

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 28 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

In respect of:

1. Aryan Agro Projects India Limited,
2. Mr. Vikash Jha,
3. Mr. Rakesh Raushan,
4. Mr. Birendra Thakur,
5. Mr. Manoj Chouhan,
6. Mr. Abadh Kumar Singh,
7. Mr. Sheonath Sahni,
8. Mr. Uttam Das,
9. Mr. Robin Ojha,
10. Mr. Anil Kumar Mishra,
11. Mr. Shailesh Kumar Mishra and
12. Rising Star Life Care Solutions Private Limited (Debenture Trustee).

In the matter of issuance of Non-convertible Redeemable Debentures by Aryan Agro Projects India Limited

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted a preliminary examination into the issuances of Secured Non-Convertible Redeemable Debentures (hereinafter referred to as “NCDs”) by Aryan Agro Projects India Limited (hereinafter referred to as ‘AAPIL’ or ‘the company’) with a view to ascertain the possible non-compliances with the public issue norms stipulated under the provisions of the Companies Act, 1956, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (hereinafter referred to as “the ILDS Regulations”), SEBI (Debenture Trustees) Regulations, 1993 (hereinafter referred to as ‘Debenture Trustees Regulations’) and other applicable laws including the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘SEBI Act’) and the SEBI Regulations/ Guidelines.

2. Pursuant to the examination, SEBI passed an *ad interim* order dated August 12, 2015 (hereinafter referred to as “*interim order*”) in respect of AAPIL and its directors, namely, Mr. Vikash Jha, Mr. Rakesh Raushan, Mr. Birendra Thakur, Mr. Manoj Chouhan, Mr. Abadh Kumar Singh, Mr. Sheonath Sahni, Mr. Uttam Das, Mr. Robin Ojha, Mr. Anil Kumar Mishra and Mr. Shailesh Kumar Mishra and the persons/ entity acting as the Debenture Trustee namely Rising Star Life Care Solutions Private Limited (hereinafter collectively referred to as “the noticees” and individually by their respective names), *inter alia*, in view of the following:

“4.3

iii. ...

a. *Under the Offer of NCDs, it is observed from the copies of Non-Convertible Debenture Certificates made available by complainants, that the same were issued by AAPIL during the Financial Years 2011–12 and 2012–13, to a total of 87 individuals/ investors. ...*

b. *... the number of allottees under the Offer of NCDs for the Financial Years 2011–12 and 2012–13, have only been taken from the documents submitted with the complaints received by SEBI, against AAPIL. Therefore, the actual number of allottees could be many more times than the figures indicated*

...

... ..

5.1. *From the material available on record, it is observed that AAPIL created a charge for an amount of ₹2.5 Crores and appointed Rising Star Life Care Solutions Private Limited as Debenture Trustee for the Offer of NCDs by that company.”*

3. In view of the alleged contraventions and the reasons stated in the *interim order*, the following directions were issued:

i. *AAPIL (PAN: AAJCA7392R) shall forthwith cease to mobilize fresh funds from investors through the Offer of NCDs 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. *AAPIL and its present Directors, viz. Shri Vikash Jha (PAN: AJHPJ4757D; DIN: 06439532), Shri Rakesh Raushan (PAN: AFQPR0048J; DIN: 06457857), Shri Birendra Thakur (PAN: AGHPT8453D; DIN: 03426081) and Shri Manoj Chouhan (PAN: AMZPC7233N; DIN: 03267029), 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. *The past Directors of AAPIL, viz. Shri Abadh Kumar Singh (PAN: CBIPS7345R; DIN: 03509328), Shri Sheonath Sahni (PAN: BIIPS0343H; DIN: 03580738), Shri Uttam Das*

(PAN: AOQPD9121F; DIN: 02977702), Sbri Robin Ojha (PAN: AAVPO4270B; DIN: 03217446), Sbri Anil Kumar Mishra (PAN: AITPM9488K; DIN: 03217442) and Sbri Shailesh Kumar Mishra (PAN: AJTPM9601P; DIN: 06439840), 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;

- iv. AAPIL and its abovementioned past and present 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;
- v. AAPIL shall provide a full inventory of all its assets and properties;
- vi. AAPIL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;
- vii. AAPIL and its abovementioned present 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 NCDs, without prior permission from SEBI;
- viii. AAPIL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of NCDs, which are kept in bank account(s) and/or in the custody of AAPIL;
- ix. AAPIL and its abovementioned past and present Directors shall co-operate with SEBI and shall furnish all information/ documents sought vide letter dated October 29, 2014;
- x. The Debenture Trustee, viz: Rising Star Life Care Solutions Private Limited, is prohibited from continuing with its assignment as debenture trustee in respect of the Offer of NCDs of AAPIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this Order till further directions."

4. The *interim order* advised the company and the aforesaid directors to show cause as to why suitable directions/ prohibitions under sections 11, 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/ imposed against them:

- "i. Directing them jointly and severally to refund money collected through the Offer of NCDs alongwith interest, if any, promised to investors therein;
- ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period."

5. The Debenture Trustee, viz. Rising Star Life Care Solutions Private Limited was advised to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining from accessing the securities market and further restraining from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
6. The noticees were advised to file their response within 21 days of receipt of the *interim order* and indicate whether they wish to avail a personal hearing. The *interim order* was forwarded to the noticees vide SEBI letters dated August 13, 2015.
7. Mr. Abadh Kumar Singh vide his letter dated September 07, 2015, replied to the *interim order*. The submissions made, in brief, are as under:
 - a. He had resigned from the company on November 23, 2014 and is not holding any shares of the company. After resignation from the Board of directors of the company, he does not have any paper/ documents of the company with him.
 - b. On receipt of the *interim order*, he intimated the present directors of the company who are directly responsible and having custody of all the documents/ papers etc.
8. Mr. Shailesh Kumar Mishra vide his letter dated September 10, 2015, submitted as under:
 - a. He was never the director of AAPIL and therefore he is not able to provide any documents related to the company or the issue. He had neither submitted nor signed any papers/ documents to become the director of AAPIL. He never took part in any of the decision making and/or the day to day affairs/ management of the company.
 - b. He knew Mr. Abadh Kumar Singh through certain personal and business contact but he had never given his consent/ permission for his appointment as director of the company. He suspects that Abadh Kumar Singh, Birendra Thakur and Manoj Chauhan had procured his personal details and forged his signature to appoint him as director of AAPIL.
 - c. He has already reported such illegal and unlawful acts to the Officer-in-charge, Netaji Nagar Police Station; Joint Commissioner of Police, Kolkata Police, Crime Branch; Deputy Commissioner of Police, South Division; Officer-in-charge, Cyber Cell, Lalbazar on November 26, 2014. Further, on the basis of his complaint an investigation has started in the matter.
9. SEBI then proceeded further and granted an opportunity of personal hearing to the noticees on September 20, 2016. The noticees were informed of the date of hearing vide SEBI's letter dated August 24, 2016. As the *interim order* could not be delivered on certain noticees at their

last known address, SEBI made the public notice dated August 28, 2016 in the newspapers namely *Ananda Bazar Patrika*, *Times of India* (West Bengal), *Prabhat Khabar Ranchi*, *Pioneer Ranchi*, *Hindustan Patna* and *Time of India* (Patna) intimating the noticees about the *interim order* and the personal hearing fixed on September 20, 2016. The Company and its directors were advised that in case they fail to appear before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.

10. In reply the debenture trustee namely Rising Star Life Care Solutions Pvt. Limited vide its letter dated September 07, 2016, submitted as under:
 - a. AAPIL had approached it for grant of loan of ₹2.5 crore for running its business and had entered into a loan agreement dated December 23, 2011.
 - b. In pursuance of the said loan agreement, AAPIL as a security to the said loan had proposed to allot 2,50,000 secured debentures of ₹100/- each and also mortgaged their lands and properties (having market value of ₹2.55 crore) in its favour. For the same, a Debenture Trust Deed dated December 23, 2011 was made between AAPIL and Rising Star Life Care Solutions Pvt. Limited.
 - c. On February 22, 2012, it had informed AAPIL that it was not eligible to be a Debenture Trustee and withdrew its consent and stated that the said Debenture Trust Deed be treated as void *ab initio*.
 - d. Upon due consideration of the acts and conduct of AAPIL, it had cancelled the loan agreement and the Debenture Trust Deed, both dated December 23, 2011. AAPIL had then passed the Board resolution dated March 03, 2012, wherein the cancellation of loan agreement and Debenture Trust Deed was acknowledged.
 - e. It had never acted as the Debenture Trustees for any issue of debentures by AAPIL in the year 2011-2012 and 2012-13 or thereafter.
11. Mr. Abadh Kumar Singh vide his letter dated September 16, 2016, while reiterating his earlier submission *inter alia* stated that due to flood in his area at Bhagalpur, Bihar, he is somehow maintaining his family and trying to save them from the calamity. He also submitted that it will be difficult for him to attend the hearing due to financial condition.
12. Another noticee namely Mr. Vikash Jha vide his e-mails dated September 11, 2016, September 12, 2016 and September 13, 2016 submitted that he neither submitted nor signed any papers/ documents to become a director of AAPIL. It was also submitted that he knew Mr. Abadh Kumar Singh through certain personal and business contact but he never gave his consent/ permission for appointment as a director of the company. He suspects that Mr. Abadh Kumar

Singh had procured his personal details and forged his signature for appointing him as a director of AAPIL. On receipt of the *interim* order, he had reported the matter to Jasidih Police Station and has sent all the documents to SEBI vide letter dated December 12, 2014. It was also submitted by him that he works for a private firm in Delhi and expressed his difficulty in attending the personal hearing due to financial condition.

13. On the date of personal hearing i.e. September 20, 2016, Mr. Shailesh Kumar Mishra, Mr. Rakesh Raushan and Mr. Vikash Jha appeared in-person and made submissions. They also requested for one weeks' time for filing their written submissions. The request was acceded to. The Debenture Trustee namely Rising Star Life Care Solutions Pvt. Limited also entered appearance through its authorized representative namely Ms. Antima Jain (Chartered Accountant) along with Ms. Neelam Garg and reiterated the submissions already made.
14. Mr. Rakesh Raushan submitted that he was never a director of AAPIL. He neither submitted nor signed any papers/ documents to become the director of AAPIL. He had never taken part in any of the decision and/ or day to day affairs and/ or management of AAPIL. Mr. Vikash Jha vide his letter dated September 30, 2016, submitted his written submissions in the form of an affidavit. The submissions of Mr. Vikash Jha, in brief, are as under:
 - a. He is an employee of a private company. Earlier he had started a limited company in the name of Sai Samridhi Agrotech Ltd. in the year 2012. He had met Mr. Abadh Kumar Singh, who offered a proposal to work for the betterment of business and certain lucrative gains.
 - b. He had visited Bhagalpur, Buxar and Sahebganj where Mr. Abadh Kumar Singh's team was working, to promote Sai Samridhi Agrotech Limited. Mr. Abadh Kumar Singh and his agents clicked many videos and pictures of his.
 - c. During that time, Mr. Abadh Kumar Singh had introduced him to Mr. Birendra Thakur as his partner and director of AAPIL and Aryan Nutrients Food Projects Limited.
 - d. Later, he understood that Mr. Abadh Kumar Singh had ill-motive and decided not to continue any further with him. He then decided to concentrate on his own business.
 - e. Thereafter, he received a notice from SEBI seeking reply/ explanation on the subject mentioned therein as he was one of the director of AAPIL. He reported the matter to the Office-in-Charge, Jasidih Police Station, Deoghar with a request to take necessary steps. The officer suggested him to file a diary entry and reply to SEBI. Then he replied to SEBI on December 12, 2014, mentioning therein that he was not involved directly or indirectly in AAPIL.
 - f. In the meantime, he also contacted Mr. Abadh Kumar Singh, the director of AAPIL who admitted that he was in possession of all the papers, documents and all personal information

- pertaining to him and used these for his appointment as a director of AAPIL and Aryan Nutrients Food Projects Limited.
- g. Such appointment as director of AAPIL was without his knowledge, consent and permission by forging his signature. Mr. Abadh Kumar Singh also blackmailed him by saying that he has certain videos in which he was addressing his fellow workers.
 - h. His father had passed away in the year 2014 and thereafter he shifted to Delhi and joined Indiabulls Securities as Senior Sales Manager. However, he was asked to give resignation, upon knowing that he was linked to AAPIL.
 - i. As he had earlier replied to SEBI he did not respond to the notices issued by SEBI.
 - j. Mr. Abadh Kumar Singh and Mr. Birendra Thakur being the directors of AAPIL are responsible for the day to day affairs of the management of the companies namely AAPIL and Aryan Nutrients Food Projects Limited.
15. Mr. Shailesh Kumar Mishra vide his affidavit dated September 28, 2016, submitted as under:
- a. He had started a limited company in the name of Sai Samridhi Agrotech Limited in the year 2012. In the meanwhile, Mr. Abadh Kumar Singh contacted him and offered a proposal to work for the betterment of business and also offered lucrative gain if he acted according to Mr. Abadh Kumar Singh. After sometime he realized that Abadh Kumar Singh had ill-motives for illegal gain and decided not to continue any further business with him.
 - b. Mr. Abadh Kumar Singh also introduced him to Mr. Birendra Thakur and Manoj Chauhan as his friends. Abadh Kumar Singh wanted to include them in his business of Sai Samridhi Agrotech Limited, but was restrained as other directors of Sai Samridhi Agrotech Limited objected to the same.
 - c. Thereafter, he had received notices dated October 29, 2014 and January 13, 2014 from SEBI in the matter of AAPIL. From the same, he came to know that he was shown as one of the directors of AAPIL. In order to seek explanation, he had contacted Abadh Kumar Singh, Mr. Birendra Thakur and Mr. Manoj Chauhan. They admitted of having all the papers, documents and personal information of him. They also admitted of having the details of Mr. Vikas Jha and Mr. Rakesh Raushan, which they used for their own benefits/ gains and for appointing them as the directors of AAPIL without his knowledge, consent and permission. Thereafter, he reported the matter to the Officer-in-Charge, Netaji Nagar Police Station, Kolkata; Joint Commissioner of Police Crime, Lal Bazar, Deputy Commissioner of Police, South Division and also to the Cyber Cell, Lal Bazar and requested the police to take necessary steps against Mr. Abadh Kumar Singh, Mr. Birendra Thakur and Mr. Manoj Chauhan. He then replied to SEBI vide letter dated December 08, 2014.
 - d. When Mr. Abadh Kumar Singh, Mr. Birendra Thakur and Mr. Manoj Chauhan came to know

- that he had informed police they again forged his signature and removed his name from directorship of AAPIL.
- e. Thereafter, he also filed a case before Learned Additional Chief Judicial Magistrate at Alipore against AAPIL, Aryan Nutrient Food Projects Limited, Mr. Abadh Kumar Singh, Mr. Birendra Thakur and Mr. Manoj Chauhan and the same is pending.
16. The remaining noticees, namely, Mr. Birendra Thakur, Mr. Manoj Chouhan, Mr. Sheonath Sahni, Mr. Uttam Das, Mr. Robin Ojha and Mr. Anil Kumar Mishra neither submitted any reply to the *interim order* nor appeared for the personal hearing. Accordingly, the hearing proceedings were concluded and the matter was proceeded further.
17. I have considered the *interim order*, the allegations levelled against the noticees therein, the replies/ submissions of the noticees namely Mr. Abadh Kumar Singh, Mr. Shailesh Kumar Mishra, Mr. Rakesh Raushan, Mr. Vikash Jha and Rising Star Life Care Solutions Pvt. Limited and the material available on record. The *prima facie* findings made in the *interim order* in respect of offer and issuance of NCDs are undisputed. Therefore, I do not deem it necessary to burden this order again with all the elaborate facts and observations made in the *interim order*. The company is alleged to have made a public offer and issued NCDs without complying with the public issue norms mandated under the Companies Act, 1956 and the ILDS Regulations. As per the *interim order*, the company had issued NCDs during the Financial Years 2011-12 and 2012-13 to atleast 54 and 33 allottees, respectively. The *interim order* has categorically stated that the number of allottees and the amount mobilized as noted therein were from the complaints received by SEBI. In view of the same, it can be said that the number of allottees would be much more than the indicated figures.
18. The *interim order* had specifically directed the company to furnish complete and relevant information. However, the concerned noticees have failed to provide the relevant information, till date. Considering the said conduct of the company and their non-participation in the proceedings despite a public notice, leads to the conclusion that they deliberately concealed information regarding their money mobilizing activities through offer and issue of NCDs to the public.
19. From the available facts and the conduct of the company and its directors in not providing the information regarding the NCDs, I find no reason to differ with the observation made in the *interim order* that the company made a 'public issue' of NCDs in terms of first *proviso* to section 67(3) of the Companies Act, 1956. As the issuance of NCDs by the company was a

‘public issue’, it ought to have complied with the applicable provisions of the Companies Act, 1956 and the ILDS Regulations as alleged in the *interim order*. In the present case, there is no dispute to the fact that the company failed to comply with sections 60 read with section 2(36), 56(1), 56(3), 73, 117B and 117C of the Companies Act, 1956 and regulations 4(2)(a), (b), (c), (d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 16(1), 17, 19 and 26 of the ILDS Regulations. Accordingly, I find the company guilty of violating the aforesaid provisions of law.

20. The *interim order* was issued against the directors of the company, namely, Mr. Vikash Jha, Mr. Rakesh Raushan, Mr. Birendra Thakur, Mr. Manoj Chouhan, Mr. Abadh Kumar Singh, Mr. Sheonath Sahni, Mr. Uttam Das, Mr. Robin Ojha, Mr. Anil Kumar Mishra and Mr. Shailesh Kumar Mishra. The details of appointment and resignation of the said directors are as under:

Table A

S.No.	Name	Date of Appointment	Date of Cessation
1.	Mr. Vikash Jha	02/02/2014	Continuing as director
2.	Mr. Rakesh Raushan	02/02/2014	Continuing as director
3.	Mr. Birendra Thakur	05/07/2011	Continuing as director
4.	Mr. Manoj Chouhan	15/05/2012	Continuing as director
5.	Mr. Abadh Kumar Singh	05/07/2011	23/11/2014
6.	Mr. Sheonath Sahni	05/07/2011	15/05/2012
7.	Mr. Uttam Das	25/10/2010	28/08/2011
8.	Mr. Robin Ojha	25/10/2010	05/08/2011
9.	Mr. Anil Kumar Mishra	25/10/2010	05/07/2011
10.	Mr. Shailesh Kumar Mishra	02/02/2014	03/06/2015

21. It has been concluded above that *Aryan Agro* made a public issue of NCDs during the financial years 2011-12 and 2012-13. Therefore, the aforesaid directors namely Mr. Birendra Thakur, Mr. Manoj Chouhan, Mr. Abadh Kumar Singh, Mr. Sheonath Sahni, Mr. Uttam Das, Mr. Robin Ojha and Mr. Anil Kumar Mishra were part of the board of directors of AAPIL during the period when the company had mobilized public funds without complying with the public issue norms. While the remaining directors, namely, Mr. Vikash Jha, Mr. Rakesh Raushan and Mr. Shailesh Kumar Mishra were appointed on the board of the company after the available dates of issuance of NCDs. Of these, as per the MCA-21 portal, Mr. Vikash Jha and Mr. Rakesh Raushan continue to act as the director of AAPIL while Mr. Shailesh Kumar Mishra has ceased to be a director of the company after June 03, 2015.
22. In terms of section 291 of the Companies Act, 1956, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors being responsible for the

conduct of the business of a company will be liable for any non-compliance of law and such liability shall be upon the individual directors also. Section 56(1) and 56(3) read with section 56(4) imposes the liability for the non-compliance of the said provisions, on the company, every director, and other persons responsible for the issuance of the prospectus. The liability for non-compliance of section 60 of the Companies Act is on the Company, and every person who is a party to the non-compliance of issuing the prospectus as per the said section. Further, the directors of a company shall be liable for action in case of contravention of the ICDR Regulations. The liability of the company and directors to repay under section 73(2) of the Companies Act, 1956 would remain until the whole of the subscription amount along with interest is refunded to the allottees/investors. Therefore, the directors (*irrespective of whether they continue or resign*) who were present during the period when the company made the offer and allotted NCDs shall be liable for violation of sections 56, 60 and 73 of the Companies Act, 1956 and the ICDR Regulations. Further, the persons who join the company's Board as directors pursuant to the offer and allotment of securities shall also be liable if the company/concerned directors fail to make refunds as mandated under sections 73(2) of the Companies Act, 1956. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar vs Registrar of Companies* (2002 108 Comp Cas 1 Mad):

"13. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.

14. 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."

23. As noted above, there is no dispute as to the fact that Mr. Birendra Thakur, Mr. Manoj Chouhan, Mr. Abadh Kumar Singh, Mr. Sheonath Sahni, Mr. Uttam Das, Mr. Robin Ojha and Mr. Anil Kumar Mishra were the directors of AAPIL at the time when the company had authorized the issuances of debentures to atleast 87 investors. The board of directors of AAPIL at the relevant time, being in control of the affairs, was under an obligation to ensure that such issuances were in compliance with all the applicable provisions of the Companies Act, 1956 and SEBI Act/ Regulations/ Guidelines.

24. The directors, namely, Mr. Vikash Jha, Mr. Rakesh Raushan and Mr. Shailesh Kumar Mishra in respective replies/ submissions have submitted that they were appointed as director of AAPIL without knowledge/ consent and permission and they came to know about their directorship in AAPIL through the letter of SEBI. It has also been submitted that Mr. Abadh Kumar Singh had fraudulently taken their papers/ documents and included their names in the board of directors of AAPIL. Mr. Vikash Jha claims to have reported the matter to Office-In-Charge, Jasidih Police Station, Deoghar and Mr. Shailesh Kumar Mishra claims to have filed complaints before Netaji Nagar Police Station, Kolkata; Joint Commissioner of Police Crime, Lal Bazar, Deputy Commissioner of Police, South Division and also to Cyber Cell, Lal Bazar. Mr. Shailesh Kumar Mishra also claims to have filed a case before the Learned Additional Chief judicial Magistrate, Alipore against AAPIL, Aryan Nutrient Food Projects Limited, Mr. Abadh Kumar Singh, Mr. Birendra Thakur and Mr. Manoj Chauhan. Having considered the submission, I note that it is not in dispute that they were the directors of the company. From the available records, it is noted that Mr. Vikash Jha, Mr. Rakesh Raushan and Mr. Shailesh Kumar Mishra became the directors of the company after the available dates of offer of NCDs. As the subscription amounts are not refunded in terms of Section 73(2) of the Companies Act, 1956, they would also become jointly and severally liable to make such payments to investors and also liable for action for default. As the liability of making refunds is a statutory liability, the same cannot be waived off by merely alleging fraud. Considering the same, it is difficult to grant any relief to Mr. Vikash Jha, Mr. Rakesh Raushan and Mr. Shailesh Kumar Mishra. I have considered the submissions of Mr. Vikash Jha, Mr. Rakesh Raushan and Mr. Shailesh Kumar Mishra and note that they have failed to submit any final decision of the respective Courts on the complaints said to be filed by them. These noticees have not been able to offer any plausible explanation or supporting documents in support of their submissions except for the ipse dixit of a mere denial that they have never directors in Aryan Agro. Considering the same, it is difficult to grant any relief to these, at this stage. However, they are at liberty to take recourse to the remedies available under law. Further, it goes without saying that if the company/ other noticees refund the subscription amounts along with applicable interest, then these noticees would be automatically discharged of the liability to make refunds to the investors.
25. Considering the above, all the above named directors of AAPIL being '*officers in default*' as defined under section 5 of the Companies Act, 1956 read with section 2(60) of the Companies Act, 2013 are held responsible for the violations committed by the company, as found in this order. Therefore, the company and the aforesaid persons are liable for the consequences including refund of the subscription money to the allottees along with interest at 15% p.a. as

mandated under section 73(2) of the Companies Act, 1956 read with rule 3(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

26. The *interim order* has observed that AAPIL, had created a charge for an amount of ₹2.5 crore and appointed Rising Star Life Care Solutions Pvt. Limited as the Debenture Trustee for the Offer of NCDs by that company in violation of section 12(1) of the SEBI Act and regulation 7 of the Debenture Trustees Regulations. Rising Star Life Care Solutions Private Limited in its reply has submitted that AAPIL had approached it for grant of loan of ₹2.5 crore and had entered into a loan agreement dated December 23, 2011. As a security to the said loan, AAPIL had proposed to allot 2,50,000 secured debentures and also mortgage their lands/ properties in favour of Rising Star Life Care Solutions Private Limited. It has also been said that a 'Debenture Trust Deed' dated December 23, 2011 was also executed between AAPIL and Rising Star Life Care Solutions Private Limited. Later on February 22, 2012, Rising Star Life Care Solutions Private Limited intimated AAPIL that it was not eligible to be a debenture trustee and accordingly withdrew its consent to become debenture trustee. The loan agreement and 'Debenture Trust Deed' were accordingly cancelled. It has also been submitted that it has never acted as a 'debenture trustees' for any issue of NCDs by AAPIL in the year 2011-12 and 2012-13.
27. I have considered the submissions of Rising Star Life Care Solutions Private Limited and note from the 'extract of the minutes of the meeting of the board of directors' of AAPIL held on March 03, 2012 that the cognizance of cancellation of 'Debenture Trust Deed' and 'loan agreement' was taken by the board of directors. From the said minutes, it is also noted that one Mr. A.K. Singh, director of AAPIL was authorized to sign the deed of cancellation and to keep the original title deeds returned by Rising Star Life Care Solutions Private Limited to the company.
28. It is important to note that the exact date of issuance and allotment of NCDs is not available on record, in view of the same, it is difficult to accept the submission of Rising Star Life Care Solutions Private Limited that it had never acted as debenture trustee. Considering the same and also the fact that the entity had executed the mortgage deed/ 'debenture trust deed', giving a clean chit to Rising Star Life Care Solutions Private Limited is not possible. It is an undisputed fact that Rising Star Life Care Solutions Private Limited was never registered with SEBI as a 'debenture trustee'. In terms of regulation 7 of the Debenture Trustee Regulations, a person can act as a debenture trustee only if it is either a scheduled bank or a public financial institution or an insurance company or a body corporate. Rising Star Life Care Solutions

Private Limited, was therefore not qualified to be appointed as debenture trustee. At this stage, I have seen the copy of the 'Debenture Trust Deed' and from the same, I note that the trust name was 'Aryan Debenture Holders Trust' and its trustee was Rising Star Life Care Solutions Private Limited. The 'Debenture Trust Deed' also finds mention of the following:

'17. In the event of death, bankruptcy, disability or resignation of trustee, another trustee or trustees shall be appointed and informed the all debenture holders who shall thereafter have and exercise all powers of the trustee under these presents. The power of appointing a new trustee or trustees shall be vested in the directors, ...'

29. It is important to note that after the cancellation of the 'Debenture Trust Deed' by Rising Star Life Care Solutions Private Limited during March 2012, the company could have appointed another trustee for its trust 'Aryan Debenture Holders Trust'.
30. SEBI is therefore advised to examine the role of the new trustee appointed by the company, if any, in the public issue of NCDs by the company and take appropriate action as deemed fit in accordance with law. Further, considering the non-availability of exact dates of issuance of NCDs and the submissions of Rising Star Life Care Solutions Private Limited, I am inclined to warn it to be cautious in future.
31. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11, 11(4), 11A and 11B read with section of the Securities and Exchange Board of India Act, 1992 and regulation 28 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, hereby issue the following directions:
 - (i) Aryan Agro Projects India Limited [PAN: AAJCA7392R] and its directors namely Mr. Vikash Jha [PAN: AJHPJ4757D], Mr. Rakesh Raushan [PAN: AFQPR0048J], Mr. Birendra Thakur [PAN: AGHPT8453D], Mr. Manoj Chouhan [PAN: AMZPC7233N], Mr. Abadh Kumar Singh [PAN: CBIPS7345R], Mr. Sheonath Sahni [PAN: BIIPS0343H], Mr. Uttam Das [PAN: AOQPD9121F], Mr. Robin Ojha [PAN: AAVPO4270B], Mr. Anil Kumar Mishra [PAN: AITPM9488K] and Mr. Shailesh Kumar Mishra [PAN: AJTPM9601P], shall within a period of three months from the date of this order, jointly and severally refund the money collected through the issue of secured non-convertible redeemable debentures to the allottees with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund.
 - (ii) Such refund shall be made only in cash through a Demand Draft or Pay Order.

- (iii) Aryan Agro Projects India Limited and its directors shall within fifteen days from the date of this Order submit to SEBI complete details of their assets (along with proofs thereof) certified by a peer reviewed Chartered Accountant.
- (iv) Aryan Agro Projects India Limited and its directors are permitted to sell assets of the company and deposit the sale 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 allottees of secured non-convertible redeemable debentures till the full refund/ repayment as directed above is made.
- (v) Aryan Agro Projects India Limited and its directors shall issue a public notice, in all editions of one English national daily and one vernacular daily 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.
- (vi) Within seven days of completion of refund/ repayment as directed hereinabove, Aryan Agro Projects India Limited and its directors shall file a certificate of such completion with SEBI from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. Such certificate shall be issued by the Chartered Accountants after verifying the relevant documents including bank accounts of the noticees and satisfying themselves that the refund has actually been made.
- (vii) 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.
- (viii) Aryan Agro Projects India Limited, Mr. Vikash Jha, Mr. Rakesh Raushan, Mr. Birendra Thakur, Mr. Manoj Chouhan, Mr. Abadh Kumar Singh, Mr. Sheonath Sahni, Mr. Uttam Das, Mr. Robin Ojha, Mr. Anil Kumar Mishra and Mr. Shailesh Kumar Mishra are restrained from, directly or indirectly, accessing the capital market by issuing prospectus, any offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in whatsoever manner for a period of four years or till the date of refund of money to the allottees, whichever is later.
- (ix) Mr. Vikash Jha, Mr. Rakesh Raushan, Mr. Birendra Thakur, Mr. Manoj Chouhan, Mr. Abadh Kumar Singh, Mr. Sheonath Sahni, Mr. Uttam Das, Mr. Robin Ojha, Mr. Anil Kumar Mishra

and Mr. Shailesh Kumar Mishra are also restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, for a period of four years or till the date of refund of money to the allottees, whichever is later.

- (x) Rising Star Life Care Solutions Private Limited is warned to be cautious in future.
 - (xi) For the purposes of sub-paragraphs (viii) and (ix) above, the period of restraint shall be counted from the date of the *interim order*.
32. The *interim order* dated August 12, 2015 is disposed off accordingly. The above directions are without prejudice to the right of SEBI to take any other appropriate action for the violations found in this case or to initiate any action in case of failure to comply with the above directions, in accordance with the provisions of applicable laws including the proceedings under the provisions of section 28A of the SEBI Act.
33. This Order shall come into force with immediate effect. A copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action.
34. 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.

DATE: NOVEMBER 1st, 2016

PLACE: MUMBAI

RAJEEV KUMAR AGARWAL

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA