

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER****UNDER SECTIONS 11(1), 11(4), 11A AND 11B (1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF SARVODAY AGRO POWER LIMITED****In respect of:**

Noticee No.1	Name of the Noticee	PAN	CIN/DIN
1.	Sarvoday Agro Power Ltd.	AAOCS8605G	U45400WB2007PLC116883
2.	Shri Anup Prabhakar Toppo	-	0002679198
3.	Shri Bhola Prasad Vishwakarma	AIDPV1683E	0003039139
4.	Shri Kalipad Rajak	ALVPR2003C	0003039162
5.	Shri Santosh Kumar Pathak	ATIPP1350K	0003049455
6.	Shri Jitendra Kumar Choudhary	AIBPC6752C	0005209522
7.	Shri Sanjeev Kumar Vishwakarma	AIXPV3212C	0005291375
8.	Shri Mantosh Pathak	AYRPP2052Q	0005306906
9.	Shri Mritunjay Gorai	AHEPG4179K	0001528944
10.	Shri Dulal Maity	BREPM799E	0001528919
11.	Shri Tarun Chatterjee	AFSPC0946C	0001528929
12.	Shri Ranbir Singh	AYOPS7302R	0002280602
13.	Shri Nilkanth Mahato	APDPM3207R	0002683760
14.	Shri Ashok Kumar Golder	AJKPG4292P	0002917554
15.	Shri Hiralal Ravidas	AQQPR3441J	0003060521
16.	Sarvoday Debenture Trust (Moral Debenture Trust)	-	-
17.	Shri Sambhunath Tewary	AEUPT9869C	-
18.	Shri Anil Kumar Gupta	AROPG6336N	-
19.	Sarvoday 2012 Debenture Trust	-	-
20.	Shri Gobind Prasad Gupta	ACEPG4609B	-

BACKGROUND AND FACTS OF THE CASE

1. Sarvodaya Agro Power Limited ('**SAPL**' or '**Company**' or '**Noticee No.1**') is an unlisted public company which was incorporated on July 02, 2007 with CIN U45400WB2007PLC116883. As per Ministry of Corporate Affairs' ('**MCA**') website, the registered office of the Company is at 8, Biplabi U. K. Dutta Road, Kolkata, West Bengal – 700086.
2. Securities and Exchange Board of India ('**SEBI**') received a reference dated June 24, 2022 and an inspection report in the matter of SAPL vide letter dated September 23, 2022 from MCA, inter alia, *stating* that SAPL had raised money from public from June 25, 2010 to March 31, 2012 and May 15, 2012 to October 31, 2012 by issuing 4,67,575 Secured Non-Convertible Redeemable Debentures ('**NCDs**') and raised ₹ 4,67,57,500/- from 3,622 allottees in two series of NCDs during 2010-2012 in violation of provisions of the Companies Act, 1956.
3. Based on the inspection report of MCA, SEBI undertook examination to ascertain whether SAPL had made any public issue of securities without complying with the relevant provisions of the Companies Act, 1956, Securities and Exchange Board of India Act, 1992 ('**SEBI Act**') and SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ('**ILDS Regulations**').

SHOW CAUSE NOTICE, REPLY AND HEARING

4. SAPL was engaged in fund mobilization activity from public through its offer and issue of NCDs in violation of respective provisions of the Companies Act, 1956, SEBI Act and ILDS Regulations. It was further alleged that the debenture trust and trustees violated the provisions of SEBI Act and SEBI (Debenture Trustees) Regulations, 1993 ('**DT Regulations**').
5. Accordingly, a common Show Cause Notice ('**SCN**') dated June 24, 2024 was issued to SAPL and its directors namely Shri Anup Prabhakar Toppo, Shri Bhola

Prasad Vishwakarma, Shri Kalipad Rajak, Shri Santosh Kumar Pathak, Shri Jitendra Kumar Choudhary, Shri Sanjeev Kumar Vishwakarma, Shri Mantosh Pathak, Shri Mritunjay Gorai, Shri Dulal Maity, Shri Tarun Chatterjee, Shri Ranbir Singh, Shri Nilkanth Mahato, Shri Ashok Kumar Golder, Shri Hiralal Ravidas and Sarvoday Debenture Trust (known as Moral Debenture Trust) (*represented by trustees viz. Shri Sambhunath Tewary, Shri Anil Kumar Gupta*), Shri Sambhunath Tewary, Shri Anil Kumar Gupta, Sarvoday 2012 Debenture Trust (*represented by trustees viz. Shri Gobind Prasad Gupta*) and Shri Gobind Prasad Gupta (**'Noticees'**) calling upon them to show cause as to why suitable directions under Sections 11(1) and 11B(1) of the SEBI Act including direction to refund monies collected from the investors through the offer of NCDs and direction for restraint and prohibition from accessing the securities market should not be issued against them for the alleged violations. The following are the crux of the allegations in the said SCN:

5.1. SAPL issued NCDs to more than 49 persons in FY 2010-11, 2011-12 and 2012-13 by inviting applications from the general public and raised ₹ 4,67,57,500/- without filing of any prospectus in connection with the issue of securities. Further, SAPL neither got the NCDs listed with any of the recognized stock exchanges nor refund the money collected from investors.

5.2. Debenture Trustees, i.e. Sarvoday Debenture Trust (*known as Moral Debenture Trust and represented by trustees namely Shri Sambhunath Tewary and Shri Anil Kumar Gupta in 1st Series*) and Sarvoday 2012 Debenture Trust (*represented by a trustee namely Shri Gobind Prasad Gupta in 2nd Series*) who acted as debenture trustees in respect NCD issuances, were not registered with SEBI.

5.3. Accordingly, Noticee No. 1 to 15 have violated provisions of Section 56(1), 56(3), Section 60 read with Section 2(36), Section 67(3) and Section 73(1), (2) & (3) of the Companies Act, 1956 read with Section 465 (2) of the Companies

Act 2013 and Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5 (2)(b), 6, 7, 8, 9, 12, 14, 15, 19 and 26 of ILDS Regulations read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible Securities) regulations, 2021 (**'ILNS Regulations'**). Further, Noticee No. 16 to 20 have violated Section 12(1) of the SEBI Act read with Regulation 7 of the DT Regulations.

