

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM : ANANTA BARUA, WHOLE TIME MEMBER

INTERIM ORDER CUM SHOW CAUSE NOTICE

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Golden Pariwar Holding and Developers India Limited

In respect of:

Sr. No.	Name of the Noticee	CIN/DIN	PAN
1.	Golden Pariwar Holding and Developers India Limited	U45400WB2007PLC115026	NA
2.	Mr. Sukalyan Biswas	00762692	ACZPB3900D
3.	Mr. Debamita Biswas	01787712	NA
4.	Ms. Bina Biswas	01787715	ALHPB8336N
5.	Ms. Susmita Biswas	NA	NA
6.	Mr. Suprakash Biswas	NA	NA
7.	Mr. Sushyamal Biswas	NA	NA
8.	Mr. Sukumar Biswas	NA	NA

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

Background:

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a complaint on January 30, 2018 from Mr. Meghlal Mahto (hereinafter referred to as “Complainant”) alleging money mobilization by Golden Pariwar Holding and Developers India Limited (hereinafter referred to as ‘GPHDIL/ the Company’). Pursuant to additional information/ document sought by SEBI, a reply was received from the Complainant on May 18, 2018 enclosing, among

other, copies of some Redeemable Preference Shares (hereinafter referred to as 'RPS') issued by the Company. The matter was taken for examination as to whether the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter, "SEBI Act, 1992") read with the relevant provisions of Companies Act, 1956 were complied with or not in the alleged issuance of RPS by the Company.

2. During the course of examination conducted by SEBI, the following details of the Company were obtained from the portal of Ministry of Corporate Affairs (hereinafter referred to as 'MCA') :

- i) Date of Incorporation : 05/04/2007
- ii) Type of the company : Public and Unlisted
- iii) CIN : U45400WB2007PLC115026
- iv) PAN: Not Available
- v) Registered Office Address: 4/6 Seth Bagan Road P. S. & P. O. – Dumdum Kolkata, West Bengal 700030, India
- vi) Correspondence Address: same as above
- vii) Details of present and past directors/Promoters:

Details of Directors						
Sl. No	Name	Current Designation	DIN	PAN	Original date of appointment	Date of Cessation
1	Sukalyan Biswas	Director	00762692	ACZPB3900D	05/04/2007	--
2	Debamita Biswas	Director	01787712	Not Available	05/04/2007	--
3	Bina Biswas	Director	01787715	ALHPB8336N	05/04/2007	--

viii) Date of filing of last Annual Accounts: 31/03/2010

ix) Paid up capital: Equity shares amounting to Rs. 5,00,000 (50,000 equity shares of Rs. 10 each) as per Balance Sheet filed by the Company with the Registrar of Companies ('RoC') on March 31, 2010.

3. On perusal of the Balance Sheets and Annual Returns of the Company filed for the F.Ys 2007-08, 2008-09 and 2009-10, (as available on the MCA portal), it was observed that there is no mention of issuance of preference shares by the Company. It was also observed that the Company had not filed any Form 2 or Form 10 with the RoC. However, on perusal of records available at MCA portal, it was noted that an extra ordinary General Meeting was held on June 07, 2010 for issuance of 100 lakh of RPS of Rs. 10 each at a premium of Rs. 90 per share.
4. As no details of the issuance of RPS was found on the MCA portal, based on the copies of certificates of RPS as provided by the Complainant, the following was observed:

F. Y.	No. of allottees	No. of RPS	Total Amount
2010-11	54	3,665	3,66,500
2011-12	66	7,350	7,35,000
2012-13	07	880	88,000
TOTAL	127	11,895	11,89,500

5. In view of the above, it is observed that the Company has issued RPS to more than 49 persons in the F.Y. 2010-11 and 2011-12.
6. Based on the above information gathered from the MCA portal, SEBI vide its letter dated November 01, 2018 addressed to the registered address of the Company, advised it to furnish the following information latest by November 15, 2018:
- Copy of Audited Annual Accounts and Annual Returns of the Company for last 3 years.*
 - Name, addresses, occupation and PAN of all the promoters/directors and Key*

- Managerial Personnel of the company.*
- iii. *Nature of Business of the company.*
- iv. *Information in respect of issue of shares*
- a. *Copy of Prospectus / Red Herring Prospectus/ Statement in lieu of prospectus/ Information memorandum filed with RoC for issuance of Shares /Debentures.*
 - b. *Date of opening and closing of the subscription list for the said Shares/Debentures*
 - c. *Number of application forms circulated inviting subscription for Shares/Debentures and number of applications received*
 - d. *Details of allottees in the format provided*
 - e. *Copies of the minutes of Board/committee meeting in which the resolution has been passed for raising such additional capital and also for allotment of shares/debentures.*
 - f. *Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of Shares/ Debentures.*
 - g. *Terms and conditions of the issue of Shares/Debentures.*
 - h. *Whether the company has applied for listing of its securities with any of the stock Exchanges.*
 - i. *Copies of Form 2 and Form 10 filed with the RoC.*
 - j. *Details of debenture trustee viz. name, address, board resolution authorizing their appointment etc.*

7. The aforesaid SEBI letter dated November 01, 2018 was not delivered on the Company and, therefore, a site visit was also made on November 03, 2018 when it was observed that the Company was not found at the given address. I note that earlier also a letter dated December 18, 2014 was written to the Company and all its aforesaid three directors, in respect of some other matter, which were returned undelivered with remarks like '*addressee moved*' and '*insufficient address*'.

ISSUE FOR CONSIDERATION:

8. In view of the above, the issue for consideration in the present matter is whether the mobilization of funds made by the Company made during the F.Y. 2010-11 and 2011-12 (RPS issued to 54 and 66 persons respectively) is in accordance with the provisions of the Companies Act, 1956 read with the provisions of SEBI Act, 1992.
9. Section 67 of the Companies Act, 1956 deals with the conditions/circumstances

under which an offer of shares/debentures by a company would be construed as made to the public. Extracts of the relevant provisions of section 67 of the Companies Act, 1956, dealing with offer of shares or debentures to the public, are reproduced as under:

“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).”

10. In view of the first proviso to section 67(3) of the Companies Act, 1956, an offer of shares or debentures made to fifty persons or more would constitute an offer to the public. In this respect, based on the information and copies of RPS certificates provided by the Complainant, as mentioned in para 4 above, it is noted that the company has issued RPS to a minimum of 54 persons in the F.Y. 2010-11 and 66 persons in the F.Y. 2011-12 mobilizing an amount of Rs. 3,66,500/- and Rs. 7,35,000/-, respectively. Therefore, on the basis of complaint received by SEBI

and other information available on record, I note that the offer and allotment of RPS made by the Company *prima facie* qualifies to be an offer made to the public in terms of section 67(3) of the Companies Act, 1956.

11. In terms of the Companies Act, 2013, post April 1, 2014, any offer or allotment of securities shall be construed as public issue if the number of offerees/allottees exceeds 200 persons, excluding certain class of subscribers whereas under the provisions of Companies Act, 1956 the number was limited to 49 persons. As such, to deal with old cases, vide SEBI Circular dated December 31, 2015 (Procedure to deal with cases prior to April 1, 2014, involving offer/allotment of securities to more than 49 upto 200 investors in a financial year), provided that, in respect of earlier cases involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the companies may avoid penal action if it provides the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to investors.
12. From the materials available on record, there is no evidence to indicate that the Company has provided investors with the requisite option for surrender of Redeemable Preference Shares and refund in accordance with the SEBI Circular dated December 31, 2015, in respect of the offer and allotment of Redeemable Preference Shares during the Financial Year 2010-11 and 2011-12.
13. It is noted above that the issue and offer of allotment of RPS made by the Company, as detailed in paragraph 4 above, was a 'public issue' in terms of Section 67(3) of the Companies Act, 1956. In this connection, Section 56 of the Companies Act, 1956 requires that the prospectus issued by a company shall state the matters specified thereunder and Section 60 of the Companies Act, 1956 mandates registration of such prospectus with the RoC. Further, in case of public issue, the requirement of making application to one or more recognised stock exchanges seeking permission for listing of such shares in terms of Section 73 (1) of the Companies Act, 1956 is also attracted. Section 73(3) requires that the

monies received by the Company has to be kept in a separate bank account until the permission for listing is granted. The relevant extract of Section 73 of the Companies Act, 1956, providing the requirement of making listing application to one or more recognised stock exchanges and consequences in case of omission thereof, is reproduced as under:

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

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

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

14. It is noted that no response has been received from the Company in respect of its said public issue of RPS. Further, the materials as available at MCA portal also do not indicate compliance with the aforesaid requirements of Sections 56, 60, 73(1) or 73(2) of the Companies Act, 1956. In this view, the Company *prima facie* appears to have violated the provisions of Sections 56, 60, 73(1) or 73(2) of the Companies Act, 1956.

15. In terms of Section 73 (2) of the Companies Act, 1956, as reproduced above, the company and its every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of section 73(1). Section 5 of the Companies Act defines the term 'officer who is in default' to mean the officers named therein. Section 5 (g) provides that where any company does not have any of the officers specified in clauses (a) to (c) of section 5, then all the directors would be "officer who is in default". Section 5 is reproduced as under:

5. Meaning of "officer who is in default": For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression " officer who is in default" means all the following officers of the company, namely:-

- (a) the managing director or managing directors;*
- (b) the whole- time director or whole- time directors;*
- (c) the manager;*
- (d) the secretary;*
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;*
- (f) any person charged by the Board with the responsibility of complying with that provision: Provided that the person so charged has given his consent in this behalf to the Board;*
- (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors: Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.*

16. As there is no material available on record to suggest that the Company had any of the officers as referred to in Section 5(a) to (c), in terms of Section 5(g) all the directors would be considered as 'officer in default'. Further, in terms of Section 62 of the Companies Act, every person who inter alia is a director of the company at the time of the issue of the prospectus and every person who is a Promoter of the company, are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein.
17. As per the information available on the MCA Portal, the details of the directors/ promoters of the Company, including the dates of appointment/cessation as directors, as available on record, are as under:

Sr. No.	Name of the Director/ Promoter	Designation	Date of Appointment	Date of Cessation
1.	Mr. Sukalyan Biswas	Director and Promoter	05.04.2007	----
2.	Mr. Debamita Biswas	Director and Promoter	05.04.2007	----
3.	Ms. Bina Biswas	Director and Promoter	05.04.2007	----
4.	Ms. Susmita Biswas	Promoter	17.03.2007	----
5.	Mr. Suprakash Biswas	Promoter	17.03.2007	----
6.	Mr. Sushyamal Biswas	Promoter	17.03.2007	----
7.	Mr. Sukumar Biswas	Promoter	17.03.2007	----

18. From the materials available on record, it is noted that the Company has not filed its annual accounts after financial year 2009-10 and also the company as well as its directors are not accessible at their address available on record. In this view, the quantum of funds mobilized by the company can differ from what has been brought on record, as mentioned in above para 4, which is based on the information and documents provided by the complainant.
19. As per the requirement under law, in case of public issue, the issuer company has to observe requirements such as obtaining rating, preparing and filing the prospectus with required disclosures, listing of securities on stock exchange etc. It is *prima facie* observed that the company has failed to comply with the aforesaid requirements.
20. As per Section 55A of the Companies Act, 1956, the provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non- payment of dividend shall – (i) in case of listed public companies and (ii) in case of those public companies which

intend to get their securities listed on any recognized stock exchange in India, be administered by SEBI. Section 11A of the SEBI Act, 1992, *inter alia*, allows SEBI to issue order prohibiting any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, sub-section (4) of section 11 lists measures that SEBI may take, by an order in writing, either pending or on completion of investigation or inquiry, in the interest of investors in the securities market. Section 11B empowers SEBI to issue such directions as may be appropriate, in the interest of investors in securities and the securities market, *inter alia*, to any person associated with the securities market or to any company in respect of issue of capital, transfer of securities etc.

21. In view of the above alleged violations committed by the Company in raising money from the public through the issue of RPS, it becomes necessary for SEBI, being regulator of the securities market, to intervene and issue suitable directions including restraining the company from mobilizing funds from the public. Further, the interest of the investors also need to be protected to ensure that public funds are not diverted and/or misappropriated.
22. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-
 - a) Golden Pariwar Holding and Developers India Limited, Sukalyan Biswas [DIN – 00762692 and PAN - ACZPB3900D], Debamita Biswas [DIN - 01787712], Bina Biswas [DIN-01787715 and PAN- ALHPB8336N], Susmita Biswas, Suprakash Biswas, Sushyamal Biswas, Sukumar Biswas are restrained from mobilizing funds or inviting subscription through the issue of RPS or through any other form of securities, to the public and/ or issuing prospectus or any offer document or issue advertisement to the public inviting subscription of securities, in any manner whatsoever, either directly or indirectly till further directions;

- b) Golden Pariwar Holding and Developers India Limited, Sukalyan Biswas [DIN – 00762692 and PAN - ACZPB3900D], Debamita Biswas [DIN - 01787712], Bina Biswas [DIN-01787715 and PAN- ALHPB8336N], Susmita Biswas, Suprakash Biswas, Sushyamal Biswas, Sukumar Biswas 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, till further directions;
- c) Golden Pariwar Holding and Developers India Limited, Sukalyan Biswas [DIN – 00762692 and PAN - ACZPB3900D], Debamita Biswas [DIN - 01787712], Bina Biswas [DIN-01787715 and PAN- ALHPB8336N], Susmita Biswas, Suprakash Biswas, Sushyamal Biswas, Sukumar Biswas shall neither dispose of, nor alienate or encumber any of its/their assets nor divert any funds raised from public through the offer and allotment of RPS;
- d) Golden Pariwar Holding and Developers India Limited and its present directors shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of RPS sought vide letters dated November 01, 2018.

The preliminary findings contained in paragraphs 9 to 20 of this Order are made on the basis of the complaint received by SEBI and information obtained from MCA21 portal.

23. Golden Pariwar Holding and Developers India Limited and the abovementioned Noticees are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act, 1992 should not be issued/imposed, including the following directions, namely:-

- a) Golden Pariwar Holding and Developers India Limited and its directors Sukalyan Biswas [DIN - 00762692], Debamita Biswas [DIN - 01787712], Bina

Biswas [DIN - 01787715], to jointly and severally refund the money collected from the public through the offer and allotment of RPS, without complying with the public issue norms, 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} within a period of ninety days and file a certificate of two independent Chartered Accountants to the satisfaction of SEBI (to be submitted within seven days of completion of the refund); and

- b) The Noticees to be restrained / prohibited from accessing the securities market by issue of prospectus / offer document / advertisement and buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, for a period of four years, from the date of completion of making refund to the investors.
24. The Noticees, may, within 21 days from the date of receipt of this interim order - cum- show cause notice, file their respective replies. The Noticees are directed to furnish an inventory of their assets in their reply. In the event the Noticees intend to avail an opportunity of personal hearing, they may do so by seeking a confirmation in writing from SEBI for the same within 45 days from the date of receipt of this Order. In the event of the Noticees failing to file replies within 21 days or requesting for an opportunity of personal hearing within the said 45 days, the preliminary findings at paras 9 to 20 of this Order shall become final and absolute against the respective Noticees automatically, without any further orders. Consequently, the Noticees shall automatically be bound by the respective directions contained in paragraphs 22 and 23 till the expiry of a period of four years from the date of repayment made to all the investors to the satisfaction of SEBI.
25. Upon the expiry of a period of 90 days from the date of this Order becoming final, SEBI may initiate appropriate enforcement action under SEBI Act, 1992 including Recovery etc. However, as regards, the amount to be refunded will depend upon the actual amount raised from the public and to that extent the order will be

subject to the aforesaid.

26. This Order shall come into force with immediate effect.
27. Copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and directors.
28. The communication, if any, to be made by the Noticees in respect of this Order such as filing of replies or submitting inventory of assets etc. shall be made at '3rd Floor, L and T Chambers, Eastern Regional Office, Securities and Exchange Board of India, 16, Camac Street, Kolkata – 700017 and by email, if any, at debdutib@sebi.gov.in and smadhu@sebi.gov.in

Place: Mumbai

Date: January 09, 2019

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA