

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 –

	NOTICEES	DIN/CIN	PAN
COMPANY –			
1.	AGRAGAMI AGRO-FARMS LIMITED	U01111WB2007PLC119711	NOT AVAILABLE
DIRECTORS –			
2.	SIDDHARTHA SANKAR ROY	01784673	AKKPR3095A
3.	BASUDEB SARDAR	01784694	BKEPS2204R
4.	SABYASACHI ROY	01784708	AKZPR6202Q
PROMOTERS –			
5.	HASEM MOLLA	NOT APPLICABLE	NOT AVAILABLE
6.	MUKUL SARDAR	NOT APPLICABLE	NOT AVAILABLE
7.	BHABESH HALDER	NOT APPLICABLE	NOT AVAILABLE
8.	SUSANTA SARDAR	NOT APPLICABLE	NOT AVAILABLE
DEBENTURE TRUSTEES –			
9.	RAMESH JORDDAR	NOT APPLICABLE	NOT AVAILABLE
10.	SUNATI GHOSH	NOT APPLICABLE	NOT AVAILABLE

- Securities and Exchange Board of India (“SEBI”) received a reference dated April 6, 2016, from the RoC, Kolkata, containing three complaints against Agragami Agro-Farms Limited (“AAFL”). Vide the aforesaid complaints, the complainants therein *inter alia* alleged fund mobilization from the public, by AAFL, through issuance of *redeemable preference shares* and *secured redeemable debentures*. The complainants submitted copies of *Preference Share Certificate* and *Debenture Certificates* issued by AAFL. The complainants requested SEBI to investigate the alleged fund mobilization by AAFL and to take necessary measures for refund of money invested by the complainants in the *preference shares* and *debentures* issued by AAFL.

2.1 As a matter of preliminary inquiry, vide separate letters dated April 21, 2016, SEBI sought the following information from AAFL and its Directors at the relevant time, viz. Mr. Siddhartha Sankar Roy; Mr. Basudeb Sardar and Mr. Sabyasachi Roy, –

- i. Copy of Audited Balance Sheet and Annual Returns of the company for the last 3 years.
- ii. Name, addresses, PAN and occupation of all the Promoters/Directors and Key Managerial Personnel of the company.
- iii. Nature of business of the company.
- iv. Other Information in respect of issue of Shares/Debentures:
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of prospectus/Information Memorandum filed with RoC for issuance of Shares/Debentures.
 - b. Date of opening and closing of the subscription list for the said Shares/Debentures.
 - c. Details regarding the number of application forms circulated inviting subscription for Shares/Debentures and number of applications received.
 - d. Details of allottees in the format given below (in hard copy as well as soft copy).

SR. No.	DATE OF ALLOTMENT (DD/MM/YYYY)	FINANCIAL YEAR	NAME OF ALLOTTEE	ADDRESS OF ALLOTTEE/ CONTACT DETAILS	AMOUNT OF SHARES / DEBENTURES ALLOTTED (₹)
TOTAL					

- v. Copies of the minutes of Board/committee meeting in which the resolution has been passed for raising such additional capital and also for allotment of Shares/Debentures.
- vi. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of Shares/Debentures.
- vii. Terms and conditions of the issue of Shares/Debentures.
- viii. Whether the company has applied for listing of its securities with any of the Stock Exchanges.
- ix. Copies of Form 2 and Form 10 filed with the RoC.
- x. Details of Debenture Trustee viz. Name, address, board resolution authorizing their appointment, etc.

