

**SECURITIES AND EXCHANGE BOARD OF INDIA
INTERIM ORDER CUM SHOW CAUSE NOTICE**

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF –

Sr. No.	Noticees	DIN/CIN	PAN
Company			
1.	Aryan Nutrient Food Projects Ltd	U15313MP2012PLC027653	
Directors / Debenture Trustee			
2.	Birendra Thakur	03426081	AGHPT8453D
3.	Manoj Chauhan	03267029	AMZPC7233N
4.	Abadh kumar Singh	03509328	CBIPS7345R
5.	Sunil Kumar	05345721	NA
6.	Vikas Jha	06439532	AJHPJ4757D
7.	Rakesh Raushan	06457857	AFQPR0048J
8.	Bimalendu Bikash Dey	NA	NA

1. Securities and Exchange Board of India ("SEBI") received several complaints along with copy of debenture certificates, alleging that Aryan Nutrient Food Projects Ltd ("ANFPL") had issued Non-Convertible Secured Redeemable Debentures (hereinafter referred to as "NCDs") to mobilize money from the public and they are not refunding the money collected from the investors.
2. As a matter of preliminary enquiry, the information/documents received from the complainants and the information available on MCA portal was analysed (including Form 10 filed by ANFPL with RoC for registration of charges for debentures). From the aforesaid information/details, it is observed as under:

- The company is registered with ROC –Gwalior with CIN No. U15313MP2012PLC027653.
- Incorporation date of the company is February 08, 2012
- Registered office address is as Meera Avenue, 25-C/2716 Airport Road, Maharajpur, Gwalior, M.P 474020.
- Paid up and authorized share capital of the company is Rs. 5, 00,000/- each.
- Activity of the company is mentioned as Manufacture of Food products and beverages in Form No. 1(application and declaration of incorporation of company).
- The details of past and present directors of the company is tabulated below :

Table - A

Sr. No.	Name of the directors	Designation	DIN/PAN	Address	Date of Appointment	Date of Cession
1	Shri. Vikas Jha	Present Director	06439532	Chutti Nuan Dham, AT Pohini, P.S. Deoghar, Jharkhand, Madhya Pradesh-814132, (India)	02/02/2014	
2	Shri. Rakesh Raushan	Present Director	06457857	Vill- Tabhaghat post jasidih, Dist- Deoghar, Jharkhand-814142	02/02/2014	
3	Shri. Birendra Thakur	Present Director	03426081	Budhnapurwa Buxar, Buxar, 802117, Bihar	08/02/2012	
4	Shri. Manoj Chauhan	Present Director	03267029	25, Bindawanpur, Nirsa, PO Mugma, Distt. Dhanbad, Nirsa-828204(Jharkhand)	15/05/2012	
5	Shri. Abadh Kumar Singh	Past Director	03509328	Sardho PO-Bishanpur, Jichho Sabour, Bhagalpur-Bihar-813210	08/02/2012	17/03/2014
6	Shri. Sheonath Sahani	Past Director	03580738	25/36, North Brook Line, Chamdani, Hoogly, West Bengal-712222	08/02/2012	15/05/2012
7	Shri. Sunil Kumar	Past Director	05345721	Town /Vill, Gudamiyo, Lalganj, Vaishali, Bihar-844119	03/08/2012	17/12/2014
8	Shri. Shailesh Kumar Mishra	Past Director	06439840	Indralok Apartment, 187, n s c Bose Road, Flat No. 405, Tollygunj, Kilkatta-7000040(West Bengal)	02/02/2014	03/06/2015

- Physical verification of the entity was also carried out at its registered office address, as per the details available on MCA website, and during the course of physical verification the company was not found at its registered office address.
- SEBI has received many investor complaints, where they have enclosed copies of debenture certificates issued by the company. The complainants also forwarded certain documents, which *inter alia* includes copy of certificate of incorporation of the company and different schemes/ payment plans offered by ANFPL for mobilization of money from the investors.
- The debenture certificates issued by ANFPL and furnished by complainants mentions the following:
 - a) Issue of 'secured Non-Convertible redeemable Debenture' of face value Rs 100 each.
 - b) The registered folio number, application number, date of issue and date of redemption, distinctive number of certificate, number of debentures etc. are mentioned on the certificate.
 - c) High redemption amount is mentioned on these certificates which are different for different folio numbers. Apparently these folio numbers are linked with different schemes bearing different maturity period, offered by the ANFPL.
- From the documents available on MCA 21 portal, it is noted that:
 - a) Company has not filed any balance sheets except for FY 2012-2013.
 - b) Form no. 10 is filed by the company on February 23, 2012
 - c) As per the debenture trust deed, made on February 18, 2012 with Bimalendu Bikash Dey as its Trustee, board resolution was passed by the company in its meeting held on February 18, 2012 to raise the sum of Rs. 500 crores.
 - d) As per schedule I of the trust deed, the following schemes were offered by the company for issuance of debentures:
 - I. Scheme-I Regular Income Non-Convertible Redeemable Secured debentures(Non-Cumulative)

Plan	Redemption Period	Rate of Interest(per annum)
G	3 Years	12%
G	5 Years	13%

G	7 Years	14%
G	10 Years	15%

II. Scheme II Multiplier Non-Convertible Redeemable Secured Debenture (Cumulative)

Plan	A	B	C	D	E	F
Redemption Period	36 Months	60 Months	84 Months	120 Months	144 Months	180 Months
Min. Application for 10 Debentures	1000/-	1000/-	1000/-	1000/-	1000/-	1000/-
Redemption Value	1500/-	2000/-	3000/-	7000/-	10000/-	14000/-

3. In order to seek information and details on the complaints filed by the investors, SEBI sent letters dated June 11, 2015, dated July 30, 2015 and September 21, 2015 to the complainant Shri. Anand Singh, Shri. Ved Prakash Rai and Shri. Priyaranjan Kumar Tiwari respectively. Further, letters dated July 16, 2015 and August 13, 2015 were also sent to the company and its present directors, namely, Birendra Thakur, Rakesh Raushan, Manoj Chauhan and Vikas Jha seeking information about the activities of the company. Thereafter, vide letter dated November 27, 2015 information of the activities of the company was sought from the past directors, namely, Abadh Kumar Singh, Sheonath Sahani, Sunil Kumar, Shailesh Kumar Mishra. Information was also sought from auditors of the ANFPL, V. K Chhinkwani & Company (statutory auditor for 2011-2012), Bimal Kumar Pal (statutory auditor for 01/04/2013 to 31/03/2018) and Kanahya Kumar Agarwal (statutory auditor for 08/02/2012 till 31/03/2013), about the issuance of debentures by the company vide letters dated November 27, 2015. None of the directors, other than Abadh Kumar Singh, or the company or auditors replied to the letters of SEBI. Abadh Kumar Singh Vide letter dated April 29, 2016, admitted that the company was doing fund raising activities and he was acting as an arranger/agent for sale of company's policy and collection of money from his area. It was also provided that there were no schemes operated by the company except issue of debenture certificates.

4. Abadh Kumar Singh (Past Director) also stated that insofar as the fund collected by him from his relatives and other known persons which total at least 249 debenture certificates, for an amount of Rs. 56, 65,550/- (Rupees fifty six lakhs sixty five thousand five hundred and fifty only), the funds have been refunded to them from his own source. However, no evidence/ supportive documents (bank statement/ demand draft) with regard to such refund of money to the said debenture holder was submitted.
5. As per the investors' complaint received and information furnished by the past director, the details of NCDs issued by the company are as under:

Table - B

Kind of Securities	FY-Year	No of persons to whom the NCDs were allotted	No. of NCD's issued	Amount collected by the company*
Secured Non-Convertible Redeemable Debenture of face value Rs. 100/- each	2012-13	1,92**	57,615	57,61,500
	2013-14	38	11070	11,07,000
Total		230	68,685	68,68,500

* Amount collected is the total value of number of NCD's issued @ of face value Rs. 100/- each.

** Certificates provided by the complainant and Mr. Abadh Kumar Singh (Past Director).

ISSUES FOR DETERMINATION

6. In the context of the abovementioned details, the issue for determination in the instant matter is whether the mobilization of funds by ANFPL through the issuance of NCD is in accordance with the provisions of the Securities and exchange Board of India Act, 1992 ("SEBI Act"), the Companies Act, 1956 read with the Companies Act, 2013 and the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("Debt Securities Regulations").

RELEVANT PROVISIONS OF LAW AND PRIMA FACIE FINDINGS

7. Section 67 of the Companies Act, 1956 deals with conditions and circumstances under which an offer of shares and debentures by a company would be construed as one made to the public. Extract of relevant provisions of section 67 of the Companies Act, 1956 in this regard are reproduced as under:

“Construction of reference to offering shares or debentures to the public, etc.

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. For ascertaining whether the issuance of NCDs is a public issue or an issue on private placement basis, the number of subscribers is of utmost importance. However, from the analysis of the details of investor complaints and copy of debenture certificates provided by the complainants and the list of debenture holders provided by Abadh Singh, past Director, it is observed that the company has issued NCDs to more than forty nine persons during the FY 2012-13 (192 investors). It is also pertinent to mention here that that despite continuous follow up by SEBI with the company and its directors and auditors, they have not co-operated with the examination process. Therefore the number of investors could be more than what is mentioned in the Table – B and the exact quantum of fund mobilization by ANFPL through issuance of NCDs could not be ascertained. Therefore, on the basis of available information recorded above, the *offer and allotment of secured redeemable debentures* by ANFPL *prima facie* qualifies to be construed as an offer made to the public in terms of section 67(3) of the Companies Act,

1956 read with section 465 of the Companies Act, 2013, for the years 2012-13. Further, it is observed that ANFPL is not a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956, and thus, is not covered under the exceptions provided in the *second proviso* to Section 67(3) of the Companies Act, 1956.

9. From the above, it will follow that such a public issue makes it imperative for ANFPL to comply with the mandate of Section 73 of the Companies Act. Relevant extract of Section 73 of the Companies Act, 1956 is reproduced as under:

“Allotment of shares and debentures to be dealt in on stock exchange.

73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognized stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) ...

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

....” (emphasis supplied)

10. As the offer and allotment of secured redeemable debentures is, *prima facie*, a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement for such shares to be dealt on a recognized stock exchange in terms of Section 73 of the Companies Act, 1956, as stated above. I find that ANFPL is *prima facie* in breach of the provisions of Section 73, read with section 465 of the Companies Act, 2013, as well.

11. Further, in connection with a public *issue*, Section 56 of the Companies Act, 1956 mandates that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the ROC. I find that there is no evidence on record to indicate that ANFPL has complied with the provisions of Sections 56 and 60 of Companies Act, 1956, in respect of the *offer and allotment of secured redeemable debentures*. In view of the same, I find that ANFPL is *prima facie* in breach of the provisions of Sections 56 and 60 of the Companies Act, 1956 in connection with the subject offer and allotment of Secured Redeemable Debentures.
12. As per Section 117C of the Companies Act, 1956, read with section 465 of the Companies Act, 2013, [Section 71(4) of the Companies Act, 2013] where a company issues debentures, it *shall* create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited out of its profits every year until such debentures are redeemed. Based on the available documents, it is observed that the ANFPL did not comply with the provisions of Sections 117C of the Companies Act, 1956 as well.
13. In addition to the above, a company which intends to issue debentures to the public has to comply with the provisions of SEBI (Issue of Listing of Debt Securities) Regulations, 2008. It is observed from the available records that ANFPL has not complied with the following provisions of SEBI (Issue of Listing of Debt Securities) Regulations, 2008:-

General Conditions.

4.

...

*(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations,
(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:*

Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange;

Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange;

Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation;

(b) it has obtained in-principle approval for listing of its debt securities on the recognized stock exchanges where the application for listing has been made;

(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document:

Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

(d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the debt securities that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder.

Disclosures in the offer document

5. (1) The offer document shall contain all material disclosures which are necessary for the subscribers of the debt securities to take an informed investment decision.

(2) Without prejudice to the generality of sub-regulation (1), the issuer and the lead merchant banker shall ensure that the offer document contains the following:

(a) the disclosures specified in Schedule II of the Companies Act, 1956;

(b) disclosure specified in Schedule I of these regulations;

(c) additional disclosures as may be specified by the Board.

Explanation: For the purpose of this regulation, "material" means anything which is likely to impact an investors' investment decision.

Filing of draft offer document

6. (1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.

(2) The draft offer document filed with the designated stock exchange shall be made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange.

(3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed.

(4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.

(5) The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.

(6) A copy of draft and final offer document shall also be forwarded to the Board for its records, [along with regulatory fees as specified in Schedule V] simultaneously with filing of these documents with designated stock exchange.

(7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations.

(8) The debenture trustee shall, prior to the opening of the public issue, furnish to the Board a due diligence certificate as per Schedule III of these regulations.

Mode of Disclosure of Offer Document

7. (1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats.

(2) The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue.

(3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

Advertisements for Public issues

8. (1) The issuer shall make a advertisement in an national daily with wide circulation, on or before the Issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV.

(2) No issuer shall issue an advertisement which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive.

(3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.

(4) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document.

(5) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document.

(6) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of debt securities or be used for solicitation.

Abridged Prospectus and application forms

9. (1) The issuer and lead merchant banker shall ensure that:

(a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus;

(b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus;

(c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.

(2) The issuer may provide the facility for subscription of application in electronic mode.

Minimum subscription.

12. (1) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document.

(2) In the event of non-receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.

Prohibitions of mis-statements in the offer document.

14.(1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading.

(2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement.

Trust Deed

15. (1) A trust deed for securing the issue of debt securities shall be executed by the issuer in favour of the debenture trustee within three months of the closure of the issue.

(2) The trust deed shall contain such clauses as may be prescribed under section 117A of the Companies Act, 1956 and those mentioned in Schedule IV of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

(3) The trust deed shall not contain a clause which has the effect of –

- (i) limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors;*
- (ii) limiting or restricting or waiving the provisions of the Act , these regulations and circulars or guidelines issued by the Board;*
- (iii) indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.*

Debenture Redemption Reserve

16. (1) *For the redemption of the debt securities issued by a company, the issuer shall create debenture redemption reserve in accordance with the provisions of the Companies Act, 1956 and circulars issued by Central Government in this regard.*

(2) *Where the issuer has defaulted in payment of interest on debt securities or redemption thereof or in creation of security as per the terms of the issue of debt securities, any distribution of dividend shall require approval of the debenture trustees.*

Creation of security

17. (1) *The proposal to create a charge or security , if any, in respect of secured debt securities shall be disclosed in the offer document along with its implications.*

(2) *The issuer shall give an undertaking in the offer document that the assets on which charge is created are free from any encumbrances and if the assets are already charged to secure a debt, the permissions or consent to create second or pari-passu charge on the assets of the issuer have been obtained from the earlier creditor.*

(3) *The issue proceeds shall be kept in an escrow account until the documents for creation of security as stated in the offer document, are executed.*

Mandatory listing

19. (1) *An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956(1 of 1956).*

(2) *The issuer shall comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed.*

(3) *Where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such debt securities.*

Obligations of the Issuer, Lead Merchant Banker, etc.

26.(1) *The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.*

(2) *The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and Schedule II of the Companies Act, 1956.*

(3) *The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board.*

(4) *The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.*

(5) *No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange.*

(6) *The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities."*

14. Upon consideration of the aforementioned paragraphs, I am of the view that during the Financial Year 2012-13, ANFPL was *prima facie* engaged in fund mobilising activity from the public, through the issuance of NCDs without complying with the aforementioned provisions of the Debt Securities Regulation.

15. In terms of section 73(2) of the Companies Act, 1956 the company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). As per available information, Vikas Jha, Rakesh Raushan, Birendra Thakur, Manoj Chauhan, Abadh Kumar Singh and Sunil Kumar are/were directors of ANFPL during the relevant time. As per the information received from RoC, Kolkata, the details of the present and past directors of ANFPL, including the dates of appointment/cessation as directors, are as under:

Sr. No.	Name of the directors	Designation	Date of Appointment	Date of Cession
1	Shri. Vikas Jha	Present Director	02/02/2014	
2	Shri. Rakesh Raushan	Present Director	02/02/2014	
3	Shri. Birendra Thakur	Present Director	08/02/2012	
4	Shri. Manoj Chauhan	Present Director	15/05/2012	
5	Shri. Abadh Kumar Singh	Past Director	08/02/2012	17/03/2014
6	Shri. Sunil Kumar	Past Director	03/08/2012	17/12/2014

16. I note that the persons at serial nos. 3 to 6 in the above Table under para 15 have been directors of the company during the period of money mobilization through *offer and allotment of Secured Redeemable Debentures* and hence are responsible for contravention of the of the abovementioned Public Issue requirements and are also liable for refund of money to the investors and persons at sl. no. 1 to 2 in the above Table, have become directors of the

company post the money mobilization and hence, are liable for the alleged contraventions by ANFPL.

17. It is also observed from the extracts of the debenture trust deed dated February 18, 2012 of ANFPL and other documents that ANFPL has appointed M/s Aryan Debenture Trust represented by Bimalendu Bikash Dey as Debenture Trustee for the issuance of NCDs. As per Section 12(1) of the SEBI Act "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("*Debenture Trustees Regulations*"), provides that: "*no person should act as a debenture trustee unless he is either –*
- i. a scheduled bank carrying on commercial activity; or*
 - ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
 - iii. an insurance company; or*
 - iv. body corporate."*

18. It is observed that ANFPL had appointed a Debenture Trustee which is not registered with SEBI. Based on the material available on record, I find that M/s Aryan Debenture Trust represented by Shri. Bimalendu Bikash Dey as Debenture Trustee *prima facie* failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as an unregistered Debenture Trustee, which is a violation of the provisions of Section 12(1) of SEBI Act, 1992 and Regulation 7 of SEBI (Debenture Trustee) Regulations, 1993.

DIRECTIONS

19. From the information submitted by the complainants and the list of debenture holders provided by past directors of ANFPL, it can be reasonably inferred that the money mobilization on the part of ANFPL is potentially placing investors at risk by not following the requirements of law applicable to a public issue. In the light of the facts in the instant matter, I find this to be a fit case to pass interim directions against ANFPL and the above named directors and debenture trustee. In view of the foregoing, I, in exercise of the powers

conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-

- i. ANFPL and its above named directors and debenture trustee (i.e. Noticee nos. 1 to 8), viz. Birendra Thakur, Manoj Chauhan, Abadh Kumar Singh, Sunil Kumar, Vikas Jha, Rakesh Raushan and Bimalendu Bikash Dey shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;
 - ii. ANFPL and its directors, viz. Birendra Thakur, Manoj Chauhan, Abadh Kumar Singh and Sunil Kumar, shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through the offer and allotment of Secured Redeemable Debentures;
 - iii. ANFPL and the above named directors (i.e. Noticee nos. 1 to 7), viz. Birendra Thakur, Manoj Chauhan, Abadh Kumar Singh, Sunil Kumar, Vikas Jha and Rakesh Raushan shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of Secured Redeemable Debentures sought vide letters dated July 16, 2015 and August 13, 2015;
 - iv. Bimalendu Bikash Dey, shall not henceforth act as Debenture Trustee in respect of debentures of ANFPL and shall not take up any new assignment or involve himself in any new issue of securities in a similar capacity.
20. The preliminary findings contained in paragraphs 8,10,11,12,13,14,15,16,17& 18 of this Order are made on the basis of the information submitted by complainants and the list of debenture holders provided by Abadh Singh, past Director. ANFPL and the above named directors and debenture trustee are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed, including the following directions, namely:-
- i. ANFPL and its directors, viz. Birendra Thakur, Manoj Chauhan, Abadh Kumar Singh, and Sunil Kumar, to jointly and severally refund the money collected through the *offer*

and allotment of Secured Redeemable Debentures, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment).

- ii. The money refunded should be supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and
 - iii. ANFPL and its above named directors and debenture trustee, viz. Birendra Thakur, Manoj Chauhan, Abadh Kumar Singh, Sunil Kumar, Vikas Jha, Rakesh Raushan and Bimalendu Bikash Dey (i.e. the Noticee nos. 1 to 8), to be restrained / prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of effecting the refund as directed above.
21. The Noticees may, within 21 days from the date of receipt of this interim order -cum- show cause notice, file their respective replies. ANFPL and its directors are directed to furnish an inventory of their assets in their reply. In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 90 days from the date of receipt of this Order. In the event of the Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 90 days, the preliminary findings at paras 8,10,11,12,13,14,15,16,17& 18 of this Order shall become final and absolute against the respective Noticees automatically, without any further orders. Consequently, the respective Noticees shall automatically be bound by the directions contained in paras 20, as applicable.
22. The Noticee nos. 1 to 8 shall comply with the directions at para 20 above within a period of 90 days from the date of this Order becoming final, failing which SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution in addition to making a suitable reference to State Government / Local Police.

23. This Order is without prejudice to any other action that SEBI may initiate under securities laws, as deemed appropriate.
24. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on the company and its directors.

Place: Mumbai
Date: December 31, 2018

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA