

**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 Tribhuvan Agro Project Limited (PAN: AACCT6018N) and its Directors, viz. Shri Mohammed Sunwas Ali (PAN: AEOPA2984D; DIN: 00539576), Shri Shaikh Mokhlesur Rahaman (DIN: 00539589), Shri Amal Sen (PAN: BNGPS8347N; DIN: 02126612), Shri Alope Das (PAN: AINPD1762F; DIN: 02875515), Shri Sidhartha Sardar (PAN: BNOPS7521Q; DIN: 03396975), Shri Pradip Sardar (PAN: BGBPS1226C; DIN: 03431576), Shri Ranjit Gope (PAN: AILPG0108L; DIN: 03397859) and Shri Mihir Baisnob (PAN: ANRPB4794Q; DIN: 03382493) alongwith its Debenture Trustee, viz. Tribhuvan Agro Debenture Trust (represented by its Trustees, viz. Shri Sukumar Mondal, Shri Sanjay Nayak, Shri Sujit Kumar Goswami, Shri Rajib Das and Shri Mohammed Sunwas Ali).

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1. Securities and Exchange Board of India ("**SEBI**") received a complaint in September 2014, alleging mobilization of funds by Tribhuvan Agro Project Limited ("**TAPL**").
 - 2.1 Thereafter, SEBI vide letter dated October 15, 2014, sought the following information from TAPL, viz. –
 - i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Copy of Audited Annual Accounts and Annual Returns 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 schemes launched by the company for raising funds, viz. –
 - a. A statement of mobilization and deployment of funds under various schemes duly certified by the Statutory Auditors of the company(s);
 - b. Terms and conditions of the schemes launched by the company;
 - c. Structure of the plans/schemes;
 - d. Details of the scheme(s) wise amount mobilized by the company till date alongwith the number of investors under the schemes;

- e. Promises or assurances or assured returns made in the scheme(s);
- f. Copies of offer documents, application form, pamphlets, brochures of the scheme(s) launched;
- g. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the company's scheme(s);
- h. Sample copies of the agreement letter/contract required to be entered into by investor/applicant under your scheme(s);
- i. Options available with the investor if he does not want to hold his investment till maturity;
- j. Instrument issued to the investors after receipt of funds, if any.

2.2.1 TAPL replied vide letter dated October 30, 2014, and provided the following information, viz.

- i. Copy of the Memorandum and Articles of Association of the company;
- ii. Copy of Audited Annual Accounts for the last 3 years;
- iii. Name, addresses and occupation of all the Promoters/Directors of the company;
- iv. Copy of Offer documents;
- v. Incomplete list of preference share holders;
- vi. Copy of preference share certificate.

2.2.2 In addition, TAPL submitted –

- i. *"There are actually three schemes i.e. preference share short term basis and preference shares issued long term basis (is) reflected as short term borrowings and long term borrowings, other scheme is secured non – convertible Debenture is reflected under the heading secured borrowings.*
- ii. *The company stopped fund mobilization ... from the year 2012. At present, the company is trying its level best to refund the amount of preference & debenture holders which was taken through private placement basis."*

2.3.1 Subsequently, SEBI vide letter dated November 24, 2014, advised TAPL and its Directors to submit *inter alia* the following additional information, viz. –

- i. Nature of business and PAN of the company;
- ii. Other information in respect of issue of shares/debentures by the company, viz. –

- a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("**ROC**");
- b. Date of opening and closing of the subscription list;
- c. Details regarding the number of application forms circulated inviting subscription and the number of applications received;
- d. Details regarding the number of allottees and list of such allottees, etc.;
- e. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
- f. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/debentures;
- g. Terms and conditions of the issue of shares/debentures;
- h. Details of application for listing, if any, filed with stock exchanges;
- i. Copy of Form 2 and Form 10 filed with ROC;
- j. Details of Debenture Trustee.

2.3.2 Vide its reply (received at SEBI on December 11, 2014), TAPL provided *inter alia* the following additional information, viz.

- i. List of debenture holders for the period 2007–08;
- ii. Details of allottees;
- iii. Details of debenture trustees alongwith Trust Deed.

2.4 SEBI was also in receipt of a complaint dated December 11, 2014, alleging mobilization of funds by TAPL, contrary to the submission made by that company that it had stopped such mobilization from the year 2012 (as mentioned at paragraph 2.2.2).

3. The material available on record i.e. correspondences exchanged between SEBI and TAPL, the abovementioned complaints received at SEBI; information obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*, have been perused. On an examination of the same, it is observed that –

- i. TAPL was incorporated on July 29, 2006, with the ROC, Kolkata with CIN No. as U02005WB2006PLC110897. Its Registered Office is at Room No. 3, Ground Floor, Dudhnai, P.O. – Piyali Town, 24 PGS (S), Baruipur, West Bengal–743387, India.

- ii. The present Directors in TAPL are Shri Mohammed Sunwas Ali, Shri Shaikh Mokhlesur Rahaman, Shri Amal Sen, Shri Alope Das and Shri Sidhartha Sardar.
- iii. Shri Pradip Sardar, Shri Ranjit Gope and Shri Mihir Baisnob, who were earlier Directors in TAPL, have since resigned.
- iv. Form 2 (Form for Return of Allotment – filed by TAPL with the ROC in accordance with the provisions of the Companies Act, 1956) for the Financial Years 2007–08, 2008–09, 2009–10 and 2010–11, reveals that TAPL issued "*Redeemable Preference Shares*" ("***Offer of Redeemable Preference Shares***") to investors, details of which are provided below –

Type of Security	Year	No. of persons to whom preference shares were allotted	Total Amount (₹ in Crores)
<i>Redeemable Preference Shares</i>	2007–08	807	0.70
	2008–09	2474	2.29
	2009–10	4553	2.65
	2010–11	3048	3.61
TOTAL		10882	9.25

- v. From the material available on record, it is noted that TAPL also issued *Secured Redeemable Non – Convertible Debentures* ("***Offer of NCDs***"), details of which are provided below –

Year	Type of Security	Amount Raised (₹ in Crores)	Number of Allottees
2007–08	Secured Redeemable Debentures	0.25	20
2008–09		0.24	50
Total		0.50	70

- 4.1 In the context of the abovementioned details of the *Offer of Redeemable Preference Shares and the Offer of NCDs*, the issue for determination in the instant matter is whether the mobilization of funds by TAPL through the aforesaid, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**"), the SEBI (Disclosure and Investor

Protection) Guidelines, 2000 ("**DIP Guidelines**") read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**"), the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("**Debt Securities Regulations**"); the Companies Act, 1956.

- 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:

"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. Construction of reference to offering shares or debentures to the public, etc.

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:

"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 Redeemable Preference Shares* and *Offer of NCDs* are public issues or issues on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.

Offer of Redeemable Preference Shares –

- a. Under the *Offer of Redeemable Preference Shares*, it is observed that during the Financial Years 2007–08, 2008–09, 2009–10 and 2010–11, TAPL allotted *redeemable preference shares* to a total of 10882 individuals/investors and mobilized funds amounting to approximately ₹9.25 Crores. The number of investors to whom allotments were made under the *Offer of Redeemable Preference Shares* alongwith the amount mobilized therein, during the Financial Years 2007–08, 2008–09, 2009–10 and 2010–11 [details provided in Table at paragraph 3(iv) of page 4], would *prima facie* indicate that such *Offer* was a public issue of securities as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956.

Offer of NCDs –

- b. Under the *Offer of NCDs*, it is observed that during the Financial Years 2007–08, and 2008–09, TAPL allotted *NCDs* to a total of 70 individuals/investors and mobilized funds amounting to approximately ₹0.50 Crores. The number of investors to whom allotments were made under the *Offer of NCDs* alongwith the amount mobilized therein, during the Financial Year 2008–09 [details provided in Table at paragraph 3(v) of page 4], would *prima facie* indicate that such *Offer* was a public issue of securities as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956.
- c. It is observed that TAPL is not stated to be a Non – banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that TAPL 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 Redeemable Preference Shares* and *Offer of NCDs (during the Financial Year 2008–09)* by TAPL, would *prima facie* qualify as public issues 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 Redeemable Preference Shares* and *Offer of NCDs* are public issues 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 recognized 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 recognized 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 five thousand rupees."

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

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons.

*... 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 Saharas 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 Redeemable Preference Shares* and *Offer of NCDs* is *prima facie* public issues 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 the provisions of Sections 73(2) and 73(3) of that Act.
- iv. In the facts of the instant case, it *prima facie* appears that TAPL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of Redeemable Preference Shares* and *Offer of NCDs*.

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, the *Offer of Redeemable Preference Shares* and *Offer of NCDs* were public issue of securities. Having made a public offer, TAPL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. I find that there is no evidence on record to indicate whether or not TAPL has complied with the provisions of Section 60 of Companies Act, 1956. In view of the same, I find that TAPL has *prima facie* 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 TAPL 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 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 TAPL has not complied with the following provisions of the DIP Guidelines as regards the *Offer of Redeemable Preference Shares* during the Financial Years 2007–08, 2008–09 and 2009–10, viz. –

- 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*)

4.8 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."

4.9.1 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.

4.9.2 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.

4.9.3 Based on the material available on record, I find that TAPL has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

4.10 In addition to the above, reference may be made to the Debt Securities Regulations, which were framed by SEBI in exercise of its powers under Section 30 of the SEBI Act and are applicable to the public issue 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 TAPL, through the *Offer of NCDs* during the Financial Year 2008–09, 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.*

4.11 Upon a consideration of the aforementioned paragraphs, I am of the view that TAPL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of Redeemable Preference Shares and 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,); in respect of the *Offer of Redeemable Preference Shares* only, the DIP Guidelines read with ICDR Regulations and in respect of the *Offer of NCDs* only, Sections 117B–C of the Companies Act, 1956 and the Debt Securities Regulations read with the Debt Securities Regulations.

- 5.1 From the material available on record, it is observed that TAPL created a charge and appointed *Tribhuvan Agro Debenture Trust (represented by its Trustees, viz. Shri Sukumar Mondal, Shri Sanjay Nayak, Shri Sujit Kumar Goswami, Shri Rajib Das and Shri Mohammed Sunwas Ali)* as Debenture Trustee for the *Offer of NCDs* by that company.
- 5.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*".
- 5.3 In addition, 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."*
- 5.4 Based on the material available on record, I find that *Tribhuvan Agro Debenture Trust (represented by its Trustees, viz. Shri Sukumar Mondal, Shri Sanjay Nayak, Shri Sujit Kumar Goswami, Shri Rajib Das and Shri Mohammed Sunwas Ali)* has acted as unregistered Debenture Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.
6. 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 deems fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956, 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 (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 TAPL and no investors are defrauded. In light of the facts in the instant matter, I find that there is no other alternative but to take recourse through an interim action against TAPL and its Directors, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of Redeemable Preference Shares and Offer of NCDs*.

7. I note that Shri Pradip Sardar, Shri Ranjit Gope and Shri Mihir Baisnob, who were earlier Directors in TAPL, have since resigned.
8. 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, hereby issue the following directions –
 - i. TAPL (PAN: AACCT6018N) shall not mobilize funds from investors through the *Offer of Redeemable Preference Shares and 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. TAPL and its present Directors, viz. Shri Mohammed Sunwas Ali (PAN: AEOPA2984D; DIN: 00539576), Shri Shaikh Mokhlesur Rahaman (DIN: 00539589), Shri Amal Sen (PAN: BNGPS8347N; DIN: 02126612), Shri Alope Das (PAN: AINPD1762F; DIN: 02875515), Shri Sidhartha Sardar (PAN: BNOPS7521Q; DIN: 03396975), and its past Directors, viz. Shri Pradip Sardar (PAN: BGBPS1226C; DIN: 03431576), Shri Ranjit Gope (PAN: AILPG0108L; DIN: 03397859) and Shri Mihir Baisnob (PAN: ANRPB4794Q; DIN: 03382493), 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. TAPL and its abovementioned past and present 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. TAPL shall provide a full inventory of all its assets and properties;

- v. TAPL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;
 - vi. TAPL and its abovementioned present 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 Redeemable Preference Shares and Offer of NCDs*, without prior permission from SEBI;
 - vii. TAPL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of Redeemable Preference Shares and Offer of NCDs*, which are kept in bank account(s) and/or in the custody of TAPL;
 - viii. The Debenture Trustee, viz. *Tribhuvan Agro Debenture Trust (represented by its Trustees, viz. Shri Sukumar Mondal, Shri Sanjay Nayak, Shri Sujit Kumar Goswami, Shri Rajib Das and Shri Mohammed Sunwas Ali)*, is prohibited from continuing with its assignment as debenture trustee in respect of the *Offer of NCDs* of TAPL 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.
9. The above directions shall take effect immediately and shall be in force until further orders.
- 10.1 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 TAPL, the abovementioned complaints received at SEBI; information obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*. In this context, TAPL 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.
- 10.2 Similarly, the Debenture Trustee, viz. *Tribhuvan Agro Debenture Trust (represented by its Trustees, viz. Shri Sukumar Mondal, Shri Sanjay Nayak, Shri Sujit Kumar Goswami, Shri Rajib Das and Shri Mohammed Sunwas Ali)*, 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 itself an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

11. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against TAPL and its abovementioned Directors and Promoters; its Debenture Trustee, viz. *Tribhuvan Agro Debenture Trust (represented by its Trustees, viz. Shri Sukumar Mondal, Shri Sanjay Nayak, Shri Sujit Kumar Goswami, Shri Rajib Das and Shri Mohammed Sunwas Ali)*, in accordance with law.

Place: Mumbai
Date: February 24, 2015

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