

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee No.	Name of the Noticees	CIN/DIN	PAN
1.	Fiidex Industries Ltd.	CIN: U45400WB2011PLC160414	AABCF7024P
2.	Shri. Hasibul Islam	DIN - 3405732	AAMPI0966M
3.	Shri Golam Mustafa Syed	DIN – 3405714	BCCPS2989F
4.	Shri Anish Ahmad	DIN – 3405663	AEEPA3369Q
5.	Shri Dibyendu Roy	DIN – 3534449	ANEPR4085P
6.	Shri Sekh Arfat Ali	DIN – 6611933	NA
7.	Shri Samim Reza	DIN – 6615175	NA
8.	Shri Binimoy Biswas	DIN – 3127960	AHZPB2842H
9.	Fiidex Industries Debenture Trust	NA	NA
10.	Shri Mehebab Alam	NA	AFTPA7531A

In the matter of Fiidex Industries Ltd.

*(The above entities are individually referred to by their corresponding names / numbers and collectively referred to as “**Noticees**”)*

1. Securities Exchange Board of India (herein after referred to “**SEBI**”) received a reference from Registrar of Companies – Kolkata (RoC – Kolkata), vide letter dated November 25, 2021 in the matter of inspection of Fiidex Industries Ltd., (hereinafter referred to as ‘**Noticee No.1**’/ ‘**Fiidex**’/ ‘**Company**’) under Section 206(5) of the Companies Act, 2013 *inter-alia* observing that the Company had mobilized funds from the public by issue of Secured Redeemable Non-Convertible Debentures without following the guidelines, Rules and Regulations of the SEBI Act 1992.
2. Thereafter, in this connection SEBI conducted a detailed examination into the issuance(s) of Secured Redeemable Non-Convertible Debentures by Fiidex to more than 49 persons with a view to ascertain as to whether Fiidex had made any public issue of securities without complying with the provisions of public issue norms stipulated, if any, under the Companies Act, 2013, relevant provisions of the SEBI Act, 1992, the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (**ILDS Regulations**) and the SEBI (Debenture Trustees) Regulations, 1993 (“**Debenture Trustees Regulations**”).
3. On examination, it was observed and alleged that Fiidex issued debentures to more than 49 persons in FY 2012-13 and mobilized an amount of Rs.1,02,11,000/- cumulatively through allotments to public in FY 2011-12, 2012-13 and 2013-14 which was *prima face* in violation of the provisions of the aforesaid Acts, Rules and Regulations.

BACKGROUND OF THE CASE

4. SEBI received reference from Registrar of Companies – Kolkata (RoC – Kolkata), vide letter dated November 25, 2021, in the matter of inspection of Fiidex Industries Ltd. under Section 206(5) of the Companies Act, 2013. The inspecting officer of RoC made the following observation cum proposal for reference to SEBI in the report:

“During the course of inspection, it was observed that the Company had mobilized funds from the public by issue of Secured Redeemable Non-

Convertible Debentures without following the SEBI Act and guidelines. It is therefore proposed that a copy of the report may be forwarded to SEBI for necessary action on its part”.

5. Aforementioned inspection was ordered by the MCA based on the report of the ROC dated 20.05.2014. ROC had received complaints from investors with regard to non-payment of maturity amount and monthly interest on Secured Redeemable Non-Convertible Debentures (**NCDs**). The list of contraventions / violations inter alia included the following violations, relevant from the perspective of:
- a) Collection of deposits in the garb of Secured Redeemable Debentures.
 - b) Filing of false Balance sheet and Annual Return and false Form 20B.
 - c) Non filing of the Return of Allotment
 - d) Non filing of financial statements and Annual returns for the years FY 2012-13, 2013-14, 2014-15, 2015-16

Examination by SEBI

Basic Details of the company

6. Name of the Company: Fiidex Industries Ltd.
CIN: U45400WB2011PLC160414
PAN: AABCF7024P
Registered Address: BG/12, Sub- CBD, Area AA-1, Action Area – 1B, New Town, Kolkata – 700156
Latest balance sheet available: 31.03.2012

Director Details

7. Director details of Fiidex were obtained from RoC- Kolkata vide letter dated October 17, 2023 which are as below:

SI.	DIN/PAN	NAME	FATHERS NAME	ADDRESS	ORIGINAL DATE OF APPOINTMENT	DATE OF CESSATION
1.	3127960	BINIMOY BISWAS	SUREN BISWAS	VILL -25, CHOTOJONEPUR, KAMPA CHAKLAP, BIJPUR, P.O. KATAGANJ, DIST. 24 PARGANAS, (N) BIJPUR, 741250 WEST BENGAL	03.06.2013	
2.	3405663	ANISH AHMAD	SAMAD ABDUS	FIZA COMPLEX, BHARSALA MORE, RAMPURHAT, BIRBHUM, RAMPURHAT, 7312224, WEST BENGAL	08.03.2011	28.11.2011
					13.01.2012	20.06.2013
					23.09.2013	
3.	3405714	GOLAM MUSTAFA SAYED	MOHAMMAD KABIR HOSSAIN MOLLA	MAU-BHABTA, PARA – BASUDEBPUR BHABTA -1, BELDANGA, MURSHIDABAD, BELDANGA – 742134, WEST BENGAL	08.03.2011	
4.	3405732	HASIBUL ISLAM	AKTAR HOSSAIN	MAUJA – GHORAMARA, J-1 PARA – DAKSHIN KEDARCHANDPUR – 2, NAODA, MURSHIDABAD, NAODA, 742133 WEST BENGAL	08.03.2011	07.10.2014
5.	3534449	DIBYENDU ROY	DULAL ROY	76 RAJANI BASU ROAD KANCHRAPARA TWENTYFOUR PARGANAS NORTH 743145 WEST BENGAL	27.06.2013	01.10.2013
6.	5100430	MEHEBUB ALAM	MOZAFFAR HOSSAIN	RAMNACHANDPUR MAHALLA MOLLAPARA KEDARCHANDOUR	25.11.2011	18.01.2012

				NAWDA, MURSHIDABAD, 742175 WEST BENGAL		
7.	6611933	SEKH ARFAT ALI	SEKH SADEK ALI	JAANAPARA, JAUGRAMA, JAMALLPUR, BURDWAN, 713166 WEST BENGAL	03.06.2013	01.10.2013
8.	6615175	SAMIM REZA	ABDUL REZA KARIM	GRAM – SADHYAHAT, MAUJA – DEOYANGANJ, 153 DABUK MAYURESHWAR, BIRBHUM 731245 WEST BENGAL	27.06.2013	03.03.2014
9.	6998164	GOUTAM ROY	GOBINDA CHANDRA ROY	18, MADAN MITRA LANE, KOLKATA 700006 WEST BENGAL	01.10.2014	

The designation of all the above persons is 'Director' except for Hasibul Islam whose designation is Managing Director.

Correspondence with Fiidex/Directors

8. Information was sought from the company/directors in respect of issuance of securities by the company. The details of correspondence are as follows:

Name of Entity/ Director	Designation	Letter Date	Letter Status (Returned/ Delivered)	Reply received (if any)
Fiidex Industries Ltd.	NA	27.10.2023	Returned Undelivered with comment – No such company in the address	Nil
Goutam Roy	Director	27.10.2023	Returned Undelivered with comment – No such person in the address	Nil
Samim Reza	Director	27.10.2023	Delivered	No reply received

Dibyendu Roy	Director	27.10.2023	Delivered	Reply dated 09.11.2023
Hasibul Islam	Managing Director	27.10.2023	Delivered	Reply dated 13.11.2023 seeking extension, however no further reply received
Anish Ahmad	Director	27.10.2023	Delivered	Reply dated 07.11.2023
Sekh Arfat Ali	Director	27.10.2023	Delivered	Reply dated 09.11.2023
Binimoy Biswas	27.10.2023	Director	Delivered	Reply dated 09.11.2023
Mehebab Alam	27.10.2023	Director	Delivered	Reply dated 13.11.2023
Golam Mustafa Syed	27.10.2023	Director	Delivered	Reply dated 13.11.2023 seeking extension, however no further reply received.

Correspondence with ICICI Bank and Axis Bank

9. Bank account numbers of ICICI Bank and Axis Bank were mentioned in the MCA Inspection Report. Subsequently, SEBI sought the Account Opening Form (AOF) and bank statements from ICICI Bank as well as Axis bank. Accordingly, ICICI Bank provided the same vide email dated 25/01/2024 for PAN of the company viz. AABCF7024P (Bank ac no. 022905000430). The list of directors details provided by the bank were Golam Mustafa Sayed (hereinafter referred to as '**Noticee No.3**'), Mehebab Alam and Hasibul Islam (hereinafter referred to as '**Noticee No.2**').

Further, Axis Bank provided the bank statement, KYC and AOF vide email dated 24/01/2024. While, the directors, Noticee No.3 and Noticee No.2 (Managing Director), had signed the AOFs on behalf of the company for Bank Account Number. 912020011262613, Noticee No.2 and Anish Ahmad (hereinafter referred to as '**Noticee No.4**') had signed the AOF for the company for Bank Account Number. 911020025073886.

Observations from the MCA documents received in reply

10. It was observed from the documents received from RoC - Kolkata that the documents also contained copies of certificates issued to investors.
11. Based on these certificates, a list of year-wise debenture holders was prepared. The summary of allotments based on examination of these certificates is as given below:

Sl. No.	FY	No. of allottees	Face Value	No. of debentures	Amount (Rs.)
1	2012-13	62	1000	4965	49,65,000
2	2013-14	40	1000	686	6,86,000
Total		~102		~5651	~56,51,000

~ the actual nos. may be more than what is stated above

12. It was observed from the above table that Fiidex issued NCDs to 62 persons in FY 2012-13 raising an amount of Rs.49,65,000/-. Since Fiidex issued NCDs to more than 49 persons in a financial year, it was alleged that it made a public issue of securities as per the first proviso to Section 67(3) of the Companies Act, 1956.
13. It was evident from the above table which was prepared based on the copies of certificates received in the MCA's reply, the company issued NCDs to more than 49 persons in FY 2012-13 and had raised an amount of Rs.56,51,000/- cumulatively in FY 2012-13 and FY 2013-14. Further, as per the list of debenture holders attached to the annual return dated 03.09.2012 for FY 2011-12, it was observed that it raised an amount of Rs.45,60,000/- in FY 2011-12.

14. Therefore, the money mobilized by Fiidex through issuance and allotment of NCDs to public was found to be as below:

Sl. No.	FY	No. of allottees	Face Value	No. of debentures	Amount (Rs.)
1	2011-12	XX	1000	4560	45,60,000
2	2012-13	62	1000	4965	49,65,000
3	2013-14	40	1000	686	6,86,000
Total		~102	1000	~10211	~1,02,11,000/-

~ the actual no.s may be more than what is stated above

15. Further, as per the bank statement analysis done by MCA as on 31/03/2012, an amount of Rs.74,67,620/- had already been deposited in cash in the bank accounts of the company. Therefore, it was inferred that the actual quantum of money collected through Secured Redeemable Non-Convertible Debentures could be much more than Rs.1,02,11,000/- (for FY 2011-12, 2012-13 and 2013-14) given that the company had made false financial statements and incomplete return of allotments as mentioned in the MCA /ROC Inspection.

16. Below observation was made by MCA in the Inspection Report:

“The company has collected huge amount of money from the investors, most of which is by cash. Out of the money collected from the investors, an amount of Rs.2,93,03,570/- has been deposited in the bank accounts in cash and Rs.74,92,000/- through banking channels aggregating to Rs.3,67,55,570/-. This is about 60% of the total collection as amounts were deposited in the accounts after meeting all the expenses of the company including payment of interest, commission and other day to day expenses. Hence, the total collection made by the company is around Rs.6 crores from incorporation to March 2013 as per the bank statements.”

17. Therefore, it was noted that Fiidex had made illegal money mobilization to the tune of Rs.6 crores. Though, the actual break-up of the aforesaid amount in terms of mobilization through debentures, deposits, preference shares was not known; however as per the examination of copies of certificates received in MCA/ROC reply and the list of allottees filed by company annexed to the Annual Return for FY 2011-

12, amount collected through issuance of debentures was found to be at least Rs.1,02,11,000/-.

18. It was further observed that Shri Mehebab Alam (hereinafter referred to as '**Noticee No.10**') was appointed as a director on 25.11.2011, and his date of cessation was 18.01.2012, which was before the issuances made by the company, therefore he was not held liable as a director. However, it was noted that he acted as a Debenture Trustee for the issuance of debentures by the company and had signed the following documents

- Mortgage Deed
- Debenture Trust Deed

19. Therefore, it was alleged that Noticee No.10 acted as a Debenture Trustee without obtaining the requisite registration from SEBI and therefore was ineligible to act as Debenture Trustee.

20. Consequently, Fiidex. appointed an unregistered Debenture Trustee named Fiidex Industries Debenture Trust (hereinafter referred to as '**Noticee No.9/FIDT**') for the aforesaid issues of debentures.

Period of Violation

21. As per the Inspection report, the company had issued certificates during February 2012 to August 2013. Examination of copies of certificates received in reply from ROC – Kolkata revealed that the earliest date of NCD certificate issued by Fiidex was 13/07/2012 and the last date of such NCD certificate issued by Fiidex was 14/09/2013. Further, a list of 49 debenture holders holding 4560 debentures of the face value of Rs.1000/- each aggregating to Rs.45,60,000/- was attached to the annual return dated 03.09.2012 for FY 2011-12. The earliest allotment in that list was from February 2012. Therefore, the period of violation was considered to be February 2012 to September 2013 (FY 2011-12, 2012-13 and 2013-14).

22. The directors of the company along with their date of appointment and date of cessation was noted as below:

Sl.	DIN/PAN	NAME	ORIGINAL DATE OF APPOINTMENT	DATE OF CESSATION
1.	3127960	BINIMOY BISWAS	03.06.2013	13.10.2013
2.	3405663	ANISH AHMAD	08.03.2011	28.11.2011
			13.01.2012	20.06.2013
			23.09.2013	
3.	3405714	GOLAM MUSTAFA SYED	08.03.2011	
4.	3405732	HASIBUL ISLAM	08.03.2011	07.10.2014
5.	3534449	DIBYENDU ROY	27.06.2013	01.10.2013
6.	5100430	MEHEBUB ALAM	25.11.2011	18.01.2012
7.	6611933	SEKH ARFAT ALI	03.06.2013	01.10.2013
8.	6615175	SAMIM REZA	27.06.2013	03.03.2014
9.	6998164	GOUTAM ROY	01.10.2014	

23. Further, there was record of Form-32 having been filed by the Company regarding the appointment and resignation of Binimoy Biswas (hereinafter referred to as '**Noticee No.8**') (03/06/2013), Dibyendu Roy (hereinafter referred to as '**Noticee No.5**') (27/06/2013), Sekh Arfat Ali (hereinafter referred to as '**Noticee No.6**') (03/06/2013) and Samim Reza (hereinafter referred to as '**Noticee No.7**') (27/06/2013); however, there was no record of any document (board resolution, debenture certificate, financial statements, annual return, bank account opening form and reports etc.) having been signed by these four persons, either as a director or in any other capacity.

24. The Authorised Representative (AR) of the aforesaid 4 entities i.e. Noticee No.5 to 8, *inter alia* submitted during examination that they had no knowledge of the internal and external affairs of the company during their directorship.

25. However, it was observed during examination that the MCA Inspection Report contained the statements made by the aforesaid directors which revealed the following points:

- a) Noticee No.8 was a senior agent of Fiidex and earned commission at the rate of 0.5% to 0.75% by cash on the collection made by the agents under him. Bank statement analysis revealed that he was paid amounts from time to time from the company's bank account even before he was appointed a director in the company viz. June 2013.
- b) Noticee No.7 was also an agent of Fiidex and he has earned commission to the tune of Rs.30 lacs.
- c) Noticee No.6 was also an agent of Fiidex and earned commission from the company.
- d) Noticee No.5 was a Marketing executive and earned commission of approximately Rs.2 lacs as per the bank statement analysis of the company.

26. Therefore, the examination did not found ground in the aforesaid contention made by their AR that his clients had no knowledge of the internal and external affairs of the company during directorship. Further, since these persons were directors during the period of violation albeit for a period of approx. 4 months, they were alleged to be liable for the violations alleged against Fiidex.

27. Following salient points from the study of the list of documents signed by the directors were observed during examination:

- a) The debenture certificates issued by the company was signed by Noticee No.2 (Managing Director) and Noticee No.3 (Director).
- b) Noticee No.2 made numerous filings on the MCA website on behalf of the company including the return of allotment (Form 2). He also signed the Mortgage Deed and Debenture Trust Deed on behalf of the company including the registration of these documents with ROC/MCA i.e. Form 10.
- c) Form 20B i.e. Annual Return for the year ended 31/03/2012 was signed by Noticee No.2 and Noticee No.3.
- d) Directors' Report to shareholders, Balance Sheet, Profit & Loss statement and the notes & schedules thereto for FY ended 31/03/2012 was signed by Noticee No.2, 3 and 4.

- e) Form 23 ACA – Form for filing Profit and Loss account – FY ended 31/03/2012 was signed digitally by Noticee No.2 for upload on the MCA website. The P&L statement has been signed by Noticee No.2, 3 and 4.

28. Further, the information received from ICICI Bank and Axis Bank revealed that Noticee No.2 and 3 signed the account opening forms on behalf of the company for Bank Account Number. 912020011262613 with ICICI Bank while Noticee No.2 and 4 signed the account opening form for the company for Axis Bank Account Number no. 911020025073886.

29. Accordingly, the above mentioned directors viz. Noticee No.2, 3 and 4 were alleged to be liable for the aforementioned violations.

30. Further, examination noted that Section 56 pertains to matters to be stated and reports to be set out in Prospectus and Section 60 pertains to Registration of Prospectus with ROC. Sections 56(1) and 56(3) read with Section 56(4) of the Companies Act, 1956 imposes the liability on the Company, every Director, and other persons responsible for issue of the prospectus for the compliance of the said provisions. Also, the liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of registration of the prospectus with the Registrar as per the said provision. Therefore, Noticee No.2 to 8, being the Directors of the Company during the respective period when the allotments of NCDs was made by the company, were alleged to have violated Sections 56(1), 56(3) and 60 read with 2(36) of the Companies Act, 1956.

31. It was further noted that Section 73(2) of Companies Act, 1956 is relevant for the purpose of refund of monies collected from investors through deemed public issues. In the instant matter, Noticee No.2 was the Managing Director of the company and therefore, he was considered as an officer in default as per Section 5 of Companies Act, 1956 for the purpose of determining liability of refund under Section 73(2) of the Companies Act, 1956.

32. Further, 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."

33. In this regard, examination observed that Noticee No.10, trustee of Fiidex Industries Debenture Trust, is neither a scheduled bank, public financial institution, insurance company, nor a trust. Hence, he is not eligible to obtain a certificate of registration. Therefore, by acting as a Debenture Trustee without obtaining certificate of registration, Noticee No.9 and 10 were alleged to have violated the provisions of section 12(1) of the SEBI Act read with Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993.

34. Further, examination observed that though the SEBI (ILDS) Regulations, 2008 was 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.

35. The aforementioned findings of examination are summarized as follows:

- a) Fiidex issued NCDs to more than 49 persons in FY 2012-13 and has raised an amount of Rs.1,02,11,000/- cumulatively through allotments to public in FY 2011-12, 2012-13 and 2013-14.;
- b) Fiidex. did not file any prospectus in connection with the issue of securities;
- c) Fiidex did not get the securities listed with Stock Exchange,
- d) Fiidex did not refund the money collected from investors and it did not keep the amounts in a separate designated bank account.
- e) Fiidex appointed unregistered Debenture Trustee for the aforesaid issue of debentures.
- f) FIDT and its Trustee, Shri Shri Mehebab Alam acted as Debenture Trustee without obtaining certificate of Registration from SEBI. Further, they are ineligible as per criteria of a Debenture Trustee provided in the Debenture Trustee Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

36. Based on the aforesaid findings of the examination, SEBI issued Show Cause Notice dated October 14, 2024, (hereinafter referred to as “**SCN**”) to the Noticees, under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992 which, *inter-alia*, alleged the following:

- a) By issuing debentures to more than 49 persons in FY 2012-13 and by mobilizing an amount of Rs.1,02,11,000/- cumulatively through allotments to public in FY 2011-12, 2012-13 and 2013-14, Noticee No.1 to 8 have violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3) read with Section 465 of Companies Act, 2013.
- b) By not making an application to a recognized stock exchange to get the securities listed with the stock exchange, by not filing prospectus in connection with the said issuance of securities, by not keeping the amounts collected in a separate designated bank account, by appointing an unregistered debenture trustee and

by not creating a Debenture Redemption Reserve, Noticee No. 1 to 4 have violated the provisions of Section 73(1) and 73(3) of the Companies Act, 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B of Companies Act, 1956, Regulation 16(1) of SEBI (ILDS) Regulations, 2008 read with Section 117C of Companies Act, 1956 read with Section 465 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, 16(1), 17, 19, 26 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

c) By not refunding the money collected through the issue of debentures, Noticee No. 1 & 2 have violated Section 73(2) read with Section 5 of the Companies Act, 1956.

d) Noticee No. 9 by acting as Debenture trustee of the company, without obtaining a certificate of registration from SEBI and Noticee No.10, being the Trustees/ Authorized Signatories of Noticee No. 9, have violated Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations.

37. The aforesaid SCN was served to all the Noticees and subsequently, all the Noticees replied to the SCN, which are detailed as under:

Noticee No.	Noticee Name	Status
1	Fiidex Industries Ltd.	- Mail dated 12.11.2024 by Noticee No.2 with reference to common reply dated 21.06.2024 with Noticee No. 4. - Common reply dated 16.11.2024 with Noticee No.3 and 4.
2	Shri. Hasibul Islam	Mail dated 12.11.2024 by Noticee No.2 with reference to common reply dated 21.06.2024 with Noticee No. 4.
3	Shri Golam Mustafa Syed	Common reply dated 16.11.2024 with Noticee No. 4.
4	Shri Anish Ahmad	Common reply dated 16.11.2024 with Noticee No.3.
5	Shri Dibyendu Roy	Reply received vide mail dated 11.11.2024.

6	Shri Sekh Arfat Ali	• Reply received on 13.11.2024.
7	Shri Samim Reza	• Reply received vide mail dated 14.11.2024.
8	Shri Binimoy Biswas	• Reply received vide mail dated 11.11.2024.
9	Fiidex Industries Debenture Trust	• Reply received from Debenture Trustee, Shri Mehebab Alam vide letter dated 16.11.2024.
10	Shri Mehebab Alam	• Reply received vide letter dated 16.11.2024.

38. Thereafter, in the interest of natural justice, an opportunity for personal hearing was granted to all the Noticees on January 02, 2025 vide hearing notice dated December 04, 2024. Noticee No.2 and Authorized Representative (AR) of Noticee No.1 & 3 to 10 attended the said hearing. Subsequent to the hearing, Noticee No. 2 submitted additional reply vide reply dated January 09, 2025 on behalf of Noticee No.1.

39. The summary of the reply of the Noticees vide aforementioned replies, are as under:

Reply of Noticee No.1 to 4:

- a) *The company obtained the permission to issue the Debenture from the Registrar of Companies, Kolkata on dated 24 January, 2012 and thereafter, the company raised Rs.73.60 lakh from 39 persons on private placement basis during the financial year 2011-12, 2012-13 and 2013-14 and the company has not made allotment of equity share/convertible securities / preference shares to more than 49/200 persons in violation of Companies Act. 1956/Companies Act. 2013 since the incorporation of the company till date.*
- b) *36 persons were allotted debentures during FY 2011-12, 10 persons during FY 2012-13, and 3 persons during FY 2013-14, amounting to a total of 49 individuals across the three financial years. This clearly falls below the threshold of 50 persons prescribed under Section 67(3) of the Companies Act, 1956.*
- c) *As per the records submitted by ROC Kolkata, the total number of investors associated our company is stated to be over 126 individuals. However, upon review, it has become apparent that this figure is significantly inflated due to repetitive entries of certain investor names, with some names appearing between 7 to 10 times. This repetition has led to a misleading increase in the*

overall count of investors. In contrast, our internally maintained and audited records confirm that the actual number of investors for the relevant each financial year is limited to 49 individuals. This figure aligns with the regulatory cap and is consistent with the submissions made by our company.

- d) The company acknowledges certain delays in filing financial statements for the financial years in question. These delays occurred due to unforeseen financial and operational difficulties. However, the company has made every effort to rectify these lapses by filing updated returns and providing accurate financial returns to RoC Kolkata.
- e) There is no bar on the side of the company to redeem the amount to its investors and the company wants to exonerate itself from such unwanted act.
- f) Company issued all debentures to its directors, friends and relatives, which is under preview of the Companies Act. 1956.
- g) The company appointed Fiidex Industries Debenture Trust, a private arrangement, as the trustee for its debenture issues. This arrangement was made in compliance with the private placement criteria, and no public solicitation was involved.
- h) Cases involving the company are currently pending before the Hon'ble Kolkata High Court and the National Company Law Tribunal (NCLT), Kolkata. These matters are directly relevant to the allegations in the notice and must be resolved before SEBI takes further action.
- i) The Company Fiidex Industries Ltd. not falling within SEBI purview.

Reply of Noticee No.5 to 8:

- a) I was a sleeping director of Fiidex Industries Limited and I am not a founder director of that company.
- b) That I have no knowledge and information about the internal and external affairs of that company during my director-ship because I was appointed as a director on 03.06.2013 and resign from my directorship on 01.10.2013 i.e. my tenure as directorship was only 87 to 90 days approximately.

- c) *I was not allottee of a little bit of equity shares/ debenture/ convertible securities/ preference shares by Fiidex Industries Limited from the date of incorporation till date.*
- d) *I was not a signatory authority of any financial institution, banking, issuance of equity shares and debentures, convertible securities, preference shares, Board Resolution, debenture certificates, financial statements. annual returns, bank account opening forms etc. by Fiidex Industries Limited from the date of incorporation till date.*
- e) *I didn't join or attend at any annual general meeting or any board meeting of that company and I didn't made any signature on any board resolution etc.*
- f) *My name has not been mentioned in the Book of Account or AOA or MOA or Bye Laws of the Company.*

Reply of Noticee No.9 and 10:

- a) *I was approached by Fiidex Industries Ltd. to act as a Debenture Trustee for a private placement issuance of debentures made to fewer than 50 individuals, comprising the company's friends and relatives. Based on this limited scope of the issuance, I was informed by the company that:*
 - *The debenture issuance was not a public offering.*
 - *SEBI registration might not be mandatory for such private placements under the interpretation of relevant laws.*
- b) *While it is true that I signed the Mortgage Deed and Debenture Trust Deed without obtaining SEBI registration, I was unaware of any statutory requirements mandating SEBI registration for such private placements. The company's representatives assured me that the debenture issue complied with all applicable laws, and I relied on their assertions.*
- c) *Additionally, at no point did I receive any prior intimation or warning from the Registrar of Companies (RoC), Kolkata, or any other regulatory body about the ineligibility of my role as Debenture Trustee.*
- d) *Given these circumstances, any non-compliance that may have occurred was purely unintentional and stemmed from a misunderstanding of the applicable regulatory requirements*

40. Considering the aforesaid, I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notices were duly served upon the Noticees, sufficient opportunity was granted to them to reply to the SCN and appear for the personal hearing and that all the Noticees availed the said opportunity.

CONSIDERATION OF ISSUES AND FINDINGS

41. I have carefully examined the allegation against the Noticees, their replies and the documents / material available on record. After considering the allegation levelled against the Noticees in the instant matter, the following issue arise for consideration:

Issue I: Whether Fiidex came out with the Offer of Secured Redeemable Non-Convertible Debentures in violation of Section 56, Section 60 read with Section 2(36), 67(3) and Section 73(1), (2) and (3) of Companies Act 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013 and Regulation 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, Regulation 16(1) of SEBI (ILDS) Regulations, 2008 read with Section 117C of Companies Act, 1956 read with Section 465 of Companies Act, 2013 and whether Noticee No.9 acted as a debenture trustee to the said issue in violation of Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations?

Issue II: If the findings on Issue No. I are found in the affirmative, who shall be liable for the violations committed?

42. Before dealing with the replies of the Noticees on specific charges on merit, I deem it appropriate first to deal with the following preliminary objections raised by some of the Noticees:

- a) The Company, Fiidex Industries Ltd. does not fall within the purview of SEBI.
- b) Cases involving the company are currently pending before the Hon'ble Kolkata High Court and the National Company Law Tribunal (NCLT), Kolkata. These matters are directly relevant to the allegations in the notice and must be resolved before SEBI takes further action.

43. With regards to the contention that Fiidex or the current issue does not fall under the purview of SEBI, I note that the present case pertains to alleged violation of the provisions related to the *issue of NCDs* made to the public. Therefore, before proceeding with the examination of the present issue, a reference may be made to Sections 55A of the Companies Act, 1956 which reads as under:

“55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA

The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, -

(a) in case of listed public companies;

(b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India; and

(c) in any other case, be administered by the Central Government.

Explanation. - For the removal of doubts, it is hereby declared that all powers relating to all other matters including the matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares shall be exercised by the Central Government, the Tribunal or the Registrar of Companies, as the case may be.”

44. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned provisions, in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in **Sahara Case** (*supra*), had observed that:

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

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

45. In this regard, it is also pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase "*intend to get listed*" in the context of deemed public issue the Hon'ble Supreme Court in **Sahara Case** (*supra*) observed-

"...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, "intent" has its limitations also, confining it within the confines of lawfulness..."

"...Listing of securities depends not upon one's volition, but on statutory mandate..."

"...The appellant-companies must be deemed to have "intended" to get their securities listed on a recognized stock exchange, because they could only then be

considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have “intended”, what was contrary to the mandatory requirement of law...”

46. From the above, it can be noted that the Companies Act, 1956 empowers SEBI to take action in matters related to issue and transfer of securities including debentures. In view of the same, I find no merit in the contention of the Noticees that the company i.e. Fiidex or the instant matter does not fall under the purview of SEBI.

47. With regards to the contention of cases involving Fiidex in Hon'ble Kolkata High Court and Hon'ble NCLT, I note that the current proceeding with SEBI is primarily to examine the possible violation of the SEBI Act, 1992, SEBI ILDS Regulations, SEBI Debenture Trustees Regulations and the Companies Act, 1956/2013. Further, neither the Noticees have submitted any document nor there is anything on record to indicate that there is any stay granted by the Hon'ble Kolkata High Court with regards to the current matter.

Further, Section 279 of the Companies Act, 2013 states as below:

“279. Stay of suits, etc., on winding up order.— (1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.”

However, from the documents available on record and the documents submitted by the Noticees, it seems that a winding up petition is filed before the Hon'ble NCLT, Kolkata and neither a winding up order has been passed nor any liquidator has been appointed yet. This has also been confirmed from the website of Ministry of Corporate Affairs, [www. https://www.mca.gov.in](https://www.mca.gov.in), which shows the status of the company as ‘active’.

Accordingly, I find no merit in the contention of the Noticees that the matter cannot be proceeded with.

48. Now that the preliminary objection has been dealt with, I shall now proceed with the merits of the case.

49. Before proceeding to deal with the allegations as recorded above against the Noticees, for the purposes of easy reference, relevant provisions of the applicable sections, regulations, guidelines, etc. which have allegedly been contravened as per the SCN are reproduced hereunder:

Companies Act, 1956

Meaning of “Officer 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 who may 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.

Section 56. Matters to be stated and reports to be set out in the 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) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) No one shall issue any form of application for shares in 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.

Section 60

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) "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;

Section 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. ..."

Section 73: Allotment of shares and debentures to be dealt in on stock exchange

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

(1A) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the

case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

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

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

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

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

Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed.

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.*

117C. Liability of company to create security and debenture redemption reserve

(1) Where a company issues debentures after the commencement of this Act, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed.

(2) The amounts credited to the debenture redemption reserve shall not be utilised by the company except for the purpose aforesaid.

(3) The company referred to in sub-section (1) shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(4) Where a company fails to redeem the debentures on the date of maturity, the Tribunal may, on the application of any or all the holders of debentures shall, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith by the payment of principal and interest due thereon.

(5) If default is made in complying with the order of the Tribunal under sub-section (4), every officer of the company who is in default, shall be punishable with imprisonment which may extend to three years and shall also be liable to a

fine of not less than five hundred rupees for every day during which such default continues.

SEBI Act, 1992

Section 12(1) 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". Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations"), provides that: "no person should act as a debenture trustee unless he is either –

- i. a scheduled bank carrying on commercial activity; or*
- ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
- iii. an insurance company; or*
- iv. body corporate."*

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.*

SEBI (Issue and Listing of Debt Securities) Regulations, 2008: (hereinafter referred to as *SEBI ILDS 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 16(1) - Debenture Redemption Reserve*
- xv. *Regulation 17 – Creation of security*
- xvi. *Regulation 19 – Mandatory Listing*
- xvii. *Regulation 26 – Obligations of the Issuer, etc.*

Relevant Regulations of SEBI ILDS Regulations 2008 are reproduced below:

General Conditions

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

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

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

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

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

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

(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.(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:

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

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 a 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.*

Debenture Redemption Reserve

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

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.

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;

Issue I: Whether Fiidex came out with the Offer of Secured Redeemable Non-Convertible Debentures in violation of Section 56, Section 60 read with Section 2(36), 67(3) and Section 73(1), (2) and (3) of Companies Act 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013 and Regulation 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, Regulation 16(1) of SEBI (ILDS) Regulations, 2008 read with Section 117C of Companies Act, 1956 read with Section 465 of Companies Act, 2013 and whether Noticee No.9 acted as a debenture trustee to the said issue in violation of Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations?

50. Regarding the current issue, I note from the SCN that during examination various documents of the company were obtained from MCA, Banks etc and were perused. The following points were observed from the said documents:

- a) Fiidex issued NCDs to more than 49 persons in FY 2012-13 and has raised at least an amount of Rs.1,02,11,000/- cumulatively through allotments to public in FY 2011-12, 2012-13 and 2013-14;
- b) The details of NCDs issued by the company are observed as under:

Sl. No.	FY	No. of allottees	Face Value	No. of debentures	Amount (Rs.)
1	2011-12	XX	1000	4560	45,60,000
2	2012-13	62	1000	4965	49,65,000
3	2013-14	40	1000	686	6,86,000
Total		~102	1000	~10211	~1,02,11,000/-

51. From the above, I note that the company had issued NCDs to at least 102 persons during the period 2011-12, 2012-13 and 2013-14 raising an amount of at least Rs.1,02,11,000/- to more than 49 persons in violation of Section 67(3) of the Companies Act, 1956.

52. In respect of the aforesaid charges of issuance of NCDs to more than 102 allottees i.e. more than 49 persons and raising at least 1,02,11,000/-, I note that Noticee No.1, 2 and 4 vide common reply dated June 21, 2024 have contended that the company raised Rs.73.60 lakh from 39 persons on private placement basis during the financial year 2011-12, 2012-13 and 2013-14. Further, Noticee No.1, 3 and 4 vide common reply dated November 16, 2024 have submitted that 36 persons were allotted debentures during FY 2011-12, 10 persons during FY 2012-13, and 3 persons during FY 2013-14, amounting to a total of 49 individuals across the three financial years which clearly falls below the threshold of 50 persons prescribed under Section 67(3) of the Companies Act, 1956. They further contended that the total number of investors associated with their company is stated to be over 126 individuals and is significantly inflated due to repetitive entries of certain investor names.

53. In this regard, I note that the documents received from RoC-Kolkata, containing the list of allottees and copies of certificates issued to investors, were perused and it was observed that there were 58 and 39 unique allottees in 2012-13 and 2013-14 respectively whereas there were 62 and 40 unique combinations of allottees and nominee in 2012-13 and 2013-14 respectively. I further note that Noticees themselves has submitted different number of allottees in their different submission i.e. their submission dated June 21, 2024 mentions the number of allottees as 39 during the financial year 2011-12, 2012-13 and 2013-14 whereas their reply dated November 16, 2024 mentions the number of allottees as 49 during the same period.

In view of the above, I find that the above contentions of the Noticees are baseless and devoid of any merit.

54. Accordingly, I note that since Fiidex has issued Secured Redeemable 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. In this connection it is pertinent to note that 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 as the NCDs were issued to more than 49 persons.

55. Further, I note that 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.

56. In this regard, I further note that in the present case the provisions alleged to have been violated are related to the *issue of NCDs* made to the public. Therefore, the

primary question that arises for consideration is whether the issue of NCDs is ‘public issue’. In this regard, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

- "67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of subsections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
- (2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
- (3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-*
- (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or*
 - (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...*

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)." (emphasis supplied)

57. Further, at this juncture, it is also relevant to rely on the specific observations of the Hon'ble Supreme Court of India in **Sahara India Real Estate Corporation Limited & Ors. v. SEBI** (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the "**Sahara Case**"), w.r.t. the scope of Section 67 of the Companies Act, 1956:

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

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”

58. In this regard, the Section 67(3) of Companies Act, 1956 was also examined which provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making

the offer *to fifty or more persons*. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

59. Upon examination, I find from the material available that Fiidex is not a non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I find that there is no case that Fiidex is covered under the second proviso to Section 67(3) of the Companies Act, 1956 and hence, not eligible for the exception.

60. Even in the cases where the allotments are considered separately i.e. privately placed, reference may be made to **Sahara Case** (*supra*), wherein it was held that under Section 67(3) of the Companies Act, 1956, the "*Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged.*" Therefore, I find that the said issuances cannot be considered as private placement. Moreover, reference may also be made to the order of Hon'ble SAT dated April 28, 2017 in the matter of **Neesa Technologies Limited vs. SEBI** (Appeal No. 311 of 2016) which lays down that "*In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning*'.

61. Taking into consideration the above said facts, I find that in the present matter, NCDs were issued by Fiidex to at least 102 investors in the financial years FY 2011-12, 2012-13 and 2013-14 raising at least Rs.1,02,11,000/-. Hence, the above findings lead to a reasonable conclusion that the *Offer of NCDs* by Fiidex was a "*public issue*" within the meaning of the first proviso to section 67(3) of the Companies Act, 1956 and Fiidex was mandated to comply with the '*public issue*' norms as prescribed under the Companies Act, 1956.

62. Further, since the issue of NCDs is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

63. In respect of the above, I note that no records have been submitted to indicate that Fiidex had made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. In view of the above, I note that Fiidex has contravened the provisions of section 73(1) and (2) of the Companies Act. Further, Fiidex has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that Fiidex has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find that section 73(1), (2) and (3) of the Companies Act, 1956 has not been complied with.

64. Further, I note that Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the issue of NCDs was a deemed public issue of securities, Fiidex was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that Fiidex has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the issue of NCDs. I, therefore, find that Fiidex has not complied with the provisions of section 60 of the Companies Act, 1956.

65. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. There is no material to show that Fiidex has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, Fiidex has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

66. Further, under section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless 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. Since Fiidex had appointed Fiidex Industries Debenture Trust as a Debenture Trustee, which do not have a certificate of registration, the appointment of the same is in violation of section 117B of the Companies Act, 1956.

In this regard, the Noticees has contended that the appointment of FIDT as the trustee for its debenture issues was a private arrangement and this arrangement was made in compliance with the private placement criteria, and no public solicitation was involved. In this regard, I note that it is already established in the preceding paragraphs that the issue in question was in the nature of 'public issue' and not a private placement and therefore, the company was required to appoint a SEBI registered Debenture Trustee. In view of the same, I find no merit in the contention of the Noticee.

67. I further note that SEBI has issued the SEBI (ILDS) Regulations, 2008 which governs the public issue of NCDs. As established in the preceding paragraphs, the issue of NCDs by Fiidex in the financial FY 2011-12, 2012-13 and 2013-14, were in the nature of deemed public issue. In this regard, I note that, in addition to the obligations stipulated in the Companies Act, 2013, SEBI by way of the above regulations has mandated specific compliances that a company, coming out with a public issue of NCDs, would have to adhere. The relevant provisions of SEBI (ILDS) Regulations, are provided here under:

- a) Regulation 4(2)(a) – Application for listing of debt securities
- b) Regulation 4(2)(b) – In-principle approval for listing of debt securities
- c) Regulation 4(2)(c) – Requirement of Credit rating
- d) Regulation 4(2)(d) – Dematerialization of debt securities
- e) Regulation 4(4) – Appointment of Debenture Trustee
- f) Regulation 5(2)(b) – Disclosure requirements in the Offer Document
- g) Regulation 6 – Filing of draft Offer Document
- h) Regulation 7 – Mode of disclosure of Offer Document
- i) Regulation 8 – Advertisements for Public Issues
- j) Regulation 9 – Abridged Prospectus and application forms
- k) Regulation 12 – Minimum subscription
- l) Regulation 14 – Prohibition of mis-statements in the Offer Document
- m) Regulation 15 – Trust Deed
- n) Regulation 16(1) - Debenture Redemption Reserve
- o) Regulation 17 – Creation of security
- p) Regulation 19 – Mandatory Listing
- q) Regulation 26 – Obligations of the Issuer, etc.

68. In view of the above findings, it is clearly established that Fiidex engaged in fund mobilizing activity from the public, through the issue of NCDs and has contravened the provisions of Section 56, Section 60 read with Section 2(36), 67(3) and Section 73(1), (2) and (3) of Companies Act 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013 and Regulation 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12,

14, 15, 16(1), 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.

Role of Debenture Trustee: Fiidex Industries Debenture Trust (FIDT) (Noticee No.9)

69. As regards to the appointment of FIDT i.e. Noticee No.9 as a Debenture Trustee, I note that Mortgage Deed as well as Debenture Trust Deed was signed between Fiidex and Noticee No. 9. Further, the Debenture Certificates as well as Debenture Application Acceptance Letter, obtained from MCA, also mentioned Noticee No.9 as the trustee of the company.

70. In this connection, it is pertinent to note that for issuing a prospectus or a letter of offer to the public for subscription of its debentures, the company is required to appoint one or more debenture trustees. I further note that, in terms of the Section 12(1) of SEBI Act, to act as a debenture trustee, the trust should have a registration from SEBI. However, in the present case, I note that Noticee No.9 acted as Debenture Trustee and it was not a SEBI registered debenture trustee.

71. From the aforesaid observations, it is evident that Noticee No.9 acted as Debenture Trustee without obtaining requisite registration from SEBI.

72. Further, Regulation 7 of SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations"), provides that: *"no person should act as a debenture trustee unless he is either –*

- i. a scheduled bank carrying on commercial activity; or*
- ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
- iii. an insurance company; or*
- iv. body corporate."*

73. In view of the same, I find that Noticee No.9 did not meet the criteria to act as Debenture Trustee and is not eligible to obtain a certificate of registration since it does not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. In view of the above, I find that Noticee No.9 has violated the provisions of Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations, 1993.

Issue II: If the findings on Issue No. I are found in the affirmative, who shall be liable for the violations committed?

Liability of Hasibul Islam (Noticee No.2), Golam Mustafa Sayed (Noticee No.3), Anish Ahmad (Noticee No.4), Dibyendu Roy (Noticee No.5), Sekh Arfat Ali (Noticee No.6), Samim Reza ((Noticee No.7) and Binimoy Biswas (Noticee No.8)

74. From the documents available on record and as per the details received from RoC – Kolkata, I find that following were the Directors in Fiidex during the relevant period of FY 2011-12, 2012-13 and 2013-14:

SI.	DIN/PAN	NAME	ORIGINAL DATE OF APPOINTMENT	DATE OF CESSATION
1.	3127960	BINIMOY BISWAS	03.06.2013	13.10.2013
2.	3405663	ANISH AHMAD	08.03.2011	28.11.2011
			13.01.2012	20.06.2013
			23.09.2013	
3.	3405714	GOLAM MUSTAFA SYED	08.03.2011	
4.	3405732	HASIBUL ISLAM	08.03.2011	07.10.2014
5.	3534449	DIBYENDU ROY	27.06.2013	01.10.2013
6.	6611933	SEKH ARFAT ALI	03.06.2013	01.10.2013
7.	6615175	SAMIM REZA	27.06.2013	03.03.2014

75. Here, I would also like to quote the observations of the Hon'ble Supreme Court of India in the matter of ***Shri N. Narayanan vs. SEBI*** [(2013) 12 SCC 152] decided on

Order in the matter of Fiidex Industries Ltd.

26.04.2013, wherein it was observed that - "... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence."

76. I note that Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, Fiidex and its directors (Noticee 1 to 8), during the relevant period, have violated the provisions of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

77. Further, I note that Noticee No.1 as well as Noticee No. 2 to 4, being the directors of Fiidex at the time of issuance of NCDs, were responsible for making an application to a recognized stock exchange to get the securities listed with the stock exchange, for filing prospectus in connection with the said issuance of securities, for keeping the amounts collected in a separate designated bank account, for appointing an unregistered debenture trustee and for creating a Debenture Redemption Reserve. In view of the above, I find that Noticee No.1 to 4 have violated the provisions of Section 73(1) and 73(3) of the Companies Act, 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B of Companies Act, 1956, Regulation 16(1) of SEBI (ILDS) Regulations, 2008 read with Section 117C of Companies Act, 1956 read with Section 465 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, 16(1), 17, 19, 26 of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

78. As far as the liability for non-compliance of section 73(2) of Companies Act, 1956 is concerned, as stipulated in the said section 73(2), the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, be jointly and severally liable to repay that money

with interest at such rate, not less than four per cent and not more than fifteen per cent if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73(2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of Rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.

79. From the material available on record and the details of the designation as well as appointment and resignation of the directors of Fiidex, as reproduced in the preceding paras of this Order, it is noted that Noticee No. 2 was the Managing Director of the company.

80. In this regard, I note that Section 5 of Companies Act, 1956 provides the meaning of 'Officer in Default' which states as below:

"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 who may 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."

81. In view of the above, I note that Noticee No.2, being the Managing Director of the Company, is officer in default as per aforementioned Section 5(a) of Companies Act, 1956. Therefore, as officers in default, Noticee No.2 is liable to make refund along with interest at the rate of 15% per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, Noticee No.2 is co-extensively responsible along with the Company for making refunds along with interest under section 73(2) of the Companies Act, 1956 read with Rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act.

82. The Managing Director of Fiidex had the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in **Madhavan Nambiar vs. Registrar of Companies** (2002 108 Cas 1 Mad):

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

14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956. "

83. In this regard, Noticee No.5 to 8 have contended that they were sleeping director of Fiidex and they had no knowledge and information about the internal and external affairs of that company during their directorship which was only 87 to 90 days approximately. They have further contended that they were not a signatory authority

of any financial institution, banking, issuance of equity shares and debentures, convertible securities, preference shares, Board Resolution, debenture certificates, financial statements. annual returns, bank account opening forms etc and that they didn't join or attend at any annual general meeting or any board meeting of that company.

84. From the above, I note that Noticee No. 5 to 8 have not denied the fact that they were the director of Fiidex during the relevant period of time when the NCDs were issued. Further, as already mentioned above in the order, it was observed during examination from the MCA Inspection Report, containing the statements made by the aforesaid directors, that:

- a) Noticee No.5 was a marketing executive and earned commission of approximately Rs.2 lacs as per the bank statement analysis of the company.
- b) Noticee No.6 was also an agent of the company and earned commission from the company.
- c) Noticee No.7 was also an agent of the company and he had earned commission to the tune of Rs.30 lacs.
- d) Noticee No.8 was a senior agent of Fiidex and earned commission at the rate of 0.5% to 0.75% by cash on the collection made by the agents under him. Bank statement analysis revealed that he was paid amounts from time to time from the company's bank account even before he was appointed a director in the company viz. June 2013.

85. Further, I note that a person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed company also comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. Accordingly, a director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Therefore, contentions made by Noticee No.5 to 8 like being a sleeping director, not having knowledge of affairs of the company, not being signatory etc. cannot wriggle them

out from the liability. In view of the same, I find that the aforesaid contentions made by Noticee No.5 to 8 have no merit in it.

86. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct Fiidex (Noticee No.1) and Hasibul Islam (Noticee No.2) to refund the monies collected, with interest to such investors. Therefore, I find that Noticee No.1 and 2 are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above-mentioned provisions.

Further, in view of the violations committed by the Company and its Directors, to safeguard the interest of the investors who had subscribed to such NCDs issued by the Company and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against Noticee No. 1-8.

87. In view of the discussion above, appropriate action in accordance with law needs to be initiated against Fiidex and its Directors (Noticee No.1 to 8). However, it also needs to be considered that substantial amount of time has been passed since the issuance of aforementioned NCDs by Fiidex.

Liability of the trustee, Shri Mehebab Alam (Noticee No.10)

88. As stated in the preceding paras, Fiidex appointed FIDT (Noticee No.9) as the debenture trustee and Noticee No.10 acted on behalf FIDT. Further, Mortgage Deed as well as Debenture Trust Deed was signed between Fiidex and Noticee No. 9 and Noticee No.10 signed the same on behalf of FIDT. Accordingly, Noticee No.10, by acting as a trustee on behalf of FIDT (Noticee No.9) has violated Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations.

89. In this connection, I note that Noticee No.10, while admitting to signing the Mortgage Deed and Debenture Trust Deed with Fiidex on behalf of Noticee No.9 without obtaining SEBI registration, has contended that he was informed by the company that the debenture issuance was not a public offering and SEBI registration might not be mandatory for such private placements and that he was unaware of any statutory requirements mandating SEBI registration. He has further submitted that any non-compliance that may have occurred was purely unintentional and stemmed from a misunderstanding of the applicable regulatory requirements.

90. With regards to the aforesaid contentions of Noticee No.10, I note that Noticee No.10 has admitted to signing the Mortgage Deed and Debenture Trust Deed with Fiidex on behalf of Noticee No.9, without obtaining SEBI registration. With regards to his contention that he was unaware of any statutory requirements mandating SEBI registration and that he was misinformed by the company, I note that it is a settled principle that '*Ignorantia juris neminem excusat*' which means that 'ignorance of law is no excuse for breaking it'. I further note that Noticee No.10 has also not produced any documents to show that he complained to any authority about the misconduct of Fiidex. In view of the above observations, I don't find any merit in the contentions made by Noticee No.10.

91. From the aforementioned observations, I find that Noticee No.10 acted as the trustees of FIDT and signed Mortgage Deed as well as Debenture Trust Deed on its behalf without obtaining requisite registration from SEBI or meeting the criteria to act as Debenture Trustee and accordingly have violated the provisions of Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations.

DIRECTIONS

92. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B thereof, hereby issue the following directions:

- a. Fiidex (Noticee No. 1) and Hasibul Islam (Noticee No. 2) shall forthwith refund the money, jointly and severally, collected by the Company through the issuance of NCDs in 2011-12, 2012-13 and 2013-14 including the application money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.
- b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order, both of which should be crossed as “*Non-Transferable*”.
- c. The Banks, with whom the accounts of Noticee No.1 and 2 lie, are directed that no debit shall be made, without permission of SEBI except for the purposes of compliance of this order.
- d. Noticee No. 1 and 2 are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- e. Noticee No.1 and 2, in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- f. After completing the aforesaid repayments, Noticee No.1 and 2 in their personal capacity shall file a report of such completion with SEBI, within a period of three

months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.

- g. In case of failure of Noticee No. 1 and 2 to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may recover such amounts, from the company and the director liable to refund as specified in paragraph 92(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- h. Noticee No. 1 to 8 are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of **3 (three) years**. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of **3 (three) years**.
- i. Noticee No. 9 and 10 are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of **3 (three) years** from the date of this order.

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

94. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, Depositories, Banks and Registrar and Transfer Agents for information and compliances.

95. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.

Date: January 22, 2025

Place: Mumbai

**G RAMAR
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA**