

WTM/AB/EFD-1/DRA-3/09/2018-19

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA**

FINAL ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in respect of Interim Order cum Show Cause Notice dated October 18, 2017 in the matter of Grass Root Finance & Investment Company (India) Ltd.

In respect of:

Sr. No.	Name of the Entity/Noticees	PAN no.	CIN/DIN
1.	GRASS ROOT FINANCE & INVESTMENT COMPANY (INDIA) LTD	AABCG8309G	U65929AS1995PLC004588
2.	PRADIP SARMAH		06964274
3.	PRADIP HAZARIKA	FRJPS4703M	
4.	MANIRAM HAZARIKA		
5.	KHARGESWAR DAS		
6.	JITEN CHANDRA BORA	AFEPB6968F	01347671
7.	JAGNESWAR SAIKIA	BKHPS7213P	01808487
8	KARUNA BORAH	AMGPB0071J	01808524
9	GOPI BHUYAN RAM	BESPB9975E	06947690
10	HARISA GOYARI	ALEPO0460F	06947715
11	BIKASH ROY	AVBPR4652F	06947748
12	KESHAB GOGOI		02491179
13	BHUPEN BURHAGOHAIN		
14	GULUK GOGOI		

The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as “the Noticees”.

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a reference dated 04/01/2017 from Reserve Bank of India against M/s. Grass Root Finance & Investment Company (India) Ltd. (hereinafter referred to as ‘**GFICIL**’/’**the company**’) whereby it was inter alia informed that GFICIL was earlier registered with RBI as a non-deposit taking non-banking financial company (NBFC) and its certificate of registration was cancelled on 05/04/2003. The reference further informed that GFICIL had issued shares to a large number of persons, apparently in violation of securities laws relating to public issue of shares. SEBI undertook an examination to ascertain whether GFICIL 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 SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as ‘**DIP Guidelines**’).
2. It was observed that GFICIL had made an offer and allotment of equity shares from the financial year 1995-96 to 2006-07 (hereinafter referred to as “**Offer of ES**”) and raised at least an amount of Rs. 6.80 Crores from at least 9321 allottees. The number of allottees and funds mobilized has been collated from the documents and submissions made by GFICIL to SEBI.
3. As the above said Offer of ES was found prima facie in violation of respective provisions of the SEBI Act, 1992, the Companies Act, 1956 and DIP Guidelines, SEBI passed an interim order dated October 18, 2017 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against GFICIL and its Directors and promoters, viz. Noticee no. 1 to 14 of the present proceeding.
4. In the said interim order, the following prima facie findings were recorded:-
 - i. GFICIL had made an Offer of ES over the financial years 1995-96 to 2006-07 and raised an amount equivalent to Rs. 6.80 Crores as shown in the table below:

Year	Date of allotment	Type	No. of Shares	No. of allottee	Amount (Rs.)	Total No. of Persons
1995-96	11/10/1995	Equity	60	6	6000	6
1995-96	24/02/1996	Equity	2000	2	200000	8

1998-99	18/01/1999	Equity	26401	556	2640100	564
1998-99	21/01/1999	Equity	1539	67	153900	631
1999-00	23/09/1999	Equity	32637	461	3263700	1092
1999-00	23/12/1999	Equity	26148	401	2614500	1493
1999-00	27/12/1999	Equity	62215	909	6221500	2402
2000-01	06/04/2000	Equity	38022	324	3802200	2726
2000-01	23/05/2000	Equity	25981	300	2598100	3026
2000-01	21/12/2000	Equity	26351	439	2635100	3465
2000-01	23/12/2000	Equity	26145	434	2614500	3899
2000-01	27/12/2000	Equity	29656	683	2965600	4582
2000-01	08/03/2001	Equity	62277	923	6227700	5505
2000-01	12/03/2001	Equity	48035	463	4803500	5968
2000-01	15/03/2001	Equity	63185	770	6318500	6738
2000-01	20/03/2001	Equity	68496	619	6849600	7357
2001-02	15/01/2002	Equity	30163	527	3016300	7884
2002-03	21/03/2003	Equity	60692	798	6069200	8682
2006-07	15/03/2007	Equity	50000	639	5000000	9321
	TOTAL		680000	9321	68000000	9321

- ii. The above Offer of ES 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) of the Companies Act, 1956, read with DIP Guidelines, were not complied with by GFICIL in respect of the Offer of ES.
5. In view of the prima facie findings on the violations, the following directions were issued in the said interim order dated October 18, 2017 with immediate effect:-
- i. The Noticee nos. 1 to 14 shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly, or associate themselves with any listed company or company intending to raise money from the public;

- ii. The Noticee nos. 1 to 14, shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through the Offer of ES;
 - iii. The Noticee nos. 1 to 14 shall co-operate with SEBI and shall furnish all information/documents in connection with the Offer of ES sought vide letters dated January 12, 2017; January 19, 2017 and January 30, 2017;
 - iv. The Noticees nos. 1 to 14 shall provide full inventory of their assets.
6. The interim order also directed the Noticees to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4) and 11B of the SEBI Act, should not be issued/imposed, including the following directions:
- i. That the Noticees shall jointly and severally refund the money collected through the Offer of ES, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment), supported by a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted to SEBI within 7 days of completion of the refund); and
 - ii. That the Noticees shall be restrained / prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly, for a period of four years from the date of completing the refund as directed above.
7. Vide the said interim order, the Noticees 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 within 90 days from the date of receipt of the interim order. The interim order further stated that in the event the Noticees failed to file any reply or request for an opportunity of personal hearing within the said 90 days, the preliminary findings at para 4 above and directions at para 6 above, shall be final and absolute,

automatically, without any further orders. The interim order further stated that in the event of the directions at para 6 becoming final, the Noticees shall comply with the directions at para 6(i) above, within 90 days from the date of such directions becoming final, failing which SEBI may initiate appropriate enforcement action under the SEBI Act, including but not limited to recovery, adjudication or prosecution.

8. **Service of interim order:** The copy of the said interim order was sent to the Noticees vide letter dated October 20, 2017 which were duly served on Noticee no. 1,2,3,5,6,7,8,9,10,11,12,13 and 14. However noticee no.4 could not be duly served with the copy of the said interim order hence, the said noticee was notified by SEBI through newspaper publication in Assam Tribune dated 30/01/2018 (English Language – Assam and Nagaland edition), Nagaland Post dated 30/01/2018 (English Language – Assam and Nagaland edition) and Asomiya Pratidin dated 30/01/2018 (Assamese Language – Assam Edition) that interim order dated October 18, 2017 was issued against them and they were given a final opportunity to submit their reply in the matter.
9. In response to the interim order, GFICIL filed its reply vide letter dated 13/11/2017 (bearing ref no. GFIC/ADM/GPR/163/11/2017/2017-2018), 04/12/2017 (bearing ref no. GFIC/ADM/GPR/250/12/2017/2017-18), 04/12/2017 (bearing ref no. GFIC/ADM/GPR/251/12/2017/2017-18), 13/11/2017 (bearing ref no. GFIC/ADM/GPR/164/11/2017/2017-18), 09/11/2017 and 20/10/2018. Noticee no. 6 and 7 also filed their replies (sworn as affidavit) dated 20/10/2018. Notice no. 3 filed its undated reply with SEBI on 16/01/2018 and Notice no. 5 filed its undated reply with SEBI on 15/12/2017.
10. Noticee no. 2,4,8,9,10,11,12 and 13 have not filed any reply or sought any personal hearing, pursuant to the interim order.
11. **Hearing and submissions:** Though the interim order stipulated that hearing shall be granted only to those who have sought the same within 90 days from the date of receipt of the interim order. However, in the interest of justice, a final opportunity of hearing was granted to all the noticees on 22/10/2018. Noticee no. 1 (represented by noticee no. 6) and noticee no. 6 were present for the personal hearing on 22/10/2018. Noticee no. 1, vide reply dated 13/11/2017, 04/12/2017, 09/11/2017, 20/10/2018, during the personal hearing held

on 22/10/2018, vide additional written submissions dated 09/11/2018 and 22/11/2018, inter alia have contended the following:

- i. That the shares were not allotted to the public, rather they were allotted to the employees of GFICIL. GFICIL had to meet the minimum paid-up capital requirement of Rs. 5 crore in order to obtain license of Local Area Bank from RBI. Hence, GFICIL allotted shares to its employees and the money for subscription would be recovered from them through regular deductions from their salary.
- ii. RoC has approved the allotment of shares and we have filed the requisite return of allotment with RoC.
- iii. RBI had issued the Certificate of Registration to GFICIL. At the time of granting such approval, RBI was aware that GFICIL has issued shares to more than 49 persons in a financial year. Further, while our Certificate of Registration was valid, we had issued shares on 15/01/2002 to 527 persons, but RBI had raised no concern/ objection at that time.
- iv. That we are aware to comply with RBI Law. We know nothing about SEBI Law. The RBI should have directed us to follow SEBI Law as well. That the DIP Guidelines shall be applicable only for listed companies and it is not possible to comply with the DIP Guidelines without approval from listing from SEBI.
- v. That the same person has been allotted shares on multiple occasions. The number of persons being allotted shares, have not exceeded 49 in a financial year. That the allottees have purchased shares in different names of their family members. That we have examined the list of our shareholders and we observe that we have not allotted shares to more than 50 persons in a financial year.
- vi. That Noticee no. 12 (Keshab Gogoi) was an ex-director and he has left the company 4 years back. He has no relation with the company and has not obtained a rupee from the company after he has left the company.

- vii.** That Noticee no. 13 (Bhupen Burhagohain) has left the company for his personal problem in 1997. At present he has no relation with the company and he has not got a rupee from the company.
 - viii.** That Noticee no. 4 (Maniram Hazariak) has left the company in Dec 1995 and he has expired long years ago. He has no relation with the company since 1995.
 - ix.** Noticee no. 14 (Guluk Gogoi) after incorporation, he has no relation with the company.
 - x.** Noticee no. 5 (Khargeswar Das) has left the company in 1996. He has been serving as Mandal from 1998 and he has no relation with the company from 1996.
 - xi.** Noticee no. 8 (Karuna Borah) is no more a director of the company. He is chronically ill and on bed rest. He has not taken a rupee from the company.
- 12.** Noticee no. 6 and 7 also filed their replies (sworn as affidavit) dated 20/10/2018 making the following submission:
- i.** Noticee no. 7 states that he was a director of GFICIL. Noticee no. 6 states that he is the Managing Director of GFICIL.
 - ii.** That they were not aware of the DIP Guidelines and were not involved in the issuance of equity shares in violation of DIP Guidelines.
- 13.** Noticee no. 3 in its reply submits that he has no connection with the company and that he has left the service of the company from 10/06/1996. Similarly, Noticee no. 5 also submits in its reply that he is no more connected with the company since 15/11/1996. Noticee no. 5 states that he was an unemployed youth and had joined the company on 11/10/1995 by purchasing its one share. He further states that he has joined the service of the state government since 15/11/1996 (present designation – kanangu) and since then is no more associated with the company.

Observations on submissions & replies:

- 14.** I have perused the documents/ information obtained from the 'MCA 21 Portal' and the documents submitted by Noticee no. 1 to SEBI and the documents forwarded by RBI to SEBI.

- i. I note that, in its Annual Return filed for the financial year 2016-17, on MCA 21 Portal, GFICIL has disclosed 607 number of shareholders (as on 31/03/2015) with paid up equity capital of 6.80 Crores.
- ii. In the reference made by RBI to SEBI dated 04/01/2017, RBI has estimated the no. of shareholders of GFICIL to be around 8000.
- iii. GFICIL in their documents submitted to SEBI vide email 28/02/2017 and vide undated letter received from GFICIL by SEBI on 27/03/2017, before the interim order, have shown that equity shares were issued and allotted to 9321 investors through the financial years 1995-96 to 2006-07 and that they have raised at least an amount of Rs. 6.80 Crores.
- iv. Further, in their post hearing written submissions dated 09/11/2018 and 22/11/2018, GFICIL has furnished certain bulk documents, which are computer printed copies and signed by Noticee no. 6 and Mr. G Das (secretary – executive committee of GFICIL). I note that these documents contain list of shareholders and as against the name of each shareholder, multiple share certificate numbers are shown. However, no documentary evidence such as register of members, copy of share certificate. etc. has been furnished. Further, Noticee no. 1 (acting through Noticee no. 6) was specifically called upon at the hearing held on 22/10/2018, to provide evidence in the form of register of members, return of allotment..etc. in support of their submissions within 15 days, however, I note that Noticee no. 1 through their additional written submissions dated 09/11/2018 and 22/11/2018 have failed to provide any extract/copy of register of members and have also failed to provide copy of all the returns of allotments filed with RoC. The copies of six returns of allotments that are furnished by noticee no. 1 through their additional written submission dated 22/11/2018, also do not contain the annexure/attachment i.e. the list of allottees that was filed with the RoC. When I further examine, the bulk of documents submitted by Noticee no. 1 by way of its additional written submissions dated 09/11/2018 and 22/11/2018, I note that, noticee no.1 has submitted the details of its shareholders and details of allotments made by it, which admittedly is in variance with the data earlier submitted by it to RBI. For example, for the financial year 1998-99 the details of allottees forwarded by RBI shows the no. of allottees for the said period as 145, whereas in the additional submission dated 9/11/2018 by GFICIL, the no. of allottees are shown by GFICIL as 50 for the financial year

1998-99. The names of some of the allottees such as Manhash Ali, Duleshwar Kasari, Subhash Guha, Ranjeet Mandal, Maosumi Bhagawat which are found in the list of allottees forwarded by RBI is not shown in the list of shareholders furnished by Noticee no. 1 in its additional written submissions. Similarly, for the financial year 2002-03, the names of some of the allottees such as Batali Sharmah, Chandan Dairmoy, Gautam Haripal, Mandal Basumatary, Atul Borah etc. which are part of list of allottees as forwarded by RBI are not included in the list of allottees furnished by Noticee no. 1 in its additional written submissions dated 9/11/2018. It is pertinent to note that the list of shareholders/allottees that was forwarded by RBI to SEBI, originates from the filings that were made by Noticee no. 1 to RBI. I note that, through its additional written submissions dated 09/11/2018 and 22/11/2018, noticee no. 1 claims to have allotted shares only to 50 persons through the financial years 1995-96 to 2006-07. Therefore, I find that noticee no. 1 through the bulk of documents furnished by way of its additional written submissions, appears to have attempted to camouflage the list of shareholders and the details of allotments by the company, only to show that it meets the threshold for private placement as set out in first proviso to section 67(3) of the Companies Act, 1956 and to avoid the consequences of being treated as a deemed public issue.

In view of the above, I note that, GFICIL has disclosed varying figure as to the no. of its equity shareholders in its various submissions/disclosures to various regulators. Nonetheless, the no of allottees in all submissions/disclosures has been shown to be atleast more than 49 persons, which does not satisfy the provisions of first proviso to section 67(3) of the Companies Act, 1956 in relation to the private placement of shares and hence, constitutes a deemed public issue of shares.

15. Therefore, I find that GFICIL may have come out with the Offer of ES as outlined above. Further, considering the varying/misleading submissions/disclosures by GFICIL, it is probable that the actual number of allottees and amount mobilized could be more than Rs. 6.80 Crores.

16. Now, the primary question that arises for consideration is whether the issue of equity shares was in violation of provisions of Companies Act, 1956. 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 subsection (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)."

17. 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.”

18. 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. The scheme of section 67(3) envisages the raising of funds by a company, privately, from informed and sophisticated investors or relatives/friends of promoters, who are capable of taking informed decisions on the basis of Letter of Offer or Information Memorandum issued by the company. The overarching intent of section 67(3) is not to burden such private placements with regulatory supervision and compliances, since the no. of investors involved is restricted to 49 known/ pre-identified persons and the public at large is not involved. However, when securities are offered to the public at large or deemed to be offered to the public, then the regulatory supervision becomes more stringent and hence, the requirement in respect of contents of prospectus, filling of draft prospectus with SEBI, registration of prospectus with RoC, mandatory listing of securities on stock exchange etc. come into picture. 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.

19. In the instant matter, as noted in the earlier paras, GFICIL has disclosed varying figure as to the no. of its equity shareholders in its various submissions/disclosures to various regulators, namely SEBI, RBI and MCA. Nonetheless, the no of allottees in all submissions/disclosures has been shown to be atleast more than 49 persons over the financial years 1998-99 to 2006-2007. I also find that GFICIL has mobilized an amount of at least Rs. 6.80 crores over the financial years 1995-96 to 2006-2007. The above findings lead to a reasonable conclusion that the issue of equity shares by GFICIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
20. I note that, the second proviso to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions (PFI's) only from the applicability of the first proviso. Therefore, NBFC's or PFI's do not have any restriction on the number of allottees as imposed on a company which is not an NBFC or PFI. However, such companies need to prove that its offer falls either under clause (a) or (b) of section 67(3) to claim such issuance to be a private placement and that the funds were not raised through solicitation from public at large. I find that GFICIL was granted a Certificate of Registration as NBFC by RBI on 16/10/2001 and the same was cancelled on 05/04/2003 due to supervisory concerns. Therefore, GFICIL may have been exempt from the requirements imposed by first proviso to section 67 (3) of the Companies Act, 1956 for the period during which it was holding a

valid certificate of registration as NBFC from RBI, if there was no public solicitation. However, GFICIL fails to show that the offer of equity shares by the company during its status as NBFC was a private placement falling under clause (a) or (b) of section 67 (3) of the Companies Act, 1956 and that it was not a public solicitation of funds. There is no material on record, neither there is any evidence adduced to that effect by the noticees to show that the offer of equity shares was to the pre-identified offerees/invitees and not the public/retail investors at large. I also note that noticee no. 1 in its reply contends that the GFICIL allotted shares to its employees and the money for subscription would be recovered from them through regular deductions from their salary. However, such a claim by noticee no. 1 has not been substantiated by any evidence. I note that noticee no. 1, appears to take this defensive stand without any supporting evidence to take refuge of clause (b) to section 67(3) of the Companies Act, 1956. However, such claim without any proof to show that the allottees were genuinely the employees of GFICIL is untenable. Furthermore, I note that the protection under clause (b) of section 67 (3) to consider issue of equity shares to 50 or more employees as private placement to NBFC's was available to noticee no. 1 only for the period when it was holding the status of an NBFC and there was no solicitation from the public or retail investors. However, the alleged offer of equity shares by noticee no. 1 spreads across the financial years from 1998-99 to 2006-2007.

21. In respect of the alleged offer of equity shares, neither GFICIL nor its directors have 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 {67(3)(b)} or it was made to the pre-identified offerrees/invitees only and not to the public at large {67(3)(a)}. 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." As noted in the above paras though noticee no. 1 claims to have made the allotment of equity shares to its employees but it fails to provide any evidence to support the claim that the allottees were its employees. Therefore, I find that the said issuance cannot be considered as private placement.

22. Noticee no. 1 has contended that they have not allotted shares to more than 50 persons in a financial year. However, I note that the threshold as prescribed in first proviso to section 67(3) of the Companies Act, 1956 is not restricted to a financial year, rather it can extend

to periods beyond one financial year. 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), wherein the Hon'ble SAT while dealing with the issue of NCD's observed 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"*. I note that the ratio laid down by the Hon'ble SAT in this case is applicable with equal measure and force to the issue of equity shares as well. Hence, the argument that GFICIL has not allotted shares to more than 50 persons in a financial year has no merit, since threshold of '50 or more' as stipulated in first proviso to section 67 (3) extends across allotments in multiple tranches, even spreading across financial years.

23. It is argued by noticee no. 1 that at the time of granting the registration as NBFC, RBI was aware that GFICIL has issued shares to more than 49 persons in a financial year, but they have raised no concern or objection at that time. It is further argued that while GFICIL's Certificate of Registration as NBFC was valid, GFICIL had issued shares on 15/01/2002 to 527 persons, but RBI had raised no concern/ objection at that time. In this regard, I note that the present proceedings were triggered against GFICIL on the basis of a reference received from RBI itself. I also note that, in accordance with 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. 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 intending to get listed, 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."

24. 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..."

25. . Therefore, in view of the above, I find that the offer of equity shares by GFICIL falls to satisfy the requirements of section 67(3) of Companies Act, 1956 in respect of private placement of shares. Hence, the offer of equity shares by GFICIL are deemed to be public issues and GFICIL was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

26. Further, since the offer of equity shares 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 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.

27. I find that no records have been submitted to indicate that GFICIL has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Therefore, I find that GFICIL has contravened the said provisions. GFICIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that GFICIL 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) and 73(3) 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 equity shares by GFICIL was a deemed public issue of securities, GFICIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that GFICIL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of equity shares. I, therefore, find that GFICIL 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 GFICIL nor its directors have 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, GFICIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

30. In view of the above findings, I am of the view that GFICIL engaged in fund mobilizing activity from the public, through the offer of equity shares and has contravened the provisions of section 56(1), 56(3), 73(1), 73(2), 73(3), 2(36) read with 60 of the Companies Act, 1956.
31. It is contended by Noticee no. 1 that they were aware to comply with RBI Law, but they knew nothing about SEBI Law. Noticee no. 1 argues that RBI should have directed them to follow SEBI Law as well. I note the legal maxim '*ignorantia juris non excusat*', which is a legal principle holding that a person who is unaware of a law may not escape liability for violating that law merely because one was unaware of its content. Hence, the contention of Noticee no. 1 that he was unaware of the laws governing deemed public issues has no merit.
32. From the documents available on record, I find that the present Directors in GFICIL are Noticee no. 2,6,7,8,9,10 and 11. I also note that, Noticee no. 12 who was earlier director in GFICIL have since resigned in August 2014. The details about the appointment and resignation of directors in GFICIL are as following:

Notice No	Name of director	Designation	DIN / DPIN	Date of appointment	Date of cessation
6	Jiten Chandra Bora	Director & Promoter	01347671	11/10/1995	Present Director
7	Jagneswar Saikia	Director	01808487	11/10/1995	Present Director
8	Karuna Borah	Director	01808524	11/10/1995	Present Director

9	Gopi Bhuyan Ram	Director	0694769 0	24/07/2014	Present Director
10	Harisa Goyari	Director	0694771 5	24/07/2014	Present Director
11	Bikash Roy	Director	0694774 8	24/07/2014	Present Director
2	Pradip Sarmah	Director	0696427 4	25/08/2014	Present Director
12	Keshab Gogoi	Director	0249117 9	11/10/1995	25/08/20 14

33. 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, GFICIL and its past and present directors and promoters are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

34. 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%.

35. 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 GFICIL 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 GFICIL, 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. However, 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 GFICIL and other directors are limited to the extent of amount collected during his/her tenure as director of GFICIL. From the material available on record and the details of the appointment and resignation of the directors of GFICIL as explained in the above paragraphs, it is noted that Noticee Nos. 6,7,8 and 12 were directors at the time of the alleged offer of equity shares. Since these persons were acting as directors during the period of offer of equity shares through the financial years 1998-99 to 2006-2007, they are officers in default as per Section 5(g) of Companies Act, 1956.
36. I note that Noticee no. 3,4,5,6,13 and 14 are promoters of GFICIL. Notice no. 1 in its reply through noticee no. 6, dated 9/11/2017, claims that noticee no. 4,5,13 and 14 are no more associated with the company and that they have not taken a single rupee from the company. However, except for Notice no. 4's death certificate, Noticee no. 1 fails to provide any evidence in respect of this claim. Noticee no. 3 and 5 have also contended in their replies that they are no more connected with the company. I note that Noticee no. 3,4,5,6,13 and 14 are shown as promoters as per the records at MCA 21 Portal and that the records at MCA 21 Portal are 'statutory records' and I am inclined to rely on its genuineness. It is for the said noticees to get the records rectified and to prove their innocence if there has been an adverse inference drawn against them on the basis of such records. In the instant case, none of the said noticees viz. Noticee no. 3,4,5,13 or 14 have produced any evidence to prove that they are no more connected with the company as a promoter. Further, Noticee no. 3 and 5 have denied being the continuing promoter of GFICIL, but no material has been brought on record to prove the same. I find that Noticee no. 3,4,5,13 and 14 have not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of the public issue and public interest requires that the persons who had such

knowledge/connivance/consent be made accountable to the investors. Therefore, the said Noticees are liable to be debarred for an appropriate period of time.

37. 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 GFICIL and its Directors, viz., Noticee no. 6,7,8 and 12, to refund the monies collected, with interest to such investors. Further, in view of the continuing nature of the violation committed by GFICIL, its present directors ought to have taken steps to remedy the violations on part of GFICIL. However, nothing has been brought on record to show that the present directors have taken any steps to rectify the non-compliance of public issue norms by the company. Hence, the present directors of GFICIL are also liable for appropriate directions under SEBI Act.

38. I also note that, vide the interim order, GFICIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors/promoters of GFICIL 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 furnished by GFICIL of its own assets. GFICIL has provided an inventory of the assets of noticee no. 6,2,9,7,10 and 11, but such inventory of assets cannot be relied upon, since it has not been provided by the aforesaid noticees themselves. Hence, I note that all the noticees have failed to provide inventory of their assets, despite the notifications of information of issuance of the interim order through newspaper publications as stated in the previous paragraphs of this Order.

39. 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. Noticee no. 1 (GFICIL), Noticee no. 6 (Jiten Chandra Bora), Noticee no. 7 (Jagneshwar Sakia), Noticee no. 8 (Karuna Borah) and Noticee no. 12 (Keshab Gogoi), shall jointly and severally, within a period of three months from the date of this order, refund all the money collected by GFICIL through the issuance of equity shares including the application money collected from investors, pending allotment

of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds from the investors to the date of actual payment. It is further directed that the present directors of GFICIL viz. Noticee no. 2 (Pradip Sarmah), Noticee no. 6 (Jiten Chandra Bora), Noticee no. 7 (Jagneshwar Sakia), Noticee no. 8 (Karuna Borah), noticee no. 9 (Gopi Bhuyan Ram), noticee no. 10 (Harisa Goyari) and noticee no. 11 (Bikash Roy) shall ensure and facilitate the compliance of this direction on behalf of GFICIL.

- 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”) or through internet banking channels such as NEFT or RTGS with appropriate audit trail.
- c. Noticee no. 1 (GFICIL), Noticee no. 6 (Jiten Chandra Bora), Noticee no. 7 (Jagneshwar Sakia), Noticee no. 8 (Karuna Borah) and Noticee no. 12 (Keshab Gogoi) 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, within 21 days from the date of receipt of this order. It is clarified that the present directors of GFICIL shall ensure and facilitate the compliance of this direction on behalf of GFICIL.
- d. Noticee no. 1 (GFICIL), Noticee no. 6 (Jiten Chandra Bora), Noticee no. 7 (Jagneshwar Sakia), Noticee no. 8 (Karuna Borah) and Noticee no. 12 (Keshab Gogoi) 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. It is clarified that the present directors of GFICIL shall ensure and facilitate the compliance of this direction on behalf of GFICIL.

- e. Noticee no. 1 (GFICIL), Noticee no. 6 (Jiten Chandra Bora), Noticee no. 7 (Jagneshwar Sakia), Noticee no. 8 (Karuna Borah) and Noticee no. 12 (Keshab Gogoi), shall ensure that a public notice is issued, 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. It is clarified that the present directors of GFICIL shall ensure and facilitate the compliance of this direction by GFICIL.
- f. Noticee no. 1 (GFICIL), Noticee no. 6 (Jiten Chandra Bora), Noticee no. 7 (Jagneshwar Sakia), Noticee no. 8 (Karuna Borah) and Noticee no. 12 (Keshab Gogoi) shall file a report of completion of such refund 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. It is clarified that the present directors of GFICIL shall ensure and facilitate the compliance of this direction by GFICIL.
- g. If the noticees as referred in para 39(a) above, fail to repay the money as directed, SEBI on the expiry of three months from the date of this Order, may recover the amounts, from GFICIL and the directors viz Noticee no. 6 (Jiten Chandra Bora), Noticee no. 7 (Jagneshwar Sakia), Noticee no. 8 (Karuna Borah) and Noticee no. 12 (Keshab Gogoi), in accordance with section 28A of the SEBI Act, including such other provisions contained in securities laws.
- h. Noticee no. 1 (GFICIL), Noticee no. 6 (Jiten Chandra Bora), Noticee no. 7 (Jagneshwar Sakia), Noticee no. 8 (Karuna Borah), Noticee no. 12 (Keshab Gogoi), noticee no. 9 (Gopi Bhuyan Ram), noticee no. 2 (Pradip Sarmah), noticee no. 10 (Harisa Goyari) and noticee no. 11 (Bikash Roy) 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 **four** years from the date of completion of refunds to investors as directed above. During the period of restraint, the existing holding, including units of mutual funds, of the aforesaid directors shall remain frozen. The aforesaid 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 **four** years from the date of completion of refunds to investors.

- i. Noticee no. 3 (Pradip Hazarika), Noticee no. 5 (Khargeshwar Das) Noticee no. 13 (Bhupen Burhagohan) and Noticee no. 14 (Guluk Gogoi) 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 **four** years. During the period of restraint, the existing holding, including units of mutual funds, of the aforesaid noticees shall remain frozen. However, I note that vide the interim order dated October 18, 2017, the aforesaid noticees were directed not to access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly in whatsoever manner. In this connection, I note that the aforesaid four noticees have already undergone prohibition for more than a year. Hence, the prohibition already undergone by the said four noticees pursuant to the interim order shall be adjusted while computing the period in respect of prohibition imposed vide this order.
- j. In view of the death of Noticee no. 4 (Maniram Hazarika), the present proceedings against him stands abated.
- k. The above directions shall come into force with immediate effect.

40. Copy of this Order shall be forwarded to the recognised stock exchanges, depositories and RTA's of all Mutual Funds for information and necessary action.

41. 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.
42. A copy of this Order shall also be forwarded to the concerned Local Police and relevant State Government for information.

Date: December 20, 2018

Place: Mumbai

**Sd/-
ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**