- 2.2 As regards the service of the aforementioned letters seeking information, the following is noted –
- Letters sent to AAFL and Mr. Siddhartha Sankar Roy, were returned undelivered.
 - Letter sent to Mr. Basudeb Sardar did not return and was presumed to have been served. However, at that stage, no reply was received from him.
 - Letter sent to Mr. Sabyasachi Roy was delivered.
- 2.3 Thereafter, a physical verification of the Registered Office address of AAFL i.e. Tiwari Bhawan 1115 Brick Field Road, Baruipur, Kolkata, West Bengal–700144, India, was conducted by SEBI, by a site visit, on September 12, 2016. However, AAFL could not be located at the aforesaid address.
- 2.4 Subsequently –
- Attempts were made to hand deliver the letters dated April 21, 2016, to AAFL and Mr. Siddhartha Sankar Roy on June 9, 2017. However, the aforesaid entities could not be located at their addresses.
 - The letter dated April 21, 2016, was hand delivered to Mr. Basudeb Sardar on December 13, 2016. He replied vide a letter dated December 16, 2016, *inter alia* submitting that *he was forced to remain a Director in AAFL by Mr. Siddhartha Sankar Roy and Mr. Sabyasachi Roy and had no knowledge nor was in possession of any documents regarding the functioning of AAFL.*
 - Since no reply was received from Mr. Sabyasachi Roy, a reminder dated April 17, 2017, was issued to him. The reminder did not return and was presumed to have been served. An attempt was made to hand deliver the letter dated April 17, 2017, on June 10, 2017. The aforesaid letter was delivered to Mr. Sabyasachi Roy; however, no reply has been received from him till date.
- 2.5 Apart from the reply of Mr. Basudeb Sardar, no information has been received by SEBI from AAFL or any of its abovementioned Directors, till date.
- 2.6 Vide separate letters dated May 29, 2017, SEBI sought the following information from the Debenture Trustees for the issue of *secured redeemable debentures* of AAFL, viz. Mr. Ramesh Jorddar and Smt Sunati Ghosh –
- Copy of Application Form for opening and closing of the Issue.
 - Copy of the Debenture Trust Deed.

iii. Details of allottees in the format given below (in hard copy as well as soft copy).

SR. No.	DATE OF ALLOTMENT (DD/MM/YYYY)	FINANCIAL YEAR	NAME OF ALLOTTEE	ADDRESS OF ALLOTTEE/ CONTACT DETAILS	AMOUNT OF SHARES / DEBENTURES ALLOTTED (₹)
TOTAL					

2.7 As regards the service of the aforementioned letter seeking information, the following is noted –

- a. Letter sent to Smt Sunati Ghosh was returned undelivered.
- b. Letter sent to Mr. Ramesh Jorddar did not return and was presumed to have been served. However, no reply was received from him. Thereafter, a reminder dated June 16, 2017, was issued to him. No reply has been received from Mr. Ramesh Jorddar, till date.

3.1 During the intervening period, details pertaining to AAFL were sought to be procured by SEBI from the Ministry of Corporate Affairs' website i.e. *MCA 21 Portal*. The following relevant information was taken note of –

- i. **DATE OF INCORPORATION:** October 16, 2007.
- ii. **TYPE OF COMPANY:** Public Limited Company.
- iii. **CORPORATE IDENTITY NUMBER (CIN):** U01111WB2007PLC119711.
- iv. **PAN:** Not Available.
- v. **REGISTERED OFFICE ADDRESS:** Tiwari Bhawan 1115 Brick Field Road, Baruipur, Kolkata, West Bengal–700144, India.
- vi. **DATE OF FILING OF LAST ANNUAL ACCOUNTS AND ANNUAL REPORTS –** March 31, 2015.
- vii. **TOTAL ISSUED CAPITAL OF THE COMPANY (AS ON 31.03.2015):**
 - a. Equity Shares: 6,50,000 Shares @ ₹10/– each.
 - b. Preference Shares: 50,000 Shares @ ₹100/– each.
- viii. **DETAILS OF RELEVANT BOARD MEETING:** NOT AVAILABLE.

3.2 From a perusal of the records available on *MCA21 Portal*, it was apparent that AAFL issued and allotted *Equity Shares; Redeemable Preference Shares* and *Secured Redeemable Debentures*. Details regarding the aforesaid as available on *MCA21 Portal* and other relevant material on record are reproduced as under –

A. ALLOTMENT DETAILS OF EQUITY SHARES [AS PER FORM 2 AND COMPLAINTS RECEIVED] –

TABLE I – DETAILS OF EQUITY SHARES ISSUED				
FINANCIAL YEAR	DATE OF ALLOTMENT	NO. OF SHARES ALLOTTED	NO. OF ALLOTTEES	VALUE OF ALLOTMENT (₹)
2008–09	27.11.2008	600000	79	60,00,000
	02.02.2009	350000	1	35,00,000
TOTAL		950000	80	95,00,000

B. ALLOTMENT DETAILS OF REDEEMABLE PREFERENCE SHARES [AS PER FORM 2 AND COMPLAINTS RECEIVED] –

TABLE II – DETAILS OF REDEEMABLE PREFERENCE SHARES ISSUED			
FINANCIAL YEAR	NO. OF SHARES ALLOTTED	NO. OF ALLOTTEES	VALUE OF ALLOTMENT (₹)
2008–09	50515	60	50,51,500
2009–10	6465	83	6,46,500
2010–11	440	10	44,000

C. DETAILS OF OUTSTANDING SECURED REDEEMABLE DEBENTURES [AS PER FORM 20B AND COMPLAINTS RECEIVED] –

TABLE III – DETAILS OF SECURED REDEEMABLE DEBENTURES ISSUED				
FINANCIAL YEAR	DATE OF ISSUE	AMOUNT OF DEBENTURES ISSUED [OF ₹100 EACH]	NO. OF DEBENTURE HOLDERS	VALUE (₹)
2010–11	Not Available	180242	668	1,80,24,200
2011–12		12590	133	12,59,000
2012–13		210	4	21,000

D. DETAILS OF CHARGE CREATED [AS PER FORM 10] –

TABLE IV – DETAILS OF CHARGE CREATED FOR ISSUE OF DEBENTURES			
1.	DATE OF CREATION	5.03.2010	
2.	AMOUNT	₹5,88,99,000	
3.	CHARGE CREATED AGAINST, DETAILS THEREOF	i. ALL THAT LAND AT MOUJA–NARAYANGARH, J.L.No.81, PLOT No. 962, J.L.No.81, PLOT No. 956, PLOT No. 855, 979, 978, 977 AND 980, J.L.No.135, PLOT No. 1007 AND 1008, P.S CANNING, SOUTH 24 PARGANAS, PIN CODE–743376. ii. ALL THAT LAND AT MOUJA–MANDARBERIYA, J.L. 84, PLOT No. 22, 182, 183, 184, 347, 350, 351, 352, 353, 411, 291, 290, 292, 283, 279, 398, 165, 374, P.S CANNING, SOUTH 24 PARGANAS, PIN CODE–743376. iii. ALL THE CURRENT ASSETS INCLUDING BANK BALANCE, CASH BALANCE, AND FURNITURE & FIXTURES.	

E. DETAILS OF DEBENTURE TRUSTEE APPOINTED BY AAFL [AS PER FORM 10] –

TABLE V – DETAILS OF DEBENTURE TRUSTEE		
	NAME OF TRUSTEE	DATE OF APPOINTMENT
1.	RAMESH JORDDAR	5.03.2010
2.	SUNATI GHOSH	5.03.2010

ISSUES FOR DETERMINATION –

- 3.4 The issues for determination in the instant matter in the context of the offer and allotment of *Equity Shares; Redeemable Preference Shares* and *Secured Redeemable Debentures* by AAFL, as detailed at paragraphs 3.2, are as under –
- a. Whether the mobilization of funds by AAFL through the *offer and allotment of Equity Shares*, is in accordance with the provisions of the SEBI Act, 1992 (“**SEBI Act**”) and the Companies Act, 1956 (“**Companies Act**”)?
 - b. Whether the mobilization of funds by AAFL through the *offer and allotment of Redeemable Preference Shares*, is in accordance with the provisions of the SEBI Act and the Companies Act?
 - c. Whether the mobilization of funds by AAFL through the *offer and allotment of Secured Redeemable Debentures*, is in accordance with the provisions of the SEBI Act and the Companies Act?

RELEVANT PROVISIONS OF LAW AND *PRIMA FACIE* FINDINGS –

- 3.5 Section 67 of the Companies Act 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, 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 (1 of 1956)."*

3.6 For ascertaining whether the *offer and allotment of Equity Shares*; the *offer and allotment of Redeemable Preference Shares* and the *offer and allotment of Secured Redeemable Debentures* by AAFL will fall within the scope of Section 67 of the Companies Act, the number of persons to whom such offers were made by AAFL 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.* Further, the Hon'ble Supreme Court of India in *Sabara India Real Estate Corporation Limited vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* examined the scope of Section 67 of the Companies Act. At paragraph 86 of the judgment, the Hon'ble Supreme Court observed: *"... 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."*

3.7 In this context, the following is noted from the information obtained from the *MCA21 Portal* and other relevant material available on record –

A. ***Offer and allotment of Equity Shares –***

- i. AAFL offered and allotted *Equity Shares* to 80 persons during the Financial Year 2008–09 and mobilized an amount of ₹95 Lakhs through such issuance.
- ii. 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.
- iii. Paragraph 2 of the SEBI Circular dated December 31, 2015 (Procedure to deal with cases prior to April 1, 2014, involving offer/allotment of securities to more than 49 upto 200 investors in a financial year), provides as below –

2. *“Considering the higher cap for private placement provided in the Companies Act, 2013, it has now been decided that in respect of earlier cases involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to investors.”*
- iv. As detailed in the preceding paragraphs, AAFL and its Directors did not provide any information to SEBI.
- v. Further, from the material available on record, there is no evidence to indicate that AAFL provided investors with the requisite option for surrender of *equity shares* and refund in accordance with the SEBI Circular dated December 31, 2015, in respect of the *offer and allotment of Equity Shares* during the Financial Year 2008–09.
- vi. In view of the above, the *offer and allotment of Equity Shares* by AAFL *prima facie* qualifies to be construed as an offer made to the public in terms of Section 67(3) of the Companies Act.

B. *Offer and allotment of Redeemable Preference Shares –*

- i. AAFL offered and allotted *redeemable preference shares* to 60 persons during the Financial Year 2008–09 and 83 persons during the Financial Year 2009–10. AAFL mobilized approximately ₹56.98 Lakhs through such issuances.
- ii. Having regard to the findings contained at paragraph 3.7(A)(ii)–(iv), from the material available on record, there is no evidence to indicate that AAFL provided investors with the requisite option for surrender of *redeemable preference shares* and refund in accordance with the SEBI Circular dated December 31, 2015, in respect of the *offer and allotment of Redeemable Preference Shares* during the Financial Years 2008–09 and 2009–10.
- iii. Therefore, on the basis of the aforesaid information, the *offer and allotment of Redeemable Preference Shares* by AAFL *prima facie* qualifies to be construed as an offer made to the public in terms of Section 67(3) of the Companies Act.

C. ***Offer and allotment of Secured Redeemable Debentures –***

- i. AAFL offered and allotted *secured redeemable debentures* to 668 persons during the Financial Year 2010–11 and 133 persons during the Financial Year 2011–12. AAFL mobilized approximately ₹192.83 Lakhs through such issuances.
- ii. Having regard to the findings contained at paragraph 3.7(A)(ii)–(iv), from the material available on record, there is no evidence to indicate that AAFL provided investors with the requisite option for surrender of *secured redeemable debentures* and refund in accordance with the SEBI Circular dated December 31, 2015, in respect of the *offer and allotment of Secured Redeemable Debentures* during the Financial Year 2011–12.
- iii. Therefore, on the basis of the aforesaid information, the *offer and allotment of Secured Redeemable Debentures* by AAFL *prima facie* qualifies to be construed as an offer made to the public in terms of Section 67(3) of the Companies Act.

3.8 It is also observed that AAFL is not a Non–banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, and thus, is not covered under the exceptions provided in the *second proviso* to Section 67(3) of the Companies Act.

3.9 From the above, it will follow that such public issues make it imperative for AAFL to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act 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) ...”

- 3.10 As the *offer and allotment of Equity Shares*; the *offer and allotment of Redeemable Preference Shares* and the *offer and allotment of Secured Redeemable Debentures* by AAFL are *prima facie* public issues in accordance with the provisions of the Companies Act, the same will attract the requirement for such shares/debentures to be dealt on a recognized stock exchange in terms of Section 73 of the Companies Act, as stated above. I find that AAFL is *prima facie* in breach of the provisions of Section 73 as well.
- 3.11 Further, in connection with a public issue, Section 56 of the Companies Act mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that AAFL has complied with the provisions of Sections 56 and 60 of Companies Act, in respect of the *offer and allotment of Equity Shares*; the *offer and allotment of Redeemable Preference Shares* and the *offer and allotment of Secured Redeemable Debentures* by AAFL. In view of the same, I find that AAFL is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act in connection with the aforesaid *offer and allotment of Equity Shares*; *Redeemable Preference Shares* and *Secured Redeemable Debentures*.
- 3.12 I note that the *offer and allotment of Equity Shares* and the *offer and allotment of Redeemable Preference Shares* during the Financial Year 2008–09 were made while the SEBI (Disclosure and Investment Protection) Guidelines, 2000 (“**DIP Guidelines**”) were in force. Clause 1.4 of the DIP Guidelines makes the provisions contained therein applicable to all ‘*public issues*’ by listed or unlisted companies. ‘*Public issue*’ is defined in Clause 1.2(xxiii) to mean “*an invitation by a company to public to subscribe to the securities offered through a prospectus.*” This definition read with the provisions of the Companies Act cited earlier in this Order, makes it clear that DIP Guidelines would apply to a public offer of *Redeemable Preference Shares* as well. The applicability of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 which came into force on August 26, 2009 and which repealed the DIP Guidelines is limited to equity shares and convertible securities. Therefore, allotments of *Equity Shares* and *Redeemable Preference Shares* till August 26, 2009, would be subject to the

provisions of DIP Guidelines. For the present matter, the relevant provisions of the DIP Guidelines are listed as under:

- a. Clause 2.1.1. – (*Filing of offer document*);
- b. Clause 2.1.4 – (*Application for listing*);
- c. Clause 2.1.5 – (*Issue of securities in dematerialized form*);
- d. Clause 2.8 – (*Means of finance*);
- e. Clause 4.1 – (*Promoters contribution in a public issue by unlisted companies*);
- f. Clause 4.11 – (*Lock-in of minimum specified promoters contribution in public issues*);
- g. Clause 4.14 – (*Lock-In of pre-issue share capital of an unlisted company*);
- h. Clause 5.3.1 – (*Memorandum of understanding*);
- i. Clause 5.3.3 – (*Due Diligence Certificate*);
- j. Clause 5.3.5 – (*Undertaking*);
- k. Clause 5.3.6 – (*List Of Promoters Group And Other Details*);
- l. Clause 5.4 – (*Appointment of intermediaries*);
- m. Clause 5.6 – (*Offer document to be made public*);
- n. Clause 5.6A – (*Pre-issue Advertisement*);
- o. Clause 5.7 – (*Despatch of issue material*);
- p. Clause 5.8 – (*No complaints certificate*);
- q. Clause 5.9 – (*Mandatory collection centres including Clause 5.9.1 (Minimum number of collection centres)*);
- r. Clause 5.10 – (*Authorised Collection Agents*);
- s. Clause 5.12.1 – (*Appointment of compliance officer*);
- t. Clause 5.13 – (*Abridged prospectus*);
- u. Clause 6.0 – (*Contents of offer documents*);
- v. Clause 8.3 – (*Rule 19(2)(b) of SC(R) Rules, 1957*);
- w. Clause 8.8.1 – (*Opening & closing date of subscription of securities*);
- x. Clause 9 – (*Guidelines on advertisements by Issuer Company*);
- y. Clause 10.1 – (*Requirement of credit rating*);
- z. Clause 10.5 – (*Redemption*).

3.13 I find that there is no evidence on record to indicate that AAFL has complied with the aforesaid provisions of the DIP Guidelines in the context of the *offer and allotment of Equity Shares* and the *offer and allotment of Redeemable Preference Shares*. I, therefore, find AAFL to be in *prima facie* breach of the aforementioned provisions of the DIP Guidelines.

3.14 As per Regulation 111(1) of the ICDR Regulations, the DIP Guidelines, “*shall stand rescinded.*” However, Regulation 111(2) of the ICDR Regulations, provides that:

“(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.”

3.15 I also note that a 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 (“**ILDS Regulations**”) are listed as under:

- i. Regulation 4(2)(a) – *Application for listing of debt securities;*
- ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities;*
- iii. Regulation 4(2)(c) – *Credit rating has been obtained;*
- iv. Regulation 4(2)(d) – *Dematerialization of debt securities;*
- v. Regulation 4(4) – *Appointment of Debenture Trustees;*
- vi. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document;*
- vii. Regulation 6 – *Filing of draft Offer Document;*
- viii. Regulation 7 – *Mode of disclosure of Offer Document;*
- ix. Regulation 8 – *Advertisements for Public Issues;*
- x. Regulation 9 – *Abridged Prospectus and application forms;*
- xi. Regulation 12 – *Minimum subscription;*
- xii. Regulation 14 – *Prohibition of mis-statements in the Offer Document;*
- xiii. Regulation 15 – *Trust Deed;*
- xiv. Regulation 16(1) – *Debenture Redemption Reserve;*
- xv. Regulation 17 – *Creation of security;*
- xvi. Regulation 19 – *Mandatory Listing;*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

- 3.16 I find that there is no evidence on record to indicate that AAFL has complied with the aforesaid provisions of the ILDS Regulations in the context of the *offer and allotment of Secured Redeemable Debentures*. I therefore find AAFL 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.
- 3.17 In the instant case, Form 10 records Mr. Ramesh Jorddar and Smt Sunati Ghosh to be Debenture Trustees. 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.”*
- 3.18 The said persons are not registered in accordance with the mandate of Section 12(1) of the SEBI Act nor are they eligible to seek registration under the DT Regulations. In view of the above, I find Mr. Ramesh Jorddar and Smt Sunati Ghosh to be *prima facie* in breach of Section 12(1) of the SEBI Act.
- 3.19 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.

3.20 As per the information available on the *MCA21 Portal*, the details of the present and past Directors and Promoters of AAFL, including the dates of appointment/cessation as Directors, are as under:

TABLE VI							
	NAME OF THE PERSON	CAPACITY	DIN	PAN	RESIDENTIAL ADDRESS	DATE OF APPT.	DATE OF CESSATION
1.	SIDDHARTHA SANKAR ROY	MANAGING DIRECTOR	01784673	AKKPR3095A	SUBUDDHIPUR, THAIPARA, BARUIPUR, KOLKATA, WEST BENGAL-700144, INDIA	16.10.2007	CONTINUING
2.	BASUDEB SARDAR	WHOLE TIME DIRECTOR	01784694	BKEPS2204R	MANMATH NAGAR, P.S. – GOSABA, 24 PARAGANAS, KOLKATA, WEST BENGAL-743370, INDIA	16.10.2007	CONTINUING
3.	SABYASACHI ROY	WHOLE-TIME DIRECTOR	01784708	AKZPR6202Q	42/38, BEDIADANGA, 2ND LANE, KOLKATA, WEST BENGAL-700039, INDIA	16.10.2007	CONTINUING
4.	HASEM MOLLA	PROMOTER	–	–	S/O M. MOLLA VILL + P.O.–TETUL BERIA, P.S–BARUIPUR, DIST. –24 PGS. SOUTH, WEST BENGAL–743376, INDIA	11.10.2007	–
5.	MUKUL SARDAR	PROMOTER	–	–	S/O RAJ KUMAR SARDAR VILL–BAIKUNTHAPUR, P.O. & P.S.- SONARPUR, DIST. – 24 PGS. SOUTH KOLKATA–700150, WEST BENGAL, INDIA	11.10.2007	–
6.	BHABESH HALDER	PROMOTER	–	–	S/O JITENDRA HALDER VILL.–BAIKUNTHAPUR, P.O. & P.S.–SONARPUR KOLKATA–700150, WEST BENGAL, INDIA	11.10.2007	–
7.	SUSANTA SARDAR	PROMOTER	–	–	S/O GANENDRA NATH SARDAR VILL. + P.O.–MANMATHA NAGAR, P.S- GOSABA, DIST. –24 PGS. SOUTH, WEST BENGAL–743370, INDIA	11.10.2007	–

3.21 I note that the persons at serial nos. 1–3 of Table VI are the present Directors and continue to be responsible for the affairs of AAFL. The persons at serial nos. 4–7 of Table VI are the Promoters of AAFL. Hence, they are liable for the alleged contraventions by AAFL.

DIRECTIONS –

- 4.1 From the information obtained from *MCA21 Portal*, it can be reasonably inferred that the money mobilization on the part of AAFL is potentially placing investors at risk by not following the requirements of law applicable to public issues. In the light of the facts in the instant matter, I find this to be a fit case to pass interim directions against AAFL and the abovenamed Directors/Promoters.
- 4.2 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 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-
- i. AAFL and its Directors/Promoters, viz. Mr. Siddhartha Sankar Roy; Mr. Basudeb Sardar; Mr. Sabyasachi Roy; Mr. Hasem Molla; Mr. Mukul Sardar; Mr. Bhabesh Halder and Mr. Susanta Sardar, 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. AAFL and the above named Directors/Promoters 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 Equity Shares; Redeemable Preference Shares and Secured Redeemable Debentures*;
 - iii. AAFL and the above named Directors/Promoters shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of Equity Shares; Redeemable Preference Shares and Secured Redeemable Debentures* sought vide letters dated April 21, 2016.
 - iv. Mr. Ramesh Jorddar and Smt Sunati Ghosh shall not henceforth act as Debenture Trustee in respect of debentures of AAFL and shall not take up any new assignment or involvement in any new issue of securities in a similar capacity.
- 4.3 The preliminary findings contained in paragraphs 3.6–3.21 of this Order are made on the basis of the information obtained from *MCA21 Portal* and other relevant material on record. AAFL and the abovenamed Directors/Promoters alongwith Mr. Ramesh Jorddar and Smt Sunati Ghosh (Collectively referred to as “**Notices**”) 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, viz. –

- i. AAFL and the abovenamed Directors/Promoters to jointly and severally refund the money collected through the *offer and allotment of Equity Shares; Redeemable Preference Shares and Secured Redeemable 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 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 restrained/prohibited from accessing the securities market 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.

- 4.4 The Noticees may, within 21 days from the date of receipt of this *Interim Order–cum–Show Cause Notice*, file their respective replies. AAFL and the abovenamed Directors/Promoters 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 respective Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paragraphs 3.6–3.21 of this Order and directions at paragraphs 4.2(i)–(ii) and 4.2(iv) above shall become final and absolute against the respective Noticees automatically, without any further orders. AAFL and the abovenamed Directors/Promoters shall comply with the directions at paragraph 4.3(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 being deemed final against the respective Noticees, SEBI may initiate appropriate enforcement action under SEBI Act including Recovery proceedings, Adjudication or Prosecution in addition to making a suitable reference to State Government/Local Police.
- 4.5 This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.

- 4.6 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 AAFL and the abovenamed Directors/Promoters alongwith Mr. Ramesh Jorddar and Smt Sunati Ghosh.

Place: Mumbai

Date: September 18, 2017

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