

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 Greater Kolkata Infracon Limited

In respect of:

Sl. No.	Name of the Entity	PAN	CIN/DIN
1.	Greater Kolkata Infracon Limited	Not available	U45200MP2011PLC026770
2.	Mr. Subir Dutta	AFYPD5024N	01642274
3.	Mr. Nakhat Sing Agarwalla	APRPA3621H	02732014
4.	Mr. Bimalendu Rakshit	AVIPR2257F	03145637
5.	Mr. Amitava Sarkar	AKKPS7894Q	03171087
6.	Mr. Himangshu Mukherjee	AJWPM6802H	05290711
7.	Mr. Sutanu Sarcar	CUJPS7833J	03490705
8.	Mr. Paramasish Bhadury	ANNPB2618K	03535491
9.	Mr. Anil Kumar Mishra	BDAPM9086Q	03585327
10.	Debenture Trustee, viz. Greater Kolkata Debenture Trust Company (Represented by its Trustees, viz. Mr. K.R. Udayaraj) at 22/2, Gariahat road, Kolkata-700029.		

1. Greater Kolkata Infracon Limited (hereinafter referred to as “**GKIL**”/ “**the Company**”) is a Public company incorporated on September 15, 2011 and registered with Registrar of Companies–Madhya Pradesh with CIN: U45200MP2011PLC026770. Its registered office is at JR LIG Kmra No-134, Shanti Vihar Colony, Rewa, Madhya Pradesh, 486001.

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a letter/complaint from some persons against GKIL in respect of issue of Secured Redeemable Non-Convertible Debentures (hereinafter referred to as “**NCDs**”) and undertook an enquiry to ascertain whether GKIL 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 GKIL had made an offer of NCDs in the financial year 2011-2012 (hereinafter referred to as “**Offer of NCDs**”) and raised at least an amount of Rs. 1.65 Crores from at least 1,676 allottees. The number of allottees and funds mobilized has been collated from the documents submitted by the Company. Thereafter, SEBI has also received several investor complaints evidencing that the Company had allotted NCDs during the financial years 2012-2013 and 2013-2014 also. Therefore, it was observed that the actual number of allottees and amount mobilized could be more than the above indicated figures. It was also observed that GKIL created a charge for an amount of Rs.50 Crores on September 20, 2011 and appointed *Greater Kolkata Debenture Trust Company (represented by its trustees, viz. Mr. K.R. Udayaraj)* 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 December 01, 2016 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against GKIL and its Directors viz., Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla, Mr. Bimalendu Rakshit, Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury and Mr. Anil Kumar Mishra and its Debenture Trustee *Greater Kolkata Debenture Trust Company (represented by its trustees, viz. Mr. K.R. Udayaraj)*.

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

5. *Prima facie findings/allegations:* In the said interim order, the following *prima facie* findings were recorded. GKIL had made an *Offer of NCDs* during the financial years 2011-2012 and raised at least an amount of Rs. 1.65 Crores as shown below:

Year of Issue	Security Issued	Amount raised (Rs.) (in Crores)	Number of allottees
2011-2012	NCDs	1.65	1,676
Total		1.65 [^]	1,676*

^{*/^} No. of allottees and funds mobilized has been collated from the documents submitted by the Company. However, the following are noted from the documents received by SEBI along with investor complaints.

- i. Though the company claims that they raised an amount of Rs. 1,65,00,000/- through the issuance of debentures, various other certificates/receipts issued by the company viz. submission statements issued to 50 individual investors during the period 2011-2012 to 2013-2014, Pre Booking certificates (P.B. Certificates) issued to 34 individual investors during the period 2011-2012 to 2013-2014, etc. (provided by complainants) clearly indicate that the company has mobilized funds from the general public through various other modes also.
- ii. Further, the Form 20B, (AGM - March 31, 2013) indicates that around 1,65,000 debentures were issued by the company. (No details of allottees annexed/filed).

In view of the above, it is, *prima facie*, found that the company has issued NCDs post March 31, 2012 also, i.e. during the period 2012-2013 and 2013-2014. Hence, the actual no. of allottees and amount mobilized could be more than the above indicated figures.

6. Further, GKIL created a charge for an amount of Rs. 50.00 Crores on September 20, 2011 and appointed Greater Kolkata Debenture Trust Company (represented by its trustees, viz. Mr. K.R. Udayaraj) as Debenture Trustee for the Offer of NCDs by the company. Greater Kolkata Debenture Trust Company (represented by its trustees, viz. Mr. K.R. Udayaraj) was not registered as debenture trustee for the offer of NCDs by that company.

7. The above *Offer of NCDs* and pursuant allotment were deemed public issue of securities under the first proviso to section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under section 60 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 read with section 27(2) of the SEBI Act and the relevant provisions of the ILDS Regulations were not complied with by GKIL in respect of the *Offer of NCDs*. Further, the Debenture Trustee viz. *Greater Kolkata Debenture Trust Company (represented by its trustees, viz. Mr. K.R. Udayaraj* 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** ").
8. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated December 01, 2016 with immediate effect.
- "GKIL (**Greater Kolkata Infracon Ltd.**) 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;
 - GKIL and its present/past Directors, viz. Mr. Subir Dutta (DIN:01642274), Mr. Nakhat Sing Agarwalla (DIN: 02732014, PAN:APRPA3621H), Mr. Bimalendu Rakshit (DIN: 03145637, PAN:AVIPR2257F), Mr. Amitava Sarkar (DIN:03171087, PAN:AKKPS7894Q), Mr. Himangshu Mukherjee (DIN:05290711, PAN:AJWPM6802H), Mr. Sutanu Sarcar (DIN: 03490705, PAN:CUJPS7833J), Mr. Paramasish Bhadury (DIN: 03535491, PAN:ANNPB2618K) and Mr. Anil Kumar Mishra (DIN: 03585327, PAN: BDAPM9086Q) 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;
 - GKIL and its abovementioned past and present Directors, are restrained from accessing the securities market and further prohibited from buying, selling or

- otherwise dealing in the securities market, either directly or indirectly, till further directions;*
- iv. GKIL shall provide a full inventory of all its assets and properties;*
 - v. GKIL abovementioned past /present Directors shall provide a full inventory of all their assets and properties;*
 - vi. GKIL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company, without prior permission from SEBI;*
 - vii. GKIL 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 GKIL;*
 - viii. GKIL and its abovementioned past and present Directors shall co-operate with SEBI and shall furnish all information/documents sought vide letters dated January 13, 2015 and November 06, 2015, specifically the details in respect of the debentures issued and amounts collected from investors/debenture holders during the period 2012-2013 and 2013-2014;*
 - ix. As GKIL has claimed to have repaid an amount of Rs.1,30,39,200/- to around 1676 investors, in respect of the issue of NCDs during the period 2011-2012, they shall furnish a detailed list containing the names and addresses of investors to whom repayments have been made by them till date. The said list should contain the date of issuance of debenture, amount paid by the investors, names and addresses of the investors, amount and date of refund, and mode of payment; supported by documentary proof. The said repayments (claimed to have been made by the company to the investors) shall also be certified by a peer reviewed Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India;*
 - x. The Debenture Trustee, viz. Trustee of the Debenture Holders, Greater Kolkata Debenture Trust Company, represented by the trustee, Mr. K.R. Udayaraj is prohibited from continuing with its assignment as debenture trustee in respect of the Offer of NCDs of GKIL and also from taking up any new assignment or involvement in any new*

issue of debentures, etc. in a similar capacity, from the date of this Order till further directions.”

9. The interim order also directed GKIL 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, 1956 read with section 27(2) of the SEBI 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.”*

10. Similarly, the Debenture Trustee, viz. Greater Kolkata Debenture Trust Company, represented by the trustee, Mr. K.R. Udayaraj was advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining them from accessing the securities market and further restraining them from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.

11. Vide the said interim order, GKIL, 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 that 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 December 20, 2016. The letters sent to GKIL, Mr. Nakhat Sing

Agarwalla, Mr. Bimalendu Rakshit, Mr. Himangshu Mukherjee and Mr. Paramasish Bhadury were returned undelivered. Subsequently, vide notification dated September 28, 2017 published in the *Dainik Jagran*, notification dated October 25, 2017 published in newspaper *Times of India*, and notification dated November 02, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI, that interim order dated December 01, 2016 was issued against them and they were given a final opportunity to submit their reply in the matter.

13. **Replies:** Pursuant to the publication of the interim Order Mr. Amitava Sarkar and Mr. Bichitra Nanda Muni, advocate and authorized representative of Mr. Subir Dutta collected the interim order from SEBI.

13.1. Mr. Amitava Sarkar, vide letter dated January 17, 2017 submitted the following:

- i. *“That I am a senior citizen of 69 years old and after retirement from a public utility Company in 2008, I joined as an employee at SUBA Enterprise under the ownership of Mr. Subir Dutta who is also a Director and the Key Managerial person of GKIL due to my financial requirement for huge expenses of my wife’s cancer treatment.*
- ii. *Thereafter in September 2011, Mr. Subir Dutta insisted and forced me to sign some papers and documents of GKIL without any knowledge and in good faith. Mr. Subir Dutta told me that I will be included as an additional director of GKIL.*
- iii. *When I realized that the Company made me a scapegoat, I resigned from the directorship of the Company from December 09, 2011 i.e. within 3 months from the date of joining GKIL.*
- iv. *When I submitted the resignation, the Company was not willing to accept the same. I also informed the MCA and concerned RoC in respect of my resignation. I also filed an ‘Investor Complaint’ form for non-filing of my resignation by the Company. Thereafter, the Company filed Form 32 on April 19, 2012 (date wrongly mentioned in the letter as 19.2.2012).*

- v. *Thereafter, I have no connection with the Company till date and I do not know any information and affairs of the Company since then.*
- vi. *Though my designation was an Additional director for name sake, but I was working as an employee of the Company.”*

13.2. Mr. Subir Dutta vide letter dated November 06, 2017 submitted the following in his personal capacity as well as in the capacity of Authorised Signatory of the Company:

- i. *“I have shifted my permanent residential address to 9/29- Bijoygarh, Kolkata-700032.*
- ii. *The registered office of the Company is in dispute between the landlord and tenant (the Company). The correspondence address of the Company is seized and under lock and key by the State administration. At present the correspondence office of the Company is at 7/3- Mandevilla Garden (1st Floor), Kolkata-700019.*
- iii. *By the Attachment Order 2313/2015 dated October 07, 2015 passed by the Recovery Officer, SEBI had recovered Rs. 37,72,708/- of the Company on October 05, 2016.*
- iv. *Further, I was under the perception that SEBI had taken away the unpaid liability of the Company i.e. Rs. 34,60,800/- accordingly the matter is stopped.*
- v. *Further, I reiterate the submissions made vide earlier letter dated December 02, 2015 of the Company and the attachment filed therewith specifically Annexure A and B and paper publication dated March 02, 2015. (The copy enclosed)*
- vi. *During financial year 2012-2013, myself resigned from the Directorship of the Company. Mr. Nakhat Sing Agarwalla also resigned from the Company in 2012-2013.”*

13.3. Considering the submissions of Mr. Subir Dutta, the relevant portion of the submissions made by GKIL vide letter dated December 02, 2015 is reproduced hereunder for reference:

- i. *Total amount paid to the debenture holders is around Rs. 1,30,39,000/- (Rupees One crore Thirty Lakhs and Thirty Nine Thousand two hundred only) and all pay orders for the same were being drawn on Allahabad Bank, Southern Avenue Branch, Kolkata, W.B,*
- ii. *Therefore, out of total collected amount of Rs.1,65,00,000/- (Rupees One crore Sixty Five Lakhs only), collected by the company through exclusive private placement of debentures till March 31, 2012, they paid total amount of around Rs. 1,30,39,000/-One crore Thirty Lakhs and Thirty Nine Thousand two hundred only) towards pre-maturity of said debentures.*
- iii. *The money collected is only through private placement and only upto March 31, 2012. The company has not collected any amount of said debentures any more.*
- iv. *Company is in the process of paying remaining unpaid debentures of approximately Rs. 43,60,800/- (Rupees Forty Three Lakhs Sixty Thousand Eight Hundred only) vide its paper publication dated March 02, 2015 in 'Sambad Pratidin' a reputed Bengali Daily News Publication. (Copy of the same was enclosed with this letter)."*

14. Vide notification dated October 15, 2017 published in newspaper *Times of India* and notification dated October 15, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on January 23, 2018 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.

15. *Hearing and submissions:*

15.1 Mr. Bichitra Nanda Muni, Advocate and Authorised Representative (“AR”) on behalf of Mr. Subir Dutta appeared before me and made *inter alia*, the following submissions:

- i. Mr. Subir Dutta has resigned from the Company on March 04, 2013. (Form 32 submitted for proof of the same). However, Mr. Paramasish Bhadury (one of the Directors of the Company) reappointed him as director on the same date.
- ii. The consent letter of Mr. Subir Dutta filed with RoC is without his knowledge and the signatures on consent letter is forged by Mr. Paramasish Bhadury.
- iii. He has initiated legal proceedings against Mr. Paramasish Bhadury and made complaint before RoC.

AR is instructed to produce proof of forgery i.e. certificate from handwriting expert.

- iv. Mr. Subir Dutta’s bank account and the Company’s bank account was attached by SEBI pursuant to the recovery proceedings initiated in the matter of greater Kolkata infrastructure Limited and recovered Rs. 37 lacs.
- v. Mr. Subir Dutta is also an Authorised signatory of the Company for all banking transactions, payments to parties etc. However, AR stated that no authorization was given to him to represent the Company.

The AR is advised to submit the following:

1. List of allottees;
2. Details of repayments if any made by the Company i.e. the proof of such payments made through banking channel and certified by two peer reviewed Chartered Accountants.

AR has been granted time upto February 7, 2018 to submit the above details.

15.2 Mr. Amitava Sarkar (“**the Noticee**”) appeared in person and submitted the following:

- i. “He was working in CESC Limited and took voluntary retirement in the year 2008. His wife was diagnosed with Cancer and later expired in 2010. For the treatment he had to sell his house and now no income and living with his son. Due to financial constraints he joined as an employee in SUBA Enterprises owned by Mr. Subir Dutta. He joined GKIL under the insistence of Mr. Subir Dutta.
- ii. Mr. Subir Dutta forcefully made him a director in GKIL and pressurized him to sign some papers. He has received salary of around one lac for an year and thereafter got Rs.12,500/- p.m. for the next year. Though he received the salary as an employee but as per the records, the Company paid him remuneration as a director.
- iii. When he came to know about collection of money by the company from his relatives, he resigned from the company on December 09, 2011. He was a director of the Company for 85 days only.
- iv. The Company tampered his resignation letter dated December 09, 2011 which was submitted to the Company and acknowledged by one Mr. A. Dutta under the seal of the Company on December 09, 2011. However, the Company changed the date of the said letter as April 19, 2012 and filed with RoC. In this regard, he has filed complaint with RoC. RoC took up the matter with the Company.

15.3 No one appeared on behalf of Greater Kolkata Infracon Ltd. and its Directors viz., Mr. Nakhat Sing Agarwalla, Mr. Bimalendu Rakshit, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury and Mr. Anil Kumar Mishra and the Debenture Trustee, viz., Greater Kolkata Debenture Trust Company and its trustee, Mr. K.R. Udayaraj.

16. 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 Greater Kolkata Debenture Trust Company (represented by its trustees, viz. Mr. K.R. Udayaraj), as the Debenture Trustee by GKIL is in violation of Section 117B of the Companies Act, 1956 and whether Greater Kolkata Debenture Trust Company and Mr. K.R. Udayaraj 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.

17. I have perused the interim order dated December 01, 2016 for the allegation of *Offer of NCDs*. I have also perused the documents/ information obtained from the 'MCA 21 Portal', the documents submitted by the Company and the replies/submissions made by the Noticees and other documents available on records. It is noted, from the documents submitted by the Company in the matter that GKIL has issued and allotted NCDs to 1,676 investors during the financial year 2011-2014 and raised at least an amount of Rs. 1.65 Crores. Further, it is also noted, from the investors' complaints received by SEBI in the matter that GKIL has also issued NCDs during the financial years 2012-2013 and 2013-2014 also. The same is evident from the documents submitted by various investors of GKIL such as Submission Statements issued to 50 individual investors during the period 2011-2012 to 2013-2014, P.B. certificates issued to 34 individual investors during the period 2011-2012 to 2013-2014, the Form 20B, (AGM - March 31, 2013) filed by

the Company mentioning that around 1,65,000 debentures were issued by the company (however, the details of the debenture holders were not provided).

18. In view of this I am of the view that the actual number of allottees and amount mobilized could be more than 1676 allottees and Rs. 1.65 Crores respectively.

19. *I therefore conclude that GKIL 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.*

20. 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'. I note that GKIL has contended that the Offer of NCDs does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956 as the same was issued through exclusive private placement of debentures till March 31, 2012. 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).”

21. 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.”

22. 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*.

23. In the instant matter, I find that NCDs were issued by GKIL to at least 1,676 investors in the financial year 2011-2014. It is further noted that this number is not conclusive as it is

based on the documents submitted by the Company. Considering the documents received by SEBI along with investor complaints it is possible that the actual number of investors could be more than 1,676. I find that GKIL has mobilized at least an amount of Rs. 1.65 Crores over the financial year 2011-2014 and which is not a conclusive value as it is based on the documents submitted by the Company. Further, considering the documents submitted by the investors and also the fact that GKIL vide trust deed dated September 20, 2011 created a charge for an amount of Rs. 50,00,00,000/- for issuance of 25,00,000 debentures of Rs. 100/- each, aggregating to Rs. 25,00,00,000/- indicate that the Company had mobilized more than Rs.1.65 Crores. Since the number of investors are more than 49, it leads to a reasonable conclusion that the *Offer of NCDs* by GKIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.

24. 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”*.

25. Therefore, in view of the material available on record, I find that the *Offer of NCDs* by

GKIL 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 GKIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

26. I find that GKIL 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 GKIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
27. 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. I also find that no records have been submitted by the Company to indicate that it has made an application seeking listing permission from stock exchange. Further, it is noted that the Company has claimed repayment of around Rs.1,30,39,200/- (One Crore Thirty Lakhs and Thirty Nine Thousand two hundred only) towards pre-maturity of said debentures. The Company has provided a list of NCD holders who have been repaid (including their names addresses, amount paid, Pay Order number etc.). Further, the Company has also provided another list of NCD holders who have been repaid (list does not mention the details of pay orders hence it appears to be cash payments). Upon perusal of the same it is noted that the above repayments are neither certified by the peer reviewed auditors nor supported with adequate documentary evidence. Further, as submitted by the Company debenture holders were paid towards pre-maturity of the said debentures and many investors were claimed to be settled in cash by the Company which is not in compliance with Section 73 of the Companies Act, 1956 as the requirement is to pay along with the interest stipulated below. Therefore, I find that GKIL has contravened section 73(1) and

(2) of the Companies Act, 1956. GKIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that GKIL 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.

28. 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, GKIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that GKIL 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 GKIL has not complied with the provisions of section 60 of the Companies Act, 1956.
29. 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 GKIL 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, GKIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
30. 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.

31. 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 GKIL 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.

32. 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"

33. 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...”

34. In view of the above findings, I am of the view that GKIL 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 Greater Kolkata Debenture Trust Company (represented by its trustees, viz. Mr. K.R. Udayaraj) as the Debenture Trustee by GKIL is in violation of Section 117B of the Companies Act, 1956 and whether Greater Kolkata Debenture Trust Company and Mr. K.R. Udayaraj have violated Section 12(1) of SEBI Act and regulation 7 of the Debenture Trustees Regulations?

35. I have perused the copy of the Debenture Trust Deed dated September 20, 2011. I find that GKIL had created a charge of Rs. 50 Crores for the Offer of NCDs by the Company. I further find that GKIL had appointed *Greater Kolkata Debenture Trust Company (represented by its trustees, viz. Mr. K.R. Udayaraj)* as the debenture trustee by way of trust deed dated September 20, 2011
36. 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.

37. *Greater Kolkata Debenture Trust Company (represented by its trustees, viz. Mr. K.R. Udayaraj)* is not eligible to obtain a certificate of registration since it does not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. None of the Noticees claimed that *Greater Kolkata Debenture Trust Company (represented by its trustee, viz., Mr. K.R. Udayaraj)* had received certificate of registration as per section 12(1) of the SEBI Act. In view of the above, I find that Greater Kolkata Debenture Trust Company and Mr. K.R. Udayaraj 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.
38. 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 GKIL has appointed *Greater Kolkata Debenture Trust Company (represented by its trustee, viz. Mr. K.R. Udayaraj)* 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 GKIL 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?

39. Before dealing with the above issue, it would be appropriate to deal with the submissions of the Noticees viz., Mr. Amitava Sarkar and Mr. Subir Dutta.
- 39.1. Mr. Subir Dutta contented that he has resigned from the Company on March 04, 2013, however, one of the directors of the Company forged his signatures on the

consent letter and without his knowledge reappointed him in the Company on the same date. In this regard, the AR was advised to submit signature verification report from an expert to prove the forgery. Though Mr. Subir Dutta has disputed his reappointment in the Company, I note that despite given the opportunity to submit the proof, Mr. Subir Dutta failed to submit any proof (signature verification, proof of complaint, etc.) till date to substantiate his claim. I also note from his reply dated November 06, 2017 and oral and written submissions on January 23, 2018 that he is still continuing with the Company in the capacity of an Authorised Signatory of the Company for all banking transactions, payments to the parties etc. Therefore, the preponderance of probability is that still he is acting as a Director of the Company. This is further corroborated by the fact that Mr. Subir Dutta is the signatory to the the Annual Returns filed with RoC by the Company on November 10, 2013. Mr. Subir Dutta is the signatory to the same in the capacity of a Director and his appointment date is shown as March 04, 2013. Considering the same, I am not inclined to believe his claim of forgery of consent letter. It is noted that he was a Director of the Company during the period of issuance of NCDs. Hence, I find that he cannot wriggle out from the responsibility to refund the investors of the Company.

39.2. Further, Mr. Subir Dutta vide letter dated November 06, 2017 submitted that one of the directors of the Company viz., Mr. Nakhat Sing Agarwalla also resigned from the Company in 2012-2013. However, Mr. Nakhat Sing Agarwalla neither filed any documents to substantiate the same nor appeared before me and made any such claim/given proof. From the MCA records I find that Mr. Nakhat Sing Agarwalla is a director from the inception and continuing as a Director of the Company as on date. Hence, I am not inclined to accept the said submission made by Mr. Subir Dutta on behalf of Mr. Nakhat Sing Agarwalla.

39.3. Mr. Amitava Sarkar submitted that due to financial constraints he had joined the Company under the insistence of Mr. Subir Dutta. However, he has resigned on December 09, 2011. Further, Mr. Amitava Sarkar disputed the date of resignation

filed by the Company. Mr. Amitava Sarkar submitted that he has filed complaint with RoC and RoC took up the matter with the Company thereafter the Company has rectified the same and filed the Form 32 with RoC with respect to his date of cessation. Further, upon perusal of the resignation letter dated December 09, 2011 submitted by Mr. Amitava Sarkar I note that the same is bearing the signature of one Mr. A.Dutta and the seal of the Company as a proof of receipt. Considering the same, I am inclined to accept the date of resignation of Mr. Amitava Sarkar with effect from December 09, 2011. Further, I also find from the MCA records that Mr. Amitava Sarkar was a Director of the Company during the period of issuance of NCDs. Hence, he cannot wriggle out from the liability to refund during the period of his 3 months tenure in the Company.

40. From the documents available on record, I find that the present Directors in GKIL are Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit. I also note that, Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury and Mr. Anil Kumar Mishra who were earlier Directors in GKIL, 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
Mr. Subir Dutta	September 15, 2011	Continuing
Mr. Nakhat Sing Agarwalla	September 15, 2011	Continuing
Mr. Bimalendu Rakshit	September 15, 2011	Continuing
Mr. Amitava Sarkar	September 15, 2011	December 09, 2011
Mr. Himangshu Mukherjee	June 06, 2012	January 14, 2013
Mr. Sutanu Sarcar	February 21, 2013	February 21, 2013
Mr. Paramasish Bhadury	February 21, 2013	February 21, 2013
Mr. Anil Kumar Mishra	February 21, 2013	February 21, 2013

41. 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, GKIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
42. 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%.
43. From the material available on record and the details of the appointment and resignation of the directors of GKIL as reproduced in paragraph 40 of this Order, it is noted that Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit 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 GKIL 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 GKIL, 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. None of the Noticees disputed this legal liability by way of any written or oral submissions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the 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 GKIL and its Directors, viz., Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit 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.

44. I note that during the financial year 2011-2012, 2012-2013 and 2013-2014, GKIL through Offer of NCDs, had collected at least an amount of Rs. 1.65 Crores from various allottees. I note that Mr. Subir Dutta has been director of GKIL since financial years 2011-2012, 2012-2013, 2013-2014 till present date. I note that Mr. Nakhat Sing Agarwalla has been director of GKIL since financial years 2011-2012, 2012-2013, 2013-2014 till present date. I note that Mr. Bimalendu Rakshit has been director of GKIL since financial years 2011-2012, 2012-2013, 2013-2014 till present date. I note that Mr. Amitava Sarkar was director of GKIL during financial year 2011-2012. I note that Mr. Himangshu Mukherjee was director of GKIL during financial years 2012-2013. I note that Mr. Sutanu Sarcar was director of GKIL during financial year 2012-2013. I note that Mr. Paramasish Bhadury was director of GKIL during financial year 2012-2013. I note that Mr. Anil Kumar Mishra was director of GKIL 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 GKIL and other directors are limited to the extent of amount collected during his/her tenure as director of GKIL.

45. 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, GKIL 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 Greater Kolkata Debenture Trust Company and Mr. K.R. Udayaraj are liable for the violation of section 12(1) of the SEBI Act read with regulation 7 of the Debenture Trustee Regulations.
46. With respect to the provisions of the respective regulations of the ILDS Regulations enumerated on paragraph 31 of this order, the liability is on the Company to comply with the requirements therein.
47. Mr. Subir Dutta is the authorized signatory of the Company for banking transactions and payments to parties etc. Therefore, Mr. Subir Dutta has active role and a key person in the dealing with and transfer of the proceeds received by the company from debenture holders. In view of this, though Mr. Subir Dutta is jointly and severally liable for the refund, and if there is a failure to refund, it would be appropriate that the recovery may be considered against the assets of the Company at first, if there are sufficient assets are available and thereafter against the assets in the name of Mr. Subir Dutta and at last recovery officer may consider proceeding against the other Noticees. Appropriate directions in this regard is issued in this order.
48. Further, I note that Mr. Sutanu Sarcar, Mr. Paramasish Bhadury and Mr. Anil Kumar Mishra joined the Company on February 21, 2013 and resigned on the same day. Considering the fact that they have joined the Company after the issuance of NCDs and

also considering the fact that they have resigned on the same day, appropriate directions with respect to debarment is issued in this order.

49. 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 GKIL and its Directors, viz. , Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit 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.
50. I also note that, vide the interim order dated December 01, 2016, GKIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of GKIL 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 GKIL or the other Noticees despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 12 of this Order.
51. In view of the discussion above, appropriate action in accordance with law needs to be initiated against GKIL and its Directors and debenture trustee, viz. Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla, Mr. Bimalendu Rakshit, Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra and Greater Kolkata Debenture Trust Company and its trustee Mr. K.R. Udayaraj.
52. 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) Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit 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) If GKIL had repaid some of their investors as submitted in its reply as per section 73(2) of the Companies Act, the above directions in (a) and (b) shall be applicable as modified herein, for the amounts claimed to have been returned to the investors:
 - i. Such prior repayments should have been made by the Company as per the requirements laid down in paragraph 52(b) above and the same shall be certified by peer reviewed Chartered Accountants, as directed in paragraph 52(i) below, or
 - ii. The Company shall produce a peer reviewed Chartered Accountant’s certificate, for the repayments claimed to have been made by the company, certifying repayment on verification of the originals of the application form for NCDs bearing signature of the debenture holder, certificate of NCDs issued by the company to debenture holder and returned to the Company on redemption, payment receipt/voucher issued by the Company to the debenture holders bearing the signature of the debenture holders, and corresponding proof of debit from the Bank Account of the Company with an original

document of proof of identity, address and signature issued by the State/Central Government to the debenture holders bearing their signature and a statement in Chartered Accountant's certificate to the effect that he has made the above said verification enclosing copies of verified documents.

- (d) Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury and Mr. Anil Kumar Mishra are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form.
- (e) GKIL, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, of the company and their own.
- (f) GKIL, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit 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.
- (g) Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit 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.
- (h) GKIL, Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr.

Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit 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.

- (i) After completing the aforesaid repayments, GKIL, Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit 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.
- (j) In case of failure of GKIL, Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Sutanu Sarcar, Mr. Paramasish Bhadury, Mr. Anil Kumar Mishra, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit 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 52(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws. The recovery officer may consider proceeding against the assets of the Company at first, if there are details of sufficient assets of the Company and thereafter against the assets in the name of Mr. Subir Dutta and at last recovery officer may consider proceeding against other Noticees.
- (k) GKIL, Mr. Amitava Sarkar, Mr. Himangshu Mukherjee, Mr. Subir Dutta, Mr. Nakhat Sing Agarwalla and Mr. Bimalendu Rakshit 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.

(l) Mr. Sutanu Sarcar, Mr. Paramasish Bhadury and Mr. Anil Kumar Mishra 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 **three months** 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 **three months** from the date of this order.

(m) Greater Kolkata Debenture Trust Company and Mr. K.R. Udayaraj 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.

(n) The above directions shall come into force with immediate effect.

53. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories and registrar and transfer agents for information and necessary action.

54. 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.

55. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: March 21, 2018

PLACE: Mumbai

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