

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Goldmine Agro Limited and its Directors –

Shri Tushar Sur (DIN: 02538169; PAN: BGSPS7776N),

Shri Bablu Saha (DIN: 02538201; PAN: AYAPS0436L),

Shri Joydip Mukhopadhyay (DIN: 02610032; PAN: AJYPM7962Q),

Shri Samir Kumar Mukherjee (DIN: 02538152; PAN: AQVPM3286D)

alongwith its Debenture Trustee, viz. Goldmine Debenture Trust (represented by Smt. Sujata Saha)

Background of Company

1. Goldmine Agro Limited is a Public company, incorporated on 30 March 2009. It is classified as a non-government company and is registered at the Registrar of Companies, Kolkata. Its authorized share capital is ₹ 50,00,000 and its paid up capital is ₹ 5,00,000. It is stated to be involved in agricultural and animal husbandry service activities, except veterinary activities.
2. Securities and Exchange Board of India ("**SEBI**") received a letter dated September 10, 2012, from the Bureau of Investigation (E.O.), Assam, stating that Goldmine Agro Limited ("**GAL/Company**") was issuing *Non-Convertible Secured Redeemable Debentures* ("**NCDs**") to the public in the guise of private placement.

3. On enquiry by SEBI, it was observed that GAL had made an offer of NCDs with varying interest rates and raised an amount of ₹35.62 Crores during the Financial Years 2009–10, 2010–11 and 2011–12.
4. As the above said offer of NCDs was found prima facie to be in violation of respective provisions of the SEBI Act, 1992 ("SEBI Act"), the Companies Act, 1956 and Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 ("**ILDS Regulations**"), SEBI passed an interim order dated June 19, 2015, against GAL and its directors, Shri Tushar Sur, Shri Bablu Saha, Shri Joydip Mukhopadhyay, Shri Samir Kumar Mukherjee and its Debenture Trustee, viz. *Goldmine Debenture Trust (represented by Smt. Sujata Saha)*.
5. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings/allegation were recorded.
6. GAL had made an offer and issued NCDs during the Financial Years 2009–10, 2010–11 and 2011–12 and raised an amount of ₹35.62 Crores as shown below:

Year	Type of security	Amount raised (in Rs. crores)	No. of allottees
2009 - 2010	<i>Non convertible secured Redeemable debentures</i>	6.73	Details not provided by GAL and also not available on MCA21 website
2010 - 2011		9.47	
2011 - 2012		19.42	
Total		35.62	

GAL offered NCDs with varying periods of redemption and different interest rates as shown below in respect of different amounts under different schemes under different series.

Debentures issued under Series A

Scheme I: Multiple Secured Non – Convertible Redeemable Debentures					
Plan	C			D	
Issue Price (Minimum 10 Debentures) (₹)	1000	1000	1000	1000	1000
Maturity Value	1500	2000	6000	10000	14000
Redemption Period	3 years	5 years	10 years	12 years	15 years

Scheme II: Regular Income Secured Non – Convertible Redeemable Debentures		
Plan	Redemption period	Rate of interest (per year)
E	3 years	13%
	5 years	14%
	10 years	15%

Debentures issued under Series B

Scheme I: Multiple Secured Non – Convertible Redeemable Debentures					
Plan	C			D	
Issue Price (Minimum 10 Debentures) (₹)	1000	1000	1000	1000	1000
Maturity Value	1500	2000	6000	10000	14000
Redemption Period	3 years	5 years	10 years	12 years	15 years

Scheme II: Regular Income Secured Non – Convertible Redeemable Debentures
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Plan	Redemption period	Rate of interest (per year)
E	3 years	13%
	5 years	14%
	10 years	15%

GAL created a charge of ₹10 Crores on April 15, 2009 and appointed *Goldmine Debenture Trust (represented by Smt. Sujata Saha)*, as Debenture Trustee for the Offer of NCDs by the company. The aforementioned amount of ₹10 Crores was further increased to ₹ 20 Crores on May 12, 2010. *Goldmine Debenture Trust (represented by Smt. Sujata Saha)* was not registered as debenture trustee for the Offer of NCDs by the company.

7. The above offer of NCDs and pursuant allotment were deemed public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under Section 60, Section 56(1) and 56(3), Sections 73(1),(2) and (3) of the Companies Act, 1956 and the relevant provisions of ILDS Regulations were not complied with by GAL in respect of the offer of NCDs. *Goldmine Debenture Trust (represented by Smt. Sujata Saha)* appointed as debenture trustee has violated Section 12(1) of SEBI Act read with regulation 7 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (“**Debenture Trustees Regulations**”).
8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated June 19, 2015 with immediate effect:
 - i. “GAL shall forthwith cease to mobilize funds from investors through the *Offer of NCDs* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.

- ii. GAL and its present Directors, viz. Shri Tushar Sur (DIN: 02538169; PAN: BGSPS7776N), Shri Bablu Saha (DIN: 02538201; PAN: AYAPS0436L), Shri Joydip Mukhopadhyay (DIN: 02610032; PAN: AJYPM7962Q), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
- iii. The past Director of GAL, viz. Shri Samir Kumar Mukherjee (DIN: 02538152; PAN: AQVPM3286D), is prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
- iv. GAL and its abovementioned past and present Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions.
- v. GAL shall provide a full inventory of all its assets and properties;
- vi. GAL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties.
- vii. GAL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of NCDs, without prior permission from SEBI;
- viii. GAL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of NCDs, which are kept in bank account(s) and/or in the custody of GAL;

- ix. GAL and its abovementioned present Directors shall furnish complete and relevant information (as sought by SEBI letters dated November 5, 2012 and May 13, 2014), within 14 days from the date of receipt of this Order;
 - x. The Debenture Trustee, viz. Goldmine Debenture Trust (represented by Smt. Sujata Saha), is prohibited from continuing with its assignment as debenture trustee in respect of the Offer of NCDs of GAL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.”
9. Vide the aforesaid interim order, GAL and its aforesaid Directors and the Debenture Trustee, viz. *Goldmine Debenture Trust (represented by Smt. Sujata Saha)* were afforded 21 days from the date of receipt of the interim order, to file their replies, if any and to seek an opportunity of personal hearing, if they so desired.
10. *Service of interim order and hearing notice:* The interim order dated June 19, 2015 was sought to be served on the Company, its directors and *Goldmine Debenture Trust (represented by Smt. Sujata Saha)* vide letters dated June 22, 2015. However, the same could not be served on the entities. Thereafter, it was served through substituted service upon the entities by way of notifications dated August 28 and 29, 2016, published in the newspapers *The Times of India* and *Ananda Bazar Patrika*. Letter of intimation of personal hearing, dated September 19, 2016, was sent to the entities by SEBI. However, the said letters could not be served on the Company, the directors and the Debenture Trustee. Subsequently, vide notification dated June 10, 2017, published in the newspapers *The Times of India* and *Ananda Bazar Patrika*, GAL, its Directors and the Debenture Trustee, viz. *Goldmine Debenture Trust (represented by Smt. Sujata Saha)* were notified by SEBI, that they would be granted an opportunity of personal hearing on June 20, 2017 at the time and venue mentioned therein.

11. *Hearing and submissions*: Vide letter dated October 10, 2015, Shri Samir Kumar Mukherjee has submitted that he had resigned from the Board of Directors of GAL. GAL, its Directors and the Debenture Trustee, viz. *Goldmine Debenture Trust (represented by Smt. Sujata Saha)* did not avail the opportunity of personal hearing granted on June 20, 2017. However, SEBI received a written submission made by Mr. Bablu Saha and Mr. Joydip Mukhopadhyay (two of the Directors) on June 20, 2017. Since the letter was not sent either by the present directors of GAL or by the Official Liquidator of High Court of Calcutta, as the Company is under liquidation, I note that the submission was not made on behalf of GAL. Vide the said written submission the following representations, *inter alia*, have been made by the aforesaid two Directors:

- a) Due to adverse market condition, the Company was compelled to stop its business from middle of June, 2013 and paid substantial amount to its investors from its own funds and the Company has closed its business due to public agitation.
- b) Some creditors of the Company filed a winding up petition being C.P. No. 261 of 2015 before the Hon'ble High Court, Calcutta under section 433, 343 and 439 of the Companies Act, 1956. Thereafter, an order of winding up was passed vis-à-vis the Company on September 3, 2015, appointing the Official Liquidator, High Court of Calcutta as the Liquidator of the Company as per the provisions of the Companies Act, 1956, and also directed the Official Liquidator to take possession of the Books, Records, Documents and assets of the Company (in liquidation). Certified copy of the said order has been annexed.
- c) In terms of the aforesaid order passed by the Hon'ble Court, the Official Liquidator took possession of the records and assets of the Company within December, 2015. The aforesaid ex-directors appeared before the Official Liquidator as per the provisions of Rule 130 of the Company Court Rule, 1959 and submitted all information as required of them and handed over all properties and Books of records for necessary compliance with the order of liquidation.

- d) The ex-directors have duly filed Statement of Affairs of the Company (in liquidation) under the provision section 454 of the Companies Act, 1956.
- e) By operation of the Companies Act, 1956, it is the duty of the Official Liquidator to take steps to sell the assets and properties of the Company and to invite claims from its creditors and investors after disposal of the assets and properties of the Company and to make payments to its investors on *pro rata* basis. In view of the above, SEBI is requested not to take any step against the Company and its aforesaid ex-directors.

12. I have considered the allegations, and materials on record. On perusal of the materials on record, the following issues arise for consideration. Each question is dealt with separately under different headings:

- i. Whether GAL came out with the offer of NCDs as stated in the interim order?
- ii. If so, whether the said issues are in violation of sections 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act, 1956, and other provisions mentioned in the interim order pertaining ILDS Regulations.
- iii. Whether appointment of *Goldmine Debenture Trust (represented by Smt. Sujata Saha)*, as the Debenture Trustee by GAL is in violation of Section 117B of the Companies Act, 1956 and whether *Goldmine Debenture Trust* and Smt. Sujata Saha have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations
- iv. If the findings on Issue No. 2 and 3 are found in the affirmative, who are liable for the violation committed?

Whether GAL came out with the offer of NCDs as stated in the interim order:

13. I have perused the interim order dated June 19, 2015 for the allegation of Offer of NCDs. I note that neither the company nor the directors filed any reply disputing the same.

14. I have also perused the documents/ information obtained from the Registrar of Companies (RoC) vide e-mail dated December 4, 2012 which state that GAL has issued NCDs during the financial years 2009-2010, 2010-2011 and 2011-2012 and raised a total amount of Rs. 35.62 crores.

If so, whether the said issues are in violation of sections 73(1), 73(2), 73(3), 60, 56(1), 56(3) and 117C of the Companies Act, 1956 and other provisions pertaining to ILDS Regulations:

15. The provisions alleged to have been violated and mentioned in Issue No.2 are applicable to an offer of NCDs made to the public. Therefore the primary question that arises for consideration is whether the issue of NCDs is 'public issues'. At this juncture, reference may be made to section 67(1) & (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 sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

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

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

16. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. SEBI* (Civil Appeal no. 9813 and 9833 of 2011)(hereinafter referred to as the 'Sahara Case'), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration.

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

Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in 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.”

17. Section 67(3) 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) exempts NBFCs and Public Financial Institutions from the applicability of the first proviso.

18. In the instant matter, for ascertaining whether the offer of NCDs is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, a conclusive finding in respect of the number of investors to whom NCDs were issued by GAL under such offer could not be made, as no information to that effect has been provided by

GAL or its directors in spite of letters issued by SEBI on April 30, 2013, July 11, 2013, April 29, 2014, and May 13, 2014 to the Company and its directors, requesting for the information. The letter dated April 30, 2013 was delivered to GAL, to which the Company had replied requesting for time to file its response. However, no response was received from the Company or its directors. Further, a physical verification of the registered office and head office of GAL during the month of November 2014, revealed the said premises to have been closed since June 2013.

19. From the above, I am of the opinion that this deliberate non-cooperation on the part of the Company and its directors is an attempt to conceal the true nature of the fund mobilization. Further, the raising of ₹ 35.62 Crores by way of offering NCDs, over the financial years of 2009-2010, 2010-2011 and 2011-2012, and the creation of a charge of ₹10 crores which was later increased to ₹ 20 crores, leads to the reasonable conclusion that the number of persons investing ₹6.73 crores during 2009-2010, ₹9.47 crores during 2010-2011 and ₹19.42 crores during 2011-2012, would be much more than 49, in view of the quantum of the fresh debentures in each financial year. Therefore, I find that the offer of NCDs by GAL falls within the first proviso of section 67(3) of Companies Act, 1956. Neither the Company nor the directors did file any reply contending that the offer and issuance of NCDs does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956. Hence, such issues are deemed to be public issues and GAL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
20. I find that GAL is not stated to be a Non-banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that GAL is not covered under the second proviso to Section 67(3) of the Companies Act, 1956 stands conclusively established.
21. Further, since the offer of NCDs is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. 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.

22. The allegations of non-compliance of the above provisions were not denied by GAL or its directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that GAL has contravened the said provisions. GAL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that GAL 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. Though Mr. Bablu Saha and Mr. Joydip Mukhopadhyay, vide their submissions, submitted that the Company has paid substantial funds to the investors, no proof of payment was submitted to substantiate the same. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.

23. 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 offer of NCDs was a deemed public issue of securities, GAL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that GAL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of NCDs. I, therefore, find that GAL has not complied with the provisions of section 60 of the Companies Act, 1956.

24. 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. Neither GAL nor its directors produced any record to show that it 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, GAL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

25. As regards the allegation of section 117C of the Companies Act, 1956, it may be seen that the said provision mandates the company to create a debenture redemption reserve for the redemption of such debentures, to which every year, adequate amounts should be credited out of its profits, until such debentures are redeemed. None of the Noticees denied this allegation. There is no material on record to show that such debenture reserve was created. Therefore, I hold that the company has violated section 117C of the Companies Act, 1956.

26. ILDS Regulations are applicable to the public issue and listing of debt securities. Regulation 2(e) of the ILDS Regulations defines debt securities to mean non-convertible debt securities which create or acknowledge indebtedness, and include debentures. In view of the finding that GAL has made a public issue of debt securities, the ILDS Regulations is also applicable to the instant offer of NCDs. Therefore, I find that the Company has violated the following provisions of the aforesaid ILDS Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- i. Regulation 4(2)(a) – Application for listing of debt securities
- ii. Regulation 4(2)(b) – In-principle approval for listing of debt securities
- iii. Regulation 4(2)(c) – Credit rating has been obtained
- iv. Regulation 4(2)(d) – Dematerialization of debt securities
- v. Regulation 4(4) – Appointment of Debenture Trustees
- vi. Regulation 5(2)(b) – Disclosure requirements in the Offer Document
- vii. Regulation 6 – Filing of draft Offer Document

- viii. Regulation 7 – Mode of disclosure of Offer Document
- ix. Regulation 8 – Advertisements for Public Issues
- x. Regulation 9 – Abridged Prospectus and application forms
- xi. Regulation 12 – Minimum subscription
- xii. Regulation 14 – Prohibition of mis-statements in the Offer Document
- xiii. Regulation 15 – Trust Deed
- xiv. Regulation 17 – Creation of security
- xv. Regulation 19 – Mandatory Listing
- xvi. Regulation 26 – Obligations of the Issuer, etc.

27. I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, 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*, 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"

28. In this regard, it is 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.

29. In view of the above findings, I am of the view that GAL was engaged in fund mobilizing activity from the public, through the offer of NCDs and has contravened the provisions of section 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3), and 117C of the Companies Act, 1956, and above mentioned provisions pertaining to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.

Whether appointment of Goldmine Debenture Trust (represented by Smt. Sujata Saha), as the Debenture Trustee by GAL is in violation of Section 117B of the Companies Act, 1956 and whether Goldmine Debenture Trust and Smt. Sujata Saha have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations:

30. I have perused the copy of the Debenture Trust Deeds dated April 10, 2009 and May 12, 2010. I find that GAL had created a charge of ₹ 10 crores which was later increased to an amount of ₹ 20 crores on May 12, 2010, for the Offer of NCDs by the Company. I further find that GAL had appointed *Goldmine Debenture Trust (represented by Smt. Sujata Saha)* as Debenture Trustee for the offer of NCDs by GAL, by way of a Trust Deed dated April 10, 2009.

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

32. Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993, stated that only *a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body*

corporate alone are eligible to get a certificate of registration as Debenture Trustee. Goldmine Debenture Trust (represented by Smt. Sujata Saha) 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. None of the Noticees claimed that Goldmine Debenture Trust (represented by Smt. Sujata Saha) had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that Goldmine Debenture Trust and Smt. Sujata Saha have dealt in the impugned NCDs as debenture trustee, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992.

33. 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 GAL has appointed *Goldmine Debenture Trust (represented by Smt. Sujata Saha)* which does not have a certificate of registration, the appointment of the same is in violation of section 117B of the Companies Act, 1956. Further, I find that GAL has not issued a prospectus with the relevant information and therefore, the requirement of stating the consent of the debenture trustee to be so appointed on the face of the prospectus has also not been complied with.

If the findings on question No.2 and 3 are found in the affirmative, who are liable for the violation committed?:

34. 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, GAL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

35. As far as the liability under sections 117B and 117C of the Companies Act, 1956, is concerned, the liability is on the company to comply with the said provisions. Therefore, GAL is liable for the violation of sections 117B and 117C of the SEBI Act. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the Trustee who act as the debenture trustee without the Certificate of Registration from SEBI as debenture trustee. In view of the above, I find that both *Goldmine Debenture Trust(represented by Smt. Sujata Saha)* and Smt. Sujata Saha are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
36. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 26 of this order, the liability is on the Company to comply with the requirements therein.
37. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73 (2) of the Companies Act, 1956, the company and every director of the company who is an officer in default 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 Government's) General Rules and Forms, 1956 read with rule 3(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the rate of interest prescribed in this regard is 15%. Therefore, I find that GAL and its directors, Shri Tushar Sur, Shri Bablu Saha, Shri Joydip Mukhopadhyay, Shri Samir Kumar Mukherjee 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.

38. I find from the material available on record that the details of the appointment and resignation of the directors were provided by RoC vide email dated December 4, 2012, which is reproduced below:

Name of the directors	Date of appointment	Date of cessation
Mr. Samir Kumar Mukherjee	30/03/2009	01/09/2009
Mr. Tushar Sur	30/03/2009	-
Mr. Joydip Mukhopadhyay	01/09/2009	-
Mr. Bablu Saha	30/03/2009	-

39. From the above table it is noted that Mr. Tushar Sur, Mr. Joydip Mukhopadhyay and Mr. Bablu Saha are still continuing as directors of GAL, while Mr. Samir Kumar Mukherjee has resigned on September 1, 2009. However, all of them were directors at the time of the issuance of NCDs. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, all the aforesaid directors are officers in default in not making the refund, till GAL does not repay the money collected, as mandated in section 73(2) of the Companies Act, 1956. They are 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 rule 3(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, and section 27(2) of the SEBI Act.

40. I find that vide written submissions dated June 20, 2017, Mr. Bablu Saha and Mr. Joydip Mukhopadhyay have made a representation that some of the creditors of GAL have filed a winding up petition against the Company before the Hon'ble High Court of Calcutta being

C.P. No. 261 of 2015, which was disposed of by its order dated September 3, 2015, appointing the Official Liquidator, High Court of Calcutta as the Liquidator of the Company as per the provisions of the Companies Act, 1956, and also directing the Official Liquidator to take possession of the Books, Records, Documents and assets of the Company (in liquidation). It was further submitted that in view of the above, SEBI may not take any step against the Company and/or its directors.

41. I note that the Hon'ble High Court of Calcutta has ordered for the winding up of the Company and also that an Official Liquidator has been appointed. It may be seen in the winding up proceedings under the Companies Act, 1956 the secured creditors get full satisfaction of their debts after the workmen's dues, and after satisfaction of other dues in priority only when sufficient assets of the company are available. In cases where no sufficient assets are available, they are entitled only to pro-rata payment. The winding up proceedings can result in such full repayment only if sufficient assets are available. However, the debenture holders in the deemed public issue are protected by way of full refund of the money collected by the company with interest for delay in making the repayment. In discharging this liability, the officers in default are equally liable jointly and severally with the company. In order to enforce the liability of 'officers in default' to repay the amount collected in deemed public issue under section 73(2) of the Companies Act, 1956 powers under the SEBI Act are available which include the power to pass direction to refund under section 11B of the SEBI Act and power to recover the same under section 28A of the SEBI Act in case of noncompliance of directions issued under section 11B.

42. Therefore, a separate order is required to be passed wherein both the Company and the directors are made liable for repayment under section 73(2) of the Companies Act, 1956. In so far as the liability of the Company is concerned, this order needs to be harmoniously read with the orders in C.P. No. 261 of 2015 passed by Hon'ble High Court at Calcutta.

43. 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 the Company, its directors Mr. Tushar Sur, Mr. JoydipMukhopadhyay, Mr. BabluSaha and Mr. Samir Kumar Mukherjee, to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its directors and unregistered debenture trustee, to safeguard the interest of the investors who had subscribed to such NCDs issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other noticees.
44. I also note that, vide the interim order dated June 19, 2015, GAL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the directors of GAL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided either by GAL or its directors despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 10 of this order.
45. In view of the discussion above, appropriate action in accordance with law needs to be initiated against GAL and its directors.
46. 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 of the SEBI Act, hereby issue the following directions:
- a. GAL and its past and present directors of the company, Mr. Tushar Sur, Mr. JoydipMukhopadhyay, Mr. BabluSaha and Mr. Samir Kumar Mukherjee shall forthwith refund the money collected by the Company through the issuance of NCDs, including the money collected from investors, till date, pending allotment of securities, if any, with an

interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) 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.

c. GAL and its past and present directors, Mr. Tushar Sur, Mr. JoydipMukhopadhyay, Mr. BabluSaha and Mr. Samir Kumar Mukherjee, are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

d. GAL and its present directors are permitted to sell the assets of the Company for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank, in consonance with the order of the Hon'ble High Court of Calcutta in C.P. No. 261 of 2015.

e. GAL and its past and present directors, Mr. Tushar Sur, Mr. JoydipMukhopadhyay, Mr. BabluSaha and Mr. Samir Kumar Mukherjee, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) 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, GAL and its past and present directors, Mr. Tushar Sur, Mr. JoydipMukhopadhyay, Mr. BabluSaha and Mr. Samir Kumar Mukherjee 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").

g. In case of failure of GAL and its directors, Mr. Tushar Sur, Mr. JoydipMukhopadhyay, Mr. BabluSaha and Mr. Samir Kumar Mukherjee, to comply with the aforesaid directions, SEBI, on the expiry of three months period from the date of this Order:

- i. shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.
- iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and

h. GAL and its directors, Mr. Tushar Sur, Mr. JoydipMukhopadhyay, Mr. BabluSaha and Mr. Samir Kumar Mukherjee are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 years from the date of completion of refunds to investors as directed above. 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 4 years from the date of completion of refunds to investors.

i. Goldmine Debenture Trust and Smt. SujataSahaare restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 years.

j. The above directions shall come into force with immediate effect.

47. This Order is without prejudice to any action, including adjudication and prosecution proceedings that might be taken by SEBI in respect of the above violations committed by GAL and its promoters, directors and other key persons.

48. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action. Copy of this order shall be forwarded to the Official Liquidator, at Calcutta, *inter alia*, for the purpose of enabling him to take into account in the winding up proceedings, the refund, if any, to be made by the directors to the debenture holders pursuant to this order.

49. 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: July 12, 2017

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**