

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

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

In the matter of Gulshan Nirman India Limited

In respect of:

Sl.No.	Name of the Entities	PAN	DIN
1	Gulshan Nirman India Limited	AAECG3774E	NA
2	Shri Sukanta Majhi	BOBPM8591Q	06812965
3	Shri Rajat Shuvro De	AKBPD1160B	06811145
4	Shri Deep Ghosh	ALBPG8451H	03584748
5	Shri Md Salim	AIUPS1764M	00569919
6	Shri Nityananda Sarkar	AWEPS6381C	03514023
7	Shri Sudhir Sharma	ALVPS9791G	03504505
8	Shri Syed Akhtar	AENPA5118G	02768884
9	Shri Kaustabh Roy	BCLPR9255A	03597279
10	Shri Debashish Bhattacharyya	AYLPB1956B	03540207
11	Shri Mohammad Attaullah Khan	AVFPK1594B	06367857
12	Shri Srinibash Ghosh	ACYPG7856L	06379831
13	Shri Prakash Kumar Kori	BTRPK4836R	05350913
14	Shri Manoj Singh	ATPPS8630Q	05350911
15	Shri Pradip Naskar	AGIPN8541M	05350908
16	Shri Partha Sarathi Dey	ADUPD7027M	00658131
17	Shri Swapan Mitra	AHTPM8429P	07293512
18	Shri Santu Bhattacharjee	AOGPB1142Q	07247207
19	Debenture Trustee, viz. Gulshan Debenture Trust (Represented by its Trustee, viz. Smt. Aisha Begum)	Address: 31/2A, Marquis Street, Kolkata 700016	

1. Gulshan Nirman India Limited (hereinafter referred to as “**GNIL**”/ “**the Company**”) is a Public company incorporated on May 3, 2011 and registered with Registrar of Companies–Chattisgarh with CIN: U45200CT2011PLC022452. Its registered office is at Station Road, Near Deshbandhu School, Raipur, Chattisgarh, India - 482001.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a complaint against GNIL in respect of issue of Secured Redeemable Non-Convertible Debentures(hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether GNIL had made any public issue of securities without complying with the provisions of the Companies Act, 1956; Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Rules and Regulations framed thereunder including the Securities and Exchange Board of India (Issue and Listing of Debt Securities), Regulations, 2008 (hereinafter referred to as “**ILDS Regulations**”).
3. On enquiry by SEBI, it was observed that GNIL had made an offer of NCDs in the financial years 2011-2012 and 2012-2013(hereinafter referred to as “**Offer of NCDs**”) and raised at least an amount of Rs. 39,53,000 from at least 75 allottees. The number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it was concluded that the actual number of allottees and amount mobilized could be more than the above indicated figures. It was also observed that GNIL created a charge for an amount of Rs. 10 Crores on May 09, 2011 and appointed *Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum)* as Debenture Trustee for the Offer of NCDs by that Company.
4. As the above said *Offer of NCDs* was found *prima facie* in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956, and the ILDS Regulations, SEBI passed an interim order dated May 12, 2015(hereinafter referred to as “**interim order**”) and issued directions mentioned therein against GNIL and its Directors viz., Shri Sukanta Majhi, Shri Rajat Shuvro De, Shri Deep Ghosh, Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, Shri Prakash Kumar Kori, Shri Manoj Singh, Shri Pradip Naskar, Shri Partha Sarathi Dey and its Debenture Trustee *Gulshan Debenture Trust(represented by its trustee, viz. Smt.*

Aisha Begum) (hereinafter collectively referred to as “**Noticees**”).

5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. GNIL had made an *Offer of NCDs* during the financial years 2011-2012 and 2012-2013 and raised at least an amount of Rs.39,53,000 as shown below:

Year of Issue	Security Issued	Amount raised (Rs.)	Number of allottees
2011-2012	NCDs	4,12,000	24
2012-2013		35,41,000	51
Total		39,53,000	75

6. Further, GNIL created a charge for an amount of Rs. 10 Crores on May 09, 2011 and appointed *Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum)* as Debenture Trustee for the Offer of NCDs by the company. *Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum)* was not registered as debenture trustee for the offer of NCDs by that company.
7. It was also noted that as per Form 10 filed with MCA, the Board of the Company had authorised issuance of debentures vide resolution dated May 9, 2011 and as per the Balance Sheet filed with MCA for the year ending 31.3.2012, long term liabilities are shown as Rs. 2,69,05,000. Further, it is mentioned in the auditor’s report for FY 2011-12 available on MCA portal that “details of allottees of debentures of Rs.1, 60, 37,000 not maintained.”
8. 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 read with section 2(36), section 56, sections 73(1), 73(2) and 73(3) and sections 117B and 117C of the Companies Act, 1956 and the

relevant provisions of the ILDS Regulations were not complied with by GNIL in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum)* has prima facie violated section 12(1) of the SEBI Act and regulation 7 of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as "**Debenture Trustees Regulations** ").

9. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated May 12, 2015 with immediate effect.

i. "GNIL (PAN: AAECG3774E) shall forthwith cease to mobilize fresh funds from investors through the Offer of NCDs or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;

ii. GNIL and its present/past Directors, viz. Shri Sukanta Majhi(PAN: BOBPM8591Q; DIN: 06812965), Shri Rajat Shuvro De(PAN: AKBPD1160B; DIN: 06811145), Shri Deep Ghosh(PAN: ALBPG8451H; DIN: 03584748), Shri Md Salim(DIN: 00569919), Shri Nityananda Sarkar(PAN: AWEPS6381C; DIN: 03514023), Shri Sudhir Sharma(PAN: ALVPS9791G; DIN: 03504505), Shri Syed Akhtar(PAN:AENPA5118G; DIN: 02768884), Shri Kaustabh Roy(PAN: BCLPR9255A; DIN: 03597279), Shri Debashish Bhattacharyya(PAN: AYL PB1956B; DIN: 03540207), Shri Mohammad Attaullah Khan(PAN: AVFPK1594B; DIN: 06367857), Shri Srinibash Ghosh(PAN: ACYPG7856L; DIN: 06379831), Shri Prakash Kumar Kori(PAN: BTRPK4836R; DIN: 05350913), Shri Manoj Singh(PAN: ATPPS8630Q; DIN: 05350911), Shri Pradip Naskar(PAN: AGIPN8541M; DIN: 05350908) and Shri Partha Sarathi Dey(DIN: 05350913), 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. GNIL and its abovementioned Directors, are restrained from accessing the securities

market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;

- iv. GNIL shall provide a full inventory of all its assets and properties;
- v. GNIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. GNIL and its abovementioned 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;
- vii. GNIL 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 GNIL;
- viii. GNIL shall furnish the information sought by SEBI vide letters dated January 13, 2014, April 17, 2014, December 10, 2014 and January 15, 2015 including the details of investors and Balance Sheet of the company for FY 2012-13 to 2014-15 within 21 days from the date of receipt of this Order.
- ix. The Debenture Trustee, viz. *Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum)*, is prohibited from continuing with her present assignment as a debenture trustee in respect of the Offer of NCDs of GNIL 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.”

10. The interim order also directed the GNIL and its Directors to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act should not be passed against them:

- i. Directing them jointly and severally to refund money collected through the *Offer of NCDs* along with interest, if any, promised to investors therein;
 - ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
 - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
11. Vide the said interim order, GNIL, its abovementioned Directors along with its Debenture Trustee were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
12. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letter dated May 13, 2015 and May 15, 2015 through registered post. The said order was delivered to the Company, Shri Sukanta Majhi, Shri Rajat Shuvro De, Shri Deep Ghosh and Shri Partha Sarathi Dey, Shri Md Salim, Shri Sudhir Sharma, Shri Prakash Kumar Kori and Shri Pradip Naskar. The order to Shri Nityananda Sarkar was returned undelivered with remarks, “deceased.” However, I find that there is no further material available on record in support thereof. The order to Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Srinibash Ghosh and Shri Manoj Singh were returned undelivered. Delivery status of order issued to Shri Mohammad Attaullah Khan, *Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum)* and Shri Syed Akhtar could not be found. Jurisconsultus, Attorneys (on behalf of GNIL, Shri Sukanta Majhi, Shri Rajat S. De, Shri Deep Ghosh and Shri Partha Sarathi Dey) vide letter dated June 10, 2015 sought time to collect necessary documents and also requested for all documents relied upon by SEBI for passing the Interim order.
13. *Hearing and submissions:* Hearing notice dated July 5, 2016 was issued to all the entities providing opportunity of hearing on August 9, 2016 which was returned undelivered.

Shri Md. Salim (on behalf of himself, Smt. Aisha Begum and Shri Syed Akhtar) vide letter dated July 16, 2016 confirmed that they will be present on August 9, 2016. Shri Deep Ghosh (on behalf of himself and Shri Rajat Shuvro De) vide letter dated July 21, 2016 confirmed that they will be present on August 9, 2016. Shri Debashish Bhattacharyya vide letter dated July 16, 2016 confirmed that he will be present on August 9, 2016. However, subsequently, Shri Md. Salim vide letter dated August 5, 2016 stated that he was ill and shall not be able to present on August 9, 2016 and requested for adjournment of hearing. Further, Shri Debashish Bhattacharyya vide email dated August 5, 2016 stated that he will be going out of station and will not be able to attend the hearing on August 9, 2016, hence requested for the hearing to be adjourned. Advocate, Ms. Kranti S.S. Anand, Shri Rajat Shuvro De and Shri Deep Ghosh appeared for Shri Rajat Shuvro De and Shri Deep Ghosh on August 9, 2016 and sought inspection of documents and time to submit reply. Their requests were acceded to and were given four weeks time to submit reply and another hearing was scheduled for September 7, 2016.

14. Advocate, Ms. Kranti SS Anand (representing Shri Rajat De and Shri Deep Ghosh) vide email dated August 10, 2016 requested for inspection of documents on Aug 16, 2016 and SEBI vide email dated August 12, 2016 informed Ms. Kranti SS Anand that inspection of documents was arranged on Aug 16, 2016. Further, hearing notice dated August 22, 2016 was issued to all the entities along with notification dated August 28, 2016 in Haribhoomi and Sunday Pioneer, Times of India Kolkata providing opportunity of hearing on September 7, 2016. SEBI vide email dated August 25, 2016 gave another opportunity of inspection on August 26, 2016, however, Ms. Kranti SS Anand vide email dated August 26, 2016 stated that due to pre-scheduled matters, etc., she could not come for inspection and as inspection of originals was not being given, SEBI was requested to send the photocopies to her office. SEBI vide email dated August 26, 2016 informed Ms. Kranti SS Anand that since the file contains confidential notings etc. and that is not open for inspection in general, hence, one more opportunity of inspection was arranged on August 29, 2016. However, Ms. Kranti SS Anand replied that in case originals are not open for inspection, photocopies may be sent. SEBI vide email dated

August 30, 2016 requested her to send list of documents so that the photocopies may be sent. Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, Smt. Aisha Begum, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Sudhir Sharma and Shri Syed Akhtar vide letters, each dated September 5, 2016 authorized Shri Md. Salim to file reply/appear etc. Shri Md. Salim authorised Shri R.S.Loona, Dhaval Vussonji to represent him and the other Noticees. Ms. Kranti SS Anand vide email dated September 7, 2016 stated that she will not be able to attend hearing on September 7, 2016 due to Ganpati festival and personal reasons and that SEBI has failed to furnish documents relied upon by SEBI, so asking for list of docs is to avoid and delay the matter. She further stated that hearing was not possible in view of the stated reasons and they will be seeking adjournment. In response to her email, SEBI vide email dated September 7, 2016 informed that another date of hearing (September 15, 2016) is being provided and that copies of documents shall be forwarded.

15. Advocate Abhishek Borgikar appeared for Shri Md Salim, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, Smt. Aisha Begum on September 7, 2016 and sought adjournment of the hearing. Accordingly, last and final hearing was scheduled on September 15, 2016. Meantime, SEBI vide letter dated September 8, 2016 forwarded the copies of the documents to Ms. Kranti SS Anand. SEBI vide email dated September 10, 2016 forwarded the documents to Ms. Kranti SS Anand and stated that hard copies of the said documents could not be hand delivered to her office on September 8, 2016. Subsequently, the copy of the documents vide the said covering letter dated September 8, 2016 was again sent to Ms. Kranti SS Anand which was acknowledged on September 12, 2016. Shri Md. Salim vide letter dated September 12, 2016 stated that due to ongoing investigation by CBI, CBI had seized all documents, hence it was difficult to gather information in such short span of time and accordingly requested for at least six weeks time to submit reply and reschedule hearing date as in the absence of proper reply, making appearance would render the hearing infructuous. Ms. Kranti SS Anand vide email dated September 13, 2016, stated that September 15, 2016 is the last day of Lord Ganpati festival, hence, they can't attend hearing and requested to keep the next date of

hearing between September 20 – 23, 2016. Further, she stated that the documents emailed by SEBI were not legible, hence, requested to send legible photocopies of documents relied upon by SEBI along with the inquiry report. The hearing scheduled on September 15, 2016 was adjourned to October 25, 2016 which was also subsequently adjourned. Subsequently, vide notification dated June 10, 2017 published in newspaper *Times of India, Bhopal, Dainik Bhaskar, MP, Times of India and Ananda Bazaar Patrika* Kolkata, the Noticees were notified by SEBI that they will be given the opportunity of being heard on June 20, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they failed to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded *ex-parte* on the basis of material available on record.

16. Shri Md Salim (for himself, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh and Smt. Aisha Begum) vide email dated June 19, 2017 enclosed their reply and sought adjournment of the hearing on the ground that his wife was undergoing medical treatment. Ms. Kranti SS Anand vide email dated June 20, 2016 (for Shri Rajat Shuvro De and Shri Deep Ghosh) requested for adjournment of the hearing scheduled on June 20, 2016 due to other court hearing and unavoidable road traffic. Accordingly, the hearing was adjourned to July 25, 2017. However, hearing for GNIL, Shri Sukanta Majhi, Shri Nityananda Sarkar, Shri Prakash Kumar Kori, Shri Manoj Singh, Shri Pradip Naskar and Shri Partha Sarathi Dey were concluded as they neither appeared for the hearing nor sought any adjournment. Further, Shri Md Salim, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, Smt. Aisha Begum, Shri Rajat Shuvro De and Shri Deep Ghosh did not appear for the hearing on July 25, 2017, hence the hearing was concluded in respect of these entities. SEBI further sent letter dated September 8, 2017 to Shri Md Salim, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, Smt. Aisha Begum, Shri Prakash Kumar Kori, Shri Sukanta Majhi, Shri Rajat S. De, Shri Deep Ghosh and Shri Partha Sarathi De informing them that they did not attend the

hearing and were being given opportunity to submit further documentary evidence in support of their submissions.

17. Shri Sudhir Sharma replied vide letter dated May 25, 2015. His submissions in brief are as under:

- a) He was in the Company only for a period from May 3, 2011 to October 24, 2011 (5 months) and during his tenure, no allotment of debentures have been made.
- b) He has no connection with the said issuance of debentures and for the last 4 years or more after resignation, he has not been in touch with the Company and/ or its management.
- c) Requested for exoneration from all allegations and for discharge from all obligations.

18. Shri Md. Salim replied vide letter dated May 28, 2015. His submissions in brief are as under:

- a) Since resignation he along with erstwhile directors and trustee are not custodian of the documents of the Company and hence unable to ascertain the liabilities.
- b) Aisha Begum has resigned much earlier and she was functus officio and never was directly or indirectly involved and discharged any functions or duties in the capacity of trustee or otherwise at any point of time.
- c) Requested to absolve him, erstwhile directors and erstwhile trustee from all allegations and release from all liabilities of the Company.
- d) Requested for personal hearing opportunity on June 8, 2015 or any other date.

19. Shri Prakash Kumar Kori replied vide letter dated October 18, 2016. His submissions in brief are as under:

- a) He received SEBI letter and also attended meeting with CBI when he got to know about the search regarding Gulshan Nirman India.
- b) Some years back his DIN was made through some brother and he had not signed on any papers of the Company.

- c) Actual owners of the Company are Rajesh Kumar Jain and Rakesh Kumar Jain who forged his signatures and his documents were also with them.
 - d) He is very poor and working as peon and can't even afford to come to meet with SEBI and enclosed the letter from CBI requiring his attendance.
20. Shri Md. Salim vide letter dated June 17, 2017 enclosed reply (on behalf of himself, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, Smt. Aisha Begum, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Sudhir Sharma and Shri Syed Akhtar). His submissions vide letter dated June 16, 2017 in brief are as under:
- a) Mohammed Attaullah Khan, Srinibash Ghosh and Debashish Bhattacharya were appointed in the company on 01.09.2012, 12.09.2012 and 01.09.2012 respectively, and thereafter, Md. Salim, Syed Akhtar and Kaustubh Roy resigned from the companies on 24.09.2012, 24.09.2012 and 19.11.2012 respectively.
 - b) Thereafter, an agreement for sale between Md. Salim and Bijay Kumar Agarwal at the behest of agents and investors of the company was executed on 29.11.2013 for the purpose of inter alia to repay the outstanding if any and/or clear any statutory overdue wherein the said Bijay Kumar Agarwal being desirous of acquiring the ownership, management and control thereof on the condition that the liabilities of the said companies being sold vide agreement dated 29.11.2013 and the assets of the Raiyan Hotel and Resorts Pvt. Ltd. Shall be part of and parcel of one single package and that but for the assets available in the said Raiyan Hotels and Resorts Pvt. Ltd., Mr. Bijay Kumar Agarwal would acquire the liabilities of the other four companies.
 - c) In the wake of the aforesaid agreement dated 29.11.2013, Manoj Singh, Prakash Kumar Kori and Pradip Naskar were appointed in the Board of Directors of the company on 12.12.2013 and Debashish Bhattacharya, Mohammad Attaullah Khan and Srinibash Ghosh resigned from the company on 23.12.2013.
 - d) By the said agreement dated 29.11.2013, Md. Salim, Kaustubh Roy, Syed Akhtar, Debashish Bhattacharya, Mohammad Attaullah Khan and Srinibash Ghosh transferred a plot of land situated at 5A, Royd Street, Kolkata – 700 016

purchased in the name of Raiyan Hotels & resorts Pvt. Ltd. (formerly Referral Software Pvt. Ltd.) valued at Rs. 69.53 crores admeasuring more or less 33 Cottahs 24 sq. ft. to the said Bijay Kumar Agarwal by of an agreement dated 29.11.2013 in order to redeem, neutralize and offset the liabilities and after disposing of the assets of the Raiyan Hotels & Resorts Pvt. Ltd and redeeming all the liabilities the said Bijay Kumar Agarwal would easily have an excess amount for running the said companies.

- e) On 5th February, 2014, the said Mr. Bijay Kumar Agarwal entered into an agreement with Partha Sarathi Dey and assigned all of his rights, title and interest arising out of or under the agreement dated 29th November, 2013 as amended in favor of Partha Sarathi Dey, who became an assignee and stepped into the shoes of the assignor, being Bijay Kumar Agarwal. In the said deed of assignment, Partha Sarathi Dey agreed that all the certificates which were created and/or issued by the companies shall be returned to him by the assignee within Eight months from the date of execution of the deed of assignment.
- f) By virtue of deed of assignment dated 05.02.2014, Partha Sarathi Dey became liable to redeem liabilities of the companies and Partha Sarathi Dey being the Director has filed an Affidavit and sworn before Ld. ACMM, 2nd Court, Calcutta on 13.05.2014 to be liable for the affairs of the Companies.
- g) Partha Sarathi Dey also recorded that he would strictly follow and comply with all the terms and conditions of the undertaking as envisaged under the agreement dated 29th November, 2013 and 5th February, 2014 as amended without any variation or modification.
- h) Partha Sarathi Dey upon accepting the aforesaid position published vide notices in the various newspapers recording therein the change in management of the companies and regarding shifting of offices of the said four companies.
- i) There have been further publication in 'Samvad Pratidin' (Bengal) dated 15.05.2014 issued by Partha Sarathi Dey as well as "The Statesman" (Bengal) dated 15.05.2014 recording that by virtue of the deed of assignment arising subsequent to the agreement dated 29.11.2013, the ownership and management

of the said four companies have been taken over by Partha Sarathi Dey and members of his group. It was recorded in the said publication that on and from 29.11.2013 all the liabilities and responsibilities be it administrative, finance, or statutory affairs, the erstwhile director of the said four companies would be ceased to have any liability. It is subsequently stated, “it has also been certified on the part of the acquirer/undersigned/assignee that the past management of all the aforesaid entities shall not be held responsible and accountable in any respect, be it administrative, finance or statutory affairs/matters pertaining thereto”. Similar publication also came in the newspaper ‘Aaj Varansi’ dated 23.05.2014 and several other newspapers.

- j) He mentioned in the said publication is Partha Sarathi Dey and by virtue of the said publication it was unequivocally admitted that Md. Salim, Kaustubh Roy, Syed Akhtar, Debashish Bhattacharya, Mohamamd Attaullah Khan and Srinibash Ghosh are no longer responsible in respect of any dealing of the said four companies, be it administrative, finance or statutory affairs/matters pertaining thereto. The contents of the said publications really show that Partha Sarathi Dey had taken over the companies and all liabilities of the companies and that Md. Salim, Kaustubh Roy, Syed Akhtar, Debashish Bhattacharya, Mohamamd Attaullah Khan and Srinibash Ghosh would have no liability or accountability in respect of any of the administrative and financial matters pertaining to the companies.
- k) By yet another document executed on 07.2.2014, Partha Saratha Dey recorded that he shall not accept any deposit of any kind whatsoever without complying with the provision of the Companies Act, 1956, the Guidelines of the Reserve Bank of India, the provision and guidelines of SEBI etc.
- l) By yet another document executed on 06.02.2014, Partha Sarathi Dey recorded that he has taken over all the material documents including original deeds of properties and documents of investors and accounting software relating to the companies and also of Raiyan Hotels and Resorts Pvt. Ltd., which has clearly indicated that Partha sarathi Dey has taken over all the liabilities of the said

companies and he had no further liability in respect thereof. Partha Sarathi Dey also executed the document containing the list of its papers and documents of Raiyan Hotels and Resorts Pvt. Ltd., which belongs to him and he only handed over the same to Partha Sarathi Dey to enable Partha Sarathi Dey to repay the depositors of the companies.

- m) Partha Sarathi Dey and his associates thereafter also changed the registered office of the companies and one of the directors being advocate of Partha Sarathi Dey namely Rajat Shuvro De executed an affidavit on 02.04.2014, which indicated that Partha Sarathi Dey has assumed full control over the said companies upon transfer of its shares and change of its registered office. Partha Sarathi Dey is thus liable to meet all the liabilities of the companies.
- n) On July 23, 2014, the Ld. Prosun Ranjan Gupta, Esq. being mutually appointed by Md. Salim and Partha Sarathi Dey was pleased to confer the Arbitral Award on agreed terms wherein it was recorded that the claims against the companies transferred vide Agreement dated 29.11.2013 have to be dealt with by the present management which at present being Partha Sarathi Dey, Deep Ghosh, Sukanta Manjhi and Rajat Shuvro De and Md. Salim, Kaustabh Roy, Syed Akhtar, Debashish Bhattacharyya, Mohammad Attaullah Khan and Srinibash Ghosh are ceased of their liability and in view of the award the responsibility for payment to the creditors, as Bijay Kumar Agarwal had taken all the liability and responsibility from Md. Salim, Kaustabh Roy, Syed Akhtar, Debashish Bhattacharyya, Mohammad Attaullah Khan and Srinibash Ghosh with the solemn undertaking to liquidate the dues of creditors which was assigned to Partha Sarathi Dey.
- o) One Title Suit No. 166/2015 was preferred before the Ld.Judge, Vth Bench, City Civil Court at Calcutta by Md. Salim, Kaustabh Roy, Syed Akhtar, Debashish Bhattacharyya, Mohammad Attaullah Khan, Srinibash Ghosh, Aisha Begum and others against Partha Sarathi Dey, Deep Ghosh, Sukanta Manjhi, Rajat Shuvro De and others which has been heard, considered, Ordered and Decreed on

11.05.2015 vide order no. 11 of the said date by the Ld. Judge, Vth Bench, City Civil Court at Calcutta.

- p) The Ld. Judge, Vth Bench, City Civil Court at Calcutta was pleased to pass an order that all the liabilities of the companies are to be borne and redeemed by the present Management namely Partha Sarathi Dey, Deep Ghosh, Sukanta Manjhi, Rajat Shuvro De, Dimple Fouzder and others being Directors alongwith the persons - in - charge of the companies. The said decree was published in Business Standard (English Edition) by Mr. Sadhan Ch. Das, Office Superintendent, City Civil Court at Calcutta on August 05, 2015.
- q) He and erstwhile directors/ shareholders is/are no longer liable to meet any of the liabilities of companies including repaying the money towards their various depositors, inasmuch as, Md. Salim, Aisha Begum, Kaustabh Roy, Syed Akhtar, Debashish Bhattacharyya, Mohammad Attaullah Khan and Srinibash Ghosh are neither the owner of any of the companies nor holding any share in any of the companies and also as per the award passed by the learned Arbitrator.
- r) Partha Sarathi Dey even after resignation from the company filed an Affidavit and sworn before Ld. Metropolitan Magistrate, Calcutta on 08.05.2015 to be liable for all the liabilities of the companies.
- s) The petitioners of the T.S. No.166/2015 also filed Title Execution Case No.141 of 2017 (Arising out of T.S. No. 166 of 2015) in the City Civil Court at Calcutta before the Ld. Registrar Bench for relief prayed that execution against the Judgment debtors/ defendants for compliance of decree dated 11.05.2015 by paying dues payable by the Judgment debtors and defendants companies being No. 5, 7 to 14 and 20 to 23 to the investors as per Securities and Exchange Board of India order bearing No. WTM/SR/WRO/RLO/ 102/05/2015 dated 12.05.2015.

21. Mr. Md. Salim on behalf of the aforesaid Noticees reiterated his submissions vide letter dated September 18, 2017 and September 16, 2017. He submitted that they had not impaired the personal hearing opportunity scheduled on June 20, 2017, rather they had availed the opportunity to provide some documentary evidence and reiterated that a CBI

investigation is pending against them on the same issue and thus requested for further time.

22. Shri Deep Ghosh and Shri Rajat Shuvro De vide letter dated October 25, 2017 stated:

- a) It appears from documents disclosed by SEBI that debentures were issued by the Company during 2011-2013 and the business of the Company was stopped from August 2013 when Mr. Md. Salim, Mr. Syed Akhtar and Mr. Nurul Islam were the directors.
- b) A complete list of depositors is available with the Software Developer Company, Web Infotech Solutions. The Company till November 29, 2013 was being managed and run by Mr. Md. Salim and his associates who sold the Company by an agreement dated November 29, 2013 to Mr. Bijoy Kumar Agarwal.
- c) Thereafter, Mr. Bijoy Agarwal by agreement dated February 5, 2014 assigned all his rights in favour of Mr. Partha Sarathy and Mr. Partha Sarathy was entrusted to repay the money raised by Mr. Md. Salim by allotment of Debentures during his tenure.
- d) Shri Deep Ghosh and Shri Rajat Shuvro De were appointed by Mr. Partha Sarathy Dey in February 2014 and both of them resigned in 2015.
- e) They were in no way connected with the activities of the Company.

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

- (1) Whether the company came out with the Offer of NCDs as stated in the interim order.*
- (2) If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.*
- (3) Whether appointment of Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum) as the Debenture Trustee by GNIL is in violation of Section 117B of the Companies Act, 1956 and whether Gulshan Debenture Trust and Smt. Aisha Begum violated Section 12(1) of SEBI Act and regulation 7 of the Debenture*

Trustees Regulations

(4) *If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1- Whether the company came out with the Offer of NCDs as stated in the interim order.

24. I have perused the interim order dated May 12, 2015 for the allegation of *Offer of NCDs*.

I note that neither the company nor the directors have disputed the same.

25. I have also perused the documents/ information obtained from the 'MCA 21 Portal' and other documents available on records. It is noted, from the investors' complaints received by SEBI in the matter that GNIL has issued and allotted NCDs to at least 75 investors during the financial years 2011-2012 and 2012-2013 and raised at least an amount of Rs. 39,53,000. I also note that the number of allottees and funds mobilized has been collated from the documents submitted with the complaints received by SEBI. Therefore, it is possible that the actual number of allottees and amount mobilized could be more than 75 allottees and Rs.39,53,000 respectively.

26. However, I also note that as per Form 10 filed with MCA, the Board of the Company had authorised issuance of debentures vide resolution dated May 9, 2011 and as per the Balance Sheet filed with MCA for the year ending 31.3.2012, long term liabilities are shown as Rs. 2,69,05,000. Further, it is mentioned in the auditor's report for FY 2011-12 available on MCA portal that "details of allottees of debentures of Rs.1, 60, 37,000 not maintained." Therefore, I find that the amount mobilized and number of allottees is expected to be more than Rs.1, 60, 37,000 and 75.

27. *I therefore conclude that GNIL came out with an offer of NCDs as outlined above.*

ISSUE No. 2- If so, whether the said issues are in violation of Section 56, Section 60 read with section 2(36), Section 73 and section 117C of the Companies Act, 1956 read with the ILDS Regulations.

28. The provisions alleged to have been violated and mentioned in Issue No.2 are applicable

to the *Offer of NCDs* made to the public. Therefore the primary question that arises for consideration is whether the issue of NCDs is 'public issue'. At this juncture, 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 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).”

29. 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.”

30. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.
31. In the instant matter, I find that NCDs were issued by GNIL to at least 75 investors in the financial years 2011-2012 and 2012-2013. However, this number is not conclusive as it is based on the documents received by SEBI along with complaints and the actual number of investors could be more than 75. I find that GNIL has mobilized at least an amount of Rs. 39,53,000 over the financial years 2011-2012 and 2012-2013 which is not a conclusive value as it is based on the complaints received by SEBI. Further, I find that GNIL has created a charge of Rs. 10 Crores on May 09, 2011. I also note that as per Form 10 filed with MCA, the Board of the Company had authorised issuance of debentures vide resolution dated May 9, 2011 and as per the Balance Sheet filed with MCA for the year ending 31.3.2012, long term liabilities are shown as Rs. 2,69,05,000. Further, it is mentioned in the auditor's report for FY 2011-12 available on MCA portal that “details of allottees of debentures of Rs. 1, 60, 37,000 not maintained.” Therefore, the amount mobilized and number of allottees can be much more than Rs. 1, 60, 37,000 and 75. The above findings lead to a reasonable conclusion that the *Offer of NCDs* by GNIL was a “public issue” within the meaning of the first proviso to section 67(3) of the

Companies Act, 1956.

32. Neither GNIL nor its directors have contended that the *Offer of NCDs* does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956. Herein, I note that the Interim order refers to the brochures cum application form and letters of allotment issued by GNIL, wherein it has been mentioned that the NCDs were being issued on private placement. I note that no evidence has been brought on record to show that the NCD issue was made to known persons or was a domestic concern. Further, considering that GNIL has issued and allotted NCDs to at least 75 investors during the financial years 2011-2012 and 2012-2013 and raised at least an amount of Rs.1,60,37,000, I do not find that the NCD issue by the Company was a private placement.
33. I find that GNIL has not claimed it 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 there is no case that GNIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
34. Even in cases where the allotments are considered separately, reference may be made to Sahara Case, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged." In respect of those issuances, the directors have not placed any material that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement. Moreover, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016)* which lays down that "In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning".

35. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by GNIL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of NCDs* are deemed to be public issues and GNIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
36. 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.
37. The allegations of non-compliance of the above provisions were not denied by GNIL 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 GNIL has contravened the said provisions. GNIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that GNIL 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(2) of the Companies Act, 1956 has not been complied with.
38. 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, GNIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that GNIL 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 GNIL has not complied with the provisions of section 60 of the Companies Act, 1956.

39. 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 GNIL 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, GNIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
40. 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.
41. 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 GNIL 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.
42. Further, 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"

43. 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. While interpreting the phrase “intend to get listed” in the context of deemed public issue the Hon’ble Supreme Court in *Sahara Case* 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...”

44. In view of the above findings, I am of the view that GNIL 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.

ISSUE No. 3-Whether appointment of Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum), as the Debenture Trustee by GNIL is in violation of Section 117B of the Companies Act, 1956 and whether Gulshan Debenture Trust and Smt. Aisha Begum have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

45. I find that GNIL had created a charge of Rs. 10 Crores for the Offer of NCDs by the

Company. I further find that GNIL had appointed *Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum)* as the debenture trustee.

46. Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993, states that *only a scheduled bank carrying on commercial activity or, a public financial institution within the meaning of section 4A of the Companies Act, 1956 or, an insurance company or, a body corporate alone are eligible to get a certificate of registration as Debenture Trustee.*
47. *Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum)* are 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 *Gulshan Debenture Trust (represented by its trustee, viz. Smt. Aisha Begum)* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that *Gulshan Debenture Trust* and *Smt. Aisha Begum* have dealt in the impugned Offer of NCDs as debenture trustees, without having a certificate of registration as Debenture Trustee in violation of Section 12(1) of the SEBI Act, 1992. Herein, I note Shri Md. Salim's submissions that *Smt. Aisha Begum* has resigned much earlier and she was *functus officio* and never was directly or indirectly involved and discharged any functions or duties in the capacity of trustee or otherwise at any point of time. On perusal of Form 10 as well as Debenture Trust Deed, I find that GNIL had created a charge of Rs. 10 Crores for the Offer of NCDs by the Company and *Smt. Aisha Begum* is shown as the Debenture Trustee of the Company in both the documents. The concerned violations herein are for dealing in the impugned Offer of NCDs as debenture trustees, without having a certificate of registration as Debenture Trustee. Further, the Debenture Trust Deed has also been executed between the Company and *Smt. Aisha Begum* as the Debenture Trustee. Therefore, I find the violations against her are established since there is evidence that she agreed to be appointed as debenture trustee as evidenced by the debenture trust deed. There is no

further requirement that she ought to have discharged the functions as debenture trustee in order to attract the violation. Therefore, I find that the aforesaid submissions that she was *functus officio* and never was directly or indirectly involved and discharged any function or duty in the capacity of trustee or otherwise at any point of time was not tenable.

48. 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. I find that GNIL has appointed *Gulshan Debenture Trust (represented by its trustee, viz., Smt. Aisha Begum)* who do not have a certificate of registration. Therefore, the appointment of the same is in violation of section 117B of the Companies Act, 1956. Further, since GNIL 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 not been complied with.

ISSUE No. 4- If the findings on Issue No.2 and 3 are found in the affirmative, who are liable for the violation committed?

49. Shri Sudhir Sharma in his reply stated that he was in the Company only for a period from May 3, 2011 to October 24, 2011 (5 months) and during his tenure, no allotment of debentures have been made and that he had no connection with the said issuance of debentures and for the last 4 years or more after resignation, he has not been in touch with the Company and/ or its management. In this regard, I find that as per MCA records as well as his submission, Shri Sudhir Sharma was director of the Company from May 3, 2011 to October 24, 2011. However, I also find that the NCDs have been allotted by the Company during 2011-2012 and 2012-2013 and from the material available on record for instance, three NCDs dated October 20, 2011 issued by the Company which falls within the period of Shri Sudhir Sharma's directorship, hence his submissions that during his

tenure, no allotment of debentures have been made are untenable. In regard to his submissions that he had no connection with the said issuance of debentures, I note Hon'ble Securities Appellate Tribunal (SAT) order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, wherein Hon'ble SAT has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act.

50. Shri Md. Salim in his reply has stated that since resignation he alongwith erstwhile directors and trustee are not custodian of the documents of the Company and hence unable to ascertain the liabilities and that Ms. Aisha Begum has resigned much earlier and she was functus officio and never was directly or indirectly involved and discharged any functions or duties in the capacity of trustee or otherwise at any point of time. He also requested to absolve him, erstwhile directors and erstwhile trustee from all allegations and release from all liabilities of the Company. Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, Smt. Aisha Begum, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Sudhir Sharma and Shri Syed Akhtar vide letters, each dated September 5, 2016 authorized Shri Md. Salim to file reply to Interim Order and Shri Md. Salim, *inter-alia*, stated that Mohammad Attaullah Khan, Srinibash Ghosh and Debashish Bhattacharyya were appointed in the company on 01.09.2012, 12.09.2012 and 01.09.2012 respectively, and thereafter, Md. Salim, Syed Akhtar and Kaustabh Roy resigned from the companies on 24.09.2012, 24.09.2012 and 19.11.2012 respectively. It was also submitted that Manoj Singh, Prakash Kumar Kori and Pradip Naskar were appointed in the Board of Directors of the Company on 12.12.2013 and Debashish Bhattacharya, Mohammad Attaullah Khan and Srinibash Ghosh resigned from the company on 23.12.2013. I find that the said submissions regarding appointment and resignation of the directors are as per the available MCA records. Further, it was submitted that they transferred the management and control of GNIL together with a large plot of land to Mr. Bijay Kumar Agarwal in November 2013 on the understanding and arrangement between them that Mr. Agarwal shall be solely responsible to discharge all liabilities of the Company including the repayment to subscribers of NCDs, issued by

the Company and Mr. Bijay Kumar Agarwal assigned all his right, title and interest in the Agreement dated February 05, 2014 to Mr. Dey to discharge all the liabilities of the Company. In regards the agreement between Mr. Md. Salim and Mr. Bijay Kumar Agarwal assigning the liabilities including repayment to the allottees of NCDs and the subsequent assignment of liabilities by Mr. Bijay Agarwal to Mr. Partha Sarathy Dey, I find that the legal/statutory obligations imposed under the Companies Act, 1956 can not be divested in favour of others. The statutory liability to repay the investors continues to vest on the persons liable to repay as per section 73(2) of the Companies Act, 1956. An agreement can apportion the joint and several liabilities among the persons liable to repay as per section 73(2) of the Companies Act, 1956. However, the statutory liability continues to remain with all who are jointly and severally liable to repay. Therefore, I find that these submissions are untenable. Therefore, Shri Md. Salim's submissions on behalf of himself, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, Smt. Aisha Begum, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Sudhir Sharma and Shri Syed Akhtar that the directions against them imposed by Interim Order be vacated and they be declared as not liable for the alleged violations of the Company cannot be accepted. Further, I find that as per MCA records, Shri Md. Salim was director of the Company from May 3, 2011 to September 24, 2012, Shri Kaustabh Roy was director of the Company from October 17, 2011 to November 19, 2012, Shri Sudhir Sharma was director of the Company from May 3, 2011 to October 24, 2011, Shri Syed Akhtar was director of the Company from May 3, 2011 to September 24, 2012, Shri Mohammad Attaullah Khan was director of the Company from September 1, 2012 to December 23 2013, Shri Debashish Bhattacharyya was director of the Company from September 1, 2012 to December 23 2013, Shri Srinibash Ghosh was director of the Company from September 12, 2012 to December 23 2013 and as the NCDs were allotted during 2011-2012, and 2012-2013, they are liable to refund.

51. However, I also find that Shri Md. Salim has submitted that one Title Suit No. 166/2015 was preferred before the Ld. Judge, Vth Bench, City Civil Court at Calcutta by Md. Salim, Kaustabh Roy, Syed Akhtar, Debashish Bhattacharyya, Mohammad Attaullah Khan, Srinibash Ghosh, Aisha Begum and others against Partha Sarathi Dey, Deep

Ghosh, Sukanta Manjhi, Rajat Shuvro De and others which has been heard, considered, Ordered and Decreed on 11.05.2015 vide order no. 11 of the said date by the Ld. Judge, Vth Bench, City Civil Court at Calcutta and the Ld. Judge, Vth Bench, City Civil Court at Calcutta was pleased to pass an order that all the liabilities of the companies are to be borne and redeemed by the present Management namely Partha Sarathi Dey, Deep Ghosh, Sukanta Manjhi, Rajat Shuvro De, Dimple Fouzder and others being Directors alongwith the persons - in - charge of the companies. Further, he submitted that the petitioners of the T.S. No.166/2015 also filed Title Execution Case No.141 of 2017 (Arising out of T.S. No. 166 of 2015) in the City Civil Court at Calcutta before the Ld. Registrar Bench for execution against the Judgment debtors/ defendants for compliance of decree dated 11.05.2015 by paying dues payable by the Judgment debtors and defendants companies being No. 5, 7 to 14 and 20 to 23 to the investors as per Securities and Exchange Board of India order bearing No. WTM/SR/WRO/RLO/ 102/05/2015 dated 12.05.2015. On perusal of the copy of judgment dated May 11, 2015 in the aforesaid suit, I find that the suit has been partly decreed by the Hon'ble Judge on the basis of the prayer of the parties on consent that the plaintiffs were entitled to get a decree for declaration that after signing the agreement dated 29.11.2013, they have seized to control the defendant companies no. 20, 23 and they have no responsibility to repay any of the depositors, investors of the defendant no. 20, 21, 22 & 23 and that the defendants no. 5, 7 to 14 being the present directors of the company and/or persons in the present management of the company and defendants no. 20 to 23 as on date of passing of the award i.e. 23.7.2014, are liable to pay the claims of the creditors including depositors. I note that the plaintiffs in the case include Shri Md Salim, Smt. Aisha Begum, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh and defendants no. 7 to 14 include Shri Rajat Shuvro De, Shri Deep Ghosh, Shri Sukanta Majhi and defendants no. 20 to 23 include GNIL. On perusal of the decree, it appears that the Hon'ble Court has determined the liability of the plaintiffs and defendants in respect of depositors, creditors as well as others based on the agreement between these parties. However, SEBI is empowered to determine the liability of the past and present directors of GNIL under the

section 73(2) of Companies Act, 1956 and Securities and Exchange Board of India Act, 1992. Attention also may be drawn to the provisions of Section 20A of the SEBI Act which bars the jurisdiction of the civil court in the following words “..no civil court shall have jurisdiction in respect of any matter which the Board [or the Adjudicating Officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board or the Adjudicating Officer by, or under, this Act.”

It may be further noted, it is different proposition that the directors who are jointly and severally liable to refund the money along with the company, can determine their inter se liability among themselves through arrangements such as contractual. It is also different proposition that the parties to such agreement can seek enforcement of contract from court of law. The proceeding in hand determines the liability of directors and the company *vis a vis* the debenture holders as stipulated under section 73(2) of the Companies Act. The inter-se liability of directors is not determined in the present proceedings. Under the various agreements cited by the directors, if inter se liability of directors are sought to be agreed upon, the present proceedings does not interfere the same. However, as found earlier, the statutory liability which is joint and several continues to vest on the persons liable to repay as per section 73(2) of the Companies Act, 1956. In case of their failure to repay, the SEBI has powers to recover the same from those persons liable to repay as per section 73(2) of the Companies Act, 1956. Given the fact that Title Suit No. 166/2015 vide its consent decree dated 11.05.2015 has declared that defendants being No. 5, 7 to 14 and 20 to 23 to the investors (The defendant No.20 being GNIL is relevant to this proceedings of Defendants No.,20- 23) based on the agreement dated November 29,2013, it is observed that Plaintiffs therein have, filed Title Suit No. 166/2015, though there is clear provision in Section 20A of the SEBI Act and plaintiffs have prosecuted the suit and by consent lead the court to decree the suit. It is further noted, SEBI has not been arrayed as party in the suit by the plaintiffs. In view of this, SEBI shall take necessary steps including filing of an appropriate application (which may include an application for modification of decree passed in Title Suit No. 166/2015/or/declaration to the extent, that statutory liability of

directors to repay the NCD holders as crystalized in this order shall be in addition to and independent of the liability of judgment debtors in Title Suit No. 166/2015) in the appropriate Court to bring to the notice of the court the present SEBI Order and the present SEBI Order shall be implemented subject to conclusion of determination of such application. On disposal of such application, SEBI can independently initiate recovery against the directors who are liable to repay, as determined in this order, in case of their failure to repay the investors as per the order when it takes effect.

52. Shri Prakash Kumar Kori in his reply stated that he received SEBI letter and also attended meeting with CBI when he got to know about the search regarding Gulshan Nirman India and that some years back his DIN was made through some brother and he had not signed on any papers of the Company. He also submitted that the actual owners of the Company are Rajesh Kumar Jain and Rakesh Kumar Jain who forged his signatures and his documents were also with them and that he is very poor and working as peon and can't even afford to come to meet with SEBI and enclosed the letter from CBI requiring his attendance. Though Shri Prakash Kumar Kori states that he had not signed on any papers of the Company and the actual owners of the Company are Rajesh Kumar Jain and Rakesh Kumar Jain who forged his signatures and his documents are also with them, he has not specifically denied being the director of the Company and also not submitted any documentary evidence in support of his submissions despite SEBI letter dated September 8, 2017 advising him to produce documentary evidence in support of his submissions, therefore, I do not find these submissions tenable as he was a director of the Company and after accepting the position of director, he cannot wriggle out of his responsibility as director. Hon'ble Securities Appellate Tribunal (SAT) vide its order dated July 14, 2017 in the matter of Manoj Agarwal vs. SEBI, has considered similar contentions like merely lending name to be a director and non-involvement in the day to day affairs of the Company and has held that this would not absolve the directors from their obligation to refund the amount to investors in view of specific provisions of the Companies Act. However, I find that as per MCA records that Shri Prakash Kumar Kori was director of the Company from December 12, 2013 to February 6, 2014 which

was subsequent to the issue/allotment of NCDs by the Company and thereby not liable for refund.

53. Shri Deep Ghosh and Shri Rajat Shuvro De in their common reply stated that debentures were issued by the Company during 2011-2013 and the business of the Company was stopped from August 2013 when Mr. Md. Salim, Mr. Syed Akhtar and Mr. Nurul Islam were the directors and the Company till November 29, 2013 was being managed and run by Mr. Md. Salim and his associates who sold the Company by an agreement dated November 29, 2013 to Mr. Bijoy Kumar Agarwal. They also submitted that thereafter, Mr. Bijoy Agarwal by agreement dated February 5, 2014 assigned all his rights in favour of Mr. Partha Sarathy and Mr. Partha Sarathy was entrusted to repay the money raised by Mr. Md. Salim by allotment of Debentures during his tenure and Shri Deep Ghosh and Shri Rajat Shuvro De were appointed by Mr. Partha Sarathy Dey in February 2014 and both of them resigned in 2015 and they were in no way connected with the activities of the Company. In regard to his submission that they were in no way connected with the activities of the Company, I find these submissions untenable as Shri Deep Ghosh and Shri Rajat Shuvro De were directors of the Company and after accepting the position of directors, they cannot wriggle out of their responsibility as directors. However, I find that as per MCA records, Shri Deep Ghosh was director of the Company from February 6, 2014 to July 27, 2015 and Shri Rajat Shuvro Dewas director of the Company from February 6, 2014 to September 19, 2015, both of which are subsequent to the issue/allotment of NCDs by the Company and thereby not liable to repay the amount mobilized by the Company. Further, I also note that the order to Shri Nityananda Sarkar was returned undelivered with remarks, “deceased.” However, I find that there is no further material available on record in support thereof, hence I am constrained to proceed against Shri Nityananda Sarkar with the material available on record. Further, I note that the liability to refund does not abate even if he is deceased.

54. From the documents available on record, I find that the present Directors in GNIL are Shri Sukanta Majhi, Shri Swapan Mitra and Shri Santu Bhattacharjee. I also note that Shri Rajat Shuvro De, Shri Deep Ghosh, Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya,

Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, Shri Prakash Kumar Kori, Shri Manoj Singh, Shri Pradip Naskar and Shri Partha Sarathi Dey, who were earlier Directors in GNIL, have since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Sukanta Majhi	February 06, 2014	Continuing
Shri Rajat Shuvro De	February 06, 2014	September 19, 2015
Shri Deep Ghosh	February 06, 2014	July 27, 2015
Shri Md Salim	May 03, 2011	September 24, 2012
Shri Nityananda Sarkar	May 03, 2011	October 24, 2011
Shri Sudhir Sharma	May 03, 2011	October 24, 2011
Shri Syed Akhtar	May 03, 2011	September 24, 2012
Shri Kaustabh Roy	October 17, 2011	November 19, 2012
Shri Debashish Bhattacharyya	September 01, 2012	December 23, 2013
Shri Mohammad Attaullah Khan	September 01, 2012	December 23, 2013
Shri Srinibash Ghosh	September 12, 2012	December 23, 2013
Shri Prakash Kumar Kori	December 12, 2013	February 06, 2014
Shri Manoj Singh	December 12, 2013	February 06, 2014
Shri Pradip Naskar	December 12, 2013	February 06, 2014
Shri Partha Sarathi Dey	February 06, 2014	August 13, 2014
Shri Swapan Mitra	September 19, 2015	Continuing
Shri Santu Bhattacharjee	July 27, 2015	Continuing

55. 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, GNIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
56. 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 Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.
57. From the material available on record and the details of the appointment and resignation of the directors of GNIL as reproduced in paragraph 54 of this Order, it is noted that Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh were directors at the time of the issuance of NCDs. Since these persons were acting as directors during the period of issuance of NCDs, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of GNIL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the past and present directors of GNIL, as officers in default, are liable to make refund, jointly and severally, 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, the above said directors 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 section 27(2) of the SEBI Act. Therefore, I find that GNIL and its Directors, viz., Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh 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.

58. I note that during the financial years 2011-2012 and 2012-2013, GNIL through Offer of NCDs, had collected at least an amount of Rs.1, 60, 37,000 from various allottees I note that Shri Md Salim was director of GNIL during financial years 2011-2012, 2012-2013. I note that Shri Nityananda Sarkar was director of GNIL during financial year 2011-2012. I note that Shri Sudhir Sharma was director of GNIL during financial year 2011-2012. I note that Shri Syed Akhtar was director of GNIL during financial years 2011-2012, 2012-2013. I note that Shri Kaustabh Roy was director of GNIL during financial years 2011-2012 and 2012-2013. I note that Shri Mohammad Attaullah Khan was director of GNIL during financial year 2012-2013. I note that Shri Debashish Bhattacharyya was director of GNIL during financial year 2012-2013. I note that Shri Srinibash Ghosh was director of GNIL during financial year 2012-2013. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with GNIL and other directors are limited to the extent of amount collected during his/her tenure as director of GNIL.

59. 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, GNIL 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 Gulshan Debenture Trust and Smt. Aisha Begumare liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.

60. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 41 of this order, the liability is on the Company to comply with the requirements therein.
61. In this regard, I note that Shri Sukanta Majhi, Shri Rajat Shuvro De and Shri Deep Ghosh were appointed as directors of GNIL only on February 06, 2014, i.e. after the period of issuance of NCDs. Further, I note that Shri Manoj Singh, Shri Prakash Kumar Kori and Shri Pradip Naskar were appointed as directors of GNIL only on December 12, 2013, i.e. after the period of issuance of NCDs. I also note that Shri Partha Sarathi Dey was appointed as a director of GNIL only on February 06, 2014, i.e. after the period of issuance of NCDs. I also note that Shri Swapan Mitra and Shri Santu Bhattacharjee were appointed as directors of GNIL on September 19, 2015 and July 27, 2015, i.e. after the period of issuance of NCDs..Therefore, following the reasoning as provided in the matter of Manoj Agarwal vs. SEBI, I am of the view that Shri Sukanta Majhi, Shri Rajat Shuvro De, Shri Deep Ghosh, Shri Manoj Singh, Shri Prakash Kumar Kori, Shri Pradip Naskar, Shri Partha Sarathi Dey, Shri Swapan Mitra and Shri Santu Bhattacharjee are not liable for refund of money as they were not directors during the relevant time of fund mobilization. However, the said Noticees 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. "

62. 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 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. The noticee cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Sukanta Majhi, Shri Rajat Shuvro De, Shri Deep Ghosh, Shri Manoj Singh, Shri Prakash Kumar Kori, Shri Pradip Naskar, Shri Partha Sarathi Dey, Shri Swapan Mitra and Shri Santu Bhattacharjee were also responsible for all the deeds/acts of the Company during the period of their directorship and was obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. In view of the failure to discharge the said liability of ensuring refund, Shri Sukanta Majhi, Shri Rajat Shuvro De, Shri Deep Ghosh, Shri Manoj Singh, Shri Prakash Kumar Kori, Shri Pradip Naskar, Shri Partha Sarathi Dey, Shri Swapan Mitra and Shri Santu Bhattacharjee are liable to be debarred for an appropriate period of time.

63. 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 GNIL and its Directors, viz., Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, to refund the monies collected, with interest to such investors. Further,

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

64. I also note that, vide the interim order dated May 12, 2015, GNIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of GNIL 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 GNIL or the other Noticees.
65. In view of the discussion above, appropriate action in accordance with law needs to be initiated against GNIL and its Directors and debenture trustees, viz. Shri Sukanta Majhi, Shri Rajat Shuvro De, Shri Deep Ghosh, Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, Shri Prakash Kumar Kori, Shri Manoj Singh, Shri Pradip Naskar, Shri Partha Sarathi Dey, Shri Swapan Mitra, Shri Santu Bhattacharjee and Gulshan Debenture Trust (*represented by its trustee, viz. Smt. Aisha Begum*).
66. 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) GNIL, Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, shall forthwith refund the money collected by the Company, during their respective period of directorship through the issuance of NCDs including the application money collected from investors during their respective period of directorship, 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) Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh, are directed to provide a full inventory of all their assets and properties and details of all their bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (d) GNIL and Shri Sukanta Majhi, Shri Swapan Mitra, Shri Santu Bhattacharjee (on behalf of the Company) are directed to provide a full inventory of all the assets and properties and details of all the bank accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company.
- (e) GNIL and Shri Sukanta Majhi, Shri Swapan Mitra, Shri Santu Bhattacharjee (on behalf of the Company) 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. 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.
- (f) Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh 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.
- (g) GNIL, Shri Sukanta Majhi, Shri Swapan Mitra, Shri Santu Bhattacharjee (on behalf of the Company) and, Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri

Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh 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.

- (h) After completing the aforesaid repayments, GNIL, Shri Sukanta Majhi, Shri Swapan Mitra, Shri Santu Bhattacharjee (on behalf of the Company) and, Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh 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.
- (i) In case of failure of GNIL, Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh 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 directors liable to refund as specified in paragraph 66(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- (j) GNIL, Shri Md Salim, Shri Nityananda Sarkar, Shri Sudhir Sharma, Shri Syed Akhtar, Shri Kaustabh Roy, Shri Debashish Bhattacharyya, Shri Mohammad Attaullah Khan, Shri Srinibash Ghosh are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from

the date of completion of refunds to investors as directed above. 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 (four) years from the date of completion of refunds to investors.

(k) Shri Sukanta Majhi, Shri Rajat Shuvro De, Shri Deep Ghosh, Shri Manoj Singh, Shri Prakash Kumar Kori, Shri Pradip Naskar, Shri Partha Sarathi Dey, Shri Swapan Mitra, Shri Santu Bhattacharjee 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 for a period of 4 (four) years from the date of this Order. The above said persons 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 for a period of 4 (four) years from the date of this order.

(l) Gulshan Debenture Trust and Smt. Aisha Begum are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 4 (four) years from the date of this order.

67. I find that Interim order dated May 12, 2015 has not provided for the directions listed herein in respect of Gulshan Debenture Trust and Smt. Aisha Begum. Further, I find that Interim Order has not been passed in respect of the other two present directors of GNIL, Shri Swapan Mitra and Shri Santu Bhattacharjee. In view of this, this order will take effect as final order against Gulshan Debenture Trust, Smt. Aisha Begum, Shri Swapan Mitra and Shri Santu Bhattacharjee on the expiry of 30 days from the date of service of this order against the respective Noticees, unless any of the said Noticees, within such period of 30 days from the date of service of this order file their objections. If no objections are filed, the interim directions vide Interim order dated May 12, 2015 shall continue against the said Noticees till the time of said thirty days period, after which this

order will come into effect. If objections are filed by any of the said Noticees, the interim directions vide Interim order dated May 12, 2015 shall continue qua that Noticee till disposal of the said objections qua that Noticee and the directions passed herein against that Noticee shall be made applicable subject to the determination on the objections.

68. The directions mentioned in 66 (c), (d), (j) and (k) shall come into force with immediate effect. The directions at paragraph 66(l) takes effect as per paragraph 67.

69. Hon'ble Calcutta High Court has passed order dated November 3, 2016 in W.P. 3408(W) of 2015- Biman Das & Ors. v. Union of India & Ors. in respect of Gulshan Nirman India Limited and its directors. Therefore, the effect and implementation of the aforesaid directions stated in paragraph 66 excluding 66 (c), (d), (j) (k) and (l) shall be subject to:-

a) the directions passed by the Hon'ble High Court in its Order dated November 3, 2016 or any further orders passed therein, and

b) The order to be passed in the application referred to para 51 of this order.

70. As stated in para 51, SEBI shall take necessary steps including filing of an appropriate application (which may include an application for modification of decree passed in Title Suit No. 166/2015/or/declaration to the extent, that statutory liability of directors to repay the NCD holders as crystalized in this order shall be in addition to and independent of the liability of judgment debtors in Title Suit No. 166/2015) in the appropriate Court to bring to the notice of the court the present SEBI Order. On disposal of such application, SEBI can independently initiate recovery against the directors who are liable to repay, as determined in this order, in case of their failure to repay the investors as per the order when it takes effect.

71. Since the present proceedings only render findings, inter alia, on the basis of the 75 compliants mentioned in the interim order, if any further material is availabe that funds were collected by company during the tenure of Shri Sukanta Majhi, Shri Rajat Shuvro De, Shri Deep Ghosh, Shri Manoj Singh, Shri Prakash Kumar Kori, Shri Pradip Naskar, Shri Partha Sarathi Dey, Shri Swapan Mitra and Shri Santu Bhattacharjee, SEBI shall

proceed against them as directors liable to pay to the investors.

72. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.
73. 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.
74. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

-Sd-

DATE: January 24, 2018

PLACE: Mumbai

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