

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

FINAL ORDER

**Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of
India Act, 1992**

**In the matter of Agragami Agro–Farms Limited
In re Deemed Public Issue Norms**

In respect of:

S. No.	Name of the Entity	PAN	CIN/DIN	Last known address of the entity
1	Agragami Agro–Farms Limited	Not Available	U01111WB 2007 PLC119711	Tiwari Bhawan, 1115, Brick Field Road, Baruipur Kolkata, West Bengal - 700144
2	Siddhartha Sankar Roy	AKKPR3095A	01784673	Subuddhipur, Thaipara, Baruipur, Kolkata, West Bengal – 700144
3	Basudeb Sardar	BKEPS2204R	01784694	Manmath Nagar, P.S – Gosaba, 24 Parganas, Kolkata, West Bengal – 743370
4	Sabyasachi Roy	AKZPR6202Q	01784708	42/38, Bediadanga, 2 nd Lane, Kolkata, West Bengal – 700039
5	Hasem Molla	Not Available	Not Applicable	S/o M. Molla Vill, P.O – Tetul Beria, P.S – Baruipur, Dist – 24 Pgs South, West Bengal – 743376
6	Mukul Sardar	Not Available	Not Applicable	S/o Raj Kumar Sardar Vill – Baikunthapur, P.O & P.S – Sonarpur, Dist 24 Pgs South Kolkata – 700150, West Bengal
7	Bhabesh Halder	Not Available	Not Applicable	S/o Jitendra Halder. Vill – Baikunthapur, P.O & P.S –

				Sonarpur Kolkata – 700150, West Bengal
8	Susanta Sardar	Not Available	Not Applicable	S/o Ganendra Nath Sardar Vill, P.O – Manmatha Nagar, P.S – Gosaba, Dist – 24 Pgs South, West Bengal – 743370
9	Ramesh Jorddar	Not Available	Not Applicable	Vill – Palpali, P.O – Ngartala, P.S – Canning, Dist – South 24 Parganas, West Bengal - 743329
10	Sunati Ghosh	Not Available	Not Applicable	Vill & P.O – Kheyedaha, P.S. – Canning, Dist – South 24 Parganas, West Bengal - 743329

1. Agragami Agro–Farms Limited (hereinafter referred to as “**AAFL**”/ “**the Company**”) is a Public company incorporated on October 16, 2007 and registered with Registrar of Companies, Kolkata with CIN: U01111WB2007PLC119711. Its registered office is at Tiwari Bhawan 1115, Brick Field Road, Baruipur, Kolkata, West Bengal–700144.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a reference dated April 6, 2016, from RoC, Kolkata containing three complaints against AAFL in respect of issuance of *redeemable preference shares* and *secured redeemable debentures*. Thereafter, SEBI undertook an inquiry to ascertain whether AAFL 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 AAFL had made offers of *Equity Shares*; *Redeemable Preference Shares (“RPS”)* and *Secured Redeemable Debentures (“SRD”)* during the period 2008-09 to 2012-13. It is noted that by the aforesaid offers of equity shares, RPS and SRD, AAFL had raised amounts of ₹95,00,000, ₹ 57,42,000 and ₹ 1,93,04,200, respectively. It was also observed that in reespect of SRD, AAFL created a charge for an amount of ₹ 5,88,99,000. on March 05,

2010 and appointed *Mr. Ramesh Jorddar and Smt Sunati Ghosh* as Debenture Trustees for the Offer of SRD by the company.

4. As the above said offers of equity shares, RPS and SRD were found *prima facie* in violation of respective provisions of SEBI Act, 1992, Companies Act, 1956, SEBI (Disclosure and Investment Protection) Guidelines, 2000 (“**DIP Guidelines**”), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 (“**ILDS Regulations**”), SEBI passed an interim order dated September 18, 2017 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against AAFL and its Directors and promoters, viz. Mr. Siddhartha Sankar Roy, Mr. Basudeb Sardar, Mr. Sabyasachi Roy, Mr. Hasem Molla, Mr. Mukul Sardar, Mr. Bhabesh Halder, Mr. Susanta Sardar, Mr. Ramesh Jorddar and Ms. Sunati Ghosh, (hereinafter collectively referred to as “**Noticees**”).
5. **Prima facie findings/allegations:** In the said interim order, the following *prima facie* findings were recorded.

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

6. Further, AAFL created a charge for an amount of ₹ 5,88,99,000 on March 05, 2010 and appointed *Mr. Ramesh Jorddar and Smt Sunati Ghosh* as Debenture Trustees for the Offer of SRD by the company. *Mr. Ramesh Jorddar and Smt Sunati Ghosh* were not registered as debenture trustees for the offer of SRD by the company.
7. The above *offers of equity shares, RPS and SRD* and pursuant allotments 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) and 73(2) of the Companies Act, 1956 and the relevant provisions of DIP Guidelines, ICDR Regulations and ILDS Regulations were not complied by AAFL in respect of the *offers of equity shares, RPS and SRD*. Further, the Debenture Trustee *viz. Mr. Ramesh Jorddar and Smt Sunati Ghosh* had prima facie violated section 12(1) of the SEBI Act and regulation 7 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "Debenture Trustees Regulations").
8. In view of the *prima facie* findings on the violations, the following directions were issued in the interim order dated September 18, 2017 with immediate effect.
 - 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.*
9. The interim order also directed AAFL 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 should not be issued against them:
- 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.*
10. Vide the said interim order, AAFL, its abovementioned Directors/promoters along with its Debenture Trustees were given the opportunity to file their replies, within

21 days from the date of receipt of the said interim order. AAFL and the abovenamed Directors/Promoters were also directed to furnish an inventory of their assets in their reply. The order further stated that 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.

11. **Service of interim order:** The copy of the said interim order was sent to the Noticees vide letters dated September 18, 2017 which were not delivered. Subsequently, vide notification dated November 18, 2017 published in newspaper *Times of India* and notification dated November 18, 2017 published in newspapers *Anand Bazar Patrika* and *Sanmarg Patrika*, the Noticees were notified by SEBI that interim order dated September 18, 2017 was issued against them and they were given a final opportunity to submit their reply in the matter.

12. Vide a letter dated November 18, 2017, the Advocate on behalf of AAFL (represented by its director – Mr. Siddhartha Roy) requested for an opportunity of personal hearing and submitted, *inter alia*, as under:

- a. Certain observations made in the order regarding allotment of equity shares as per Form 2; Allotment details of RPS as per Form 2 and details of outstanding SRD as per form 20B have not tallied in respect of filed and recorded documents as available on MCA site.
- b. Under these circumstances, the position and status of the SRD and RPS cannot be correctly assessed unless the correct documents, records and papers in respect of the issuance of such SRD and RPS are made available.
- c. The audited balance sheet is filed and recorded with the ROC, West Bengal which describes the following facts and figures:

(Figures In ₹)

Closing balance of liability as on March 31 st / Details`	Debentures	RPS
31.03.2011	1,61,51,200	50,00,000
31.03.2012	56,51,200	50,00,000
31.03.2013	40,23,200	50,00,000
31.03.2014	30,45,200	50,00,000
31.03.2015	16,25,200	50,00,000

31.03.2016 (Audited but not filed with concerned ROC)	10,00,000	28,30,000
31.03.2017 (Audited but not filed with concerned ROC)	6,00,000	16,30,000

- d. The company requested that it may be allowed to produce the documents supporting the above figures at the time of the hearing.
- e. It was also requested that the company be provided details of the relevant Form 2 which have been filed with ROC, West Bengal from which the company can assess the factual position in accordance with the recorded claims and liability for debentures and RPS.
- f. In course of time, the company has already repaid / refunded the liability of debentures and RPS as has been shown in the audited balance sheet.
- g. Mr. Sabyasachi Roy passed away on 15/01/2017. A copy of his death certificate issued by the Kolkata Municipal Corporation has been enclosed.

13. Hearing and submissions: Hearing in the matter was scheduled on May 8, 2018 and hearing notices in that regard were sent to the Noticees on April 6, 2018. It is noted that in the interim order it was categorically mentioned that *“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”*. As noted above, the interim order was served on the Noticees by way of newspaper publication. Further, as mentioned above, reply/objections to the interim order were received only from AAFL (represented by Mr. Siddhartha Roy). Though all the Noticees (except AAFL) did not file their objections / reply within the stipulated time, an opportunity of hearing was provided to all the Noticees and notices in that regard were sent to all the Noticees.

14. Even though the notice communicating the date of hearing was served on AAFL, no one appeared on its behalf on the scheduled date of hearing, nor was any communication received from AAFL. Further, no other Noticee appeared for the hearing.

Consideration of issues

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 offers of equity shares, RPS and SRD as stated in the interim order.*
- (2) If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 read with the provisions of DIP Guidelines and ILDS Regulations.*
- (3) Whether Mr. Ramesh Jorddar and Smt Sunati Ghosh violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations*
- (4) If the findings on Issue No.1, 2 and 3 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1- Whether the company came out with the offers of equity shares, RPS and SRD as stated in the interim order.

16. I have perused the interim order dated September 18, 2017 for the allegation of *offers of equity shares, RPS and SRD.*

17. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on record. From the said record, I note the following:

- 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. AAFL offered and allotted *redeemable preference shares* to 60 persons during the Financial Year 2008–09, 83 persons during the Financial Year 2009–10 and 10 persons during the Financial Year 2010–11. AAFL mobilized approximately ₹57.42 Lakhs through such issuances.
- iii. AAFL offered and allotted *secured redeemable debentures* to 668 persons during the Financial Year 2010–11, 133 persons during the Financial Year 2011–12 and 4 persons during the Financial Year 2012–13. AAFL mobilized approximately ₹1,93,04,200 through such issuances.

18. In this regard, I note that AAFL in its submissions has stated that certain observations made in the order regarding allotment of equity shares as per Form 2, Allotment details of RPS as per Form 2 and details of outstanding SRD as per form 20B have not tallied in respect of filed and recorded documents as available on MCA site. AAFL also submitted that as per its audited balance sheet, the status of RPS and SRD issued by it is also different. AAFL also requested that it may be provided an opportunity of hearing and further it may be allowed to produce the documents supporting the figures submitted by it.

19. As noted above, an opportunity of hearing was provided to AAFL on May 8, 2018 to appear and submit the documents supporting its claim regarding the discrepancies in the observations made in the interim order based on the MCA records. However, in spite of service of the hearing notice, AAFL failed to appear for the hearing and also failed to submit documents in support of its submissions. In view of the above, I am constrained to accept the records available on MCA website (relied upon in the interim order) as final. On the basis of the above, I note that AAFL made offers and allotments of equity shares, RPS and SRD in the financial years mentioned above. I therefore conclude that AAFL came out with an *offers of equity shares, RPS and SRD* as outlined above.

ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 and Section 73 read with the provisions of DIP Guidelines and ILDS Regulations.

20. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the offers of securities made to the public. Therefore the primary question that arises for consideration is whether the issuances of *equity shares, RPS and SRD* are 'public issues'. At this juncture, reference may be made to sections 67 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 made 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 is 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. I note that neither AAFL nor its directors have contended that the *above mentioned offers of equity shares, RPS and SRD* do not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956.

24. In the instant matter, I find that AAFL had made offers of *equity shares, RPS and SRD* during the period 2008-09 to 2012-13. It is noted that by the aforesaid offers

of equity shares, RPS and SRD, AAFL had raised amounts of ₹95,00,000 (to 80 allottees), ₹57,42,000 (to 153 allottees) and ₹1,93,04,200 (to 805 allottees), respectively. On independent consideration of these issuances of equity shares, RPS and SRD, I find the following:

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. Further, under the 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 on *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 –

“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. From the material available on record, it is noted that 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.
- v. Considering the above, I find that since the *offer and allotment of Equity Shares* by AAFL was made to more than 50 persons, it

qualified as an offer made to the public in terms of Section 67(3) of the Companies Act, 1956. Further, on account of the fact that in respect of the aforesaid offer of equity shares, AAFL did not provide investors with the requisite option for surrender of *equity shares* and refund in accordance with the SEBI Circular dated December 31, 2015, the present proceedings are justified in terms of SEBI Circular dated December 31, 2015 as well.

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, 83 persons during the Financial Year 2009–10 and 10 persons during the Financial Year 2010-11. AAFL mobilized approximately ₹57.42 Lakhs through such issuances.
- ii. With respect to issuance of RPS, AAFL has submitted that the number of RPS issued and the amount raised by such issuance is different from what has been mentioned in the interim order, and as on March 31, 2017, the outstanding amount in respect of RPS issued is far less than that mentioned in the interim order. Drawing reference to the provisions of the SEBI Circular dated December 31, 2015, I find that for any refund claimed to have been made by the company / its directors, it should meet the condition specified in the Circular i.e. *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.*
- iii. In the present case, from the material available on record, I find that 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, 2009–10 and 2010-11.

- iv. Considering the above, I find that since the *offer and allotment of Redeemable Preference Shares* by AAFL was made to more than 50 persons, it qualified as an offer made to the public in terms of Section 67(3) of the Companies Act, 1956. Further, on account of the fact that in respect of the aforesaid offer of *Redeemable Preference Shares*, AAFL did not provide investors with the requisite option for surrender of *equity shares* and refund in accordance with the SEBI Circular dated December 31, 2015, the present proceedings are justified in terms of SEBI Circular dated December 31, 2015 as well.

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, 133 persons during the Financial Year 2011–12 and 4 persons during the Financial Year 2012-13. AAFL mobilized approximately ₹1,93,04,200 through such issuances.
- ii. With respect to issuance of SRD, AAFL has submitted that the number of SRD issued and the amount raised by such issuance is different from what has been mentioned in the interim order, and as on March 31, 2017, the outstanding amount in respect of SRD issued is far less than that mentioned in the interim order. Drawing reference to the provisions of the SEBI Circular dated December 31, 2015, I find the for any refund claimed to have been made by the company / its directors, it should meet the condition specified in the Circular i.e. *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.*
- iii. In the instant case, from the material available on record, I find that 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 2010-11, 2011-12 and 2012-13.

- v. Considering the above, I find that since the *offer and allotment of secured redeemable debentures* by AAFL was made to more than 50 persons, it qualified as an offer made to the public in terms of Section 67(3) of the Companies Act, 1956. Further, on account of the fact that in respect of the aforesaid offer of *secured redeemable debentures*, AAFL did not provide investors with the requisite option for surrender of *equity shares* and refund in accordance with the SEBI Circular dated December 31, 2015, the present proceedings are justified in terms of SEBI Circular dated December 31, 2015 as well.

25. It was also observed that in respect of SRD, AAFL created a charge for an amount of ₹ 5,88,99,000. on March 05, 2010 and appointed *Mr. Ramesh Jorddar and Smt Sunati Ghosh* as Debenture Trustees for the Offer of SRD by AAFL.

26. I find that AAFL 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 AAFL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

27. 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 the above mentioned 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 issuances cannot be considered as private placements. 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 appellant 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”.

28. In view of the above, since the offers of equity shares, RPS and SRD by AAFL are deemed to be public issues, AAFL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
29. Further, since the offers of equity shares, RPS and SRD were public issues 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. The allegations of non-compliance of the above provisions were not denied by AAFL or its directors. I also find that no records have been submitted to indicate that AAFL had made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that AAFL has contravened the said provisions.
30. Section 60 of the Companies Act read with section 2(36) 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 offers of equity shares, RPS and SRD by AAFL were deemed public issues of securities, AAFL was required to register prospectus(es) with the RoC under Section 60 of the Companies Act, 1956. I find that AAFL has not submitted any record to indicate that it had registered prospectus(es) with the RoC, in respect of the same. I, therefore, find that AAFL 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 AAFL nor its directors produced any record to show that it had 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, AAFL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

32. 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*).

33. 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 that AAFL violated the aforementioned provisions of the DIP Guidelines.

34. 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 AAFL has made a public issue of SRD, the ILDS Regulations are also applicable to the instant offer of SRD. Therefore, I find that AAFL has violated the following provisions of 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 16(1) – Debenture Redemption Reserve;
- xv. Regulation 17 – Creation of security
- xvi. Regulation 19 – Mandatory Listing
- xvii. Regulation 26 – Obligations of the Issuer, etc.

35. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned provisions, in 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"

36. 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 thereof, 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...”

37. In view of the above findings, I am of the view that AAFL engaged in fund raising activity from the public, through the offer of equity shares, RPS and SRD, and has contravened the provisions of section 56, 60, 73 and the above mentioned provisions of DIP Guidelines and ILDS Regulations.

ISSUE No. 3- Whether Mr. Ramesh Jorddar and Smt Sunati Ghosh appointed as the Debenture Trustees by AAFL have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

38. I have perused the Form 10 filed by AAFL which shows that AAFL had created a charge of ₹ 5,88,99,000 for the Offer of SRD by the Company. I further find that AAFL had appointed *Mr. Ramesh Jorddar and Smt Sunati Ghosh* as the debenture trustee on March 5, 2010.

39. 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 the SEBI (Debenture Trustees) Regulations, 1993, states that only a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body corporate alone are eligible to get a certificate of registration as Debenture Trustee.

40. *Trustee of the debenture holders of AAFL viz. Mr. Ramesh Jorddar and Smt Sunati Ghosh* are not eligible to obtain a certificate of registration since they do not satisfy the eligibility criteria mentioned in Regulation 7 of DT Regulations. It is also noted that they do not hold a certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that Mr. Ramesh Jorddar and Smt Sunati Ghosh have dealt in the impugned Offers of SRD as debenture trustees, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992 read with regulation 7 of DT Regulations.

ISSUE No. 4- If the findings on Issue No.1, 2 and 3 are found in the affirmative, who are liable for the violation committed?

41. As noted above, in response to the interim order AAFL (through its Advocate) submitted its reply vide letter dated November 18, 2017.

42. It has been submitted on behalf of AAFL that certain observations made in the interim order regarding allotment of equity shares as per Form 2, Allotment details of RPS as per Form 2 and details of outstanding SRD as per form 20B have not tallied with filed and recorded documents as available on MCA site. Thus AAFL has contended that under these circumstances, the position and status of the SRD and RPS cannot be correctly assessed unless the correct documents, records and papers in respect of the issuance of such SRD and RPS are made available. The company requested that it should be provided details of the relevant form 2 which have been filed with ROC, West Bengal from which the company can assess the factual position in accordance with the recorded claims and liability for debentures and RPS. Further, that it may be allowed to produce the documents supporting the correct figures. In this regard, it is noted that the observations made in the interim order are based on the records available on MCA website, which were filed and uploaded by the company itself. If there is a discrepancy in the audited balance sheet of AAFL and the records available on the MCA website,

explanation in that regard can be provided only by the company. It is pertinent to note that the documents which formed the basis of the observations in the interim order, were available for inspection at all times. However, neither the company nor the other Noticees availed the inspection of documents. Further, apart from a brief reply noted above, no other material was submitted by AAFL to highlight any discrepancy in the findings of the interim order. Furthermore, at the request of AAFL, an opportunity of personal hearing was also provided to it and the notice sent in that regard was served on AAFL. However, no one appeared on behalf of AAFL for the said hearing. In view of the above, I find that the submissions of AAFL in this regard are devoid of any merit and I am constrained to find the MCA records as final.

43. From the documents available on record, I find that the present directors in AAFL are Mr. Siddhartha Sankar Roy, Mr. Basudeb Sardar and Mr. Sabyasachi Roy. The details of the appointment and resignation of the directors are as following:

Name and designation of the directors	Date of appointment	Date of cessation
Siddhartha Sankar Roy	October 16, 2007	Continuing
Basudeb Sardar	October 16, 2007	Continuing
Sabyasachi Roy	October 16, 2007	Continuing

44. I find that Mr. Hasem Molla, Mr. Mukul Sardar, Mr. Bhabesh Halder and Mr. Susanta Sardar are promoters of AAFL.
45. 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, AAFL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
46. 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%.

47. From the material available on record and the details of the appointment of the directors of AAFL as reproduced above, it is noted that Mr. Siddhartha Sankar Roy, Mr. Basudeb Sardar and Mr. Sabyasachi Roy were directors of AAFL at the time of the issuance of equity shares, RPS and SRD. Since these persons were acting as directors during the period of issuance of equity shares, RPS and SRD, they are officers in default as per Section 5 of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any specified director of AAPL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Thus, all these directors, 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. None of these Noticees 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, 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 AAFL and its Directors, viz. Mr. Siddhartha Sankar Roy, Mr. Basudeb Sardar and Mr. Sabyasachi Roy 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.

48. I note that in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, the obligation of every director to refund the amount with interest jointly and severally with AAFL and other directors are limited to the extent of amount collected during his/her tenure as director of AAFL. In the present case, Mr. Siddhartha Sankar Roy, Mr. Basudeb

Sardar and Mr. Sabyasachi Roy have been the directors of AAFL since October 16, 2007. Thus, in accordance with the above judgment of Hon'ble SAT, they shall be liable jointly and severally with AAFL to refund the amount raised by AAFL through issuance of equity shares, RPS and SRD as mentioned above.

49. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the person who act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that both *Mr. Ramesh Jorddar and Smt Sunati Ghosh* are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
50. I find that Mr. Hasem Molla, Mr. Mukul Sardar, Mr. Bhabesh Halder and Mr. Susanta Sardar are promoters of AAFL and therefore, are liable as promoters for the *offers of* equity shares, RPS and SRD against the norms of deemed public issue. The said Noticees have not denied 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.
51. With respect to the provisions of the DIP Guidelines and respective regulations of the ILDS Regulations enumerated above, the liability is on the Company to comply with the requirements therein.
52. 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 AAFL and its Directors, viz. Mr. Siddhartha Sankar Roy, Mr. Basudeb Sardar and Mr. Sabyasachi Roy 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 equity shares, RPS and SRD 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.
53. I also note that vide the interim order dated September 18, 2017, AAFL was

directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors/promoters of AAFL 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 AAFL or the other Noticees despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 11 of this Order.

54. In view of the discussion above, appropriate action in accordance with law needs to be initiated against AAFL and its Directors, promoters and debenture trustees viz. Mr. Siddhartha Sankar Roy, Mr. Basudeb Sardar, Mr. Sabyasachi Roy, Mr. Hasem Molla, Mr. Mukul Sardar, Mr. Bhabesh Halder, Mr. Susanta Sardar, Mr. Ramesh Jorddar and Ms. Sunati Ghosh.

55. It has been informed by AAFL that Mr. Sabyasachi Roy passed away on 15/01/2017. A copy of his death certificate issued by the Kolkata Municipal Corporation has also been submitted by AAFL according to which Mr. Sabyasachi Roy had died on January 15, 2017. In view of this fact, the question that arises for consideration is whether in view of the death of Mr. Sabyasachi Roy, the present proceedings against him would continue or abate. On the question of which causes of action survive and which abate the Hon'ble Supreme Court (SC) in the matter of *Melepurath Sankunni Ezhuthassan Vs Thekittil Gopalankutty Nair*, (1986 AIR 411) observed as follows:-

“.....So far as this country is concerned, which causes of action survive and which abate is laid down in section 306 of the Indian Succession Act, 1925, which provides as follows :

306. Demands and rights of action of or against deceased survive to and against executor or administrator. -

All demands whatsoever and all rights to prosecute or defend any action or special processing existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.....

.....Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.”

56. In an earlier judgment in *Girijanandini Vs Bijendra Narain* [1967 SCR (1) 93], Hon’ble Supreme Court observed that “.....The maxim **‘actio personalis moritur cum persona’** - a personal action dies with the person has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party.....”.

57. The Hon’ble Supreme Court had another occasion to deal with the meaning of the words “other personal injuries not causing the death of the party” in *M. Veerappa Vs Evelyn Sequeira & Ors* (1988 AIR 506). In the said case Hon’ble Supreme Court made a reference to the Full Bench decision of the Madras High Court in *Rustomji Dorabji v. W.H. Nurse*, (1921) ILR 44 Mad 357 wherein Trotter, J. speaking for himself and Ayling, J. set out the law as follows.

“We are therefore driven to the conclusion that the Act must be supposed to have envisaged a logically coherent class of causes of action, and that result can only be achieved by construing ‘personal injuries’ as meaning not ‘injuries to the body’ merely, but injuries to the person in Blackstone’s sense, other than those which either cause death or tangibly affect the estate of the deceased injured person or **cause an accretion to the estate of the deceased wrong doer**. In effect, we think that the words which we have to construe are ejusdem generis not merely with the last preceding word ‘assault’, but with the two preceding words ‘defamation’ and ‘assault’”

58. In its concluding remarks, the Hon’ble Supreme Court in *M. Veerappa vs Evelyn Sequeira & Ors*, (1988 AIR 506) observed that “.....Thus it may be seen that there is unanimity of view among many High Courts in the country regarding the interpretation to be given to the words ‘other personal injuries not causing the death of the party’ occurring in Section 306 of the Indian Succession Act and that the contrary view taken by the Calcutta & Rangoon High Courts in the solitary

cases referred to above has not commended itself for acceptance to any of the other High Courts. The preponderant view taken by several High Courts has found acceptance with this Court in its decision in Melepurath Sankunni Ezhuthassan's case.....”

59. In subsequent case of *Smt. Yallawwa Vs. Smt. Shantavva* on October 08, 1996, (MANU/SC/0016/1997) the Hon'ble Supreme Court endorsed its earlier view and held that “.....*Save and except the personal cause of action which dies with the deceased on the principal of 'actio personal is moritur cum persona,' i.e. a personal cause of action dies with the person, **all the rest of causes of action which have impact on proprietary rights** and socio legal status of the parties cannot be said to have died with such a person.....”*

60. I note that the cause of action regarding the refund liability is not personal in nature. Therefore, considering the above, I am of the view that the proceedings against Sabyasachi Roy are not liable to be abated and the same survive his death.

ORDER

61. In view of the above 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(1), 11(4) and 11B of the SEBI Act, hereby issue the following directions:

- (a) AAFL, Mr. Siddhartha Sankar Roy, Mr. Basudeb Sardar and legal representatives of Late Sabyasachi Roy as per applicable law, shall jointly and severally, forthwith refund the money collected by AAFL through the issuance of equity shares, RPS and SRD including the application money collected from investors, 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 AAFL or its director(s) had repaid some of their investors as stated in their submissions, as per section 73(2) of the Companies Act, the above directions in sub-paragraphs (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 equity shares/RPS/SRD bearing signature of the equity shares/RPS/SRD holder(s), certificate of equity shares/RPS/SRD issued by the company to equity shares/RPS/SRD holder(s) and returned to the Company on redemption, payment receipt/voucher issued by the Company to the equity shares/RPS/SRD holders bearing the signature of the equity shares/RPS/SRD holders, (in the absence of payment receipt/voucher, an Affidavit of receipt of payment with full description of equity shares/RPS/SRD 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 equity shares/RPS/SRD 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) AAFL, Mr. Siddhartha Sankar Roy and Mr. Basudeb Sardar 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) Legal representatives of Late Sabyasachi Roy 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) AAFL, Mr. Siddhartha Sankar Roy and Mr. Basudeb Sardar 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) Mr. Siddhartha Sankar Roy and Mr. Basudeb Sardar are prohibited 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) AAFL, Mr. Siddhartha Sankar Roy, Mr. Basudeb Sardar and legal representatives of Late Sabyasachi Roy 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, AAFL, Mr. Siddhartha Sankar Roy, Mr. Basudeb Sardar and legal representatives of Late Sabyasachi Roy 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 AAFL, Mr. Siddhartha Sankar Roy, Mr. Basudeb Sardar and legal representatives of Late Sabyasachi Roy 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, directors and the legal representatives of Late Sabyasachi Roy liable to refund as specified in paragraph 61(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

- (k) AAFL, Mr. Siddhartha Sankar Roy and Mr. Basudeb Sardar 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) Mr. Hasem Molla, Mr. Mukul Sardar, Mr. Bhabesh Halder and Mr. Susanta Sardar 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) Mr. Ramesh Jorddar and Smt Sunati Ghosh are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.

62. The above directions shall come into force with immediate effect subject to paragraph 63.

63. As noted above, Mr. Sabyasachi Roy had passed away on January 15, 2017.

However, his legal representatives have not been brought on record. Therefore, the directions against Mr. Sabyasachi Roy are made contingent on SEBI serving this order to his legal representatives. Therefore, this order will take effect as final order against legal representatives of Mr. Sabyasachi Roy only on the expiry of 60 days from the date of service of this order to his legal representatives, unless legal representatives of Mr. Sabyasachi Roy, file reply or seek, by a written request, personal hearing receivable by SEBI within such period of 60 days from the date of service of this order. If reply/request for personal hearing is filed by legal representatives of Mr. Sabyasachi Roy, the directions passed herein against his legal representatives shall be made applicable subject to the determination on the objections/reply. In the meantime, the legal representatives of Mr. Sabyasachi Roy shall not buy, sell or otherwise deal in securities for creation of any third party rights, from the date of this order till the disposal of the objections/reply, if such objections or reply are filed, or till the date of discharge of the liability of refund, if no objections/reply are filed.

64. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories and registrar and transfer agents for information and necessary action.
65. 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.

Sd/-

DATE: July 27th, 2018
PLACE: Mumbai

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