

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

ORDER

Under Sections 11 (1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Goldmine Food Products Limited (PAN:AADCG6079R) and its Directors, viz. Shri Bablu Saha (DIN: 02538201; PAN: AYAPS0436L), Shri Tushar Sur (DIN: 02538169; PAN: BGSPS7776N) and Shri Joydip Mukhopadhyay (DIN: 02610032; PAN: AJYPM7962Q) and its Debenture Trustee, viz. Goldmine Debenture Trust (represented by its Trustee viz. Smt. Sujata Saha).

1. Securities and Exchange Board of India ("**SEBI**") received a letter dated September 06, 2011 informing that Goldmine Food Products Limited (hereinafter referred to as '**GFPL**' or '**the company**') is raising funds through the issuance of debentures. The complainant also enclosed a copy of brochure for offer of *Non-Convertible Redeemable Debentures ('NCDs')* issued by GFPL.
- 2.1 As a part of preliminary inquiry, SEBI vide letter dated January 18, 2012 advised GFPL to furnish *inter alia* the following information latest by January 21, 2012, viz. –
 - a) A certificate from the statutory auditor certifying size of issue, amount collected and number of investors for the said issue and name of the debenture trustee (if any);
 - b) Copies of submissions to the Registrar of Companies ("**RoC**") regarding the issue such as copy of Form 2, list of investors, copy of Board Resolution etc.;
 - c) Copy of the latest audited annual report.

Since no reply was received from GFPL, a reminder letter dated February 10, 2012 was sent to the company advising them to provide the requisite information by February 20, 2012.

- 2.2 SEBI, on March 05, 2012, received a letter from GFPL enclosing the issue summary, copy of Form 10, copy of the Board Resolution and other documents submitted to RoC regarding the issue and copy of the audited Balance Sheet as on March 31, 2011. GFPL also made the following submissions:

- i. "The debenture trustee to the issue is Goldmine Debenture Trustee with Ms. Sujata Saha as the Trustee. Pertinent to mention that the issue has been subscribed by just a handful HNI and institutions, numbering 22.*
 - ii. As the issue pertained to debt and did not in any way alter the capital of the company, as such, did not warrant any change/revision in Form 2. However, we enclose a copy of the Form 10..."*
- 2.3 Subsequently, SEBI, vide letter dated March 09, 2012, advised GFPL to submit the following documents latest by March 26, 2012, viz. –
 - i. Certificate from statutory auditor certifying size of issue, amount collected and number of investors for the said issue;
 - ii. A list of investors for the said issue mentioning name of investor, PAN, Bank account number and Bank name;
 - iii. A copy of Bank statements highlighting the entries for receipt of monies for the NCD issue for the period July 1, 2010 to the closure of the issue in June , 2011.
- 2.4 Since no reply was received from GFPL, two reminder letters dated April 30, 2013 and July 11, 2013 were issued to the company advising them to submit the above mentioned documents along with the audited accounts for the financial year 2011-12. SEBI, on August 13, 2013, received a letter from GFPL wherein the following documents were enclosed, viz. –
 - i. Copy of Board resolution, Copy of notice of EGM and Copy of extract of EGM;
 - ii. Copy of Form 10;
 - iii. Copy of land deed;
 - iv. Copy of debenture trust deed;
 - v. Copy of Memorandum & Articles of Association.

However, the documents sought by SEBI vide its letter dated March 09, 2012 (para 2.3 above) were not submitted by GFPL.

- 2.5 Another reminder letter was sent to GFPL on April 29, 2014 which was returned undelivered. Thereafter, letters dated May 13, 2014 were issued to the Directors of the company and also to an alternative address of the company, advising them to submit relevant information in respect of debentures issued by GFPL. The letter sent to the alternative address of the company was returned undelivered.

- 2.6 Thereafter, SEBI conducted physical inspections at the registered office as well as corporate office of GFPL on September 18, 2014 and January 31, 2015. However, no information could be gathered as the premises were closed. As on date, SEBI has not received any reply/information from GFPL and its Directors despite being given several opportunities to do so.
3. The material available on record i.e. correspondence exchanged between SEBI and GFPL alongwith the documents contained therein and the information/documents obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*' have been perused. On an examination of the same, it is observed that –
- i. GFPL was incorporated on October 07, 2009 with the RoC, Kolkata, West Bengal with CIN No. as U15400WB2009PLC138780 having its Registered Office at Vivekananda Road, Pipulpati, Chinsura, Hooghly, West Bengal-712103, India.
 - ii. The Directors in GFPL are Shri Bablu Saha, Shri Tushar Sur and Shri Joydip Mukhopadhyay.
 - iii. It was observed from the undated reply submitted by GFPL received by SEBI on March 05, 2012 that the company came out with an issue of Non- Convertible Redeemable Debentures ("***Offer of NCDs***") aggregating to ₹49.68 Crores. The issue opening date was July 01, 2010 and closing date was June 30, 2011. During 2010-11, the total amount collected from the Offer of NCDs was ₹31.44 Crores (approx.) and during 2011-12, the total amount collected was ₹17.96 Crores (approx.).
 - iv. GFPL has claimed that the debentures were issued to only 22 holders. However, no list in this regard has been submitted by the company despite being given several opportunities to do so. Further, GFPL has also not provided any certificate from a Chartered Accountant as sought by SEBI. The details of debenture holders is also not available in MCA portal.
 - v. GFPL has not created any Debenture Redemption Reserve as noted from the Balance Sheet for the financial years ended March 31, 2011 and March 31, 2012.

- vi. GFPL has created a charge of ₹50 Crores on June 25, 2010 for series of debentures issued on July 01, 2010 on its immovable properties. As per the Trust Deed, the company has stated that it has land as a security. However, it was observed from the balance sheet for the year ending on 31.03.2010 that as on 31.03.2010, the value of the land is only ₹1.46 Crore.
- vii. GFPL had filed Form 10 with the RoC, West Bengal for all the aforesaid series of Debentures. It is observed from the aforesaid Form 10 that Goldmine Debenture Trust, represented by Trustee Smt. Sujata Saha and having its address at Vivekananda Road, Pipulpati, Chinsura, Hooghly, West Bengal-712103, was appointed as the Debenture Trustee for series of debentures issued on July 01, 2010. However, the Debenture Trustee is not registered with SEBI.
- viii. As per the Balance Sheets available from MCA21 Portal, an amount of ₹0.40 Crores as on March 31, 2011 and ₹1.40 Crores as on March 31, 2012 is shown towards 'Application money on Equity Shares'. However, no such amount is reflected in the Balance Sheet submitted by GFPL to SEBI.

4.1 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 GFPL through the aforesaid issue of NCDs, 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**") and the Companies Act, 1956.

4.2 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 at the relevant time flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in ***Sahara 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:

"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."

4.3 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) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation

...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."

- 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:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to

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

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

Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. ...

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.

a. In the instant case, GFPL has claimed that the number of allottees in the Offer of NCDs is 22. Considering the fact that GFPL raised ₹31.44 Crores during FY 2010-11 and ₹17.96 Crores during FY 2011-12, GFPL was granted sufficient time and opportunities to submit the details of the investors from whom the amounts were raised. It is pertinent to mention that GFPL has failed to submit the details of the investors till date. In the absence of any reply from GFPL, on January 31, 2015, SEBI official visited the registered office address of the company at Vivekananda Road, Pipulpati, Chinsura, Hooghly, West Bengal-712103. During the visit at the registered office address it was observed that :

- The address of the Registered office of the company was found to be closed. No representative of the company was available at that address.
 - A visit was made to the Corporate office address at P-5, CIT Road Scheme LV, 7th floor, Kolkata - 700014, West Bengal. However, the corporate office was also found to be closed. On conducting further enquiries at the locality, it was gathered that the company was earlier operating from the address. However, it is closed since almost two years.
- b. In view of the magnitude of the mobilisation of funds to the tune of ₹31.44 Crores during 2010-11 and ₹17.96 Crores during 2011-12, and considering the failure on the part of GFPL to submit details of the investors, it is difficult to give credence to the submissions of GFPL that it issued NCDs to only 22 investors. Further, as detailed before, during a site visit by an official of SEBI, both the Registered and Corporate offices of the company were found to be closed. In view of the facts and circumstances of the case such as the quantum of funds mobilized by GFPL through the aforementioned issuance of NCDs, the company's refusal to submit relevant information to SEBI regarding the investors (despite being given several opportunities to do so) *prima facie*, leads me to draw an adverse but eminently reasonable inference that the number of persons to whom the offer was made should be much beyond the prescribed limit of forty-nine persons. I therefore, have to conclude that the Offer of NCDs was nothing but a public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956.
- c. GFPL 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).
- d. 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.

4.4 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) Where a prospectus, whether issued generally or not, state that an application under subsection (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognized stock exchanges, such prospectus, shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists: Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

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

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not

been granted, be repaid within the time and in the manner specified in sub- section (2); and if default is made in complying with this sub- section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees."

- 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.

...

*Section 73(2) says that every company and every director of the company who is an officer in default, shall 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. The scope of the above mentioned provisions came up for consideration before this Court in *Raymond Synthetics Ltd. & Ors. V. Union of India* (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since *Saharas* had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."*

- iii. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, since the *Offer of NCDs* is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, 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 and also compliance with provisions of Sections 73(2) and 73(3) of that Act.

iv. In the facts of the instant case, it *prima facie* appears that GFPL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.

4.5 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 NCD* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, GFPL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. In the instant case, there is no evidence on record to indicate whether or not GFPL has filed a prospectus with RoC. In view of the same, I find that *prima facie*, GFPL has not complied with the provisions of Section 60 of Companies Act, 1956.

4.6 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 GFPL 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.

4.7 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. Based on the

material available on record, I find that GFPL has not complied with the provisions of Sections 117B of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

Section 12(1) of the SEBI Act states : "*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*". Goldmine Debenture Trust and its trustee Smt. Sujata Saha are not registered with SEBI. 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."*

Based on the material available on record, I find that Smt. Sujata Saha has *prima facie*, failed to meet the eligibility criteria specified under the provisions of the Debenture Trustees Regulations and therefore, has acted as unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustee Regulations.

4.8 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 GFPL has not complied with the provisions of Sections 117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

4.9 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 GFPL, 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(3) – *Appointment of Merchant Banker*
- vi. Regulation 4(4) – *Appointment of Debenture Trustee*
- vii. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- viii. Regulation 6 – *Filing of draft Offer Document*
- ix. Regulation 7 – *Mode of disclosure of Offer Document*
- x. Regulation 8 – *Advertisements for Public Issues*
- xi. Regulation 9 – *Abridged Prospectus and application forms*
- xii. Regulation 12 – *Minimum subscription*
- xiii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiv. Regulation 15 – *Trust Deed*
- xv. Regulation 16 – *Debenture Redemption Reserve*
- xvi. Regulation 17 – *Creation of security*
- xvii. Regulation 19 – *Mandatory Listing*
- xviii. Regulation 26 – *Obligations of the Issuer, etc.*

4.10 Upon a consideration of the aforementioned paragraphs, I am of the view that GFPL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCDs* and as 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) and the Debt Securities Regulations.

5. SEBI has a statutory duty to protect the interests 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 thinks fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956, 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, over companies who issue *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 4.1–4.9 above). Steps, therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by GFPL and no investors are defrauded. This is especially so because of the refusal on the part of the company and its Directors, viz., Shri Bablu Saha, Shri Tushar Sur, and Shri Joydip Mukhopadhyay to reply to the letters sent by SEBI seeking details of the investors to whom debentures were allotted by GFPL. Further considering the huge amounts raised by GFPL, I find there is no other alternative but to take recourse through an interim action against GFPL and its Directors alongwith its Debenture Trustee, viz. Goldmine Debenture Trust (represented by its Trustee viz. Smt. Sujata Saha), for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*. It is also pertinent to mention that as stated in paragraph 4.3(iii) of this order, during a visit by the SEBI official, both the Registered and Corporate offices of GFPL, were found to be closed. Considering all these factors, it is felt that urgent intervention by SEBI is warranted as otherwise there could be every possibility of irreparable damage to investors.

6. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 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. GFPL shall forthwith cease to mobilize any fresh funds from investors through the *Offer of NCDs* 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. GFPL and its Directors, viz. Shri Bablu Saha (DIN: 02538201; PAN: AYAPS0436L), Shri Tushar Sur (DIN: 02538169; PAN: BGSPS7776N) and Shri Joydip Mukhopadhyay (DIN: 02610032; PAN: AJYPM7962Q), 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. GFPL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
 - iv. GFPL shall provide a full inventory of all its assets and properties;
 - v. GFPL's abovementioned Directors shall provide a full inventory of all their assets and properties;
 - vi. GFPL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of NCDs*, without prior permission from SEBI;
 - vii. GFPL and its abovementioned present Directors shall not divert any funds raised from public at large through the *Offer of NCDs*, which are kept in bank account(s) and/or in the custody of GFPL;
 - viii. GFPL and its abovementioned Directors shall furnish complete and relevant information (as sought by SEBI vide letters dated January 18, 2012, March 09, 2012, April 30, 2013 and April 29, 2014), within 21 days from the date of receipt of this Order.
 - ix. The Debenture Trustee, viz. Goldmine Debenture Trust (represented by its Trustee viz. Smt. Sujata Saha), is prohibited from continuing with their present assignment as debenture trustee in respect of the *Offer of NCDs* of GFPL 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.
7. The above directions shall take effect immediately and shall be in force until further orders.
8. The *prima facie* observations contained in this interim Order are made on the basis of the material available on record i.e. correspondences exchanged between SEBI and GFPL alongwith the documents contained therein and the information/documents obtained from the Ministry of Corporate Affairs' website i.e. '*MCA 21 Portal*'. In this context, GFPL and its abovementioned Directors are advised to show cause as to why suitable

directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:

- i. Directing them jointly and severally to refund money collected through the *Offer of NCDs* alongwith interest, if any, promised to investors therein;
 - ii. Directing them to not issue 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, for an appropriate period;
 - iii. Directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
9. GFPL, its abovementioned Directors and the Debenture Trustee, viz. Goldmine Debenture Trust (represented by its Trustee viz. Smt. Sujata Saha) may, within 21 days from the date of receipt of this interim order cum show cause notice, file their replies, if any, to the same 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.

Place: Mumbai
Date: March 19, 2015

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