

<b>Department: Investigation</b>	<b>Segment: All</b>
<b>Circular No: MSE/ID/16072/2024</b>	<b>Date: October 01, 2024</b>

**Subject: SEBI Final Order in the matter of Max Wealth Infracon India Ltd**

To All Members,

SEBI vide its Order No. QJA/GR/ERO/ERO/30823/2024-25 dated September 30, 2024, wherein SEBI has restrained following entities from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of 3 (three) years from the date of SEBI order:

<b>Sr.no.</b>	<b>Name of the Noticee</b>	<b>PAN</b>	<b>CIN/DIN</b>
1	Max Wealth Infracon India Ltd	AAGCM8372A	U45400WB2010PLC153347
2	Shri. Partha Sarathi Ghosal	ALNPG7331C	3121257
3	Shri Goutam Ray	ATKPR4708H	3122557
4	Shri Aman Goyal	AUDPG0283G	3221975
5	Muskaan Social Welfare Trust	NA	NA
6	Shri Sunil Kumar Singh	AWZPS4355H	12002531232
7	Shri Tapan Kumar Ghosh	NA	NA

This order shall come into force with immediate effect.

Members of the Exchange are advised to take note of the full text of the order available on SEBI's website [[www.sebi.gov.in](http://www.sebi.gov.in)] and ensure compliance.

**For and on behalf of**

**Metropolitan Stock Exchange of India Limited**

**Vipul Vaishnav**  
**Assistant Vice President**

**Metropolitan Stock Exchange of India Limited**

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee No.	Name of the Noticees	CIN/DIN	PAN
1.	Max Wealth Infracon India Ltd	CIN: U45400WB2010PLC1533 47	AAGCM8372A;
2.	Shri. Partha Sarathi Ghosal	DIN - 03121257	ALNPG7331C
3.	Shri Goutam Ray	DIN – 03122557	ATKPR4708H
4.	Shri Aman Goyal	DIN – 03221975	AUDPG0283G
5.	Muskaan Social Welfare Trust	NA	NA
6.	Shri Sunil Kumar Singh	D L No. – WB- 012002531232	AWZPS4355H
7.	Shri Tapan Kumar Ghosh	NA	NA

**In the matter of Max Wealth Infracon India Ltd.**

*(The above entities are individually referred to by their corresponding names / numbers and collectively referred to as “Noticees”)*

1. Securities Exchange Board of India (herein after referred to “**SEBI**”) had conducted investigation on the fundraising activities by way of issue of Secured Redeemable Non-Convertible Debentures (**SRNCD**) to more than 49 persons by Max Wealth Infracon India Ltd., (hereinafter referred to as “**Noticee No.1/MWIL**”/”**Company**”) to ascertain as to whether MWIL had made any public issue of securities without complying with provisions of public issue norms stipulated, if any, under the Companies Act, 1956. / 2013, relevant provisions of the SEBI Act, 1992, the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (**ILDS Regulations**) and the SEBI (Debenture Trustees) Regulations, 1993 (“**Debenture Trustees Regulations**”).
2. On examination, it was observed and alleged that MWIL issued 213 Secured Redeemable Non-Convertible Debentures to more than 49 persons in the FY 2010-2011 & 2011-12 and raised an amount of Rs.27 Crores from 213 allottees which was *prima face* in violation of the provisions of the aforesaid Acts, Rules and Regulations.

## **BACKGROUND OF THE CASE**

3. SEBI was in receipt of complaints against the company M/s Max Wealth Infracon India Ltd., Regd. Office at FC/49, Narayan Tala (W), P.O. – Desbandhu Nagar, Kolkata -700059, West Bengal. The complainants stated that the Company issued Secured Redeemable Non-Convertible Debentures (SRNCD) however, on maturity they did not receive the maturity amounts. They also attached the copies of the aforesaid SRNCD issued by MWIL.

### **Examination of Non-Convertible Debenture Certificate provided by the complainant**

4. On examination of the said complaint, following was observed:

Type of security was seen as Fully Paid up Secured Non-Convertible Redeemable Debentures each of Rs.1000/-. The certificate contained the following fields:

- Debenture Certificate No.:
- Reg. Folio No.:
- Name of Holder:
- No. of Debentures:
- Distinctive no. of Debentures:
- Tenure of Debenture: Max-2 60 Month
- Redemption Date:
- Redemption Amount:
- Rate of Interest Payable:
- Interest Payable Frequency:
- Nomination Registered:

The below was also mentioned on the certificate:

*“This Debenture(s) is/are issued subject to and with the benefit of the conditioned endorsed hereon which are deemed to be part hereof for all purposes and to all intents. The Debentures are issued on terms of the Debenture Trust Deed (herein after referred to as “The Company” on the one part and Trustees to the Debenture Holders of Max Wealth Infracon India Limited in its capacity as the Trustees of the other part (hereinafter called “the Trustees”) and subject to the terms, provisions and conditions therein contained.”*

*Given at Kolkata under the Common Seal, the company this \_\_\_ day of \_\_\_ 2010.*

*Managing Director*

*Director*

*Authorised Signatory*

**Information received from Registrar of Company (RoC) – Kolkata**

5. As per the details received from RoC – Kolkata, vide its letter dated December 14, 2022, the following list of directors of MWIL was observed:

Sl. No.	Name	Designation	DIN	PAN	Address	Original date of appointment	Date of Cessation
<b>Details of Directors</b>							
1	Partha Sarathi Ghosal (Noticee No.2)	Director	0312 1257	ALNPG73 31C	c/o Mr. A.K Roy, No:1, C.R. Das Sarani, PO Rabindra Sarani, Dt-Darjeeling-734006, West Bengal	23/09/2010	23/04/2012
2	Goutam Ray (Noticee No.3)	Director	0312 2557	ATKPR470 8H	Block C/42, Flat 6, Kalindi Housing Estate, S Dum Dum Municipality, North 24 Parganas-700089	23/09/2010	-
3	Shri Aman Goyal (Noticee No.4)	Director	0322 1975	AUDPG02 83G	Flat –T25, 4th Floor, Block A, Silver Oak Apartment, Pranami Mandir Road, Siliguri-734001	23/09/2010	10/08/2012
4	Ashutosh Roy	Director	0518 2261	NA	623/3 Jessore Road, Green Park, FLR-GR, Kolkata - 700055	10/08/2012	-
5	Asit Das	Director	0525 7293	NA	2 B/A, North Nowda para Road, Kolkata - 700057	23/04/2012	-

6. Additionally, vide its letter dated January 06, 2023, ROC-Kolkata had also provided the below documents:

- a) Form 20 B for FY ending 31/03/2011
- b) List of Debenture holders (213)
- c) List of Shareholders
- d) Annual Return for FY ending 31/03/2011
- e) Form 23 AC for FY ending 31/03/2011
- f) Form 23 ACA for FY ending 31/03/2011
- g) Form 23 AC for FY ending 31/03/2012
- h) Form 23ACA for FY ending 31/03/2012

**Correspondence with the Company/ Directors**

7. Thereafter, vide letters dated February 08, 2022, details regarding the issuance of equity shares/ convertible or non-convertible instruments/ preference shares were sought from the company / directors. Accordingly, the details of correspondence with the company and its directors are as below:

<b>Name of Entity/ Director</b>	<b>Designation</b>	<b>Letter Date</b>	<b>Letter Status (Returned/ Delivered)</b>	<b>Reply received (if any)</b>
Max Wealth Infracon India Ltd. (Noticee No.1)	Company	08.02.2022	Returned undelivered	Returned undelivered with the comment "Left".  Site verification report indicates that the company is not found to be existing at the given address.

Shri. Partha Sarathi Ghosal (Noticee No.2)	Director	08.02.2022	Delivered	Vide letter dated 25.02.2022, he stated that he resigned from the company on 18.04.2012. He attached a board resolution for the same. He stated that he is unaware of the company raising funds and has no documents in his possession as he has resigned.
Shri Goutam Ray (Noticee No.3)	Director	08.02.2022	Returned undelivered	No reply received. No such address.
Shri Aman Goyal (Noticee No.4)	Director	08.02.2022	Delivered	Vide letter dated 25.02.2022 he stated that he resigned from the company on August 10, 2012. He attached a board resolution for the same. He stated that he is unaware of the company raising funds and has no documents in his possession as he has resigned.
Shri. Ashutosh Roy	Director	08.02.2022	Returned undelivered	Unknown address. The entity has left this address and the affixture of the letter couldn't be carried out as the same was not permitted by the landlady

Shri Asit Das	Director	08.02.2022	Returned undelivered	No reply received. Affixture of the letter couldn't be carried out as the said address couldn't be located
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8. Further, letters were also sent to the company's registered office address, and its directors as mentioned in the above table. A physical verification was conducted on 30/07/2022 at the registered office address available on record, however the company was not found at its registered office address.

**Observations from the documents obtained from the Ministry Of Corporate Affairs (MCA) PORTAL & RoC Letter:**

**Details of allotment of Secured Redeemable Debentures (as per Form 20B)**

9. On examination of MCA portal and RoC letters, it was observed from the filings that the company had filed Form 20B along with the following attachments:
- i) Annual Return for the year ended 31/03/2011 (Date of AGM – 14/09/2011)
  - ii) List of shareholders – 07
  - iii) List of Debenture Holders – 213
10. On perusal of the aforesaid documents obtained from the MCA, it was observed that the company was incorporated on 23/09/2010. Further, from the annual return for FY ending 31/03/2011, a list of names of 213 debenture holders along with the amount raised from each holder totaling to an amount of Rs.19,62,000/-.
11. It was further observed that the company had also filed Form 23AC & 23ACA (Forms for filing Balance Sheet & Profit & Loss statement and associated documents) for the FY ended 31/03/2011 and 31/03/2022. The balance sheet for the years ended 31/03/2011 and 31/03/2012 showed the amount raised through debentures as Rs.1,87,000/- and Rs.79,48,000/- respectively. However, the said amount of



Rs.1,87,000/- for year ended 31/03/2011 did not matched with the sum of amount of Rs.19,62,000/-, indicated as mobilized from 213 allottees, mentioned in the annual return for the year ended 31/03/2011 attached to Form 20B submitted to the RoC.

12. Further, it was also noted that the company had filed two Form10s (Charge documents) (forms dated 21/10/2010 and 09/05/2012) along with trust deed, one for creation of charge and another for modification of charge for debentures. In the foresaid charge documents, it was noted that the name of the debenture trustee/ charge holder was Muskaan Social Welfare Trust (hereinafter referred to as

“**MSWT/Noticee No.5**”) and its address as below:

Muskaan Social Welfare Trust

59, Banomali Naskar Road

Kolkata

WB – 700060

Email id: [arunabha10s@gmail.com](mailto:arunabha10s@gmail.com)

13. **Trust Deed 1:** In the trust deed dated October 21, 2010, it was seen that the company had created a charge on immovable properties to the extent of Rs.27 crores and the trust deed was signed by Shri Sunil Kr Singh (hereinafter referred to as **Noticee No.6**) on behalf of Muskaan Social Welfare Trust and Shri Partha Sarthi Ghoshal (Noticee No.2) for MWIIL. Further, the Board resolution approving the issuance of debentures and the registered deed of mortgages was also attached to the Form 10. Following was observed w.r.t. the above-Board Resolution:

Date of Board meeting	Date of passing resolution	Amount proposed to raise (Rs.)	Type of issue
27/09/2010	27/09/2010	27 Crores	Secured Redeemable Non-Convertible Debentures

Screenshot from Board Resolution dated 27.09.20210:

Notice is hereby given that an Extraordinary General Meeting of the members of Max Wealth Infracon India Limited will be held on Thursday the 21<sup>st</sup> Day of October, 2010, at its registered office at 10.00 a.m.

- (1) To consider and, if thought fit, to pass, with or without modification, the following resolution which is proposed to be passed as an ordinary.

“RESOLVED THAT the consent of the share holders of the company be and is hereby accorded pursuant to the provisions of Sec-293(1)(a) of the Companies Act 1956, for mortgaging and / or charging by the board of the directors of the company of all the immovable and movable properties of the company, wherever situate, present and future and the whole of the undertaking of the company together with the power to take over the management of the business of the company in certain events to or in favour of trustees for the debenture holders in respect of the debenture privately placed to secure;

- (i) An amount not exceeding Rs. 27 Crores (Rupees Twenty Seven crores) only, subscribed to debentures by private placement.
- (ii) The interest at the respective agreed rates, cost, charges, expenses and all others money payable by the company to the debenture trustees in respect of the debentures.

14. Further, as regards to the Form 10 for modification of charge for debentures, it was observed that the charge created was supplemented by a second Form 10 dated 09/05/2012. Along with the aforesaid form, an Extract of the Resolution passed at the meeting of board of directors on 16<sup>th</sup> January, 2012 was also attached wherein it was mentioned that *“the company has issued secured redeemable debentures amounting to Rs.27 crores on 21.10.2010. The said debentures were secured by mortgage and/or charge of immovable properties. Now, the company has purchased some properties at Joynagar in District of South 24 Parganas and the same may be offered as additional security for securing the debentures issued by the company.”*

Screenshot from Board Resolution dated 16.01.2012:

**MAX WEALTH INFRACON INDIA LIMITED**  
FC/49, NARAYAN TALA(W)  
P.O.-DESBANDHUNAGAR  
KOLKATA-700059

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EXTRACT OF THE RESOLUTION PASSED AT THE MEETING OF BOARD OF DIRECTORS OF M/S. MAX WEALTH INFRACON INDIA LIMITED HELD AT ITS REGISTERED OFFICE AT FC/49, NARAYAN TALA(W), P.O.-DESBANDHUNAGAR, KOLKATA-700059 ON MONDAY, THE 16<sup>TH</sup> DAY OF JANUARY, 2012 AT 04.00 P.M.

**Creation of mortgage on the properties situated at Joynagar in the District of South 24-Parganas.**

The chairman informed the board that our company has issued secured redeemable debentures amounting to Rs. 27 crore on 21.10.2010. The said debentures were secured by mortgage and / or charge of immovable and movable properties of the company.

Now, the company has purchased/owned/acquired some properties in its name situated at Joynagar in the District of South 24-Parganas and the same be offered as additional security for securing the debentures issued by the company.

15. **Trust Deed 2:** It was also observed that the additional mortgage was secured by way of a second deed which was executed on January 31, 2012 between MWIIL (signed by Shri Goutam Ray, Noticee No.3) and MSWT (Noticee No.5) (signed by Shri Tapan Kumar Ghosh, Noticee No.7).
16. Apart from the 213 allottees stated above, another list of allottees filed by MWIIL was also observed which contained date of allotment as November 1, 2010 to July 02, 2011, from which it was gathered that MWIIL had made issuances in FY 2011-12 as well.
17. From the aforesaid facts and documents, it was observed that the Company had issued debentures to at least 213 allottees raising Rs.27 Crores, which was secured by charge created on immovable properties and subsequent additional security created in May 2012.

### Observations from the Debenture Trust Deed

18.As per the copy of the executed trust deed, the details of Secured Redeemable Debentures issued by the company is given below:

#### **SCHEME - I**

Term	Plan	Face Value	Redemption Value
3 years	MAX – 1	1000	1500
5 years	MAX – 2	1000	2100
9 years	MAX -3	1000	6000
12 years	MAX – 4	1000	10000

#### **SCHEME – II (Yearly Payout)**

Plan	Period	Rate	For senior citizens
MAX – T -1	3 years	13% p.a.	13.5%
MAX – T -2	5 years	14.5% p.a.	15% p.a.

### Summary of allotments and amount mobilized through Non-Convertible Debentures

19.During the investigation, the number of allottees and funds mobilized was collated from the documents filed by the Company on the MCA 21 Portal. The summary of the allotment of non-convertible debentures issued by the company was observed to be as under:

FY	Date of allotment	No. of allottees	No. of debentures allotted	Nominal amount per debenture	Amount Mobilized (in Rs.)
2010-11	21/10/2010 to 29/10/2010	213	NA	1000	27 Crores
2011-12	Various dates	NA	NA	1000	
		<b>NA</b>			<b>27 Crores</b>

20. From all of the aforesaid observations, it was found to be evident that MWIL had issued secured non-convertible debentures to more than 49 persons in the FY 2010-2011 & 2011-12 amounting to Rs.27 Crores and hence, MWIL was considered to have made a public issue of securities.
21. This apart, it was observed that MSWT (Noticee No.5) and its Trustees, Shri Sunil Kumar Singh (Noticee No.6) and Shri Tapan Kumar Ghosh (Noticee No.7) acted as Debenture Trustee without obtaining requisite registration from SEBI. Further, it was also noted that MSWT (Noticee No.5) did not meet the criteria to act as Debenture Trustee.
22. Additionally, on verification of the KYC documents obtained from the Bank, it was observed that Noticee No.6 had also signed the bank account opening form of MWIL apart from signing documents as a trustee on behalf of the trust i.e. Noticee No.5.
23. The summary of the above findings are as below:
- i. MWIL issued NCDs to more than 49 persons in financial years 2010-2011 and 2011-2012 by inviting applications from the general public, and mobilized amount to the tune of Rs.27 Crores;
  - ii. MWIL did not file any prospectus in connection with the issue of securities;
  - iii. MWIL did not get the securities listed with the Stock Exchange;
  - iv. MWIL appointed unregistered Debenture Trustee for the aforesaid issue of debentures;
  - v. MWIL did not refund the money collected from investors;
  - vi. Muskan Social Welfare Trust and its Trustees, Shri Sunil Kumar Singh and Shri Tapan Kumar Ghosh acted as a Debenture Trustee without obtaining certificate of Registration from SEBI. Further, they were ineligible as per criteria of a Debenture Trustee in the Debenture Trustee Regulations.

## **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

24. Based on the aforesaid findings of the examination, SEBI issued Show Cause Notice dated November 22, 2023, (hereinafter referred to as “SCN”) to the Noticees, under Sections 11(1), 11(4), 11A and 11B of SEBI Act, 1992 which, *inter-alia*, alleged the following:

- a) By issuing debentures to more than 49 persons each in FY 2010-11 & FY 2011-12, by not filing prospectus in connection with the said issuance of securities, by not getting the securities listed on the stock exchange, by not refunding the money collected through the issue of debentures, by not keeping the amounts collected in a separate designated bank account and by appointing an unregistered debenture trustee, Noticee No.1 to 4 were alleged to have violated the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3), Section 73(1), (2) & (3) of the Companies Act, 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013, Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 17, 19 and 26 of SEBI (ILDS) Regulations, 2008 read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 read with Section 5 of the Companies Act, 1956.
- b) Noticee No.5, by acting as Debenture Trustee of MWIIL without obtaining a certificate of registration from SEBI and Noticee No.6 and 7, by being the Trustees/ Authorized Signatories of Noticee No.5, were alleged to have violated Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations.

25. SCN dated July 17, 2023 was sent to the Noticees through SPAD at the addresses of the Noticees, status of which are as under:

Noticee No.	Name of the Noticee	SPAD Delivery Status	Remarks for being undelivered
1.	Max Wealth Infracon India Ltd	Returned undelivered	No such company located in this area
2.	Partha Sarathi Ghosal	Delivered	NA
3.	Goutam Ray	Returned undelivered	Left
4.	Aman Goyal	Returned undelivered	No such addressee with this address
5.	Muskaan Social Welfare Trust	Returned undelivered	Left
6.	Sunil Kumar Singh	Delivered	NA
7.	Tapan Kumar Ghosh	Delivered	NA

26. Subsequently, the SCN was served to all the Noticees vide newspaper publication dated July 05, 2024, published in Times of India, Sanmarg and Bertman Patrika in Kolkata, Darjiling and Siliguri Edition and were advised to download the SCN from SEBI website or collect it from SEBI-Eastern Regional Office. However, only Noticee No.2 and 6 replied to the SCN vide reply dated January 20, 2024 and July 13, 2024 respectively. No reply was received from Noticee No.1, 3, 4, 5 and 7.

27. The summary of the reply of Noticee No.2 and 6 vide reply dated January 20, 2024 and July 13, 2024 respectively, are as under:

**Reply of Noticee No.2:**

- a) *He was one of the directors of the Company but subsequently resigned from the Company on 23 April, 2012.*

- b) *The resolution for Form 10 was not signed by him and Form 10 submitted in ROC was digitally signed by Shri. Goutam Roy and the Debenture Trust Deed also signed by some other person.*
- c) *During the period of 23.09.2010 to 31.03.2011 and 1.04.2011 to 31.02.2012, the Company had allotted debentures to 213 allottees and the total fund collected was Rs.19,62,000/- and Rs.79,48,000/- respectively.*
- d) *The finding w.r.t. the mobilized amount being Rupees Twenty Seven Crores only is totally false and it has no substantive proof of evidence.*
- e) *During his directorship in the Company, he did not receive any remuneration or profit or losses in cash through a bank transaction which can be reflected in his bank account.*
- f) *He resigned from the Company as a director prior to the supplementary charge being created by a second Form 10 dated 09.05.2012.*
- g) *The complete adjudication of the dispute can only be decided in the presence of all the directors who were active and are participating in the affairs of the Company till today.*

**Reply of Noticee No.6:**

- a) *In Max Wealth Infracon India Limited, he was neither a shareholder nor a director and he was also not a subscriber to the Memorandum and Articles of Association of the said company.*
- b) *He was not part of the affairs of the said company with respect to any matter including the alleged issue of allotment of any debenture to any person.*
- c) *He agreed to become a trustee of Muskaan Social Welfare Trust along with Mr. Tapan Kumar Ghosh at the request of one of the directors.*
- d) *He blindly believed that there will be no activities which are in contravention of any enactment and/or law of land and he agreed to become a trustee in 2010 only for the purpose of social welfare and not for issue of debentures to the public or any person.*
- e) *After he realized the requirements, he immediately refused to act as a trustee and asked the other trustee to immediately take steps to register the trust under*



*SEBI Regulations/guidelines and in the meantime he did not further perform any duty as a trustee.*

- f) After finding no action taken for registration of the trust, he immediately tendered his resignation and stopped from performing any act as a trustee.*
- g) In the year 2010, obtaining of digital signature verification and authentication was not required from the persons in whose name the digital signature is obtained. During that period, DSC issued merely based on documents. The promoters of the company have availed loopholes and misused his personal documents.*
- h) I have never signed any document or paper or certificate with respect to the issuance of the debenture or collection of any fund in that way.*
- i) The digital signature was obtained and used by the company in a purported Form No. 10 with date of creation of charge dated 21.10.2010*
- j) Debenture certificates were issued wherein he has not signed and his documents have been misused for other purposes also.*
- k) He also submitted the resignation letter dated October 28, 2010.*

28. In the interest of natural justice, an opportunity for personal hearing was granted to the Noticees on July 23, 2024 and was served through the aforesaid newspaper publication. Prior to the same, the Hearing Notice dated June 26, 2024 was also sent through SPAD to the available address of the Noticees as well as through affixture. However, the aforesaid hearing was only availed by Noticee No.2 and 6 through their respective authorized representative.

29. I note that keeping the principle of natural justice in mind, sufficient opportunities of filing reply to the SCN and hearing have been given to the Noticees, however, Noticee No.1, 3, 4, 5 and 7 have neither filed any reply nor appeared for hearing. Hence, it is presumed that Noticee No.1, 3, 4, 5 and 7 has nothing to submit in respect of the allegations levelled in the SCN. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Classic Credit Ltd. vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter alia, held that,

".....the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".

30. In view of the aforesaid observation made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against Noticee No.1, 3, 4, 5 and 7 *ex-parte*, based on the material available on record.

### **CONSIDERATION OF ISSUES AND FINDINGS**

31. I have carefully examined the allegation against the Noticees, reply of the Noticee No. 2 and 6 and the documents / material available on record. After considering the allegation levelled against the Noticees in the instant matter, the following issue arise for consideration:

***Issue I: Whether MWIL came out with the Offer of Secured Redeemable Non-Convertible Debentures in violation of Section 56, Section 60 read with Section 2(36), 67(3) and Section 73(1), (2) and (3) of Companies Act 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013 and Regulation 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 17, 19 and 26 of SEBI (ILDS) Regulations, 2008 read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 read with Section 5 of the Companies Act, 1956 and whether Noticee No.5 acted as a debenture trustee to the said issue in violation of Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations?***

***Issue II: If the findings on Issue No. I are found in the affirmative, who shall be liable for the violations committed?***

32. Before proceeding further, it is pertinent to refer to the relevant provisions of the SEBI Act and the IA Regulations which are reproduced hereunder: -

### **Companies Act, 1956**

#### **Meaning of “Officer in Default”**

*For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:*

- (a) the managing director or managing directors;*
- (b) the whole-time director or whole-time directors;*
- (c) the manager;*
- (d) the secretary;*
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;*
- (f) any person charged by the Board with the responsibility of complying with that provision:*

*Provided that the person so charged has given his consent in this behalf to the Board;*

- (g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:*

*Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.*

#### **Section 56. Matters to be stated and reports to be set out in the prospectus.**

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

*(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.*

*(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied [by a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section : [Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him :] Provided [further] that this sub-section shall not apply if it is shown that the form of application was issued either - (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures ; or (b) in relation to shares or debentures which were not offered to the public. If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to [fifty] thousand rupees.*

## **Section 60**

### **60. REGISTRATION OF PROSPECTUS**

*(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto - (a) any consent to the issue of the prospectus required by section 58 from any person as an expert ; and (b) in the case of a prospectus issued generally, also - (i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof ; and (ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of*

that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

**Section 2(36)** "prospectus" 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;

**Section 67. Construction of references to offering shares or debentures to the public etc.**

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

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

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

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

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

**Supreme Court Judgement:**

While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the in Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the "Sahara Case"), observed:

".....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 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. ..."

### **Section 73: Allotment of shares and debentures to be dealt in on stock exchange**

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 sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised 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.*

**117B. Appointment of debenture trustees and duties of debenture trustees**

*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.*

*Provided that no person shall be appointed as a debenture trustee, if he -*

- (a) beneficially holds shares in the company;*
- (b) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee;*
- (c) has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon.*

### **SEBI Act, 1992**

**Section 12(1)** 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."*

### **SEBI (Debenture Trustees) Regulations, 1993 ("Debenture Trustees Regulations")**

#### ***Eligibility for being debenture trustee.***

**7.** No person shall be entitled to act as a debenture trustee unless it is :-

- (a) a scheduled bank carrying on commercial activity; or*
- (b) a public financial institution as defined sub-section (72) of section 2 of the Companies Act, 2013; or*
- (c) an insurance company; or*
- (d) body corporate as defined under sub-section (11) of section 2 of the Companies Act, 2013.*



**SEBI (Issue and Listing of Debt Securities) Regulations, 2008:** (hereinafter referred to as *SEBI ILDS Regulations 2008*)

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

**Relevant Regulations of SEBI ILDS Regulations 2008 are reproduced below:**

**General Conditions**

4.(2) No issuer shall make a public issue of debt securities unless following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations,

(a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:

*Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange: Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange; Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation.*

*(b) it has obtained in -principle approval for listing of its debt securities on the recognized stock exchanges where the application for listing has been made;*

*(c) credit rating has been obtained from at least one credit rating agency registered with the Board and is disclosed in the offer document: Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;*

*(d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the debt securities that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder.*

*(4) The issuer shall appoint one or more debenture trustees in accordance with the provisions of Section 71 of the Companies Act, 2013 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.*

**Disclosures in the offer document-**

*5.(2) Without prejudice to the generality of sub-regulation (1), the issuer and the lead merchant banker shall ensure that the offer document contains the following:*

*(b) disclosure specified in Schedule I of these regulations;*

**Filing of draft offer document-**

6.(1) No issuer shall make a public issue of debt securities unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.

(2) The draft offer document filed with the designated stock exchange shall be made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange.

(3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the debt securities are proposed to be listed.

(4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.

(5) The Lead Merchant Banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.

(6) A copy of draft and final offer document shall also be forwarded to the Board for its records, along with regulatory fees as specified in Schedule V simultaneously with filing of these documents with designated stock exchange.

(7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations.

(8) The debenture trustee shall, prior to the opening of the public issue, furnish to the Board a due diligence certificate as per Schedule III of these regulations.

**Mode of Disclosure of Offer Document-**

7.(1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF / HTML formats.

(2) *The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue.*

(3) *Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.*

### **Advertisements for Public issues**

8.(1) *The issuer shall make an advertisement in a national daily with wide circulation, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule IV.*

(2) *No issuer shall issue an advertisement which is misleading in material particular or which contains any information in a distorted manner or which is manipulative or deceptive.*

(3) *The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.*

(4) *Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document.*

(5) *The advertisement shall urge the investors to invest only on the basis of information contained in the offer document.*

(6) *Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of debt securities or be used for solicitation.*

### **Abridged Prospectus and application forms-**

9 (1) *The issuer and lead merchant banker shall ensure that:*

(a) *every application form issued by the issuer is accompanied by a copy of the abridged prospectus;*

(b) *the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus;*

(c) *adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.*

*(2) The issuer may provide the facility for subscription of application in electronic mode.*

### **Minimum subscription**

*12.(1) The issuer may decide the amount of minimum subscription which it seeks to raise by issue of debt securities and disclose the same in the offer document.*

*(2) In the event of non-receipt of minimum subscription all application moneys received in the public issue shall be refunded forthwith to the applicants.*

### **Prohibitions of mis-statements in the offer document**

*14.(1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading.*

*(2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of debt securities shall not contain any false or misleading statement*

### **Trust Deed**

*15.(1) A trust deed for securing the issue of debt securities shall be executed by the issuer in favour of the debenture trustee within three months of the closure of the issue.*

*(1A) Where an issuer fails to execute the trust deed within the period specified in the sub-regulation (1), without prejudice to any liability arising on account of violation of the provisions of the Act and these Regulations, the issuer shall also pay interest of at least two percent per annum to the debenture holder, over and above the agreed coupon rate, till the execution of the trust deed.*

*(1B) A clause stipulating the requirement under sub-regulation (1A) shall form part of the Trust Deed and also be disclosed in the Offer Document.*

*(2) Every debenture trustee shall amongst other matters, accept the trust deeds which shall contain the matters as prescribed under section 71 of Companies Act,*

2013 and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014. Such trust deed shall consist of two parts:

(a) Part A containing statutory/standard information pertaining to the debt issue.

(b) Part B containing details specific to the particular debt issue.

(3) The trust deed shall not contain a clause which has the effect of –

(i) limiting or extinguishing the obligations and liabilities of the debenture trustees or the issuer in relation to any rights or interests of the investors;

(ii) limiting or restricting or waiving the provisions of the Act, these regulations and circulars or guidelines issued by the Board;

(iii) indemnifying the debenture trustees or the issuer for loss or damage caused by their act of negligence or commission or omission.

### **Debenture Redemption Reserve**

16.(1) For the redemption of the debt securities issued by a company, the issuer shall create debenture redemption reserve in accordance with the provisions of the Companies Act, 1956 and circulars issued by Central Government in this regard.

### **Creation of security**

17.(1) The proposal to create a charge or security, if any, in respect of secured debt securities shall be disclosed in the offer document along with its implications.

(2) The issuer shall give an undertaking in the offer document that the assets on which charge is created are free from any encumbrances and if the assets are already charged to secure a debt, the permissions or consent to create second or pari-pasu charge on the assets of the issuer have been obtained from the earlier creditor.

(3) The issue proceeds shall be kept in an escrow account until the documents for creation of security as stated in the offer document, are executed.

### **Mandatory listing**

19.(1) An issuer desirous of making an offer of debt securities to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) and sub-section (2) of section 40 of the Companies Act, 2013.

(2) The issuer shall comply with conditions of listing of such debt securities as specified in the Listing Agreement with the stock exchange where such debt securities are sought to be listed.

(3) Where the issuer has disclosed the intention to seek listing of debt securities issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such debt securities.

### **Obligations of the Issuer, Lead Merchant Banker, etc.**

26.(1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.

(2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and the Companies Act, 2013 and the Rules made thereunder.

(3) The issuer shall treat the applicants in a public issue of debt securities in a fair and equitable manner as per the procedures as may be specified by the Board.

(4) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.

(5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of debt securities which are listed or proposed to be listed on a recognized stock exchange.

(6) *The issuer and the merchant banker shall ensure that the security created to secure the debt securities is adequate to ensure 100% asset cover for the debt securities.*

(7) *The issuer shall create a recovery expense fund in the manner as maybe specified by the Board from time to time and inform the Debenture Trustee about the same.*

## **SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021**

### ***Repeal and Savings***

*59.(1) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 and the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 shall stand repealed from the date on which these regulations come to force.*

*(2) Notwithstanding such repeal:*

*(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

***Issue I: Whether MWIL came out with the Offer of Secured Redeemable Non-Convertible Debentures in violation of Section 56, Section 60 read with Section 2(36), 67(3) and Section 73(1), (2) and (3) of Companies Act 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013 and Regulation 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 17, 19 and 26 of SEBI (ILDS) Regulations, 2008 read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible***



***Securities) Regulations, 2021 read with Section 5 of the Companies Act, 1956 and whether Noticee No.5 acted as a debenture trustee to the said issue in violation of Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations?***

33. I note that the present case pertains to alleged violation of the provisions related to the *issue of NCDs* made to the public. Therefore, before proceeding with the examination of the present issue, a reference may be made to Sections 55A of the Companies Act, 1956 which reads as under:

***“55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA***

*The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, -*

*(a) in case of listed public companies;*

*(b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India; and*

*(c) in any other case, be administered by the Central Government.*

*Explanation. - For the removal of doubts, it is hereby declared that all powers relating to all other matters including the matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares shall be exercised by the Central Government, the Tribunal or the Registrar of Companies, as the case may be.”*

34. Further, I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned provisions, 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, 1956. While examining the scope

of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in **Sahara Case** (*supra*), 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."*

*"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"*

35. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase "*intend to get listed*" in the context of deemed public issue the Hon'ble Supreme Court in **Sahara Case** (*supra*) observed-

*"...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, "intent" has its limitations also, confining it within the confines of lawfulness..."*

*"...Listing of securities depends not upon one's volition, but on statutory mandate..."*

*"...The appellant-companies must be deemed to have "intended" to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have*

*"intended", what was contrary to the mandatory requirement of law..."*

From the above, it is to be noted that the Companies Act, 1956 empowers SEBI to take action in matters related to issue and transfer of securities including debentures.

36. Regarding the current issue, I note from the SCN that during examination the filings made by the company on the MCA website were accessed and perused. The following points were observed from the said filings:

- a) MWIIL issued NCDs to more than 49 persons in financial years 2010-2011 and 2011-2012 by inviting applications from the general public, and mobilized amount to the tune of Rs.27 Crores;
- b) The details of RPS issued by the company are observed as under:

<b>FY</b>	<b>Date of allotment</b>	<b>No. of allottees</b>	<b>No. of debentures allotted</b>	<b>Nominal amount per debenture</b>	<b>Amount Mobilized (in Rs.)</b>
2010-11	21/10/2010 to 29/10/2010	213	NA	1000	27 Crores
2011-12	Various dates	NA	NA	1000	
		<b>NA</b>			<b>27 Crores</b>

37. From the above, I note that the company had issued NCDs to at least 213 persons during the period 2010-2011 and 2011-2012 raising an amount of Rs.27 crores to more than 49 persons in violation of Section 67(3) of the Companies Act, 1956.

38. In respect of the aforesaid charges of issuance of NCDs to more than 213 allottees i.e. more than 49 persons and raising 27 crores, I note that Noticee No.2 has contended that company has only collected Rs.19,62,000/- and Rs.79,48,000/- during the period of 23.09.2010 to 31.03.2011 and 1.04.2011 to 31.02.2012 respectively from 213 allottees and not Rs.27 crores, as alleged. In this regard, I note that by aforesaid statement, Noticee No.2 has admitted that MWIIL had issued NCDs to at least 213 persons. Further, with regards to the contention of the amount raised, I note that Noticee No.2 has not submitted any documentary evidence in support of the said claim. It is therefore the contention of the Noticee No.2 cannot be accepted as the said allegations were actually based on their own documents filed with the MCA by the company itself, such as Board Resolutions dated 27.09.2010 and 16.01.2012 of MWIIL, Trust Deed between MWIIL and the trust etc, wherein it was

specifically mentioned in the Extract of the Resolution passed at the meeting of board of directors of MWILL on 16<sup>th</sup> January, 2012 that *“the company has issued secured redeemable debentures amounting to Rs.27 crores on 21.10.2010.”* Further, I also note that Form 20B, obtained from Registrar of Companies, West Bengal, clearly shows the total amount of non-convertible debentures as Rs.27 crores.

39. Accordingly, I note that since MWILL has issued Non-Convertible Debentures to more than 49 persons in a financial year, it amounts to public issue of securities as per the first proviso to Section 67(3) of the Companies Act, 1956. In this connection it is pertinent to note that the Companies Act, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of securities) Rules, 2014 revised this limit upwards to 200 persons in a financial year. However, since the allotments were made before this limit of 200 came into effect, the limit of 50 persons as per Companies Act, 1956 is applicable in the instant case as the NCDs were issued to more than 49 persons.

40. Further, I note that though the Companies Act, 1956, has been repealed by the Companies Act, 2013, anything done or any action taken or purported to have been done or taken under the Companies Act, 1956, is deemed to have been done or taken under the corresponding provisions of the Companies Act, 2013, by virtue of Section 465(2) of the Companies Act, 2013, and is therefore saved regardless of the repeal of the Companies Act, 1956.

41. In this regard, I further note that in the present case the provisions alleged to have been violated are related to the *issue of NCDs* made to the public. Therefore, the primary question that arises for consideration is whether the issue of NCDs is ‘*public issue*’. In this regard, reference may be made to sections 67(1) and 67(3) of the Companies Act, 1956:

*“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 subsections (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).” (emphasis supplied)*

42. Further, at this juncture, it is also relevant to rely on the specific observations of the Hon'ble Supreme Court of India in **Sahara India Real Estate Corporation Limited & Ors. v. SEBI** (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the “**Sahara Case**”), w.r.t. the scope of Section 67 of the Companies Act, 1956:

*“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.”*

43. In this regard, the Section 67(3) of Companies Act, 1956 was also examined which provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not 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, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer *to fifty or more persons*. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

44. Upon examination, I find from the material available that MWILL is not a non-banking financial company or public financial institution within the meaning of Section 4A of

the Companies Act, 1956. In view of the aforesaid, I find that there is no case that MWIIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956 and hence, not eligible for the exception.

45. Even in the cases where the allotments are considered separately i.e. privately placed, reference may be made to **Sahara Case** (*supra*), wherein it was held that under Section 67(3) of the Companies Act, 1956, the *"Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged."* Therefore, I find that the said issuances cannot be considered as private placement. Moreover, reference may also be made to the order of Hon'ble SAT dated April 28, 2017 in the matter of **Neesa Technologies Limited vs. SEBI** (Appeal No. 311 of 2016) which lays down that *"In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellants have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning'.*
46. Taking into consideration the above said facts, I find that in the present matter, NCDs were issued by MWIIL to at least 213 investors in the financial years 2010-11 and 2011-2012 raising Rs.27 crores. Hence, the above findings lead to a reasonable conclusion that the *Offer of NCDs* by MWIIL was a *"public issue"* within the meaning of the first proviso to section 67(3) of the Companies Act, 1956 and MWIIL was mandated to comply with the *'public issue'* norms as prescribed under the Companies Act, 1956.
47. Further, since the issue 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. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with

in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

48. In respect of the above, I note that no records have been submitted to indicate that MWIIL had made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. In view of the above MWIIL has contravened the provisions of section 73(1) and (2) of the Companies Act. Further, MWIIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that MWIIL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find that section 73(1), (2) and (3) of the Companies Act, 1956 has not been complied with.

49. Further, I note that Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its '*prospectus*' with the RoC, before making a public offer/ 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 the issue of NCDs was a deemed public issue of securities, MWIIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that MWIIL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the issue of NCDs. I, therefore, find that MWIIL has not complied with the provisions of section 60 of the Companies Act, 1956.

50. In terms of 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 a company, unless the form is accompanied by abridged prospectus, containing



disclosures as specified. There is no material to show that MWIIL has issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, MWIIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

51. Further, 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 the company 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. Since MWIIL had appointed MSWT as a Debenture Trustee, which do not have a certificate of registration, the appointment of the same is in violation of section 117B of the Companies Act, 1956.

52. I further note that SEBI has issued the SEBI (ILDS) Regulations, 2008 which governs the public issue of NCDs. As established in the preceding paragraphs, the issue of NCDs by MWIIL in the financial 2010-11 and 2011-11, were in the nature of deemed public issue. In this regard, I note that, in addition to the obligations stipulated in the Companies Act, 2013, SEBI by way of the above regulations has mandated specific compliances that a company, coming out with a public issue of NCDs, would have to adhere. The relevant provisions of SEBI (ILDS) Regulations, are provided here under:

- a) Regulation 4(2)(a) – Application for listing of debt securities
- b) Regulation 4(2)(b) – In-principle approval for listing of debt securities
- c) Regulation 4(2)(c) – Requirement of Credit rating
- d) Regulation 4(2)(d) – Dematerialization of debt securities
- e) Regulation 4(4) – Appointment of Debenture Trustee
- f) Regulation 5(2)(b) – Disclosure requirements in the Offer Document
- g) Regulation 6 – Filing of draft Offer Document
- h) Regulation 7 – Mode of disclosure of Offer Document

- i) Regulation 8 – Advertisements for Public Issues
- j) Regulation 9 – Abridged Prospectus and application forms
- k) Regulation 12 – Minimum subscription
- l) Regulation 14 – Prohibition of mis-statements in the Offer Document
- m) Regulation 15 – Trust Deed
- n) Regulation 17 – Creation of security
- o) Regulation 19 – Mandatory Listing
- p) Regulation 26 – Obligations of the Issuer, etc.

53. In view of the above findings, it is clearly established that MWIL engaged in fund mobilizing activity from the public, through the issue of NCDs and has contravened the provisions of Section 56, Section 60 read with Section 2(36), 67(3) and Section 73(1), (2) and (3) of Companies Act 1956, Regulation 4(4) of SEBI (ILDS) Regulations, 2008 read with Section 117B read with Section 465(2) of Companies Act, 2013 and Regulation 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 17, 19 and 26 of SEBI (ILDS) Regulations, 2008 read with Regulation 59 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 read with Section 5 of the Companies Act, 1956.

#### **Role of Debenture Trustee: Muskaan Social Welfare Trust (Noticee No.5)**

54. As regards to the appointment of MSWT i.e. Noticee No.5 as a Debenture Trustee, I note that from Form 10s dated 21/10/2010 and 09/05/2012, obtained from MCA portal, that the name of the debenture trustee/ charge holder in the said Form 10s was MSWT (Noticee No.5). I further note that the name of the trustee in the Form 10 dated 21/10/2010 was of Sunil Kumar Singh (Noticee No.6) and the name of the trustee in Form 10 dated 09/05/2012 was Tapan Kumar Ghosh (Noticee No.7). It was also observed from the same documents that MWIL had created a charge on immovable properties and the amount mentioned was Rs.27 crores. Further, I note that the Board resolution approving the issuance of debentures and the registered deed of mortgages was also attached to the said Form 10.

55. In this connection, it is pertinent to note that for issuing a prospectus or a letter of offer to the public for subscription of its debentures, the company is required to appoint one or more debenture trustees. In this regard, as stated in the preceding paras, it was observed that mortgage was secured by way of trust deeds executed between MWIL and MSWT (Noticee No.5). I further note that, in terms of the Section 12(1) of SEBI Act, to act as a debenture trustee, the trust should have a registration from SEBI. However, in the present case MSWT (Noticee No.5) was not a SEBI registered debenture trustee.

56. From the aforesaid observations, it is evident that MSWT (Noticee No.5) acted as Debenture Trustee without obtaining requisite registration from SEBI.

57. 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."*

58. In view of the same, I find that MSWT (Noticee No.5) did not meet the criteria to act as Debenture Trustee and is not eligible to obtain a certificate of registration since it does not satisfy the eligibility criteria mentioned in Regulation 7 of the SEBI (Debenture Trustees) Regulations, 1993. In view of the above, I find that MSWT (Noticee No.5) have violated the provisions of Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations, 1993.

**Issue II: If the findings on Issue No. I are found in the affirmative, who shall be liable for the violations committed?**

**Liability of Partha Sarathi Ghosal (Noticee No.2), Goutam Ray (Noticee No.3) and Aman Goyal (Noticee No.4)**

59. From the documents available on record and as per the details received from RoC – Kolkata, I find that following were the Directors in MWIL during the relevant period of FY 2010-11 and 2011-12:

Sl. No.	Name of the Director	Original date of appointment	Date of Cessation
1	Partha Sarathi Ghosal (Noticee No.2)	23/09/2010	23/04/2012
2	Goutam Ray (Noticee No.3)	23/09/2010	-
3	Shri Aman Goyal (Noticee No.4)	23/09/2010	10/08/2012

60. Here, I would also like to quote the observations of the Hon'ble Supreme Court of India in the matter of **Shri N. Narayanan vs. SEBI** [(2013) 12 SCC 152] decided on 26.04.2013, wherein it was observed that - "... *Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence.*"

61. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision.

Therefore, MWIL and its directors during the relevant period are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

62. As far as the liability for non-compliance of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, the company and every director of the company who is an officer in default shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per section 73(2) of the Companies Act, 1956, the company and every director of the company who is an officer in default is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of Rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.

63. From the material available on record and the details of the appointment and resignation of the directors of MWIL as reproduced in the preceding paras of this Order, it is noted that Noticee No. 2, 3 and 4 were directors at the time of the issuance of NCDs. Since these persons were acting as directors during the period of issuance of NCDs, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, in the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified director of MWIL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the said directors of MWIL (Noticee No. 2, 3 and 4), as officers in default, are liable to make refund, jointly and severally, along with interest at the rate of 15% per annum, under section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions. Since, the liability of the company to repay under section 73(2) is continuing and such liability continues till all the repayments are made, the above said directors are co-extensively responsible along with the Company for making refunds along with interest under section 73(2)

of the Companies Act, 1956 read with Rule 4D of the Companies (Central Government's) General Rules and Forms, 1956, and section 27(2) of the SEBI Act.

64. The directors of MWIL had the responsibility of ensuring that refund of money was made to the investors as prescribed in law. With respect to the breach of law and duty by a director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in ***Madhavan Nambiar vs. Registrar of Companies*** (2002 108 Cas 1 Mad):

*" 13. .... A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.*

*14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956. "*

65. I note that Noticee No.2 has contended that he was one of the directors of the Company but subsequently resigned from the Company on 23 April, 2012 and that the resolution for Form 10 was not signed by him and Form 10 submitted in ROC was digitally signed by Shri Goutam Roy and the Debenture Trust Deed was also signed by some other person. He further contended that during his directorship in the Company, he did not receive any remuneration or profit or losses and that he resigned from the Company as a director prior to the supplementary charge being created by a second Form 10 dated 09.05.2012.

66. In this regard, I note that Noticee No.2 has not denied the fact that he was the director of MWIL during the relevant period of time when the NCDs were issued i.e. during 2010-11 and 2011-12. Further, a person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company/listed

company also comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. Accordingly, a director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Therefore, contentions made by Noticee No.2 like not receiving remuneration, not signing a particular document etc cannot wriggle him out from the liability. In view of the same, I find that the aforesaid contentions made by Noticee No.2 devoid of any merit.

67. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under section 73(2) of the Companies Act, 1956, is to direct MWIL and its Directors, viz. Partha Sarathi Ghosal, Goutam Ray and Aman Goyal to refund the monies collected, with interest to such investors. Therefore, I find that MWIL and its Directors, viz. Partha Sarathi Ghosal, Goutam Ray and Aman Goyal are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above-mentioned provisions.

Further, in view of the violations committed by the Company and its Directors, to safeguard the interest of the investors who had subscribed to such NCDs issued by the Company and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against all the Noticees.

68. In view of the discussion above, appropriate action in accordance with law needs to be initiated against MWIL and its Directors, viz. Partha Sarathi Ghosal, Goutam Ray and Aman Goyal. However, it also needs to be considered that substantial amount of time has been passed since the issuance of impugned NCDs by MWIL.

**Liability of the trustees, Sunil Kumar Singh (Noticee No.6) and Tapan Kumar Ghosh (Noticee No.7)**

69. As stated in the preceding paras, MWIL appointed MSWT (Noticee No.5) as the debenture trustee and Noticee No.6 and 7 acted on behalf of MSWT (Noticee No.5). Further, from the Form 10 filed by the company, it was observed that MWIL executed two trust deeds with MSWT (Noticee No.5), one for creation of charge and another for modification of charge for debentures. It was observed therein that the first trust deed was signed by Shri Sunil Kr Singh (Noticee No.6) on behalf of MSWT (Noticee No.5) and by Noticee No.2 on behalf of MWIL. It was also observed that the second deed which was executed on January 31, 2012 was signed by Noticee No.3 on behalf of MWIL and Shri Tapan Kumar Ghosh (Noticee No.7) on behalf of the trust (Noticee No.5). Accordingly, Noticee No.6 and 7, by acting as a trustee on behalf of MSWT (Noticee No.5) were alleged to have violated Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations.

70. In this connection, I note that Noticee No.6 has contended that he was neither a shareholder nor a director and he was also not a subscriber to the Memorandum and Articles of Association of the said company. He has further contended that he was not part of the affairs of the said company with respect to any matter including the alleged issue of allotment of any debenture to any person and after he realized the requirements, he immediately refused to act as a trustee and asked the other trustee to immediately take steps to register the trust under SEBI Regulations/guidelines and in the meantime, he did not further perform any duty as a trustee. He submitted that he resigned on October 28, 2010 and stopped performing any act as a trustee. He further contended that he never signed any document or paper or certificate with respect to the issuance of the debenture or collection of any fund in that way and that the digital signature was obtained and used by the company in a purported Form No. 10 with date of creation of charge dated 21.10.2010

71. With regards to the aforesaid contentions of the Noticee No.6, I note that Noticee No.6 signed one of the trust deed with Noticee No.1 on behalf of MSWT (Noticee No.5). Apart from this, I also note that Noticee No.6 signed the bank account opening



form of MWIL as well as he was one of the authorized signatories of the said bank account. Accordingly, I note that these facts contradict not only his contention that he was not part of the affairs of MWIL but also that he never signed any document or paper or certificate with respect to the issuance of the debenture or collection of any fund. Further, with regards to the contention of his digital signature was obtained and used by the company, I note that the aforementioned trust deed was not digitally signed but was manually signed by Noticee No.6. I further note that Noticee No.6 has also not produced any documents to show that he complained to any authority about the misconduct of MWIL or the trust. In view of the aforesaid observations, I don't find any merit in the contentions made by Noticee No.6.

72. From the aforementioned observations, I find that Noticee No.6 and 7 acted as the trustees of MSWT (Noticee No.5) and signed trust deeds on its behalf without obtaining requisite registration from SEBI or meeting the criteria to act as Debenture Trustee and accordingly have violated the provisions of Section 12(1) of the SEBI Act read with Regulation 7 of Debenture Trustees Regulations.

## **DIRECTIONS**

73. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), 11A and 11B thereof, hereby issue the following directions:

- a. MWIL (Noticee No. 1), Partha Sarathi Ghosal (Noticee No. 2), Goutam Ray (Noticee No. 3) and Aman Goyal (Noticee No. 4) shall forthwith refund the money, jointly and severally, collected by the Company through the issuance of NCDs in FY 2010-11 and 2011-12 including the application money collected from investors during their respective period of directorship, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

- b. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order, both of which should be crossed as “*Non-Transferable*”.
- c. The Banks, with whom the accounts of MWIIL, Partha Sarathi Ghosal, Goutam Ray and Aman Goyal lie, are directed that no debit shall be made, without permission of SEBI except for the purposes of compliance of this order.
- d. The MWIIL, Partha Sarathi Ghosal, Goutam Ray and Aman Goyal are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- e. MWIIL and the directors of MWIIL at the time of issuance of NCDs viz. Partha Sarathi Ghosal, Goutam Ray and Aman Goyal in their personal capacity to make refund, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- f. After completing the aforesaid repayments, MWIIL, Partha Sarathi Ghosal, Goutam Ray and Aman Goyal in their personal capacity shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered

Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.

- g. In case of failure of MWIL, Partha Sarathi Ghosal, Goutam Ray and Aman Goyal to comply with the aforesaid applicable directions, SEBI, on the expiry of three months period from the date of this Order, may recover such amounts, from the company and the directors liable to refund as specified in paragraph 73(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
- h. MWIL, Partha Sarathi Ghosal, Goutam Ray and Aman Goyal are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of **3 (three) years**. The above said directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this Order till the expiry of **3 (three) years**.
- i. Muskaan Social Welfare Trust and its trustees namely Shri Sunil Kr Singh and Shri Tapan Kumar Ghosh are restrained from accessing the securities market and are further restrained from buying, selling or dealing in securities, in any manner whatsoever, for a period of **3 (three) years** from the date of this order.

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

75. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, Depositories, Banks and Registrar and Transfer Agents for information and compliances.

76. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.

**Date: September 30, 2024**

**Place: Mumbai**

**G RAMAR  
CHIEF GENERAL MANAGER  
SECURITIES AND EXCHANGE BOARD OF INDIA**