

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

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

In the matter of Angel Agritech Limited

In Re: Deemed Public Issue Norms

In respect of:

S.No.	Name of the Entity	PAN	DIN
1.	Mr. Sumantra Sinha	AZWPS2036H	02705993
2.	Mr. Rohit Das	AJIPD6461D	01933786
3.	Mr. Arindam Pal	AOFP2459F	02838394

1. Angel Agritech Limited (hereinafter referred to as “**AAL**”/ “**the Company**”) is a Public company incorporated on February 05, 2010 and registered with Registrar of Companies– Kolkata with CIN: U01400WB2010PLC141816. Its registered office is at 23/A, Royd Street 2nd Floor Kolkata WB 700016, India.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received complaints against AAL in respect of issue of Redeemable preference share (hereinafter referred to as “**RPS**”) AND Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether AAL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue and Listing of Debt Securities),

Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).

3. On enquiry by SEBI, it was observed that AAL had made an offer of RPS in the financial years 2010-2011 and 2011-2012(hereinafter referred to as “**Offer of RPS**”) and raised an amount of at least Rs.116.91 lacs from at least 116 allottees. Further, AAL had also made an offer of NCDs in the financial years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 (hereinafter referred to as “**Offer of NCDs**”) and raised at least an amount of Rs. 100.32 lacs from at least 756 allottees. The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it was *prima facie* concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures. It was also observed that AAL created a charge for an amount of Rs. 10.00 Crores on July 01, 2010 and appointed *Dristi Social Welfare Trust (represented by its trustees, viz. Ms. Nabina Jahan)* as Debenture Trustee for the Offer of NCDs.
4. As the above said *Offer of RPS and Offer of NCDs* were found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956 and the ILDS Regulations, SEBI passed an interim order dated February 16, 2017 (hereinafter referred to as “**interim order**”) and issued the following directions against AAL and its Directors viz., Mr. Sumantra Sinha, Mr.Arindam Pal, Mr.Rohit Das, Mr.Hasibul Haque, Mr.Firoj Hossain, Mr.Sekh Nazibulla, Mr. Sunirmal Goswami and Mr.Sheikh Abdul Robial, Basudev Ghosh and Devid Haslaf and its Debenture Trustee *Dristi Social Welfare Trust (represented by its trustees, viz. Ms. Nabina Jahan)*. (hereinafter collectively referred to as “**Noticees**”).
 - i. “AAL shall cease to mobilize fresh funds from investors through the offer and allotment of any securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly;
 - ii. AAL and the abovenamed Directors shall not 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;

- iii. AAL and the abovenamed Directors shall not dispose of, alienate or encumber any of its/their assets or not divert any funds raised from public either through *the offer and allotment of preference shares* or through *the offer and allotment of debentures*;
 - iv. AAL and the abovenamed Directors shall co-operate with SEBI and shall furnish all information/documents in connection with the *offer and allotment of preference shares* and *offer and allotment of debentures* including the documents sought vide letters dated January 30 2014 and the summons dated January 09, 2015; and
 - v. Dristi Social Welfare Trust and its trustee Ms. Nabina Jahan shall not henceforth act as debenture trustee in respect of debentures of AAL and shall not take up any new assignment or involvement in any new issue of securities in a similar capacity”.
5. The interim order also directed the AAL and its Directors/Debenture Trustee to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, should not be passed against them:
- i. “AAL and its abovenamed Directors, to jointly and severally refund money collected through the *offer and allotment of preference shares* and *offer and allotment of 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, 1956 till the date of actual payment) within a period of 180 days from the date of receipt of this order, supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI; and
 - ii. AAL, its abovenamed Directors, Dristi Social Welfare Trust and its trustee Ms. Nabina Jahan be refrained / 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.”
6. Vide the said interim order, AAL, its Directors along with its Debenture Trustee were

given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. They were also directed to furnish an inventory of their assets in their reply. The order further stated that the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard within 90 days from the date of receipt of the interim order.

7. The interim order further stated that *“In the event of the aforementioned persons or trust/trustee failing to file replies or requesting for an opportunity of personal hearing, within the said 90 days, the prima facie findings regarding the violations at paragraphs 19 to 22 of this order shall become final and absolute, without any further orders. Consequentially, AAL, its abovementioned Directors, Dristi Social Welfare Trust and Ms. Nabina Jahan shall automatically be bound by the directions contained in paragraphs 26 & 27 above till the expiry of a period of four years from the date of repayment to the satisfaction of SEBI. In case of failure to comply with the aforesaid directions within a period of one hundred eighty (180) days from the date of receipt of this order, appropriate enforcement actions as deemed fit, in terms of the SEBI Act, 1992, shall be initiated including reference to the State Government/ Local Police.”*
8. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated February 16, 2017. The copy of the Order sent to Mr. Rohit Das and Mr. Sumantra Sinha were delivered by way of Speed Post with Acknowledgement. The copy of the Order sent to the remaining Noticees were returned undelivered. Subsequently, copy of the Order was served through affixture at the last known address (as per MCA records) of AAL, Mr.Arindam Pal, Mr.Firoj Hossain and Mr.Sekh Abdul Robial. Thereafter, vide notification dated April 26, 2017 published in the newspaper “The Statesman” and “Bartaman Patrika” the remaining Noticees viz., Mr.Basudev Ghosh, Mr.Devid Haslaf, Mr.Hasibul Haque, Mr.Imran Ali, Mr.Sekh Nazibulla, Mr.Sunirmal Goswami, Dristi Social Welfare Trust and Mrs.Nabina Jahan were notified by SEBI, that interim order dated February 16, 2017 was issued against them and they were given a final opportunity

to submit their reply in the matter.

Replies:

9. It is noted that AAL, Mr. Basudev Ghosh, Mr. Devid Haslaf, Mr. Firoj Hossain, Mr. Hasibul Haque, Mr. Imran Ali, Mr. Sekh Nazibulla, Mr. Sekh Abdul Robial, Mr. Sunirmal Goswami, Dristi Social Welfare Trust and Mrs. Nabina Jahan neither submitted any reply nor sought any personal hearing within 90 days from the date of receipt of the interim order. Therefore, as per Paragraph 28 of the interim order reproduced at paragraph 7 above, the *prima facie* findings against them became final and absolute, without any further orders. Hence, they became bound by the directions mentioned in paragraph 26 and 27 of the interim order (reproduced at paragraph 5 above) till the expiry of a period of four years from the date of repayments to the investors to the satisfaction of SEBI.
10. Further, I also note that AAL, Mr. Basudev Ghosh, Mr. Devid Haslaf, Mr. Firoj Hossain, Mr. Hasibul Haque, Mr. Imran Ali, Mr. Sekh Nazibulla, Mr. Sekh Abdul Robial and Mr. Sunirmal Goswami failed to refund the money to the investors in compliance of the SEBI Order, SEBI initiated Recovery Proceedings under Section 28A of the SEBI Act 1992 against them. It is noted that vide order dated July 11, 2018, the Hon'ble Calcutta High Court had referred the matter of Angel Agritech Group of Companies to the Talukdhar Committee for identification and valuation of their assets with the ultimate objective of disbursing the amount to be realized from such assets to the individual investors. SEBI has also been served notice in this matter and a SEBI representative regularly appears before the Committee during the meetings. Several properties have been identified and pending for receipt of valuation report from the State agencies.
11. SEBI received replies from Mr. Arindam Pal, Mr. Sumantra Sinha and Mr. Rohit Das in respect of the interim order. In view of the same, the extant proceedings are in respect of Mr. Arindam Pal, Mr. Sumantra Sinha and Mr. Rohit Das.
12. Mr. Arindam Pal, Mr. Sumantra Sinha and Mr. Rohit Das vide their separate letters dated March 09, 2017, March 09, 2017 and March 10, 2017, respectively requested for

inspection of relevant documents and also requested not to pass any further negative orders against them in the interim period without providing an opportunity of making oral and written submissions. Considering the request, SEBI vide its letter dated March 14, 2017 and March 15, 2017 intimated that they will be given an opportunity for inspection of documents on March 28, 2017 at the time and the venue mentioned therein. Mr. Rohit Das, Mr. Arindam Pal (who also represented Mr. Sumantra Sinha) appeared in person on March 28, 2017 and inspected the documents.

13. Further, Mr. Arindam Pal vide letters dated March 31, 2017, April 03, 2017, April 12, 2017 and April 20, 2017 requested SEBI to provide copies of complaints pertaining to the financial years 2009-10 and 2010-11. SEBI vide letter dated March 31, 2017 and April 28, 2017 provided List of the complaints received.
14. Considering the request of Mr. Arindam Pal, Mr. Sumantra Sinha and Mr. Rohit Das, vide hearing notice dated September 06, 2017, an opportunity of personal hearing has been granted to them on October 03, 2017.
15. Mr. Rohit Das vide letter dated September 26, 2017 filed a detailed reply to the interim order. Vide the said reply, Mr. Rohit Das, *inter alia*, submitted as under:
 - i. “... A bare perusal of the documents filed at the time of incorporation of AAL, including the Memorandum and Articles of Association, would show that I am neither a promoter nor a Subscriber to the Memorandum and Articles of Association of the Company. I have never been an equity shareholder or any other beneficiary of the Company. I was only made an initial director of the Company by my former Partner, Mr. Arindam Pal in my professional capacity as an Advocate and Managing Partner of the Firm RDA Legal because the same was for purpose of facilitating the delivery of legal services by the Kolkata office of Firm under the charge of Mr. Arindam Pal. The Firm was professionally engaged for providing incorporation services by the Client (Mr. S.K. Hasibul Haque, promoter of AAL) vide the Mandate Letter dated January 15, 2010, and I was made an initial Director of AAL by my former Partner,

Mr. Arindam Pal purely in my professional capacity. The Form 32 filed for my appointment on the Board of Directors clearly mentions that I am being appointed in the category of “Professional” Director. I have not accepted any salary or sitting fees personally for acting temporarily as the Director of the Company/AAL, and the only fees paid by the Client to the Firm/RDA Legal for the Legal Services in connection with the incorporation of the Company/AAL, as agreed in the Mandate Letter dated January 15, 2010 by Mr. Arindam Pal on behalf of the Firm and the Client.

- ii. During the said period of only 3 weeks, i.e. from the date of incorporation being February 05, 2010 till March 01, 2010, while I was a Director of AAL, I have not attended even a single Board meeting of the Company. In fact only one Board Meeting was held during this period, i.e. on February 08, 2010 by Mr. Arindam Pal and Mr. Sumantra Sinha, that too only for the purpose of passing necessary Resolution of the Board of Directors for filing Statement in Lieu of Prospectus and Declaration in Form E-20 which is mandatory for a public company under Section 149 of the Act, for obtaining the Certificate of Commencement of Business.*
- iii. During the said period of only 3 weeks, i.e. from the date of incorporation being February 05, 2010 till March 01, 2010, while I was a Director of AAL, I have never been a signatory to any bank accounts of the Company and in fact to the best of my knowledge during this period, the Company had no bank accounts.*
- iv. During this period of only 3 weeks, I have not dealt with any funds of the Company or engaged in any other business activities or activities of an executive character whatsoever, leave alone any activity of raising or receiving any funds on behalf of the Company from any investors or the general public. In fact, during this period I was based in New Delhi and not even in the State of West Bengal.*
- v. At the time of incorporation, the main objects of the Company as per the Memorandum and Articles of Association is to carry on the business of “dealers, traders, merchants, importers, exporters, canners, bottlers, blenders, makers of preserves, raisers, growers, producers, manufacturers and marketers of all kinds of seeds and seed products, tissue culture, fruit and fruit products, vegetable products, agricultural*

products, forests, forest products, plantation products, horticultural products etc.”
The authorised share capital of the Company as per the Memorandum of Association filed at the time of incorporation was Rs. 1,00,00,000/-(Rupees One Crore only) divided into 10,00,000 (Ten Lakhs)equity shares of Rs. 10/-(Rupees Ten only) each. The Company was not authorised to issue any preference shares whatsoever, redeemable or otherwise.

- vi. *At the time I was made a Director of AAL by Mr. Arindam Pal, I had no knowledge and no reason to suspect that any of the Clients and/or Promoters were or would be engaging in any activity pertaining to raising of fund/investments from the public or otherwise, or that the Clients and/or Promoters may in the future use AAL for the purpose of raising of fund/investments from the public or otherwise. No such facts were ever disclosed to me by Mr. Arindam Pal, and to the best of my knowledge and belief, no such facts were ever disclosed by the Clients and/or Promoters to Mr. Arindam Pal, Mr. Sumantra Sinha or any other Advocates/Associates working at our Kolkota Office, when the professional Legal Services of the Firm in connection with incorporation of the Company/AAL was engaged.*
- vii. *During the short period of 3 weeks, when he had been made a Director of AAL the only two other Directors on the Board of Directors of the Company, were his colleagues Mr. Arindam Pal and Mr. Sumantra Sinha. None of them have issued and/or authorized the issuance of and/or signed any documents pertaining to the issuance of any Redeemable Preference Shares ("RPS") of Non-Convertible Debentures (NCD).*

Hearing and submissions:

16. Mr. Rohti Das appeared in person before me and made the following submissions:

- i. He is an advocate by profession and at the relevant point of time he used to professionally help companies in their incorporation and carrying out other legal formalities in relation thereto.
- ii. In certain cases, he used to act as an initial director and shareholder in companies

- since having a DIN was a mandatory requirement for directorship in a company and the actual directors would usually not have their DINs at the time of incorporation.
- iii. He used to be a director only for the purpose of procedural compliance and never used to be involved in the business of the companies.
 - iv. As regards the matter of Angel Agrotech Ltd., Mr. Haque approached Mr. Arindam Pal (a partner of law firm where Mr. Rohit Das was also a partner) for the purpose of incorporation. Thereafter, Mr. Rohit Das, Mr. Arindam Pal and Mr. Sumantra Sinha applied for incorporation of the company and became initial directors. They were non-executive professional directors in the company.
 - v. The application for DIN for Mr. Haque was rejected twice in February 2010 and he was finally provided a DIN on February 26, 2010. Mr. Rohit Das resigned from the company on the next working day i.e. March 1, 2010.
 - vi. During his tenure with the company, it did not issue any non-convertible debentures or redeemable preference shares. In fact, at that point of time, the articles of the company did not authorize it to issues preference shares.
 - vii. None of the complaints referred in the order relate to period of his directorship except for one case for an amount of Rs. 7,000 (i.e. February 26, 2010), which was actually prior to name approval by ROC.
17. Mr. Abhishek V., Mr. Dhaval Kothari and Mr. Adwitiyaa Das appeared on behalf of Mr. Arindam Pal and Mr. Sumanta Sinha and made the following submissions:
- i. Their role and directorship in the company was similar to Mr. Rohit Das
 - ii. Mr. Sumantra Sinha resigned from the company on March 31, 2010 when another director of the company obtained DIN. Further, his resignation got delayed because no other director of the company had a digital signature certificate (DSC) without which requisite filings could not be done on behalf of the company.
 - iii. Mr. Arindam Pal resigned in June 2010 because DIN application of Mr. Nazibulla who was supposed to replace him on the board got rejected 4 times and was finally approved in June 2010,

- iv. During their directorship no board meeting of the company took place. Also the company was not authorized to issue preference shares at that point of time.
 - v. They did not receive any of the complaints referred in the order.”
18. Pursuant to the personal hearing, Mr. Arindam Pal and Mr.Sumantra Sinha vide letters dated October 10, 2017 and October 12, 2017 filed separate and identical replies on merit (except the date of resignation) to the interim order. The submissions in brief made by Mr. Arindam Pal and Mr.Sumantra Sinha are as follows:
- a. *“The documents relied upon by SEBI including in relation to the purported issue of NCDs during my tenure as a director, have not been provided to me as part of Inspection resulting in violation of natural justice.*
 - b. *No legal basis for creating artificial distinction between complaints received before date of incorporation of AAL and after date of incorporation of AAL;*
 - c. *The purported “certificates” showing issue of Redeemable Preference Shares (RPS) could not have been validly issued by AAL, as admittedly AAL had no power to issue RPS (in accordance with relevant provisions of its Memorandum of Association as on the date of incorporation) till the authorised share capital of AAL was increased, which was done only four months after my resignation. Similarly the purported Secured NCDs could not have been issued without authorization of the Board and shareholders of AAL, which admittedly was obtained nearly a year after I resigned as a director of AAL.*
 - d. *SEBI’s reliance on RPS share certificates is misplaced as the applicable law required share certificates to be issued only after Board Approval which was admittedly not obtained, as no allotments were approved during my tenure as a director of AAL. The RPS share certificates do not bear my signature and they have been issued inter alia by Mr. Hasibul Haque who held himself out as Chairman cum Managing Director (CMD).*
 - e. *I was never an “Officer in Default” within the meaning of Section 5 of the Companies Act, 1956 as AAL in any case had a whole-time director or a managing*

director (Mr. Hasibul Haque) with effect from March 01, 2010. Any allotments illegally made, cannot, therefore, in any case, render me an “Officer in Default” in view of Section 5 (g) of the Companies Act, 1956.

- f. SEBI has simply aggregated the number of allottees in a financial year without determining pertinent information like the dates of each allotment and at what point, they exceeded 49 allottees. Whether the allotments were made at a go or in tranches, has not been examined at all. The records available with RoC clearly show that the impugned allotments in question occurred well after my (Mr. Arindam Pal) resignation.
- g. The reliance on the Hon’ble Securities Appellate Tribunal’s decision of *Manoj Agarwal Vs. SEBI* (Appeal 66 of 2016, Order dated July 14, 2017) is misplaced as in that case: (i) there was no managing director or whole time director appointed by the company and (ii) the impugned allotments were validly undertaken when the appellant was a director i.e. the ex-parte order passed by SEBI clearly identified the dates of the allotment based on the return of allotments filed by the Company.”

19. Mr. Sumantra Sinha, in addition to the above submissions, submitted the following factual clarifications sought during the personal hearing:

- i. “In relation to the query why I had resigned only on March 31, 2010 despite the fact that Mr. Firoj Hossain’s Director Identification Number got confirmed on February 25, 2010... I was the only person at RD Associates who had a valid DSC for the purpose of e-filing documents with the RoC. In light of the same, all e-filings on behalf of the clients at RD Associates were done using my DSC...
- ii. It is pertinent to mention that a director cannot use his own DSC for the purpose of filing his own resignation from the Board of Directors of the Company. In the present case of AAL, although the DINs of Mr. Hasibul Haque and Mr. Firoj Hossain were confirmed on February 25, 2010, the DSC of Mr. Hasibul Haque was processed much later owing to the delay in submission of his KYC documents

to RD Associate. Mr. Firoj Hossain did also not have a DSC at that time.

- iii. Mr. Hasibul Haque's DSC key was only obtained much later, on or around March 31, 2010. In view of the same, I was compelled to continue on the Board of Directors of AAL till such time the DSC of Mr. Hasibul Haque was processed so that the same could be used to file my resignation from AAL. Copy of Form 32 dated April 06, 2010 in relation to appointment of Mr. Firoj Hossain and my resignation from the Board of Directors shows that the same is e-filed using the DSC of Mr. Hasibul Haque. I was therefore, compelled to stay on Board of AAL till March 31, 2010 and finally resigned with effect from March 31, 2010.

20. In addition to the reply and oral submissions made during the personal hearing, Mr. Rohit Das vide letter dated December 18, 2017 made the following additional submissions:

“.... during the course of personal hearing a query was raised as to whether the name of the Company as allotted by the RoC, Kolkata, viz., Angel Agritech Limited was the first preference as provided in Form 1A for obtaining name approval. On perusal of Form 1A, it is transpired that Angel Agritech Limited was only the third preference for the Company...”.

21. It is observed that inspection was granted to the Noticees on March 28, 2017 at Eastern Regional Office of SEBI. Further, various documents have been provided to the Noticees vide letters dated March 31, 2017, April 28, 2017 & September 28, 2018. Subsequently, Mr. Sumantra Sinha vide letter dated March 26, 2019 and Mr. Arindam Pal vide letter dated April 01, 2019 sought legible copies of the documents in the matter. Vide letters dated September 30, 2019 and October 09, 2019 Mr. Sumantra Sinha and Mr. Arindam Pal once again sought the legible copies of the documents in the matter. Subsequently, Mr. Arindam Pal and Mr. Sumantra Sinha had visited ERO on November 04, 2019 and November 08, 2019 respectively and took inspection of documents. Thereafter, the said Noticees were granted an opportunity of hearing on February 06, 2020.

22. On February 06, 2020, Mr. Rohti Das appeared in person before me from Eastern Regional

Office through Video Conference and made the following submissions:

- i. During the period, it was a common practice of law firms in Kolkata to assist the Companies for incorporation.
- ii. For the purpose of incorporation of a Company, Mr. Hazibul Haque approached their Law Firm wherein Mr. Arindam Pal was his partner and Mr. Sumantra Sinha was his Associate.
- iii. As Mr. Hazibul Haque was not having a DIN, their DINs were used for incorporation formalities and as soon as Mr. Hasibul Haque received DIN, he has resigned.
- iv. Mr. Hazibul Haque has also given them a mandate letter for the incorporation of the Company.
- v. Though they were initial Directors, they were non-executive professional directors in the company.
- vi. As per the MoA and AoA of the Company, the Company was only authorized to raise capital through issuance of Equity shares only. However, the Board authorized to issue RPS after six months of its incorporation.
- vii. He was a Director of the Company only for three weeks.
- viii. As advised earlier during the personal hearing, he has verified whether there were RPS certificates before incorporation. In this regard, it is noted that there were RPS certificates before incorporation of the Company.
- ix. The NCDs available on record were that of Angel Rural Development or that of Angel Group Companies.

