when they issue and transfer securities, at the relevant point of time 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 :
"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 companies which intend to get their securities listed on a recognized stock exchange in India."
10. 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) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitation to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”

- 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 :

"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. ..."

11. For ascertaining whether the *issuance 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 *issue of RPS*, AAL had allotted RPS to approximately **6545** persons and raised an amount of approximately **₹ 25,20,40,800/-** during the financial years 2010-11, 2011-12 and 2012 -13. It is noted that in each year, the numbers of allottees were more than 49 as stated by AAL.
- b) Further, it is observed that although the *issue of RPS* is stated to have been made on a private placement basis, as per the general instructions in the brochure, the *issue of RPS* was addressed to the general public.
- c) These facts *prima facie* indicate that the *issue of RPS* was a public issue of securities since the number of persons to whom such *issue* was made, was above the limit of forty-nine persons as prescribed under Section 67(3) of the Companies Act, 1956.
- d) In addition, AAL 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 hence is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.
- e) In view of above, the *issue of RPS* by AAL 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 read with Section 67 of the said Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

12. I note that -

- i. From the abovementioned, it will follow that since the *issue 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) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

***Provided** that where an appeal against the decision of any recognised stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.*

(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 fifty 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 *issue of RPS* was made to fifty persons or more by AAL, the same will attract the requirement of compulsory listing with a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956. It therefore, *prima facie*, appears that AAL has violated the provisions of Section 73(1) of the Companies Act, 1956, since it has failed to ensure listing with a recognized stock exchange of the securities issued under the *issue 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 *issue of RPS* is mandatory on AAL. In this regard, there is no evidence on record to indicate whether or not AAL 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 *prima facie*, AAL has 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 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 fifty thousand rupees. In the instant case, there is no evidence on record to indicate whether or not funds received from the investors under the *issue of RPS* have been kept in separate bank account by AAL. In view of the same, I find that AAL has *prima facie* not complied with the provisions of Section 73(3) of Companies Act, 1956.
13. Under 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 to the public. As per 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 *issue of RPS* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, AAL 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 AAL has not complied with the provisions of Section 60 of Companies Act, 1956.

14. 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 AAL 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.

15. It is pertinent to note that though the Companies Act, 1956, has been repealed by the Companies Act, 2013, anything done or any action taken or purported to have been done or taken under the Companies Act, 1956, is deemed to have been done or taken under the corresponding provisions of the Companies Act, 2013, by virtue of Section 465(2) of the Companies Act, 2013, and is therefore saved regardless of the repeal of the Companies Act, 1956. Section 465(2)(a) 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;"

16. Upon a consideration of the aforementioned paragraphs, I am of the view that AAL is *prima facie* engaged in fund mobilizing activity from the public, through the *issue of RPS* and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60, 67 read with Section 2(36), Section 73) read with Section 465 of the Companies Act, 2013.

17. Protecting the interests of investors is the foremost mandate for SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with Section 55A of the Companies Act, 1956 and Section 465 of the Companies Act, 2013, over the companies who issue securities to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts. In the instant matter steps have to be taken to ensure that only legitimate fund raising activities are carried on by AAL and no investors are defrauded. In light of the same, I find that there is no other alternative but to take recourse through an interim action against AAL and its Directors, for preventing it from further carrying on with its fund mobilizing activity under the *issue of RPS*.
18. In view of the foregoing, I, in exercise of powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:
- a) AAL shall not mobilize any further funds from investors through the *issue of RPS* or through the issue of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further orders;
 - b) AAL and its Directors viz., Shri Biswajit Biswas (DIN-02856091; PAN-AEGPB3449C), Shri Dilip Shaw (DIN-02861398; PAN-AKTPS7602P), Shri Bana Bihari Biswas (DIN-02861437; PAN-ADVPB9506E), Shri Dhiraj Kumar Shrivastava (DIN-03078199; PAN-CJJPS8909L), Shri Basant Kumar Singh (DIN-02857646; PAN-BAXPS9686L), Shri Prashanta Ghosh (DIN-02861411; PAN-AJSPG1087A), Ms. Moumita Biswas (DIN-02856110; PAN-AIOPB5379D), Shri Binod Majumder (DIN-02991620; PAN-AWLPM7082P) 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;
 - c) AAL and its 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;
 - d) AAL and its abovementioned Directors shall provide a full inventory of all its assets and properties;

- e) AAL and its Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *issue of RPS*, without prior permission from SEBI;
- f) AAL and its Directors shall not divert any funds raised from the public at large through the *issue of RPS*, which are kept in bank account(s) and/or in the custody of AAL;

19. The above directions shall take effect immediately and shall be in force until further orders.

20. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. the complaint received by SEBI, correspondence exchanged between SEBI and AAL along with the documents contained therein; and information obtained from the 'MCA 21 Portal'. In this context, AAL and its 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.

21. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against AAL and its abovementioned Directors, in accordance with law.

Place: Mumbai
Date: December 15, 2014

S RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA