

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Mangalam Agro Products Limited

In respect of:

1. Smt Runa Mazumder ( PAN: AIXPM8121D; DIN: 02502380 ).
  2. Smt Nabanita Sikder ( PAN: DKGPS4118N; DIN: 05352501 ).
  3. Smt Runa Sikder ( PAN: CIEPS3278L; DIN: 05217136 ).
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1. Mangalam Agro Products Limited (hereinafter referred to as “**MAPL**”/ “**the Company**”) is a Public company incorporated on May 18, 2009 and registered with Registrar of Companies—Kolkata with CIN: U01400WB2009PLC135152. Its registered office is at 170/3 Santosh Roy Road (James Long Sarani) Kolkata West Bengal 700008.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter dated June 19, 2013 forwarding a complaint dated April 30, 2013 against MAPL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether MAPL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).
3. On enquiry by SEBI, it was observed that MAPL had made an offer of NCDs in the financial years 2011-2012 (hereinafter referred to as “**Offer of NCDs**”) and raised an amount of at

least Rs. 11.00 Crores from at least 4820 allottees. The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures.

4. As the above said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an interim order dated May 30, 2014 and issued directions mentioned therein against MAPL and its Directors viz. Shri Kamollesh Kumar Ghosh, Shri Ujjal Sikder and Shri Tapan Kumar Dey.
5. Thereafter, SEBI vide an Order bearing no. WTM/PS/02/ERO/APR/2015 dated April 6, 2015, passed certain directions as mentioned at paragraph 18 thereof, against MAPL and its Directors, viz. Shri Kamollesh Kumar Ghosh, Shri Ujjal Sikder and Shri Tapan Kumar Dey, for violating the provisions of Section 56, Section 60 read with Section 2(36), Section 73, Sections 117B–C of the Companies Act, 1956 and the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (“Debt Securities Regulations”), by engaging in fund mobilising activity from the public, through the issue of Secured Non–Convertible Redeemable Debentures
6. Subsequently it came to the notice of SEBI that Smt Runa Mazumder, Smt Nabanita Sikder, Smt Runa Sikder were earlier Directors of MAPL and thus SEBI passed an interim order dated November 20, 2015 (hereinafter referred to as “**interim order**”) against Smt Runa Mazumder, Smt Nabanita Sikder, Smt Runa Sikder (hereinafter collectively referred to as “**Noticees**”) for the alleged violation of aforementioned provisions of the Companies Act, 1956, the SEBI Act and the Debt Securities Regulations.
7. *Prima facie findings/allegations:* In the said interim order, the following was recorded: As per the findings contained in the Final Order dated April 06, 2015, the offer and allotment of Secured Non–Convertible Redeemable Debentures made by MAPL to around 4820 investors during the Financial Year 2011-12 is shown below:

| Year of Issue | Security Issued | Amount raised (Rs.)<br>(in crores) | Number of allottees |
|---------------|-----------------|------------------------------------|---------------------|
| 2011-2012     | NCDs            | 11.00                              | 4820                |
| Total         |                 | 11.00 <sup>^</sup>                 | 4820*               |

<sup>^</sup>\* No. of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI with the complaints received by SEBI. However, actual no. of allottees and amount mobilized could be more than the above indicated figures.

8. It has now come to SEBI's notice that Smt Runa Mazumder, Smt Nabanita Sikder, Smt Runa Sikder were earlier Directors of MAPL during the Offer of NCDs. Smt Runa Mazumder, Smt Nabanita Sikder and Smt Runa Sikder, were also engaged in fund mobilising activity from the public, in their capacity as Directors of MAPL, through the Offer of NCDs and as a result of the aforesaid activity, have prima facie violated *Section 56, Section 60 read with section 2(36), Section 73 read with Regulation 4(2)(a)-(d), 4(4), 5(2)(b), 6-9, 12, 14-17, 19 and 26 of the ILDS Regulations.*
9. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated November 20, 2015 with immediate effect.
  - i. The past Director of MAPL, viz. Smt Runa Mazumder (PAN: AIXPM8121D; DIN: 02502380), Smt Nabanita Sikder (PAN: DKGPS4118N; DIN: 05352501) and Smt Runa Sikder (PAN: CIEPS3278L; DIN: 05217136), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
  - ii. The abovementioned past Directors of MAPL are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
  - iii. The abovementioned past Directors of MAPL shall provide a full inventory of all their assets and properties.

10. The interim order also directed the Noticees to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act should not be passed against them:
- i. Directing them jointly and severally to refund money collected through the Offer of NCDs alongwith interest, if any, promised to investors therein;
  - ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
  - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
11. Vide the said interim order, the Notices were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
12. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated November 23, 2015 and which were not delivered. Subsequently, the copy of the said interim order was once again sent to the Noticees vide letter dated May 06, 2016 and the same were served by way of affixture. However no reply was received from the Noticees. Vide notification dated October 15, 2017 published in newspaper *Times of India* and notification dated October 15, 2017 published in newspaper *Anand Bazar Patrika* , the Noticees were notified by SEBI, that interim order dated November 20, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter. However none of the Noticees replied.
13. Vide the aforesaid notification dated October 15, 2017 published in newspaper *Times of India* and *Anand Bazar Patrika*, the Noticees were also notified by SEBI that they will be given the final opportunity of being heard on November 01, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to appear for the personal hearing

before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.

14. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on November 01, 2017. None of the Noticees have filed any replies as on date.

15. I have considered the allegations and materials available on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings

(1) *Whether the company came out with the Offer of NCDs as stated in the interim order?*

(2) *If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 read with the ILDS Regulations?*

(3) *If the findings on Issue No.2 is found in the affirmative, whether the noticees are liable for the violations committed?*

**ISSUE No. 1- Whether the company came out with the Offer of NCDs as stated in the interim order.**

16. I have perused the interim order dated November 20, 2015 for the allegation of *Offer of NCDs*.

17. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted that MAPL has issued and allotted NCDs to at least 4820 investors during the financial years 2011-2012 and raised at least an amount of Rs. 11.00 Crores. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 4820 allottees and Rs. 11.00 Crores respectively.

18. I therefore conclude that MAPL came out with an offer of NCDs as outlined above. The same has also been decided vide SEBI's the Final Order dated April 6, 2015.

**ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 of the Companies Act, 1956.**

19. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of NCDs* made to the public. Therefore the primary question that arises for consideration is whether the issue of NCDs is ‘public issue’. At this juncture, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

*"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)."*

20. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI* (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the “**Sahara Case**”), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

*“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, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”*

21. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not 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, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private

placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

22. In the instant matter, I find that NCDs were issued by MAPL to at least 4820 investors in the financial years 2011-2012 raising at least Rs. 11.00 Crores. However, this number is not conclusive as it is based on the documents received by SEBI along with complaints and the actual number of investors could be more than 4820. I find that MAPL has mobilized at least an amount of Rs. 11.00 Crores over the financial years 2011-2012 which is not a conclusive value as it is based on the complaints received by SEBI. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by MAPL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
23. I find that the notice has not claimed MAPL to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that MAPL is covered under the second proviso to Section 67(3) of the Companies Act, 1956. The same has also been decided vide SEBI's the Final Order dated April 6, 2015.
24. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that “In terms of Section 67(3) of

the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellants have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".

25. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by MAPL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of NCDs* are deemed to be public issues and MAPL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956. The same has also been decided vide SEBI's the Final Order dated April 6, 2015.
26. Further, since the offer of NCDs 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. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.
27. The allegations of non-compliance of the above provisions were not denied by the noticees. I also find that no records have been submitted to indicate that MAPL has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that MAPL has contravened the said provisions. The noticees have not provided any records to show that the amount collected by MAPL is kept in a separate bank account. Therefore, I find that MAPL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with. The same has also been decided vide SEBI's the Final Order dated April 6, 2015.
28. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to

register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of NCDs was a deemed public issue of securities, MAPL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that the noticees have not submitted any record to indicate that MAPL has registered a prospectus with the RoC, in respect of the offer of NCDs. I, therefore, find that MAPL has not complied with the provisions of section 60 of the Companies Act, 1956. The same has also been decided vide SEBI's the Final Order dated April 6, 2015.

29. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. The noticees have not produced any record to show that MAPL has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, MAPL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956. The same has also been decided vide SEBI's the Final Order dated April 6, 2015.
30. It is observed that ILDS Regulations are applicable to the public issue and listing of debt securities. Regulation 2(e) of the ILDS Regulations defines debt securities to mean non-convertible debt securities which create or acknowledge indebtedness, and include debentures. In view of the finding that MAPL has made a public issue of debt securities, the ILDS Regulations is also applicable to the instant offer of NCDs. Therefore, I find that the Company has violated the following provisions of the aforesaid ILDS Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- 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 17 – Creation of security
- xv. Regulation 19 – Mandatory Listing
- xvi. Regulation 26 – Obligations of the Issuer, etc.

Similar findings were also made vide SEBI's the Final Order dated April 6, 2015.

31. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sabara Case*, had observed that:

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

*"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"*

32. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase "intend to get listed" in the context of deemed public issue the Hon'ble Supreme Court in *Sahara Case* observed-

*"...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, "intent" has its limitations also, confining it within the confines of lawfulness..."*

*"...Listing of securities depends not upon one's volition, but on statutory mandate..."*

*"...The appellant-companies must be deemed to have "intended" to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have "intended", what was contrary to the mandatory requirement of law..."*

33. In view of the above findings, I am of the view that MAPL was engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956, and above mentioned provisions pertaining to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008. The same has also been decided vide SEBI's the Final Order dated April 6, 2015.

**ISSUE No. 3-** *If the findings on Issue No.2 is found in the affirmative, whether the noticees are liable for the violations committed?*

34. I note that Smt Runa Mazumder, Smt Nabanita Sikder , Smt Runa Sikder, who were earlier

Directors in MAPL, have since resigned. The details of the appointment and resignation of the directors are as following:

| <b>Name of the directors</b> | <b>Date of appointment</b> | <b>Date of cessation</b> |
|------------------------------|----------------------------|--------------------------|
| Smt Runa Mazumder            | May 18, 2009               | September 15, 2012       |
| Smt Nabanita Sikder          | August 10, 2012            | March 18, 2013           |
| Smt Runa Sikder              | March 06, 2013             | November 26, 2013        |

35. It is noted that the issuance of NCDs was in the FY 2011-2012. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, Smt Runa Mazumder is held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
36. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.
37. From the material available on record and the details of the appointment and resignation of the directors of MAPL as reproduced in paragraph 34 of this Order, it is noted that Smt Runa Mazumder was a director at the time of the issuance of NCDs. Since she was acting as director

during the period of issuance of NCDs, she is an officer in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of MAPL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 Smt Runa Mazumder, is an officer in default and is liable to make refund, jointly and severally, with MAPL and other directors as mentioned in Order dated April 6, 2015 along with interest at the rate of 15 % per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. She has not disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, , Smt Runa Mazumder, jointly and severally with MAPL and other directors as mentioned in Order dated April 6, 2015, is co-extensively responsible for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act. Therefore, I find that Smt Runa Mazumder is liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions jointly and severally, with MAPL and other directors as mentioned in Order dated April 6, 2015. In view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of Smt Runa Mazumder to refund the amount with interest jointly and severally with MAPL and other directors as mentioned in Order dated April 6, 2015 is limited to the extent of amount collected during her tenure as director of MAPL.

38. As regards past Directors Smt Nabanita Sikder and Smt Runa Sikder are concerned, they joined MAPL subsequent to the issue. However I note that a director who is part of a company's board is responsible and liable for acts carried out by a company and Smt Nabanita Sikder and Smt Runa Sikder were obligated to ensure during their respective tenure that refund is made by MAPL to the investors as per the provisions of Section 73 of Companies Act, 1956.

39. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct past Director of MAPL, viz. Smt Runa Mazumder to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Noticees, to safeguard the interest of the investors who had subscribed to such NCDs issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Noticees.
40. I also note that, vide the interim order dated November 20, 2015 the noticees were directed to provide a full inventory of all their assets and properties. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided by the Noticees despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 12 of this Order.
41. In view of the discussion above, appropriate action in accordance with law needs to be initiated abovementioned past Directors of MAPL viz. Smt Runa Mazumder, Smt Nabanita Sikder, Smt Runa Sikder.
42. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions:
- (a) Smt Runa Mazumder shall forthwith refund the money collected by the Company, during her period of directorship through the issuance of NCDs including the application money collected from investors during her period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment jointly and severally with MAPL and other directors as mentioned in Order dated April 6, 2015.
  - (b) The repayments and interest payments to investors shall be effected by Smt Runa Mazumder along with MAPL and other directors as mentioned in Order dated April 6, 2015 only through Bank Demand Draft or Pay Order both of which should be crossed as

“Non-Transferable”.

- (c) Smt Runa Mazumder is directed to provide a full inventory of all her assets and properties and details of all her bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (d) Smt Runa Mazumder is prevented from selling her assets, properties and holding of mutual funds/shares/securities held by her in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- (e) Smt Runa Mazumder in her personal capacity to make refund jointly and severally with MAPL and other directors as mentioned in Order dated April 6, 2015, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- (f) After completing the aforesaid repayments Smt Runa Mazumder jointly and severally with MAPL and other directors as mentioned in Order dated April 6, 2015 shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India (**"ICAI"**)
- (g) In case of failure of Smt Runa Mazumder to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order:

- i) may recover such amounts, from her in view of her liability to refund as specified in paragraph 42(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
  - ii) may initiate appropriate action against her including adjudication proceedings against her, in accordance with law.
  - iii) would make a reference to the State Government/ Local Police to register a civil/ criminal case against her for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds;
- (h) Smt Runa Mazumder is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. Smt Runa Mazumder is also restrained from associating herself with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.
- (i) In view of liability of Smt Nabanita Sikder and Smt Runa Sikder as detailed in para 38 of this Order, Smt Nabanita Sikder and Smt Runa Sikder are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of this Order. Smt Nabanita Sikder and Smt Runa Sikder are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI till the expiry of 4 (four) years from the date of this Order.
- (j) The above directions shall come into force with immediate effect.
43. This Order is without prejudice to any action that SEBI may initiate under securities laws, as

deemed appropriate in respect of the above violations committed by Noticees and other key persons.

44. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.
45. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the individuals.

**DATE: November 02, 2017**

**PLACE: Mumbai**

**MADHABI PURI BUCH  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**