National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/63605	Date: August 27, 2024
Circular Ref. No: 369/2024	

To All NSE Members,

Sub: **SEBI Order in respect of Mr. Sunil Kumar Panda in the matter of Green India Infra Projects Limited**

This is with reference to SEBI Order No. QJA/AA/ERO/ERO/30712/2024-25 dated August 27, 2024, wherein SEBI has restrained following entity from directly or indirectly, accessing the capital market by issuing prospectus, any offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in whatsoever manner for a period of four (4) years or till the date of refund of money to the allottees, whichever is later.

Sr. no.	Name of Noticee	PAN
1	Mr. Sunil Kumar Panda	ANBPP2853L

The detailed order is available on SEBI website (https://www.sebi.gov.in/enforcement.html).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

https://www.nseindia.com/regulations/member-sebi-debarred-entities

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

For and on behalf of
National Stock Exchange of India Limited

NSE

India@75 A guiding light, shining bright

National Stock Exchange of India

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI Order in respect of Mr. Sunil Kumar Panda in the matter of Green India Infra Projects Limited

QJA/AA/ERO/ERO/30712/2024-25

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Sr. No.	Noticee Name	PAN
1.	Mr. Sunil Kumar Panda	ANBPP2853L

In the matter of Green India Infra Projects Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted a preliminary examination into the issuance of Secured Optionally Convertible Debentures (hereinafter referred to as "**SOCDs**") by Green India Infra Projects Limited (hereinafter referred to as "**the company**" or "**GIIPL**") with a view to ascertain the possible violations of the public issue norms stipulated under the Companies Act, 1956 and other applicable laws pertaining to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**ICDR Regulations**").

2. Pursuant to the examination, SEBI passed an ex-parte interim order cum Show Cause Notice (hereinafter referred to as "**Interim order**") dated March 04, 2015 against GIIPL and its promoter/directors, *inter alia*, advising GIIPL and its directors / promoters to show cause as to why suitable directions under sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as "**ICDR Regulations**") should not be taken/ imposed against them.

3. After considering the interim order, the replies/ written submissions and the material available on record, a final order dated October 28, 2016 (hereinafter referred to as "**Final Order**") was passed by SEBI, *inter alia*, observing that the issue and transfer of SOCDs were a sham and façade to circumvent the applicable provisions of law and that the company allotted SOCDs to 616 persons in the financial year 2010-2011 in violation of the provisions of law regulating such public issues i.e. Section 56, 60 read with Section 2(36) and 73 of the Companies Act, 1956 and Regulations 3, 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the ICDR Regulations.

4. In addition to the above, the Whole Time Member, SEBI (hereinafter referred to as "**WTM**") in his final order noted that "*Mr. Pradeep Kumar Singh and Mr. Sunil Kumar Panda (also referred as CEO of the company) are the main persons and are in the custody of CBI. I note that the name of Mr. Sunil Kumar Panda has neither been mentioned in the interim order nor a show cause notice has been issued to him. In the interest of public investors, it is important to examine the role of Mr. Sunil Kumar Panda."* Accordingly, WTM vide the aforesaid final order advised SEBI to examine the role of Mr. Sunil Kumar Panda (hereinafter referred to as "**Noticee')** in the public issue of SOCD by the company and to take appropriate action as deemed fit in accordance with law.

SHOW CAUSE NOTICE, INSPECTION, REPLY AND HEARING

I. Show Cause Notice

5. A Show Cause Notice dated March 01, 2024 (hereinafter referred to as "**SCN**") was issued to the Noticee calling upon him to show cause as to why appropriate direction(s) be not issued against the Noticee under Sections 11(4) and 11B of the SEBI Act, 1992. The SCN was issued to the noticee at four of his addresses and acknowledgement was received from one address viz. *Ramnagar, 1st Lane, Lanjipalli, P.S. Baidyanathpur, Berhampur, Dist. Ganjam, Odihsa-760008* on

March 18, 2024. I note that the following documents were enclosed as annexures along with the SCN:

Table 1

Annexures to SCN	
Annex. No.	**Particulars**
1.	Ex-Parte interim order cum Show Cause Notice dated March 04, 2015
2.	Final order dated October 28, 2016
3.	Copy of recorded statement dated June 06, 2017 of Sunil Kumar Panda
4.	Copy of charge sheet/ final report No. 08/2014 dated December 02, 2014 of CBI
5.	Copy of Green India Pariwar diary/ brochure
6.	Copy of complaints received from investors
7.	KYC/AOF documents received from Kotak Mahindra Bank
8.	Extract of Board resolution of GIIPL dated November 10, 2012

6. I note that the SCN, *inter alia*, alleged that:

6.1. The Noticee confessed before the Learned Chief Judicial Magistrate, CBI Bhubaneshwar (hereinafter referred to as "CJM, CBI") that he was the CEO of GIIPL and was carrying out its day to day activities.

6.2. The printed diary/ brochure of Green India Pariwar states that the Noticee is the CEO of Green India Pariwar and that GIIPL is one of its group companies.

6.3. The board of GIIPL had authorized the Noticee to operate the bank account of GIIPL at Kotak Mahindra Bank and he was the authorized signatory of the said account.

6.4. The Noticee is an Officer in default as per Section 5 of the Companies Act, 1956 and has violated the provisions of Section 56, Section 60 read with Section 2(36), Section 73 of Companies Act, 1956 read with Section 465 of Companies Act, 2013 and Section 27 of SEBI Act, 1992 and Regulations 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57, 59 of ICDR Regulations read with Regulation 301 of ICDR Regulations in his capacity as the Chief Executive Officer (hereinafter referred to as "**CEO**") of GIIPL.

II. Reply, Inspection and Hearing

7. No reply was received from the Noticee to the SCN. An opportunity of hearing was granted to the Noticee on May 28, 2024, and the Noticee was advised to file his reply on or before the said date of hearing. On consideration of the requests made by the Noticee and in due compliance of the principles of natural justice, the hearing was adjourned.

8. It is noted that the Noticee vide his Letter dated June 06, 2024, denied the allegations in the SCN and *inter alia* requested as under:

8.1. To provide copies of materials/ documents relied upon in the present matter.

8.2. To provide copies of materials/ documents relied upon in passing of Interim Order and Final Order dated March 04, 2015 and 28 October 28, 2016 in the matter of Green India Infra Projects Limited.

8.3. To provide all the documents of Green India Infra Projects Limited with respect to the issuance of the SOCDs, as collected and considered by SEBI.

8.4. To reserve his right to seek further documents/ materials as and when required during the course of proceedings.

9. I note that the Noticee was provided an inspection of documents at the Eastern Regional Office of SEBI at Kolkata on June 20, 2024. Copies of documents relied upon by SEBI in the SCN were also provided.

10. The Noticee vide his letter dated June 22, 2024, confirmed inspection and receipt of documents requested by him. He further stated that the documents received were voluminous in nature and *inter alia* requested for a period of 3 weeks to submit his reply and to schedule the hearing 10 days thereafter. The request for adjournment was partly acceded to and the hearing was adjourned to July 10, 2024, and time was granted until July 08, 2024, to the Noticee to submit his reply.

11. I note that the Noticee vide his letter dated July 08, 2024, submitted his reply to the SCN, and on July 10, 2024, Mr. Ankit Lohia from Mindspright Legal, authorized representative (hereinafter referred to as "**AR**") of the Noticee appeared before me online and made submissions in line with the reply dated July 08, 2024. During the hearing held on July 10, 2024, the Noticee, in addition to the above submissions, sought a period of 4 weeks to submit his reply to the SCN. Considering the request of the Noticee, further time was granted to submit the reply of the Noticee.

12. I have perused the replies of the Noticee dated July 08, 2024, and July 10, 2024, and the oral submissions made by the AR of the Noticee before me. The submissions of the Noticee, in brief are as under:

12.1. That the allegations in the SCN are based on surmises and conjectures and that no proof has been provided to the Noticee with respect to the allegations in the SCN.

12.2. The SCN is based on low preponderance of probabilities and is bad in law and must be withdrawn and proceedings dropped.

12.3. Noticee has vehemently denied the allegations made against him in the SCN and has stated that the proceedings are marred by delay and latches as the cause of action dates back to Financial Year 2010-2011, the Final Order in the matter of Green India Infra Projects limited was passed by WTM, SEBI on October 2016 whereas SCN was issued in the month of March 2024. That there was a gap of 8 years without any justification for the same.

12.4. That GIIPL was incorporated on February 01, 2024, as a public company to do the business of real estate activities with its owned or leased property. On August 04, 2010, the Company resolved to issue SOCDs on '*private placement'* basis and on December 16, 2010, GIIPL issued fifty thousand 20% SOCDs of face value of INR 1000/- in order to mobilize INR 5 Crores to two of its group companies, namely Green India Properties Private Limited and Green India Retailing Private Limited (hereinafter referred to as "**GIPPL**" and **GIRPL**). These SOCDs were transferred thereafter by GIRPL to 751 persons. There is no evidence with respect to the role of the Noticee in the issue of SOCDs by GIIPL. The Noticee has annexed Board Resolution and Minutes of Board

Meeting dated August 04, 2010 and the Resolution of the Extra Ordinary General Meeting dated August 28, 2010 in support of the aforesaid contention of the Noticee.

12.5. That the present proceedings are in violation of the principles of natural justice and is a mere tick-box compliance to show the obedience and adherence to the direction of WTM, SEBI and the same ought to have been held before the WTM, SEBI as:

12.5.1. The Interim Order dated March 4, 2015, and Final Order dated October 28, 2016, in the matter of Green India Infra Projects Ltd passed by WTM, SEBI and relied upon in the present case were issued against the company ex-parte where the Noticee was not a party and that reliance on same is misplaced as the Noticee was not part of the proceedings therein and the present proceedings alleging the Noticee as being liable for the actions of the company as an "officer who is in default" under Section 05 of the Companies Act, 1956 is in violation of natural justice as the aforesaid orders were passed ex-parte against the Company without opportunity to the Noticee to challenge the alleged violations.

12.5.2. Quasi-Judicial Authority (hereinafter referred to as "**QJA**") being at a post which is subordinate to the post of WTM will not consider any argument or submission with respect to the violations of the Company as well as his liability for the same. Noticee alleges the same to be violation of principles of Natural Justice.

12.5.3. QJA does not have the power to withdraw/ recall the order of WTM or question the conclusion arrived by WTM being subordinate to WTM.

12.6. That there were violations of principles of natural justice with respect to inspection and supply of documents as:

12.6.1. The Noticee requested for an inspection at the Mumbai Office of SEBI, however the inspection was provided at the Eastern Regional Office of SEBI situated in Kolkata.

12.6.2. That inspection of complete set of documents pertaining to the present case was not provided to the Noticee.

12.6.3. That the present proceedings are conducted in haste. Noticee has stated that the request of Noticee vide his email dated June 22, 2024 to adjourn the hearing scheduled on June 25, 2024 was only partly acceded to.

12.7. That the invitation/ offer and allotment of SOCDs by GIIPL were made to only to 02 group companies namely Green India Retailing Pvt. Limited and Green India Properties Pvt. Ltd and the same is a private placement of securities as the requirements of Section 67 (3) of Companies Act, 1956 are not fulfilled. The Company never intended to allot or allow subscription of SOCDs by any person other than its 02 group companies.

12.8. That no document was ever issued to the public inviting them to subscribe to the SOCDs of the Company and hence no violation of Section 2 (36) can be alleged against the Company or the Noticee. That GIIPL and the Noticee herein did not violate any law and the principle of '*spirit of law*' cannot be invoked in order to expand the scope and applicability of the law to bring under its prohibition something which is not restricted by the law itself. That *"a judicial and / or quasi-judicial authority cannot not alter the language or material of which the a provision is woven and cannot supply the words to bring within letter of the law something which apparently does not fall under the bounds of the law as the same would be restricted by the operation of the principle of "casus omissus""*.

12.9. That the Noticee is not an '*officer who is in default*' for the alleged violations of the provisions of Companies Act, 1956 as:

12.9.1. The Noticee was not the CEO of the GIIPL at the time of issuance of SOCDs. The Examination Report alleges that the Noticee was the "*person in accordance with whose directions or instructions the Board of directors of the company was accustomed to act*". CEO as a post in the organizational hierarchy is a position lower than the Board of Directors or an individual director and hence the Noticee cannot be considered to be a person in accordance with whose directions or instruction the Board of directors of the company is accustomed to act.

12.9.2. The Noticee was never in a position of real authority as the power of determining the corporate policy and the responsibility for decision making for the Company was always vested in Mr. Pradeep Kumar Singh only who held out the Noticee as the CEO of the company while no corresponding authority was ever granted to the Noticee. The Noticee was a freelance agent engaged with the Company who got commission for his services and acted on the directions of the Board of the Company.

12.9.3. That the board resolution dated November 26, 2012 for the meeting of Board of GIIPL conducted on November 10, 2012, the account opening form/ KYC of Kotak Mahindra Bank and the Authorization letter dated November 26, 2012 granted by the Board of Directors to GIIPL to Kotak Mahindra Bank does not establish that the Noticee was the CEO of the Company at the time when the SOCDs were issued by GIIPL. Reliance on above documents is misplaced as these documents relate post the issue of SOCDs by the Company and hence cannot be relied upon.

12.9.4. That the bank account of GIIPL opened with Kotak Mahindra Bank was in respect of one of its residential projects i.e. Green Jasmin for operational ease. Noticee was never in a position of real authority as the power of determining the corporate policy and the authority/ responsibility of decision making for GIIPL was always vested in Mr. Pradeep Kumar Singh, Managing Director.

12.9.5. That the confession of the Noticee before the CJM, CBI cannot be considered as a confession with respect to the present proceedings as the proceedings therein were for the fund-raising exercises in the Green India Multi State Members Credit Co-Operative Society and other companies but not GIIPL.

12.9.6. That the brochure and project diary of Green India Pariwar itself states that the Noticee took charge as the CEO of the company in 2012 and therefore brochure cannot be relied upon in the present proceedings to fix any liability on the Noticee for the cause of action arising in December, 2010.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully considered the allegations levelled against the Noticee in the SCN, the submissions made by the Noticee vide replies dated July 08, 2024 and July 25, 2024, and other relevant documents available on record. I note that the issue that arises for consideration in the present proceedings is the role of the Noticee in the issuance of SOCDs by GIIPL in violation of the provisions of the Companies Act,1956 and 2013, SEBI Act, 1992 and the ICDR Regulations, 2009 as mentioned in Paragraph 6.4 above. For ease of reference the provisions of law alleged to have been violated by the Noticee are reproduced as under:

Companies Act, 1956:

"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.

56. Matters to be stated and reports to be set out in prospectus

(1) Every prospectus issued -

(a) by or on behalf of a company, or

(b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) ……………

(3) No one shall issue any form of application for shares or debentures of a company, unless the form is accompanied by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section:"

Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:

Provided further that this sub-section shall not apply if it is shown that the form of application was issued either –

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to fifty thousand rupees.

60. Registration of Prospectus

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto -

(a) any consent to the issue of the prospectus required by section 58 from any person as an expert; and

(b) in the case of a prospectus issued generally, also –

(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor…….”

*“**Section 2(36): Prospectus***

(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.”

67. Construction of References to Offering Shares or Debentures to the Public, etc.

(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 the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).*

73. Allotment of shares and debentures to be dealt in on stock exchange

(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.

(1A) …….

(2) Where the permission has not been applied under sub-section (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 subsection (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.

Companies Act, 2013

465. Repeal of certain enactments and savings

(1)…

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments--

(a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any

appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;

(d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;

(e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;

(f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;

(g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;

(h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;

(i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

(j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and

(k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act

and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.

SEBI (ICDR) Regulations, 2009:

- *Regulation 4(2) - Application for listing of specified securities on one or more recognized stock exchange*
- *Regulation 5 - Appointment of merchant banker and other intermediaries,*
- *Regulation 6- Filing of draft offer document with SEBI and the designated stock exchange and RoC,*
- *Regulation 7- Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed,*
- *Regulation 25 and 26- Satisfy the conditions of initial public offer,*
- *Regulation 36 and 37 - Lock-in of specified securities held by promoters and persons other than promoters*
- *Regulation 46- Keeping the public issue open for the specified period,*
- *Regulation 47- Pre issue advertisement for public issue*
- *Regulation 57 - Manner of disclosures in the offer documents*
- *Regulation 59 – Prohibition on payment of incentives*

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

Repeal and Savings

301. (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations 2009 shall stand rescinded.

(2) Notwithstanding such rescission:

a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.

b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Regulations and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.

14. Before going into the merits of the present case, it would be appropriate to deal with the preliminary objections raised by the Notice.

Preliminary issues raised and findings:

Validity of proceedings before the QJA:

15. The Noticee, vide his reply dated July 08, 2024, *inter alia*, has raised an objection on the present proceedings stating that the same ought to have been initiated before the WTM, SEBI as the Interim Order and the Final Order in respect of GIIPL was passed by the WTM, SEBI and that a QJA, SEBI, who is a subordinate officer to the WTM, SEBI does not have the authority to either withdraw/ recall the earlier order of WTM or to question the conclusion arrived therein, especially with respect to the findings on the violations committed by the Company. It was submitted by the Noticee that the same is in violation of the principles of natural justice.

16. In order to deal with the said submissions, it is pertinent to refer to the final order passed by the WTM, SEBI in respect of GIIPL and its promoter/ directors dated October 28, 2016. I note that vide the said order, the WTM, SEBI, while holding GIIPL and its directors liable for the contraventions of the provisions of Companies Act, 1956 and 2013, SEBI Act, 1992 and ICDR Regulations in the issuance of SOCDs, made the following observations:

"26. Mr. Pradeep Kumar Singh, Mr. Panchanan Pradhan, Mr. Trinath Panda and Mr. Debasis Padhyare the present directors of the company. As noted above Mr. Pradeep Kumar Singh, Mr. Panchanan Pradhan, Mr. Trinath Panda, Ms. Snehlata Singh, Ms. Suchitra Rani Panda, Mr. Debasis Padhyand Mr. SandeepKumar Singhwere the directors of GIIPL at the relevant point of time. Mr. Panchanan Pradhan, Mr. Trinath Panda, Ms. Snehlata Singh, Ms. Suchitra Rani Pandaand Mr. Debasis Padhyhave argued that they had neither participated in the affairs of GIIPL nor mobilised the funds through the issuance of SOCDs. These persons having been aware of being the directors cannot plead ignorance. They should be aware of the duties and responsibilities that are cast upon a director under law. Further, it is also important to note that Mr. Pradeep Kumar Singh, Mr. Panchanan Pradhan, Mr. Trinath Panda, Ms. Snehlata Singh, Ms. Suchitra Rani Panda were also the promoter/ director in the group companies of GIIPL. It has also been

submitted by them that the main persons responsible for the issue of SOCD are Mr. Pradeep Kumar Singh and Mr. Sunil Kumar Panda. Having considered the submission, I note that it is not in dispute that Mr. Panchanan Pradhan, Mr. Trinath Panda, Ms. Snehlata Singh, Ms. Suchitra Rani Panda and Mr. Debasis Padhy were the directors of the company. Considering the same, it is difficult to grant any relief to Mr. Panchanan Pradhan, Mr. Trinath Panda, Ms. Snehlata Singh, Ms. Suchitra Rani Panda and Mr. Debasis Padhy.

…………..

28. At this stage, it is noted from the replies of the noticees that Mr. Pradeep Kumar Singh and Mr. Sunil Kumar Panda (also referred as CEO of the company) are the main persons and are in the custody of CBI. ***I note that the name of Mr. Sunil Kumar Panda has neither been mentioned in the interim order nor a show cause notice has been issued to him. In the interest of public investors, it is important to examine the role of Mr. Sunil Kumar Panda. Concerned department of SEBI is therefore advised to examine his role in the public issue of SOCD by the company and take appropriate action as deemed fit in accordance with law.****"*

17. In view of the above observations in the final order dated October 28, 2016, a further examination was conducted by SEBI to identify the role of the Noticee in the issue of SOCDs by the Company. Upon completion of the examination, proceedings under Section 11B were initiated in the matter and the matter was assigned to me. With respect to the contention of the Noticee that a QJA is subordinate to WTM and that the present proceedings are in violation of the principles of Natural Justice, I note that in terms of Section 19 of the SEBI Act, 1992, the Board/ SEBI is empowered to delegate such of its powers and functions by general or special Order in writing, to any member, officer of the Board or any other person. Accordingly, in exercise of the said powers, SEBI has delegated its statutory, financial powers and functions to such members or officers of the Board as specified in the Securities and Exchange Board of India (Delegation of Statutory and Financial Powers) Order, 2019 (hereinafter referred to as "**Delegation of Powers Order**"). The Board/ SEBI has since long, already delegated its quasi – judicial functions to individual whole – time members of the Board/ SEBI vide the aforesaid Delegation of Powers Order.

18. I note that vide an amendment made to the Delegation of Powers Order with effect from July 25, 2022, the quasi-judicial functions of the Board under sections 11 (1), 11 (4), 11 (4A), 11B (2), 11D or any regulations framed by SEBI (where no interim, confirmatory or revocation order is envisaged in the matter) has been delegated to the officials of the Board/ SEBI holding the office of Chief General Managers (**CGMs**) and Executive Directors (**EDs**) of the Board/ SEBI. The said Delegation of Powers Order is also available on the website of SEBI. I also note that it is judicially settled position that when a statute has express provision for delegation, any delegation that is made in exercise of such powers is wholly within the jurisdiction. The Parliament in its wisdom under Section 19 of the SEBI Act has provided that the Board/ SEBI (established under section 3 of the SEBI Act) can delegate such powers and functions inter alia to an Officer of the Board.[1]

19. The Hon'ble Supreme Court in ***Sahni Silk Mills (P) Ltd v. E.S.I. Corporation*** *[**1994 SCC (5) 346]*** in the context of delegation of powers observed as under:

"5. The courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maxim delegatus non potest delegare is not being applied specially when there is question of exercise of administrative discretionary power.

6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power."

20. It is also pertinent to note the observations of the Hon'ble Supreme Court in ***The Barium Chemicals Ltd. and Anr. v. The Company Law Board And Ors. [1967 AIR SC 295.]***:

[1] The only exception of the rule is the delegation in respect of powers under Section 29 of the SEBI Act (the rule making power of the Central Government under the SEBI Act).

“Bearing in mind that the maxim delegatus non protest delegate sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by express provision or by necessary implication.”

21. I note that the Hon’ble Madras High Court in its judgment dated August 25, 2006 in ***Coimbatore Stock Exchange v. SEBI [W.P. No. 11557 of 2006]*** has observed as under:

“52. In view of the ruling of the Supreme Court in the case reported in AIR 1967 SC 295 (supra), when the provisions of the statutory enactment did not provide for a further delegation, the same could not be done by way of statutory rules. But, in the case before me, the functions of the Central Government under SCRA by delegation became the function of the Board under Section 11(2)(i) and when once it became the function of the Board, the statute itself authorizes the delegation of such function of the Board under Section 19 to the Chairman or its officers.”

22. Furthermore, I note that the Hon’ble Supreme Court in ***Hitendra Vishnu Thakur v. State of Maharashtra & Ors. [(1994) 4 SCC 602]*** has, *inter alia*, observed that the law relating to forum is procedural in nature and that every litigant has a vested right in substantive law but no such right exists in procedural law. I, therefore, note that SEBI is empowered under Section 19 of the SEBI Act, 1992 to delegate such of its powers and functions to its ‘Officer’ which is an express category or class of persons mentioned under Section 19 itself and hence, when delegation has been made strictly in terms of Section 19 of the SEBI Act, 1992, the preliminary objection of the Noticee to the exercise of powers and initiation of proceedings by a QJA in respect of the Noticee under sections 11 (4) and 11B of the SEBI Act, 1992 in the instant case is not maintainable.

23. Further, with respect to the findings of the WTM, SEBI in the final order dated October 28, 2016 and the submission of the Noticee that a QJA, SEBI, who is a subordinate officer to the WTM, SEBI does not have the authority to either withdraw/ recall the earlier order of WTM or to question the conclusion arrived therein, especially with respect to the findings on the violations committed by the Company, I note that the final order passed by the WTM, SEBI was challenged by the Promoters/ Directors of GIIPL (***Mr. Debasis Padhy Vs SEBI and Panchanan Pradhan Vs. SEBI*** - *Appeal Nos. 6 of 2017 and 17 of 2017*) before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**SAT”**). It is noted that

Hon’ble SAT, vide its Order dated March 19, 2020, while dismissing the aforesaid Appeals, upheld the Order passed by WTM, SEBI. Aggrieved by the same, the said Appellants / directors of GIIPL filed an appeal before the Hon’ble Supreme Court of India (Civil Appeal No. 133-134 of 2021). After hearing the parties, the Hon’ble Supreme Court, vide order dated February 04, 2021 dismissed the Appeals by stating that the Appeals have no merits and observed as under:

“Heard learned counsel for the appellants. We do not find any merit in the appeals. The appeals are, accordingly, dismissed. Pending application(s), if any, shall stand disposed of.”

24. As per the doctrine of stare decisis expressed in the latin maxim *“*stare decisis et non quieta movere*”* which in English translates to *“stand by decisions and not to disturb what is settled*”, a lower authority is bound by the decisions of a higher authority. The aforesaid doctrine is embodied in Article 141 of the Constitution of India which states that “*the law declared by the Supreme Court shall be binding on all courts within the territory of India*”.

25. In light of the final order dated October 28, 2016 passed by WTM, SEBI being upheld by Hon’ble SAT and subsequently by the Hon’ble Supreme Court, I note that the observations made and directions issued vide the aforesaid final order against the Company and its directors have attained finality and are binding on all courts/ authorities. No submission/ argument contrary to the final order dated October 28, 2016 can be considered, being barred by Article 141 of the Constitution of the India. Further, the present proceedings are only to determine the role of Noticee vis-à-vis the issuance of SOCDs by the Company for the violations as alleged in Paragraph 6.4 above. Therefore, there is no violation of principles of natural justice in conducting proceedings before QJA..

<u>On Inspection and Supply of documents:</u>

26. The Noticee, vide his reply dated June 08, 2024 and also during his oral submissions on June 10, 2024, has stated that denial of inspection of all the documents sought by the Noticee is violation of principles of natural justice. The Noticee has also submitted that, voluminous documents were inspected by him on June 20, 2024 and therefore reasonable time should have been granted to him to file his reply. However, the haste in which the present proceeding is being dealt with is in violation of the principles of natural justice.

27. It can be seen from the preceding paragraphs that ample opportunities have been given to the Noticee to seek inspection of documents, submit his reply to the SCN and to avail opportunity of personal hearing. It is pertinent to note that the SCN was delivered to the Noticee on March 18, 2024 and as no reply was received, a hearing was scheduled on May 28, 2024. The Noticee, vide his letter dated May 21, 2024 sought adjournment which was partly acceded to and the hearing was rescheduled to May 28, 2024. Thereafter, another opportunity of personal hearing was granted to the Noticee on June 06, 2024 for which an adjournment request was made by the Noticee on May 31, 2024. The same was then adjourned and rescheduled on June 25, 2024.

28. I note that, subsequent to scheduling of the hearing on June 25, 2024, the Noticee, vide his letter dated June 06, 2024, *inter* alia, sought for inspection of all material/ documents relied upon in the present proceedings as well as all documents forming background and the basis of the orders passed by WTM, SEBI dated March 04, 2015 and October 28, 2016 for the first time. Thus, it can be clearly seen that the Noticee had not requested for inspection of documents until June 06, 2024. Further, it is also noted that the Noticee sought for the inspection of the documents at Mumbai at a date after June 10, 2024. The request for inspection of documents was acceded to and an opportunity of inspection of documents was granted to the Noticee on June 20, 2024 at Kolkata considering that all the relevant and relied upon documents pertaining to the case were available at the Eastern Regional Office of SEBI located at Kolkata. The Noticee availed the opportunity of inspection at Kolkata on June 20, 2024.

29. With respect to the contention of the Noticee that he was denied inspection at Mumbai and the same being in violation of principles of natural justice, it is pertinent to note that while Noticee has the right to seek inspection of documents, the same cannot be at the convenience of the Noticee or his authorized representatives alone. I note that in the present matter, pursuant to receipt of request for inspection of documents, the same was examined and the documents pertaining to the present case were located at the Eastern Regional Office of SEBI at Kolkata. Therefore, an opportunity to inspect the relevant documents was provided to the Noticee at Kolkata as mentioned in the preceding paragraph. I also note that the said request was made by the Noticee after seeking two adjournments to the opportunities of personal hearing provided to him. However, considering the fact that the said opportunity was duly availed by him through his ARs at Kolkata on June 20, 2024, I find that the said objection of the Noticee is irrelevant and therefore, not worthy of any more deliberation.

30. With respect to the contention of the Noticee that selective set of documents were provided to the Noticee for inspection, I find from the perusal of record of inspection maintained and available in the file that inspection of all material relied upon and relevant to and having nexus with the present proceedings have been provided to the Noticee in accordance with the Judgement dated February 18, 2022 passed by the Hon'ble Supreme Court in the matter of ***T. Takano Vs. SEBI (Civil Appeal No. 487-488 of 2022)*** .

31. Furthermore, it is submitted by the Noticee that the present proceedings are conducted in haste. In this respect it is pertinent to note that upon issuance of the SCN on March 01, 2024 by Speed Post, the sequence of events in the instant case are as under:

Table 2

Date	**Particulars**
03.05.2024	Hearing notice sent to Noticee informing that hearing in the matter is scheduled on May 28, 2024.
21.05.2024	Letter from the Noticee seeking adjournment by 7 weeks to respond to allegations in the SCN and to brief a counsel for the hearing.
27.05.2024	Noticee was informed that hearing was rescheduled to June 06, 2024.

31.05.2024	Letter dated May 30, 2024 received from the Noticee seeking adjournment on the ground of summer vacations of lawyers in Mumbai.
04.06.2024	Noticee was informed that the hearing was rescheduled once again to June 25, 2024
06.06.2024	Letter received from the Noticee seeking inspection of documents
20.06.2024	Inspection of documents was availed by legal representative of the Noticee at Eastern Regional Office of SEBI at Kolkata
22.06.2024	Letter from the Noticee seeking adjournment of hearing scheduled on June 25, 2024 so as to examine the documents provided in inspection and to file his response to the SCN.
24.06.2024	In compliance with the principles of natural justice, the hearing was rescheduled to July 10, 2024 and Noticee was provided time till July 08, 2024 to file his reply. Aforesaid was informed to the Noticee vide email dated June 24, 2024.
08.07.2024	Noticee submitted his reply to the SCN dated March 01, 2024
10.07.2024	Noticee availed the opportunity of hearing and made submissions in line with his reply dated July 08, 2024. The Noticee also sought time to file certain additional submissions, which was acceded to and time was granted till July 22, 2024 to file his written submissions.
22.07.2024	Three days' extension sought by the Noticee to submit his written submissions. Accordingly, the same was acceded to and time was granted till July 25, 2024.
25.07.2024	Noticee submitted his additional submissions.

32. From perusal of the chronology as brought out in the above table, I note that multiple requests for adjournment / rescheduling of hearing opportunities and thereafter, request for inspection of documents made (after scheduling of personal hearing) has been acceded to and therefore, the principles of natural justice have been duly complied with. Considering that the SCN was issued to the Noticee on March 01 , 2024 and that ample opportunities have been provided to the Noticee to present his case, I find no merit in the contention raised by the Noticee that the proceedings are conducted in haste.

33. In the light of the above, I find that there is no violation of the principles of natural justice in conducting the present proceedings.

Undue delay in initiation of proceedings:

34. The Noticee has raised an objection that there is an inordinate delay on the part of SEBI in initiating the present proceedings placing reliance upon various cases decided by the Hon'ble Supreme Court and SAT wherein it was held that delay in launching the proceedings by SEBI caused prejudice to the Appellant. In this context, the Hon'ble Supreme Court in ***Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari [(2019) 5 SCC 9]*** has observed that delay in issue of the SCNs itself would not exonerate the defaulters from the default. Reference is also be made to the order of the Hon'ble Supreme Court in the matter of ***SEBI v. Sunil Krishna Khaitan and Ors [Civil Appeal No. 8249 of 2013]***, decided on July 11, 2022, on the aspect of delay and its impact on proceedings in the context of SEBI. The Hon'ble Supreme Court while referring to its earlier decision in the matter of *Bhavesh Pabari* (supra) held as follows:

"81. This Court in the judgment authored by one of us (Sanjiv Khanna, J.) in Bhavesh Pabari (supra) had examined the question of delay and laches in initiating proceedings under Chapter VI-A of the Act and the principle of law that when no limitation period is prescribed proceedings should be initiated within a reasonable time and what would be reasonable time would depend upon facts and circumstances of each case. In this regard, it was held as under:

> *"35. The Appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show-cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a*

reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc. The show-cause notice in the present case had specifically referred to the respective dates of default and the date of compliance, which was made between 30-8-2011 to 29-11-2011 (delay was between 927 days to 1897 days). Only upon compliance being made that the defaults had come to notice. In the aforesaid background, and so noticing the quantum of fine/penalty imposed, we do not find good ground and reason to interfere."

82. The directions given in the aforesaid quotation should not be understood as empowering the authorities /Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast Rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to inordinate delay in issuance of a show-cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the duty of the authority/ officer to consider the question objectively, fairly and in a rational manner. There is public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified, should be done within reasonable time. This prevents miscarriage of justice, misuse and abuse of the power as well as ensures that the violation of the provisions are checked and penalised without delay, thereby effectuating the purpose behind the enactment."

35. On perusal of records available before me, I find that although the issuance of SOCDs by the Company was done in the Financial Year 2010-2011, it was only during the proceedings before the WTM, SEBI that the alleged role of the Noticee was noted from the replies of the Noticees therein and vide final order dated October 28, 2016, WTM, SEBI, *inter alia,* advised the concerned department of SEBI to examine the role of the Noticee. Accordingly, letters dated July 12, 2017 and August 08, 2017 seeking information / clarification were sent to the Noticee and the directors of GIIPL. On examination of the response received, letters dated July 24, 2019, August 23, 2022 and October 28, 2022 were sent to CBI seeking relevant details/ documents of the evidence against the Noticee and on the basis of information received from CBI, on January 25, 2023 bank account details of GIIPL were sought from Kotak Mahindra Bank and the same was received on February 06, 2023. Thereafter, the competent authority approved the initiation of enforcement action against the Noticee and the case was assigned to me and a SCN was duly issued to the Noticee on March 01, 2024 and the further chronology has been duly explained at table 2 above.

36. Considering the sequence of events laid down in aforesaid paragraph while I agree with the contention of the Noticee that there has been delay in initiation of the present proceedings, I note that mere delay in initiation of proceedings would not absolve the Noticee from the liabilities for violations as alleged in Paragraph 6.4. I note that SEBI could only initiate action pursuant to the observations made in SEBI Order dated October 28, 2016. Also, as a statutory authority, it had to necessarily follow the process of further investigation to collect necessary evidence. In the present case, I note that SEBI had to seek evidence from the CBI and Kotak Mahindra Bank in addition to seeking evidence from the Noticee and directors of GIIPL and had to independently consider the evidence received. In light of the aforesaid, I am of the view that the plea of objection regarding the initiation of the proceedings with a delay raised by the Noticee is not tenable.

37. Having addressed the preliminary issues raised by the Noticee, I would now proceed to deal with the case on merits.

38. With respect to the contention of the Noticee that the issue of SOCDs by GIIPL was private placement and not a public issue as the same was issued to only to two companies namely Green India Retailing Pvt. Limited and Green India Properties Pvt. Ltd, I find that the said contention was raised in the proceedings before the WTM, SEBI and has been considered in detail in the Order dated October 28, 2016. The relevant extract of the same is as under:

"*13. I have considered the interim order, the replies/ written submissions and the material available on record. The prima facie findings made in the interim order in respect of offer and issue of SOCDs are undisputed. However, it has been argued by the noticees namely Mr. Panchanan Pradhan, Mr. Debashish Padhi, Mr.*

Trinath Panda, Ms. Snehlata Singh and Ms. Suchitra Rani Panda that the SOCDs were issued only to two companies namely Green India Retailing Pvt. Limited and Green India Properties Pvt. Limited in the year 2010. It has also been said that on receipt of SOCDs, the said two companies had transferred the same to other persons. The said noticees have further submitted that the details of such transfers have already been intimated to the Registrar of Companies, Cuttack by GIIPL in its annual return filed for the concerned financial year.

14. Considering the above submissions of the noticees, the details of the companies namely Green India Retailing Pvt. Limited and Green India Properties Pvt. Limited were analysed. From the analysis the following was revealed:

a. The promoter and director of Green India Properties Pvt. Limited are Mr. Pradeep Kumar Singh and Mr. Trinath Panda. The said persons are also the promoter and director of GIIPL.

b. The promoter and director of Green India Retailing Pvt. Limited are Mr. Panchanan Pradhan, Mr. Pradeep Kumar Singh, Ms. Snehlata Singh and Ms. Suchitra Rani Panda who are also promoter and director of GIIPL.

15. In view of the above, it can be said that Green India Retailing Pvt. Limited and Green India Properties Pvt. Limited are the group companies of GIIPL and the affairs of these companies were managed in the combination of the noticees. As per the interim order, the company had allotted SOCDs on December 16, 2010 and the same were allotted to 751 persons as on March 31, 2013. From the details of allotment it is seen that the SOCDs were allotted to two companies namely Green India Retailing Pvt. Limited and Green India Properties Pvt. Limited. However, it is important to note that Green India Retailing Pvt. Limited had transferred the SOCDs to 616 persons during the financial year 2010-11 (i.e. to 378 persons as on December 27, 2010 and to 238 persons on January 03, 2011) and to 42 persons during the financial year 2011-12 (i.e. to 1 person as on May 25, 2011; to 21 persons as on June 03, 2011 and to 20 persons as on July 15, 2011).

16. The allotment and transfer of SOCDs to individuals suggests to be mere device to misguide the regulatory authorities. In my view, the issue and transfer of SOCDs were a sham and façade to circumvent the applicable provisions of law. It is important to note that the company in order to avoid the liability under the Companies Act, 1956 and compliance with the public issue norms, had devised a method of allotting the securities first to group companies and then the same has been transferred to the individuals.

17. In terms of the first proviso to Section 67(3) of the Companies Act, 1956, where an offer or invitation to subscribe for securities is made to fifty persons or more, *then such an offer/ invitation has to be construed as a public offer/ invitation. GIIPL could not bypass the operation of the first proviso to section 67(3) of the Companies Act, 1956 by first making allotments to its group companies and then transferring such securities to the individuals. It is mandatory for every company to comply with the aforesaid proviso both in letter and spirit. In view of the discussion above, it can be concluded that the company had allotted SOCDs to 616 persons in the financial year 2010-2011.*

18. Having considered the above discussion, I find no reason to differ with the observations made in the interim order that the company made a 'public issue' of SOCDs in terms of the first proviso to section 67(3) of the Companies Act, 1956. As the issuance of SOCDs by the company was a 'public issue', it ought to have complied with the applicable provisions of the Companies Act, 1956 as alleged in the interim order. In the present case, there is no dispute to the fact that the company failed to comply with the provisions of law regulating such public issues i.e. Section 56, 60 read with Section 2(36) and 73 of the Companies Act, 1956 and Regulations 3, 4(2), 5, 6, 7, 25, 26, 36, 37, 46, 47, 57 and 59 of the ICDR Regulations. Accordingly, I find the company liable for violating the aforesaid provisions of law."

39. As mentioned in Paragraph Nos. 23, 24 & 25 above, the aforesaid observations of WTM, SEBI have been upheld by SAT and the Hon'ble Supreme Court. In the light of the same, I find no reason to differ from the findings of the WTM that the issue and transfer of SOCDs to only two group companies by GIIPL were a sham and façade to circumvent the applicable provisions of law and that the same is indeed a public issue of securities as per the provisions of Section 67(3) of the Companies Act, 1956.

40. The Noticee, vide his replies dated July 08, 2024 and July 25, 2024, has vehemently contested the allegation of being an *'officer in default'* in terms of Section 5 of the Companies Act, 1956 and has denied that he was the CEO of the Company at the time of issuance of the SOCDs by the Company. He has submitted that he was merely a freelancer following the instructions and directions of the Board of the Company and had no directorial/ administrative/ managerial authority over the business affairs of the Company and that the day-to-day activities of the Company as well as the Green India Parivar (Group) were under direct control and supervision of Mr. Pradeep Kumar Singh. He has further submitted that reliance cannot be placed on the documents annexed with the SCN as they do not establish that the Noticee was the CEO of the company at the time of the issue of SOCDs and that the statement before CBI and the complaints received by CBI against the Noticee were in respect to some deposits taken by the Green India Multi State Members Credit Co-operative Society Limited (hereinafter referred to as "**Green India Cooperative Society**").

41. On perusal of records, I note that as per Noticee's own submission before Learned Chief Judicial Magistrate (**CJM**), CBI dated June 06, 2017, he along with Mr. Pradeep Kumar Singh and others had floated nine companies including GIIPL, GIRPL and GIPPL and carried out the day to day business of the said companies. Further, it has been specifically submitted that he was the CEO and in charge of the day-to-day affairs of Green India Group of companies (including GIIPL) along with Mr. Pradeep Kumar Singh. Also, most of the directors of the said company were his family members. Furthermore, the Noticee has submitted that he along with Mr. Pradeep Kumar Singh was instrumental in collecting huge deposits from the public and misleading them by promising higher returns from investing in the Green India Group of companies (including GIIPL). Thus, the Noticee, in the said submission before CBI, has clearly admitted of being the CEO and to have raised monies from public in the aforesaid companies. I note that the aforesaid admission of Noticee before Learned CJM, CBI led to the conviction and sentencing of the Noticee, vide conviction order and sentencing order dated July 06, 2017 and July 08, 2017, respectively.

42. In the light of the above, I find that the contention of the Noticee that he was a mere freelancer following the instruction and directions of the board and had no directorial/ administrative/ managerial authority over the business affairs of the company is without any merit and cannot be accepted. Further, the Noticee has contested his role as the CEO of the company at the relevant time i.e., during F.Y. 2010-2011, I find that no documentary evidence is produced by the Noticee in support of his contentions.

43. In the absence of material in support of the contentions made by the Noticee his position in the Green India Group of Companies (including GIIPL) has to be viewed based on the material available on record.

44. I note that the Noticee has contended that the complaints received by CBI against the Noticee were with respect to collection of monies by Green India Cooperative Society and therefore, the same cannot be considered for the charges levelled against him in the present case. On perusal of the copies of complaints, while the Complainants do state themselves to be depositors of Green India Multi-State Members Credit Co-operative Society, I note that in certain complaints the complainants have annexed copies of SOCDs issued in the name of the Complainants by GIIPL. The dates of issue mentioned on the copies of the SOCDs are December 27, 2010 and January 03, 2011, respectively. On perusal of Paragraph 15 of the final order dated October 28, 2016, I note that these are the same dates on which the allotment of the SOCDs was made to 378 and 238 persons, respectively, by the Company. In view of the same, the submission of the Noticee cannot be considered.

45. Further, the Noticee has also stated that the records of the proceedings before CBI cannot be relied upon for charging the Noticee in the present proceedings. Here, it is pertinent to note that in the past, SEBI has been initiating enforcement actions against the entities for violation of various provisions of securities laws based on the material / information / documents received from third parties and / or other agencies, both domestic as well as foreign. However, an independent examination is also conducted by SEBI before initiating any enforcement action against such an entity. In the instant case, I find that the material / information was received from the CBI with respect to the ongoing investigation with respect to the Noticee in the case of mobilization of funds from investors. Thereafter, based on the said material, SEBI conducted a further examination about the role of the Noticee with respect to issuance of the SOCDs by GIIPL. Thus, based on the material received from CBI and also the examination conducted by SEBI separately, the present SCN has been issued to the Noticee in the matter.

46. Also, it is pertinent to draw reference to Section 313 of the Criminal Procedure Code, 1973 (hereinafter referred to as "**CrPC, 1973**") which reads as under:

> *"**313. Power to examine accused.***
>
> *…………….*
>
> *(4)* ***The answers given by the accused may be taken into consideration in such inquiry or trail, and put in evidence for or against him on any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.****"*

47. Thus, the fact that there is an admission on record by the Noticee that he was the CEO of the Company and was also in-charge of the day-to-day affairs of the company before the CBI which in terms of Section 313 of the CrPC, 1973 can be taken into consideration in such inquiry or trial, and put in evidence for or against him on any other inquiry into, or trial for, any other offence wherein such answers may tend to show the commitment of a contravention of law, I do not find any merit in the submissions of the Noticee and conclude that the Noticee, being the CEO, was an *"officer in default"* in terms of Section 5 of the Companies Act, 1956 and therefore, is liable for the violations of the provisions of the Companies Act, 1956 and Companies Act, 2013 and the ICDR Regulations by GIIPL under Section 27 of the SEBI Act, 1992.

48. I note that SEBI is a statutory body established under the provisions of SEBI Act, 1992 with a mandate to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. Section 11 of the SEBI Act, 1992 lays down the functions of the board and empowers SEBI to take such measures as deemed fit in discharge of its mandate.

49. In light of the observations made in Paragraph 47 above, since the Noticee was an '*officer in default*' in terms of Section 5 of the Companies Act, 1956, the Noticee is liable to make refund, jointly and severally, with other officers of GIIPL who are in default as per WTM order dated October 28, 2016 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. I note that the Hon'ble SAT in the matter of ***Manoj Agarwal Vs. SEBI (Appeal No. 66 of 2016)*** vide its decision dated July 14, 2017, *inter alia*, observed as under:

"8. In the present case, fact that Rs.40 lac was collected by BREDL through issuance of redeemable preference shares during the period when the appellant was a director of BREDL is not in dispute. Similarly fact that the redeemable preference shares were issued to more than 50 entities and as a result BREDL and its directors were obliged to follow the public issue norms laid down under Section 56 of the Companies Act, 1956 is also not in dispute.

9. In view of the fact that BREDL failed to follow the public issue norms contained in Section 56 of the Companies Act, 1956 before issuance of redeemable preference shares to more than 50 entities and no officer was authorised by BREDL to comply with the public issue provisions contained in the Companies Act, 1956 including the obligation to refund the amount under Section 73(2), the WTM of SEBI has held that all directors of BREDL were "officer in default" and accordingly directed BREDL and all its directors including the appellant to refund the amount collected from the investors with interest at the rate as more particularly set out in the impugned order.

10. Argument that the appellant was not a person responsible for issuance of redeemable preference shares and therefore for failure on part of BREDL and its directors to comply Section 73(2) of the Companies Act, 1956 the appellant could not be made liable is without any merit. In the present case, even though the intention of BREDL was to collect Rs.40 lac by issuance of redeemable preference shares through private placement and not by the general public, admittedly allotments were made to more than 50 entities and therefore BREDL was obliged to follow the public issue norms specified under the Companies Act, 1956. Since the said norms were not followed, under Section 73(2) of the Companies Act, 1956 it was obligatory on part of BREDL to refund the amount collected within the time stipulated therein. As the amounts were not refunded to the investors it is held that BREDL and every director of BREDL who is an "officer in default" shall refund jointly and severally the amount with interest. Therefore, fact that the appellant was not responsible for issuance of redeemable preference shares does not absolve the obligation of all the directors of BREDL including the appellant to refund the amount collected from the investors with interest as set out in the impugned order."

50. I further note that GIIPL through the offer of SOCD's collected Rs. 5 Crore during the financial year 2010-2011. Therefore, I find the Noticee, alongwith other officers of GIIPL, who are officers in default, are 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 of law for the issuance of SOCD's during FY 2010-2011.

51. On perusal of records available before me, I note the Noticees in SEBI Order dated October 28, 2016 failed to comply with the directions passed therein and therefore, SEBI has initiated recovery proceedings against the Noticees therein which are still pending. Further, I note that an amount of Rs. 5,49,796 has been recovered from the Noticees therien till date.

52. In view of the foregoing, I find it appropriate to issue directions, including directions for refund and debarment, on the Noticee under Section 11B read with Section 11(1) of the SEBI Act, 1992 in order to meet the ends of justice. The directions issued herein are to be read along with the directions issued by WTM, SEBI vide final order dated October 28, 2016.

ORDER AND DIRECTIONS

53. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(4) and 11B read with Section 19 of the SEBI Act, 1992 hereby pass the following directions:

53.1. The Noticee, Mr. Sunil Kumar Panda shall, within a period of three (3) months from the date of coming into force of this Order shall refund the monies collected through the issue of Secured Optionally Convertible Debentures to the allottees with an interest at the rate of 15% per annum from the date of receipt of money till the date of actual payment. However, the liability of the Noticee for making refund shall be joint and several with the company and other directors who have been directed to make refund vide SEBI Order dated October 28, 2016.

53.2. The repayments to the complainants/ investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;

53.3. The Noticee shall within fifteen days from the date of this Order submit to SEBI complete details of their assets (alongwith proofs thereof) certified by a peer reviewed Chartered Accountant.

53.4. The Noticee, Mr. Sunil Kumar Panda, is permitted to sell assets of the company and deposit the sale 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 allottees till the full refund/ repayment as directed above is made.

53.5. The Noticee, Mr. Sunil Kumar Panda, shall issue public notice in all editions of one English national daily and one vernacular daily with wide circulation, detailing the modalities for refund, including the details of contact persons including names, addresses and contact details, within 15 days of coming into force of this direction;

53.6. Within seven days of completion of refund/ refund as directed in Paragraph 53.1 above, Noticee shall file a certificate of such completion with SEBI from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. Such certificate shall be issued by the Chartered Accountants after verifying the relevant documents including bank accounts of the Noticee and satisfying themselves that the refund has actually been made.

53.7. 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.

53.8. The Noticee, Mr, Sunil Kumar Panda is restrained from, directly or indirectly, accessing the capital market by issuing prospectus, any offer document or advertisement soliciting money from the public and are further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly, in whatsoever manner for a period of four (4) years or till the date of refund of money to the allottees, whichever is later.

53.9. The Noticee, Mr. Sunil Kumar Panda is also restrained from associating himself, with any listed public company and any public company which intends to raise money from the public, for a period of four (4) years or till the date of refund of money to the allottees, whichever is later.

54. This order shall come into force with immediate effect.

55. A copy of this order shall be sent to the Noticee / Mr. Sunil Kumar Pandey, recognized Stock Exchanges, banks, Depositories and Registrar and Transfer Agents of mutual funds to ensure that the directions given above are strictly complied with.

Date: August 27, 2024
Place: Mumbai

DR. ANITHA ANOOP
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA