

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, against GSHP Realtech Limited and its Directors, viz. Shri Sanjay Kumar Srivastava, Shri Arun Kumar Singh and Shri Dharampal Kumar Rawat, Shri Mahesh Kumar Singh and Shri Raj Kumar Mondal; its Debenture Trustee, viz. GSHP Welfare and Development Trust.

1. Securities and Exchange Board of India ("**SEBI**") received a letter dated April 4, 2013, from an investor regarding the Issue of "*Secured Non-Convertible Redeemable Debentures*" ("**NCDs**") by GSHP Realtech Limited ("**GSHP**").
2. Thereafter, SEBI vide letter dated July 17, 2013, while stating: "*It has come to our notice that you (GSHP) are raising funds from public by issuing NCDs ostensibly by way of private placement. No Prospectus or DRHP or statement in lieu of prospectus or information memorandum (was) filed with (SEBI)*", advised GSHP to furnish the following information within 15 days from the date of receipt of the aforesaid letter, viz. –
 - i. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with ROC for issuance of NCDs.
 - ii. Copy of the Memorandum and Articles of Association of the company;
 - iii. Audited Balance Sheet and Profit & Loss Account of the company for the last 3 years;
 - iv. Name, addresses and occupation of all the promoters/directors of the company;
 - v. Names and details of the Key Managerial Personnel of the company;
 - vi. Other information in respect of every series of NCDs issued by the company, viz. –
 - a. Date of opening and closing of the subscription list;
 - b. Details regarding the number of application forms circulated inviting subscription;
 - c. Details regarding the number of applications received;
 - d. Details regarding the number of allottees and list of such allottees;

- e. Number of NCDs allotted and value of such allotment against each allottee's name.
 - f. Details regarding subscription amount raised;
 - g. Date of allotment of NCDs;
 - h. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
 - i. Date of dispatch of NCDs;
 - j. Details of the total number of applicants for each of GSHP's scheme besides the list of final allottee;
 - k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of NCDs;
 - l. Terms and conditions of the issue of NCDs.
3. GSHP, vide letter dated August 1, 2013, while requesting for an extension of 3–4 weeks for submitting information to SEBI in respect of NCDs issued by the company, submitted the following, viz. –
- i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Audited Balance Sheet and Profit & Loss Account of the company for the last 3 years;
 - iii. Name, addresses and occupation of all the promoters/directors of the company;
 - iv. Names and details of the Key Managerial Personnel of the company;
4. Thereafter, vide letter dated August 24, 2013, GSHP, while enclosing a list of investors with their particulars, amount, no. of NCDs issued, *inter alia* submitted –
- i. *"(GSHP) is neither a listed company nor it is intended to be listed with any of the recognized Stock Exchanges of India in near future. We have issued (NCDs) as per the guidelines and in terms of applicable provisions of the Companies Act, 1956 and in terms of the provisions of Articles of Association of the Company.*
 - ii. *(GSHP) is also neither a 'Financial Institution' as defined under section 45I(c) of the Reserve Bank of India Act, 1934, nor a 'Non-Banking Financial Company' as defined under section 45I(f) of (that Act). (GSHP) is not carrying on any NBFC activities ...*
 - iii. *(GSHP) has issued (NCDs) from time to time on private placement basis. We don't have any schemes in the name of our Company which is open to public at any point of time since incorporation*

and as such, we have not issued any prospectus/RHP, Pamphlets, Advertisement or other promotional materials for issuing of (NCDs) to public. ...

iv. ... (GSHP) have issued (NCDs) to various persons from time to time total amounting to ₹ 2,88,16,680 ..."

5. Subsequently, SEBI vide letter dated September 20, 2013, advised GSHP to submit *inter alia* information, viz. Copy of Form 10 filed with the Registrar of Companies ("**ROC**") for Issue of NCDs, details with respect to allotment of debentures made amounting to ₹ 2,88,16,680 and point-wise details of information sought vide SEBI letter dated July 17, 2013, in respect of NCDs issued by that company.
6. GSHP replied to SEBI vide letters dated September 25, 2013 and October 3, 2013, and submitted the information sought vide SEBI letter dated September 20, 2013. Further, GSHP submitted point-wise details of information in respect of NCDs issued by that company wherein it *inter alia* stated –
 - a. "Date of opening and closing of the subscription list – Not applicable as we have not issued any such scheme for public and there was no opening and closing date of the subscription;*
 - b. Details regarding the number of application forms circulated inviting subscription – We have issued application form only to close friends, associates, relatives, known person to our director, directors and associates and given only for private placement basis and not open for public;*
 - c. Date of dispatch of NCDs – There is no such dispatch process through courier or post box, either debenture holder used to collect their respective certificates from our offices personally or collected through our associates ..."*
7. SEBI also intimated several authorities, viz. Registrar of Companies, Kolkata (vide letter dated January 31, 2014) ("**ROC**"); the Convener, Regional Economic Intelligence Council, Office of Chief Commissioner of Customs, Kolkata (vide letter dated February 18, 2014) and to the Deputy Director , Income Tax (INV), Kolkata (vide letter dated February 25, 2014), regarding complaint received against GSHP alleging fund mobilization from the public through issue of NCDs.
- 8.1 The material available on record i.e. correspondences exchanged between SEBI and GSHP alongwith the documents contained therein, have been perused. On an examination of the same, it is observed that –

- i. GSHP was incorporated on August 19, 2010, with the ROC, Kolkata, West Bengal with CIN No. as U45200WB2010PLC152445, having its Office at 189 Rabindra Sarani, 1st Floor, Kolkata-700007, West Bengal, India.
- ii. The Directors in GSHP (as per information submitted vide GSHP's letter dated August 1, 2013) were Shri Sanjay Kumar Srivastava, Shri Arun Kumar Singh and Shri Dharampal Kumar Rawat.
- iii. GSHP invited subscription for "*Secured Non-Convertible Redeemable Debentures*" ("***Offer of NCDs***") of ₹ 100 each aggregating to ₹ 31 Crores (with option of retaining the over subscription upto another ₹ 31 Crores), in accordance with the following schemes, viz. -

Scheme – I								
Plan	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>H</i>
Redemption Period	<i>1 Year</i>	<i>1.3 Years</i>	<i>3 Years</i>	<i>5 Years</i>	<i>7 Years</i>	<i>10 Years</i>	<i>12 Years</i>	<i>14 Years</i>
Issue Price	<i>1000</i>	<i>1000</i>	<i>1000</i>	<i>1000</i>	<i>1000</i>	<i>1000</i>	<i>1000</i>	<i>1000</i>
Redemption Value	<i>1200</i>	<i>1225</i>	<i>1500</i>	<i>2110</i>	<i>4000</i>	<i>5500</i>	<i>8000</i>	<i>11000</i>

Scheme – II			
Plan	A	B	C
Redemption Period	<i>3 Years</i>	<i>5.6 Years</i>	<i>8 Years</i>
Principal Value	<i>1,00,000</i>	<i>1,00,000</i>	<i>1,00,000</i>
Monthly Redemption	<i>1300</i>	<i>1700</i>	<i>2100</i>

- iv. The "*Offer of NCDs*" is stated to have been made on a private placement basis. Application under the "*Offer of NCDs*" must be made for a minimum amount of ₹ 1000 each and in multiples of ₹ 1000 thereafter.

- v. From the information submitted by GSHP to SEBI, it is observed that it had issued *Secured Non-Convertible Redeemable Debentures* on several occasions since incorporation, to a large number of investors, details of which are reproduced below –

Sl. No.	Financial Year	Date of allotment	No. of debentures allotted	No. of persons to whom allotted	Total Amount (₹)
1	2011-12	31.01.2011	1150	4	115,000
		02.08.2011	2700	7	270,000
		26.10.2011	3675	5	367,500
		30.01.2012	1100	3	110,000
		31.03.2012	15600	16	1,560,000
Sub-Total			24225	35	2,422,500
2	2012-13	28.06.2012	11470	21	1,147,000
		01.10.2012	38930	48	3,893,000
		03.10.2012	11740	19	1,174,000
		15.12.2012	7245	31	724,500
		18.12.2012	8040	35	804,000
		22.12.2012	17020	46	1,702,000
		28.12.2012	31265	45	3,126,500
		29.12.2012	7390	11	739,000
		01.01.2013	19775	46	1,977,500
		04.01.2013	17950	47	1,795,000
		08.01.2013	23872	45	2,387,200
		10.01.2013	28805	46	2,880,500
		31.01.2013	14870	32	1,487,000
		28.02.2013	13720	31	1,372,000
		30.03.2013	11850	32	1,185,000
Sub-Total			263942	535	26,394,200
Total			288167	570	28,816,700

- vi. GSHP created a charge amounting to ₹ 1 Crore on December 22, 2011 and filed Form 10 with the ROC on January 9, 2012, for issue of series of debentures amounting to ₹ 1 Crore. From a scrutiny of the e-form (filed by GSHP as part of the aforesaid Form 10) and which has been obtained from the *MCA 21 Portal*, it is observed that for the aforementioned "*Offer of NCDs*", GSHP attached a list containing the names of 46 individuals, which was certified by the Director of that company, stating: "*The said*

debenture issued on private placement basis under the Company Act 1956 shall not be offered more than 49 persons in a trench and list of proposed debenture holder listed below".

vii. Thereafter, GSHP again filed Form 10 with the ROC on June 27, 2012, for modifying the existing charge of ₹ 1 Crore with an increase to an amount of ₹ 31 Crores. Further, through the aforesaid Form 10, GSHP proposed an increased in the issue of series of debentures to ₹ 31 Crores. It was noted that the same list containing the names of 46 individuals (as referred to at paragraph 8.1(vi) above) was filed as attachment to the e-form.

8.2 In the context of the abovementioned details of the "Offer of NCDs", the issue for determination in the instant matter is whether the mobilization of funds by GSHP through the aforesaid Offer, is in accordance with the provisions of the SEBI Act, 1992 ("SEBI Act") read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("Debt Securities Regulations"); the Companies Act, 1956 read with the Companies Act, 2013.

8.3 I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in ***Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)*** (hereinafter referred to as the "***Sahara Case***"), had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

8.4 In this regard –

i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which 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) ...

(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)."*

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sahara Case* observed that:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/ invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ...

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

- iii. In the instant matter, for ascertaining whether the "Offer of NCDs" is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the no. of subscribers is of utmost importance.
 - a. The "Offer of NCDs" is stated by GSHP to have been made on a private placement basis and "shall not be offered (to) more than 49 persons in a trench". In this context, it is observed that during the financial year 2011–12, under the "Offer of NCDs", GSHP allotted NCDs to only 35 individuals/investors, for which it collected approximately ₹ 0.24 Crores. However, for the financial year 2012–13, GSHP allotted NCDs to 535 individuals/investors under the "Offer of NCDs" and mobilized funds amounting to approximately ₹ 2.64 Crores.
 - b. It is observed from the various Minutes of the Board Meeting of GSHP (for meetings held on March 31, 2012; June 28, 2012; August 31, 2012; September 3, 2012; October 3, 2012; October 5, 2012; December 15, 2012; December 18, 2012; December 22, 2012; December 28, 2012; December 29, 2012; January 1, 2013; January 4, 2013; January 8, 2013; January 10, 2013; January 31, 2013; February 28, 2013 and March 30, 2013) that the Board of that company passed similar resolutions *inter alia* approving the allotment of NCDs of ₹ 100 each to certain allottees "*whose details are mentioned in the allotment list placed before the meeting and initiated by the Chairman on private placement basis.*"

- c. It is pertinent to note that the allotments made during the financial year 2012–13, consisted of *inter alia* the following series of allotments, viz. –

Period of Allotment	No. of Investors/Allottees
October 1–3, 2012	67
December 15–22, 2012	112
December 28, 2012–January 4, 2013	149
January 8–10, 2013	91

- d. The abovementioned allotments during the financial year 2012–13, were made within a very short span of approximately 2–8 days between each such allotment; for example, allotment to 67 investors/allottees was made within a very short time span between October 1–3, 2012. Vide its letter dated August 24, 2013, GSHP submitted that: "*the proceeds of issue of NCDs has been utilized for procuring land, real estates, investment in business*". While it is observed that each allotment of NCDs was approved by a resolution passed by the Board of Directors of GSHP [as stated in paragraph 8.4(iii)b], the frequency of and time span between such approvals coupled with the series of allotments made thereafter would *prima facie* indicate that the "*Offer of NCDs*" was a public issue of securities and such method adopted by GSHP for mobilization of funds is nothing but a device to circumvent the provisions of section 67(3) of the Companies Act, 1956. In view of the same, the abovementioned allotments under the "*Offer of NCDs*", therefore, have to be construed as emanating from a *single offer of securities* and *prima facie* indicate that the number of persons to whom such offer was made by GSHP in tranches during the financial year 2012–13, was above the limit of forty–nine persons as prescribed under Section 67(3) of the Companies Act, 1956.
- e. GSHP is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and therefore, is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.
- f. In addition to the above, it is observed that GSHP created a charge amounting to ₹ 1 Crore on December 22, 2011 and filed Form 10 with the ROC on January 9, 2012, for issue of series of debentures amounting to ₹ 1 Crore; as

part of the aforementioned "*Offer of NCDs*", GSHP attached a list to the e-form (filed by GSHP as part of the aforesaid Form 10) containing the names of 46 individuals, which was certified by the Director of that company to be a "*list of proposed debenture holder*". Thereafter, GSHP again filed Form 10 with the ROC on June 27, 2012, for modifying the existing charge from ₹ 1 Crore to ₹ 31 Crore alongwith a proposed increase in the issue of series of debentures to ₹ 31 Crores; the same list containing the names of 46 individuals was filed as an attachment to the e-form in respect of the subsequent "*Offer of NCDs*". However, on a comparison of the aforementioned two lists each containing names of 46 individuals against the list of 570 debenture holders (submitted by GSHP vide letter dated August 24, 2013) to whom the "*Offer of NCDs*" was made by GSHP, it is observed that only 3 names were common in such lists.

- g. In view of the above, the "*Offer of NCDs*" during the financial year 2012–13, would *prima facie* qualify as a public issue under the first proviso to Section 67(3) of the Companies Act, 1956. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI in the case of companies who intend to get their securities listed.

8.5 I note that –

- i. From the abovementioned, it will follow that since the "*Offer of NCDs*" is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard, reference is made to Sections 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which 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.

(1A) ...

(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 1 [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 five thousand rupees."

- ii. In the *Sabara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that –

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."

- iii. In the facts of the instant case, since the "Offer of NCDs" was made to fifty persons or more by GSHP, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956. It therefore *prima facie* appears that GSHP has violated the provisions of

Section 73(1) of the Companies Act, 1956, since it has failed to ensure listing with a recognised stock exchange of the securities issued under the "*Offer of NCDs*".

- iv. As per Section 73(2) of the Companies Act, 1956, the obligation to refund the amount with interest that was collected from investors under the "*Offer of NCDs*" is mandatory on GSHP. In this regard, there is no evidence on record to indicate whether or not GSHP has paid interest to the investors where such *Debentures* are not allotted within 8 days under the "*Offer of NCDs*", as per the aforesaid Section. In view of the same, I find that GSHP has *prima facie* not complied with the provisions of Section 73(2) of the Companies Act, 1956.
- v. Section 73(3) of Companies Act, 1956, says that all moneys received shall be kept in a separate bank account maintained with a Scheduled Bank 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 five thousand rupees. In the instant case, there is no evidence on record to indicate whether or not funds received from the investors under the "*Offer of NCDs*" has been kept in separate bank account by GSHP. In view of the same, I find that GSHP has *prima facie* not complied with the provisions of Section 73(3) of Companies Act, 1956.

- 8.6 Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the ROC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), "*prospectus*" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, since the "*Offer of NCDs*" was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, GSHP was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. In this regard, GSHP in its letter dated August 1, 2013, submitted: "*We don't have any schemes in the name of our Company which is open to public at any point of time since incorporation and as such, we have not issued any prospectus/RHP, Pamphlets, Advertisement or other promotional materials for issuing of (NCDs) to public.*" In view of the same, I find that GSHP has not complied with the provisions of Section 60 of Companies Act, 1956.

- 8.7 Under Section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that GSHP has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
- 8.8 Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. Further, under Section 117C of the aforesaid Act, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. Based on the material available on record, I find that GSHP has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
- 8.9 As per Section 465(1) of the Companies Act, 2013, the Companies Act, 1956, "*shall stand repealed*". However, Section 465(2)(i) of the Companies Act, 2013, provides that:
- "(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;"
- 8.10 In addition to the above, reference may be made to the Debt Securities Regulations, which were framed by SEBI in exercise of its powers under Section 30 of the SEBI Act and are applicable to the public issue and listing of debt securities. It may be relevant to

note that under the aforesaid Regulations, '*debt securities*' have been defined as '*non-convertible debt securities which create or acknowledge indebtedness, and include debenture...*' In this context, I find that GSHP, through the "*Offer of NCDs*", which is a public issue of debt securities, has *prima facie* violated the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- i. Regulation 4(2)(a) – *Application for listing of debt securities*
- ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
- iii. Regulation 4(2)(c) – *Credit rating has been obtained*
- iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
- v. Regulation 4(4) – *Appointment of Debenture Trustee*
- vi. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- vii. Regulation 6 – *Filing of draft Offer Document*
- viii. Regulation 7 – *Mode of disclosure of Offer Document*
- ix. Regulation 8 – *Advertisements for Public Issues*
- x. Regulation 9 – *Abridged Prospectus and application forms*
- xi. Regulation 12 – *Minimum subscription*
- xii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiii. Regulation 15 – *Trust Deed*
- xiv. Regulation 16 – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

8.11 Upon a consideration of the aforementioned paragraphs, I am of the view that GSHP is *prima facie* engaged in fund mobilising activity from the public, through the "*Offer of NCDs*" and a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Section 117B, Section 117C) read with Section 465 of the Companies Act, 2013 and the Debt Securities Regulations.

9. SEBI's powers under Sections 11, 11A, 11B and 11(4) of the SEBI Act, as interpreted by judicial authority, are not fettered by any other law including the Companies Act and in view of the provisions of Section 55A of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013, administrative authority on the subjects relating to public

issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 and Section 465 of the Companies Act, 2013, over companies who issue *Secured Non-Convertible Redeemable Debentures* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts and the Debt Securities Regulations (as mentioned in paragraphs 5.1–5.11 above).

- 10.1 From information obtained by SEBI from the *MCA 21 Portal*, it is observed that GSHP appointed *GSHP Welfare and Development Trust* as Debenture Trustee for the issue of NCDs by that company.
- 10.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.*"
- 10.3 Based on the material available on record, I find that *GSHP Welfare and Development Trust* is not registered with SEBI as a Debenture Trustee and therefore, has *prima facie* acted as unregistered Debenture Trustee, which is a violation of the abovementioned provisions of the SEBI Act.
11. Protecting the interest of investors is the foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by GSHP and no investors are defrauded. In light of the same, I find there is no other alternative but to take recourse through an interim action against GSHP and its Directors alongwith its Debenture Trustee, viz. *GSHP Welfare and Development Trust*, for preventing that company from further carrying on with its fund mobilising activity under the "*Offer of NCDs*".
12. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustee Regulations, hereby issue the following directions –
 - i. GSHP shall not mobilize funds from investors through the issue of *Secured Non-Convertible Redeemable Debentures* or through the issuance of equity shares or any other

- securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
- ii. GSHP and its Directors, viz. Shri Sanjay Kumar Srivastava, Shri Arun Kumar Singh and Shri Dharampal Kumar Rawat, Shri Mahesh Kumar Singh and Shri Raj Kumar Mondal, are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
 - iii. GSHP and its abovementioned Directors shall provide a full inventory of all its assets and properties;
 - iv. GSHP and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the issue of *Secured Non-Convertible Redeemable Debentures*, without prior permission from SEBI;
 - v. GSHP and its abovementioned Directors shall not divert any funds raised from public at large through the issue of *Secured Non-Convertible Redeemable Debentures*, which are kept in bank account(s) and/or in the custody of GSHP;
 - vi. GSHP Welfare and Development Trust is prohibited from continuing with his present assignment as a debenture trustee in respect of the issue of *Secured Non-Convertible Redeemable Debentures* of GSHP and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.
13. The above directions shall take effect immediately and shall be in force until further orders.
14. The *prima facie* observations contained in this Order are made on the basis of the material available on record i.e. correspondences exchanged between SEBI and GSHP alongwith the documents contained therein; information obtained from the 'MCA 21 Portal'. In this context, GSHP and its abovementioned Directors; its Debenture Trustee, viz. GSHP Welfare and Development Trust may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

15. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against GSHP and its abovementioned Directors; its Debenture Trustee, viz. GSHP Welfare and Development Trust, in accordance with law.

Place: Mumbai
Date: May 15, 2014

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA