

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Assda Agro Projects Limited

In re Deemed Public Issue Norms

In respect of:

S.No.	Name of the Entity	PAN	CIN/DIN
1.	Assda Agro Projects Limited	AAICA6147R	U01400WB2010PLC150776
2.	Aloke Das	AINPD1762F	2875515
3.	Nabarun Dutta	ARBPD8838K	3105059
4.	Sheke Ajger Ali	AJVPA5372K	3107562
5.	Debasish Dutta	AHXPDP8258R	3105060
6.	Sheke Jasmir Hossain	ABMPH2954D	3245529
7.	Gouri Dutta	ASWPD5852F	6408222
8.	Sekh Jasim Hossain	ACMPH7807A	3245355
9.	Santanu Das	ACZPD5934F	3105058
10.	SK Mansur Ali	AVPJA2954S	NA

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1. Assda Agro Projects Limited (hereinafter referred to as “**AAPL**”/ “**the Company**”) is a Public company incorporated on 29.06.2010 and registered with Registrar of

Companies–Kolkata with CIN: U01400WB2010PLC150776. Its registered office is at 69, B.T. Road, PO Panihati, Gopal Kunja Bhavan Kolkata, Parganas North, WB 700114.

2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received complaints from some persons against AAPL in relation to money mobilization by way of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether AAPL 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.
3. On Inquiry by SEBI, it was observed that AAPL had made an offer of RPS in the financial years 2010-2011, 2011-2012 and 2012-2013 (hereinafter referred to as “Offer of RPS”) and raised at least an amount of Rs. 69,13,500 from at least 97 allottees. The number of allottees and funds mobilized has been collated from the documents available with MCA (Form 2) and the complaints received by SEBI.
4. As the above said *Offer of RPS* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 and the Companies Act, 1956. SEBI passed an interim order dated June 29, 2017 (hereinafter referred to as “interim order”) and issued directions mentioned therein against AAPL and its Directors and promoters, viz. Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta, Sekh Jasim Hossain, Santanu Das and SK Mansur Ali (hereinafter collectively referred to as “Noticees” and individually by their respective name).
5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded.
 - a. AAPL had made an *Offer of RPS* during the financial years 2010-2011, 2011-2012 and 2012-2013, and raised at least an amount of Rs. 69,13,500 as shown below:

Year of Issue	Security issued	Amount raised (Rs.)	Number of allottees
2010-2011	RPS	61,67,000	55
2011-2012		5,52,000	25
2012-2013		1,94,500	17
Total		69,13,500 ^	97*

**^ No. of allottees and funds mobilized has been collated from the documents available with MCA (form 2) and the complaints received by SEBI. However, actual no. of allottees and amount mobilized could be more than the above indicated figures.*

- b. The above *Offer of RPS* and pursuant allotment were deemed public issues of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) read with section 27(2) of the SEBI Act were not complied with by AAPL in respect of the *Offer of RPS*.
6. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated June 29, 2017 with immediate effect.
 - i. *AAPL and its Directors and Promoters namely Alope Das, Nabarun Dutta, Sheke Ajger 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.*
7. The interim order also directed the AAPL and its Directors/promoters to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4) 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. *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.*
8. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated June 30, 2017. Subsequently, vide notification dated October 28, 2017 published in newspaper *Times of India*, and notification dated October 28, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI that interim order dated June 29, 2017 was issued against them and they were given a final opportunity to submit their reply in the matter.
9. *Replies of the Noticees:* Vide the said *interim order*, AAPL, its abovementioned Directors/promoters were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order.
10. Upon receipt of the interim order, vide letter dated July 10, 2017, Sk Mansur Ali

submitted that he was a messenger cum peon of AAPL and used to be given jobs of serving letters of the office to some persons, posting letters at the post office, purchasing stationery from the market for the office and such other miscellaneous jobs. He used to get Rs. 20,000 as salary through account payee cheques. He worked in the said capacity in the said office for around 26 months. Thereafter, the owner of the office, Mr. Alope Das not being satisfied with his service removed him from the said job. Thereafter, he never visited the office of AAPL. He had no knowledge about anything that the owners of the office would do and what business was being done in the office of AAPL.

11. Vide a letter dated July 12, 2017, Advocate Kazi Safiullah, on behalf of Sk. Jasmir Hossain, informed that Sk. Jasmir Hossain is in judicial custody and the notice/ order may be served upon him through the Jail.
12. *Hearing and submissions:* By way of the interim order, the Noticees were directed to file their respective replies within 21 days from the receipt thereof along with an inventory of their assets. It was also mentioned in the interim order that if the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of the interim order. *It was further directed that 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 interim order and directions at para 16 (i) and (ii) of the interim order shall become final and absolute against the Noticees automatically, without any further orders.*
13. As noted above, replies from only two entities namely, Sk. Mansur Ali and Sk. Jasmir Hossain were received within the said period of 90 days mentioned in the interim order and therefore, the directions mentioned in paragraph 15 of the interim order became final against the other Noticees. However, in the interest of principles of natural justice, an opportunity of hearing was given to all the entities on March 20, 2018 and hearing notices were sent in that regard.
14. On the said date of hearing Sk. Jasmir Hossain, Sk. Jasim Hossain, Sk. Mansur Ali and Mr. Satanu Das appeared either in person or through their authorized representatives. The submissions made on their behalf and other details of hearing are, *inter alia*, as under:

Sk. Jasmir Hossain and Sk. Jasim Hossain

Advocate Bikash Halder appeared on behalf of Sk. Jasmir Hossain and Sk. Jasim Hossain and made, *inter alia*, the following submissions:

- i) Sk. Jasmir Hossain and Sk. Jasim Hossain are in judicial custody since November 6, 2015.
- ii) CBI had seized all the papers because of which they have not been able to provide detailed submissions.
- iii) Mr. Alope Das and Mr. Debashis Dutta used to control the company.
- iv) Regarding the business of the company, initially they were told that the company will open poultry farms, fisheries farm and other agricultural projects.
- v) Sk. Jasmir Hossain had performed the functions of a director only in the absence of Mr. Alope Das for a period of 3-4 months.
- vi) When he realized that the company was involved in wrongful activity, he resigned from the company.
- vii) Thereafter, in his personal capacity he repaid around Rs. 1 crore to investors in order to save his reputation.
- viii) Sk. Jasim Hossain was the director of the company for a very short time.

The Advocate appearing for the entities was asked to submit within 2 weeks the proofs of payments made by them (bank statements) along with their written submissions, if any and other relevant documents.

Sk. Mansur Ali

Advocate Bikash Halder appeared on behalf of Sk. Mansur Ali and made, *inter alia*, the following submissions:

- i) Sk. Mansur Ali was the brother-in-law of Sk. Jasmir Hossain. He joined the company as a peon and used to get Rs. 20,000 as salary. He also used to act as a messenger for the company. He had no educational qualification and was a man of meagre means.

- ii) At the time of joining the company, he was symbolically given certain shares of the company.
- iii) Mr. Alope Das and Mr. Debashis Dutta used to control the company
- iv) As per his knowledge, Mr. Alope Das had died and Mr. Debashis Dutta is absconding.
- v) Mansur Ali has another small business of grill – welding and he is currently also doing the same.

The Advocate was asked to submit the written submissions, if any, and relevant documents on behalf of Mansur Ali to support his submissions along with an explanation of who gave him shares of the company.

Mr. Santanu Das.

Mr. Santanu Das himself appeared and made, *inter alia*, the following submissions:

- i) His neighbor had told him that the company was collecting Rs. 1.5 lakh from each person for starting agro projects. He also approached the company and paid Rs. 1.5 lakh.
- ii) The company took his documents and generated a DIN in his name.
- iii) He was there in the company since the beginning. His name was shown as a director in the brochure of the company but in the MCA/ROC records his name was not there as a director.
- iv) When he was the director of the company, he used to go to the office of the company once or twice every week. In the office, there used to be discussions regarding the projects to be undertaken by the company.
- v) Mr. Alope Das and Mr. Debashis Dutta used to control the company. He asked Mr. Alope Das about the details of the business of the company but he never replied. He got to know about the money mobilization by the company after 3-4 months of becoming the director. Thereafter he resigned from the company on 09/09/2011 and gave his resignation letter to Mr. Debashis Dutta.
- vi) He sent a copy of his resignation letter to RoC through a Chartered Accountant.

- vii) He does not have an acknowledgment of his resignation letter but with his DIN, there is no directorship of Assda Agro Projects Ltd.
- viii) When he had resigned, he had transferred the shares held by him to the wife of Mr. Alope Das. In the brochure of the company prepared after his resignation, his name was not there as a shareholder rather the name of Mr. Alope Das's wife was there.
- ix) Regarding the whereabouts of Mr. Alope Das and Mr. Debashis Dutta, as per his knowledge, Mr. Alope Das had died and Mr. Debashis Dutta is not traceable.
- x) Before his resignation, he got back Rs. 1 lakh out of Rs. 1.5 lakh paid to the company.

Mr. Santanu Das was given two weeks' time to submit the relevant documents in support of his submissions along with his written submissions, if any.

15. Pursuant to the hearing, vide a letter received by SEBI on April 4, 2018, Mr. Santanu Das submitted that he had joined AAPL without understanding anything about it. He submitted that he is completely innocent and had resigned from the company in 2011. Further, he was not involved in any money exchange. He did not attend any meeting in the company. The company owed Rs. 1.5 lakh to him and after 4 months of follow up, he received Rs. 1 lakh only in 4 instalments. He also submitted that the ROC records do not show his name as a director.

Consideration of issues:

16. 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 RPS as stated in the interim order?*
- (2) If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956?*
- (3) If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

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

17. I have perused the interim order dated June 29, 2017 for the allegation of *Offer of RPS*.

18. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. It is noted, from the investors' complaints received by SEBI in the matter that AAPL has issued and allotted RPS to 97 investors during the financial years 2010-2011, 2011-2012 and 2012-2013 and raised at least an amount of Rs. 69,13,500. I also note that the number of allottees and funds mobilized has been collated from the MCA records and 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 97 and Rs. 69,13,500, respectively. I note that none of the Noticees have disputed the issuance of RPS by AAPL.

19. I therefore conclude that AAPL came out with an offer of RPS as outlined above.

ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 of Companies Act 1956?

20. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *Offer of RPS* made to the public. Therefore the primary question that arises for consideration is whether the issue of RPS 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)."

21. 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."

22. 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*.

23. In the instant matter, I find that RPS were issued by AAPL to at least 97 investors in the financial years 2010-2011, 2011-2012 and 2012-2013 and that AAPL has mobilized at least an amount of Rs. 69,13,500 over the financial years 2010-2011, 2011-2012 and 2012-2013. It is pertinent to reiterate that the number of allottees and the quantum of allotment are based on the MCA records and the complaints

that were received by SEBI. The above findings lead to a reasonable conclusion that the *Offer of RPS* by AAPL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

24. I find that AAPL has not claimed 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 find that there is no case that AAPL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

25. Neither AAPL nor its directors have contended that the *Offer of RPS* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.

26. 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 Noticees 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*".

27. Therefore, in view of the material available on record, I find that the *Offer of RPS* by AAPL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS* is deemed to be public issue and AAPL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

28. Since the *offer of RPS* 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.
29. The allegations of non-compliance of the above provisions were not denied by AAPL or its directors. I also find that no records have been submitted to indicate that it had made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that AAPL has contravened the said provisions. AAPL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that AAPL 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(3) of the Companies Act, 1956 has not been complied with.
30. 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 RPS was a deemed public issue of securities, AAPL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that AAPL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that AAPL has not complied with the provisions of section 60 of the Companies Act, 1956.
31. 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. Neither AAPL nor its directors produced any record to show that it 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, AAPL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

32. 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 *Sahara 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"

33. 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 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...”

34. In view of the above findings, I am of the view that AAPL engaged in fund mobilizing activity from the public, through the offer of RPS and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2) and 73(3) of the Companies Act, 1956.

ISSUE No. 3- If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?

35. From the documents available on record, I find that the present Directors in AAPL are Alope Das, Nabarun Dutta and Sheke Ajger Ali. Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta and Sk. Jasim Hossain, who were earlier Directors in AAPL, have since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Alope Das	January 11, 2012 (actual date of apointment as per the AOA of AAPL is June 24, 2010)	Continuing
Nabarun Dutta	June 29, 2010	Continuing
Sheke Ajger Ali	June 30, 2010	Continuing
Debasish Dutta	June 29, 2010	December 26, 2012
Sheke Jasmir Hossain	July 25, 2010	December 26, 2012
Gouri Dutta	October 16, 2012	December 26, 2012
Sk. Jasim Hossain	June 30, 2010	July 25, 2010

36. I find that Alope Das, Nabarun Dutta, Debasish Dutta and Sheke Jasmir Hossain are the promoters as well as the directors of AAPL. Two other persons namely, Santanu Das and Sk Mansur Ali are only the promoters of AAPL.
37. It has been submitted on behalf of Sk. Jasmir Hossain and Sk. Jasim Hossain that they have been in judicial custody since November 6, 2015 and CBI had seized all the documents because of which they could not submit detailed submissions. Further, Sk. Jasmir Hossain submitted that Mr. Alope Das and Mr. Debashis Dutta used to control AAPL and he performed the functions of a director only for 3-4 months in the absence of Mr. Alope Das. Sk. Jasim Hossain was the director of AAPL for a very short time. In this regard, I note from the record that Sk. Jasmir Hossain was the director of AAPL for the period 25.07.2010 to 26.12.2012. Further, Sekh Jasim Hossain was the director of AAPL from 30.06.2010 to 25.07.2010. Thus, considering the fact that both of them were directors of AAPL for the time period mentioned above, and that during the said period AAPL had made issuances of RPS (as seen from the MCA records and the complaints), they, shall remain liable for the issuances made by AAPL during their tenure as directors. As regards the opportunity to make submission in view of seizure of documents by CBI, I find that sufficient time and opportunity was given to them to obtain copies of the seized documents and make submissions, however they have failed to do so. In light of the above, I do not find any merit in the submissions of Sk. Jasmir Hossain and Sk. Jasim Hossain in this regard.
38. Sk. Jasmir Hossain also submitted that when he realized that AAPL was involved in wrongful activity, he resigned and thereafter, in his personal capacity he repaid around Rs. 1 crore to investors in order to save his reputation. In this regard, I note that at the time of hearing, the Advocate on behalf of Sk. Jasmir Hossain was asked to provide the proofs of refund made to the investors as claimed, however, he failed to provide the same. After the hearing also, 2 weeks' time was given to Sk. Jasmir Hossain / his Advocate to submit the proofs of such repayments. Even after the expiry of the said time of 2 weeks, no documents were submitted on behalf of Sk. Jasmir Hossain. Thus, in absence of any proof to substantiate the claim of such repayment / refund, I am unable to accept the said submission of Sk. Jasmir Hossain.

39. Sk. Mansur Ali has submitted that he worked as a peon cum messenger in AAPL and had no idea about the acts and affairs of the company. On that basis he prayed that the directions issued vide the interim order against him be revoked. In this regard, I note that Sk. Mansur Ali has been alleged to be a promoter of AAPL in the interim order on the basis of Memorandum of Association and the information submitted in Form 1 by the company itself pursuant to sections 33(1) and (2) of the Companies Act, . Further, as per his own admission, at the time of joining the company, he was symbolically given certain shares of the company. Admittedly, he was the brother in law of Sk. Jasmir Hossain who was also a director of AAPL. In view of the above, I find that Mansur Ali was related to AAPL and held shares in it. Further, he has not been able to establish that his name was not shown as promoter of AAPL. In consideration of the above, the submissions of Mansur Ali cannot be accepted.
40. Mr. Santanu Das has stated that his name does not appear as a director in the records of ROC. Further, he had joined the company since its inception and also held certain shares in AAPL, which he transferred to the wife of Mr. Alope Das at the time of his resignation. He also submitted that he had paid Rs. 1.5 lakh to AAPL out of which he was only paid back Rs. 1 lakh in 4 instalment after months of follow up. On the basis of the above, he has submitted that he had no role in the issuances made by the company and prayed that the directions issued against him vide the interim order be revoked. In this regard, I note that in the interim order, on the basis of Memorandum of Association and the information submitted in Form 1 by the company itself pursuant to sections 33(1) and (2) of the Companies Act, Mr. Santanu Das has been alleged to be a promoter of AAPL. Admittedly, he held shares of AAPL and was there with the company since its inception. Further, he has not shown any proof to establish that he was not a promoter of AAPL as has been alleged on the basis of records. Considering the above, I am unable to accept the submission of Mr. Santanu Das in this regard.
41. 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, AAPL and its directors are held

liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

42. 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%.
43. From the material available on record and the details of the appointment and resignation of the directors of AAPL as reproduced above, it is noted that Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta and Sk Jasim Hossain were directors at the time of the issuance of RPS. Since these persons were acting as directors during the period of issuance of RPS, they are officers 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 AAPL 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 all the past and present directors of AAPL, as officers in default, are liable to make refund, jointly and severally, 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. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors are co-extensively responsible along with the Company 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 AAPL and its Directors, viz. , Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain,

Gouri Dutta and Jasim Hossain are jointly and severally 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.

44. I note that during the financial years 2010-2011, 2011-2012 and 2012-2013, AAPL through Offer of RPS, had collected at least an amount of Rs. 69,13,500 from various allottees. I note that Alope Das, Nabarun Dutta and Shake Ajger Ali have been director of AAPL since financial years 2010-2011, 2011-2012, 2012-2013 till present date. I note that Debasish Dutta was director of AAPL from 29.06.2010 to 26.12.2012 (i.e. financial years 2010-11 and 2011-12); Sheke Jasmir Hossain was director of AAPL from 25.07.2010 to 26.12.2012 (i.e. financial years 2010-11 and 2011-12); Gouri Dutta was director of AAPL from 16.10.2012 to 26.12.2012 and Sekh Jasim Hossain was the director of AAPL from 30.06.2010 to 25.07.2010. As noted above, the particulars of issuances made by AAPL in the financial years 2010-2011, 2011-2012 and 2012-2013 are based on the records available on the MCA portal and the complaints which were received by SEBI. These complaints refer to issuances by AAPL in addition to what has been disclosed on the MCA portal. Thus, the list of issuances by AAPL as recorded in the order is not conclusive. Therefore, 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 the directors to refund the amount with interest jointly and severally with AAPL and other directors are limited to the extent of amount collected during his/her tenure as director of AAPL.

45. I find that Alope Das, Nabarun Dutta, Debasish Dutta, Sekh Jasmir Hossain, Santanu Das and SK Mansur Ali are promoters of AAPL and therefore, are liable as promoters for the *Offer of RPS* against the norms of deemed public issue. As noted above, only three promoters namely, Sheke Jasmir Hossain, Santanu Das and SK Mansur Ali have made submissions pursuant to the interim order. In their submissions, they have admitted that they were associated with AAPL since its earlier years. The position of all of them as promoters of the company is also evidenced by the Memorandum of Association of AAPL which they signed and the Form 1, which was submitted by the company on the MCA portal. Further, the said Noticees have not provided any documents to refute the knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue, and public interest requires that the persons

who had such knowledge/connivance/consent be made accountable to the investors. Therefore, the said Noticees are liable to be debarred for an appropriate period of time.

46. 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 AAPL and its Directors, viz, Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta and Sekh Jasim Hossain to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its Directors and promoters, to safeguard the interest of the investors who had subscribed to such RPS 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 Company and the other Noticees.

47. I also note that, vide the interim order dated June 29, 2017, AAPL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors/promoters of AAPL were also directed to provide an inventory of assets and properties belonging to them. 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 either by AAPL or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 8 of this Order.

48. In view of the discussion above, appropriate action in accordance with law needs to be initiated against AAPL and its Directors and promoters, viz. Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta, Sekh Jasim Hossain, Santanu Das and SK Mansur Ali.

49. 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) and 11B of the SEBI Act, hereby issue the following directions:

- a. AAPL, Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta and Sekh Jasim Hossain shall forthwith refund the

- money collected by AAPL, during their respective period of directorship through the issuance of RPS including the application money collected from investors during their respective 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.
- b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable”.
 - c. If the director(s) of the Company had repaid some of their investors as per their submissions, as per section 73(2) of the Companies Act, the above directions in (a) and (b) shall be applicable as modified herein, for the amounts claimed to have been returned to the investors:
 - i. Such prior repayments should have been made by the director(s) / Company as per the requirements laid down in clause (b) above and the same shall be certified by peer reviewed Chartered Accountants, as directed in sub-paragraph i below, or
 - ii. The Company and the directors who have repaid the investors, shall produce a peer reviewed Chartered Accountant’s certificate, for the repayments claimed to have been made, certifying repayment on verification of the originals of the application form for RPS bearing signature of the RPS holder(s), certificate of RPS issued by the company to RPS holder and returned to the Company on redemption, payment receipt/voucher issued by the Company to the RPS holders bearing the signature of the RPS holders, (in the absence of payment receipt/voucher, an Affidavit of receipt of payment with full description of RPS holders’ identity, address and amount received by them) and corresponding proof of debit from the Bank Account of the Company with an original document of proof of identity, address and signature issued by the State/Central Government to the RPS holders bearing their signature and a statement in Chartered Accountant’s certificate to the effect that he has made the above said verification enclosing copies of verified documents.
 - d. AAPL, Alope Das, Nabarun Dutta and Sheke Ajger Ali are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.

- e. Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta and Sekh Jasim Hossain are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of their own.
- f. AAPL, Alope Das, Nabarun Dutta and Sheke Ajger Ali, are permitted to sell the assets of the Company 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.
- g. Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta and Sekh Jasim Hossain are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them 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.
- h. AAPL and Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta and Sekh Jasim Hossain in their personal capacity to make refund, 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.
- i. After completing the aforesaid repayments, AAPL, Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta and Sekh Jasim Hossain in their personal capacity 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") holding such certificate.
- j. In case of failure of AAPL, Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta and Sekh Jasim Hossain

to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from the company and the directors liable to refund as specified in paragraph 49(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

- k. AAPL, Alope Das, Nabarun Dutta, Sheke Ajger Ali, Debasish Dutta, Sheke Jasmir Hossain, Gouri Dutta and Sekh Jasim Hossain 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 completion of refunds to investors as directed above. The above said directors 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 from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.
 - l. Santanu Das and SK Mansur Ali 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 for a period of 4 (four) years from the date of this Order. The above said persons 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 for a period of 4 (four) years from the date of this order.
 - m. The above directions shall come into force with immediate effect.
50. It is noted that the hearing notice issued to Alope Das was returned undelivered with remarks, "deceased." Mansur Ali and Santanu Das also in their submission informed that Alope Das had died. However, I find that the death certificate of Alope Das is not on record nor is there any other material / proof to confirm his death. In these circumstances, I am constrained to proceed against Alope Das with the material available on record. I note that the cause of action regarding the refund liability is not personal in nature. Therefore, the same survives the death of Alope Das. However, it is noted, assuming that Alope Das is deceased, his

legal heirs / representatives have not been brought on record. Therefore, the directions against Alope Das are made contingent on SEBI taking steps to ascertain the fact of death of Alope Das and serving notice to his legal heirs / representatives in case he is deceased.

51. I note that the Hon'ble Calcutta High Court has passed an Order dated August 12, 2016 in W.P. No. 12414(W) of 2015 in the matter of *Sanjoy Dutta & Ors. Vs. Union of India and Ors.* in respect of AAPL and its directors whereby AAPL was directed not to dispose of any of the movable or immovable properties till further direction of the Court. Similarly, the director(s) of the Company were also directed not to dispose of or create any encumbrances of their valuable movable or immovable properties (personal) till further orders. Subsequently, vide another order dated March 1, 2017 the matter has been referred to Justice Talukdar Committee for examining the assets and liabilities of the company and then to file a report to the Hon'ble High Court. Therefore, the effect and implementation of the aforesaid directions except directions mentioned in paragraph 49(d), (e), (k) and (l) shall be subject to the directions passed by the Hon'ble High Court in its aforesaid orders and other subsequent orders in respect of the said petition.

52. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action. 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 Company and the individuals.

53. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: July 20, 2018
PLACE: Mumbai

Sd/-
MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA