



General Manager
Eastern Regional Office

SEBI/ERO/ON/P/46227/ 3/2023
November 22, 2023

By Speed Post Ack. Due

Noticees:

Noticee No.	Noticee Details	Noticee No.	Noticee Details
1.	Max Wealth Infracon India Ltd. (CIN: U45400WB2010PLC153347 ; PAN: AAGCM8372A; Email id: abc_1234@yahoo.com) FC/49, Narayan Tala (W), P.O. – Desbandhu Nagar, Kolkata -700059, West Bengal	2.	Shri. Partha Sarathi Ghosal (DIN - 03121257, PAN: ALNPG7331C) C/O Mr. A.K Roy, No:1, C.R. Das Sarani, PO Rabindra Sarani, Dt- Darjeeling- 734006, West Bengal
3.	Shri Goutam Ray (DIN – 03122557, PAN – ATKPR4708H) Block C/42, Flat 6, Kalindi Housing Estate, S Dum Dum Municipality, North 24 Parganas-700089, West Bengal	4.	Shri Aman Goyal (DIN – 03221975, PAN: AUDPG0283G) Flat –T25, 4th Floor, Block A, Silver Oak Apartment, Pranami Mandir Road, Siliguri-734001, West Bengal



5.	Muskaan Social Welfare Trust (Debenture Trustee) Email id: arunabha10s@gmail.com 59, Banomali Naskar Road, Kolkata, West Bengal - 700060	6.	Shri Sunil Kumar Singh (PAN - AWZPS4355H, Trustee / Authorized Signatory D L No. - WB- 012002531232) BL-6, FL-3, Dock Eastern Boundary ROA, Kolkata - 7000023
7.	Shri Tapan Kumar Ghosh, (PAN: NA) 221, Milan Nagar, Sector IV, Salt Lake, Kolkata - 700105		

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

Sub: Show Cause Notice under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Max Wealth Infracon India Ltd. (CIN: U45400WB2010PLC153347)

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had received complaints/documents against Max Wealth Infracon India Ltd. (herein referred to as "**MWIL**"/"Company") stating that the Company issued Secured Redeemable Non-Convertible Debentures (SRNCD), however, the maturity amounts were not paid to them. Copies of the aforesaid Secured Redeemable Non-Convertible Debentures issued by MWIL were also attached with the said complaints.
2. Based on the said complaint, SEBI conducted an examination into the issuance of SRNCD by MWIL, Regd. Office: FC/49, Narayan Tala (W), P.O. - Desbandhu Nagar, Kolkata - 700059, West Bengal, with a view to ascertain the possible violations of the public issue norms stipulated under the Companies Act, 1956. / 2013, relevant provisions of the SEBI Act, 1992, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS





Regulations) and the SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations").

Examination of Non-Convertible Debenture Certificate provided by the complainant

3. **Type of Security:** Fully Paid up Secured Non-Convertible Redeemable Debentures each of Rs. 1000/-. The certificate contained the following fields:

- Debenture Certificate No.:
- Reg. Folio No.:
- Name of Holder:
- No. of Debentures:
- Distinctive no. of Debentures:
- Tenure of Debenture: Max-2 60 Month
- Redemption Date:
- Redemption Amount:
- Rate of Interest Payable:
- Interest Payable Frequency:
- Nomination Registered:

The following para is also mentioned on the certificate:

"This Debenture(s) is/are issued subject to and with the benefit of the conditioned endorsed hereon which are deemed to be part hereof for all purposes and to all intents. The Debentures are issued on terms of the Debenture Trust Deed (herein after referred to as "The Company" on the one part and Trustees to the Debenture Holders of Max Wealth Infracon India Limited in its capacity as the Trustees of the other part (hereinafter called "the Trustees") and subject to the terms, provisions and conditions therein contained."

Given at Kolkata under the Common Seal, the company this ____ day of ____ 2010

Managing Director

Director

Authorised Signatory





Information received from Registrar of Company (RoC) – Kolkata

4. As per the details received from RoC – Kolkata vide its letter dated December 14, 2022, provided the following list of directors of MWIL:

Sl. No	Name	Designation	DIN	PAN	Address	Original date of appointment	Date of Cessation
Details of Directors							
1	Partha Sarathi Ghosal (Noticee No.2)	Director	03121257	ALNPG7331C	c/o Mr. A.K Roy, No:1, C.R. Das Sarani, PO Rabindra Sarani, Dt- Darjeeling- 734006, West Bengal	23/09/2010	23/04/2012
2	Goutam Ray (Noticee No.3)	Director	03122557	ATKPR4708H	Block C/42, Flat 6, Kalindi Housing Estate, S Dum Dum Municipality, North 24 Parganas-700089	23/09/2010	-
3	Shri Aman Goyal (Noticee No.4)	Director	03221975	AUDPG0283G	Flat –T25, 4 th Floor, Block A, Silver Oak Apartment, Pranami Mandir Road, Siliguri- 734001	23/09/2010	10/08/2012
4	Ashutosh Roy	Director	05182261	NA	623/3 Jessore Road, Green Park, FLR-GR, Kolkata -700055	10/08/2012	-
5	Asit Das	Director	05257293	NA	2 B/A, North Nowda para Road, Kolkata - 700057	23/04/2012	-

5. Additionally, ROC-Kolkata had also provided the below documents vide its letter dated 06.01.2023:

- Form 20 B for FY ending 31/03/2011
- List of Debenture holders (213)
- List of Shareholders
- Annual Return for FY ending 31/03/2011
- Form 23 AC for FY ending 31/03/2011
- Form 23 ACA for FY ending 31/03/2011
- Form 23 AC for FY ending 31/03/2012
- Form 23ACA for FY ending 31/03/2012

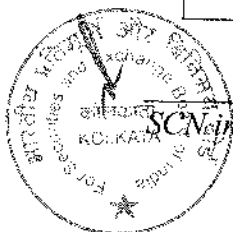




Correspondence with the Company/ Directors

6. Thereafter, vide letters dated February 08, 2022 details regarding the issuance of equity shares/ convertible or non-convertible instruments/ preference shares was sought from the company / directors. Accordingly, the details of correspondence with the company and its directors are as below:

Name of Entity/ Director	Designation	Letter Date	Letter (Returned/ Delivered)	Status	Reply received (if any)
Max Wealth Infracon India Ltd. (Noticee No.1)	Company	08.02.2022	Returned undelivered		Returned undelivered with the comment "Left". Site verification report indicates that the company is not found to be existing at the given address.
Shri. Partha Sarathi Ghosal (Noticee No.2)	Director	08.02.2022	Delivered		Vide letter dated 25.02.2022, he stated that he resigned from the company on 18.04.2012. He attached a board resolution for the same. He stated that he is unaware of the company raising funds and has no documents in his possession as he has resigned.
Shri Goutam Ray (Noticee No.3)	Director	08.02.2022	Returned undelivered		No reply received. No such address.
Shri Aman Goyal (Noticee No.4)	Director	08.02.2022	Delivered		Vide letter dated 25.02.2022 he stated that he resigned from the company on August 10, 2012. He attached a board resolution for the same. He stated that he is unaware of the company raising funds and has no documents in his possession as he has resigned.
Shri. Ashutosh Roy	Director	08.02.2022	Returned undelivered		Unknown address. The entity has left this address and the affixture of the letter couldn't be carried out as the same was not permitted by the landlady





Shri Asit Das	Director	08.02.2022	Returned undelivered	No reply received. Affixture of the letter couldn't be carried out as the said address couldn't be located
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7. Further, letters were also sent to the company's registered office address, and its directors as mentioned in the above table. A physical verification was conducted on 30/07/2022 at the registered office address available on record. It is pertinent to note that the company was not found at its registered office address.

DOCUMENTS OBTAINED FROM THE MINISTRY OF CORPORATE AFFAIR (MCA) PORTAL & RoC Letter: Observations

Details of allotment of Secured Redeemable Debentures (as per Form 20B)

8. It is observed from the filings, that the company has filed Form 20B- Annual Return for the year ended 31/03/2011 (Date of AGM – 14/09/2011). The attachments to the aforesaid Form 20B are as under:
- ROC – Annual Return
 - List of shareholders – 07
 - List of Debenture Holders – 213
9. Considering the fact that the company was incorporated on 23/09/2010, and this annual return is pertaining to the FY ending 31/03/2011, it is quite evident that the company has allotted debentures to 213 allottees during the period between 23/09/2010 – 31/03/2011. The list contains the name of debenture holders and the amount raised from the particular holder. The sum of the amounts mentioned against each of the 213 debenture holders comes to Rs.19,62,000/-.
10. The company has also filed Form 23AC & 23ACA (Forms for filing Balance Sheet & Profit & Loss statement and associated documents) for the FY ended 31/03/2011 and 31/03/2022. The balance sheet for the years ended 31/03/2011 and 31/03/2012 shows the amount raised through debentures as Rs.187,000/- and Rs.79,48,000/- respectively.



However, the sum of amounts mobilized from 213 allottees at the end of 31/03/2011 comes to Rs.19,62,000/- as against Rs.187,000/- mentioned on the balance sheet.

11. Further, the company has filed 2 - Form 10s (Charge documents) (forms dated 21/10/2010 and 09/05/2012), one for creation of charge and one for modification of charge for debentures. The name of the debenture trustee/ charge holder is Muskaan Social Welfare Trust. Its address is as below:

Muskaan Social Welfare Trust
59, Banomali Naskar Road
Kolkata
WB – 700060
Email id: arunabha10s@gmail.com

12. The initial trust deed has been signed by Shri Sunil Kr Singh on behalf of Muskaan Social Welfare Trust and Shri Partha Sarathi Ghosal for the company. The company has created a charge on immovable properties and the amount mentioned as Rs.27 crores. The Board resolution approving the issuance of debentures and the registered deed of mortgages is also attached to the Form 10.

The charge created has been supplemented by a second Form 10 dated 09/05/2012. It is mentioned in the Extract of the Resolution passed at the meeting of board of directors on 16th January, 2012 that the company has issued secured redeemable debentures amounting to Rs.27 crores on 21.10.2010. The said debentures were secured by mortgage and/or charge of immovable properties. Now, the company has purchased some properties at Joynagar in District of South 24 Parganas and the same may be offered as additional security for securing the debentures issued by the company. This additional mortgage was secured by way of a second deed of mortgage was executed on 31/01/2012 between Noticee No.1 (signed by Noticee No.3) and Noticee No.5 (signed by Noticee No.7 on behalf of the trust).



Further, another list of allottees filed by the company contains date of allotment from 1-Nov-2010 to 02-July-2011, which indicates that the company has made issuances in FY 2011-12 as well.

From the aforesaid documents, it is observed that the Company has issued debentures of amount Rs.27 Crores, which has been secured by charge created on immovable properties and additional security created in May 2012.

Details of any Board meetings held by the company with respect to the issue as per RoC record

13.

Date of Board meeting	Date of passing resolution	Amount proposed to raise (Rs.)	Type of issue
27/09/2010	27/09/2010	Rs.27Crores	Secured Redeemable Non-convertible Debentures

Observations from the Debenture Trust Deed

14. As per the copy of the executed trust deed, the details of Secured Redeemable Debentures issued by the company is given below:

SCHEME - I

Term	Plan	Face Value	Redemption Value
3 years	MAX - 1	1000	1500
5 years	MAX - 2	1000	2100
9 years	MAX -3	1000	6000
12 years	MAX - 4	1000	10000

SCHEME - II

(Yearly Payout)



Plan	Period	Rate	For senior citizens
MAX – T -1	3 years	13% p.a.	13.5%
MAX – T -2	5 years	14.5% p.a.	15% p.a.

15. Since MWIL has issued Non-Convertible Debentures to more than 49 persons in a financial year, it amounts to public issue of securities as per the first proviso to Section 67(3) of the Companies Act, 1956. The Companies Act, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of securities) Rules, 2014 revised this limit upwards to 200 persons in a financial year. However, since the allotments were made before this limit of 200 came into effect, the limit of 50 persons as per Companies Act, 1956 is applicable in the instant case.
16. Though the Companies Act, 1956, has been repealed by the Companies Act, 2013, 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.
17. Further, though the SEBI (ILDS) Regulations, 2008 has been repealed by the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (SEBI (NCS) Regulations, 2021), anything done or any action taken or purported to have been done or taken under the SEBI (ILDS) Regulations, 2008, is deemed to have been done or taken under the corresponding provisions of the SEBI (NCS) Regulations, 2021, by virtue of Regulation 59 of SEBI (NCS) Regulations, 2021, and is therefore saved regardless of the repeal of the SEBI (ILDS) Regulations, 2008.
18. It is evident from the above table that the company has issued secured non-convertible debentures to more than 49 persons each in the FY 2010-2011 & 2011-12 amounting to Rs.27 Crores. Hence, MWIL has made a public issue of securities.



Summary of allotments and Amount Mobilized through Non-Convertible Debentures

19. The number of allottees and funds mobilized has been collated from the documents filed by the Company on the MCA 21 Portal. The summary of the allotment of non-convertible debentures issued by the company is as under:

FY	Date of allotment	No. of allottees	No. of debentures allotted	Nominal amount per debenture	Amount Mobilized (in Rs.)
2010-11	21/10/2010 to 29/10/2010	213	NA	1000	27 Crores
2011-12	Various dates	NA	NA	1000	
		NA			27 Crores

20. Muskaan Social Welfare Trust and its Trustees Shri Sunil Kumar Singh, Shri Tapan Kumar Ghosh have acted as Debenture Trustee without obtaining requisite registration from SEBI. Further, Muskaan Social Welfare Trust does not meet the criteria to act as Debenture Trustee.

21. Consequently, MWIL has appointed an unregistered Debenture Trustee for the aforesaid issues of debentures.

22. Further, it is observed from the bank account opening form of MWIL that Shri Sunil Kumar Singh has also signed the bank account opening form of the Company apart from signing documents on behalf of Muskaan Social Welfare Trust.

23. The findings are summarized as follows:

- MWIL issued NCDs to more than 49 persons in each financial years 2010-2011, 2011-2012 by inviting applications from the general public, and mobilized amount to the tune of Rs. 27 Crores;
- MWIL did not file any prospectus in connection with the issue of securities;



- iii. MWIL did not get the securities listed with Stock Exchange,
- iv. MWIL did not refund the money collected from investors and it did not keep the amounts in a separate designated bank account.
- v. MWIL appointed unregistered Debenture Trustee for the aforesaid issue of debentures.
- vi. Muskaan Social Welfare Trust and its Trustees Shri Sunil Kumar Singh and Shri Tapan Kumar Ghosh acted as Debenture Trustee without obtaining certificate of Registration from SEBI. Further, they are ineligible as per criteria of a Debenture Trustee in the Debenture Trustee Regulations.

Therefore, in view of the above facts it is alleged that:

- i. I note that Section 56 of the Companies Act, 1956 requires that no one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus including certain provisos and conditions. Further, Section 60 of the Companies act prescribes conditions for registration of prospectus, Section 67 (3) of the Companies Act, 1956 provides for construction of references to offering shares or debentures to public, etc., and Section 73 prescribes the rules for the company to get its shares listed on the stock exchange. Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B of Companies Act, 1956 stipulates that 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. Thereafter, the relevant provisions of ILDS Regulations, provide the conditions for public issue, disclosures in offer documents, filing of draft offer document etc. However, I note that being the company and the directors, it was duty of Noticees Nos. 1 to 4 to follow and adhere to all of the above mentioned provisions of law, but, I know that by issuing debentures to more than 49 persons each in FY 2010-11 & FY 2011-12, by not filing and prospectus in connection with the said

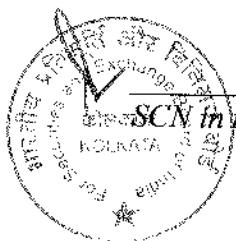


issuance of securities, by not getting the securities listed on the stock exchange and not refunding the money collected through the issue of debentures, by not keeping the amounts collected in a separate designated bank account and by appointing an unregistered debenture trustee, they have allegedly violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3), Section 73(1), (2) & (3) of the Companies Act, 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013, 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, 17, 19, and 26 of SEBI (ILDS) Regulations, 2008 read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 read with Section 5 of the Companies Act, 1956.

- ii. With regard to Noticee Nos. 5, 6 and 7, I note that Section 12(1) of the SEBI Act, 1992, 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. Thereafter, Regulation 7 of Debenture Trustees Regulations, provides that: "no person should act as a debenture trustee unless he is either –
- a. a scheduled bank carrying on commercial activity; or
 - b. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or
 - c. an insurance company; or
 - d. body corporate."

Therefore, Noticee No. 5 by acting as Debenture trustee of the company, without obtaining a certificate of registration from SEBI and Noticee Nos.6 and 7 being the Trustees/ Authorized Signatories of Noticee No.5, have allegedly violated Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations.

24. The Regulatory provisions alleged to have been violated by the Noticees are as follows:



23.1 Companies Act, 1956:

"5. MEANING OF "OFFICER WHO IS IN DEFAULT

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable

to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in

default" means all the following officers of the company, namely :

- (a) the managing director or managing directors ;*
- (b) the whole-time director or whole-time directors ;*
- (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 :*

Provided that the person so charged has given his consent in this behalf to the Board ;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors whomay be specified by the Board in this behalf or where no director is so specified, all the directors :

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

"56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN PROSPECTUS

- (1) Every prospectus issued -*
 - (a) by or on behalf of a company, or*
 - (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.*

(2)

(3) No one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section."

[Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:] Provided [further] that this





sub-section shall not apply if it is shown that the form of application was issued either -
(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees.

"60. REGISTRATION OF PROSPECTUS

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto -

(a) any consent to the issue of the prospectus required by section 58 from any person as an expert; and

(b) in the case of a prospectus issued generally, also -

(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor....."

"Section 2(36) of the Companies Act, 1956

(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."

67. Construction of References to Offering Shares or Debentures to the Public, etc.

(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).

Supreme Court Judgement:

While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the in Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the "Sahara Case"), observed:

".....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 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. ...

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. ..."

73. ALLOTMENT OF SHARES AND DEBENTURES TO BE DEALT IN ON STOCK EXCHANGE

(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)]

(2) Where the permission has not been applied [under sub-section (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 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 subsection (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 fifty thousand rupees.

117B. Appointment of debenture trustees and duties of debenture trustees

(1) No company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company 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:

Provided that no person shall be appointed as a debenture trustee, if he –

(a) beneficially holds shares in the company ;
(b) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee ; (c) has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon.

(2) Subject to the provisions of this Act, the functions of the debenture trustees shall generally be to protect the interest of holders of debentures (including the creation of securities within the stipulated time) and to redress the grievances of holders of debentures effectively.

(3) In particular, and without prejudice to the generality of the foregoing functions, a debenture trustee may take such other steps as he may deem fit –

(a) to ensure that the assets of the company issuing debentures and each of the guarantors are sufficient to discharge the principal amount at all times ;
(b) to satisfy himself that the prospectus or the letter of offer does not contain any matter which is inconsistent with the terms of the debentures or with the trust deed ;
(c) to ensure that the company does not commit any breach of covenants and provisions of the trust deed ;



(d) to take such reasonable steps to remedy any breach of the covenants of the trust deed or the terms of issue of debentures ;

(e) to take steps to call a meeting of holders of debentures as and when such meeting is required to be held.

(4) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Central Government and the Central Government may, after hearing the company and any other person interested in the matter, by an order, impose such restrictions on the incurring of any further liabilities as the Central Government thinks necessary in the interests of holders of the debentures.

Provided that in the case of revival and rehabilitation of a sick industrial company under Part VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted;

23.2 Companies Act, 2013

465. Repeal of certain enactments and savings

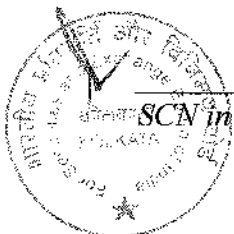
(1)...

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments--

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;



- (d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;
- (e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;
- (f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;
- (g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;
- (h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;
- (i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;
- (j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and
- (k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

23.3 SEBI Act, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market 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:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with



securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

23.4 SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations")

Eligibility for being debenture trustee.

7. No person shall be entitled to act as a debenture trustee unless it is :—

- (a) a scheduled bank carrying on commercial activity; or
- (b) a public financial institution as defined sub-section (72) of section 2 of the Companies Act, 2013; or
- (c) an insurance company; or
- (d) body corporate as defined under sub-section (11) of section 2 of the Companies Act, 2013.

23.5 SEBI (Issue and Listing of Debt Securities) Regulations, 2008:

- 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) – Requirement of Credit rating
- iv. Regulation 4(2)(d) – Dematerialization of debt securities
- v. Regulation 4(4) – Appointment of Debenture Trustee
- 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 17 – Creation of security
- xv. Regulation 19 – Mandatory Listing
- xvi. Regulation 26 – Obligations of the Issuer, etc.





Regulations are reproduced below:

General Conditions

4. (1)

(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations,

(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:

Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange: Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange; Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation.

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

(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document: Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

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

(3)

(4) The issuer shall appoint one or more debenture trustees in accordance with the provisions of Section 71 of the Companies Act, 2013 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

Disclosures in the offer document-

5. (1)

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

(a) ...;

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

(c)

Filing of draft offer document-

6. (1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker (2) The draft offer document filed with the designated stock exchange shall be





made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange. (3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed. (4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers. (5) The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies. (6) A copy of draft and final offer document shall also be forwarded to the Board for its records, along with regulatory fees as specified in Schedule V simultaneously with filing of these documents with designated stock exchange. (7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations. (8) The debenture trustee shall, prior to the opening of the public issue, furnish to the Board a due diligence certificate as per Schedule III of these regulations.

Mode of Disclosure of Offer Document-

7. (1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats. (2) The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue. (3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

Advertisements for Public issues

8. (1) The issuer shall make an advertisement in an national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV. (2) No issuer shall issue an advertisement which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive. (3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading. (4) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document. (5) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document. (6) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of debt securities or be used for solicitation.



Abridged Prospectus and application forms-

9. (1) The issuer and lead merchant banker shall ensure that: (a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus; (b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus; (c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc. (2) The issuer may provide the facility for subscription of application in electronic mode.

Minimum subscription

12. (1) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document. (2) In the event of non-receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.

Prohibitions of mis-statements in the offer document

14. (1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading. (2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement

Trust Deed

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

(1A) Where an issuer fails to execute the trust deed within the period specified in the sub-regulation (1), without prejudice to any liability arising on account of violation of the provisions of the Act and these Regulations, the issuer shall also pay interest of at least two percent per annum to the debenture holder, over and above the agreed coupon rate, till the execution of the trust deed. (1B) A clause stipulating the requirement under sub-regulation (1A) shall form part of the Trust Deed and also be disclosed in the Offer Document. (2) Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as prescribed under section 71 of Companies Act, 2013 and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts: (a) Part A containing statutory/standard information pertaining to the debt issue. (b) Part B containing details specific to the



particular debt issue. (3) The trust deed shall not contain a clause which has the effect of – (i) limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors; (ii) limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by the Board; (iii). indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

Creation of security

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

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

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

Mandatory listing

19. (1) An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) and sub-section (2) of section 40 of the Companies Act, 2013. (2) The issuer shall comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed. (3) Where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such debt securities.

Obligations of the Issuer, Lead Merchant Banker, etc.

26. (1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document. (2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and the Companies Act,



2013 and the Rules made thereunder. (3) The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board. (4) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public. (5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange. (6) The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities. (7) The issuer shall create a recovery expense fund in the manner as maybe specified by the Board from time to time and inform the Debenture Trustee about the same

23.6 SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

Repeal and Savings

59.(1) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 and the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 shall stand repealed from the date on which these regulations come to force.

(2) Notwithstanding such repeal:

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

..
...

25. The Noticees are hereby called upon to show cause as to why appropriate direction(s) be not issued against them under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992. The written submissions, if any, of the Noticees should reach the undersigned, at the address given below and by e-mail at vikas@sebi.gov.in and gunjanb@sebi.gov.in within 21 days from the date of receipt of this notice, failing which it shall be construed that the Noticees have no reply to submit and SEBI shall be free to proceed with on the basis of documents available on record in terms of the provisions of SEBI Act and other applicable laws.





Shri Vikas S. S., General Manager

SEBI Eastern Regional Office

Address: L&T Chambers, 3rd Floor, 16 Camac Street,

Kolkata - 700017, West Bengal

Tel. Board: +91-33-23023000.

Fax : +91-33-22874307

E-mail : sebiero@sebi.gov.in, gunjanb@sebi.gov.in

26. If personal hearing before the Quasi-Judicial Authority, SEBI is desired, it shall be indicated by the Noticees accordingly. The Noticees are advised to keep SEBI informed about the change in their correspondence address, if any, till the proceedings in the extant matter are complete.

27. This notice is without prejudice to the rights of SEBI to issue a supplementary notice and to initiate any other proceedings/actions for the aforesaid violations in terms of the SEBI Act and rules or regulations made there under.

28. All documents relied upon in the notice have been annexed as per the list of enclosures.


Vikas S S
General Manager

Enclosures:

Annexure No.	Particulars
1.	Copy of complaint
2.	Copies of ROC Letters dated 14.12.2022 and 06.01.2023 and the annexures/ enclosures to thee letters
3.	Copies of Form 10 – (Charge documents) (forms dated 21/10/2010 and 09/05/2012)





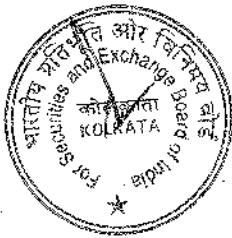
General Manager
Eastern Regional Office

SEBI/ERO/ON/P/46227/4/2023
November 22, 2023

By Speed Post Ack. Due

Noticees:

Noticee No.	Noticee Details	Noticee No.	Noticee Details
1.	Max Wealth Infracon India Ltd. (CIN: U45400WB2010PLC153347 ; PAN: AAGCM8372A; Email id: abc_1234@yahoo.com) FC/49, Narayan Tala (W), P.O. – Desbandhu Nagar, Kolkata -700059, West Bengal	2.	Shri. Partha Sarathi Ghosal (DIN - 03121257, PAN: ALNPG7331C) C/O Mr. A.K Roy, No:1, C.R. Das Sarani, PO Rabindra Sarani, Dt- Darjeeling- 734006, West Bengal
3.	Shri Goutam Ray (DIN – 03122557, PAN – ATKPR4708H) Block C/42, Flat 6, Kalindi Housing Estate, S Dum Dum Municipality, North 24 Parganas-700089, West Bengal	4.	Shri Aman Goyal (DIN – 03221975, PAN: AUDPG0283G) Flat –T25, 4th Floor, Block A, Silver Oak Apartment, Pranami Mandir Road, Siliguri-734001, West Bengal

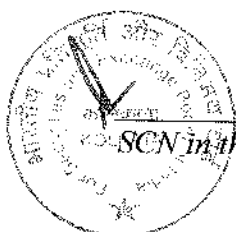


5.	Muskaan Social Welfare Trust (Debenture Trustee) Email id: arunabha10s@gmail.com 59, Banomali Naskar Road, Kolkata, West Bengal - 700060	6.	Shri Sunil Kumar Singh (PAN - AWZPS4355H, Trustee / Authorized Signatory D L No. - WB- 012002531232) BL-6, FL-3, Dock Eastern Boundary ROA, Kolkata - 7000023
7.	Shri Tapan Kumar Ghosh, (PAN: NA) 221, Milan Nagar, Sector IV, Salt Lake, Kolkata - 700105		

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

Sub: Show Cause Notice under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Max Wealth Infracon India Ltd. (CIN: U45400WB2010PLC153347)

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had received complaints/documents against Max Wealth Infracon India Ltd. (herein referred to as "MWIL"/"Company") stating that the Company issued Secured Redeemable Non-Convertible Debentures (SRNCD), however, the maturity amounts were not paid to them. Copies of the aforesaid Secured Redeemable Non-Convertible Debentures issued by MWIL were also attached with the said complaints.
2. Based on the said complaint, SEBI conducted an examination into the issuance of SRNCD by MWIL, Regd. Office: FC/49, Narayan Tala (W), P.O. - Desbandhu Nagar, Kolkata - 700059, West Bengal, with a view to ascertain the possible violations of the public issue norms stipulated under the Companies Act, 1956. / 2013, relevant provisions of the SEBI Act, 1992, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS





Regulations) and the SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations").

Examination of Non-Convertible Debenture Certificate provided by the complainant

3. **Type of Security:** Fully Paid up Secured Non-Convertible Redeemable Debentures each of Rs. 1000/-. The certificate contained the following fields:

- Debenture Certificate No.:
- Reg. Folio No.:
- Name of Holder:
- No. of Debentures:
- Distinctive no. of Debentures:
- Tenure of Debenture: Max-2 60 Month
- Redemption Date:
- Redemption Amount:
- Rate of Interest Payable:
- Interest Payable Frequency:
- Nomination Registered:

The following para is also mentioned on the certificate:

"This Debenture(s) is/are issued subject to and with the benefit of the conditioned endorsed hereon which are deemed to be part hereof for all purposes and to all intents. The Debentures are issued on terms of the Debenture Trust Deed (herein after referred to as "The Company" on the one part and Trustees to the Debenture Holders of Max Wealth Infracon India Limited in its capacity as the Trustees of the other part (hereinafter called "the Trustees") and subject to the terms, provisions and conditions therein contained."

Given at Kolkata under the Common Seal, the company this ____ day of ____ 2010

Managing Director

Director

Authorised Signatory



SCN in the matter of Max Wealth Infracon India Limited



Information received from Registrar of Company (RoC) – Kolkata

4. As per the details received from RoC – Kolkata vide its letter dated December 14, 2022, provided the following list of directors of MWIL:

Sl. No	Name	Designation	DIN	PAN	Address	Original date of appointment	Date of Cessation
Details of Directors							
1	Partha Sarathi Ghosal (Noticee No.2)	Director	03121257	ALNPG7331C	c/o Mr. A.K Roy, No:1, C.R. Das Sarani, PO Rabindra Sarani, Dt- Darjeeling- 734006, West Bengal	23/09/2010	23/04/2012
2	Goutam Ray (Noticee No.3)	Director	03122557	ATKPR4708H	Block C/42, Flat 6, Kalindi Housing Estate, S Dum Dum Municipality, North 24 Parganas-700089	23/09/2010	-
3	Shri Aman Goyal (Noticee No.4)	Director	03221975	AUDPG0283G	Flat –T25, 4 th Floor, Block A, Silver Oak Apartment, Pranami Mandir Road, Siliguri- 734001	23/09/2010	10/08/2012
4	Ashutosh Roy	Director	05182261	NA	623/3 Jessore Road, Green Park, FLR-GR, Kolkata -700055	10/08/2012	-
5	Asit Das	Director	05257293	NA	2 B/A, North Nowda para Road, Kolkata - 700057	23/04/2012	-

5. Additionally, ROC-Kolkata had also provided the below documents vide its letter dated 06.01.2023:

- Form 20 B for FY ending 31/03/2011
- List of Debenture holders (213)
- List of Shareholders
- Annual Return for FY ending 31/03/2011
- Form 23 AC for FY ending 31/03/2011
- Form 23 ACA for FY ending 31/03/2011
- Form 23 AC for FY ending 31/03/2012
- Form 23ACA for FY ending 31/03/2012



Correspondence with the Company/ Directors

6. Thereafter, vide letters dated February 08, 2022 details regarding the issuance of equity shares/ convertible or non-convertible instruments/ preference shares was sought from the company / directors. Accordingly, the details of correspondence with the company and its directors are as below:

Name of Entity/ Director	Designation	Letter Date	Letter (Returned/ Delivered)	Status	Reply received (if any)
Max Wealth Infracon India Ltd. (Noticee No.1)	Company	08.02.2022	Returned undelivered		Returned undelivered with the comment "Left". Site verification report indicates that the company is not found to be existing at the given address.
Shri. Partha Sarathi Ghosal (Noticee No.2)	Director	08.02.2022	Delivered		Vide letter dated 25.02.2022, he stated that he resigned from the company on 18.04.2012. He attached a board resolution for the same. He stated that he is unaware of the company raising funds and has no documents in his possession as he has resigned.
Shri Goutam Ray (Noticee No.3)	Director	08.02.2022	Returned undelivered		No reply received. No such address.
Shri Aman Goyal (Noticee No.4)	Director	08.02.2022	Delivered		Vide letter dated 25.02.2022 he stated that he resigned from the company on August 10, 2012. He attached a board resolution for the same. He stated that he is unaware of the company raising funds and has no documents in his possession as he has resigned.
Shri. Ashutosh Roy	Director	08.02.2022	Returned undelivered		Unknown address. The entity has left this address and the affixture of the letter couldn't be carried out as the same was not permitted by the landlady





Shri Asit Das	Director	08.02.2022	Returned undelivered	No reply received. Affixture of the letter couldn't be carried out as the said address couldn't be located
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7. Further, letters were also sent to the company's registered office address, and its directors as mentioned in the above table. A physical verification was conducted on 30/07/2022 at the registered office address available on record. It is pertinent to note that the company was not found at its registered office address.

DOCUMENTS OBTAINED FROM THE MINISTRY OF CORPORATE AFFAIR (MCA) PORTAL & RoC Letter: Observations

Details of allotment of Secured Redeemable Debentures (as per Form 20B)

8. It is observed from the filings, that the company has filed Form 20B- Annual Return for the year ended 31/03/2011 (Date of AGM – 14/09/2011). The attachments to the aforesaid Form 20B are as under:
- ROC – Annual Return
 - List of shareholders – 07
 - List of Debenture Holders – 213
9. Considering the fact that the company was incorporated on 23/09/2010, and this annual return is pertaining to the FY ending 31/03/2011, it is quite evident that the company has allotted debentures to 213 allottees during the period between 23/09/2010 – 31/03/2011. The list contains the name of debenture holders and the amount raised from the particular holder. The sum of the amounts mentioned against each of the 213 debenture holders comes to Rs.19,62,000/-.
10. The company has also filed Form 23AC & 23ACA (Forms for filing Balance Sheet & Profit & Loss statement and associated documents) for the FY ended 31/03/2011 and 31/03/2022. The balance sheet for the years ended 31/03/2011 and 31/03/2012 shows the amount raised through debentures as Rs.187,000/- and Rs.79,48,000/- respectively.





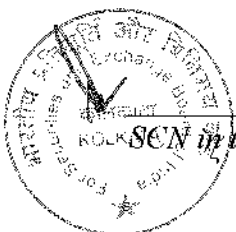
However, the sum of amounts mobilized from 213 allottees at the end of 31/03/2011 comes to Rs.19,62,000/- as against Rs.187,000/- mentioned on the balance sheet.

11. Further, the company has filed 2 - Form 10s (Charge documents) (forms dated 21/10/2010 and 09/05/2012), one for creation of charge and one for modification of charge for debentures. The name of the debenture trustee/ charge holder is Muskaan Social Welfare Trust. Its address is as below:

Muskaan Social Welfare Trust
59, Banomali Naskar Road
Kolkata
WB – 700060
Email id: arunabha10s@gmail.com

12. The initial trust deed has been signed by Shri Sunil Kr Singh on behalf of Muskaan Social Welfare Trust and Shri Partha Sarathi Ghosal for the company. The company has created a charge on immovable properties and the amount mentioned as Rs.27 crores. The Board resolution approving the issuance of debentures and the registered deed of mortgages is also attached to the Form 10.

The charge created has been supplemented by a second Form 10 dated 09/05/2012. It is mentioned in the Extract of the Resolution passed at the meeting of board of directors on 16th January, 2012 that the company has issued secured redeemable debentures amounting to Rs.27 crores on 21.10.2010. The said debentures were secured by mortgage and/or charge of immovable properties. Now, the company has purchased some properties at Joynagar in District of South 24 Parganas and the same may be offered as additional security for securing the debentures issued by the company. This additional mortgage was secured by way of a second deed of mortgage was executed on 31/01/2012 between Noticee No.1 (signed by Noticee No.3) and Noticee No.5 (signed by Noticee No.7 on behalf of the trust).





Further, another list of allottees filed by the company contains date of allotment from 1-Nov-2010 to 02-July-2011, which indicates that the company has made issuances in FY 2011-12 as well.

From the aforesaid documents, it is observed that the Company has issued debentures of amount Rs.27 Crores, which has been secured by charge created on immovable properties and additional security created in May 2012.

Details of any Board meetings held by the company with respect to the issue as per RoC record

13.

Date of Board meeting	Date of passing resolution	Amount proposed to raise (Rs.)	Type of issue
27/09/2010	27/09/2010	Rs.27Crores	Secured Redeemable Non-convertible Debentures

Observations from the Debenture Trust Deed

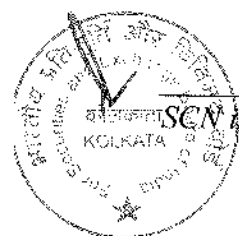
14. As per the copy of the executed trust deed, the details of Secured Redeemable Debentures issued by the company is given below:

SCHEME - I

Term	Plan	Face Value	Redemption Value
3 years	MAX - 1	1000	1500
5 years	MAX - 2	1000	2100
9 years	MAX -3	1000	6000
12 years	MAX - 4	1000	10000

SCHEME - II

(Yearly Payout)





Plan	Period	Rate	For senior citizens
MAX – T -1	3 years	13% p.a.	13.5%
MAX – T -2	5 years	14.5% p.a.	15% p.a.

15. Since MWIL has issued Non-Convertible Debentures to more than 49 persons in a financial year, it amounts to public issue of securities as per the first proviso to Section 67(3) of the Companies Act, 1956. The Companies Act, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of securities) Rules, 2014 revised this limit upwards to 200 persons in a financial year. However, since the allotments were made before this limit of 200 came into effect, the limit of 50 persons as per Companies Act, 1956 is applicable in the instant case.
16. Though the Companies Act, 1956, has been repealed by the Companies Act, 2013, 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.
17. Further, though the SEBI (ILDS) Regulations, 2008 has been repealed by the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (SEBI (NCS) Regulations, 2021), anything done or any action taken or purported to have been done or taken under the SEBI (ILDS) Regulations, 2008, is deemed to have been done or taken under the corresponding provisions of the SEBI (NCS) Regulations, 2021, by virtue of Regulation 59 of SEBI (NCS) Regulations, 2021, and is therefore saved regardless of the repeal of the SEBI (ILDS) Regulations, 2008.
18. It is evident from the above table that the company has issued secured non-convertible debentures to more than 49 persons each in the FY 2010-2011 & 2011-12 amounting to Rs.27 Crores. Hence, MWIL has made a public issue of securities.



Summary of allotments and Amount Mobilized through Non-Convertible Debentures

19. The number of allottees and funds mobilized has been collated from the documents filed by the Company on the MCA 21 Portal. The summary of the allotment of non-convertible debentures issued by the company is as under:

FY	Date of allotment	No. of allottees	No. of debentures allotted	Nominal amount per debenture	Amount Mobilized (in Rs.)
2010-11	21/10/2010 to 29/10/2010	213	NA	1000	27 Crores
2011-12	Various dates	NA	NA	1000	
		NA			27 Crores

20. Muskaan Social Welfare Trust and its Trustees Shri Sunil Kumar Singh, Shri Tapan Kumar Ghosh have acted as Debenture Trustee without obtaining requisite registration from SEBI. Further, Muskaan Social Welfare Trust does not meet the criteria to act as Debenture Trustee.

21. Consequently, MWILL has appointed an unregistered Debenture Trustee for the aforesaid issues of debentures.

22. Further, it is observed from the bank account opening form of MWILL that Shri Sunil Kumar Singh has also signed the bank account opening form of the Company apart from signing documents on behalf of Muskaan Social Welfare Trust.

23. The findings are summarized as follows:

- MWILL issued NCDs to more than 49 persons in each financial years 2010-2011, 2011-2012 by inviting applications from the general public, and mobilized amount to the tune of Rs. 27 Crores;
- MWILL did not file any prospectus in connection with the issue of securities;



- iii. MWIL did not get the securities listed with Stock Exchange,
- iv. MWIL did not refund the money collected from investors and it did not keep the amounts in a separate designated bank account.
- v. MWIL appointed unregistered Debenture Trustee for the aforesaid issue of debentures.
- vi. Muskaan Social Welfare Trust and its Trustees Shri Sunil Kumar Singh and Shri Tapan Kumar Ghosh acted as Debenture Trustee without obtaining certificate of Registration from SEBI. Further, they are ineligible as per criteria of a Debenture Trustee in the Debenture Trustee Regulations.

Therefore, in view of the above facts it is alleged that:

- i. I note that Section 56 of the Companies Act, 1956 requires that no one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus including certain provisos and conditions. Further, Section 60 of the Companies act prescribes conditions for registration of prospectus, Section 67 (3) of the Companies Act, 1956 provides for construction of references to offering shares or debentures to public, etc., and Section 73 prescribes the rules for the company to get its shares listed on the stock exchange. Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B of Companies Act, 1956 stipulates that 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. Thereafter, the relevant provisions of ILDS Regulations, provide the conditions for public issue, disclosures in offer documents, filing of draft offer document etc. However, I note that being the company and the directors, it was duty of Noticees Nos. 1 to 4 to follow and adhere to all of the above mentioned provisions of law, but, I know that by issuing debentures to more than 49 persons each in FY 2010-11 & FY 2011-12, by not filing and prospectus in connection with the said



issuance of securities, by not getting the securities listed on the stock exchange and not refunding the money collected through the issue of debentures, by not keeping the amounts collected in a separate designated bank account and by appointing an unregistered debenture trustee, they have allegedly violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3), Section 73(1), (2) & (3) of the Companies Act, 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013, 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, 17, 19, and 26 of SEBI (ILDS) Regulations, 2008 read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 read with Section 5 of the Companies Act, 1956.

- ii. With regard to Noticee Nos. 5, 6 and 7, I note that Section 12(1) of the SEBI Act, 1992, 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. Thereafter, Regulation 7 of Debenture Trustees Regulations, provides that: "no person should act as a debenture trustee unless he is either –
- a. a scheduled bank carrying on commercial activity; or
 - b. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or
 - c. an insurance company; or
 - d. body corporate."

Therefore, Noticee No. 5 by acting as Debenture trustee of the company, without obtaining a certificate of registration from SEBI and Noticee Nos.6 and 7 being the Trustees/ Authorized Signatories of Noticee No.5, have allegedly violated Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations.

24. The Regulatory provisions alleged to have been violated by the Noticees are as follows:



23.1 Companies Act, 1956:

"5. MEANING OF "OFFICER WHO IS IN DEFAULT

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable

to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in

default" means all the following officers of the company, namely :

(a) the managing director or managing directors ;

(b) the whole-time director or whole-time directors ;

(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 :

Provided that the person so charged has given his consent in this behalf to the Board ;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors whomay be specified by the Board in this behalf or where no director is so specified, all the directors :

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

"56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN PROSPECTUS

(1) Every prospectus issued -

(a) by or on behalf of a company, or

(b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2)

(3) No one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section."

[Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:] Provided [further] that this





sub-section shall not apply if it is shown that the form of application was issued either -
(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees.

"60. REGISTRATION OF PROSPECTUS

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto -

(a) any consent to the issue of the prospectus required by section 58 from any person as an expert; and

(b) in the case of a prospectus issued generally, also -

(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor....."

"Section 2(36) of the Companies Act, 1956

(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."

67. Construction of References to Offering Shares or Debentures to the Public, etc.

(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).

Supreme Court Judgement:

While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the in Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the "Sahara Case"), observed:

".....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 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. ...

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. ..."

73. ALLOTMENT OF SHARES AND DEBENTURES TO BE DEALT IN ON STOCK EXCHANGE

(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)]

(2) Where the permission has not been applied [under sub-section (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 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 subsection (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 fifty thousand rupees.

117B. Appointment of debenture trustees and duties of debenture trustees

(1) No company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company 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:

Provided that no person shall be appointed as a debenture trustee, if he –

*(a) beneficially holds shares in the company ;
(b) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee ; (c) has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon.*

(2) Subject to the provisions of this Act, the functions of the debenture trustees shall generally be to protect the interest of holders of debentures (including the creation of securities within the stipulated time) and to redress the grievances of holders of debentures effectively.

(3) In particular, and without prejudice to the generality of the foregoing functions, a debenture trustee may take such other steps as he may deem fit –

*(a) to ensure that the assets of the company issuing debentures and each of the guarantors are sufficient to discharge the principal amount at all times ;
(b) to satisfy himself that the prospectus or the letter of offer does not contain any matter which is inconsistent with the terms of the debentures or with the trust deed ;
(c) to ensure that the company does not commit any breach of covenants and provisions of the trust deed ;*



(d) to take such reasonable steps to remedy any breach of the covenants of the trust deed or the terms of issue of debentures ;

(e) to take steps to call a meeting of holders of debentures as and when such meeting is required to be held.

(4) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Central Government and the Central Government may, after hearing the company and any other person interested in the matter, by an order, impose such restrictions on the incurring of any further liabilities as the Central Government thinks necessary in the interests of holders of the debentures.

Provided that in the case of revival and rehabilitation of a sick industrial company under Part VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted;

23.2 Companies Act, 2013

465. Repeal of certain enactments and savings

(1)...

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments--

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;



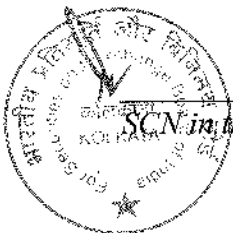
- (d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;
- (e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;
- (f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;
- (g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;
- (h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;
- (i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;
- (j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and
- (k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

23.3 SEBI Act, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market 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:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with



securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

23.4 SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations")

Eligibility for being debenture trustee.

7. No person shall be entitled to act as a debenture trustee unless it is :—

(a) a scheduled bank carrying on commercial activity; or

(b) a public financial institution as defined sub-section (72) of section 2 of the Companies Act, 2013; or

(c) an insurance company; or

(d) body corporate as defined under sub-section (11) of section 2 of the Companies Act, 2013.

23.5 SEBI (Issue and Listing of Debt Securities) Regulations, 2008:

- 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) – Requirement of Credit rating
- iv. Regulation 4(2)(d) – Dematerialization of debt securities
- v. Regulation 4(4) – Appointment of Debenture Trustee
- 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 17 – Creation of security
- xv. Regulation 19 – Mandatory Listing
- xvi. Regulation 26 – Obligations of the Issuer, etc.



Regulations are reproduced below:

General Conditions

4. (1)

(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations,

(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:

Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange: Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange; Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation.

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

(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document: Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

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

(3)

(4) The issuer shall appoint one or more debenture trustees in accordance with the provisions of Section 71 of the Companies Act, 2013 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

Disclosures in the offer document-

5. (1)

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

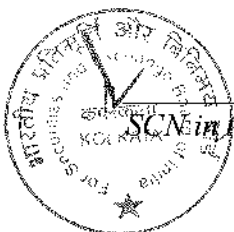
(a) ...;

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

(c)

Filing of draft offer document-

6. (1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker (2) The draft offer document filed with the designated stock exchange shall be



made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange. (3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed. (4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers. (5) The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies. (6) A copy of draft and final offer document shall also be forwarded to the Board for its records, along with regulatory fees as specified in Schedule V simultaneously with filing of these documents with designated stock exchange. (7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations. (8) The debenture trustee shall, prior to the opening of the public issue, furnish to the Board a due diligence certificate as per Schedule III of these regulations.

Mode of Disclosure of Offer Document-

7. (1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats. (2) The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue. (3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

Advertisements for Public issues

8. (1) The issuer shall make an advertisement in an national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV. (2) No issuer shall issue an advertisement which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive. (3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading. (4) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document. (5) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document. (6) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of debt securities or be used for solicitation.



Abridged Prospectus and application forms-

9. (1) The issuer and lead merchant banker shall ensure that: (a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus; (b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus; (c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc. (2) The issuer may provide the facility for subscription of application in electronic mode.

Minimum subscription

12. (1) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document. (2) In the event of non-receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.

Prohibitions of mis-statements in the offer document

14. (1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading. (2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement

Trust Deed

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

(1A) Where an issuer fails to execute the trust deed within the period specified in the sub-regulation (1), without prejudice to any liability arising on account of violation of the provisions of the Act and these Regulations, the issuer shall also pay interest of at least two percent per annum to the debenture holder, over and above the agreed coupon rate, till the execution of the trust deed. (1B) A clause stipulating the requirement under sub-regulation (1A) shall form part of the Trust Deed and also be disclosed in the Offer Document. (2) Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as prescribed under section 71 of Companies Act, 2013 and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts: (a) Part A containing statutory/standard information pertaining to the debt issue. (b) Part B containing details specific to the



particular debt issue. (3) The trust deed shall not contain a clause which has the effect of – (i) limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors; (ii) limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by the Board; (iii). indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

Creation of security

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

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

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

Mandatory listing

19. (1) An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) and sub-section (2) of section 40 of the Companies Act, 2013. (2) The issuer shall comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed. (3) Where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such debt securities.

Obligations of the Issuer, Lead Merchant Banker, etc.

26. (1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document. (2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and the Companies Act,



2013 and the Rules made thereunder. (3) The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board. (4) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public. (5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange. (6) The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities. (7) The issuer shall create a recovery expense fund in the manner as maybe specified by the Board from time to time and inform the Debenture Trustee about the same

23.6 SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

Repeal and Savings

59.(1) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 and the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 shall stand repealed from the date on which these regulations come to force.

(2) Notwithstanding such repeal:

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

...
...

25. The Noticees are hereby called upon to show cause as to why appropriate direction(s) be not issued against them under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992. The written submissions, if any, of the Noticees should reach the undersigned, at the address given below and by e-mail at vikas@sebi.gov.in and gunjanb@sebi.gov.in within 21 days from the date of receipt of this notice, failing which it shall be construed that the Noticees have no reply to submit and SEBI shall be free to proceed with on the basis of documents available on record in terms of the provisions of SEBI Act and other applicable laws.



Shri Vikas S. S., General Manager

SEBI Eastern Regional Office

Address: L&T Chambers, 3rd Floor, 16 Camac Street,

Kolkata - 700017, West Bengal

Tel. Board: +91-33-23023000.

Fax : +91-33-22874307

E-mail : sebiero@sebi.gov.in, gunjanb@sebi.gov.in

26. If personal hearing before the Quasi-Judicial Authority, SEBI is desired, it shall be indicated by the Noticees accordingly. The Noticees are advised to keep SEBI informed about the change in their correspondence address, if any, till the proceedings in the extant matter are complete.

27. This notice is without prejudice to the rights of SEBI to issue a supplementary notice and to initiate any other proceedings/actions for the aforesaid violations in terms of the SEBI Act and rules or regulations made there under.

28. All documents relied upon in the notice have been annexed as per the list of enclosures.


Vikas S S
General Manager

Enclosures:

Annexure No.	Particulars
1.	Copy of complaint
2.	Copies of ROC Letters dated 14.12.2022 and 06.01.2023 and the annexures/ enclosures to these letters
3.	Copies of Form 10 – (Charge documents) (forms dated 21/10/2010 and 09/05/2012)



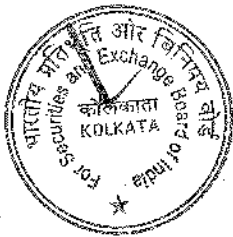
General Manager
Eastern Regional Office

SEBI/ERO/ON/P/46227/ 5 /2023
November 22, 2023

By Speed Post Ack. Due

Noticees:

Noticee No.	Noticee Details	Noticee No.	Noticee Details
1.	Max Wealth Infracon India Ltd. (CIN: U45400WB2010PLC153347 PAN: AAGCM8372A; Email id: abc_1234@yahoo.com) FC/49, Narayan Tala (W), P.O. – Desbandhu Nagar, Kolkata -700059, West Bengal	2.	Shri. Partha Sarathi Ghosal (DIN - 03121257, PAN: ALNPG7331C) C/O Mr. A.K Roy, No:1, C.R. Das Sarani, PO Rabindra Sarani, Dt- Darjeeling- 734006, West Bengal
3.	Shri Goutam Ray (DIN – 03122557, PAN – ATKPR4708H) Block C/42, Flat 6, Kalindi Housing Estate, S Dum Dum Municipality, North 24 Parganas-700089, West Bengal	4.	Shri Aman Goyal (DIN – 03221975, PAN: AUDPG0283G) Flat –T25, 4th Floor, Block A, Silver Oak Apartment, Pranami Mandir Road, Siliguri-734001, West Bengal



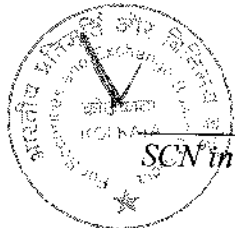


5.	Muskaan Social Welfare Trust (Debenture Trustee) Email id: arunabha10s@gmail.com 59, Banomali Naskar Road, Kolkata, West Bengal - 700060	6.	Shri Sunil Kumar Singh (PAN - AWZPS4355H, Trustee / Authorized Signatory D L No. – WB- 012002531232) BL-6, FL-3, Dock Eastern Boundary ROA, Kolkata – 7000023
7.	Shri Tapan Kumar Ghosh, (PAN: NA) 221, Milan Nagar, Sector IV, Salt Lake, Kolkata – 700105		

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

Sub: Show Cause Notice under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Max Wealth Infracon India Ltd. (CIN: U45400WB2010PLC153347)

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had received complaints/documents against Max Wealth Infracon India Ltd. (herein referred to as "MWIL"/"Company") stating that the Company issued Secured Redeemable Non-Convertible Debentures (SRNCD), however, the maturity amounts were not paid to them. Copies of the aforesaid Secured Redeemable Non- Convertible Debentures issued by MWIL were also attached with the said complaints.
2. Based on the said complaint, SEBI conducted an examination into the issuance of SRNCD by MWIL, Regd. Office: FC/49, Narayan Tala (W), P.O. – Desbandhu Nagar, Kolkata - 700059, West Bengal, with a view to ascertain the possible violations of the public issue norms stipulated under the Companies Act, 1956. / 2013, relevant provisions of the SEBI Act, 1992, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS





Regulations) and the SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations").

Examination of Non-Convertible Debenture Certificate provided by the complainant

3. **Type of Security:** Fully Paid up Secured Non-Convertible Redeemable Debentures each of Rs. 1000/-. The certificate contained the following fields:

- Debenture Certificate No.:
- Reg. Folio No.:
- Name of Holder:
- No. of Debentures:
- Distinctive no. of Debentures:
- Tenure of Debenture: Max-2 60 Month
- Redemption Date:
- Redemption Amount:
- Rate of Interest Payable:
- Interest Payable Frequency:
- Nomination Registered:

The following para is also mentioned on the certificate:

"This Debenture(s) is/are issued subject to and with the benefit of the conditioned endorsed hereon which are deemed to be part hereof for all purposes and to all intents. The Debentures are issued on terms of the Debenture Trust Deed (herein after referred to as "The Company" on the one part and Trustees to the Debenture Holders of Max Wealth Infracon India Limited in its capacity as the Trustees of the other part (hereinafter called "the Trustees") and subject to the terms, provisions and conditions therein contained."

Given at Kolkata under the Common Seal, the company this ____ day of __ 2010

Managing Director

Director

Authorised Signatory



Information received from Registrar of Company (RoC) – Kolkata

4. As per the details received from RoC – Kolkata vide its letter dated December 14, 2022, provided the following list of directors of MWIL:

Sl. No	Name	Designation	DIN	PAN	Address	Original date of appointment	Date of Cessation
Details of Directors							
1	Partha Sarathi Ghosal (Noticee No.2)	Director	03121257	ALNPG7331C	c/o Mr. A.K Roy, No:1, C.R. Das Sarani, PO Rabindra Sarani, Dt- Darjeeling- 734006, West Bengal	23/09/2010	23/04/2012
2	Goutam Ray (Noticee No.3)	Director	03122557	ATKPR4708H	Block C/42, Flat 6, Kalindi Housing Estate, S Dum Dum Municipality, North 24 Parganas-700089	23/09/2010	-
3	Shri Aman Goyal (Noticee No.4)	Director	03221975	AUDPG0283G	Flat –T25, 4 th Floor, Block A, Silver Oak Apartment, Pranami Mandir Road, Siliguri-734001	23/09/2010	10/08/2012
4	Ashutosh Roy	Director	05182261	NA	623/3 Jessore Road, Green Park, FLR-GR, Kolkata -700055	10/08/2012	-
5	Asit Das	Director	05257293	NA	2 B/A, North Nowda para Road, Kolkata -700057	23/04/2012	-

5. Additionally, ROC-Kolkata had also provided the below documents vide its letter dated 06.01.2023:
- Form 20 B for FY ending 31/03/2011
 - List of Debenture holders (213)
 - List of Shareholders
 - Annual Return for FY ending 31/03/2011
 - Form 23 AC for FY ending 31/03/2011
 - Form 23 ACA for FY ending 31/03/2011
 - Form 23 AC for FY ending 31/03/2012
 - Form 23ACA for FY ending 31/03/2012





Correspondence with the Company/ Directors

6. Thereafter, vide letters dated February 08, 2022 details regarding the issuance of equity shares/ convertible or non-convertible instruments/ preference shares was sought from the company / directors. Accordingly, the details of correspondence with the company and its directors are as below:

Name of Entity/ Director	Designation	Letter Date	Letter (Returned/ Delivered)	Status	Reply received (if any)
Max Wealth Infracon India Ltd. (Noticee No.1)	Company	08.02.2022	Returned undelivered		Returned undelivered with the comment "Left". Site verification report indicates that the company is not found to be existing at the given address.
Shri. Partha Sarathi Ghosal (Noticee No.2)	Director	08.02.2022	Delivered		Vide letter dated 25.02.2022, he stated that he resigned from the company on 18.04.2012. He attached a board resolution for the same. He stated that he is unaware of the company raising funds and has no documents in his possession as he has resigned.
Shri Goutam Ray (Noticee No.3)	Director	08.02.2022	Returned undelivered		No reply received. No such address.
Shri Aman Goyal (Noticee No.4)	Director	08.02.2022	Delivered		Vide letter dated 25.02.2022 he stated that he resigned from the company on August 10, 2012. He attached a board resolution for the same. He stated that he is unaware of the company raising funds and has no documents in his possession as he has resigned.
Shri. Ashutosh Roy	Director	08.02.2022	Returned undelivered		Unknown address. The entity has left this address and the affixture of the letter couldn't be carried out as the same was not permitted by the landlady





Shri Asit Das	Director	08.02.2022	Returned undelivered	No reply received. Affixture of the letter couldn't be carried out as the said address couldn't be located
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7. Further, letters were also sent to the company's registered office address, and its directors as mentioned in the above table. A physical verification was conducted on 30/07/2022 at the registered office address available on record. It is pertinent to note that the company was not found at its registered office address.

DOCUMENTS OBTAINED FROM THE MINISTRY OF CORPORATE AFFAIR (MCA) PORTAL & RoC Letter: Observations

Details of allotment of Secured Redeemable Debentures (as per Form 20B)

8. It is observed from the filings, that the company has filed Form 20B- Annual Return for the year ended 31/03/2011 (Date of AGM – 14/09/2011). The attachments to the aforesaid Form 20B are as under:
- ROC – Annual Return
 - List of shareholders – 07
 - List of Debenture Holders – 213
9. Considering the fact that the company was incorporated on 23/09/2010, and this annual return is pertaining to the FY ending 31/03/2011, it is quite evident that the company has allotted debentures to 213 allottees during the period between 23/09/2010 – 31/03/2011. The list contains the name of debenture holders and the amount raised from the particular holder. The sum of the amounts mentioned against each of the 213 debenture holders comes to Rs.19,62,000/-.
10. The company has also filed Form 23AC & 23ACA (Forms for filing Balance Sheet & Profit & Loss statement and associated documents) for the FY ended 31/03/2011 and 31/03/2022. The balance sheet for the years ended 31/03/2011 and 31/03/2012 shows the amount raised through debentures as Rs.187,000/- and Rs.79,48,000/- respectively.





However, the sum of amounts mobilized from 213 allottees at the end of 31/03/2011 comes to Rs.19,62,000/- as against Rs.187,000/- mentioned on the balance sheet.

11. Further, the company has filed 2 - Form 10s (Charge documents) (forms dated 21/10/2010 and 09/05/2012), one for creation of charge and one for modification of charge for debentures. The name of the debenture trustee/ charge holder is Muskaan Social Welfare Trust. Its address is as below:

Muskaan Social Welfare Trust
59, Banomali Naskar Road
Kolkata
WB – 700060
Email id: arunabha10s@gmail.com

12. The initial trust deed has been signed by Shri Sunil Kr Singh on behalf of Muskaan Social Welfare Trust and Shri Partha Sarathi Ghosal for the company. The company has created a charge on immovable properties and the amount mentioned as Rs.27 crores. The Board resolution approving the issuance of debentures and the registered deed of mortgages is also attached to the Form 10.

The charge created has been supplemented by a second Form 10 dated 09/05/2012. It is mentioned in the Extract of the Resolution passed at the meeting of board of directors on 16th January, 2012 that the company has issued secured redeemable debentures amounting to Rs.27 crores on 21.10.2010. The said debentures were secured by mortgage and/or charge of immovable properties. Now, the company has purchased some properties at Joynagar in District of South 24 Parganas and the same may be offered as additional security for securing the debentures issued by the company. This additional mortgage was secured by way of a second deed of mortgage was executed on 31/01/2012 between Noticee No.1 (signed by Noticee No.3) and Noticee No.5 (signed by Noticee No.7 on behalf of the trust).



Further, another list of allottees filed by the company contains date of allotment from 1-Nov-2010 to 02-July-2011, which indicates that the company has made issuances in FY 2011-12 as well.

From the aforesaid documents, it is observed that the Company has issued debentures of amount Rs.27 Crores, which has been secured by charge created on immovable properties and additional security created in May 2012.

Details of any Board meetings held by the company with respect to the issue as per RoC record

13.

Date of Board meeting	Date of passing resolution	Amount proposed to raise (Rs.)	Type of issue
27/09/2010	27/09/2010	Rs.27Crores	Secured Redeemable Non-convertible Debentures

Observations from the Debenture Trust Deed

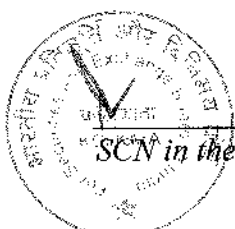
14.As per the copy of the executed trust deed, the details of Secured Redeemable Debentures issued by the company is given below:

SCHEME - I

Term	Plan	Face Value	Redemption Value
3 years	MAX – 1	1000	1500
5 years	MAX – 2	1000	2100
9 years	MAX -3	1000	6000
12 years	MAX – 4	1000	10000

SCHEME – II

(Yearly Payout)



Plan	Period	Rate	For senior citizens
MAX – T -1	3 years	13% p.a.	13.5%
MAX – T -2	5 years	14.5% p.a.	15% p.a.

15. Since MWIL has issued Non-Convertible Debentures to more than 49 persons in a financial year, it amounts to public issue of securities as per the first proviso to Section 67(3) of the Companies Act, 1956. The Companies Act, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of securities) Rules, 2014 revised this limit upwards to 200 persons in a financial year. However, since the allotments were made before this limit of 200 came into effect, the limit of 50 persons as per Companies Act, 1956 is applicable in the instant case.

16. Though the Companies Act, 1956, has been repealed by the Companies Act, 2013, 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.

17. Further, though the SEBI (ILDS) Regulations, 2008 has been repealed by the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (SEBI (NCS) Regulations, 2021), anything done or any action taken or purported to have been done or taken under the SEBI (ILDS) Regulations, 2008, is deemed to have been done or taken under the corresponding provisions of the SEBI (NCS) Regulations, 2021, by virtue of Regulation 59 of SEBI (NCS) Regulations, 2021, and is therefore saved regardless of the repeal of the SEBI (ILDS) Regulations, 2008.

18. It is evident from the above table that the company has issued secured non-convertible debentures to more than 49 persons each in the FY 2010-2011 & 2011-12 amounting to Rs.27 Crores. Hence, MWIL has made a public issue of securities.



Summary of allotments and Amount Mobilized through Non-Convertible Debentures

19. The number of allottees and funds mobilized has been collated from the documents filed by the Company on the MCA 21 Portal. The summary of the allotment of non-convertible debentures issued by the company is as under:

FY	Date of allotment	No. of allottees	No. of debentures allotted	Nominal amount per debenture	Amount Mobilized (in Rs.)
2010-11	21/10/2010 to 29/10/2010	213	NA	1000	27 Crores
2011-12	Various dates	NA	NA	1000	
		NA			27 Crores

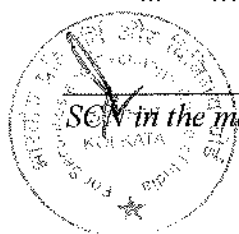
20. Muskaan Social Welfare Trust and its Trustees Shri Sunil Kumar Singh, Shri Tapan Kumar Ghosh have acted as Debenture Trustee without obtaining requisite registration from SEBI. Further, Muskaan Social Welfare Trust does not meet the criteria to act as Debenture Trustee.

21. Consequently, MWIL has appointed an unregistered Debenture Trustee for the aforesaid issues of debentures.

22. Further, it is observed from the bank account opening form of MWIL that Shri Sunil Kumar Singh has also signed the bank account opening form of the Company apart from signing documents on behalf of Muskaan Social Welfare Trust.

23. The findings are summarized as follows:

- MWIL issued NCDs to more than 49 persons in each financial years 2010-2011, 2011-2012 by inviting applications from the general public, and mobilized amount to the tune of Rs. 27 Crores;
- MWIL did not file any prospectus in connection with the issue of securities;



- iii. MWIL did not get the securities listed with Stock Exchange,
- iv. MWIL did not refund the money collected from investors and it did not keep the amounts in a separate designated bank account.
- v. MWIL appointed unregistered Debenture Trustee for the aforesaid issue of debentures.
- vi. Muskaan Social Welfare Trust and its Trustees Shri Sunil Kumar Singh and Shri Tapan Kumar Ghosh acted as Debenture Trustee without obtaining certificate of Registration from SEBI. Further, they are ineligible as per criteria of a Debenture Trustee in the Debenture Trustee Regulations.

Therefore, in view of the above facts it is alleged that:

- i. I note that Section 56 of the Companies Act, 1956 requires that no one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus including certain provisos and conditions. Further, Section 60 of the Companies act prescribes conditions for registration of prospectus, Section 67 (3) of the Companies Act, 1956 provides for construction of references to offering shares or debentures to public, etc., and Section 73 prescribes the rules for the company to get its shares listed on the stock exchange. Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B of Companies Act, 1956 stipulates that 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. Thereafter, the relevant provisions of ILDS Regulations, provide the conditions for public issue, disclosures in offer documents, filing of draft offer document etc. However, I note that being the company and the directors, it was duty of Noticees Nos. 1 to 4 to follow and adhere to all of the above mentioned provisions of law, but, I know that by issuing debentures to more than 49 persons each in FY 2010-11 & FY 2011-12, by not filing and prospectus in connection with the said



issuance of securities, by not getting the securities listed on the stock exchange and not refunding the money collected through the issue of debentures, by not keeping the amounts collected in a separate designated bank account and by appointing an unregistered debenture trustee, they have allegedly violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3), Section 73(1), (2) & (3) of the Companies Act, 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013, 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, 17, 19, and 26 of SEBI (ILDS) Regulations, 2008 read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 read with Section 5 of the Companies Act, 1956.

- ii. With regard to Noticee Nos. 5, 6 and 7, I note that Section 12(1) of the SEBI Act, 1992, 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. Thereafter, Regulation 7 of Debenture Trustees Regulations, provides that: "no person should act as a debenture trustee unless he is either –
- a. a scheduled bank carrying on commercial activity; or
 - b. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or
 - c. an insurance company; or
 - d. body corporate."

Therefore, Noticee No. 5 by acting as Debenture trustee of the company, without obtaining a certificate of registration from SEBI and Noticee Nos.6 and 7 being the Trustees/ Authorized Signatories of Noticee No.5, have allegedly violated Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations.

24. The Regulatory provisions alleged to have been violated by the Noticees are as follows:



23.1 Companies Act, 1956:

"5. MEANING OF "OFFICER WHO IS IN DEFAULT"

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable

to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in

default" means all the following officers of the company, namely :

- (a) the managing director or managing directors ;*
- (b) the whole-time director or whole-time directors ;*
- (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 :*

Provided that the person so charged has given his consent in this behalf to the Board ;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors whomay be specified by the Board in this behalf or where no director is so specified, all the directors :

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

"56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN PROSPECTUS"

(1) Every prospectus issued -

- (a) by or on behalf of a company, or*
- (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.*

(2)

(3) No one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section:"

[Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:] Provided [further] that this



sub-section shall not apply if it is shown that the form of application was issued either -
(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees.

"60. REGISTRATION OF PROSPECTUS

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto -

(a) any consent to the issue of the prospectus required by section 58 from any person as an expert; and

(b) in the case of a prospectus issued generally, also -

(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor....."

"Section 2(36) of the Companies Act, 1956

(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."

67. Construction of References to Offering Shares or Debentures to the Public, etc.

(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).

Supreme Court Judgement:

While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the in Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the "Sahara Case"), observed:

".....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 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. ...

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. ..."

73. ALLOTMENT OF SHARES AND DEBENTURES TO BE DEALT IN ON STOCK EXCHANGE

(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)]

(2) Where the permission has not been applied [under sub-section (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 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 subsection (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 fifty thousand rupees.

117B. Appointment of debenture trustees and duties of debenture trustees

(1) No company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company 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:

Provided that no person shall be appointed as a debenture trustee, if he –

- (a) beneficially holds shares in the company ;*
- (b) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee ; (c) has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon.*

(2) Subject to the provisions of this Act, the functions of the debenture trustees shall generally be to protect the interest of holders of debentures (including the creation of securities within the stipulated time) and to redress the grievances of holders of debentures effectively.

(3) In particular, and without prejudice to the generality of the foregoing functions, a debenture trustee may take such other steps as he may deem fit –

- (a) to ensure that the assets of the company issuing debentures and each of the guarantors are sufficient to discharge the principal amount at all times ;*
- (b) to satisfy himself that the prospectus or the letter of offer does not contain any matter which is inconsistent with the terms of the debentures or with the trust deed ;*
- (c) to ensure that the company does not commit any breach of covenants and provisions of the trust deed ;*



(d) to take such reasonable steps to remedy any breach of the covenants of the trust deed or the terms of issue of debentures ;

(e) to take steps to call a meeting of holders of debentures as and when such meeting is required to be held.

(4) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Central Government and the Central Government may, after hearing the company and any other person interested in the matter, by an order, impose such restrictions on the incurring of any further liabilities as the Central Government thinks necessary in the interests of holders of the debentures.

Provided that in the case of revival and rehabilitation of a sick industrial company under Part VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted;

23.2 Companies Act, 2013

465. Repeal of certain enactments and savings

(1)...

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments--

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;



- (d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;
- (e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;
- (f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;
- (g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;
- (h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;
- (i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;
- (j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and
- (k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

23.3 SEBI Act, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market 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:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with



securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

23.4 SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations")

Eligibility for being debenture trustee.

7. No person shall be entitled to act as a debenture trustee unless it is :—

- (a) a scheduled bank carrying on commercial activity; or
- (b) a public financial institution as defined sub-section (72) of section 2 of the Companies Act, 2013; or
- (c) an insurance company; or
- (d) body corporate as defined under sub-section (11) of section 2 of the Companies Act, 2013.

23.5 SEBI (Issue and Listing of Debt Securities) Regulations, 2008:

- 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) – Requirement of Credit rating
- iv. Regulation 4(2)(d) – Dematerialization of debt securities
- v. Regulation 4(4) – Appointment of Debenture Trustee
- 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 17 – Creation of security
- xv. Regulation 19 – Mandatory Listing
- xvi. Regulation 26 – Obligations of the Issuer, etc.



Regulations are reproduced below:

General Conditions

4. (1)

(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations,

(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:

Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange: Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange; Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation.

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

(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document: Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

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

(3)

(4) The issuer shall appoint one or more debenture trustees in accordance with the provisions of Section 71 of the Companies Act, 2013 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

Disclosures in the offer document-

5. (1)

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

(a) ...;

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

(c)

Filing of draft offer document-

6. (1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker (2) The draft offer document filed with the designated stock exchange shall be





made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange. (3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed. (4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers. (5) The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies. (6) A copy of draft and final offer document shall also be forwarded to the Board for its records, along with regulatory fees as specified in Schedule V simultaneously with filing of these documents with designated stock exchange. (7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations. (8) The debenture trustee shall, prior to the opening of the public issue, furnish to the Board a due diligence certificate as per Schedule III of these regulations.

Mode of Disclosure of Offer Document-

7. (1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats. (2) The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue. (3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

Advertisements for Public issues

8. (1) The issuer shall make an advertisement in an national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV. (2) No issuer shall issue an advertisement which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive. (3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading. (4) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document. (5) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document. (6) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of debt securities or be used for solicitation.





Abridged Prospectus and application forms-

9. (1) The issuer and lead merchant banker shall ensure that: (a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus; (b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus; (c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc. (2) The issuer may provide the facility for subscription of application in electronic mode.

Minimum subscription

12. (1) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document. (2) In the event of non-receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.

Prohibitions of mis-statements in the offer document

14. (1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading. (2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement

Trust Deed

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

(1A) Where an issuer fails to execute the trust deed within the period specified in the sub-regulation (1), without prejudice to any liability arising on account of violation of the provisions of the Act and these Regulations, the issuer shall also pay interest of at least two percent per annum to the debenture holder, over and above the agreed coupon rate, till the execution of the trust deed. (1B) A clause stipulating the requirement under sub-regulation (1A) shall form part of the Trust Deed and also be disclosed in the Offer Document. (2) Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as prescribed under section 71 of Companies Act, 2013 and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts: (a) Part A containing statutory/standard information pertaining to the debt issue. (b) Part B containing details specific to the



particular debt issue. (3) The trust deed shall not contain a clause which has the effect of – (i) limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors; (ii) limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by the Board; (iii). indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

Creation of security

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

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

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

Mandatory listing

19. (1) An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) and sub-section (2) of section 40 of the Companies Act, 2013. (2) The issuer shall comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed. (3) Where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such debt securities.

Obligations of the Issuer, Lead Merchant Banker, etc.

26. (1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document. (2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and the Companies Act,



2013 and the Rules made thereunder. (3) The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board. (4) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public. (5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange. (6) The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities. (7) The issuer shall create a recovery expense fund in the manner as maybe specified by the Board from time to time and inform the Debenture Trustee about the same

23.6 SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

Repeal and Savings

59.(1) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 and the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 shall stand repealed from the date on which these regulations come to force.

(2) Notwithstanding such repeal:

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

..
...

25. The Noticees are hereby called upon to show cause as to why appropriate direction(s) be not issued against them under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992. The written submissions, if any, of the Noticees should reach the undersigned, at the address given below and by e-mail at vikas@sebi.gov.in and gunjanb@sebi.gov.in within 21 days from the date of receipt of this notice, failing which it shall be construed that the Noticees have no reply to submit and SEBI shall be free to proceed with on the basis of documents available on record in terms of the provisions of SEBI Act and other applicable laws.





Shri Vikas S. S., General Manager

SEBI Eastern Regional Office

Address: L&T Chambers, 3rd Floor, 16 Camac Street,
Kolkata - 700017, West Bengal

Tel. Board: +91-33-23023000.

Fax : +91-33-22874307

E-mail : sebiero@sebi.gov.in, gunjanb@sebi.gov.in

26. If personal hearing before the Quasi-Judicial Authority, SEBI is desired, it shall be indicated by the Noticees accordingly. The Noticees are advised to keep SEBI informed about the change in their correspondence address, if any, till the proceedings in the extant matter are complete.

27. This notice is without prejudice to the rights of SEBI to issue a supplementary notice and to initiate any other proceedings/actions for the aforesaid violations in terms of the SEBI Act and rules or regulations made there under.

28. All documents relied upon in the notice have been annexed as per the list of enclosures.


Vikas S. S.
General Manager

Enclosures:

Annexure No.	Particulars
1.	Copy of complaint
2.	Copies of ROC Letters dated 14.12.2022 and 06.01.2023 and the annexures/ enclosures to these letters
3.	Copies of Form 10 – (Charge documents) (forms dated 21/10/2010 and 09/05/2012)





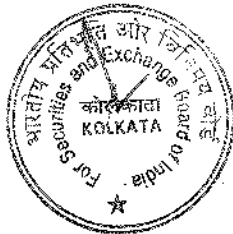
General Manager
Eastern Regional Office

SEBI/ERO/ON/P/46227/ 7/2023
November 22, 2023

By Speed Post Ack. Due

Noticees:

Noticee No.	Noticee Details	Noticee No.	Noticee Details
1.	Max Wealth Infracon India Ltd. (CIN: U45400WB2010PLC153347 ; PAN: AAGCM8372A; Email id: abc_1234@yahoo.com) FC/49, Narayan Tala (W), P.O. – Desbandhu Nagar, Kolkata -700059, West Bengal	2.	Shri. Partha Sarathi Ghosal (DIN - 03121257, PAN: ALNPG7331C) C/O Mr. A.K Roy, No:1, C.R. Das Sarani, PO Rabindra Sarani, Dt- Darjeeling- 734006, West Bengal
3.	Shri Goutam Ray (DIN – 03122557, PAN – ATKPR4708H) Block C/42, Flat 6, Kalindi Housing Estate, S Dum Dum Municipality, North 24 Parganas-700089, West Bengal	4.	Shri Aman Goyal (DIN – 03221975, PAN: AUDPG0283G) Flat –T25, 4th Floor, Block A, Silver Oak Apartment, Pranami Mandir Road, Siliguri-734001, West Bengal





5.	Muskaan Social Welfare Trust (Debenture Trustee) Email id: arunabha10s@gmail.com 59, Banomali Naskar Road, Kolkata, West Bengal - 700060	6.	Shri Sunil Kumar Singh (PAN - AWZPS4355H, Trustee / Authorized Signatory D L No. - WB- 012002531232) BL-6, FL-3, Dock Eastern Boundary ROA, Kolkata - 7000023
7.	Shri Tapan Kumar Ghosh, (PAN: NA) 221, Milan Nagar, Sector IV, Salt Lake, Kolkata - 700105		

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

Sub: Show Cause Notice under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Max Wealth Infracon India Ltd. (CIN: U45400WB2010PLC153347)

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had received complaints/documents against Max Wealth Infracon India Ltd. (herein referred to as "MWIL"/"Company") stating that the Company issued Secured Redeemable Non-Convertible Debentures (SRNCD), however, the maturity amounts were not paid to them. Copies of the aforesaid Secured Redeemable Non- Convertible Debentures issued by MWIL were also attached with the said complaints.
2. Based on the said complaint, SEBI conducted an examination into the issuance of SRNCD by MWIL, Regd. Office: FC/49, Narayan Tala (W), P.O. - Desbandhu Nagar, Kolkata - 700059, West Bengal, with a view to ascertain the possible violations of the public issue norms stipulated under the Companies Act, 1956. / 2013, relevant provisions of the SEBI Act, 1992, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS





Regulations) and the SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations").

Examination of Non-Convertible Debenture Certificate provided by the complainant

3. **Type of Security:** Fully Paid up Secured Non-Convertible Redeemable Debentures each of Rs. 1000/-. The certificate contained the following fields:

- Debenture Certificate No.:
- Reg. Folio No.:
- Name of Holder:
- No. of Debentures:
- Distinctive no. of Debentures:
- Tenure of Debenture: Max-2 60 Month
- Redemption Date:
- Redemption Amount:
- Rate of Interest Payable:
- Interest Payable Frequency:
- Nomination Registered:

The following para is also mentioned on the certificate:

"This Debenture(s) is/are issued subject to and with the benefit of the conditioned endorsed hereon which are deemed to be part hereof for all purposes and to all intents. The Debentures are issued on terms of the Debenture Trust Deed (herein after referred to as "The Company" on the one part and Trustees to the Debenture Holders of Max Wealth Infracon India Limited in its capacity as the Trustees of the other part (hereinafter called "the Trustees") and subject to the terms, provisions and conditions therein contained."

Given at Kolkata under the Common Seal, the company this ____ day of __ 2010

Managing Director

Director

Authorised Signatory





Information received from Registrar of Company (RoC) – Kolkata

4. As per the details received from RoC – Kolkata vide its letter dated December 14, 2022, provided the following list of directors of MWIL:

Sl. No	Name	Designation	DIN	PAN	Address	Original date of appointment	Date of Cessation
Details of Directors							
1	Partha Sarathi Ghosal (Noticee No.2)	Director	03121257	ALNPG7331C	c/o Mr. A.K Roy, No:1, C.R. Das Sarani, PO Rabindra Sarani, Dt- Darjeeling- 734006, West Bengal	23/09/2010	23/04/2012
2	Goutam Ray (Noticee No.3)	Director	03122557	ATKPR4708H	Block C/42, Flat 6, Kalindi Housing Estate, S Dum Dum Municipality, North 24 Parganas-700089	23/09/2010	-
3	Shri Aman Goyal (Noticee No.4)	Director	03221975	AUDPG0283G	Flat –T25, 4 th Floor, Block A, Silver Oak Apartment, Pranami Mandir Road, Siliguri- 734001	23/09/2010	10/08/2012
4	Ashutosh Roy	Director	05182261	NA	623/3 Jessore Road, Green Park, FLR-GR, Kolkata -700055	10/08/2012	-
5	Asit Das	Director	05257293	NA	2 B/A, North Nowda para Road, Kolkata - 700057	23/04/2012	-

5. Additionally, ROC-Kolkata had also provided the below documents vide its letter dated 06.01.2023:

- Form 20 B for FY ending 31/03/2011
- List of Debenture holders (213)
- List of Shareholders
- Annual Return for FY ending 31/03/2011
- Form 23 AC for FY ending 31/03/2011
- Form 23 ACA for FY ending 31/03/2011
- Form 23 AC for FY ending 31/03/2012
- Form 23ACA for FY ending 31/03/2012





Correspondence with the Company/ Directors

6. Thereafter, vide letters dated February 08, 2022 details regarding the issuance of equity shares/ convertible or non-convertible instruments/ preference shares was sought from the company / directors. Accordingly, the details of correspondence with the company and its directors are as below:

Name of Entity/ Director	Designation	Letter Date	Letter (Returned/ Delivered)	Status	Reply received (if any)
Max Wealth Infracon India Ltd. (Noticee No.1)	Company	08.02.2022	Returned undelivered		Returned undelivered with the comment "Left". Site verification report indicates that the company is not found to be existing at the given address.
Shri. Partha Sarathi Ghosal (Noticee No.2)	Director	08.02.2022	Delivered		Vide letter dated 25.02.2022, he stated that he resigned from the company on 18.04.2012. He attached a board resolution for the same. He stated that he is unaware of the company raising funds and has no documents in his possession as he has resigned.
Shri Goutam Ray (Noticee No.3)	Director	08.02.2022	Returned undelivered		No reply received. No such address.
Shri Aman Goyal (Noticee No.4)	Director	08.02.2022	Delivered		Vide letter dated 25.02.2022 he stated that he resigned from the company on August 10, 2012. He attached a board resolution for the same. He stated that he is unaware of the company raising funds and has no documents in his possession as he has resigned.
Shri. Ashutosh Roy	Director	08.02.2022	Returned undelivered		Unknown address. The entity has left this address and the affixture of the letter couldn't be carried out as the same was not permitted by the landlady





Shri Asit Das	Director	08.02.2022	Returned undelivered	No reply received. Affixture of the letter couldn't be carried out as the said address couldn't be located
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7. Further, letters were also sent to the company's registered office address, and its directors as mentioned in the above table. A physical verification was conducted on 30/07/2022 at the registered office address available on record. It is pertinent to note that the company was not found at its registered office address.

DOCUMENTS OBTAINED FROM THE MINISTRY OF CORPORATE AFFAIR (MCA) PORTAL & RoC Letter: Observations

Details of allotment of Secured Redeemable Debentures (as per Form 20B)

8. It is observed from the filings, that the company has filed Form 20B- Annual Return for the year ended 31/03/2011 (Date of AGM – 14/09/2011). The attachments to the aforesaid Form 20B are as under:
- ROC – Annual Return
 - List of shareholders – 07
 - List of Debenture Holders – 213
9. Considering the fact that the company was incorporated on 23/09/2010, and this annual return is pertaining to the FY ending 31/03/2011, it is quite evident that the company has allotted debentures to 213 allottees during the period between 23/09/2010 – 31/03/2011. The list contains the name of debenture holders and the amount raised from the particular holder. The sum of the amounts mentioned against each of the 213 debenture holders comes to Rs.19,62,000/-.
10. The company has also filed Form 23AC & 23ACA (Forms for filing Balance Sheet & Profit & Loss statement and associated documents) for the FY ended 31/03/2011 and 31/03/2022. The balance sheet for the years ended 31/03/2011 and 31/03/2012 shows the amount raised through debentures as Rs.187,000/- and Rs.79,48,000/- respectively.





However, the sum of amounts mobilized from 213 allottees at the end of 31/03/2011 comes to Rs.19,62,000/- as against Rs.187,000/- mentioned on the balance sheet.

11. Further, the company has filed 2 - Form 10s (Charge documents) (forms dated 21/10/2010 and 09/05/2012), one for creation of charge and one for modification of charge for debentures. The name of the debenture trustee/ charge holder is Muskaan Social Welfare Trust. Its address is as below:

Muskaan Social Welfare Trust
59, Banomali Naskar Road
Kolkata
WB – 700060
Email id: arunabha10s@gmail.com

12. The initial trust deed has been signed by Shri Sunil Kr Singh on behalf of Muskaan Social Welfare Trust and Shri Partha Sarathi Ghosal for the company. The company has created a charge on immovable properties and the amount mentioned as Rs.27 crores. The Board resolution approving the issuance of debentures and the registered deed of mortgages is also attached to the Form 10.

The charge created has been supplemented by a second Form 10 dated 09/05/2012. It is mentioned in the Extract of the Resolution passed at the meeting of board of directors on 16th January, 2012 that the company has issued secured redeemable debentures amounting to Rs.27 crores on 21.10.2010. The said debentures were secured by mortgage and/or charge of immovable properties. Now, the company has purchased some properties at Joynagar in District of South 24 Parganas and the same may be offered as additional security for securing the debentures issued by the company. This additional mortgage was secured by way of a second deed of mortgage was executed on 31/01/2012 between Noticee No.1 (signed by Noticee No.3) and Noticee No.5 (signed by Noticee No.7 on behalf of the trust).



Further, another list of allottees filed by the company contains date of allotment from 1-Nov-2010 to 02-July-2011, which indicates that the company has made issuances in FY 2011-12 as well.

From the aforesaid documents, it is observed that the Company has issued debentures of amount Rs.27 Crores, which has been secured by charge created on immovable properties and additional security created in May 2012.

Details of any Board meetings held by the company with respect to the issue as per RoC record

13.

Date of Board meeting	Date of passing resolution	Amount proposed to raise (Rs.)	Type of issue
27/09/2010	27/09/2010	Rs.27Crores	Secured Redeemable Non-convertible Debentures

Observations from the Debenture Trust Deed

14. As per the copy of the executed trust deed, the details of Secured Redeemable Debentures issued by the company is given below:

SCHEME - I

Term	Plan	Face Value	Redemption Value
3 years	MAX - 1	1000	1500
5 years	MAX - 2	1000	2100
9 years	MAX -3	1000	6000
12 years	MAX - 4	1000	10000

SCHEME - II

(Yearly Payout)



Plan	Period	Rate	For senior citizens
MAX – T -1	3 years	13% p.a.	13.5%
MAX – T -2	5 years	14.5% p.a.	15% p.a.

15. Since MWIL has issued Non-Convertible Debentures to more than 49 persons in a financial year, it amounts to public issue of securities as per the first proviso to Section 67(3) of the Companies Act, 1956. The Companies Act, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of securities) Rules, 2014 revised this limit upwards to 200 persons in a financial year. However, since the allotments were made before this limit of 200 came into effect, the limit of 50 persons as per Companies Act, 1956 is applicable in the instant case.

16. Though the Companies Act, 1956, has been repealed by the Companies Act, 2013, 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.

17. Further, though the SEBI (ILDS) Regulations, 2008 has been repealed by the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (SEBI (NCS) Regulations, 2021), anything done or any action taken or purported to have been done or taken under the SEBI (ILDS) Regulations, 2008, is deemed to have been done or taken under the corresponding provisions of the SEBI (NCS) Regulations, 2021, by virtue of Regulation 59 of SEBI (NCS) Regulations, 2021, and is therefore saved regardless of the repeal of the SEBI (ILDS) Regulations, 2008.

18. It is evident from the above table that the company has issued secured non-convertible debentures to more than 49 persons each in the FY 2010-2011 & 2011-12 amounting to Rs.27 Crores. Hence, MWIL has made a public issue of securities.



Summary of allotments and Amount Mobilized through Non-Convertible Debentures

19. The number of allottees and funds mobilized has been collated from the documents filed by the Company on the MCA 21 Portal. The summary of the allotment of non-convertible debentures issued by the company is as under:

FY	Date of allotment	No. of allottees	No. of debentures allotted	Nominal amount per debenture	Amount Mobilized (in Rs.)
2010-11	21/10/2010 to 29/10/2010	213	NA	1000	27 Crores
2011-12	Various dates	NA	NA	1000	
		NA			27 Crores

20. Muskaan Social Welfare Trust and its Trustees Shri Sunil Kumar Singh, Shri Tapan Kumar Ghosh have acted as Debenture Trustee without obtaining requisite registration from SEBI. Further, Muskaan Social Welfare Trust does not meet the criteria to act as Debenture Trustee.

21. Consequently, MWILL has appointed an unregistered Debenture Trustee for the aforesaid issues of debentures.

22. Further, it is observed from the bank account opening form of MWILL that Shri Sunil Kumar Singh has also signed the bank account opening form of the Company apart from signing documents on behalf of Muskaan Social Welfare Trust.

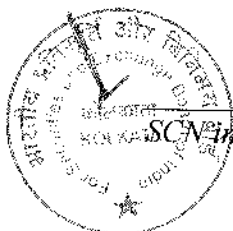
23. The findings are summarized as follows:

- MWILL issued NCDs to more than 49 persons in each financial years 2010-2011, 2011-2012 by inviting applications from the general public, and mobilized amount to the tune of Rs. 27 Crores;
- MWILL did not file any prospectus in connection with the issue of securities;

- iii. MWIL did not get the securities listed with Stock Exchange,
- iv. MWIL did not refund the money collected from investors and it did not keep the amounts in a separate designated bank account.
- v. MWIL appointed unregistered Debenture Trustee for the aforesaid issue of debentures.
- vi. Muskaan Social Welfare Trust and its Trustees Shri Sunil Kumar Singh and Shri Tapan Kumar Ghosh acted as Debenture Trustee without obtaining certificate of Registration from SEBI. Further, they are ineligible as per criteria of a Debenture Trustee in the Debenture Trustee Regulations.

Therefore, in view of the above facts it is alleged that:

- i. I note that Section 56 of the Companies Act, 1956 requires that no one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus including certain provisos and conditions. Further, Section 60 of the Companies act prescribes conditions for registration of prospectus, Section 67 (3) of the Companies Act, 1956 provides for construction of references to offering shares or debentures to public, etc., and Section 73 prescribes the rules for the company to get its shares listed on the stock exchange. Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B of Companies Act, 1956 stipulates that 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. Thereafter, the relevant provisions of ILDS Regulations, provide the conditions for public issue, disclosures in offer documents, filing of draft offer document etc. However, I note that being the company and the directors, it was duty of Noticees Nos. 1 to 4 to follow and adhere to all of the above mentioned provisions of law, but, I know that by issuing debentures to more than 49 persons each in FY 2010-11 & FY 2011-12, by not filing and prospectus in connection with the said



issuance of securities, by not getting the securities listed on the stock exchange and not refunding the money collected through the issue of debentures, by not keeping the amounts collected in a separate designated bank account and by appointing an unregistered debenture trustee, they have allegedly violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3), Section 73(1), (2) & (3) of the Companies Act, 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013, 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, 17, 19, and 26 of SEBI (ILDS) Regulations, 2008 read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 read with Section 5 of the Companies Act, 1956.

- ii. With regard to Noticee Nos. 5, 6 and 7, I note that Section 12(1) of the SEBI Act, 1992, 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. Thereafter, Regulation 7 of Debenture Trustees Regulations, provides that: "no person should act as a debenture trustee unless he is either –
- a. a scheduled bank carrying on commercial activity; or
 - b. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or
 - c. an insurance company; or
 - d. body corporate."

Therefore, Noticee No. 5 by acting as Debenture trustee of the company, without obtaining a certificate of registration from SEBI and Noticee Nos.6 and 7 being the Trustees/ Authorized Signatories of Noticee No.5, have allegedly violated Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations.

24. The Regulatory provisions alleged to have been violated by the Noticees are as follows:



23.1 Companies Act, 1956:

"5. MEANING OF "OFFICER WHO IS IN DEFAULT"

For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable

to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in

default" means all the following officers of the company, namely :

- (a) the managing director or managing directors ;*
- (b) the whole-time director or whole-time directors ;*
- (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 :*

Provided that the person so charged has given his consent in this behalf to the Board ;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors whomay be specified by the Board in this behalf or where no director is so specified, all the directors :

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

"56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN PROSPECTUS"

(1) Every prospectus issued -

- (a) by or on behalf of a company, or*
- (b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.*

(2)

(3) No one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section:"
[Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:] Provided [further] that this



sub-section shall not apply if it is shown that the form of application was issued either -
(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees.

"60. REGISTRATION OF PROSPECTUS

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto -

(a) any consent to the issue of the prospectus required by section 58 from any person as an expert; and

(b) in the case of a prospectus issued generally, also -

(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor....."

"Section 2(36) of the Companies Act, 1956

(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."

67. Construction of References to Offering Shares or Debentures to the Public, etc.

(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).

Supreme Court Judgement:

While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the in Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the "Sahara Case"), observed:

".....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 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. ...

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. ..."

73. ALLOTMENT OF SHARES AND DEBENTURES TO BE DEALT IN ON STOCK EXCHANGE

(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)]

(2) Where the permission has not been applied [under sub-section (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 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 subsection (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 fifty thousand rupees.

117B. Appointment of debenture trustees and duties of debenture trustees

(1) No company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company 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:

Provided that no person shall be appointed as a debenture trustee, if he –

(a) beneficially holds shares in the company ;
(b) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee ; (c) has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon.

(2) Subject to the provisions of this Act, the functions of the debenture trustees shall generally be to protect the interest of holders of debentures (including the creation of securities within the stipulated time) and to redress the grievances of holders of debentures effectively.

(3) In particular, and without prejudice to the generality of the foregoing functions, a debenture trustee may take such other steps as he may deem fit –

(a) to ensure that the assets of the company issuing debentures and each of the guarantors are sufficient to discharge the principal amount at all times ;
(b) to satisfy himself that the prospectus or the letter of offer does not contain any matter which is inconsistent with the terms of the debentures or with the trust deed ;
(c) to ensure that the company does not commit any breach of covenants and provisions of the trust deed ;



(d) to take such reasonable steps to remedy any breach of the covenants of the trust deed or the terms of issue of debentures ;

(e) to take steps to call a meeting of holders of debentures as and when such meeting is required to be held.

(4) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Central Government and the Central Government may, after hearing the company and any other person interested in the matter, by an order, impose such restrictions on the incurring of any further liabilities as the Central Government thinks necessary in the interests of holders of the debentures.

Provided that in the case of revival and rehabilitation of a sick industrial company under Part VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted;

23.2 Companies Act, 2013

465. Repeal of certain enactments and savings

(1)...

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments--

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;



- (d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;
- (e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;
- (f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;
- (g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;
- (h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;
- (i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;
- (j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and
- (k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

23.3 SEBI Act, 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market 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:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with



securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

23.4 SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations")

Eligibility for being debenture trustee.

7. No person shall be entitled to act as a debenture trustee unless it is :—

- (a) a scheduled bank carrying on commercial activity; or*
- (b) a public financial institution as defined sub-section (72) of section 2 of the Companies Act, 2013; or*
- (c) an insurance company; or*
- (d) body corporate as defined under sub-section (11) of section 2 of the Companies Act, 2013.*

23.5 SEBI (Issue and Listing of Debt Securities) Regulations, 2008:

- 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) – Requirement of Credit rating*
- iv. Regulation 4(2)(d) – Dematerialization of debt securities*
- v. Regulation 4(4) – Appointment of Debenture Trustee*
- 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 17 – Creation of security*
- xv. Regulation 19 – Mandatory Listing*
- xvi. Regulation 26 – Obligations of the Issuer, etc.*



Regulations are reproduced below:

General Conditions

4. (1)

(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations,

(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:

Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange: Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange; Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation.

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

(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document: Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

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

(3)

(4) The issuer shall appoint one or more debenture trustees in accordance with the provisions of Section 71 of the Companies Act, 2013 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.

Disclosures in the offer document-

5. (1)

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

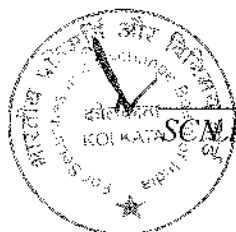
(a) ...;

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

(c)

Filing of draft offer document-

6. (1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker (2) The draft offer document filed with the designated stock exchange shall be





made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange. (3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed. (4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers. (5) The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies. (6) A copy of draft and final offer document shall also be forwarded to the Board for its records, along with regulatory fees as specified in Schedule V simultaneously with filing of these documents with designated stock exchange. (7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations. (8) The debenture trustee shall, prior to the opening of the public issue, furnish to the Board a due diligence certificate as per Schedule III of these regulations.

Mode of Disclosure of Offer Document-

7. (1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats. (2) The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue. (3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

Advertisements for Public issues

8. (1) The issuer shall make an advertisement in an national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV. (2) No issuer shall issue an advertisement which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive. (3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading. (4) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document. (5) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document. (6) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of debt securities or be used for solicitation.



Abridged Prospectus and application forms-

9. (1) The issuer and lead merchant banker shall ensure that: (a) every application form issued by the issuer is accompanied by a copy of the abridged prospectus; (b) the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus; (c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc. (2) The issuer may provide the facility for subscription of application in electronic mode.

Minimum subscription

12. (1) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document. (2) In the event of non-receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.

Prohibitions of mis-statements in the offer document

14. (1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading. (2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement

Trust Deed

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

(1A) Where an issuer fails to execute the trust deed within the period specified in the sub-regulation (1), without prejudice to any liability arising on account of violation of the provisions of the Act and these Regulations, the issuer shall also pay interest of at least two percent per annum to the debenture holder, over and above the agreed coupon rate, till the execution of the trust deed. (1B) A clause stipulating the requirement under sub-regulation (1A) shall form part of the Trust Deed and also be disclosed in the Offer Document. (2) Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as prescribed under section 71 of Companies Act, 2013 and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts: (a) Part A containing statutory/standard information pertaining to the debt issue. (b) Part B containing details specific to the



particular debt issue. (3) The trust deed shall not contain a clause which has the effect of – (i) limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors; (ii) limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by the Board; (iii). indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

Creation of security

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

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

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

Mandatory listing

19. (1) An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) and sub-section (2) of section 40 of the Companies Act, 2013. (2) The issuer shall comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed. (3) Where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such debt securities.

Obligations of the Issuer, Lead Merchant Banker, etc.

26. (1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document. (2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and the Companies Act,



2013 and the Rules made thereunder. (3) The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board. (4) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public. (5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange. (6) The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities. (7) The issuer shall create a recovery expense fund in the manner as maybe specified by the Board from time to time and inform the Debenture Trustee about the same

23.6 SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

Repeal and Savings

59.(1) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 and the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 shall stand repealed from the date on which these regulations come to force.

(2) Notwithstanding such repeal:

(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

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25. The Noticees are hereby called upon to show cause as to why appropriate direction(s) be not issued against them under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992. The written submissions, if any, of the Noticees should reach the undersigned, at the address given below and by e-mail at vikas@sebi.gov.in and gunjanb@sebi.gov.in within 21 days from the date of receipt of this notice, failing which it shall be construed that the Noticees have no reply to submit and SEBI shall be free to proceed with on the basis of documents available on record in terms of the provisions of SEBI Act and other applicable laws.



Shri Vikas S. S., General Manager

SEBI Eastern Regional Office

Address: L&T Chambers, 3rd Floor, 16 Camac Street,

Kolkata - 700017, West Bengal

Tel. Board: +91-33-23023000.

Fax : +91-33-22874307

E-mail : sebiero@sebi.gov.in, gunjanb@sebi.gov.in

26. If personal hearing before the Quasi-Judicial Authority, SEBI is desired, it shall be indicated by the Noticees accordingly. The Noticees are advised to keep SEBI informed about the change in their correspondence address, if any, till the proceedings in the extant matter are complete.

27. This notice is without prejudice to the rights of SEBI to issue a supplementary notice and to initiate any other proceedings/actions for the aforesaid violations in terms of the SEBI Act and rules or regulations made there under.

28. All documents relied upon in the notice have been annexed as per the list of enclosures.


Vikas S S
General Manager

Enclosures:

Annexure No.	Particulars
1.	Copy of complaint
2.	Copies of ROC Letters dated 14.12.2022 and 06.01.2023 and the annexures/ enclosures to thee letters
3.	Copies of Form 10 – (Charge documents) (forms dated 21/10/2010 and 09/05/2012)