

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under sections 11(1), 11(4), 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992 and regulation 28 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 in respect of:

Sl. No.	Company	CIN/DIN	PAN
1.	Aspen Industries Limited	U14290PB2012PLC036978	Not available
Directors			
2.	Shri Bhaskar Saha	02531517	ALAPS8382A
3.	Shri Abhijit Dasgupta	02475280	AHEPD4809K
4.	Shri Ujjal Kumar Roy	02555033	AHMPR4384B
Debenture Trustee			
5.	M/s Aspen Debenture Trust (acting through Shri Raju Sarkar) 28, Micheal Madhu Sudan Sarani, Kolkata - 700023	Not available	Not available

1. Securities and Exchange Board of India ("SEBI") received several complaints alleging that Aspen Industries Limited ("AIL") had issued Secured Redeemable Non-Convertible Debentures ("NCDs") to mobilize money from the public and is not refunding the money collected.
2. As a matter of preliminary enquiry, SEBI vide letter dated May 30, 2016 (which was addressed to AIL with copies sent to its three directors, namely, Shri Abhijit Dasgupta, Shri Bhaskar Saha and Shri Ujjal Kumar Roy) sought *inter-alia* the following information/documents about the company and its schemes.
 - a. Memorandum and Article of Association as filed with the Registrar of Companies.
 - b. Name of the past and present promoters / directors / key management personnel with details containing name, address, PAN and contact details (email / fax / contact no), etc.
 - c. Brochures pertaining to schemes / plans / offers / projects which were made available and or are proposed to be made available to the public.

- d. Application forms /model agreement which were required to be submitted / executed / signed by investors / clients / applicants to participate/invest in the scheme/plan/offer.
 - e. Copies of the certificates issued to the investors to subscribe to such schemes.
 - f. Copies of Agreements / contracts entered into by investors / clients / applicants with AIL at the time of subscribing or joining to the scheme and continuation of scheme/plan/offers.
 - g. Details of the regulatory approvals obtained by AIL, if any, for the issuance of debentures or schemes.
 - h. Details of any other similar schemes floated by AIL or its group or associate company.
 - i. Number of plans/schemes/offers/projects launched or proposed.
 - j. Structure of such plans/schemes/offers/projects.
 - k. Terms and conditions of each such plan/scheme/offers/projects.
 - l. Number of investors and amount collected in each such plan/scheme.
 - m. Balance Sheets and Profit and Loss Accounts of AIL since incorporation as filed with the concerned Registrar of Companies.
 - n. Annual Returns since incorporation as filed with the concerned Registrar of Companies.
 - o. Certified copies of audited financial statements for the last three financial years.
 - p. Copies of Income Tax Returns filed for the last three financial years.
3. AIL replied to SEBI vide letter dated June 29, 2016 stating that, *“the company could not file the balance sheet, profit & loss account and annual return for the accounting years 2013-2014 and 2014-2015. The accounting process is going on ...”*. AIL requested 45 days’ time to prepare and submit the necessary documents. Thereafter, a letter dated July 13, 2016 was issued to AIL advising it to furnish the information/reply by July 22, 2016 but AIL did not respond to the letter. Again on July 27, 2016 a letter was issued to AIL advising it to reply and submit the desired information by August 07, 2016. AIL vide a letter dated August 03, 2016 provided certain documents, viz. Certificate of Commencement of Business, Certificate of Incorporation, Memorandum of Association, Article of Association, extracts of the meeting of the Board of Directors of AIL held on January 02, 2013, Notice of Extra-Ordinary General Meeting (EGM), Extracts of EGM held on January 08, 2013, Debenture Trust Deed, Application form for subscription of debentures, Form 10 filed with ROC detailing particulars for registration of charges for debentures and Auditor’s Report for the Financial Year ended on March 31, 2013. AIL also submitted that at present it is not mobilizing money from the public through any scheme and requested few weeks’ time to submit other documents such as audit reports

and annual reports for the year 2013-14 and 2014-15. However, no documents were furnished subsequently.

4. On examination of the material available on record, i.e. documents provided by AIL, information obtained from the ROC Punjab and Chandigarh and downloaded from MCA 21 Portal it is observed as under:

- i. That AIL was incorporated on December 27, 2012 and was registered with ROC, Punjab and Chandigarh with CIN No. as U14290PB2012PLC036978, having its Registered Office at Sudarshan Market, Opp. Kiran Market, Hall Bazar, Amritsar-143006.
- ii. The Directors of AIL are Shri Abhijit Dasgupta (DIN-02475280), Shri Bhaskar Saha (DIN-02531517) and Shri Ujjal Kumar Roy (DIN-02555033). These persons were appointed as directors of AIL on December 27, 2012.
- iii. As per information received from ROC Punjab and Chandigarh on July 29, 2016, it is observed that AIL created a charge on its assets in favour of Aspen Debenture Trust represented by Shri Raju Sarkar (Debenture Trustee) on January 8, 2013 for issuing 150 lakh NCDs of face value of ₹100 each for an amount of ₹150 crore. The NCDs were to be issued as per the following three schemes-

SCHEME-1 MULTIPLE NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE

Plan	F-1	F-3	F-5	F-7	F-10	F-13	F-14
Redemption Period	1 year 16 months	3 years	5 years	7 years 6 months	10 years	13 years	14 years
Principal Value	Redemption Value						
1000/-	1200/-	1500/-	2000/-	3000/-	5000/-	10000/-	10000/-

SCHEME-2 MULTIPLE NON-CONVERTIBLE REDEEMABLE SECURED DEBENTURE MINIMUM AMOUNT ACCEPTABLE ₹ 25,000/- INTEREST PAYABLE MONTHLY

Plan	Redemption Period	Principal Value	Return / Month	Bonus (%)
MIP-3	3 Years	25000	375	3
MIP-5	5 Years	25000	375	5
MIP-10	10 Years	25000	200	Nil

**SCHEME-3 MULTIPLE NON-CONVERTIBLE REDEEMABLE SECURED
DEBENTURE (INSTALLMENT)**

Type of Payments	Plan					Redemption Value				
Monthly	RI-1	RI-1.5	RI-2	RI-3	RI-5	15 Months + 1 Day	21 Months + 1 Day	27 Months + 1 Day	39 Months + 1 Day	63 Months + 1 Day
	1 Year	1 Year 6 Months	2 Years	3 Years	5 Years					
100	1200	1800	2400	3600	6000	1400	2200	3000	5000	9500

- iv. From the Minutes of the Meeting of the Board of Directors of AIL held on January 02, 2013, it is observed that the Board of Directors was authorized to issue, from time to time, NCD of ₹100 each for raising funds up to ₹150 crore. In the said meeting Shri Bhaskar Saha, Director of AIL, was authorized to finalize with the debenture trustee the documents for creating mortgage and/or charge and to do all such acts and things as may be necessary for the purpose of issuing NCDs.
- v. It is observed from the Minutes of the Extra-Ordinary General Meeting of the Shareholders of the company held on January 08, 2013 that the company accorded its consent to mortgage or create charge on the present and future moveable and immovable properties of the company by the Board of Directors of the company in favour of trustees for the debenture holders in order to secure the debentures for an amount not exceeding ₹150 crore and interest, expenses etc. On the same day, in the meeting of the Board of Directors, the company resolved to issue NCDs.
- vi. From the trust deed executed on January 08, 2013 between AIL and M/s Aspen Debenture Trust represented by its Trustee Shri Raju Sarkar, it is observed that the said trust deed was signed on behalf of AIL by Shri Bhaskar Saha, Director of AIL and on behalf of M/s Aspen Debenture Trust by Shri Raju Sarkar. The trust deed provided that AIL mortgages in favour of the trustees all its present or future properties, described in Schedule III, as security for due payment of the principal moneys amounting to ₹ 150 crore in aggregate with interest and all other charges, expenses and other dues. It is observed that Schedule III of the Trust Deed does not contain any detail of property belonging to the company and instead states “all the present and future assets wherever situated of the company”.

- vii. Form 10 filed by AIL with ROC had indicated that charge was created on January 08, 2013 for issuing NCDs of ₹ 150 crore.
- viii. The application form provided by AIL has the words “*For Private & Confidential Placement*” printed on it. The issue opening date was mentioned as January 08, 2013. The details of the three aforesaid schemes for issuance of NCDs were mentioned in the application form.
- ix. It is observed from the documents submitted by the complainants / investors that AIL had issued debentures during the financial years 2012-13, 2013-14, 2014-15 and 2015-16. Most of the complaints / debenture certificates were received through Kanoon Pidit Nyay Manch (having its office in Devria district of Uttar Pradesh) which had forwarded the complaints on behalf of investors. During the course of examination, SEBI received similar complaints from several other investors as well. The details of the funds mobilized and number of investors, as gathered from the investors complaints and copy of debenture certificates received by SEBI till date are as follows:

Financial Year	Number of Allottees*	No. of Debentures*	Face Value	Value of Debentures (in ₹)*	Redemption Value (in ₹)*
2012-13	2	70	100	7,000	56000
2013-14	293	61,895	100	61,89,500	3,32,00,900
2014-15	736	1,92,814	100	1,92,81,400	7,24,71,008
2015-16	109	29,275	100	29,27,500	82,44,750

**SEBI is continuing to receive investor complaints in this matter, therefore, the figures may go up.*

- x. Along with the documents submitted by the complainants / investors, an application form issued by AIL on November 05, 2013 for subscription of the debentures of AIL was also received by SEBI. As per application form, AIL had a Plan-I for 36 months and 60 months under which the subscription amount per debenture was ₹ 100/- and an investor had to subscribe for a minimum of 250 debentures. The issue was offered to individuals, trusts, corporate bodies, minors (through guardians), financial institutions, HUFs and co-operative bodies. The issue size was ₹ 150 crore and details of the plan given in the application form are as below:

Plan-I	Regular Income Redeemable Secured Debentures			
Amount	Redemption Period	Monthly Repayment	Incentive	Redemption Amount
25000	36 Months	312.5	2%	25500
25000	60 Months	350	3%	25750

5. In the context of the abovementioned details, the issue for determination in the instant matter is whether the mobilization of funds by AIL through the issuance of NCDs is in accordance with the provisions of the Securities and exchange Board of India Act, 1992 ("SEBI Act"), the Companies Act, 1956 read with the Companies Act, 2013 and the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("Debt Securities Regulations").
6. Section 67 of the Companies Act, 1956 deals with conditions and circumstances under which an offer of shares and debentures by a company would be construed as one made to the public. Extract of relevant provisions of section 67 of the Companies Act, 1956 in this regard 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.

(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)."

7. Hon'ble Supreme Court of India has examined the scope of Section 67 of the Companies Act, 1956 in *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI* (Civil Appeal no. 9813 of 2011 - Judgment dated August 31, 2012). It has been 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. ..."

8. In view of the above, for ascertaining whether the issuance of NCDs is a public issue or an issue on private placement basis, the number of subscribers is of utmost importance. Further, under the new Companies Act, 2013, post April 1, 2014, any offer or allotment of securities shall be construed as public issue if the number of offerees/allottees exceeds 200 persons, excluding certain class of subscribers. In the instant case, it is observed that even after repeated

advice, the company has neither furnished the balance sheet, profit and loss account and annual return for the accounting years 2013-2014 and 2014-2015 nor it provided the details of its funds mobilization activities including the details of allottees and the fund raised through the issuance of NCDs. However, from the analysis of the details of investor complaints and copy of debenture certificates provided by the complainants, it is observed that the company has issued NCDs to more than 49 or 200 investors during the years 2013-14 and 2014-15 respectively (refer table at para 4 (ix) on page 5). The exact quantum of fund mobilization by AIL through issuance of NCDs and acceptance of deposits could not be ascertained as AIL did not co-operate with the examination process. However, considering the documents submitted by investors, it prima facie leads me to draw an inference that the number of persons from whom funds were mobilised by issuance of NCDs is beyond the prescribed limit of forty nine / two hundred persons at least for the years 2013-14 and 2014-15. Therefore, it can be inferred that the company had issued NCDs to the public during these years.

9. From the abovementioned, it will follow that since the issuance of NCDs by AIL 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 [corresponding Section 40 of Companies Act, 2013]. As per these provisions, 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 recognized stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange. However, available records suggest that AIL did not make any such application for listing of securities to any recognized stock exchange and thus violated the provisions of Section 73 of Companies Act, 1956 [Section 40 of Companies Act, 2013].
10. Further, from the available documents and records, it is observed that AIL made an offer or invitation to the public and issued debentures to more than forty nine persons prior to April 1, 2014 and thereafter to more than two hundred persons. Under Section 60 read with Section 2(36) of the Companies Act, 1956 [Section 389 read with Section 2(70) of the Companies Act, 2013], a company needs to register its prospectus with the RoC, before making a public offer or issuing the prospectus. Being a public offer, AIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956 [corresponding Section 389 of the Companies Act, 2013]. But as per documents available on record, AIL did not file the

prospectus and thus violated these provisions. It is also observed that Section 56(1) of the Companies Act, 1956 and corresponding Section 26(1) and 33(1) of the Companies Act, 2013 mandates that every prospectus issued by or on behalf of a company shall contain the details specified in the provision. Based on the documents available on record, it is observed that AIL had not complied with the provisions of Section 56(1) of the Companies Act, 1956 [corresponding Section 26(1) and 33 (1) of the Companies Act, 2013].

11. As per Section 117C of the Companies Act, 1956 [Section 71(4) of the Companies Act, 2013] 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 out of its profits every year until such debentures are redeemed. Based on the available documents, it is observed that the AIL did not comply with the provisions of Sections 117C of the Companies Act, 1956 [Section 71(4) of the Companies Act, 2013] as well.
12. In addition to the above, a company which intends to issue debentures to the public has to comply with the provisions of SEBI (Issue of Listing of Debt Securities) Regulations, 2008. It is observed from the available records that AIL has not complied with the following provisions of SEBI (Issue of Listing of Debt Securities) Regulations, 2008 :-

General Conditions.

4.

...

(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations, (a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:

Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange;

Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange;

Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation;

(b) it has obtained in-principle approval for listing of its debt securities on the recognized stock exchanges where the application for listing has been made;

(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document:

Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

(d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the debt securities that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder.

Disclosures in the offer document

5. (1) *The offer document shall contain all material disclosures which are necessary for the subscribers of the debt securities to take an informed investment decision.*

(2) *Without prejudice to the generality of sub- regulation (1), the issuer and the lead merchant banker shall ensure that the offer document contains the following:*

(a) *the disclosures specified in Schedule II of the Companies Act, 1956;*

(b) *disclosure specified in Schedule I of these regulations;*

(c) *additional disclosures as may be specified by the Board.*

Explanation: For the purpose of this regulation, “material” means anything which is likely to impact an investors’ investment decision.

Filing of draft offer document

6. (1) *No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.*

(2) *The draft offer document filed with the designated stock exchange shall be made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange.*

(3) *The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed.*

(4) *The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.*

(5) *The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.*

(6) *A copy of draft and final offer document shall also be forwarded to the Board for its records, [along with regulatory fees as specified in Schedule V] simultaneously with filing of these documents with designated stock exchange.*

(7) *The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations.*

(8) *The debenture trustee shall, prior to the opening of the public issue, furnish to the Board a due diligence certificate as per Schedule III of these regulations.*

Mode of Disclosure of Offer Document

7. (1) *The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats.*

(2) *The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue.*

(3) *Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.*

Advertisements for Public issues

8. (1) *The issuer shall make a advertisement in an national daily with wide circulation, on or before the Issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV.*

(2) *No issuer shall issue an advertisement which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive.*

(3) *The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.*

(4) *Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document.*

- (5) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document.
- (6) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of debt securities or be used for solicitation.

Abridged Prospectus and application forms

9. (1) The issuer and lead merchant banker shall ensure that:
- (a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus;
- (b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus;
- (c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.
- (2) The issuer may provide the facility for subscription of application in electronic mode.

Minimum subscription.

12. (1) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document.
- (2) In the event of non-receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.

Prohibitions of mis-statements in the offer document.

- 14.(1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading.
- (2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement.

Trust Deed

15. (1) A trust deed for securing the issue of debt securities shall be executed by the issuer in favour of the debenture trustee within three months of the closure of the issue.
- (2) The trust deed shall contain such clauses as may be prescribed under section 117A of the Companies Act, 1956 and those mentioned in Schedule IV of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.
- (3) The trust deed shall not contain a clause which has the effect of –
- (i) limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors;
- (ii) limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by the Board;
- (iii) indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

Debenture Redemption Reserve

16. (1) For the redemption of the debt securities issued by a company, the issuer shall create debenture redemption reserve in accordance with the provisions of the Companies Act, 1956 and circulars issued by Central Government in this regard.
- (2) Where the issuer has defaulted in payment of interest on debt securities or redemption thereof or in creation of security as per the terms of the issue of debt securities, any distribution of dividend shall require approval of the debenture trustees.

Creation of security

17. (1) The proposal to create a charge or security, if any, in respect of secured debt securities shall be disclosed in the offer document along with its implications.

(2) The issuer shall give an undertaking in the offer document that the assets on which charge is created are free from any encumbrances and if the assets are already charged to secure a debt, the permissions or consent to create second or pari-passu charge on the assets of the issuer have been obtained from the earlier creditor.

(3) The issue proceeds shall be kept in an escrow account until the documents for creation of security as stated in the offer document, are executed.

Mandatory listing

19. (1) An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956 (1 of 1956).

(2) The issuer shall comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed.

(3) Where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such debt securities.

Obligations of the Issuer, Lead Merchant Banker, etc.

26.(1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.

(2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and Schedule II of the Companies Act, 1956.

(3) The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board.

(4) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.

(5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange.

(6) The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities."

13. Upon consideration of the aforementioned paragraphs, I am of the view that AIL is prima facie engaged in fund mobilising activity from the public, through the issuance of NCDs without complying with the aforementioned provisions of the Debt Securities Regulation.

14. In terms of section 73(2) of the Companies Act, 1956 the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). As per available information, Shri Abhijit Dasgupta (DIN-02475280), Shri Bhaskar Saha (DIN-02531517) and Shri Ujjal Kumar Roy (DIN-02555033) are directors of AIL since the date of its incorporation i.e. December 27, 2012. It is thus

observed that these persons were directors of the company during the time of issue and allotment of the NCDs and were responsible for the conduct of business of AIL.

15. It is also observed from the extracts of the Minutes of the Extra Ordinary General Meeting of the Board of Directors of AIL held on January 08, 2013 and other documents that AIL appointed M/s Aspen Debenture Trust represented by Shri Raju Sarkar as Debenture Trustee for the issuance of NCDs. As per Section 12(1) of the SEBI Act "*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."*
16. It is observed that AIL had appointed Aspen Debenture Trust represented by Mr. Raju Sarkar as Debenture Trustee which is not registered with SEBI. A letter dated August 03, 2016 was sent to M/s Aspen Debenture Trust by SEBI, but no reply was received. Based on the material available on record, I find that M/s Aspen Debenture Trust represented by Shri Raju Sarkar has prima facie failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as an unregistered Debenture Trustee, which is a violation of the provisions of Section 12(1) of SEBI Act, 1992 and Regulation 7 of SEBI (Debenture Trustee) Regulations, 1993.
17. SEBI has a statutory duty to protect the interest 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, sub-section (4) of section 11 of SEBI Act, 1992 lists measures that SEBI may take, by an order in writing, either pending or on completion of investigation or inquiry, in the interest of investors in the securities market. Section 11B empowers SEBI to issue such directions as may be appropriate to any company in respect of issue of capital, transfer of securities etc., in the interest of investors in securities and the securities market.

18. Protecting the interest of investors is the prime mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure that issue of securities to the public is carried out in accordance with the applicable provisions of law as cited in the foregoing paragraphs. Though, AIL has submitted that they have stopped fund mobilization activity, no evidence has been submitted in this regard and SEBI is continuing to receive investor complaints. Therefore, I am of the view that there is no other alternative but to take recourse through an interim action against AIL and its Directors along with its Debenture Trustees for preventing them from carrying on further with the issuance of NCDs to the public.
19. It is also pertinent to mention that in order to raise ₹150 crore through issuance of NCDs, it appointed Aspen Debenture Trust as Debenture Trustee by mortgaging all the present or future properties. No details of properties has been given in the trust deed. Further, as per the Balance Sheet of AIL for the year ended on March 31, 2013, it had no fixed assets and it has not provided the balance sheet for subsequent years.
20. I also note that all the directors of AIL viz. Shri Abhijit Dasgupta, Shri Bhaskar Saha and Shri Ujjal Kumar Roy were also directors in Aspen Projects India Limited which is a group company of AIL. The company Aspen Projects India Limited and its directors including all three directors of AIL viz. Shri Abhijit Dasgupta, Shri Bhaskar Saha and Shri Ujjal Kumar Roy were prohibited from collecting any money from investors through issuance of securities in any manner whatsoever vide interim order dated June 05, 2014. It appears from the available records that despite the prohibition against them, the directors of AIL viz. Shri Abhijit Dasgupta, Shri Bhaskar Saha and Shri Ujjal Kumar Roy continued with their activities of money mobilization in the name of the company AIL, even in the subsequent years.

Directions

21. 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 read with regulation 28 of the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions, which shall take effect immediately and shall remain in force till further directions: –
- i. AIL shall cease to mobilize fresh funds through offer and issuance of NCDs or through offer and issuance of any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly.

- ii. AIL and its Directors, viz. Shri Abhijit Dasgupta (PAN-AHEPD4809K; DIN-02475280), Shri Bhaskar Saha (PAN-ALAPS8382A; DIN-02531517) and Shri Ujjal Kumar Roy (AHMPR4384B; DIN-02555033), shall not buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public.
 - iii. AIL and its abovementioned Directors shall not dispose of or alienate or encumber any of its/their assets or properties nor divert any fund raised from the public through offer and allotment of NCDs without prior permission from SEBI.
 - iv. AIL and its above named directors shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and issuance of securities, including the documents sought earlier.
 - v. Aspen Debenture Trust and Shri Raju Sarkar are prohibited from continuing with their present assignment as debenture trustees in respect of the issuance of NCDs of AIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity.
 - vi. Aspen Debenture Trust and Shri Raju Sarkar shall not buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public.
22. 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 AIL along with the documents contained therein, information obtained from the 'MCA 21 Portal' and ROC Punjab and Chandigarh and documents provided by the investors/ complainants. In this context, AIL and its abovementioned Directors, its Debenture Trustee M/s Aspen Debenture Trust represented by Shri Raju Sarkar (hereinafter referred to as the “Noticee”) are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, namely:-

- i. The Noticees to jointly and severally refund the money collected through the *offer and allotment of NCDs*, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment, supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and
 - ii. The Noticees to be refrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.
23. The Noticees may, within 21 days from the date of receipt of this interim order -cum- show cause notice, file their respective replies. The Noticees are directed to furnish an inventory of their assets along with their reply. If the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. In the event of the Noticees failing to file reply or requesting for an opportunity of personal hearing within the said 90 days, the prima facie findings regarding the violations at paragraph 8 to 16 of this Order and the directions at paragraphs 21 and 22 shall become final and absolute against the Noticees automatically, without any further orders. The Noticees shall comply with the direction to refund as mentioned above within a period of 90 days from the date of this Order becoming final. The restrictions/prohibitions imposed upon Noticees, mentioned in para 21 and 22 above shall continue till the expiry of four years from the date of completion of repayment. Upon the expiry of the period of 90 days from the date of this Order becoming final and the Noticees failing to comply with the direction to refund as mentioned in the para above, SEBI may initiate appropriate enforcement action under SEBI Act, 1992, including recovery, adjudication, prosecution in addition to making a suitable reference to State Government / Local Police.
24. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
25. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to

MCA/concerned RoC for their information and necessary action with respect to the directions imposed on the company and its directors.

Date: July 06, 2017

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER