

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 Annex Infrastructure India Limited (PAN: AAICA1716G) and its Directors, viz. Shri Prasenjit Mazumder (DIN: 02828354; PAN: AKGPM9017P), Shri Asim Das (DIN: 02815409; PAN: ALNPD5607J), Shri Nirmal Kr. Jha (DIN: 02828406; PAN: AGPPJ7304P), Shri Asit Kumar Majumder (DIN: 02815370; PAN: ABGPM9614H), Shri Subrat Kr. Mazumder (DIN: 0300766; PAN: BCFPM0940P), Shri Shantonu Roy (DIN: 02815342; PAN: AISPR0927R) and Shri Rabin Kumar Mal (DIN: 02825221; PAN: BAYPM6700N).

1. Securities and Exchange Board of India ("**SEBI**") received a complaint on June 21, 2012, wherein it was alleged that Annex Infrastructure India Limited ("**AIIL**") had illegally mobilized funds from the public through the issue of *Redeemable Preference Shares* ("**RPS**").
- 2.1 SEBI vide letter dated November 9, 2012, advised AIIL to furnish *inter alia* the following information within 15 days from the date of receipt of the aforesaid letter, viz. –
 - i. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with ROC for issuance of preference shares.
 - ii. Copy of the Memorandum and Articles of Association of the company;
 - iii. Audited Balance Sheet and Profit & Loss Account of the company for the last 3 years;
 - iv. Name, addresses and occupation of all the Promoters/Directors of the company;
 - v. Names and details of the Key Managerial Personnel of the company;
 - vi. Other information in respect of every series of preference shares issued by the company, viz. –
 - a. Date of opening and closing of the subscription list;
 - b. Details regarding the number of application forms circulated inviting subscription;
 - c. Details regarding the number of applications received;

- d. Details regarding the number of allottees and list of such allottees;
- e. Number of preference shares allotted and value of such allotment against each allottee's name.
- f. Details regarding subscription amount raised;
- g. Date of allotment of preference shares;
- h. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
- i. Date of dispatch of preference share Certificates;
- j. Details of the total number of applicants for each of PAFL's scheme besides the list of final allottee;
- k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of debenture/preference shares;
- l. Terms and conditions of the issue of preference shares.

2.2.1 Vide reply dated November 30, 2012, AIIL sought additional 15 days time to submit the abovementioned information to SEBI. Thereafter, vide letter dated December 17, 2012, AIIL submitted the following information, viz. –

- i. Copy of the Memorandum and Articles of Association of the company;
- ii. Audited Balance Sheet and Profit & Loss Account of the company for the Financial Years 2010–11 and 2011–12;
- 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. Copies of Board resolution regarding allotment of RPS;
- vi. Terms and conditions i.e. Date of redemption and rate of preference dividend.

2.2.2 Vide the abovementioned letter dated December 17, 2012, AIIL also submitted that –

- i. *"The Company hereby mentioned that it has not raised funds from the public by issuing preference shares and hence, no Prospectus or Statement in lieu of Prospectus was required to be filed by the Company.*
- ii. *The Company has only issued preference shares to Annex Social Research & Development Society. There was no requirement of an opening or closing date. Kindly find the details of allotment to Annex Social Research & Development Society."*

- 2.3 SEBI also received a complaint against AIIL on April 3, 2013, from complainants stated to be Associate Members/agents and investors of that company.
- 2.4 Subsequently, SEBI vide letters dated August 1, 2014, advised AIIL and its Directors at the relevant time viz. Shri Prasenjit Mazumder, Shri Asit Kumar Mazumder, Shri Subrat Kumar Mazumder, Shri Asim Das and Shri Nirmal Kumar Jha, to furnish information such as Audited Annual Accounts and Annual Return of the company for the Financial Years 2011–12, 2012–13 and 2013–14; Form 2 or list of investors who were allotted Preference shares, etc. within 7 days from the date of receipt of the aforesaid letter. The aforementioned letters sent to the company and its Directors were either returned undelivered or where delivered, no reply was received by SEBI.
3. The material available on record i.e. correspondences exchanged between SEBI and AIIL alongwith the documents contained therein, information obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*' alongwith the abovementioned complaints, have been perused. On an examination of the same, it is observed that –
- i. AIIL was incorporated as M/s Toubro Holdings Limited on December 9, 2009, with the ROC, Kolkata with CIN No. as U70109WB2009PCL140037. AIIL's Registered Office is at 122, Southern Avenue, 3rd Floor, Kolkata –700029, West Bengal, India.
 - ii. The present Directors in AIIL are Shri Prasenjit Mazumder, Shri Asim Das and Shri Nirmal Kr. Jha.
 - iii. Shri Asit Kumar Majumder, Shri Shantonu Roy, Shri Rabin Kumar Mal and Shri Subrat Kr. Mazumder, who were earlier Directors in AIIL, have since resigned.
 - iv. From the information submitted by AIIL vide letter dated December 17, 2012, it is observed that the company issued *Redeemable Preference Shares* as follows:

Sr. No.	Date of Allotment	Name of Allottee	No of Shares	Face Value	Amount (₹)
1.	30-04-2010	Annex Social Research and Development Society	2500	1000	2500000
2.	31-05-2010		4289		4289000
3.	30-06-2010		5000		5000000
4.	31-07-2010		5000		5000000
5.	31-08-2010		4000		4000000
6.	01-10-2010		5000		5000000
7.	02-11-2010		5000		5000000
8.	30-11-2010		5000		5000000
9.	31-12-2010		5000		5000000
10.	31-01-2011		4000		4000000
11.	28-02-2011		4000		4000000
12.	30-03-2011		4000		4000000
			52789		52789000

- v. However, copies of *Letter of Allotment* (received by SEBI on April 3, 2013, as part of the complaint from complainants stated to be Associate Members/agents and investors of AIIL), reveals that the company also issued "*Redeemable Preference Shares*" ("*Offer of Redeemable Preference Shares*") to investors, details of which are provided below –

Table I – Details of <i>Redeemable Preference Shares</i> issued by AIIL during the Financial Year 2010–11							
Sr. No.	Holders Name*	Certificate No./ Application No.	Issue Date	No. of Shares	Face Value	Redemption Date	Redemption Value
1.	Basana Rani Das	14102	25.10.2010	100	1000	08-09-2015	100000
2.	Rinku Saha	37046	25.10.2010	4	1000	06-09-2015	8000
3.	Sanjoy Paul	18980	29.09.2010	1	1000	17-07-2024	10000
4.	Prava Dey	11149	05.06.2010	5	1000	23-04-2015	10000
5.	Dipa Sarkar	36638	25.10.2010	20	1000	15-06-2013	20000
6.	Sikha Das	36639	25.10.2010	20	1000	15-09-2013	20000
				150			
<i>*No. of allottees have been collated merely from the documents submitted with the complaints received by SEBI. Actual no. of allottees could be much more than the above indicated figures. It is also noted that AIIL had not filed its Annual Return or Balance Sheet for the Financial Year 2010–11.</i>							

Table II – Details of *Redeemable Preference Shares* issued by AIIL during the Financial Year 2011–12

Sr. No.	Holders Name*	Certificate No./ Appln. No.	Issue Date	No. of Shares	Face Value	Redemption Date	Redemption Value
1.	Ajit Kumar Das	61378	06-03-2012	2	1000	31-01-2026	20000
2.	Ajit Kumar Das	33274	13-10-2011	1	1000	02-08-2025	10000
3.	Dipa Sarkar	60532	06-03-2012	1	1000	30-01-2026	10000
4.	Nipa Roy	60524	06-03-2012	2	1000	30-01-2026	20000
5.	Prasenjit Das	60830	03-02-2012	1	1000	13-01-2026	10000
6.	Prasenjit Das	34705	07-01-2012	2	1000	15-11-2025	20000
7.	Koushik Das	60776	07-01-2012	2	1000	11-11-2025	20000
8.	Manju Ghosh	34822	07-01-2012	1	1000	11-11-2025	10000
9.	Kalpana Ghosh	60777	07-01-2012	1	1000	11-11-2025	10000
10.	Kali Dasi Naiya	36866	07-01-2012	3	1000	21-11-2016	6000
11.	Susanta Ghosh	34821	07-01-2012	2	1000	11-11-2025	20000
12.	Susanta Ghosh	60775	07-01-2012	1	1000	11-11-2025	10000
13.	Soma Dey	37045	05-11-2011	5	1000	07-09-2016	10000
14.	Sikha Das	60312	05-11-2011	10	1000	14-09-2016	20000
15.	Manoj Kumar Das	18543	05-11-2011	1	1000	03-09-2025	10000
16.	Swapna Dey	35126	13-10-2011	1	1000	23-08-2025	10000
17.	Dilip Das	33272	13-10-2011	1	1000	23-08-2025	10000
18.	Sumana Das	33293	13-10-2011	5	1000	23-08-2025	50000
19.	Satya Ranjan Das	35453	21-05-2011	100	1000	16-04-2014	100000
20.	Satya Ranjan Das	35452	21-05-2011	100	1000	16-04-2014	100000
21.	Ruma Singh Roy	35307	21-05-2011	4	1000	15-04-2016	8000
22.	Dilip Paul	32580	21-05-2011	5	1000	15-04-2025	50000
23.	Moriyan Bibi	35124	21-05-2011	3	1000	15-04-2016	6000
24.	Moriyan	35079	24-04-2011	1	1000	08-03-2016	2000

Table II – Details of *Redeemable Preference Shares* issued by AIIL during the Financial Year 2011–12

Sr. No.	Holders Name*	Certificate No./ Appln. No.	Issue Date	No. of Shares	Face Value	Redemption Date	Redemption Value
	Bibi						
25.	Dipa Sarkar	60314	05-11-2011	5	1000	14-09-2016	10000
26.	Dipa Sarkar	60301	03-02-2012	10	1000	20-12-2016	20000
27.	Sikha Das	60313	03-02-2012	10	1000	20-12-2016	20000
28.	Nilaj Rajbanshi	33270	13-10-2011	1	1000	08-05-2025	10000
29.	Rama Biswas	33284	05-11-2011	5	1000	15-09-2025	50000
30.	Sikha Das	60315	03-02-2012	10	1000	20-12-2016	20000
31.	Jeet Sarkar	60302	06-03-2012	1	1000	30-01-2026	10000
32.	Sikha Das	60313	06-03-2012	10	1000	30-01-2017	20000
33.	Tapati Majumder	60742	07-01-2012	25	1000	11-02-2025	250000
				286			
* No. of allottees have been collated merely from the documents submitted with the complaints received by SEBI. Actual no. of allottees could be much more than the above indicated figures. It is also noted that AIIL had not filed its Annual Return or Balance Sheet for the Financial Year 2011–12.							

Table III – Details of *Redeemable Preference Shares* issued by AIIL during the Financial Year 2012–13

Type of Security	Year	No. of persons to whom preference shares were allotted	Total Amount (Rs. in Lakhs)
<i>Redeemable Preference Shares</i>	2012–13	*51	^4.85
*^No. of allottees and amount raised have merely been collated from the documents submitted with the complaints received by SEBI. Actual no. of allottees and amount mobilized could be much more than the above indicated figures. It is also noted that AIIL had not filed its Annual Return or Balance Sheet for the Financial Year 2012–13.			

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

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

- 4.3 In this regard –

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

"67. 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 that:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ...

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

iii. In the instant matter, for ascertaining whether the *Offer of Redeemable Preference Shares* is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.

- a. Under the *Offer of Redeemable Preference Shares*, it is observed that during the Financial Year 2012–13, AIIL allotted *redeemable preference shares* to 51 individuals/investors and admittedly mobilized an amount of ₹ 4.85 Lakhs (Table at para 3(v) of page 5). The number of investors to whom allotments were made under the *Offer of Redeemable Preference Shares* during the Financial Year 2012–13 alongwith the amount mobilized therein, would *prima facie* indicate that the number of persons to whom such *Offer* was made, was above the limit of forty–nine persons as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956.
- b. The number of allottees and amount raised under the *Offer of Redeemable Preference Shares* during the Financial Years 2010–11, 2011–12 and 2012–13, have been collated solely from the documents submitted with the complaints received by SEBI, against AIIL. It is, therefore, very likely that the actual number of allottees and amount mobilized by AIIL under such *Offer* could be much more than the figures indicated in the Table at paragraph 3(v) of page 5.
- c. It is observed that AIIL 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 AIIL 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* by AIIL, 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, 1956, 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* 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 subsection (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 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 Redeemable Preference Shares* 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 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 AIIL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of Redeemable Preference Shares*.

4.5 Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the ROC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), “*prospectus*” means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, since the *Offer of Redeemable Preference Shares* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, AIIL 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 AIIL has complied with the provisions of Section 60 of Companies Act, 1956. In view of the same, I find that AIIL 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 AIIL 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 Upon a consideration of the aforementioned paragraphs, I am of the view that AIIL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of Redeemable Preference Shares* 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).

5. Shri Asit Kumar Majumder, Shri Shantonu Roy, Shri Rabin Kumar Mal and Shri Subrat Kr. Mazumder, who were earlier Directors in AIIL, have since resigned.
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 4.1–4.7 above). Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by AIIL 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 AIIL and its Directors, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of Redeemable Preference Shares*.
7. 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. AIIL (PAN: AAICA1716G), shall not mobilize any fresh funds from investors through the *Offer of Preference Shares* 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. AIIL and its present Directors, viz. Shri Prasenjit Mazumder (DIN: 02828354; PAN: AKGPM9017P), Shri Asim Das (DIN:02815409; PAN: ALNPD5607J) and Shri Nirmal Kr. Jha (DIN: 02828406 PAN: AGPPJ7304P), 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. The past Directors of AIIL, viz. Shri Asit Kumar Majumder (DIN:02815370; PAN: ABGPM9614H), Shri Subrat Kr. Mazumder (DIN: 0300766 PAN: BCFPM0940P), Shri Shantonu Roy (DIN:02815342; PAN: AISPR0927R) and Shri Rabin Kumar Mal (DIN: 02825221; PAN: BAYPM6700N), 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;
- iv. AAIL 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;
 - v. AAIL shall provide a full inventory of all its assets and properties;
 - vi. The abovementioned past and present Directors of AAIL shall provide a full inventory of all their assets and properties;
 - vii. AAIL 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 Preference Shares*, without prior permission from SEBI;
 - viii. AAIL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of Preference Shares*, which are kept in bank account(s) and/or in the custody of AAIL;
 - ix. AAIL and its abovementioned present Directors shall furnish complete and relevant information in respect of the *Offer of preference shares* (as sought by SEBI letter dated November 9, 2012 and August 1, 2014) including details of all its shareholders such as name, number of shares held, etc. within 21 days from the date of receipt of this Order.
8. The above directions shall take effect immediately and shall be in force until further orders.
- 9.1 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 AAIL alongwith the documents contained therein; information obtained from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal* alongwith the abovementioned complaints. In this context, AAIL and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:
- i. Directing them jointly and severally to refund money collected through the *Offer of Redeemable Preference Shares* alongwith interest, if any, promised to investors therein;

- ii. Directing them to not issue 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, for an appropriate period;
 - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
- 9.2 AIIL and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their replies, 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. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against AIIL and its abovementioned past and present Directors in accordance with law.

Place: Mumbai
Date: June 24, 2015

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