

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER**

**UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992, IN THE MATTER OF –**

- 1. ANGEL AGRITECH LIMITED (PAN: AAICA2522N)**
- 2. DIRECTORS, VIZ.**
 - (I) SUMANTRA SINHA (PAN: AZWPS2036H; DIN: 02705993)**
 - (II) ROHIT DAS (PAN: AJIPD6461D; DIN: 01933786)**
 - (III) HASIBUL HAQUE (PAN :ABMPH3009D; DIN:02968546)**
 - (IV) SUNIRMAL GOSWAMI (PAN :ARMPG3713B; DIN:03614972)**
 - (V) DEVID HASLAF (PAN : AHUPH9113Q; DIN:06594846)**
 - (VI) BASUDEV GHOSH(PAN :AVAPG0570A; DIN:06533516)**
 - (VII) MOHD. SEKH ABDUL ROBIAL (PAN :AGKPR7880B; DIN:06371624)**
 - (VIII) ARINDAM PAL (PAN: AOFPP2459F; DIN02838394)**
 - (IX) FIROJ HUSSAIN (PAN: ABXPH8897C; DIN: 02960200)**
 - (X) IMRAN ALI (DIN: 03441983)**
 - (XI) MD. SEKH NAZIBULLA (PAN: CJOPS3256B; DIN: 03109435)**
- 3. DEBENTURE TRUSTEE (UNREGISTERED):**

DRISTI SOCIAL WELFARE TRUST (PAN: N.A) Represented by MS. NABINA JAHAN (PAN: N.A.), having office at 1, DR. S. P. Mukherjee Road, Room No. 203, 1st Floor Kolkata 700056

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1. Securities and Exchange Board of India ("SEBI") was in receipt of complaints stating that Angel Agritech Limited (hereinafter referred to as "**AAL**") was collecting money illegally and the company was not refunding the money collected. There were also many complaints against AAL alleging that the company issued debentures and was not refunding the money.

2. SEBI sought information pertaining to the collection of money by AAL. Details of the correspondence and replies are as under:

- (i) Letter dated 08.03.2013 was sent to Angel Agritech Group at its registered office address. Since no information was received from the company, a reminder letter dated April 01 2013 was sent to the company's registered address. Further, letter dated April 10 2013 was sent to the group company's registered address. The company has furnished its reply vide letter dated April 08 2013.
- (ii) In addition, letter dated April 10 2013 was sent to RoC Kolkata requesting them to furnish information regarding mobilization of funds from public by the Angel Agritech Group.
- (iii) Company in its letter dated April 08 2013 submitted the following:
 - (a) Incorporation Certificate, Business Commencement Certificate, Memorandum of Association and Articles of AAL;
 - (b) Balance Sheet of AAL for the years ending March 31 2010 and March 31 2011
 - (c) VAT acknowledge Return of AAL for December 2012
 - (d) Annual ROC Return of AAL for March 31 2011 and March 31 2010
 - (e) Copy of Form 20B of AAL;
 - (f) Copy of Form 66 of AAL;
 - (g) Copy of Form 23AC and 23ACA of AAL;
 - (h) Copy of Form 23 of AAL;
 - (i) Copy of Form 2 of AAL;
 - (j) Copy of Form 1 of AAL;

(k) Copy of Form 22 of AAL; and

(l) Copy of Form 20 of AAL.

Further, the company vide its letter dated May 07 2013, sought for extension of time for furnishing information and explanation sought by SEBI.

(iv) Since the company did not submit information in respect of securities issue, letters dated January 30 2014 were sent to the directors of AAL namely Hasibul Haque, Sunirmal Goswami and Basudev Ghosh. The letters sent to Hasibul Haque and Sunirmal Goswami returned undelivered with the remarks - "Refused". Though the letter sent to Basudev Ghosh was delivered, no reply to the same was received.

3. As sufficient information was not forthcoming from the company and its directors, a letter dated March 05, 2014 was sent to RoC Kolkata requesting them to furnish information in respect of AAL. RoC in its letter dated March 11 2014 provided Form 10 and Form 2 of AAL.
4. Thereafter attempts were made to obtain details from the MCA21 portal. Based on information obtained from MCA21 Portal, documents submitted by the company and the complaints received, it was observed that the registered office of the company is at 23/A, Royd Street 2nd Floor Kolkata WB 700016, India. The company was incorporated on February 05 2010. The corporate identity number of the company is U01400WB2010PLC141816. However, when a site visit was made to the registered office address of the company on April 25 2016, the company was not traceable. Further, the fact that AAL has not filed its Annual Accounts and Annual Returns for the F.Y. ended 2012-13,

2013-14 and 2014-15 till date with the RoC has been brought to its notice vide letter dated May 02, 2016.

ISSUE OF REDEEMABLE PREFERENCE SHARES (RPS)

5. From the company's submission, MCA21 Portal and the information received from RoC, it was observed that the issued capital was Rs. 1,17,82,000/- of which Rs. 5,00,000/- through equity issued and Rs. 1,12,82,000/- through Redeemable preference share (hereinafter referred to as "**RPS**") issued. Further, the company filed Form 2 with RoC. On a scrutiny of the same, it was observed that the company has allotted preference shares listed as below:

Year	Date allotment	Of Type	No of Allottee	Amount (Rs.)
2010-11	15.12.2010	Redeemable Preference Share of Rs. 10/- each	26	2,61,000
2010-11	01.03.2011		22	1,07,60,000
Total			48	1,12,82,000

6. As per company's submission, the issued capital through Redeemable preference shares was Rs. 1,12,82,000/-
7. Though there were complaints against the company alleging that it had issued debentures, AAL in its reply had not mentioned the issue of debentures. On a scrutiny of Form 10 filed with RoC, it was observed that the company had created a charge of Rs. 10 crore against the immovable properties held by the company in connection with the issue of debentures. After examination, it was noted that the aggregate value of all such properties is Rs. 10 crore.

8. The non-cooperation of the company and its directors in submitting the requisite information to SEBI hindered the examination process. Moreover, the details with respect to number of debenture and preference shareholders were not available from the MCA21 Portal. Further, the company did not submit any details about the debentures issued. Having regard to the quantum of funds mobilized by the company, media reports regarding AAL with regard to illegality/irregularity in raising of funds and complaints received from investors based in multiple states, an Investigating Authority (hereinafter referred to as "**the IA**") was appointed for the investigation of the case.
9. Pursuant to appointment of the IA, summons dated January 09, 2015 was issued to the company and its directors (both past and present) for production of documents and to appear in person before the IA under Section 11 C (3) & 11C (5) of the SEBI Act, 1992 on January 21, 2015. The summons were issued to AAL at its last known address and also at its new registered office address. The details with regard to past and present directors were taken from the 'Register of directors, managing directors, manager and secretary, etc' obtained from the RoC, Kolkata. The company and the directors were summoned to provide copy of Audited Annual Accounts and Annual Returns for the last five years along with the details in respect of issue of shares/debentures. However, none of the entities appeared before SEBI. The names of those entities to whom the summons were issued but the service was incomplete (i.e. either returned as undelivered or where no receipt of acknowledgement after service, was received) are shown below:

- (i) Angel Agritech Limited
- (ii) Basudev Ghosh
- (iii) Md. Sekh Nazibulla
- (iv) Md. Sekh Abdul Robial

- (v) Sunirmal Goswami
- (vi) Sumantra Sinha
- (vii) Devid Haslaf
- (viii) Arindam Pal
- (ix) Firoj Hossain
- (x) Hasibul Haque
- (xi) Imran Ali
- (xii) Rohit Das

10. SEBI received many investor complaints in respect of preference shares issued by AAL. The complainants have furnished copies of RPS certificates issued by the company. When physically counted, it is noted that the details of such shares are as follows:

Year	Type	No of Allottees*	Amount (Rs.)
2010-11	Redeemable Preference	17	1,74,400
2011-12	Share of Rs. 10/- each	51	2,34,700

**It may be noted that complaints are continuously being received in SEBI and the number of allottees and amount given above is therefore approximate.*

11. Further, it was noted that the names of the allottees as per Form 2 were different from the names of the complainant who allegedly were allotted RPS. Thus, prima facie it appears from the available information that the number of persons to whom RPS were issued by AAL are as follows:

Year	Type	No of Allottee*	Amount (Rs.)
2010-11	Redeemable	65	1,14,56,400
2011-12	Preference Share of Rs. 10/- each	51	2,34,700

Total		116	1,16,91,100
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**It may be noted that complaints are continuously being received in SEBI and the number of allottees and amount given above is therefore approximate.*

Therefore, based on the available information (and subject to the fact that more complaints are being received by way of alleged allotments), it may be inferred that the company has issued RPS to at least **116** persons during the years 2010 to 2012 (hereinafter collectively referred to as "**offer and allotment of preference shares**").

ISSUE OF DEBENTURES

12. SEBI had also received many investor complaints where the investors have enclosed copies of money receipts and secured non-convertible redeemable debentures ("NCD") certificates issued by the company. However, the company did not submit any information regarding the debenture issue. The details of the physical counting of the certificates attached to the complaints is given below:

Year	No of Allottee	Amount (Rs.)
2009-10	37	1,97,000
2010-11	10	39,000
2011-12	268	74,76,000
2012-13	435	23,01,000
2013-14	6	19,000
Total	756	1,00,32,000

**It may be noted that complaints are continuously being received in SEBI and the amount given above is therefore approximate.*

Therefore, based on the available information (and subject to the fact that more complaints are being received by way of alleged allotments), it may be inferred that AAL has issued NCDs to at least 756 persons during the years 2009 to 2014 (hereinafter collectively referred to as "**offer and allotment of debentures**").

13. From the copy of Form 10 filed with the RoC, it is observed that the company has created a charge for an amount of 10 crore rupees on 01/07/2010 for issue of debentures of ` 1000/- each. The said charge has been created against the immovable properties held by the company. Form 10 also records Dristi Social Welfare Trust as being the trustee of debenture holders and the trustee's address is stated as: 1, DR. S. P. Mukherjee Road, Room No. 203, 1st Floor Kolkata 700056.

TERMS AND CONDITIONS OF ISSUE

14. The brochure/application forms issued by AAL refers to the words 'private placement'. However, contents of the brochure issued by the company purportedly for private placement of securities indicate that the offers were made to general public rather than select individuals. The brochure/application form issued by the company stated that *“AAL is privately placing redeemable preference shares. They invited to participate in the offer on the terms listed herein”*. Terms & Condition of Redeemable Preference Share and NCDs are as follows:

PLAN	A	B
Redemption Period	3 Years	5 Years
Issue Price Minimum	10,000	10,000
Redemption Premium	160	200
Redemption Amount	Nil	5%

Terms & Condition of NCDs

SCHEME-I: SECURED REDEEMABLE DEBENTURE

Term	Plan	Face Value	Redemption Value
1.5 Years	E-1	Rs. 1000/-	Rs. 1200/-

3 Years	E-2	Rs. 1000/-	Rs. 1500/-
5 Years	E-3	Rs. 1000/-	Rs. 2100/-
7 Years	E-4	Rs. 1000/-	Rs. 3000/-
10 Years	E-5	Rs. 1000/-	Rs. 6000/-
14 Years	E-6	Rs. 1000/-	Rs. 12000/-

SCHEME-U: REGULAR INCOME PLAN

Rs.				
Term	Business	25000/-	50,000/-	1,00,000/-
Amount				
Plan Period (monthly Payout)				
E-MDS-1	3 Years	275	600	1200
E-MDS-2	5 Years	375	725	1450

ISSUES FOR DETERMINATION

15. In the context of the abovementioned details of the offer and allotment of preference shares, the issue for determination in the instant matter is whether or not the mobilization of funds by AAL as described above by way of issue of RPS and NCDs, during the Financial Years 2010-11, 2011-12, 2012-13 and 2013-14 is in accordance with the provisions of the Companies Act, 1956 read with the provisions of the SEBI Act, 1992.

RELEVANT PROVISIONS OF LAW AND PRIMA FACIE FINDINGS

16. Section 67 of the Companies Act, 1956 deals with the conditions or circumstances under which an offer of shares/debentures by a company would be construed as one made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

"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)."*

17. For ascertaining whether the *offer and allotment of preference shares and offer and allotment of debentures* by AAL would fall within the scope of Section 67 of the Companies Act, 1956, the number of persons to whom offer was made by the Company is crucial. In terms of the first proviso to section 67(3), an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. In this regard, it is observed from the documents obtained from RoC and complaints received, that AAL has offered and allotted RPS to atleast 116 persons thereby mobilizing an amount of atleast ₹ 1,16,91,100 ; and offered and allotted NCDs to atleast 756 persons during the period 2009 to 2014 thereby mobilising an

amount of atleast ₹1,00,32,000. Details of the offers made by the company relating to issue of securities remain unavailable due to non-cooperation on the part of directors of the company. However on the basis of complaints received, and available information recorded above, the *offer and allotment of preference shares* and *offer and allotment of debentures* by AAL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

18. From the above, it will follow that such a public issue makes it imperative for AAL to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act, 1956 is reproduced as under:

"Allotment of shares and debentures to be dealt in on stock exchange.

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) ...

(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.

...." (emphasis supplied)

19. As *the offer and allotment of preference shares* and *offer and allotment of debentures* is, *prima facie*, a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the

requirement for such shares to be dealt on a recognised stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. I find that AAL is *prima facie* in breach of the provisions of Section 73 as well.

20. Further, in connection with the public issue, Section 56 of the Companies Act, 1956 mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that AAL has complied with the provisions of Sections 56 and 60 of Companies Act, 1956, in respect of the *offer and allotment of Preference Shares* or in respect of *offer and allotment of debentures*. In view of the same, I find that AAL is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the subject offer and allotment of preference shares.

21. Further, public issue of debentures requires compliance with the norms issued by SEBI. The relevant provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as "**ILDS Regulations**") are listed as under:

"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 an advertisement in a 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."*

I find that there is no evidence on record to indicate that AAL has complied with the aforesaid provisions of the ILDS Regulations in the context of the *offer and allotment of debentures*. I therefore find AAL to be in *prima facie* breach of regulations 4(2) (a)-(d), 4(4), 5(2)(b), 6-9, 12, 14, 15, 16(1), 17, 19 and 26 of the ILDS Regulations.

22. 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*". Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("**DT 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."*

In the instant case, Form 10 records a trust viz. Dristi Social Welfare Trust to be debenture trustee. The debenture trust deed enclosed with Form 10 mentions that Dristi Social Welfare Trust is represented by Ms. Nabina Jahan, trustee. Both the trust and its representative are neither registered in accordance with the mandate of section 12(1) of the SEBI Act nor eligible to seek registration under the DT Regulations. In view of the above, I find Dristi Social Welfare Trust represented by Ms. Nabina Jahan to be *prima facie* in breach of section 12(1) of the SEBI Act, 1992.

23. 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 55A of the Companies Act, 1956, confers the jurisdiction on SEBI *inter alia* to administer provisions specified therein, in

relation to public issue of securities. Under section 11 of the SEBI Act, SEBI is empowered to take such measures as it deems fit for fulfilling its legislative mandate. Further, sub-section (4) of section 11 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, in the interest of investors in securities and the securities market, *inter alia*, to any company in respect of issue of capital, transfer of securities etc.

24. In terms of Section 73(2), 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, the details of the directors of AAL, including the dates of appointment/cessation as directors, are as under:

Sr. No.	DIN	Full Name	PAN	Designation	Date of Appointment	Date of cessation
1.	02705993	Sumantra Sinha	AZWPS2036H	Director	05/02/2010	31/03/2010
2.	02838394	Arindam Pal	AOFPP2459F	Director	05/02/2010	15/06/2010
3.	01933786	Rohit Das	AJIPD6461D	Director	05/02/2010	01/03/2010
4.	02968546	Hasibul Haque	ABMPH3009D	Director	01/03/2010	
5.	02960200	Firoj Hossain	ABXPH8897C	Director	31/03/2010	26/11/2011
6.	03109435	Sekh Nazibulla	CJOPS3256B	Additional director	15/06/2010	01/01/2013
7.	03441983	Imran Ali	NA	Additional	25/04/2011	23/05/2011

				director		
8.	03614972	Sunirmal Goswami	ARMPG3713B	Director	20/09/2011	
9.	06371624	Sheikh Abdul Robial	AGKPR7880B	Director	16/08/2012	01/04/2013
10.	06533516	Basudev Ghosh	AVAPG0570A	Director	20/03/2014	
11.	06594846	Devid Haslaf	AHUPH9113Q	Director	20/03/2014	

25. From the above table, it is noted that Sumantra Sinha, Arindam Pal, Rohit Das, Hasibul Haque, Firoj Hossain, Sekh Nazibulla, Sunirmal Goswami and Sheikh Abdul Robial were the directors of AAL at the time of the issue and allotment of RPS and NCDs and were responsible for the affairs of AAL at the relevant point of time. Further, Hasibul Haque, Sunirmal Goswami, Basudev Ghosh and Devid Haslaf are currently the directors of AAL and are presently responsible for its affairs.

DIRECTIONS

26. In light of the facts in the instant matter, I find this to be a fit case to pass interim directions against AAL, its abovenamed Directors, Dristi Social Welfare Trust and its trustee Ms. Nabina Jahan. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-

- i. AAL shall cease to mobilize fresh funds from investors through the offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly;
- ii. AAL and the abovenamed Directors 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. AAL and the abovenamed Directors shall not dispose of, alienate or encumber any of its/their assets or not divert any funds raised from public either through *the offer and allotment of preference shares* or through the *offer and allotment of debentures*;
- iv. AAL and the abovenamed Directors shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* and *offer and allotment of debentures* including the documents sought vide letters dated January 30 2014 and the summons dated January 09, 2015; and
- v. Dristi Social Welfare Trust and its trustee Ms. Nabina Jahan shall not henceforth act as debenture trustee in respect of debentures of AAL and shall not take up any new assignment or involvement in any new issue of securities in a similar capacity.

27. The *prima facie* observations contained in paragraphs 19 to 22 of this Order are made on the basis of the material available on record, information obtained from RoC and complaints received. AAL and its abovementioned Directors are also 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. AAL and its abovenamed Directors, to jointly and severally refund money collected through the *offer and allotment of preference shares* and *offer and allotment of debentures*, 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) within a period of 180 days from the date of receipt of this order, supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI; and

- ii. AAL, its abovenamed Directors, Dristi Social Welfare Trust and its trustee Ms. Nabina Jahan 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.

28. AAL, its Directors, Dristi Social Welfare Trust and Ms. Nabina Jahan may, within 21 days from the date of receipt of this interim order -cum- show cause notice, file their respective replies. AAL and its Directors are also directed to furnish an inventory of their assets in their reply. In the event the aforementioned persons or trust/trustee intends 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 aforementioned persons or trust/trustee failing to file replies or requesting for an opportunity of personal hearing, within the said 90 days, the prima facie findings regarding the violations at paragraphs 19 to 22 of this order shall become final and absolute, without any further orders. Consequentially, AAL, its abovementioned Directors, Dristi Social Welfare Trust and Ms. Nabina Jahan shall automatically be bound by the directions contained in paragraphs 26 & 27 above till the expiry of a period of four years from the date of repayment to the satisfaction of SEBI.

29. In case of failure to comply with the aforesaid directions within a period of one hundred eighty (180) days from the date of receipt of this order, appropriate enforcement actions as deemed fit, in terms of the SEBI Act, 1992, shall be initiated including reference to the State Government/ Local Police.
30. 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 company and directors.

Place: Mumbai

Date: February 16, 2017

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA