

**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 Greater Kolkata Infrastructure Limited and its Directors, viz. Shri Subir Dutta, Shri Nakhat Sing Agarwalla, Shri Bimalendu Rakshit; its Debenture Trustee, viz. Shri Bimalendu Rakshit, Shri Sujay Roy Choudhury and Smt. Sherrie Lal Vasdev.

1. Securities and Exchange Board of India ("**SEBI**") received letters dated October 12, 2012 and October 26, 2012, from the Office of the Director: Bureau of Investigation (E.O.), Guwahati, Assam, wherein it was *inter alia* stated that Greater Kolkata Infrastructure Limited ("**GKIL**") was involved in issuing *Non-Convertible Redeemable Debentures* to the public without obtaining permission from SEBI.
2. Thereafter, SEBI vide letter dated November 7, 2012, while stating: *"It has come to our notice that you (GKIL) are raising funds from public by issuing Debentures ostensibly by way of private placement. No Prospectus or DRHP or statement in lieu of prospectus or information memorandum (was) filed with (SEBI)"*, advised GKIL to furnish the following information within fifteen 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 Registrar of Companies ("**ROC**") for issuance of debentures.
 - 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 debentures 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 Debentures allotted and value of such allotment against each allottee's name.
 - f. Details regarding subscription amount raised;
 - g. Date of allotment of debenture;
 - h. Copies of the minutes of Board/Committee meeting in which the resolution was passed for allotment;
 - i. Date of dispatch of debenture certificates;
 - j. Details of the total number of applicants for each of GKIL's scheme besides the list of final allottee;
 - k. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of debentures.
 - l. Terms and conditions of the issue of debentures.
3. GKIL replied to SEBI vide letter dated November 23, 2012, wherein while requesting for further time for submission of the aforementioned information, it *inter alia* submitted:
- i. *"The Company has not issued Prospectus/Red Herring Prospectus (RHP)/Statement in Lieu of Prospectus (SLP) relating to issue of Debentures. The Company has ... filed necessary Form – 23 and Form – 10 under the applicable provisions of the Companies Act, 1956, with Registrar of Companies, West Bengal, Kolkata.*
 - ii. *The Company has issued Non-Convertible Debentures.*
 - iii. *The Company has issued Debentures in Private Placement Basis i.e. exclusively and only to the registered member of the Calcutta Government Employee's Shelter and Welfare Association, a registered association under the provisions of West Bengal Society Registration Act, 1961, who are only eligible for entitlement of said Non-Convertible Debentures in purely Private Placement Basis.*
 - iv. *The terms and conditions for issue of each series of Debentures, as more fully described in the agreement as entered in between the debenture trustee and the company, which has been recorded with and already been filed with Registrar of Companies, West Bengal vide e-Form 10 dated 10.11.2009.*
 - v. *... the said debenture issue is purely private placement in nature and the members of the aforesaid society can only be eligible for participation in the said debentures, the Greater Kolkata Infrastructure Debenture Trustee solely safeguarding the entire interest of its debenture holders."*

4. Thereafter, SEBI vide letter dated May 16, 2013, advised GKIL to submit the aforementioned information (sought vide letter dated November 7, 2012), by May 23, 2013. Vide letter dated May 21, 2013, GKIL submitted only *"the list of privately placed Debentures and the balance amount due amount payable, thereon, till date"*.
5. Subsequently, SEBI, vide another letter dated June 13, 2013, advised GKIL to submit the aforementioned information (sought vide letter dated November 7, 2012), by June 25, 2013. GKIL replied to the aforementioned SEBI letter, vide its letter dated June 24, 2013, wherein it submitted:
 - i. *"... copy of the audited Balance Sheet for the year 2009-10, 2010-11 and 2011-12 ... provisional Balance Sheet for the year 2012-13 is pending Annual General Meeting (AGM) for the year 2013..."*
 - ii. *In the last communication with your esteem organization, in which we specifically mentioned that the debenture (exclusively private placement) issued upto 31/10/2011, total amounting ₹ 8,92,08,890 and out of which payment made thereof ₹ 7,61,27,390 and balance Due and Payable ₹ 1,30,81,500 as on the said letter dated 21/05/2013.*
And further as on 15/06/2013, we have already issued the amount of ₹ 77,53,340, in cheque, for which the statement attached herewith.
And the required Auditor Certificate attached to that effect herewith.
 - iii. *Name, Address and occupation of Promoter/Director: i) Sri Subir Dutta ii) Sri Nakhat Sing Agarwalla and iii) Sri Bimalendu Rakshit. ...*
 - iv. *Other information ...*
 - a. *Date of opening and closing of the subscription list for the said debentures. As such issue basically an exclusively private placement and the amount of such debentures, was accepted upto 31/10/2011 from its exclusive private members of the society ...*
 - b. *We were not circulating anything publicly due to its character of Private Placement in Exclusive Category.*
 - c. *... copies and minutes of Board/Committee meeting*
 - d. *The question of total number of applicants for each of its scheme besides the list of final allottee does not ... arise at all because of its 'exclusive private placement character'.*
 - e. *The question of total number of copies and application forms, pamphlets, ... does not ... arise at all because of its 'exclusive private placement character'.*
 - f. *The terms and conditions of such privately placed debentures, duly rely on bye-laws of the said registered Association, whose Members duly provide such loan facilities.*

- g. *Certificate of CA attached to that effect.*
 - h. *Copies of e-Form 10 & 23 duly attached and the Mortgage Certificate issued by the concerned Registrar of Companies, after verification of all such due adhered procedure under the applicable provisions of the Companies Act, 1956 and issued such Certificate under provisions of Section 132 of the Companies Act, 1956."*
6. Vide letter dated September 17, 2013, SEBI advised GKIL to submit the following information by September 27, 2013, viz. –
- i. Copy of Annual Accounts for the year ended March 2012 in legible format;
 - ii. Details of debentures in soft copy.
7. GKIL provided the abovementioned information vide its letter dated October 1, 2013. In the aforesaid reply, GKIL also stated that: *"The Company have already paid entire amount of Debentures, which were raised in purely private placement basis, pending the remaining amount of ₹ 53,28,000 and the interest calculated thereon for the same ₹ 8,30,000 ..."*
8. SEBI also intimated several authorities, viz. Director, Economic Offences Cell, Finance Department, Kolkata (vide letter dated January 29, 2014) and the Regional Director, Ministry of Corporate Affairs, Eastern Region, Kolkata (vide letters dated January 15, 2014 and January 30, 2014), in respect of the issue of Non-Convertible Debentures ("**NCDs**") by GKIL.
- 9.1 The material available on record i.e. correspondences exchanged between SEBI and GKIL alongwith the documents contained therein, have been perused. On an examination of the same, it is observed that –
- i. GKIL was incorporated on October 5, 2009, with the ROC, Kolkata, West Bengal with CIN No. as U45400WB2009PLC138699, having its Office at 22/2, Gariahat Road, Kolkata – 700029, West Bengal, India. The Directors of GKIL are Shri Subir Dutta, Shri Nakhat Sing Agarwalla and Shri Bimalendu Rakshit.
 - ii. GKIL invited subscription for *"Secured Non-Convertible Redeemable Debentures"* ("**Offer of NCDs**"), in accordance with *inter alia* the following conditions, viz. -

a. *“Terms of the Schemes:*

- *The present series of Secured Debentures (Non-Convertible) shall be issued only on Private Placement basis and shall not at any time exceed ₹ 9 Crores ...*
- *The Secured Non-Convertible Debentures shall be repaid on or before Six and a half years. However, with the consent of Debenture holders the same can be redeemed with a later period with interest of such amount as may be mutually decided by the Debenture holder and the Board and Trustee.”*

- iii. The Offer of NCDs is stated to have been made *“only to the registered member of the Calcutta Government Employee's Shelter and Welfare Association, a registered association under the provisions of West Bengal Society Registration Act, 1961 ... in purely Private Placement Basis”.*
- iv. From the information submitted by GKIL to SEBI, it is observed that it issued *Secured Non-Convertible Redeemable Debentures* since incorporation, to a large number of investors, details of which are reproduced below –

Year	Type of Security	No. of Subscribers to the Issue	Total Amount (₹ in Crores)
2009 – 10	Secured Non – Convertible Redeemable Debenture	5356	1.02
2010 – 11	Secured Non – Convertible Redeemable Debenture	4198	5.77
2011 – 12	Secured Non – Convertible Redeemable Debenture	529	2.21
Total		10083	9.00

9.2 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 GKIL 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.

9.3 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."

9.4 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 number of subscribers is of utmost importance. In the facts of the instant case, it is observed that although the *Offer of NCDs* is stated to have been made "*only to the registered member of the Calcutta Government Employee's Shelter and Welfare Association, a registered association under the provisions of West Bengal Society Registration Act, 1961 ... in purely Private Placement Basis*", yet, through the same offer, GKIL received subscription from 10083 investors and mobilized funds amounting to approximately ₹8.99 Crores [Reference may be made to the table at Paragraph 11.1(iv)]. The

aforesaid clearly indicates that the number of persons to whom the "*Offer of NCDs*" was made by GKIL was way beyond the prescribed limit of forty-nine persons. In addition, GKIL 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 and therefore, is not covered under the *second proviso* to Section 67(3). In view of the aforesaid, the *Offer of NCDs* would *prima facie* qualify as a public issue under the first proviso to Section 67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the *Sahara Case*. 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.

9.5 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 Section 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant in 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 GKIL, 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 GKIL 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 GKIL. In this regard, there is no evidence on record to indicate whether or not GKIL 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 GKIL 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, states that all monies 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 GKIL. In view of the same, I find that GKIL has *prima facie* not complied with the provisions of Section 73(3) of Companies Act, 1956.

9.6 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, GKIL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. In this regard, GKIL in its letter dated November 23, 2012, submitted: "*The Company has not issued Prospectus/Red Herring Prospectus (RHP)/Statement in Lieu of Prospectus (SLP) relating to issue of Debentures*". In view of the same, I find that GKIL has not complied with the provisions of Section 60 of Companies Act, 1956.

9.7 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 GKIL 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.

- 9.8 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 GKIL has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
- 9.9 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;"
- 9.10 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 of debt securities and listing of debt securities issued through public issue or on private placement basis on a recognized stock exchange. 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 GKIL, 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) – *Requirement of Credit rating*
- 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(1) – *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

9.11 Further, In addition to the above, the following may also be noted in respect of the *Offer of NCDs* made by GKIL –

- i. GKIL was incorporated on October 5, 2009. The *Offer of NCDs* was stated to have been made on a private placement basis pursuant to the Resolution passed at the Board Meeting of GKIL held on November 5, 2009. The "*Offer of NCDs*" therefore, occurred immediately within a month of GKIL's date of incorporation.
- ii. Form 10 (filed by GKIL with the ROC in accordance with the provisions of the Companies Act, 1956), reveals that GKIL created Charge for an amount of ₹9 Crores on November 7, 2009, in respect of the *Offer of NCDs*. Further, the aforesaid document reveals that the debentures so issued, shall be secured by way of deposit of title deeds of immovable property (value of which was estimated at ₹9.64 Crores) with the Debenture Trustee. However, from the Balance Sheet for the year ending March 31, 2010 (as submitted by GKIL), it is seen that the value of fixed assets including capital work-in-progress (WIP) was only ₹1.67 Crores. The aforesaid fact clearly indicates that Charge created by GKIL to secure the issuance of debentures, was not backed by sufficient assets.

- iii. From the Balance Sheet for the year ending March 31, 2012, it is observed that there was a significantly high Debt–Equity ratio i.e. 180:1. Such a high Debt–Equity ratio is prejudicial to the interest of the debenture holders and may significantly hamper the ability of the company to fulfill its obligation of redeeming the debentures on maturity.
- 9.12 Upon a consideration of the aforementioned paragraphs, I am of the view that GKIL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCDs* and as a result of such activity has violated the provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Sections 117B–C) read with Section 465 of the Companies Act, 2013 and the Debt Securities Regulations.
10. SEBI has a statutory duty to protect the interest of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate. Further, as per 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 11.1–11.12 above).
- 11.1 From information obtained by SEBI from the *MCA 21 Portal*, it is observed that GKIL appointed *Shri Bimalendu Rakshit, Shri Sujay Roy Choudhury and Smt. Sherrie Lal Vasdev* as Debenture Trustees for the issue of *NCDs* by that company. Further, it is observed that an Agreement for issue of *NCDs* was executed between GKIL and *Shri Bimalendu Rakshit, Shri Sujay Roy Choudhury and Smt. Sherrie Lal Vasdev* (representing Greater Kolkata Infrastructure Debenture Trust) on November 7, 2009.
- 11.2 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*". Further, Regulation 7 of

SEBI (Debenture Trustees) Regulations, 1993 ("**Debenture Trustees Regulations**"), provides that: "*no person should act as a debenture trustee unless he is either –*

- i. a scheduled bank carrying on commercial activity; or*
- ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
- iii. an insurance company; or*
- iv. body corporate."*

11.3 Based on the material available on record, I find that *Shri Bimalendu Rakshit, Shri Sujay Roy Choudhury and Smt. Sherrie Lal Vasdev* have *prima facie* failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as unregistered Debenture Trustee, which is a violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.

12. 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 GKIL 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 GKIL and its Directors alongwith its Debenture Trustee, viz. *Greater Kolkata Infrastructure Debenture Trust*, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.

13. 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. GKIL 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. GKIL and its Directors, viz. Shri Subir Dutta, Shri Nakhat Sing Agarwalla, Shri Bimalendu Rakshit, 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. GKIL shall provide a full inventory of all its assets and properties;*

- iv. GKIL 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. GKIL 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 GKIL;
 - vi. GKIL shall produce proof for its claim (made vide letter dated October 1, 2013) that it has already "*paid entire amount of Debentures, which were raised in purely private placement basis, pending the remaining amount of ₹ 53,28,000 and the interest calculated thereon for the same ₹ 8,30,000* ", by providing a Certificate from a Chartered Accountant in the panel of any public authority or public institution, who would examine the veracity of such claim. This certificate shall be submitted by GKIL within a period of 30 days from the date of receipt of this Order.
 - vii. *Shri Bimalendu Rakshit, Shri Sujay Roy Choudhury and Smt. Sherrie Lal Vasdev* are prohibited from continuing with their present assignment as debenture trustees in respect of the issue of *Secured Non-Convertible Redeemable Debentures* of GKIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this order till further directions.
14. The above directions shall take effect immediately and shall be in force until further orders.
15. 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 GKIL alongwith the documents contained therein. In this context, GKIL and its abovementioned Directors; its Debenture Trustees, viz. *Shri Bimalendu Rakshit, Shri Sujay Roy Choudhury and Smt. Sherrie Lal Vasdev* 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.

16. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against GKIL and its abovementioned Directors; its Debenture Trustees, viz. *Shri Bimalendu Rakshit, Shri Sujay Roy Choudhury and Smt. Sherrie Lal Vasdev*, in accordance with law.

Place: Mumbai
Date: May 30, 2014

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