

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under Section 11(1), 11(4), 11A (1)(b) and 11B of the Securities and Exchange Board of India Act, 1992 in the respect of –

M/s Greater Kolkata Infracon Ltd. (CIN: U45200MP2011PLC026770), its Directors *viz.* Mr. Subir Dutta (DIN:01642274), Mr. Nakhat Sing Agarwalla (DIN:02732014, PAN:APRPA3621H), Mr. Bimalendu Rakshit (DIN:03145637, PAN:AVIPR2257F), Mr. Amitava Sarkar (DIN:03171087, PAN:AKKPS7894Q), Mr. Himangshu Mukherjee (DIN:05290711, PAN:AJWPM6802H), Mr. Sutanu Sarcar (DIN:03490705, PAN:CUJPS7833J), Mr. Paramasish Bhadury (DIN: 03535491, PAN:ANNPB2618K) and Mr. Anil Kumar Mishra (DIN: 03585327, PAN: BDAPM9086Q) and the Debenture Trustee, *viz.* Greater Kolkata Debenture Trust Company, represented by the trustee, Mr. K.R. Udayaraj.

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1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a reference from Registrar of Companies (RoC), Madhya Pradesh vide letter dated October 29, 2013, stating: "*Greater Kolkata Infracon Ltd. has failed to furnish information regarding Form 10 therefore it appears that the company has issued debentures to more than 50 persons*". They also stated that a show cause notice under Sections 56(3), 60(B), 67(1)&(3) and 68 of the Companies Act, 1956 has been issued to the company in September 2013.
 2. Thereafter, SEBI vide letter dated December 10, 2013 sought further information/documents in respect of the issue of debentures by Greater Kolkata Infracon Ltd. (hereinafter referred to as "**GKIL**"/the **company**) from RoC, M.P. However, no further information was provided by them.
 3. Subsequently, SEBI received a complaint vide letter dated October 08, 2014 against GKIL alleging mobilization of funds from public by the company. It was also stated by the complainant that:
 - The complainant had invested in debentures of GKIL in July 2012 and January 2013,
 - During April 2014 the agents of GKIL had taken the complainant's original debenture certificates for repayment. However, the money has not been repaid by GKIL.

3.1 Thereafter, SEBI obtained the names and addresses of Directors of GKIL from the website of Ministry of Corporate Affairs, *MCA 21 Portal*.

3.2 SEBI vide letter dated January 13, 2015 advised the company and its directors to furnish *inter alia* the following information/documents:

- a. Details of past and present directors of the company containing names, addresses, PAN and contact details.
- b. Nature of activities of the company.
- c. Date of opening and closing of issue.
- d. Copy of minutes of EGM of the company approving allotment of debentures and board minutes approving allotment.
- e. Brochures/advertisement pertaining to debenture issue which were made available to public.
- f. Copies of duly filled application forms received from investors/applicants who applied in the debenture issue of the company.
- g. Name and address of the person(s) to whom debentures were allotted with details including face value of debentures, number of debentures allotted, date of receipt of payment, date of allotment, distinctive number, date of charge creation in RoC, charge identification number.
- h. Amount mobilized by issue of debentures till date and amount refunded to investors.
- i. Whether the persons to whom debentures were allotted are still the holder of these debentures. Details of debentures transferred by allottees.
- j. Name and address of debenture trustees. Also, whether these trustees are registered with SEBI.
- k. Details of properties held as security for the said issue of debentures along with valuation report for these assets secured by company.
- l. Details of properties acquired from the money raised from the said debenture issue.
- m. Addresses of all branches operating in India.
- n. Information about any broker employed for the issue, if any, along with name and amount of brokerage paid.
- o. Certified copies of audited financial statements for all the financial years during which funds were raised by company from 2011-12 onwards till date of submission of information.
- p. Copies of IT returns filed by the company for financial year 2011-12 onwards.
- q. Details of the regulatory approvals obtained, if any, for the said debenture issue.
- r. Details of any other fund raising by the company or group associate company from public.

- s. Details of any action initiated/taken by any other authority (including any court order) against the company in respect of money raised from public.

3.3 A physical verification of the company was conducted by SEBI on January 15, 2015 at the corporate office of GKIL, situated at 22/2, Gariahat Road, Kolkata, (W.B.) – 700029. The findings were:

- The company used to operate from 4th Floor of the building,
- The company closed its operations from the said premises since July 2015.