6. Vide the said SCN, the Noticees were given an opportunity to file their replies, within 21 days from the date of receipt of the said SCN. SEBI informed the Noticees that in case of failure to reply, it would be presumed that they had no reply to submit and the matter would be proceeded on the basis of material available on record. The SCN further stated that the concerned persons may also indicate whether they desire to avail themselves an opportunity of personal hearing before SEBI.
7. The SCN was served to the Noticees through Speed Post with acknowledgement (**'SPAD'**).

7.1. The SCN was delivered to Shri Bhola Prasad Vishwakarma, Shri Kalipad Rajak, Shri Santosh Kumar Pathak, Shri Jitendra Kumar Choudhury, Shri Sanjeev Kumar Vishwakarma, Shri Mantosh Pathak and Shri Mrityunjay Gorai and a common response was sent by SAPL {letter signed by Shri Bhola Prasad Vishwakarma as a Managing Director (**'MD'**) of the Company} on their behalf vide letter dated July 15, 2024, *inter-alia*, stating that SAPL has not undertaken public offer for issuance of NCDs but issued it to private persons and who are being paid accordingly upto March 31, 2023. It was also mentioned that SAPL shall set off entire liability during the period 2024-25 and have filed the same before ROC for the relevant year accordingly.

7.2. While the SCN was delivered to Shri Dulal Maity, Shri Tarun Chatterjee, Shri Ranbir Singh, Shri Nilkanth Mahato, Shri Hiralal Ravidas, Shri Sambhunath Tewary and Shri Anil Kumar Gupta, no response has been received.

- 7.3. For the remaining Noticees viz., SAPL, Shri Anup Prabhakar Toppo, Shri Ashok Kumar Golder, Sarvoday Debenure Trust, Sarvoday 2012 Debenture Trust and Shri Gobind Prasad Gupta, the SCN returned undelivered.
8. Thereafter, vide hearing notice dated November 06, 2024 sent through Speed Post, the Noticees were given an opportunity of hearing on December 02, 2024.
9. Subsequently, SEBI vide publications on November 15, 2024 in the newspapers viz., '*The Times of India*', '*The Sanmarg*', '*Bartman Patrika*' and '*Dainik Jagran*', also served the hearing notice cum SCN to all the Noticees stating that an opportunity of personal hearing is scheduled on December 02, 2024 and advised them to file written reply latest by November 26, 2024, failing which, matter shall be proceeded ex-parte qua them. It was also mentioned that the SCN could not be served to Noticee No. 1,2,14,16,19 & 20 and were advised to download copy of the SCN/hearing notice from SEBI website or to collect from Eastern Regional Office, SEBI. The hearing opportunity was availed by Shri Kalipad Rajak, Shri Sanjeev Kumar Vishwakarma, Shri Santosh Kumar Pathak, Shri Sambhunath Tewary and Shri Mantosh Pathak only and the remaining noticees did not attend the hearing held on December 02, 2024.
10. Thereafter, the undersigned was assigned as the Quasi-Judicial Authority and hearing notice dated June 03, 2025 was served again to all the notices through SPAD and also through newspaper publication on June 18, 2025 to avail an opportunity of personal hearing on June 23, 2025. The said hearing was attended by Shri Sambhu Nath Tewary, Shri Gobind Prasad Gupta, Shri Mantosh Pathak, Shri Hiralal Ravidas, Shri Santosh Pathak, Shri Sanjeev Kumar Vishwakarma, Shri Anil Kumar Gupta, Shri Kalipad Rajak and Shri Bhola Prasad Vishwakarma only.
11. Submissions of the Noticees during hearings held on December 02, 2024 and June 23, 2025 and written submissions are summarized below:

SAPL and Shri Bhola Prasad Vishwakarma:

11.1. Shri Bhola Prasad Vishwakarma was the signatory (under the capacity of MD) to the letters sent by SAPL dated July 15, 2024 and refuted the allegation that issuance of NCDs constituted a public offer and letter dated June 20, 2025 wherein it was re-iterated that the Company has not made any public offer for issuance of NCDs and offer was made only to private persons and who are being repaid accordingly upto March 31, 2025 and onwards. It was also stated that they have filed the same before ROC for the relevant year upto 2022-2023 accordingly. Further, it was stated since the hearing notice is regarding public offer, it is not related to the Company. Letter dated June 20, 2025 was sent to SEBI on behalf of all directors viz., Shri Bhola Prasad Vishwakarma, Shri Kalipad Rajak, Shri Jitendra Kumar Choudhury, Shri Santosh Kumar Pathak, Shri Sanjeev Kumar Vishwakarma, Shri Mantosh Pathak and Shri Mrityunjay Gorai.

11.2. Shri Bhola Prasad Vishwakarma had requested for adjournment of hearing which was re-scheduled on March 11, 2025 before Shri G. Ramar, the predecessor Quasi-Judicial Authority. Subsequently, hearing opportunity was availed by him on June 23, 2025 authorizing Shri Gobind Prasad Gupta to make submissions on his behalf who re-iterated earlier submissions.

Shri Kalipad Rajak

11.3. During hearing held on December 02, 2024, Shri Kalipad Rajak submitted that he resigned from the Company in 2014 and filed written submissions that he tendered his resignation on October 25, 2014 along with a copy of resignation letter. He also submitted that advocate Shri Gobind Prasad Gupta coerced him to sign on audit papers and misused his digital signature. He also submitted that the Company is being run by Shri Bhola Prasad Vishwakarma, Shri Nilkanth Mahato, Shri Mrityunjay Gorai and Shri Gobind Prasad Gupta and they have sold the properties belonging to the

Company for their benefit without repayment of money to the investors. He re-iterated his submissions in the response filed on July 06 & 21, 2025. Shri Kalipad Rajak and his representative Shri Gobind Prasad Gupta were present in the hearing on June 23, 2025.

Shri Santosh Kumar Pathak

11.4. During hearing held on December 02, 2024, he submitted that he resigned from the Company in 2014 and did not attend any meetings of the Company. Subsequently, vide email dated December 02, 2014 submitted that he resigned from the Company on October 25, 2014 and the Company is being managed by Shri Gobind Prasad Gupta and Shri Bhola Prasad Vishwakarma. The reason for resignation was that he was not informed about any meetings and Shri Bhola Prasad Vishwakarma handled everything on his own. He also shared a copy of notarized resolution signed by Shri Bhola Prasad Vishwakarma, *inter-alia*, stating that on account of resignation of Shri Santosh Kumar Pathak, Shri Sanjeev Kumar Vishwakarma and Shri Kalipad Rajak, he has been authorized to do all act and deeds, matters and things as deemed necessary and to sign and execute all necessary documents, applications and returns along with the filing of E-forms with the Registrar of Companies ('**ROC**'), West Bengal.

11.5. He re-iterated his submissions in the hearing conducted on June 23, 2025 and vide email dated July 02, 2025, *inter-alia* submitted that he resigned from the Company in 2014 and the same was accepted by Shri Bhola Prasad Vishwakarma, MD of SAPL. He also submitted copies of notices to the investors of the Company dated January 21, 2017 and February 14, 2017 and an affidavit by Shri Bhola Prasad Vishwakarma stating that he is the director and Chairman of the Company.

Shri Sanjeev Kumar Vishwakarma

11.6. During the hearing held on December 02, 2024, he submitted about his resignation from the Company in 2014. In support of his claim, he submitted a letter dated October 25, 2014 of SAPL accepting his resignation and a notarized affidavit dated December 12, 2018 by Shri Bhola Prasad Vishwakarma, in the capacity of Chairman and MD of the Company stating that Shri Sanjeev Kumar Vishwakarma has resigned from the Company on October 25, 2014 from all Sarvoday Agro companies and no liability/responsibilities arise from him. He has also submitted a copy of complaint filed with the ROC, Kolkata about affairs of the Company and also shared a screenshot of the MCA portal about complaint filed with ROC.

11.7. Further, Shri Sanjeev Kumar Vishwakarma, vide emails dated July 04 & 07, 2025, *inter-alia* submitted that he accepted offer of Shri Bhola Prasad Vishwakarma, MD of SAPL for his induction as a director of SAPL despite having no knowledge about how a company functions as he was offered monthly remuneration. Later, he expressed unwillingness to continue and Shri Gobind Prasad Gupta informed about his removal from the post of director from October 25, 2014 and he would not face any issues in future.

11.8. Subsequently, pursuant to receipt of notice from the ROC, he came to know that his name was not removed in the records of ROC. When he enquired, Shri Bhola Prasad Vishwakarma assured him that his name will be removed from ROC, Kolkata and asked him to submit power of attorney of land in the name of Shri Bhola Prasad Vishwakarma and Shri Nilkanth Mahato. Shri Bhola Prasad Vishwakarma also informed that he will return money to the investor pursuant to sale of land. While Shri Bhola Prasad Vishwakarma sold the land, he failed to return money to investors. He also submitted that Shri Bhola Prasad Vishwakarma, Shri Gobind Prasad Gupta and Shri Nilkanth Mahato are running the Company. He has also submitted copy of letter addressed to BL & LRO,

inter-alia, alleging that a general power of attorney which was given by Shri Santosh Kumar Pathak, Shri Sanjeev Kumar Vishwakarma and Shri Mantosh Pathak to Shri Bhola Prasad Vishwakarma was misused by him and a court case is pending in Khunti Court in Jharkhand.

Shri Mantosh Pathak

11.9. During the hearings held on December 02, 2024 and June 23, 2024, he stated that he was not involved in any meetings of the Company nor signed any documents of the Company.

Shri Mritunjay Gorai

11.10. He submitted vide letter dated November 30, 2024 that he could not reply to the SCN on account of ill health. Further, he stated that he resigned from the Company in 2011 and liability has been settled in due time.

Shri Dulal Maity

11.11. He submitted vide email dated June 22, 2025, that he was involved with the persons of SAPL and had good relations with the directors of the Company but has no nexus with the said company. He is neither aware nor able to recollect anything related to this company and date of his resignation. He was unable to attend the hearings due to financial issues and ill health.

Shri Ranbir Singh

11.12. Shri Ranbir Singh, vide letter dated November 23, 2024 through his advocate Shri Batukesh Chakraborty stated that he has been falsely implicated in the matter and he is not related to SAPL and unaware about debentures of SAPL. Accordingly, there is no reason to visit SEBI in connection with the allegations in the SCN/ hearing notice.

Shri Nilkanth Mahato

11.13. He submitted vide letter dated November 30, 2024, that he could not reply to the SCN on account of ill health, resigned from the Company in 2011 and liability has been settled in due time.

11.14. Further, vide email dated June 20, 2025, he submitted that he resigned from the Company in 2011. The Company collected debenture fund on private placement basis and liability was paid completely before his resignation and also submitted that as per MCA rules, there is no liability post resignation of the director and therefore, he is not liable to respond to SEBI. He also submitted that the Company has issued no dues certificate. He re-iterated his submissions during hearing on June 23, 2025.

Shri Hiralal Ravidas

11.15. Shri Hiralal Ravidas, vide email dated June 20 & 23, 2025, *inter-alia*, submitted that he was director in SAPL and resigned in February 2022, the Company collected debenture fund on private placement basis and liability was paid completely before his resignation. There is no liability post his resignation and he is not liable to respond to SEBI. He also submitted that the Company has paid no dues certificate. He re-iterated his submissions during hearing held on June 23, 2025.

Shri Sambhunath Tewary

11.16. Shri Sambhunath Tewary, vide letters dated August 01, 2024 and November 30, 2024, *inter-alia* submitted that there was no involvement in SAPL and directors of SAPL viz., Shri Santosh Kumar Pathak, Shri Bhola Prasad Vishwakarma, Shri Kalipad Rajak and Shri Mantosh Pathak met him for creation of Sarvoday Debenture Trust and SAPL in 2010. Later, in his absence and without his consent trust deed was executed. He tendered his resignation

immediately i.e. on June 10, 2011, after he came to know about registration of SAPL, which was acknowledged by Shri Bhola Prasad Vishwakarma. He also submitted a copy of resignation letter which was acknowledged by Shri Bhola Prasad Vishwakarma, director of SAPL.

11.17. During hearing held on December 02, 2024, he submitted that there was no involvement in any of the meetings of the Company nor signed any documents of the Company. He re-iterated his submissions during hearing held on June 23, 2025.

Shri Anil Kumar Gupta

11.18. Shri Anil Kumar Gupta, vide letter dated November 30, 2024, submitted that he was a debenture trustee for a period of less than one month and tendered his resignation to Shri Mritunjay Gorai on June 30, 2010 and there is no liability on him. Further, vide email dated June 20, 2025, stated that he was a trustee of Sarvoday Debenture Trust from June 01, 2010 to June 30, 2010, resigned thereafter and has not received any fee. He further mentioned that directors of SAPL filed a declaration before ROC that debenture fund was collected from less than 50 persons on private placement basis and have not violated terms of affidavit sworn by the director, Shri Mrityunjay Gorai and there is no violation of SEBI rules and the Company has paid 80% and above payment having sufficient assets to set off the liability. He attended the hearing on June 23, 2025 and re-iterated his submissions.

Shri Gobind Prasad Gupta

11.19. Shri Gobind Prasad Gupta, vide letter dated November 21, 2024, *inter-alia*, submitted that he was trustee of Sarvoday 2012 Debenture Trust, Kolkata from the period April 25, 2012 to May 13, 2012 only and resigned on May 14, 2012. He also stated that he worked as a legal advisor in SAPL and fund collection was on private basis. He also mentioned that authorities of SAPL, in

a declaration filed before ROC, stated that collection of debenture fund was from less than 50 persons and have not violated terms of the affidavit sworn by Shri Bhola Prasad Vishwakarma during his tenure. He re-iterated his submissions during hearing held on June 23, 2025.

CONSIDERATION OF ISSUES

12. I have considered the allegations and materials available on record such as the SCN, replies and oral submissions made during the personal hearings and the MCA records. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

12.1. *Whether the Company came out with the Offer of NCDs as stated in the SCN in violation of Section 56(1), 56(3), Section 60 read with Section 2(36), 67(3) and 73 (1),(2) and (3) of the Companies Act, 1956 read with Section 465 (2) of Companies Act, 2013, ILDS Regulations and ILNS Regulations?*

12.2. *Whether Sarvoday Debenture Trust, its trustees viz. Shri Sambhunath Tewary and Shri Anil Kumar Gupta and Sarvoday 2012 Debenture Trust, its trustee viz. Shri Gobind Prasad Gupta, have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?*

12.3. *If the findings on issue no. 2 & 3 are found in the affirmative, who shall be liable for the violation committed?*

Issue No. 1: Whether the Company came out with the Offer of NCDs as stated in the SCN in violation of Section 56(1), 56(3), Section 60 read with Section 2(36), 67(3) and 73 (1),(2) and (3) of the Companies Act, 1956 read with Section 465 (2) of Companies Act, 2013, ILDS Regulations and ILNS Regulations?

13. I have perused all the documents available on record viz., the inspection report sent by MCA, records pertaining to tenure of directors received from MCA, trust deeds and all written submissions by the noticees.
14. I note that SEBI received a reference on June 24, 2022 and an inspection report from MCA vide letter dated September 23, 2022 stating that SAPL raised money from public from June 25, 2010 to March 31, 2012 and from May 15, 2012 to October 31, 2012 by issuance of NCDs. During examination, SEBI sought information w.r.t. the Company including details of issuance of equity shares/ convertible or non-convertible instruments/ preference shares, etc. from the Company and all its directors vide letters dated February 06, 2023 and February 08, 2023. No response was received except from Shri Bhola Prasad Vishwakarma, identifying himself as MD of the Company, vide letter dated February 22, 2023 stating that the Company has not issued any NCDs to public and all issuances were to private persons and the same is being refunded. It was also submitted that the entire liability will be set off within a year; however, no documentary evidence to substantiate the claim of refund to investor was provided.
15. I note that the Company has issued NCDs in two series as per inspection report of MCA. The board of directors of SAPL, in its meeting held on April 30, 2010, resolved to convene an extraordinary general meeting ('**EGM**') on June 02, 2010 to consider issuance of NCDs of value not exceeding ₹10 crore. However, in the EGM held on June 01, 2010, it was resolved that SAPL can issue NCDs aggregating to ₹ 1 crore purportedly on private placement basis in tranches.
16. Pursuant to this meeting/resolution, a debenture trust deed was executed on June 02, 2010 between SAPL and Sarvoday Debenture Trust (known as Moral Debenture Trust) *(represented by its trustees namely Shri Sambunath Tewary & Shri Anil Kumar Gupta)*. In the Trust deed the proposal to raise capital aggregating to ₹ 10 crore by issuing a series of 10,00,000 NCDs of face value ₹ 100 was

mentioned. I note the details of scheme as per Trust Deed in the 1st series as follows:

Table 1 Details of scheme in the 1st series

Scheme I: Multiplier Secured Redeemable Debenture						
Plan	A	B	C	D	E	F
Issue Price Minimum 10 debentures @ Rs. 100 per debenture	1000/-	1000/-	1000/-	1000/-	1000/-	1000/-
Maturity Value	1150/-	1500/-	2000/-	3000/-	6000/-	10000/-
Redemption Period	1 yr.	2.5 yrs	4.5 yrs.	7 yrs.	10 yrs.	12 yrs.
Scheme II: Multiplier Four Call Secured Non-Convertible Redeemable Debenture						
Plan issue Price Minimum 10 Debentures in one call and in multiple of 10 Debenture	Maturity value if call complete One Two Three Four				Redemption remarks period 1 st call application money for debenture is the minimum amount in the scheme for a person for other call, which is not be delayed more than one year from previous call date	
F						

17. I note that the Company has raised ₹ 1 crore from June 25, 2010 to March 31, 2012 by allotment of 1,00,000 debentures to 1,059 allottees.

Table 2 Details of money raised in the 1st series

Series	Duration		No of Allottees	No of Debentures allotted	Face value per debenture (Rs.)	Amount
	From	To				
1 st	25.06.2010	31.03.2012	1,059	1,00,000	100	1,00,00,000/-

18. With regard to issuance of 2nd series of NCDs, the board of directors in its meeting held on April 16, 2012 passed a resolution to raise a sum of ₹ 25 crore by issue of 25,00,000 NCDs of ₹ 100/- each, bearing interest at 13.5% having different redemption period between 3 to 15 years.

19. However, shareholders in the EGM held on April 16, 2012, resolved that SAPL can borrow upto 30 crore including issuance of NCDs aggregating to ₹ 26 crore. Subsequently, a debenture trust deed was executed on April 25, 2012 between SAPL and Sarvoday 2012 Debenture Trust represented by Shri Gobind Prasad Gupta as a trustee. I note the details of scheme as per Trust Deed in the 2nd series as follows:

Table 3 Details of scheme in the 2nd series

Scheme A: Multiplier Secured Redeemable Debenture					
Plan	A	B	C	D	E
Issue Price minimum 1 Debenture @ ₹ 100/- per debenture	100/-	100/-	100/-	100/-	100/-
Maturity Value	-	-	-	-	-
Redemption Period	3 yrs.	4 yrs	5 yrs.	6 yrs.	7 to 15 yrs.
Scheme B: Regular Income Secured Debenture					
Plan	Minimum		Redemption period	Annualized yield on Investments	Payable
A	100	1000	3 – 15 Years	13.5%	Monthly / Quarterly / Yearly / Cumulative

20. I note that the Company has raised ₹ 3.68 crore from May 15, 2012 to October 31, 2012 by allotment of 1,00,000 debentures to 2,563 allottees.

Table 4 Details money raised in the 2nd series

Series	Duration		No of Allottees	No of Debentures allotted	Face value per debenture (₹)	Amount
	From	To				
2 nd	15.05.2012	31.10.2012	2,563	3,67,575	100	3,67,57,500/-

21. I note that the Company issued a total of 4,67,575 debentures and raised ₹ 4,67,57,500/- from 3,622 allottees in two series of NCDs during 2010-2012 as per following details.

Table 5 Money raised by SAPL through NCDs during 2010-2012

Series	Duration		No of Allottees	No of Debentures allotted	Face value per debenture (₹)	Amount
	From	To				
1 st	25.06.2010	31.03.2012	1,059	1,00,000	100	1,00,00,000/-
2 nd	15.05.2012	31.10.2012	2,563	3,67,575	100	3,67,57,500/-
Total			3,622	4,67,575	100	4,67,57,500/-

22. On perusal of the reply received, during examination or to the SCNs, it is seen that none of the directors have refuted the alleged issuance of NCDs by SAPL during 2010-2012.

23. The alleged violations of regulatory provisions in the SCN are applicable to the offer of NCDs made to the public. Therefore, the primary question that arises for consideration is whether issuance of NCDs is a 'public issue'. At this juncture, reference may be made to Sections 67 (1) and 67 (3) of the Companies Act, 1956:

"67. CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC."

(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 the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).” (emphasis supplied)

24. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. V. SEBI (Civil Appeal No.9813 and 9833 of 2011)* (**'Sahara Case'**), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration: -

“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 Subsection (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”

25. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the first proviso to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the second proviso to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the first proviso.

26. On examination of the material available on record, I note that SAPL is not a non-banking financial company or public financial institution within the meaning of Section 4 of the Companies Act, 1956. In view of the aforesaid, SAPL is not covered under the exception mentioned at second proviso to Section 67(3) of the Companies Act, 1956.
27. In the instant matter, SAPL and its directors have contended that the Offer of NCDs was on private placement basis and does not fall within the ambit of first proviso of Section 67(3) of Companies Act, 1956. However, no documents have been produced in support of their claim such as certified copy of board resolution approving private placement, offer letter accompanied by an application form serially numbered and addressed either in writing or electronic mode, specifically to the person to whom such an offer is made, etc. I also note from the extract of the minutes of meeting of the board of directors held on April 16, 2012 that there is no mention about issuance of NCDs to be on private placement basis. Further, based on the inspection report of MCA, I find that SAPL issued NCDs to 1,059 allottees from June 25, 2010 to March 31, 2012 and 2,563 allottees from May 15, 2012 to October 31, 2012 and mobilized an amount of ₹ 1,00,00,000/- and ₹ 3,67,57,500/, respectively during the said period. The above findings lead to the conclusion that the offer of NCDs by SAPL was a 'public issue' within the meaning of the first proviso to Section 67(3) of the Companies Act, 1956. Hence, the offer of NCDs by SAPL is deemed to be public issue and SAPL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
28. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the *"Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged."* In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of

section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016) which lays down that "In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".

29. Further, Section 2(36) of the Companies Act read with Section 60 thereof, mandates a company to register its prospectus with the Registrar of Company (RoC), before making a public offer /issuing the prospectus. As per 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 the offer of NCD was a deemed public issue of securities, SAPL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that there is no material on record to indicate that SAPL has registered a prospectus with the RoC, in respect of the offer of NCDs. Therefore, I find that SAPL has not complied with the provisions of Section 60 of the Companies Act, 1956 read with Section 2(36) of the Companies Act, 1956.

30. Section 56(1) of the Companies Act, 1956 provides for every prospectus issued by or on behalf of a company to state the matters specified in Part I and set out the reports specified in Part II of Schedule II of the Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing

disclosures as specified. There is no material to show that SAPL has issued prospectus containing the disclosures mentioned in Section 56(1) of the Companies Act, 1956 or issued application forms accompanying the abridged prospectus. In view of the above, I find that SAPL has not complied with Sections 56(1) and 56(3) of the Companies Act, 1956.

31. The offer of NCDs, being a public issue of securities, such securities shall also have to be listed on a recognised stock exchange, as mandated under Section 73 of the Companies Act, 1956. A company under Section 73(1) and (2) of the Companies Act, 1956 is required to make an application to one or more recognised stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been sought for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. Further, Section 73(3) of the Companies Act, 1956, *inter-alia*, mandated that monies received from applicants shall be kept in a separate bank account.

32. No material is produced before me to show that SAPL had made an application seeking listing permission from stock exchange. The Company has claimed to have submitted list of debenture allottees to MCA along with list of allottees to whom maturity amount was purportedly repaid during October 2011 to October 2012. However, no evidence was placed by the Company to support any repayment was made through banking channel. Accordingly, I find that SAPL had not refunded maturity amount to NCD allottees as claimed. Further, Shri Sanjeev Kumar Vishwakarma, in his submissions, stated that Shri Bhola Kumar Vishwakarma assured about returning money to investors pursuant to sale of land; however, the money has not been returned despite sale of land by him. Shri Nilkanth Mahato and Shri Hiralal Ravidas have stated that liability was paid completely before their resignations; however, they have not produced any evidence in support of claim of refund by banking channels. Shri Anil Kumar Gupta has also claimed that 80% money has been paid by the Company without any supporting documents of

payment through banking channel. I also note that there is no evidence to show that the amount collected by SAPL is kept in a separate bank account. In view of the same, it is noted that SAPL have not complied with Sections 73(1), (2) and (3) of the Companies Act, 1956.

33. The public companies, whether listed or unlisted, when issue and transfer securities is involved, the jurisdiction of SEBI is governed by the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in the Sahara Case(supra) has observed that:

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

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

34. SEBI has to administer Section 67 of the Act, in so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase “intend to get listed” in the context of deemed public issue, the Hon'ble Supreme Court in the matter of Sahara Case (supra) observed the following:

“... But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law.

Obviously, therefore, “intent” has its limitations also, confining it within the confines of lawfulness.....”

“...Listing of securities depends not upon one’s volition, but on statutory mandate..”

“...The appellant-companies must be deemed to have “intended” to get their securities listed on a recognised stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law....”

35. The Companies Act, 1956, has been repealed by the Companies Act 2013 and anything done or any action taken or purported to have been done or taken under the Companies Act, 1956, is deemed to have been done or taken under the corresponding provisions of the Companies Act, 2013, by virtue of Section 465(2) of the Companies Act, 2013 and is therefore saved regardless of the repeal of the Companies Act, 1956.

36. ILDS Regulations are applicable to the public issue and listing of debt securities. Regulation 2(e) of the ILDS Regulations defines debt securities to mean non-convertible debt securities which create or acknowledge indebtedness, and include debentures. In view of the finding that SAPL has made a public issue of debt securities, the ILDS Regulations is also applicable to the instant offer of NCDs. Therefore, I find that the Company has violated the following provisions of the aforesaid ILDS 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 19 –Mandatory Listing
- xiv. Regulation 26 –Obligations of the Issuer, etc.

37. ILDS Regulations have been repealed by the ILNS Regulations and anything done or any action taken or purported to have been done or taken under the ILDS Regulations, is deemed to have been done or taken under the corresponding provisions of the ILNS Regulations, by virtue of Regulation 59 of the ILNS Regulations and is therefore saved regardless of the repeal of the ILDS Regulations.

38. In view of the above findings, I am of the view that SAPL was engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of Section 56(1), 56(3), Section 60 read with Section 2(36), Section 67(3) and Section 73(1), (2) and (3) of the Companies Act, 1956 read with Section 465 (2) of the Companies Act, 2013, ILDS Regulations read with ILNS Regulations.

Issue No. 2: Whether Sarvoday Debenture Trust and its trustees viz. Shri Sambhunath Tewary and Shri Anil Kumar Gupta and Sarvoday 2012 Debenture Trust, its trustee viz. Shri Gobind Prasad Gupta, have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

39. I note from the copy of the Debenture Trust Deeds that SAPL had appointed for the issuances covered in this order, Sarvoday Debenture Trust (known as Moral Debenture Trust) (*represented by its trustees, viz. Shri Sambhunath Tewary and Shri Anil Kumar Gupta*) and Sarvoday 2012 Debenture Trust (*represented by its*

trustee viz. Shri Gobind Prasad Gupta) by execution of trust deeds on June 02, 2010 and April 25, 2012, respectively.

40. 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".* Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993, states that *only a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body corporate alone are eligible to get a certificate of registration as Debenture Trustee.*

41. Sarvoday Debenture Trust (Moral Debenture Trust) *(represented by its trustees, viz. Shri Sambhunath Tewary and Shri Anil Kumar Gupta)* and Sarvoday 2012 Debenture Trust *(represented by its trustee viz. Shri Gobind Prasad Gupta)* are not eligible to obtain a certificate of registration since it does not satisfy the eligibility criteria mentioned in Regulation 7 of the DT Regulations. None of the Noticees claimed that Sarvoday Debenture Trust (Moral Debenture Trust) *(represented by its trustees, viz. Shri Sambhunath Tewary and Shri Anil Kumar Gupta)* and Sarvoday 2012 Debenture Trust *(represented by its trustee viz. Shri Gobind Prasad Gupta)* had received certificate of registration as per section 12(1) of the SEBI Act.

42. Shri Sambunath Tiwary stated that he tendered his resignation on June 10, 2011 and I note from the documents submitted by him that the same has been acknowledged by Shri Bhola Prasad Vishwakarma on behalf of the Company. Further, Shri Anil Kumar Gupta has submitted that he resigned on June 30, 2010 and has not received fee. While the debenture trustees may have resigned, they have executed the trust deed for issuance of NCDs without receipt of certificate of registration as required under section 12(1) of the SEBI Act.

43. In view of the above, I find that Sarvoday Debenture Trust (known as Moral Debenture Trust), Shri Sambhunath Tewary, Shri Anil Kumar Gupta, Sarvoday

2012 Debenture Trust and Shri Gobind Prasad Gupta have dealt in impugned Offer of NCDs as debenture trustees, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992.

Issue No. 3: If the findings on issue no. 1 & 2 are found in the affirmative, who shall be liable for the violation committed?

44. I note that the directors in SAPL are Shri Anup Prabhakar Toppo, Shri Bhola Prasad Vishwakarma, Shri Kalipad Rajak, Shri Santosh Kumar Pathak, Shri Jitendra Kumar Choudhury, Shri Mantosh Pathak, and Shri Shiv Shakti Kumar Gupta as per records shared by MCA vide letter dated January 11, 2023.

45. However, certain noticees viz. Kalipad Rajak, Shri Santosh Kumar Pathak, Shri Sanjeev Kumar Vishwakarma (*date of resignation claimed by each one of them as October 25, 2014*), Shri Mritunjay Gorai and Shri Nilkanth Mahato (*both claim to have resigned in 2011*), Shri Hiralal Ravidas (*claim to have resigned in February 2022*) have submitted that they had resigned from the Company.

46. I note that, except for the following noticees, no supporting documents have been provided in support of claim w.r.t. resignation from the Company.

- i. Shri Kalipad Rajak - copy of resignation letter;
- ii. Shri Santosh Kumar Pathak - copy of notarized resolution signed by MD on behalf of the Company mentioning about resignation of him and Shri Kalipad Rajak and Shri Sanjeev Kumar Vishwakarma
- iii. Shri Sanjeev Kumar Vishwakarma – copy of letter of SAPL accepting his resignation and copy of notarized affidavit dated December 12, 2018 by the MD mentioning about his resignation.

47. Section 168(2) of the Companies Act, 2013 specifies that resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

Accordingly, I accept the claim of the Noticees viz. Shri Santosh Kumar Pathak and Shri Sanjeev Kumar Vishwakarma since intimation of resignation and receipt of resignation by the company is available on record. While Shri Kalipad Rajak has not provided any proof w.r.t. acceptance of his resignation letter by the Company, I have considered his resignation w.e.f. October 25, 2014 based on the copy of notarized resolution signed by Shri Bhola Prasad Vishwakarma as mentioned at para 46 above. Further, from MCA record, I note that Shri Mritunjay Gorai ceased to be a director from December 31, 2016.

48. In view of the above materials, I find that Shri Dulal Maity, Shri Tarun Chatterjee, Shri Mritunjay Gorai, Shri Ranbir Singh, Shri Nilkanth Mahato, Shri Ashok Kumar Golder and Shri Hiralal Ravidas, Kalipad Rajak, Santosh Kumar Pathak, Sanjeev Kumar Vishwakarma who were earlier directors in SAPL, have resigned.

49. Based on the above discussion, I find that the details of appointment and cessation of the directors, are as follows:

Table 6 Details of appointment and cessation of directors of SAPL

Sl. No.	Name of Director (Noticee No.)	Date of appointment	Date of cessation
1	Anup Prabhakar Toppo (Noticee No. 2)	31/03/2010	-
2	Bhola Prasad Vishwakarma (Noticee No. 3)	10/06/2010	-
3	Kalipad Rajak (Noticee No. 4)	10/06/2010	25/10/2014 [#]
4	Santosh Kumar Pathak (Noticee No. 5)	05/06/2010	25/10/2014 [#]
5	Jitendra Kumar Choudhary (Noticee No. 6)	20/06/2012	-
6	Sanjeev Kumar Vishwakarma (Noticee No. 7)	20/06/2012	25/10/2014 [#]
7	Mantosh Pathak (Noticee No. 8)	20/06/2012	-
8	Mritunjay Gorai (Noticee No. 9)	02/07/2007	20/08/2010
		15/09/2010	31/12/2016
9	Dulal Maity (Noticee No. 10)	02/07/2007	20/08/2010

Sl. No.	Name of Director (Noticee No.)	Date of appointment	Date of cessation
10	Tarun Chatterjee (Noticee No. 11)	02/07/2007	20/08/2010
11	Ranbir Singh (Noticee No. 12)	15/10/2008	23/04/2011
12	Nilkanth Mahato (Noticee No. 13)	10/06/2010	20/08/2010
13	Ashok Kumar Golder (Noticee No. 14)	01/09/2010	23/04/2011
14	Hiralal Ravidas (Noticee No. 15)	10/06/2010	20/06/2012
15	Shiv Shakti Kumar Gupta	25/10/2021	-

50. Sections 56(1) and 56(3) read with Section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. There is no material on record w.r.t filing of the prospectus.

51. Therefore, the company (i.e. Noticee No. 1) and all the directors (i.e. Noticee No.2 to 15) during the period of issuance are held liable for the violations of Section 56(1), 56(3) and 60 of the Companies Act, 1956 and liable to be debarred for an appropriate period of time.

52. As far as the liability for non-compliance of Section 73 of the Companies Act, 1956 is concerned, as stipulated in Section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default are jointly and severally liable, to repay all the money with interest at prescribed rate. In this

regard, I note that in terms of Rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.

53. As per Section 5 of the Companies Act, 1956, “officer who is in default” means (a) the managing director(s); (b) the whole-time director(s); (c) the manager; (d) the secretary; (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act; (f) any person charged by the Board with the responsibility of complying with that provision; (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors.