Mr. Somasekhar Sundaresan appeared on behalf of Mr. Arindam Pal and Mr. Sumanta Sinha ('the Noticees herein'), along with Ms Adwitiyaa Das and made the following submissions:

- i. The Noticees were professional non-executive directors in Angel Agritech Limited. Mr. Sumanatra Sinha was a director from February 5, 2010 to March

31, 2010 and Mr. Arindam Pal was a Director from February 05, 2010 to June 15, 2010.

- ii. Apart from the reference to the financial year in which the allotments were allegedly made, SEBI Order does not specify the date of allotment.
- iii. During their tenure, Company's authorized share capital comprised only equity shares. The authorization to issue RPS was passed only in October 3, 2010 i.e. after four to eight months of resignation of the Noticees.
- iv. Further, the Board of the Company approved the issue of NCDs only on June 06, 2011 i.e. over a year after the resignation of the Noticees.
- v. It is well settled that a non-executive director is not in charge of or responsible for the day to day conduct of the business of the Company. They have insight into the affairs of the Company only through Board processes. In this regard, the Noticees placed reliance upon the MCA Master Circular dated July 29, 2011 and Judicial precedents viz., Chintalapati Srinivas Raju Vs. SEBI (SC), Sayanti Sen Vs. SEBI (SAT), PG Electroplast Limited Vs. SEBI (SAT) Uppal Devinder Kumar Vs. SEBI (SAT).
- vi. The proceedings are vitiated for gross delay as the subject matter pertains to events occurred nearly 10 years ago and SEBI Order has been issued after 7 years of the resignation of the Noticees.

Consideration of Issues & Findings

23. I have considered the allegations and materials available on record such as Interim Order, various replies filed by the Noticees along with the documents contained therein, oral submissions made by the Noticees during the personal hearing and documentary evidence available on MCA21 portal, etc. On perusal of the same, the issue before me is to determine the extent of applicability of the directions passed qua Mr. Arindam Pal, Mr. Sumantra Sinha and Mr. Rohit Das vide Order dated February 16, 2017 in view of the replies given by the Noticees.

24. I note that the interim order which has become final for AAL and other directors held that AAL had made an offer of RPS in the financial years 2010-2011 and 2011-2012 and raised an amount of at least Rs.116.91 lacs from at least 116 allottees. Further, AAL had also made an offer of NCDs in the financial years 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 and raised at least an amount of Rs. 100.32 lacs from at least 756 allottees.

25. From the perusal of MCA 21 Portal, the following details of the appointment and resignation of the Noticees are observed:

Name of the directors	Date of appointment	Date of cessation
Mr. Sumantra Sinha	February 05, 2010	March 31, 2010
Mr. Rohit Das	February 05, 2010	March 01, 2010
Mr.Arindam Pal	February 05, 2010	June 15, 2010

26. In this regard, I note the contentions raised by the Noticees viz., Rohit Das, Sumantra Sinha and Arindam Pal. From the perusal of the submissions, I note that all of them claimed that they had become initial directors of AAL in their professional capacity as Advocates and Managing Partners/ Associates of the Firm RDA Legal. I note that it is not disputed by the Noticees that they were the initial directors. I note from the material available on record that Mr. Sumantra Sinha, Mr. Rohit Das and Mr. Arindam Pal had given their consent vide letters dated January 25, 2010 to act as directors of AAL. I also note that the Noticees did not dispute their resignation as mentioned in the MCA 21 Portal. In view of the same, I find that Mr. Sumantra Sinha was appointed as a director of AAL on February 05, 2010 and resigned from the directorship of the Company on March 31, 2010. I also find that Mr. Rohit Das was appointed as a director of AAL on February 05, 2010 and resigned from the directorship of the Company on March 01, 2010. Further, I find that Mr. Arindam Pal was appointed as a director of AAL on February 05, 2010 and resigned from the directorship of the Company on June 15, 2010 .

27. Now the issue to determine is whether there was issuance of RPS and NCDs during the tenure of the Noticees.

Issuance of RPS:

28. In this regard I note that the Noticees submitted that AAL's authorised share capital comprised only equity shares. Under Section 94 of the Companies Act, 1956, AAL could have increased its authorized share capital and issue preference shares only by way of a resolution passed at a shareholders meeting. The authorization to issue preference share capital was passed only in October 30, 2010 i.e. after the resignation of the Noticees. Therefore, the Noticees contended that there could not have been any issue of RPS prior to October 03, 2010 attributable to the Noticees.

I note that during the tenure of Mr. Rohit Das there were three RPS certificates filed by the Complainants each dated March 01, 2010 issued by the Company. I also note that during the tenure of Mr. Sumantra Sinha there were three RPS certificates dated March 13, 2010, March 23, 2010 and March 30, 2010 issued by the Company. During the tenure of Mr. Arindam Pal there were around seven RPS certificates issued by the Company. I note from the interim order that as per MCA records during the financial year there were two allotments of RPS and as per investor complaints received by SEBI there were 17 RPS certificates issued by the Company during the financial year 2010-2011. I note that the allotments of RPS made by the Company is after the resignation of the Noticees. I note that out of the 17 Complaints mentioned in the interim Order, during the tenure of the Noticees maximum of 3 RPS certificates were issued during the tenure of any of the Noticees which in any case below the specified number of 49 as per proviso to Section 67(3) of the Companies Act, 1956. Further, the perusal of the RPS certificates shows that it bears the signature of Mr. Hasibul Haque, Director of AAL. It is also noted from the minutes of the Extra Ordinary General Meeting of the Company dated October 30, 2010 that the shareholders of AAL resolved to increase its authorized equity capital from Rs.1,00,00,000 to Rs.10,00,00,000 by mandating permission to issue preferences share capital. The said minutes was signed by directors of AAL Mr. Hasibul Haque and Mr.

Firoj Hossain. I note that the approval process for the issuance of RPS was done by the Company much after the resignation of the Noticees. I note that as regards the said issuance of RPS, the Company and the directors who issued the certificates are liable for the issues made prior to the approval as the same were issued without authorization through Board process. Considering these facts that the allotments were made after the resignation of the Noticees and the RPS Certificates were issued prior to the approval process, I am inclined to give the benefit of doubt to the Noticees as regards the issuance of RPS.

Issuance of NCDs:

29. The interim order alleges that Mr. Sumantra Sinha and Mr. Rohit Das were directors of AAL during financial year 2009-2010 and Mr. Arindam Pal was a director of AAL during financial years 2009-2010 and 2010-2011 when NCDs were issued by the Company. In this regard, the Noticees contended that during their tenure, AAL could not have issued secured NCDs since the same would have required approval of the Board of directors and approval of the shareholders. For the same, they have relied upon the Articles 57-61 of the Articles of Association of AAL which deal with issue of debentures under the heading 'Borrowing Powers'. I note that the Board of AAL approved the issue of NCDs only on November 30, 2010 held for the same and created charge on December 24, 2010. I note that these events happened after the resignation of the Noticees. Considering the same, I am inclined to give the benefit of doubt to the Noticees as regards the issuance of NCDs.
30. I note that the Noticees contended that they cannot be cast upon with the responsibility of "Officer in default" as the Noticees were non-executive directors who had acted in the capacity of a legal professional for the limited purpose of facilitating and expediting the incorporation of the company. The difference between a "professional non-executive director" and "promoter executive directors" like Shri Hasibul Haque, Shri Firoj Hossain and Shri Sekh Nazibulla has to be determined before adjudging the matter. In this regard,

I note that it is already found that the Noticees had resigned from the directorship of the Company before the issuance of RPS and NCDs hence, the determination of the issue whether they were liable as ‘officer in default’ does not arise.

31. In view of the discussion above, the directions issued with respect to directors of AAL viz., Mr. Sumantra Sinha, Mr. Rohit Das, Mr. Arindam Pal, vide interim order dated February 16, 2017 need not be continued and hence are liable to be revoked.
32. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B of the SEBI Act, hereby revoke the directions issued in respect of the Noticees viz., Mr. Sumantra Sinha, Mr. Rohit Das and Mr. Arindam Pal.
33. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.

DATE: March 16, 2020

PLACE: Mumbai

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