

SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER CUM SHOW CAUSE NOTICE
UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992, IN THE MATTER OF –

Sr. No.	Noticees	DIN/CIN	PAN
Company			
1.	ASSDA AGRO PROJECTS LTD.	U01400WB2010PLC150776	AAICA6147R
Promoters & Directors			
2.	Aloke Das	2875515	AINPD1762F
3.	Nabarun Dutta	3105059	ARBPD8838K
4.	Sheke Ajger Ali	3107562	AJVPA5372K
5.	Debasish Dutta	3105060	AHXP8258R
6.	Sheke Jasmir Hossain	3245529	ABMPH2954D
7.	Gouri Dutta	6408222	ASWPD5852F
8.	Sekh Jasim Hossain	3245355	N/A
9.	Santanu Das	3105058	ACZPD5934F
10.	SK Mansur Ali		AVPJA2954S

The aforesaid entities are hereinafter referred to by their respective names or collectively as "the Noticees".

1. Securities and Exchange Board of India ("SEBI") was in receipt of complaints in relation to money mobilization by way of issue of shares by Assda Agro Projects Limited ("AAPL"). Copies of certificates of redeemable preference shares (RPS) allegedly issued by AAPL were also received by SEBI.
2. Based on the complaints received, SEBI sought information pertaining to the collection of money by AAPL. Details of the correspondence and replies are as under:
 - (i) SEBI issued letter dated July 22, 2013 to AAPL requesting it to furnish information regarding mobilization of funds from public.

- (ii) Letters dated January 30, 2014 were also issued to its directors namely, Alok Das, Nabarun Dutta and Sheke Ajger Ali for furnishing the aforesaid information.
- (iii) No reply / response was received from the AAPL or its directors
- (iv) Reminders dated July 29 2013 were sent to the company's registered address. No reply / response was received from the AAPL.
- (v) A site visit was conducted on July 20, 2016 at the registered office address of AAPL. However, the company could not be located at the said address.

3. Details pertaining to AAPL were procured from the MCA21 portal. The following relevant information was taken note of :

- i) Date of Incorporation : 29.06.2010
- ii) Type of the company : Public and Unlisted
- iii) CIN : U01400WB2010PLC150776
- iv) PAN: AAICA6147R.
- v) Registered Office Address: 69, B.T. Road, PO Panihati, Gopal Kunja Bhavan Kolkata, Parganas North WB 700114.
- vi) Correspondence Address: same as above.
- vii) Date of filing of the last Annual Accounts & Annual Report: 31.03.2011
- viii) Return of allotment (Form 2)- Total capital of the company (Break up of issues and authorised capital: Rs.1,000,000=00 (Ten Lakh only) as per form 1

a. Issue capital: As on March 31 2011, as per Balance Sheet filed by AAPL

- I. Equity Capital: **10,00,000**
- II. Preference Capital : **59,70,000**
- III. Share Premium : **5,37,30,000**

ix) Details of any Board meetings held by the company as per Registrar of Companies (RoC) record which indicate with respect to the issue.

Date of Board meeting	Date of passing resolution	Amount proposed to be raised	Type of issue
06.12.2010	30.12.2010	10 crore	Redeemable Preference Shares of Rs. 10/- each at premium of Rs. 90/- per share on Private placement

x) Details of Redeemable Preference Shares Issued (As per Form 2)

Year	Date of allotment	Type	No of allottees	Amount (Rs.)
2010-11	30.03.2011	Preference Shares	39	59,70,000

4. From the complaints received by SEBI, it was found that the company issued RPS during 2010-11, 2011-12 and 2012-13. On a perusal of the complaints received, it is observed that in addition to the allottees disclosed in Form 2, the company has also made allotments to the complainants. The details of the allotments made by AAPL during 2010 to 2013, in terms of the complaints received by SEBI, are tabulated as shown below:

Allotment details as per complaints received

Year	No of RPS	Amount Raised (Rs.)	No. of Allottees
2010-11	1,970	1,97,000	16
2011-12	5,520	5,52,000	25
2012-13	1,945	1,94,500	17
Total	9,435	9,43,500	58

5. Therefore, based on the documents available with MCA (Form 2) and the complaints received, the total number of allottees and the amounts raised is given below:

Year	No of RPS	Amount Raised (Rs.)	No. of Allottees
2010-11	61,670	61,67,000	55
2011-12	5,520	5,52,000	25
2012-13	1,945	1,94,500	17
Total	69,135	69,13,500	97

6. From the above table, it is clearly evident that AAPL has issued RPS to more than 49 persons in F.Y. 2010-11. However, the actual number of persons to whom RPS have been issued could not be ascertained since the details of investors are not available and the companies/directors are also not responding.

ISSUES FOR DETERMINATION

7. In the context of the details of the offer and allotment of preference shares mentioned in the Table at paragraph 5 above (hereinafter referred to as "*the offer and allotment of preference shares*"), the issue for determination in the instant matter is whether or not such mobilization of funds by AAPL 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

8. 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)."*

9. For ascertaining whether the *offer and allotment of preference shares* by AAPL 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 MCA, that AAPL has offered and allotted RPS to at least 55 persons amounting of Rs. 61,67,000 during 2010-11. Details of the offers made by the company relating to issue of securities remain unavailable due to non-cooperation on the part of the directors of the company. Therefore on the basis of complaints received, and available information recorded above, the *offer and allotment of preference shares* by AAPL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

10. From the above, it will follow that such a public issue makes it imperative for AAPL 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)

11. As the *offer and allotment of preference shares* 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 AAPL is *prima facie* in breach of the provisions of Section 73 as well.

12. Further, in connection with a 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 AAPL has complied with the provisions of Sections 56 and 60 of Companies Act, 1956, in respect of the *offer and allotment of Preference Shares*. In view of the same, I find that AAPL 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.

13. 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). Further, in terms of Section 62 of the Companies Act, every person who *inter alia* is a director of the company at the time of the issue of the prospectus and every person who is a promoter of the company, are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein. As per the information available on the MCA Portal, the details of the directors of AAPL, including the dates of appointment/cessation as directors, are as under:

Name of the director	Designation	DIN/D PIN	PAN	Residential Address	Date of appointment	Date of cessation
Aloke Das	Additional director & Promoter	02875515	AINPD1762F	476,Nandan Nagar, 30, Belgharia North, 24 Parganas Kolkata, West Bengal India 700083	01.11.2012	
Nabarun Dutta	Promoter & Director	03105059	ARBPD8838K	7 Teachers Colony, Agarpara Lp 59/29/5 Kolkata West Bengal India 700056	29.06.2010	
Sheke Ajger Ali	Director	03107562	AJVPA5372K	Md Kala Chand Road P.O. Ghola Bazar, 24 Pgs North, Kolkata, West Bengal - 700111	30.06.2010	
Debasish Dutta	Promoter & Director	03105060	AHXP8258R	13 Adarsha Pally 22 Belgharia North 24 Parganas, Kolkata	29.06.2010	26.12.2012

				West Bengal India 700056		
Sheke Jasmir Hossain	Promoter & Director	03245529	ABMPH2954D	Nilganj Road, Iswaripur, PO- Suryapur Near Masjid More Kolkata West Bengal India 700121	25.07.2010	26.12.2012
Gouri Dutta	Director	06408222	ASWPD5852F	D/O -Gouranga Dutta 38, Milan Pally, Dp Nagar, Belghoria Kolkata West Bengal India 700056	16.10.2012	26.12.2012
Sekh Jasim Hossain	Director	03245355	N/A	Md Kala Chand Road P.O. Gholabazar, 24 Pgs North, Kolkata, West Bengal -700111, India	30.06.2010	25.07.2010
Santanu Das	Promoter	03105058	ACZPD5934F	Basunagar 1 No. Gate 7 Madhyamgram Barasat North 24 Parganas Kolkata 743275		
SK Mansur Ali	Promoter		AVPJA2954S	Iswaripur, Suryapur, Khardah, 24 PGS N Kolkata 700121		

14. From the above table, it is noted that directors and promoters in the table above were the directors / promoters of AAPL at the time of the issue and allotment of RPS and directors at serial no. 1 to 3 are also presently responsible for the affairs of AAPL.

DIRECTIONS

15. From the information available with SEBI and details downloaded from MCA portal, it can be reasonably inferred that the money mobilization on the part of AAPL is potentially placing investors at risk. In the light of the facts in the instant matter, I find this to be a fit case to pass interim directions against AAPL and the above named Directors and promoter. 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. AAPL and its Directors and Promoters namely Alope Das, Nabarun Dutta, Sheke Aiger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta, Sekh Jasim Hossain, Santanu Das and SK Mansur Ali shall not access the securities market or 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;
- ii. AAPL and the above named Directors and promoter shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through *the offer and allotment of preference shares*;
- iii. AAPL and the above named Directors and promoter shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* sought vide letters dated July 22, 2013 & January 30, 2014.

16. The preliminary findings contained in paragraphs 9, 11 and 12 of this Order are made on the basis of the complaints received and information obtained from MCA portal. AAPL and the above named Directors and promoter 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. That the Noticees shall jointly and severally refund the money collected through the *offer and allotment of preference shares*, 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. That the Noticees shall be restrained / 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.

17. 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 in their reply. In the event 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 replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paras 9, 11 and

12 of this Order and directions at para 16 (i) and (ii) above shall become final and absolute against the Noticees automatically, without any further orders. The Noticees shall comply with the directions at para 16(i) above within a period of 90 days from the date of this Order becoming final. Upon the expiry of the period of 90 days from the date of this Order becoming final and if the Noticees fail to comply with the directions at para 16 above, SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution in addition to making a suitable reference to State Government / Local Police.

18. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.

19. 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.

DATE: JUNE 29, 2017

PLACE: MUMBAI

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA