

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Amazan Agro Products Limited (PAN: AAECA2227N) and its Directors, viz. Shri Joydeb Garai (DIN: 02626788, PAN: AEPPG8484F), Shri Sunil Kumar Brahamchari (DIN: 03525188, PAN: ADGPB7510D), Shri Manigrib Bag (DIN: 03525192, PAN: AIAPB0966A), Shri Dilip Kumar Gangopadhyay (DIN: 03525194, PAN: ADXPG0369E), Shri Debabrata Ghosh (DIN: 05264819, PAN: ACWPG8355L), Shri Pahari Basu (DIN: 02669894 , PAN: ACXPB9394B), Shri Basudeb Garai (DIN: 02652917, PAN: AGNPG3984G), Shri Dinabandhu Das (DIN: 02626822, PAN: AEWPD5164N), Gargi Biswas (DIN: 02626808, PAN: BMEPB2162H), Shri Samir Das (DIN: 01637363, PAN: ADAPD1592M).

- 1.1 Amazan Agro Products Limited (hereinafter referred to as 'AAPL' or 'the company') having its Office at Infinity Infotech Parks, 2nd Floor, Tower 1, Plot A 3 Block GP, Sector-5, Electronics Complex, Kolkata – 700091, West Bengal, India, was incorporated on January 22, 2003, with CIN No. U63022WB2003PLC095694 with the Registrar of Companies (ROC), Kolkata.
- 2.1 An enquiry by SEBI, revealed that AAPL had issued the Non - Convertible Redeemable Preference Shares, to 1,169 persons in the year 2009-2010 ("hereafter referred to as RPS") and collected an amount of Rs. 29,51,400. As the said offer of RPS was found *prima facie* in violation of respective provisions of the SEBI Act, 1992 ("SEBI Act"), the Companies Act, 1956, SEBI passed an *interim* order dated March 19, 2015 and issued directions mentioned therein against AAPL and its Directors, viz., Shri Joydeb Garai, Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh , Shri Pahari Basu , Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas, Shri Samir Das.
- 2.2 *Prima facie findings/ allegations:* In the said *interim* order, the following *prima facie* findings/ allegation were recorded. AAPL had made an offer and issued RPS to 1169 persons in the year 2009-2010 and had collected an amount of Rs. 29,51,400 through allotment as shown in the following table:-

Table 1

Year	Type of Security	No. of securities	Amount per share (in Rs.)	Total Amount Raised (in Rs.)	No. of Allottees
2009 – 10	Non-Convertible Redeemable Preference Shares	14757	200	29,51,400	1169

2.3 The said RPS were issued under different plans for different tenures with different rates of dividends as shown below:-

Table 2

<i>Plan</i>	<i>F</i>	<i>G</i>	<i>H</i>
<i>Rate of Dividend</i>	<i>9%</i>	<i>10%</i>	<i>11.5%</i>
<i>Redemption Period</i>	<i>1 Year</i>	<i>3 Year</i>	<i>5 Year</i>

- *The entire amount of Rs. 200/- per preference Share.*
- *The Non-Convertible Redeemable Preference Shares are being issued pursuant to resolution passed at the meeting of the Board of Directors on 21st May, 2009 and also approved by the duly convened General Meeting of the company."*

2.4 The above offer of RPS and pursuant allotment were deemed public issues of securities under the first proviso to Section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under Section 60, Section 56(1) and 56(3), Sections 73(1), (2) and (3) of the Companies Act were not complied with by AAPL in respect of offers of RPS.

2.5 In view of the *prima facie* findings on the violations, the following directions were issued in the said *interim* order dated January 30, 2015, with immediate effect:

- i. AAPL shall not mobilize any fresh funds from investors through the *offer of RPS* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
- ii. AAPL and its past and present Directors, viz. Shri Joydeb Garai , Shri Sunil Kumar Brahamchari, Shri Manigrib Bag , Shri Dilip Kumar Gangopadhyay , Shri Debabrata Ghosh, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas, Shri Samir Das are prohibited from issuing prospectus or any offer document or issue advertisement for

soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;

- iii. AAPL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
- iv. AAPL shall provide a full inventory of all its assets and properties;
- v. AAPL's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. AAPL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *offer of RPS*, without prior permission from SEBI;
- vii. AAPL and its abovementioned Directors shall not divert any funds raised from public at large through the *offer of RPS*, which are kept in bank account(s) and/or in the custody of AAPL;
- viii. AAPL and its abovementioned Directors shall furnish complete and relevant information including the details regarding issuance of the NCDs within 21 days from the date of receipt of this Order.

2.6 The direction for furnishing the information regarding the NCDs was pursuant to the complaints against the Company regarding issuance of NCDs during the financial year 2009-10 and 2010-2011 and non-cooperation by the Company during the enquiry.

2.7 Vide the said *interim* order, AAPL and its abovementioned directors were given the opportunity to file their replies, within 21 days from the date of receipt of the said *interim* Order. The order further stated that the concerned persons may also indicate whether they desired to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

3.1 *Service of interim order:* The copy of the said *interim* order was sent to the above mentioned entities vide SEBI's letter dated January 30, 2015, through speed post acknowledgement due. However, no reply was received.

4.1 Subsequently, vide letter dated April 02, 2015, all the persons against whom the above said *interim* order was passed, were intimated that they shall be given opportunities of personal hearing on April 22, 2015.

- 4.2** In addition to this, vide notification dated April 14, 2015, published in newspaper *Ananda Bazar Patrika*, and notification dated April 15, 2015 published in newspaper *Times of India*, AAPL and the directors were notified that they will be given the final opportunity of being heard on April 22, 2015 at the time and the venue mentioned therein.
- 5.1** *Hearing and submissions:* One Mr. Joydeb Garai, vide his letter dated April 16, 2015, while writing on behalf of the Company and Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Shri Joydeb Garai, Gargi Biswas, Shri Dilip Kumar Gangopadhyay, Shri Manigrib Bag, Shri Sunil Kumar Brahamchari, Shri Samir Das and Shri Debabrata Ghosh, sought for an adjournment of the personal hearing by two months, on the ground that the Company is under liquidation and the records of the company, are in the custody of the Official Liquidator appointed by the High court of Calcutta.
- 5.2** On the date fixed for the personal hearing i.e. April 22, 2015, Mr. Samir Das was represented by one Mr. Arun Kumar Singh. As the representative did not file his authority letter, his representation was not considered and liberty was granted to the Mr. Samir Das to file his written submissions within a period of 7 days.
- 5.3** In view of the request made by Mr. Joydeb Garai, vide his letter dated April 16, 2015, another opportunity of hearing was scheduled on July 30, 2015. The same was communicated by SEBI through speed post vide letter dated July 15 2015. The letter sent to Basudeb Garai was delivered. The letters sent to the Company, Shri Dilip Kumar Gangopadhyay, Shri Pahari Basu, Shri Manigrib Bag, Shri Sunil Kumar Brahmachari, Shri Dinabandhu Das and Shri Joydeb Garai were returned undelivered. However, none of the entities availed the opportunity of hearing granted to them on July 30, 2015.
- 5.4** The Company vide letter dated April 09, 2015 denied issuing any NCDs in FY 2009-10 and 2010-2011 and stated that it has already submitted the information vide its letter dated August 12, 2013 to SEBI. Vide this letter, the Company admitted of issuing RPS and collecting Rs. 29,51,400 from its distributors and retailers in the financial year 2009-10. The Company also stated that it had redeemed its entire RPS to its shareholders in financial year 2010-11 and the same is duly reflected in the audited balance sheet and profit and loss account of the Company for 2010-11, and the Balance sheet is already submitted with the ROC. It

was also stated that though the said balance sheet and Profit and Loss account of the Company was signed by Mr. Amit Kumar of the audit firm Mukherjee & Associates though later he denied signing/ certifying the Annual Accounts of the Company for year 2010-11. It was stated by the Company that FIR has been filed against him. It was also stated that the Company is under liquidation by the order of the Hon'ble High court.

5.5 Shri Samir Das vide letter dated April 28, 2015, stated that he had been made as additional director of the Company, for a period of May 15, 2012 to June 21, 2012 without his knowledge and consent. He also enclosed the copy of the letter dated June 04, 2012 stated to be sent by him to the Company addressed to the director, Shri Joydeb Garai, intimating the Company that he had come to know that his name is shown as additional director in the filings of the Company.

6.1 I have considered the allegations, replies, documents downloaded from MCA 21 Portal' and other material on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

1. Whether the company came out with the Offer of RPS?
2. If so, whether the said issues are in violation of Section 60, Section 56(1) and 56(3), Sections 73(1), (2) and (3), the Companies Act,1956?
3. If the findings on question No.2 are found in the affirmative, who are liable for the violation committed?

7.1 *Whether the company came out with the Offer of RPS?:* I have perused the *interim* order dated January 30, 2015 for the allegation of Offer of RPS. The company and its directors have not disputed the said issuance by way of any oral or written representations. The Company, instead, admitted vide the letter dated April 9, 2015 that it has issued RPS and collected Rs. 29,51,400 from its distributors and retailers of the Company in the financial year 2009-10

7.2 I have also perused the Form 2 filed in respect of the issue of redeemable preference shares on March 30, 2010, I find that 14, 757 RPS shares at Rs. 10 face value with *premium* of Rs. 190 have been issued by the Company to 1169 persons and a total amount of Rs. 29,51,400 (which includes the share premium amount of Rs. 28,03,830) has been collected by the company as shown in Table 1 above

with the terms and conditions mentioned in Table 2.

- 8.1** *If so, whether the said issues are in violation of Section 60, Section 56(1) and 56(3), Sections 73(1) (2) (3), the Companies Act, 1956?:* The provisions alleged to have been violated and mentioned in Issue No.2 are applicable to the offer made to the public. Therefore the primary question that arises for consideration is whether the issue of preference shares covered in Issue No 1 is a 'public issue'. At this juncture, reference may be made to sections 67(1) & (3) of the Companies Act, 1956:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."

- 8.2** The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & ORs. Vs. 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:-

"84. 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.

85. 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. (Emphasis supplied).

- 8.3** Section 67(3) 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 {(section 67(3)(a))}, or, if the offer is the domestic concern of the persons making and receiving the offer {(section 67(3)(b))}, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the first proviso to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons.
- 8.4** In the instant case, as the offer and allotment of RPS was made by AAPL to 1,169 persons i.e. more than 49 persons, the offer of RPS falls within the first proviso of section 67(3) of Companies Act, 1956. In view of the same, the stance of the Company that RPS were issued to the retailers and distributors of the Company does not, even if assumed, divest the nature of the deemed public issue. I note that these issue will still be deemed deemed to be public issues and were mandated to

comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

- 8.5** 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. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), “prospectus” means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate.
- 8.6** The allegation of non-compliance of the above provisions was not denied by the company or directors or the promoters. Neither the company nor the directors produced any record to show that AAPL has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or filed a Prospectus with ROC or issued application forms accompanying the abridged prospectus. Therefore, I find that, AAPL and its directors and promoters responsible for the failure to issue prospectus have not complied with Section 56(1), 56(3) and 60 of the Companies Act, 1956.
- 8.7** Further, by issuing RPS to more than 49 persons, AAPL had to compulsorily list such securities in compliance with 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 within 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.
- 8.8** The allegation of non-compliance of the above provisions was not denied by the company or directors. I find that no records have been submitted to indicate that it had made an application seeking listing permission from stock exchange nor did it refund the amounts consequent upon such failure. Thus, AAPL has contravened the

said provisions. AAPL has not provided any records to show that the amount collected by AAPL are kept in a separate bank account. Therefore, I find that AAPL has also not complied with the provisions of section 73(3) as it has not kept the amounts received from investors in a separate bank account and failed to repay the same in accordance with section 73(2) as observed above.

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

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

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

8.10 In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed.

8.11 In view of the forgoing findings, I am of the view that AAPL was engaged in fund mobilizing activity from the public, through the offer and issuance of RPS and has contravened the provisions of sections 56, 60 and 73 of the Companies Act, 1956.

9.1 *If the findings on question No.2 are found in the affirmative, who are liable for the violation committed:* Section 56(1) and 56(3) read with section 56(4) 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 section.

- 9.2** 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 becomes 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.
- 9.3** SEBI, as per section 27(2) of the SEBI Act, has the powers to proceed against directors of such companies. In cases of financial fraud, the role of directors in prevention of the same is of utmost importance. They are required to take diligent measures in preventing the same. They are also required not to be neglectful in the affairs of the company which results in the violation of various laws such as deemed public issue in violation of law. In deemed public issue in violation of law, money is collected from innocent, ill-informed and gullible public, without the Company giving the statutory protection available to those investors under the law such as, full and necessary disclosures about the company, an exit opportunity by way of listing of the shares. The purpose of refund in such cases as per law, is to protect the investors who have parted with their money without having any opportunity of exit and without full disclosures about the Company which deprives their informed consent.
- 9.4** Reference may also be made to the ratio of the Hon'ble High court of Madras in *Madhavan Nambiar vs Registrar Of Companies* (2002 108 Comp Cas 1 Mad) which observed "In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956".
- 9.5** SEBI also has powers under section 11 and 11B of the SEBI Act to pass direction of refund along with interest. The Hon'ble Bombay High court in *B.P.Plc (Formerly B.P.Amoco Plc) vs SEBI*, (2002 (4) Bom CR 79), held that that SEBI has powers to award interest in exercise its power under section 11 and 11B of SEBI Act, as stated below:-

“Applying the principles regarding award of interest as has been held by the Apex Court in Secretary, Irrigation Department vs. G.C.Roy (supra) to the effect "a person deprived of the use of money to which he is legitimately entitled to has a right to be compensated for the deprivation, call it by any name. It may be called "interest, compensation or damages," the investors are entitled to be compensated by way of interest for delayed payment. Under these circumstances we find no substance that there is no power to award such an interest.”

- 9.6** The Company claimed that it had redeemed its entire RPS to its shareholders in financial year 2010-11 and the same is duly reflected in the audited balance sheet and profit and loss account of the Company for 2010-11, and the Balance sheet is already submitted with the ROC. It was also stated that though the said balance sheet and Profit and Loss account of the Company was signed by Mr. Amit Kumar of the audit firm Mukherjee & Associates, he denied later saying that that he had not signed/ certified the Annual Accounts of the Company for the year 2010-11. It was stated by the Company that a FIR has been filed against him.
- 9.7** On perusal of the balance sheet as on March 31, 2010, I find that the Company has recorded therein the issuance of 1,47,570 preference shares. In the said balance sheet in the column meant for the amount of preference shares as on March 31, 2009, no entry has been made indicating issuance of RPS during the year 2008-09. Further it is stated therein that the Company has issued 12,128 number of one year preference shares, 1672 number of 3 years preference shares, 914 number of 5 years preference shares and 43 number of 13 years preference shares. In the Auditor Report- 2010-11 an entry of Rs.1,47,570/- as capital redemption reserve is shown. It is noted that as per section 80(d) of the Companies Act, 1956, where any redeemable preference shares are redeemed out of profits which would otherwise have been available for dividend, a sum equal to the nominal amount of the shares redeemed should be transferred to capital redemption reserve account. In view of the same, the entry appears to be an indication of redemption of preference shares. However, no reliance could be placed on the Annual Report - 2010-11, in view of the issue of authenticity raised by the Auditor of the Company. Therefore, there is no conclusive proof of repayment as claimed by the Company. On perusal of the Note 3.01.2 appended to the Balance sheet (audited by B.K Choraria & Company) as on March 31, 2012 shows that as on March 31, 2011, 1,47,57 compulsorily convertible shares are shown as redeemed. It may be noted that the issue in question

is redemption of redeemable preference shares. Therefore, the same does not help in advancing the case of the Company.

- 9.8** In view of the provisions of law, AAPL and its Directors, viz., Shri Joydeb Garai, Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas, Shri Samir Das are responsible for the refund. From the available information as per the *Form 32*, the details of the appointment and resignation of all the directors are given in the Table below:

Table 3

S.No.	Name of directors	Date of Appointment	Date of cessation
1	Shri Joydeb Garai	10/03/2006	-
2	Shri Sunil Kumar Brahamchari	01/04/2011	-
3	Shri Manigrib Bag	01/04/2011	-
4	Shri Dilip Kumar Gangopadhyay	01/04/2011	-
5	Shri Debabrata Ghosh	15/05/2012	-
6	Shri Pahari Basu	22/01/2003	15/05/2010
7	Shri Basudeb Garai	22/01/2003	21/06/2012
8	Shri Dinabandhu Das	10/03/2006	15/05/2010
9	Gargi Biswas	10/03/2006	21/06/2012
10	Shri Samir Das	15/05/2012	21/06/2012

- 9.9** Shri Joydeb Garai, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas were serving as director while the impugned issues and allotments were made. In view of the non-availability of the status of their resignation except for Gargi Biswas and non-production of any information on their date of resignation, it is clear that these directors continue to be directors. Therefore, Shri Joydeb Garai, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas who acted as directors at the time of impugned issue continues as on this day as director, are co-extensively responsible for the refund along with the Company. The liability of the Company and its directors to repay under section 73(2) of the Companies Act, 1956 is continuing and such liability continues till all the repayments are made.

- 9.10** Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh and Shri Samir Das joined as the directors

subsequent to the impugned allotments. Shri Samir Das also enclosed the copy of the letter dated June 04, 2012 stated to be sent by him to the Company addressed to the director, Shri Joydeb Garai, intimating the company that he had come to know that his name is shown as additional director in the filings of the Company. However, he has not narrated the events as to how he came to know that he has been made as additional director of the Company without his knowledge. Neither did he bring to my notice any criminal complaint filed by him to that effect. In view of the non-availability of the status of their resignation except for Shri Samir Das and non-production of any information on their date of resignation, it is clear that these directors continue to be directors. Therefore, I hold that these directors continue as on this day as directors.

I note that the directors who have joined subsequent to the impugned issues, have not exercised necessary diligence after joining as directors in the Company. Neither did they make any attempts to report the wrongdoings of the company to appropriate authorities. The very inaction by these directors against the previous management (for violating the public issue norms as stipulated under the Companies Act, 1956 while making the offer and issuing the preference shares), even after the receipt of the *interim* order, leads one to conclude on a possible collusion at their end with the Company and its previous management. Further, Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh and Shri Samir Das have also not taken any steps to remedy the violations committed. I note that the liability to refund is a continuous liability and would be discharged only when the repayments are done. Accordingly, I hold him responsible for the same. Therefore, I hold Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh and Shri Samir Das liable for refund along with the Company.

- 10.1** Regarding the direction in the *interim* order to the effect that AAPL and its abovementioned Directors shall, furnish complete and relevant information including the details regarding issuance of the NCDs (for which SEBI had received complaints) within 21 days from the date of receipt of the *interim* Order. However, no such details have been filed till date. Therefore, there is a non-compliance of the direction of the *interim* order on this score. SEBI may take

appropriate action as per law for this non-compliance. 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 the AAPL and its directors, Shri Joydeb Garai, Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas, Shri Samir Das to refund the monies collected, with interest to such investors. 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 preference shares issued by the Company 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.

11.1 In view of the foregoing, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(4), 11A and 11B thereof hereby issue the following directions:

- a) The Company, namely, Amazan Agro Products Limited and its Directors, Shri Joydeb Garai, Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas, Shri Samir Das, shall forthwith refund the money collected by the Company through the issuance of RPS, including the money collected from investors, till date, pending allotment, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) 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.
- c) Amazan Agro Products Limited and its present management is permitted to sell the assets of the Company only for the sole purpose of making the repayments including interest, as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank.
- d) The Company, namely, Amazan Agro Products Limited and its Directors, Shri

Joydeb Garai, Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas, Shri Samir Das, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.

- e) If the Company, Amazan Agro Products Limited had repaid the investors as claimed by it, the Company may include such repayment in the report to be submitted under para 11.1 (f) below, provided the Company had met with the criteria laid down under para 11.1(b) and provided further that the Company pays interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.
- f) After completing the aforesaid repayments, Amazan Agro Products Limited and its Directors, Shri Joydeb Garai, Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas, Shri Samir Das, shall file a report of such completion of repayment with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI").
- g) Amazan Agro Products Limited and its Directors, Shri Joydeb Garai, Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas, Shri Samir Das directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.
- h) In case of failure of Amazan Agro Products Limited and its Directors, Shri Joydeb Garai, Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip

Kumar Gangopadhyay, Shri Debabrata Ghosh, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas, Shri Samir Das, to comply with the aforesaid directions, SEBI, on the expiry of the three months period from the date of this order,-

- i. shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.
 - iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
 - iv. would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.
- i) Amazan Agro Products Limited and its Directors, Shri Joydeb Garai, Shri Sunil Kumar Brahamchari, Shri Manigrib Bag, Shri Dilip Kumar Gangopadhyay, Shri Debabrata Ghosh, Shri Pahari Basu, Shri Basudeb Garai, Shri Dinabandhu Das, Gargi Biswas, Shri Samir Das, 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 four (4) 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 years from the date of completion of refunds to investors.
- j) The above directions shall come into force with immediate effect.

- 12.1** This Order is without prejudice to any action, including adjudication and prosecution proceedings that might be taken by SEBI in respect of the above violations committed by the Company, its promoters, directors and other key persons.
- 12.2** Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.
- 12.3** 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.

Date : January 22, 2016
Place: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA