

**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, in the matter of Gitanjali Udyog Limited (PAN: AAMCS8602D) and its Directors, viz. Shri Paramasish Bhadury (PAN: ANNPB2618K; DIN: 03535491), Shri Anil Kumar Mishra (DIN: 03585327), Shri Prabir Middey (PAN: AIQPM0516K; DIN: 06583618), Shri Surajeet Ray (PAN: AUAPR1861N; DIN: 02937174), Shri Sutanu Sarcar (PAN: CUJPS7833J; DIN: 03490705), Shri Sanjay Bahadur (PAN: ALGPB7497M; DIN: 05309291), Shri Nonigopal Mondal (PAN: AKJPM5712E; DIN: 05116933) alongwith its Debenture Trustees, viz. Shri Amit Samanta and Shri Jagdish Chandra Nag.

1. Securities and Exchange Board of India ("**SEBI**") received a reference dated February 20, 2013 [forwarded by the Ministry of Corporate Affairs ("**MCA**") vide their letter dated March 12, 2013], regarding illegal mobilization of funds by Gitanjali Udyog Limited ("**GUL**").
 - 2.1.1 Thereafter, SEBI vide letters dated April 17, 2013, sought the following information from GUL, viz. –
 - i. Copy of the Memorandum and Articles of Association of the company;
 - ii. Copy of Audited Annual Accounts of the company for the last 3 years;
 - iii. Name, addresses and occupation of all the Promoters/Directors and Key Managerial of the company;
 - iv. Other information in respect of issue of preference shares/debentures by the company, viz. –
 - a. Copy of Prospectus/Red Herring Prospectus/Statement in lieu of Prospectus/Information Memorandum filed with Registrar of Companies ("**ROC**");
 - b. Date of opening and closing of the subscription list;
 - c. Details regarding the number of application forms circulated inviting subscription for preference shares/debentures;
 - d. Details regarding the number of applications received;

- e. Details regarding the number of allottees and list of such allottees, etc.;
- f. Number of preference shares/debentures allotted and value of such allotment against each allottee's name.
- g. Details regarding subscription amount raised;
- h. Date of allotment of preference shares/debentures;
- i. Copies of the minutes of Board/Committee meeting in which the resolution has been passed for allotment;
- j. Copies of application forms, pamphlets, advertisements and other promotional material circulated for issuance of preference shares/debentures;
- k. Terms and conditions of the issue of preference shares/debentures.

2.1.2 As no information was forthcoming from GUL, a reminder letter dated July 8, 2013, was sent to that company. GUL vide letter dated July 19, 2013 sought extension of 7 days to furnish its reply. Thereafter, GUL replied vide letter dated August 1, 2013, *inter alia* submitting:

"As the issue of debenture has been purely on private placement basis among the closely held group of Promoters, relatives of Promoters, employees and or associates of the company including marketing and distribution agents/persons thus no prospectus/RHP/SLP/Information Memorandum is filed with ROC".

2.1.3 Another reminder letter dated September 12, 2013, was forwarded to GUL advising it to submit the remaining information (sought vide letter dated April 17, 2013). GUL replied vide letter dated September 23, 2013, wherein while stating that the other information would reach SEBI by October 3, 2013, submitted:

"We also confirm that we have created multiple number of smaller issues using the private placement route ensuring on every occasion that the regulatory regime of selling the debentures to '49 or less number of investors' is never flouted.

Incidentally, we would like to bring to your notice that while doing such 'private placement' of our debt instruments, we were guided by the observations of R. H. Patil Committee's report on 'Private Issue of Corporate Debt Securities', which read as "...there are no regulations on the number of issues an issuer can make during any given period. There are instances of making a number of issues on the same day by a single issuer."

- 2.1.4 Pursuant to the above, SEBI sought the remaining information from GUL vide letters dated November 4, 2013 (old registered office address) and November 22, 2013 (new registered office address). However, the aforesaid letters were returned as undelivered with remarks '*Address not known*'. Thereafter, SEBI forwarded another letter dated December 16, 2013 (through hand delivery), which was received by GUL. However, no reply was received from the company.
- 2.2 Vide letter dated February 12, 2014, SEBI also sought information from the Directors of GUL at the relevant time i.e. Shri Paramasish Bhadury, Shri Anil Kumar Mishra and Shri Prabir Middey. While the letter sent to Shri Paramasish Bhadury was returned as undelivered, no reply was received from Shri Anil Kumar Mishra and Shri Prabir Middey.
- 2.3 SEBI is also in receipt of several complaints alleging illegal mobilization of funds from the public, by GUL.
- 2.4.1 GUL had filed a *Writ Petition No. 18995 (W) of 2014, Gitanjali Udyog Limited & Anr. vs. The Union of India & Ors.*, before the Hon'ble Calcutta High Court, against the alleged inaction on the part of the MCA, in disposing of the company's application under Section 621A of the Companies Act, 1956, wherein it sought compounding of the violation of Section 73(3) of the Companies Act, 1956. SEBI was impleaded as Respondent no. 4 in the said Petition. From the Writ Petition, it is observed that Petitioner no. 1 i.e. GUL, "*raised a total sum of 51,78,60,850/- on the basis of debentures which were redeemable on different dates.*"
- 2.4.2 In the abovementioned Writ Petition, the Hon'ble High Court vide Order dated September 16, 2014, observed –

"This application has been filed by the company which floated ponzi schemes. A representation has been made to the Registrar of Companies but in the light of the decision of the Apex Court in the case of Subrata Chattoraj vs. State of West Bengal (Re: Sarada Group of Companies), it is SEBI, the respondent no. 4 herein, who is to enquire, investigate and submit a report. SEBI has initiated an investigation but due to non – cooperative attitude of the petitioner, investigation has not progressed much as no information has been forthcoming.

SEBI will be entitled to proceed with the enquiry as postulated in the said reported decision but in the interregnum period, let the leasehold interest of the petition in Mouza Dhapamanpur comprised in R. S.

Dag Nos. 875, 999, 877, 968, 879, 895, 972, 894, 901, 1013, 1019, 1023, 998, 1010 and 977, commonly known as Pather Abad Fishery – I, II, III and also commonly known as 'Nalban' be sold by SEBI."

- 2.4.3 In compliance with the Hon'ble High Court's Order, SEBI took steps to seek valuation of GUL's property and also appointed a Valuer on November 26, 2014. However, on the next hearing held in the abovementioned Writ Petition i.e. January 13, 2015, the counsel for the State of West Bengal submitted that the land measuring 1280 Bighas in Salt Lake actually belonged to the Fisheries Department, Government of West Bengal and the petitioner had no right to transfer the leasehold interests in the same. The matter is currently pending before the Hon'ble Calcutta High Court.
- 2.4.4 There is also another connected matter i.e. *Writ Petition No. 14594(W) of 2014 – Ira Dutta vs. State of West Bengal*, which was directed to be listed alongwith the abovementioned *Writ Petition No. 18995 (W) of 2014*. The matter is pending before the Hon'ble Calcutta High Court.
3. The material available on record i.e. correspondences exchanged between SEBI and GUL alongwith the documents contained therein; reference from the MCA; abovementioned complaints received by SEBI and information 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. GUL was incorporated on March 02, 2009, with the ROC, Calcutta with CIN as U01500WB2009PLC133332. Its Registered Office is at 2, Chowdhury Para Lane, Ward No–21, Kamarhati Municipality Dist. P.O., PS, Belgharia, 24 Parganas Calcutta–700056, West Bengal, India.
 - ii. The present Directors in GUL are Shri Paramasish Bhadury, Shri Anil Kumar Mishra and Shri Prabir Middey.
 - iii. Shri Surajeet Ray, Shri Sutanu Sarcar, Shri Sanjay Bahadur and Shri Nonigopal Mondal, who were earlier Directors in GUL, have since resigned.

iv. GUL issued *Non-Convertible Secured Redeemable Debentures ("Offer of NCDs")* in accordance with *inter alia* the following terms and conditions:

- a. *"As the issue for secured debenture on private placement basis, no prior approval/rating is required for Government/SEBI and other statutory authorities.*
- b. *Who can invest: Individuals, Trusts, Corporate Bodies, Minors (through Guardians), Financial Institution, Mutual Funds, HUFs and Cooperate Bodies.*
- c. *The debentures are secured by mortgage of the assets to Registrar of Companies.*
- d. *The offer is being made on a private placement basis and cannot be accepted by any person other than to whom it has been offered."*

Plan	Installment Tenure (Months)	Min. Monthly Payment (Multiples)	Total Payment at the end of Tenure ()	Redemption Value ()	Redemption Period
M	12	100	1200	1450	15 months 1 day
N	24	100	2400	2940	27 months 1 day
O	36	100	3600	4575	39 months 1 day
P	60	100	6000	9150	63 months 1 day

Plan	A	B	C	D	E	F	G	H
Redemption Period	12 months	24 months	36 months	60 months	96 months	120 months	144 months	168 months
Amount payable per Debenture	100	100	100	100	100	100	100	100
Minimum Applied Debenture	10 Nos.	10 Nos.	10 Nos.	10 Nos.	10 Nos.	10 Nos.	10 Nos.	10 Nos.
Minimum Value	Rs. 1,000/-	Rs. 1,000/-	Rs. 1,000/-	Rs. 1,000/-	Rs. 1,000/-	Rs. 1,000/-	Rs. 1,000/-	Rs. 1,000/-
Redemption Amount	1200/-	1400/-	1650/-	2100/-	3500/-	5000/-	6500/-	10,000/-

Plan & R.R. (Per Annum)	I (12%)	J (18%)	K (24%)	L (26.4%)	Q (30%)
Tenure Period	24 months	36 months	60 months	96 months	120 months
Amount payable per debenture	100/-	100/-	100/-	100/-	100/-
Minimum Applied Debenture	250 nos.	250 nos.	250 nos.	250 nos.	250 nos.
Monthly Return (per Lakh)	Rs. 1,000/-	Rs. 1,500/-	Rs. 2,000/-	Rs. 2,200/-	Rs. 2,500/-
Final Bonus	-	-	-	2%	3%

- v. From the documents annexed with the complaints received by SEBI, it is noted that GUL issued *Offer of NCDs* during the Financial Years 2011–12, 2012–13, 2013–14 and 2014–15, details of which are provided below –

Year	Type of Security	Amount Raised ()	Number of Allottees
2011 – 12	<i>Non-Convertible Secured Redeemable Debentures</i>	140500	4
2012 – 13		2694188	206
2013 – 14		1067460	80
2014 – 15		300	1
Total		*3902448	^291
<i>*^No. of allottees and amount raised are taken from the documents submitted with the complaint received by SEBI. However, actual no. of allottees and amount mobilized are likely to be much more than the above indicated figures.</i>			

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 GUL through the aforesaid, 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.

4.2 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:

"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. Construction of reference to offering shares or debentures to the public, etc.

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, 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 this regard, –
 - a. It is important to note that the number of allottees and amounts raised under the *Offer of NCDs* during the Financial Years 2011–12, 2012–13, 2013–14 and 2014–15, have only been taken from the documents submitted with the complaints received by SEBI, against GUL. No details have been provided by either GUL or its Directors despite being given several chances to do so. This non-cooperation on the part of the company has also been noted by the Hon'ble Calcutta High Court in its Order dated September 16, 2014, wherein it observed - "*This application has been filed by the company which floated ponzi schemes. ...SEBI has initiated an investigation but due to non – cooperative attitude of the petitioner, investigation has not progressed much as no information has been forthcoming.*"

- b. In its letter dated September 23, 2013, GUL contended that they were "*guided by the observations of R. H. Patil Committee's report on 'Private Issue of Corporate Debt Securities', which read as ...there are no regulations on the number of issues an issuer can make during any given period. There are instances of making a number of issues on the same day by a single issuer.*" However, no other information to substantiate such contention was submitted by GUL to SEBI.
- c. From the documents annexed with the complaints received by SEBI, it is observed that during the Financial Years 2011–12, 2012–13, 2013–14 and 2014–15, GUL allotted *NCDs* to at least 291 individuals/investors and mobilized funds amounting to approximately 39.02 Lakhs, under the *Offer of NCDs*. However, as per the Writ Petition filed by GUL before the Hon'ble Calcutta High Court, the company admitted to having "*raised a total sum of 51,78,60,850 on the basis of debentures which were redeemable on different dates.*" Therefore, it is most certainly that the actual number of allottees and amount mobilized by GUL under the *Offer of NCDs* would be much more than the figures collated by SEBI merely on the basis of complaints received. In these proceedings, nothing else has been possible because of non-cooperation by the company as detailed in paragraph 4.3(iii)(a) above.
- d. Upon a consideration of the above and having regard to the specific number of investors to whom allotments were made under the *Offer of NCDs* during the Financial Years 2012–13 and 2013–14 (details provided in Table at paragraph 3(v) of page 6), I find that such *Offer* was nothing but a public issue of securities, as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956. Further, from the brochure circulated by GUL for the *Offer of NCDs*, it is observed that the invitation for subscription to the aforesaid extended to "*Individuals, Trusts, Corporate Bodies, Minors (through Guardians), Financial Institution, Mutual Funds, HUFs and Cooperate Bodies*". Such a generalized category of investor(s) cannot be said to satisfy the condition of specificity as required under Section 67(3) of the Companies Act, 1956.
- e. From the Reserve Bank of India's letter dated May 6, 2014 (addressed to EOIC), it is observed that GUL was not registered with that authority. Further, GUL is not stated to be a public financial institution within the meaning of

Section 4A of the Companies Act. In view of the same, GUL is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956.

- f. In view of the above, the *Offer of NCDs* by GUL, would *prima facie* qualify as public issues 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.

4.4 I note that –

- i. From the abovementioned, it will follow that since the *Offer of NCDs* is a public issues 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, states 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 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 *Sahara 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 the provisions of Sections 73(2) and 73(3) of that Act.
- iv. In the facts of the instant case, it *prima facie* appears that GUL 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, the *Offer of NCDs* was a public issues of securities. Having made a public issue, GUL was required to register a prospectus with the ROC under Section 60 of the Companies Act, 1956. In its letter dated August 1, 2013, GUL submitted that "*As the issue of debenture has been purely on private placement basis among the closely held group of Promoters, relatives of Promoters, employees and or associates of the company including marketing and distribution agents/persons thus no prospectus/RHP/SLP/Information Memorandum is filed with ROC*". In view of the same, I find that GUL has *prima facie* 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 GUL 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. Further, under Section 117C of the Companies Act, 1956, 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 GUL has not complied with the provisions of Sections 117B–117C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions in respect of the *Offer of NCDs*.

4.8 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 GUL, 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 Trustees*
- 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 17 – *Creation of security*
- xv. Regulation 19 – *Mandatory Listing*
- xvi. Regulation 26 – *Obligations of the Issuer, etc.*

- 4.9 Upon a consideration of the aforementioned paragraphs, I am of the view that GUL 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, Sections 117B–117C) read with the Debt Securities Regulations.
- 5.1 From the *MCA 21 Portal*, it is observed that GUL created a charge of 20 Crores on August 2, 2011 and appointed *Shri Amit Samanta and Shri Jagdish Chandra Nag*, as Debenture Trustees for the *Offer of NCDs* by that company.
- 5.2 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*".
- 5.3 In addition, 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.*"
- 5.4 Based on the material available on record, I find that *Shri Amit Samanta and Shri Jagdish Chandra Nag*, have acted as unregistered Debenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustees Regulations.

6. Shri Surajeet Ray, Shri Sutanu Sarcar, Shri Sanjay Bahadur and Shri Nonigopal Mondal, who were earlier Directors in GUL, have since resigned.
7. 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 deems 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 (as mentioned in paragraphs 4.1–4.9 above). Steps therefore, have to be taken in the instant matter to ensure that only legitimate fund raising activities are carried on by GUL and no investors are defrauded. In light of the facts in the instant matter, I find that there is no other alternative but to take recourse through an interim action against GUL and its Directors, for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.
8. 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, hereby issue the following directions –
 - i. GUL (PAN: AAMCS8602D) shall forthwith cease to mobilize 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. GUL and its present Directors, viz. Shri Paramasish Bhadury (PAN: ANNPB2618K; DIN: 03535491), Shri Anil Kumar Mishra (DIN: 03585327), Shri Prabir Middey (PAN: AIQPM0516K; DIN: 06583618), 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. The past Directors of GUL, viz. Shri Surajeet Ray (PAN: AUAPR1861N; DIN: 02937174), Shri Sutanu Sarcar (PAN: CUJPS7833J; DIN: 03490705), Shri Sanjay Bahadur (PAN: ALGPB7497M; DIN: 05309291), Shri Nonigopal Mondal (PAN: AKJPM5712E; DIN: 05116933), 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;

- iv. GUL and its abovementioned past and present 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;
 - v. GUL shall provide a full inventory of all its assets and properties;
 - vi. GUL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;
 - vii. GUL and its 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;
 - viii. GUL 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 GUL;
 - ix. GUL and its abovementioned past and present Directors shall furnish complete and relevant information (as sought by SEBI letter dated April 17, 2013 and February 12, 2014), within 14 days from the date of receipt of this Order including full details of amount mobilized under the *Offer of NCDs* till date, list of debenture holders, names and addresses of such debenture holders, date(s) on which debentures were allotted under the *Offer of NCDs*, etc.;
 - x. The Debenture Trustees, viz. *Shri Amit Samanta and Shri Jagdish Chandra Nag*, are prohibited from continuing with their assignment as debenture trustees in respect of the *Offer of NCDs* of GUL 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.
9. The above directions shall take effect immediately and shall be in force until further orders.
- 10.1 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 GUL alongwith the documents contained therein; reference from the MCA; abovementioned complaints received by SEBI and information obtained from the Ministry of Corporate Affairs'

website i.e. *MCA 21 Portal*. In this context, GUL 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. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

10.2 GUL and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their replies, 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.

10.3 Similarly, the Debenture Trustees, viz. *Shri Amit Samanta and Shri Jagdish Chandra Nag*, 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 restraining them from accessing the securities market and further restraining them from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.

10.4 The Debenture Trustees, viz. *Shri Amit Samanta and Shri Jagdish Chandra Nag*, may, within 21 days from the date of receipt of this Order, file their replies, if any, to this Order and may also indicate whether they desire to avail of an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

11. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against GUL and its abovementioned Directors; its Debenture Trustees, viz. *Shri Amit Samanta and Shri Jagdish Chandra Nag*, in accordance with law.

Place: Mumbai
Date: June 17, 2015

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