3.4 SEBI also received several other complaints regarding fund raising activities of the company. The complainants also furnished the following documents along with their complaints:

- a. List of investors;*
- b. Copies of Debenture Certificates;*
- c. Submission Statements;*
- d. P.B. (Product Booking) Certificates; and*
- e. Money Receipts.*

3.5 Based on the information/documents (copies of debenture certificates, submission statements, P.B. Certificates, etc. issued by the company) furnished by the complainants, SEBI vide letter dated November 06, 2015 sought various information/documents from the company in relation to their issue of debentures and other instruments. Copies of the said letter were also sent to the past and present directors of the company, *viz.* Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla, Mr. Bimalendu Rakshit, Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury and Mr. Anil Kumar Mishra and the debenture trustee of the company, *viz.* *Greater Kolkata Debenture Trust Company*. The information/documents sought were as under:

- a. Copy of trust deed,
- b. Year-wise details of number of debentures issued along with number of investors and amount mobilized since inception,
- c. Names, addresses and contact details of all key managerial persons, directors and promoters of the company,
- d. Statement of mobilization and deployment of funds under various schemes/plans,

- e. Terms and conditions and structure of the plan,
- f. Names and addresses of all the investors,
- g. Options to the investors if they don't want to hold their investment till maturity,
- h. Details of instruments/documents issued, if any to the investors.

3.6 The letters sent to the directors *viz.* Mr. Sutanu Sarcar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Nakhat Sing Agarwalla and Mr. Himangshu Mukherjee were returned undelivered with the comments *locked/left*. The letters sent to the company and the remaining directors, *viz.* Mr. Subir Dutta, Mr. Bimalendu Rakshit and Mr. Amitava Sarkar were delivered. However, no reply was received from them.

3.7 SEBI, vide separate letters dated November 6, 2015 sought the following information from the Chartered Accountants of the company *viz.* Alokesh Koley & Co. and Chinmoy Ghatak & Co. (Chartered Accountants of the company for Financial Year 2011-12 as per MCA records):

- a. The period during which they audited the company.
- b. The audited balance sheets for 2012-13, 2013-14 and 2014-15 of the company.
- c. Information about the issuance of debentures/preference shares by the company since inception,
- d. Year-wise list of all the debenture holders/ preference shares holders of GKIL showing date of allotment since inception.
- e. Year-wise list of applications from whom debenture / preference shares applications were received by Greater Kolkata Infracon Ltd. but debentures yet to be allotted. Date wise receipt of amount was also sought.
- f. List of entities to whom advances were given by Greater Kolkata Infracon Ltd.as on March 31, 2012, March 31, 2013, March 31, 2014 and March 31, 2015.
- g. Copies of other relevant documents available with them in respect of GKIL and *Greater Kolkata Debenture Trust*.
- h. Copies of the documents obtained for the audit of the said company.

3.8 As the company, its Directors, debenture trustee and the Chartered Accountants did not respond to SEBI letters dated November 6, 2015, (scanned) copies of the aforesaid letters were forwarded to the company, its past & present directors, debenture trustee and the Chartered Accountants of the company, vide e-mails dated November 17, 2015.

3.9 In the meanwhile, SEBI vide letter dated November 06, 2015 and via e-mail dated November 18, 2015 *inter alia* sought the following information/documents from RoC, Madhya Pradesh:

- (a) Number of debenture-holders (year-wise) and amount mobilized through the issuance of such debentures.
- (b) Balance sheets, Annual Returns of the companies since incorporation, etc.;
- (c) Any evidence available with RoC regarding fund mobilization by the company through issuance of debentures/shares. Please inform whether company had subsequently submitted any further information or filed Form no. 17.
- (d) Information about any other fund mobilization activities of the company.
- (e) Status of show cause notice issued to the company and information about any further penal action by the RoC against the company.

3.9.1 Vide the aforesaid letter SEBI also informed RoC, Madhya Pradesh that–

- (a) *“Company had not filed any balance sheets except for FY 2011.*
- (b) *Directors of the company joined and resigned on the same day, however no further information about the re-joining of the said directors uploaded on MCA21 by the company.*

<i>Name of Director</i>	<i>DIN</i>	<i>Date of Joining</i>	<i>Date of Resignation</i>
<i>Subir Dutta S/o Sukhamoy Dutta</i>	<i>1642274</i>	<i>04-03-2013</i>	<i>Resigned on the same day. However, he is presently acting as authorized signatory.</i>
<i>Nakhat Sing Agarwalla S/o Pradip Sing Agarwalla</i>	<i>2732014</i>	<i>21-02-2013</i>	<i>Resigned on the same day. However, he is presently acting as authorized signatory.</i>
<i>Sutanu Sarcar S/o Pulak Sarcar</i>	<i>3490705</i>	<i>21-02-2013</i>	<i>Resigned on the same day, i.e on 21-02-2013</i>
<i>Anil Kumar Mishra S/o Rama Kant Mishra</i>	<i>3585327</i>	<i>21-02-2013</i>	<i>Resigned on the same day, i.e on 21-02-2013</i>

- (c) *As per Form 20B, (AGM - March 31, 2012) filed with RoC, no debentures were issued by the company, whereas as per Form 20B, (AGM - March 31, 2013) 1,65,000 debentures were issued by the company. However, no details about the debenture holders are given.*

(d) Balance sheet as on March 31, 2012 shows Long term borrowings as Rs. 1,01,44,500 (Long term Liabilities from issuance of 1,01,445 debentures) which is in contradiction to Form 20 B (AGM - March 31, 2012) filed with RoC. According to said Form 20 B, no debentures were issued by the company for the said year.”

3.9.2 However, no response has been received from RoC, M.P. till date.

3.10 The company vide letter dated November 12, 2015 (received on November 17, 2015) furnished a copy of the trust deed (entered between GKIL and Greater Kolkata Debenture Trust Company) and copy of e-Form 10. Additionally, they submitted:

- i. “Due to internal audit process certain details for the time being could not be possible, so it is our earnest request to allow us further time to provide all in detail.*
- ii. The company has filed the necessary e-form -10 under the Companies Act, 1956, with the Registrar of Companies (RoC), Madhya Pradesh (MP) and accordingly on 20/09/2011 vide charged ID number 10307326, the said RoC issued the Charge Certificate for the amount of Rs.50,00,00,000/- (fifty crore). The Company has not issued any Prospectus / Red Herring Prospectus (RHP) Statement in lieu of Prospectus (SLP) relating to issue of Debentures as the issue is purely private placement. The company has filed necessary e-Form-10 for issuance of Non –Convertible Redeemable Secured Debentures (NCRSD), under the applicable provisions of the Companies Act, 1956, with Registrar of Companies (RoC) Madhya Pradesh. The Company only collected Rs.1,65,00,000/- (one crore sixty five lacs) from such private placement of debentures within 31/03/2013 and further due to various regulatory problems, the company was not collected any such NCRSD. Further, and as on 31/08/2015, the company has the liability (due and payable) of Rs.34,60,000/- (thirty four lacs sixty thousand) , excluding interest thereon.*
- iii. The said company has issued debentures in Private Placements Basis i.e. exclusively and only to the registered member of the Calcutta Government Employee’s Shelter and Welfare Association, a registered association under the provisions of West Bengal Society Registration Act, 1961, who are only be eligible for entitlement of said NCRSD in purely Private Placement Basis.*
- iv. The directors and addresses shown therein on view signatory details as available at www.mca.gov.in, are the KMP of the said company. E-mail of the company – kolkatagreater99@gmail.com,*
- v. The brochures, Terms and Conditions and Structure of plans for such exclusive private placement of said NCRSD is attached to said e-Form -10.*
- vi. The issuance of said NCRSD is in purely private placement basis and accordingly not attracted under the provisions of the SEBI (Collective Investment Schemes) Regulations, 1999*

- vii. *The company is in the process of payment of all such NCRSD in premature, so to reduce the cost of such administration, the company operates from its Corporate Office,*
- viii. *Maximum amount of NCRSD already been paid, in pre-mature,*
- ix. *Due to maximum re-payment of such NCRSD, the company is in the process of re-arranging its properties afresh, as maximum payment by way of, from sale proceeds of fixed assets. So the list of remaining fixed assets will be provide to your good self very shortly,*
- x. *Certain court matters of the trust and its Trustees are in the nature of sub-judice,*
- xi. *The Company up to Financial 31/03/2013 has the liability (due and payable) of Rs.1,65,00,00 (one crore sixty five lacs) , and as on 31/08/20115, the company has the liability (due and payable) of Rs.34,60,000/- (thirty four lacs sixty thousand) excluding interest shown, after made out the regular premature payments.*

3.11 The Company vide the said letter sought time to furnish the remaining information/documents, such as the agreement letter, details of the schemes, amount mobilized by the company, assurances about guarantee, names and addresses of all investors, a statement of mobilization and deployment of funds under various schemes/plans /offers duly certified by statutory auditors, year-wise details of number of debentures issued along with number of investors and amount mobilized since inception, copies of applications forms, etc..

In view of this, SEBI, vide email dated November 17, 2015, gave an extension of 15 days for submission of point-wise reply. The company was also advised that in case the audited results for the current year is not available with the company, they may furnish the unaudited results duly certified by a Chartered Accountant.

3.12 In the meanwhile, SEBI received a letter dated November 12, 2015 from Mr. Amitava Sarkar (one of the directors of the company), wherein he submitted:

- *“I am a senior citizen of 68 years old and after retirement in 2008 ..I joined as an employee at SUBA Enterprise in the year 2008 under the ownership of Mr. Subir Dutta (one of the directors of GKIL)*
- *Thereafter, under pressure of Mr. Subir Dutta....I was unwillingly on good faith compelled to sign certain documents and papers of GKIL without knowledge,*
- *I resigned from the company on 09/12/2011. Thereafter I have no connection with the company till date and I do not know any affairs/information about the said company. In this connection I enclose my resignation letter with the Investor Complaint Form...”*

3.13 In response to SEBI letter dated November 6, 2015, Alokesh Koley & Co., Chartered Accountants vide email dated November 16, 2015 stated: *“After selecting me as the Statutory Auditor none of the Director care to contact with me, no information is available from their side about their transaction they have made afterwards, no audit has been done by me of the above mentioned Company. So I possessed no paper or knowledge about their operation.”*

It is however, observed that Chinmoy Ghatak & Co., Chartered Accountants failed to respond to SEBI's letter even though the letter was delivered (as per postal delivery status) to them at the address available on record.

3.14 Vide separate letters dated November 17, 2015, reminders were sent to the Directors of the company, *Greater Kolkata Debenture Trust Company* (Debenture Trustee) and Chinmoy Ghatak & Co. (Chartered Accountants). The copies of the letter were also forwarded to their email ids as available on record on the same day.

3.15 The letters sent to *Greater Kolkata Debenture Trust Company* (Debenture Trustee), Mr. Bimalendu Rakshit, Mr. Sutanu Sarcar, Mr. Anil Kumar Mishra, Mr. Parmashish Bhadury and Mr. Nakhat Singh Agarwalla (directors) were returned undelivered.

The letter issued to Chinmoy Ghatak & Co. (Chartered Accountants) was delivered as per Acknowledgment card received from postal department. However, no response has been received from them.

3.16 Mr. Himangshu Mukherjee (one of the Directors of the company), vide letter dated November 30, 2015 submitted:

- *“I was appointed as an employee-director of the company with effect from June 06, 2012,*
- *Due to my pre-occupations and certain unavoidable circumstances I have resigned on January 14, 2013, ...Copy of the extract of the resolution of the Board of Directors is attached herewith,*
- *Accordingly filed the e-Form 32- resignation/ cessation from directorship (attached herewith) with the concerned Registrar of Companies*
- *I have also intimated the concerned RoC about my resignation, vide my reply letter dated 07/02/2014 (as attached), in a reply to show cause of RoC, M.P. dated 29/01/2014,*
- *Under such circumstances, I am unable to provide you any information sought in your letter.”*

3.17 GKIL vide letter dated December 02, 2015 submitted the following documents:

- i. Detailed list of holders of Non-convertible Redeemable Debentures, who have been repaid (including their names addresses, amount paid, pay Order number etc).
- ii. Detailed list of holders of debentures, who were already paid (including their names addresses, amount paid, pay Order number etc.).
- iii. Un-audited balance sheet for FY 2012-13 and provisional balance sheet for FY 2013- 2014, certified by one of the directors of the company,
- iv. Copy of newspaper publication made by the company on March 2, 2015 inviting claim application from the debenture holders for repayment in a Bengali Newspaper “*Sambad Pratidin*”

3.18 In addition to the above, the company also stated (vide the aforesaid letter) that:

- Total amount paid to the debenture holders is around Rs. 1,30,39,000/- (Rupees One crore Thirty Lakhs and Thirty Nine Thousand two hundred only) and all pay orders for the same were being drawn on Allahabad Bank, Southern Avenue Branch, Kolkata, W.B,
- Therefore, out of total collected amount of Rs.1,65,00,000/- (Rupees One crore Sixty Five Lakhs only) collected by the company through exclusive private placement of debentures till March 31, 2012, they paid total amount of around Rs. 1,30,39,000/- (One crore Thirty Lakhs and Thirty Nine Thousand two hundred only) towards pre-maturity of said debentures.
- The money collected is only through private placement and only upto March 31, 2012. The company has not collected any amount of said debentures any more.
- Company is in the process of paying remaining unpaid debentures of approximately Rs. 43,60,800/- (Rupees Forty Three Lakhs Sixty Thousand Eight Hundred only) vide its paper publication dated March 02, 2015 in ‘*Sambad Pratidin*’ a reputed Bengali Daily News Publication. (Copy of the same was enclosed with this letter).

3.19 Thereafter, GKIL vide another letter dated December 24, 2015 stated “*..the remaining amount of unpaid (due and payable) debentures is Rs. 34,60,800/-, as on date. But inadvertently it has been mentioned as Rs. 43,60,800/- in the earlier letter dated December 2, 2015*”.

4. The material available on record such as reference received from RoC, complaints received by SEBI and the documents contained therein, correspondence exchanged between SEBI and GKIL and its directors, and information obtained from the *MCA 21 Portal*, etc. has been perused. On an examination of the same, it is observed that:

- i. GKIL (**M/s Greater Kolkata Infracon Ltd.**) was incorporated on September 15, 2011 with CIN U45200MP2011PLC026770. The registered office address of the company is JR LIG Kmra No-134, Shanti Vihar Colony, Rewa, Madhya Pradesh, 486001. The authorized capital of the company is Rs. 5,00,000/- and paid up capital Rs. 5,00,000/-.
- ii. The present directors of the Company are Mr. Subir Dutta (DIN:01642274), Mr. Nakhat Sing Agarwalla (DIN: 02732014, PAN:APRPA3621H) and Mr. Bimalendu Rakshit (DIN: 03145637, PAN:AVIPR2257F) and the past directors are Mr. Amitava Sarkar (DIN:03171087, PAN:AKKPS7894Q), Mr. Himangshu Mukherjee (DIN:05290711, PAN:AJWPM6802H), Mr. Sutanu Sarcar (DIN: 03490705, PAN:CUJPS7833J), Mr. Paramasish Bhadury (DIN: 03535491, PAN:ANNPB2618K) and Mr. Anil Kumar Mishra (DIN: 03585327, PAN: BDAPM9086Q).
- iii. The present directors of GKIL, *viz.* Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla, and Mr. Bimalendu Rakshit were also directors in another company *viz.* M/s Greater Kolkata Infrastructure Ltd., against whom SEBI has issued an Order (dated February 06, 2015). Vide the said Order SEBI restrained M/s Greater Kolkata Infrastructure Ltd. and the directors Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla, and Mr. Bimalendu Rakshit among others from mobilizing funds from general public through the issuance of debentures.
- iv. From the submissions made by the Company in their letters dated November 12, 2015, December 2, 2015 and December 24, 2015 and the documents such as the list of debenture holders who were refunded, copy of trust deed dated September 20, 2011, etc. furnished by the company, it is observed that:
 - a. GKIL issued “*Non-convertible redeemable debentures*” to a large number of investors, *i.e.* more than 1676 investors during the period 2011-2012. The company has not provided the exact date of the said issue of the NCDs in the list furnished by them to SEBI.
 - b. GKIL made premature repayments to around 1676 individual debenture holders/investors.
 - c. The repayments are claimed to have been made by the company through Pay Orders (drawn on Allahabad Bank, Southern Avenue Branch, Kolkata, W.B.). However, the pay order numbers of only 37 cases were mentioned in the list provided by the company.

- d. The company has created a charge for an amount of Rs. 50,00,00,000/- on September 20, 2011 and appointed *Greater Kolkata Debenture Trust Company* (represented by the Trustee Mr. K.R. Udayaraj as the trustee) as the company's debenture trustee for the offer of NCDs.
- e. Clauses 2 and 6 of the trust deed dated September 20, 2011 furnished by the company (vide letter dated November 12, 2015) states:

Clauses 2 - *"The debentures entitled to the benefit of these presents shall consist of a series of 25,00,000 debentures of Rs. 100/- each aggregating to Rs. 25,00,00,000/- with an option of retaining the over-subscription upto another 25,00,000 debentures of Rs. 100/- each aggregating to another Rs. 25,00,00,000/- in all rank pari passu without any preference or priority by reason of the date of issue or otherwise and secured by the mortgage hereby created on the mortgaged premises"*

Clause 6 *"In consideration of the debentures hereby authorized aggregating to Rs. 50 crores the company as the beneficial owner, hereby mortgages unto the trustee all the present and future properties of the company as security for the due payment of the principal moneys and other dues, the payment of which has been secured by a charge on the mortgaged premises"*

- v. The complainant furnished the following documents to SEBI:
 - a. 65 copies of various *"Debenture Certificates"* issued by the company to 38 individual investors (filtered on the basis of ID proofs given by complainants) during 2011-2012 to 2013-2014,
 - b. 61 copies of *"Submission Statements"* issued to 50 individual investors (filtered on the basis of ID proofs given by complainants) during the period 2011-2012 to 2013-2014,
 - c. 40 *"P.B. Certificates"* issued to 34 individual investors (filtered on the basis of ID proofs given by complainants) during the period 2011-2012 to 2013-2014.
 - d. 4 *"money receipts"* amounting to Rs. 11,080/-.
- vi. As per Schedule I of the *Debenture Trust Deed* filed along with Form 10 to RoC, information about the following plans about *"interest on debentures"* was submitted by the company:

Scheme I: Multiplier Non-Convertible Redeemable Secured Debentures

PLAN	B		C	
Redemption Period	15 Months 1 Day	27 Months 1 Day	39 Months 1 Day	63 Months 1 Day
Amount per Debenture of Rs. 100/-	3600/-	4800/-	3600/-	6000/-
	Minimum 36 Nos.	Minimum 48 Nos.	Minimum 36 Nos.	Minimum 60Nos.
Redemption Value	4140/-	6096/-	5004/-	9780/-
No. of Debentures Applied				

Scheme I: Multiplier Non-Convertible Redeemable Secured Debentures

PLAN	D				E	
Redemption Period	3 Years	5 Years	7 Years	10 Years	12 Years	15 Years
Amount per Debenture of Rs. 100/- (.....)	1000/-	1000/-	1000/-	1000/-	1000/-	1000/-
Redemption Value	1500/-	2000/-	3000/-	6000/-	10000/-	14000/-
No. of Debentures Applied						

- vii. It is further observed from the Form 20B, (AGM - March 31, 2012) filed with RoC that the company did not issue debentures during the period 2011-2012. However, it is seen that the Long term borrowings of Rs. 1,01,44,500 (*i.e* Long term Liabilities from issuance of 1,01,445 debentures) was reflected in the Balance Sheet of the company during the period 2011-2012, which is in contradiction to the aforementioned Form 20 B (AGM - March 31, 2012) filed with RoC.

Further, the Form 20B, (AGM - March 31, 2013) indicates that around 1,65,000 debentures were issued by the company. However, the details of the debenture holders were not provided.

- viii. The aforementioned details/documents (forwarded by the complainant) and various clauses in the trust deed (forwarded by the company) clearly indicate that:
- The company has issued NCDs post March 31, 2012 also, *i.e.* during the period 2012-2013 and 2013-2014,
 - Even though the company claims that they raised an amount of Rs. 1,65,00,000/- through the issuance of debentures, various other certificates/receipts issued by the company (mentioned in Paragraph No. 4(v) above) viz. submission statements, P.B. certificates etc. (provided by complainants) clearly indicate

that the company is raising funds from the general public through various other modes as well.

- Further, the trust deed dated September 20, 2011 states that the company has created a charge for an amount of Rs. 50,00,00,000/- for issuance of 25,00,000 debentures of Rs. 100/- each, aggregating to Rs. 25,00,00,000/-. This clearly shows that GKIL had every intention to issue debentures to the extent of Rs. 50 Cr.

5.1 In the context of the abovementioned details of the *Offer of NCDs*, the issue for determination in the instant matter is whether the mobilization of funds by GKIL through the aforesaid NCDs, is in accordance with the provisions of the Companies Act, 1956; SEBI Act, 1992 ("**SEBI Act**") and the Rules and Regulations framed thereunder including the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("**Debt Securities Regulations**").

5.2 I note that the jurisdiction of SEBI over various provisions of the Companies Act 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. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI* 2012 Indlaw SC 272 (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012) (hereinafter referred to as the "**Sahara Case**"), had observed:

"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."

5.3 In this regard –

- i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced as under:

"67. 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)."

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the Sahara Case observed:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ...

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

- iii. In the instant matter, for ascertaining whether the Offer of NCDs is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.

- a. Under the Offer of NCDs, it is observed from the copies of NCD Certificates made available by the complainants, that same were issued by GKIL during the Financial Years 2011-2012, 2012- 2013 and 2013-2014. Further from the documents provided by the company, such as the list containing the

number of debenture holders to whom premature repayments were made, it is observed that they have issued NCDs to more than 1676 investors. Funds amounting to Rs.1,65,00,000/- (as mentioned at Paragraph No. 3.18 above) were mobilized by GKIL during the period 2011-2012. The number of investors to whom allotments were made under the Offer of NCDs during the aforesaid Financial Years *prima facie* indicate that the number of persons to whom such Offer was made, was above the limit of forty-nine persons as prescribed under the first proviso to Section 67(3) of the Companies Act, 1956.

- b. It is important to note that the number of allottees and funds mobilized under the Offer of NCDs for the Financial Year 2011-2012, have only been taken from the documents submitted by GKIL. Therefore, the actual number of allottees could possibly be several times than the figures indicated in the Paragraph No. 4(iv) (a) above as the copies of debenture certificates furnished by the complainants indicate that the company has issued debentures subsequent to March 2012 also.
- c. GKIL is not stated to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that GKIL is not covered under the second proviso to Section 67(3) of the Companies Act, 1956.
- iv. In view of the above, the Offer of NCDs by GKIL, would *prima facie* qualify as public issue under the first proviso to Section 67(3) of the Companies Act, 1956. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

From the abovementioned, I note that –

- a. Since the Offer of NCDs is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard, reference is made to Sections 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which is reproduced as under:

"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 recognised 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) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been

made for permission for the shares or debentures offered thereby to be dealt in one or more recognized stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(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.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1 [until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2)]; and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees."

- b. In the Sahara Case, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that -

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons.

... Section 73(2) says that every company and every director of the company who is an officer in default, shall 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. The scope of the above mentioned provisions came up for consideration before this Court in Raymond Synthetics Ltd. & Ors. V. Union of India 1992 Indlaw SC 955 (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since Saharas

had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."

- c. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, since the Offer of NCDs is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956 and also compliance with the provisions of Sections 73(2) and 73(3) of that Act.
- v. In the facts of the instant case, it *prima facie* appears that GKIL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the Offer of NCDs.

5.4 Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the RoC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, the Offer of NCDs was a public issue of securities. Having made a public issue, GKIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. It is however found that GKIL has not filed a prospectus with the RoC. In view of the same, I find that GKIL has *prima facie* not complied with the provisions of Section 60 of Companies Act, 1956, in respect of the Offer of NCDs.

5.5 Under 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 or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that GKIL has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

5.6 Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of

offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. Further, under Section 117C of the Companies Act, 1956, 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, from out of its profits every year until such debentures are redeemed. Based on the material available on record, I find that GKIL has not complied with the provisions of Sections 117B-117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions in respect of the Offer of NCDs.

5.7 In addition to the above, reference may be made to the Debt Securities Regulations, which were framed by SEBI in exercise of its powers under Section 30 of the SEBI Act and are applicable to the public issue and listing of debt securities. It may be relevant to note that under the aforesaid Regulations, '*debt securities*' have been defined as '*non-convertible debt securities which create or acknowledge indebtedness, and include debenture...*' In this context, I find that GKIL, through the Offer of NCDs, which is a public issue of debt securities, has *prima facie* violated the following provisions of the aforesaid Regulations, which contain inter alia conditions for public issue and listing of debt securities, viz.

- (i) Regulation 4(2)(a) - Application for listing of debt securities
- (ii) Regulation 4(2)(b) - In-principle approval for listing of debt securities
- (iii) Regulation 4(2)(c) - Credit rating has been obtained
- (iv) Regulation 4(2)(d) - Dematerialization of debt securities
- (v) Regulation 4(4) - Appointment of Debenture Trustees
- (vi) Regulation 5(2)(b) - Disclosure requirements in the Offer Document
- (vii) Regulation 6 - Filing of draft Offer Document
- (viii) Regulation 7 - Mode of disclosure of Offer Document
- (ix) Regulation 8 - Advertisements for Public Issues
- (x) Regulation 9 - Abridged Prospectus and application forms
- (xi) Regulation 12 - Minimum subscription
- (xii) Regulation 14 - Prohibition of mis-statements in the Offer Document
- (xiii) Regulation 15 - Trust Deed
- (xiv) Regulation 16(1) - Debenture Redemption Reserve
- (xv) Regulation 17 - Creation of security
- (xvi) Regulation 19 - Mandatory Listing
- (xvii) Regulation 26 - Obligations of the Issuer, etc.

5.8 Upon a consideration of the aforementioned paragraphs, I am of the view that GKIL is *prima facie* engaged in fund mobilizing activity from the public, through the Offer of NCDs and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Sections 117B-117C) read with the Debt Securities Regulations.

6.1 From the material available on record, it is observed that GKIL created a charge for an amount of Rs.50 Crores on September 20, 2011 and appointed Trustee of the Debenture Holders, *viz* Greater Kolkata Debenture Trust Company (represented by its Trustee, *viz* Mr. K.R. Udayaraj) as Debenture Trustee for the Offer of NCDs by the company.

6.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*".

6.3 In addition, 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."

6.4 Based on the material available on record, I find that Trustee of the Debenture Holders *viz* Greater Kolkata Debenture Trust Company (represented by its Trustee, *viz* Mr. K.R. Udayaraj), has acted as unregistered Debenture Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the provisions of Debenture Trustee Regulations.

7. I note that under the Offer of NCDs, GKIL allotted NCDs to the public during the Financial Year 2011-2012 and also during the FY 2012-2013 and 2013-2014. The present Directors of GKIL are Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit and the past directors are Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury and Mr. Anil Kumar Mishra. Two of the past directors, *viz* Mr. Amitava Sarkar and Mr. Himangshu Mukherjee vide letters

dated November 12, 2015 and November 30, 2015 submitted that they have resigned from the directorship of the company on December 9, 2011 and January 14, 2013 respectively. In this regard, it may be noted that as per the details/documents furnished by the company, they have issued the NCDs on September 20, 2011. Further, the copies of debenture certificates furnished by the complainants clearly indicate that the company continued to issue NCDs subsequent to March 31, 2012, *i.e* during the period, 2012-2013 and 2013-2014.

It is therefore evident that both the aforementioned directors *viz.* Mr. Amitava Sarkar and Mr. Himangshu Mukherjee along with the other directors mentioned above, were in charge and responsible for the day to day affairs of the company during the period of issuance of the NCDs in violation of law. The aforementioned Directors therefore are responsible under Section 73(2) of the Companies Act, 1956, read with Section 27(2) of the SEBI Act, for the *prima facie* contraventions committed by GKIL through the Offer of NCDs.

8. It is further observed that as per the documents furnished by the company vide letter dated December 2, 2015 out of the total amount of Rs. 1,65,00,000/- collected by the company through issue of NCDs during the period 2011-2012, the company claims to have refunded a total of amount of Rs. 1,30,39,200/- to approximately 1676 investors/debenture holders. As per the list containing the details of refund furnished by the Company, they have made repayments to 1416 debenture holders through pay orders (drawn on Allahabad Bank, Southern Avenue Branch, Kolkata, W.B.). All the said repayments were found to have been made by them during the year 2015. The company further claims that they are in the process of refunding the remaining amount of Rs. 34,60,800/- to the debenture holders. The company has also provided (vide letter dated December 2, 2015) a copy of newspaper publication dated March 2, 2015 issued by them in a Bengali Newspaper inviting refund application from the debenture holders. In this regard, it is relevant to note that the aforementioned refund is only in respect of the amount of Rs. 1,65,00,000/- stated to have been collected by the company through the issue of debentures during the period 2011-2012. However, the documents furnished by the complainants clearly indicate that the company collected moneys from the investors subsequent to 2011-2012. It is therefore possible that the actual number of debenture holders and amount mobilized by GKIL could be much more than the figures indicated by them.

It is important to note that the company has not furnished any other evidence such as the copies of pay orders, receipts, bank account statements, etc. in support of its claim that they made refund to the debenture holders/investors. Nor have the auditors been able to give any information directly to

SEBI despite several communication. Furthermore, the copy of the trust deed dated September 20, 2011 furnished by the company (vide letter dated November 12, 2015) indicates that a charge has been created for an amount of Rs. 50 Crore for the issue of 25,00,000 debentures of Rs. 100 each, aggregating to Rs. 25 Crore, with an option to retain the over-subscription upto another 25,00,000 debentures of Rs. 100/- each aggregating to another Rs. 25 Crore. This clearly indicates that GKIL had every intention to issue debentures to the extent of Rs. 50 Cr.

9. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956, administrative authority on the subjects relating to public issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 (as mentioned in Paragraph Nos. 5.2 to 5.8 above). Measures therefore, have to be taken in the instant matter to ensure that only legitimate fund raising activities are carried on by GKIL and no investors are defrauded. In light of the facts in the instant matter, I find that there is no other alternative but to take recourse through an interim action against GKIL and its Directors, for preventing that company from further carrying on with its fund mobilizing activity under the Offer of NCDs.
10. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act, hereby issue the following directions –
 - i. **GKIL (*Greater Kolkata Infracon Ltd.*)** 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. GKIL and its present/past Directors, viz. Mr. Subir Dutta (DIN:01642274), Mr. Nakhat Sing Agarwalla (DIN: 02732014, PAN:APRPA3621H), Mr. Bimalendu Rakshit (DIN: 03145637, PAN:AVIPR2257F), Mr. Amitava Sarkar (DIN:03171087, PAN:AKKPS7894Q), Mr. Himangshu Mukherjee (DIN:05290711, PAN:AJWPM6802H), Mr. Sutanu Sarcar (DIN: 03490705, PAN:CUJPS7833J), Mr. Paramasish Bhadury (DIN: 03535491, PAN:ANNPB2618K) and Mr. Anil Kumar Mishra (DIN: 03585327, PAN: BDAPM9086Q) 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. GKIL 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;*
- iv. GKIL shall provide a full inventory of all its assets and properties;*
- v. GKIL abovementioned past /present Directors shall provide a full inventory of all their assets and properties;*
- vi. GKIL 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, without prior permission from SEBI;*
- vii. GKIL 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 GKIL;*
- viii. GKIL and its abovementioned past and present Directors shall co-operate with SEBI and shall furnish all information/ documents sought vide letters dated January 13, 2015 and November 06, 2015, specifically the details in respect of the debentures issued and amounts collected from investors/ debenture holders during the period 2012-2013 and 2013-2014;*
- ix. As GKIL has claimed to have repaid an amount of Rs.1,30,39,200/- to around 1676 investors, in respect of the issue of NCDs during the period 2011-2012, they shall furnish a detailed list containing the names and addresses of investors to whom repayments have been made by them till date. The said list should contain the date of issuance of debenture, amount paid by the investors, names and addresses of the investors, amount and date of refund, and mode of payment; supported by documentary proof. The said repayments (claimed to have been made by the company to the investors) shall also be certified by a peer reviewed Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India;*
- x. The Debenture Trustee, viz, Trustee of the Debenture Holders, Greater Kolkata Debenture Trust Company, represented by the trustee, Mr. K.R. Udayaraj is prohibited from continuing with its assignment as debenture trustee in respect of the Offer of NCDs of GKIL 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.*

11. The above directions shall take effect immediately and shall be in force until further orders.

12. The prima facie observations contained in this Order are made on the basis of the material available on record i.e. documents/information provided by GKIL, the complaints received by SEBI and information obtained from the MCA 21 Portal and RoC, Madhya Pradesh. In this context, GKIL and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act and Section 73(2) of the Companies Act, 1956, read with Section 27(2) 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 along with 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.
13. GKIL and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their replies, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
14. Similarly, Debenture Trustee, *viz.* Trustee of the Debenture Holders, Greater Kolkata Debenture Trust Company, represented by the trustee, Mr. K.R. Udayaraj is 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 it from accessing the securities market and further restraining it from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
15. The Debenture Trustee, *viz.* Trustee of the Debenture Holders, *Greater Kolkata Debenture Trust Company*, represented by the trustee, Mr. K.R. Udayaraj, may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether it desires to avail itself an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
16. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against GKIL and its abovementioned Directors; its Debenture Trustee, *viz.* Trustee of the Debenture Holders

Greater Kolkata Debenture Trust Company, represented by the trustee, Mr. K.R. Udayaraj, in accordance with law.

Order accordingly.

Place: Mumbai
Date: December 01, 2016

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA