

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 Hooghly Agrotech Limited (PAN- AABCH8362A) and its past and present Directors, viz. Shri Subhrajit Banik, (DIN-02913681, PAN- ANRPB9054H), Uma Shankar Shaw (DIN-03644930, PAN-BDBPS9453C), Shri Debdulal Banik Chowdhury (DIN-05325110, PAN-AHCPC4610M), Shri Avijit Chowdhury (DIN-05358817, PAN-APEPC8255N), Shri Sekhar Chandra Koley (DIN- 06454703, PAN-BUOPK8353F), Himadri Bag (DIN- 02729318, PAN-AJXPB3796L) , Shri Arjun Saha (DIN- 02457813, PAN- AVIPS6571K), Smt. Sumita Das (DIN- 02645151, PAN-AHTPD9166G), Shri Subrata Das (DIN-02457681,PAN-AEYPD5580Q), Shri Devid Haslaf (DIN- 06594846, PAN-AHUPH9113Q), Shri Miarul Sekh (DIN- 05134527, PAN-CQYPS9419K), Shri Kedar Chandra Bera (DIN- 05203711, PAN- AUDPB3525G); its Debenture Trustee viz. Hooghly Debenture Trust (represented by its trustee viz. Mr. Bijay Sarkar).

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1. Securities and Exchange Board of India ("**SEBI**") received a complaint dated September 21, 2013 from an investor alleging non-payment of his invested money by an Eris group Company. SEBI vide letter dated February 27, 2014 requested the investor to provide copy of the Application Form, copy of the proof of payment, Copy of the deposit receipt/unit certificate issued by the company, copy of the brochures/pamphlets or other marketing material issued by the company and copy of the terms and conditions of the schemes. In response, SEBI received a letter dated March 07, 2014 from the investor wherein he has *inter alia* enclosed a copy of a brochure cum application form and copies of letters of Allotment in respect of *Non convertible Redeemable Secured Debentures ("**NCDs**")* issued by one of the Eris Group company viz. Hooghly Agrotech Limited (hereinafter referred to as "**Hooghly Agrotech**" or "**the company**").
 2. Meanwhile, SEBI also received complaints from some other investors dated April 18, 2013 (received by SEBI on April 22, 2014) and October 22, 2014 along with copies of Letters of Allotment of NCDs of Hooghly Agrotech.

3. As a part of preliminary inquiry, vide letters dated May 05, 2014 SEBI advised Hooghly Agrotech to furnish *inter alia* the following information/documents in respect of issuance of the NCDs, viz. –
- i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Copy of Audited Balance Sheet and Profit & Loss Account of the company for the last 3 years;
 - iii. Copy of Annual Returns of the company for the last 3 years;
 - iv. Names, 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 issue of 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 debentures.
 - b. Date of opening and closing of the subscription for the said debentures;
 - 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 debentures allotted and value of such allotment against each allottee's name.
 - g. Details regarding subscription amount raised;
 - h. Date of allotment of debentures;
 - i. Copies of the minutes of Board/Committee meeting in which the resolution was passed for allotment;
 - j. Date of dispatch of debenture certificates, etc.;
 - k. Details of the total number of applicants for each of Hooghly Agrotech's scheme besides the list of final allottees;
 - l. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of debentures.
 - m. Terms and conditions of the issue of debentures.
 - n. Whether Hooghly Agrotech has applied for listing of its securities with any of the stock exchanges.
 - o. Copy of Form 2 and Form 10 filed with the RoC.

- p. Details of debenture trustee viz. name, address, board resolution authorizing their appointment, etc.
4. The aforesaid letters issued to Hooghly Agrotech at 28/2, Shakespeare Sarani, Room No. 601, Centre Point Building , Kolkata- 700 017 (registered address mentioned in 'Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal') and 160 Sarat Pally , P.O. + District Hooghly, West Bengal - 712103 (registered office address of the company as mentioned in the copy of brochure cum application form) were returned undelivered. Thereafter, vide letters dated June 13, 2014 SEBI advised the then present directors of the company viz. Mr. Subhrajit Banik, Uma Shankar Shaw, Mr. Debulal Banik Chowdhury, Mr. Avijit Chowdhury and Mr. Sekhar Chandra Koley to provide the requisite information/documents. Letter sent to one of the directors Mr. Subhrajit Banik got returned undelivered. No communication was received from any of the other directors.
 5. SEBI sent yet another letter dated July 26, 2014 to the company at an alternate address at 169, Rash Behari Avenue, 5th Floor, Kolkata, West Bengal- 700019, which was stated to be an address of ERIS Group in one of the complaints received by SEBI. The said letter was also returned undelivered. Thereafter, SEBI conducted a physical visit on January 16, 2015 and January 23, 2015 and found that the said company i.e. Hooghly Agrotech does not exist at the aforesaid addresses. SEBI also sent reminder letters dated July 10, 2014, July 28, 2014 and January 15 individually to all the aforesaid directors of the company in this regard. However, no reply has been received till date from any of them.
 6. Meanwhile, SEBI vide letters dated December 19, 2014 and January 05, 2015 sought further documents/information from one of the complainant regarding issuance of NCDs by Hooghly Agrotech. The said complainant vide letters dated December 30, 2014 and January 27, 2015 provided copies of Letters of Allotment of NCDs issued by Hooghly Agrotech to several investors.
 7. Simultaneously, efforts were made to obtain information from 'Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'. Statutory filings made by Hooghly Agrotech viz. Form 23AC i.e. Form for filing Balance Sheet and other documents with the Registrar , Form 20B i.e. Form for filing Annual Return with the Registrar and Form 10 i.e. Form for filing particulars for registration of charges for debentures were downloaded from the

MCA21 website and perused. However, details of number of debenture holders were not found on the MCA21 Portal since Hooghly Agrotech has not provided details of the debenture holders in its Annual Returns for the year ended 2009-10, 2010-11, 2011-12 filed with RoC.

8. SEBI vide letter dated July 28, 2014 also sought certain information from Auditor of the company 'V K Mishra & Associates'. However, no reply has been received from the auditor till now.
9. The material available on record i.e. information/documents obtained from the 'Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*'; complaints received from investors and the information/documents enclosed along with them have been perused. On an examination of the same, it is observed that –
 - a. Hooghly Agrotech was incorporated on March 03, 2005, with the ROC, Kolkata, West Bengal. The CIN No. is U01122WB2005PLC102019. The Registered Office of Hooghly Agrotech is situated at 28/2, Shakespeare Sarani, Room No. 601, Centre Point Building , Kolkata- 700 017.
 - b. The present directors of Hooghly Agrotech are Shri Devid Haslaf, Shri Miarul Sekh and Shri Kedar Chandra Bera. Shri Subhrajit Banik (till 15/05/2014), Uma Shankar Shaw (till 15/05/2014) , Shri Debdulal Banik Chowdhury (till 15/05/2014), Shri Avijit Chowdhury (till 17/07/2014), Shri Sekhar Chandra Koley (till 17/07/2014), Himadri Bag (till 23/05/2014), Shri Arjun Saha (till 23/07/2012), Smt. Sumita Das(till 21/10/2010) and Shri Subrata Das (till 15/11/2011) who were earlier directors in the company have since resigned.
 - c. Copy of the Brochure cum Application Form enclosed along with the complaint dated March 07, 2014 *inter alia* mentions that issue is of non convertible redeemable secured debentures amounting to Rs. 5 Crores. The issue opening date has been stated as 01.01.2010. Copy of the Brochure cum Application Form also *inter alia* mentions:
 - i. " *Hooghly Agrotech is privately placing secured non convertible redeemable debentures under the following terms and conditions:*

Scheme I: Multiplier Non Convertible Redeemable Secured Debenture

PLAN	A					
Issue Price (Minimum) 10 Debentures	1000/-	1000/-	1000/-	1000/-	1000/-	1000/-
Maturity Value	1200/-	1500/-	2000/-	3000/-	5000/-	10000/-
Redemption Period	1 Year 6 Months	3 Years	5 Years	7 Years	10 Years	14 Years

*Scheme II: Monthly Income Non Convertible Redeemable Secured Debenture**

Plan	Redemption Period	Minimum Amount	Rate of Interest	Monthly	Bonus
C	1 Year	100000/-	9.0%	750.00	0%
	3 Years	50000/-	12.0%	500.00	0%
	5 Years	30000/-	13.5%	337.50	2%
	7 Years	20000/-	13.5%	225.00	5%
	10 Years	20000/-	15.0%	250.00	7%

** Interest will be paid monthly*

- ii. *The company is managed by Mr. Subrata Das, Chairman cum Managing Director Under Superintendence, Control and Directions of the Board of Directors of the company.*
 - iii. *The debentures are being issued pursuant to the resolutions passed at a meeting of the Board of Directors of the Company held on 10th November 2009.*
 - iv. *Size of issue is Rs. 500 Lacs. While it will be the company's endeavor to allot debentures as indicated, the company has right to increase/decrease the size of the offer.*
 - v. *The debentures will be secured by mortgage of the assets (movable & immovable) registered with RoC, West Bengal."*
- d. It is observed from Form 10 filed by the company with RoC, Kolkata that charge of Rs.10 crores was created on December 30, 2009 on immovable properties, plant & machinery, furniture & fixtures, stock in trade, book debts and any movable or immovable, present or future assets of the company. The name of debenture trustee is "Hooghly Debenture Trust" managed by trustee Mr. Bijay Sarkar and the office of the debenture trustee is situated at 160 Sarat Pally , P.O. Hooghly, West Bengal - 712103 which, incidentally, was the same as the registered office address of the company before the company changed its address from 160 Sarat

Pally , P.O. Hooghly, West Bengal - 712103 to 28/2, Shakespeare Sarani, Room No. 601, Centre Point Building , Kolkata- 700 017.

- e. It is observed from the complaints received from investors and copies of letters of Allotment of NCDs enclosed along with them that Hooghly agrotech issued NCDs of face value of Rs. 100/- each during F.Y. 2009-10, 2010-11 and 2011-12.
 - f. The exact number of debenture holders and the amount raised through the offer of NCDs could not be ascertained as Hooghly Agrotech has not filed details of the debentures issued and debenture holders in its Annual Return for the year ended 2009-10, 2010-11, 2011-12 with RoC. Hooghly Agrotech and its directors have also not replied to any of the letters sent by SEBI in this regard.
10. 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 Hooghly Agrotech 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**") and the Companies Act, 1956.
11. 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, 1956. 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."

12. 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 invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

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

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

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

...

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

***Provided further** that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 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, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving 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. Hooghly Agrotech and its directors have not submitted any reply to the queries raised by SEBI in respect of the offer of NCDs by Hooghly Agrotech despite repeated reminders. It is evident from the copy of the brochure cum application form and the Copies of Letters of Allotment (copies of 47 letters of Allotment amounting to Rs. 25,63,000/-) enclosed along with several complaints received by SEBI that Hooghly Agrotech issued NCDs of face value of Rs. 100/- each during the FY 2009-10, 2010-11, 2011-12. It is also observed from a copy of brochure cum application form that the issue size for the said debenture issue was Rs. 5 Crores. SEBI has granted several opportunities to Hooghly Agrotech and its directors to furnish details of the debentures. However, Hooghly Agrotech and its directors have failed to submit relevant information despite being granted

several opportunities to do so. SEBI also conducted a physical visit to three different addresses of the company available on record, however could not locate the company at these addresses. Based on the aforementioned facts, in the interest of investors, it is reasonable to presume that Hooghly Agrotech issued debentures worth Rs. 5 Crores in FY 2009-10, 2010-11, 2011-12 to more than 49 investors. I, therefore, find that the Offer of NCDs was nothing but a public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956 and the company camouflaged the issuance of NCDs to public as private placement.

- b. Hooghly Agrotech 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 and therefore, is not covered under the second proviso to Section 67(3).
- c. In view of the aforesaid, the *Offer of NCDs* would *prima facie* qualify as a public issue under the first proviso to Section 67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the *Sahara Case*. 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.

13. 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 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 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 *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.

...

Section 73(2) says that every company and every director of the company who is an officer in default, shall 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. The scope of the above mentioned provisions came up for consideration before this Court in Raymond Synthetics Ltd. & Ors. V. Union of India (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since Sabaras had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."

- iii. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, since the *Offer of NCDs* is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, 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 and also compliance with provisions of Sections 73(2) and 73(3) of that Act.
 - iv. In the facts of the instant case, it *prima facie* appears that Hooghly Agrotech has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.
14. 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, Hooghly Agrotech was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. In the instant case, there is no evidence on record to indicate whether or not Hooghly Agrotech has filed a prospectus. In view of the same, I find that *prima facie*, Hooghly Agrotech has not complied with the provisions of Section 60 of Companies Act, 1956.

15. 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 Hooghly Agrotech has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore *prima facie*, has violated the aforesaid provisions.

16. 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. Based on the material available on record, I find that Hooghly Agrotech has not complied with the provisions of Sections 117B of the Companies Act, 1956.

Section 12(1) of the SEBI Act states : "*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*". 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."*

Based on the material available on record, I find that Hooghly Debenture Trust (represented by its trustee viz. Mr. Bijay Sarkar) has *prima facie*, failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations. Hooghly Debenture Trust and its trustee Mr. Mr. Bijay Sarkar are not registered with SEBI and therefore, has acted as unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.

17. Further, under Section 117C of the Companies Act, 1956, 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. There is no evidence on record to indicate that Hooghly Agrotech has created a debenture reserve. Therefore, I find that Hooghly Agrotech has not complied with the provisions of Sections 117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
18. 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 and listing of debt securities. 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 Hooghly Agrotech, 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) – *Credit rating has been obtained*
 - 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 – *Debenture Redemption Reserve*
 - xv. Regulation 17 – *Creation of security*
 - xvi. Regulation 19 – *Mandatory Listing*
 - xvii. Regulation 26 – *Obligations of the Issuer, etc.*
19. Upon a consideration of the aforementioned paragraphs, I am of the view that Hooghly Agrotech is *prima facie*, engaged in fund mobilising activity from the public, through the *Offer of NCDs* 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, Section 117B, Section 117C) and the Debt Securities Regulations.
20. 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, the 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, over companies who issue *Non-Convertible Redeemable Debentures* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts and the Debt Securities Regulations. Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by Hooghly Agrotech 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 Hooghly Agrotech and its Directors alongwith its Debenture Trustee, viz. Hooghly Debenture Trust (represented by its trustee viz. Mr. Bijay Sarkar), for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.

21. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 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. Hooghly Agrotech shall not mobilize any fresh funds from investors through the *Offer of NCDs* 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. Hooghly Agrotech (PAN- AABCH8362A) and its past and present Directors viz. Shri Subhrajit Banik, (DIN-02913681, PAN- ANRPB9054H), Uma Shankar Shaw (DIN-03644930, PAN-BDBPS9453C), Shri Debdulal Banik Chowdhury (DIN-05325110, PAN-AHCPC4610M), Shri Avijit Chowdhury (DIN-05358817, PAN-APEPC8255N), Shri Sekhar Chandra Koley (DIN- 06454703, PAN-BUOPK8353F), Himadri Bag (DIN- 02729318, PAN-AJXPB3796L) , Shri Arjun Saha (DIN- 02457813, PAN- AVIPS6571K), Smt. Sumita Das (DIN- 02645151, PAN-AHTPD9166G), Shri Subrata Das (DIN-02457681,PAN-AEYPD5580Q), Shri Devid Haslaf (DIN- 06594846, PAN-AHUPH9113Q), Shri Miarul Sekh (DIN-05134527, PAN-CQYPS9419K), Shri Kedar Chandra Bera (DIN- 05203711, PAN-AUDPB3525G) 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. Hooghly Agrotech 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;
 - iv. Hooghly Agrotech shall provide a full inventory of all its assets and properties;
 - v. Hooghly Agrotech's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. Hooghly Agrotech 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 NCDs*, without prior permission from SEBI;
 - vii. Hooghly Agrotech and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of NCDs*, which are kept in bank account(s) and/or in the custody of Hooghly Agrotech;
 - viii. Hooghly Agrotech and its abovementioned Directors shall furnish complete and relevant information (as sought by SEBI letters dated May 05, 2014 and June 13, 2014) within 21 days from the date of receipt of this Order.

- ix. The Debenture Trustee, viz. Hooghly Debenture Trust (represented by its trustee viz. Mr. Bijay Sarkar), is prohibited from continuing with its present assignment as a debenture trustee in respect of the *Offer of NCDs* of Hooghly Agrotech 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.
22. The above directions shall take effect immediately and shall be in force until further orders.
23. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. complaints received; information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*'. In this context, Hooghly Agrotech 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.
24. Similarly, the Debenture Trustee, viz. Hooghly Debenture Trust (represented by its trustee viz. Mr. Bijay Sarkar), may, within 21 days from the date of receipt of this Order, file its reply, if any, to this Order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
25. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Hooghly Agrotech and its abovementioned Directors; its Debenture Trustee, viz. Hooghly Debenture Trust (represented by its trustee viz. Mr. Bijay Sarkar), in accordance with law.

Place: Mumbai
Date: February 11, 2015

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