54. In the present case, on the basis of MCA record, I note that Shri Bhola Prasad Vishwakarma is the director in a company since June 10, 2010 and continues to be so till date. Further, I observe that Shri Bhola Prasad Vishwakarma is a signatory to letters dated July 15, 2024 and June 20, 2025 sent by SAPL to SEBI identifying himself as the MD of the Company. I also noted that while SAPL has submitted that the letter is on behalf of all directors, as mentioned at paras 7.1 and 11.1 above, there is no authorization from these directors except for the fact that the letter is signed by Shri Bhola Prasad Vishwakarma. I also find from the copies of Notices to the investors of the Company dated January 21, 2017 and February 14, 2017 and an affidavit by Shri Bhola Prasad Vishwakarma that he is the director and Chairman of the Company. Accordingly, Shri Bhola Prasad Vishwakarma falls under the definition of officer in default in terms of Section 5(a) of the Companies Act, 1956 and is liable to make refund along with interest at the rate of 15% per annum under Section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. While Shri Bhola Prasad Vishwakarma had stated that payment is being made, he has not disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the MD

is responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with rule 4D of the Companies (Central Government's) General Rules and Forms, 1956. Therefore, I find that SAPL and Shri Bhola Prasad Vishwakama, MD of the Company are jointly and severally liable to refund the amounts collected from the investors at the rate of 15% per annum, for the non-compliance of the above mentioned provisions.

55. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct SAPL and its MD, viz. Shri Bhola Prasad Vishwakarma to refund the monies collected, with interest to such investors. Further, SAPL has the continuing obligation to repay the amounts collected in violation of deemed public issue. Such liability can be ensured only by the directors. Hence, in order to safeguard the interests of investors, to prevent further harm to investors and to ensure orderly development of securities market, all the noticees become liable to be debarred for an appropriate period of time.

56. Further, all the continuing directors of SAPL, as mentioned below, are obligated to ensure compliance of the refund:

56.1. Shri Anup Prabhakar Toppo, Shri Bhola Prasad Vishwakarma, Shri Jitendra Kumar Choudhary, Shri Mantosh Pathak who were directors during the issuance of NCDs and are still continuing as directors in the Company;

56.2. Shiv Shakti Kumar Gupta who has joined subsequent to issuance period and is still continuing.

57. With respect to the provisions of the respective regulations of the ILDS Regulations and ILNS Regulations enumerated on paragraphs 36 and 37 of this order, the liability is on the Company to comply with the requirements therein.

58. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the Trustee who act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that Sarvoday Debenture Trust (Moral Debenture Trust) (*represented by its trustees, viz. Shri Sambhunath Tewary and Shri Anil Kumar Gupta*), Shri Sambhunath Tewary, Shri Anil Kumar Gupta, Sarvoday 2012 Debenture Trust (*represented by its trustee viz. Shri Gobind Prasad Gupta*) and Shri Gobind Prasad Gupta are liable for the violation of Section 12(1) of the SEBI Act read with regulation 7 of the DT Regulations.

59. Further, in view of the violations committed by the Company and its directors, to safeguard the interest of the investors who had subscribed to such NCDs issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.

DIRECTIONS

60. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under Section 19 read with Sections 11(1), 11(4), 11A and 11B(1) of the SEBI Act, hereby issue the following directions:

60.1. SAPL and Shri Bhola Prasad Vishwakarma shall, forthwith refund the money to the investors, jointly and severally, collected by the Company through the issuance of NCDs in FY 2010-11, FY 2011-12 and FY 2012-13 including the application money collected from investors till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

60.2. SAPL and Shri Bhola Prasad Vishwakarma are directed to provide a full inventory of all the assets and properties and details of all the bank accounts,

demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and his own.

- 60.3. SAPL and Shri Bhola Prasad Vishwakarma shall issue a public notice in all editions of two National Dailies (*one English and one Hindi*) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this direction;
- 60.4. The repayments and interest payments shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;
- 60.5. SAPL and Shri Bhola Prasad Vishwakarma are prevented from selling the assets, properties and holding of mutual funds / shares / securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized bank. Such proceeds shall be utilized for the sole purpose of making refunds to the investors till full refund as directed above is made. Further, the banks are directed to allow debit only for the purpose of making refunds to the investors of the issuance of NCDs to the Escrow Account, as directed in this order, from the bank accounts of the Noticee no. 1 and 3;
- 60.6. After completing the aforesaid repayments, SAPL and Shri Bhola Prasad Vishwakarma (on behalf of the Company) and Shri Bhola Prasad Vishwakarma (in his personal capacity) shall file a report of such completion with SEBI addressed to the “Regional Director, Eastern Regional Office, SEBI, L&T Chambers, 3rd Floor, 16 Camac Street, Kolkata - 700017, within a period of three months from the date of this Order, duly certified by two independent peer reviewed Chartered Accountants who are in the panel of any

public authority or public institution. The Report of Chartered Accountant shall specifically state that verification has been done by him that the repayments were done to the clients through banking channels. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India.

60.7. SAPL and on its behalf, the present directors (including Noticee No. 2,3,6,8) shall ensure repayment to the investors.

60.8. In case of failure of the Noticees viz., SAPL and Shri Bhola Prasad Vishwakarma and all the directors mentioned above to comply with the aforesaid directions, SEBI, on the expiry of three months from the date of this Order:

- i. may recover such amounts, from the company and Shri Bhola Prasad Vishwakarma, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws;
- ii. may initiate appropriate action against the Company and Shri Bhola Prasad Vishwakarma, including adjudication proceedings against them, in accordance with law;

60.9. SAPL and other noticees viz. Noticee no. 2 to 15 are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. Noticee no. 2 to 15 are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered

with SEBI from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.

60.10. Noticee No. 16 to 20 are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.

61. This order shall come into force with immediate effect.

62. A copy of this order shall be sent to all the notices, recognized Stock Exchanges, banks, depositories and Registrar and Transfer Agents of mutual funds to ensure that the directions given above are strictly complied with.

63. A copy of this order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action.

Date: July 31, 2025

Place: Mumbai

N. Murugan

Quasi-Judicial Authority

Securities and Exchange Board of India