

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

UNDER SECTIONS 11(1), 11(4), 11A and 11B (1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF GEOSHINE MINES TO METALS LIMITED.

In respect of:

Noticee No.	Name of Noticee	PAN	CIN / DIN
1.	M/s. Geoshine Mines 2 Metals Limited	AABCB5955D	U74110UP1997PLC021979
2.	Chhotelal Shukla	CLJPS2300B	02706032
3.	Shivanand Mishra	AJHPM9388B	02706697
4.	Deena Nath Maurya	BJJPM1012K	02824654
5.	Mukesh Kumar Khare	BBVPK0966N	06400147
6.	Arvind Tiwari	ADXPT8691C	1629407
7.	Pashupati Nath Dixit	AJPPD9322G	1664553
8.	Rajesh Kumar Sharma	BFXPS2910E	1731816
9.	Ramendra Prasad Sharma	AOBPS4499A	2518373
10.	Raj Kumar Verma	AGOV5191R	6605102
11.	Ram Vishal Prajapati	ATEPP5173G	7072179
12.	Bharat Subhash Prasad Maurya	Not available	8101500
13.	Surendra Singh	BVGPS1857P	7524382
14.	Ram Kishor Prajapati	AVOPP0495M	7524405
15.	Rajesh Singh Yadav	ALVPY5087F	7524409
16.	Sita Ram Prajapati	ASPPP5581Q	7526339

Noticee No.	Name of Noticee	PAN	CIN / DIN
17.	Vishwa Bandhu Vashistha	ADFPV9924N	02707338

(The aforesaid entities are hereinafter individually referred to by their respective names / noticee numbers and collectively as 'Noticees', unless the context specifies otherwise).

BACKGROUND OF THE CASE

1. Geoshine Mines 2 Metals Limited (**'GM2ML'** / **'company'/Noticee 1**) is an unlisted public company which was incorporated on 16.05.1997 as Basil Granites and Mining Private Limited with CIN U74110UP1997PLC021979. The name of the company was changed to Geoshine Granites and Mining Private Limited and on 07.06.2012 the name of the company was changed to GM2ML. As per MCA, the registered office of the company is at P. No. 1033 SA, Kataula Gaushpur Main Road Airport Post- Bamrauli, Ps. Dhoomanganj , Prayagraj, Uttar Pradesh, India – 211012.
2. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), received complaints from various investors regarding their subscription in the Redeemable Cumulative Preference Shares (**RCPS**) issued by the company. Based on these complaints, SEBI undertook an examination to ascertain whether GM2ML had made any public issue of securities without complying with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India Act, 1992 (*hereinafter referred to as **SEBI Act***) and the Rules and Regulations framed thereunder.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A common Show Cause Notice dated 10.05.2024 (hereinafter referred to as "**SCN**") was issued to the Noticees calling upon them to show cause as to why suitable directions under Sections 11(1), 11(4), 11A and 11B (1) of the SEBI Act, 1992 including direction of refund of monies collected from the investors through the offer of RCPS and direction of restraint and prohibition from accessing the

securities market should not be issued against the Noticees for the alleged violations. The following documents were enclosed as annexures to the SCN:-

Table A

Annexures to SCN	
Annex. No.	Particulars
A	The list of complaints received by SEBI alongwith the details of the certificate holders
B	ROC certificate w.r.t change of name of company
C	NCLT orders dated 24.08.2022 and 21.11.2023
D	Form 20B and Form 23AC
E	Various SEBI letters issued to company and its directors
F	Replies received from noticees viz 2,3,4,11,13,14 and 15

4. The SCN has *inter alia* alleged the following which is summarized hereinbelow:-
 - 4.1. SEBI was in receipt of various complaints w.r.t the RCPS issued by the company during 2012-13.
 - 4.2. From the Insolvency and Bankruptcy Board of India (IBBI) website, it was observed that the company viz GM2ML was under CIRP since 24.08.2022 and the CIRP was withdrawn vide NCLT order dated 21.11.2023.
 - 4.3. From the various filings of the company with ROC for 2012-13, i.e Forms 20B and 23AC it was observed that the company had not mentioned about the issuance of preference shares for raising capital. As per the company filings, only equity shares were issued by the company during 2012-13.
 - 4.4. In the light of various complaints received w.r.t the issuance of RCPS during 2012-13, SEBI vide its letter dated 25.12.2020 advised the company to ensure compliance with SEBI Circular No. CIR/CFD/DIL3/18/2015 dated 31.12.2015 regarding the refund procedure and obtaining a certificate of compliance to avoid penal action. However, the delivery of the letter attempted at the various addresses of company was not successful.
 - 4.5. SEBI vide letter dated 28.05.2021 sought information w.r.t the issuance of RCPS by GM2ML from the directors / noticees. Reminder letters dated

16.06.2023 were sent to the directors from whom the earlier letter returned undelivered. Replies were received from some directors, however the relevant information w.r.t the issuance of RCPS by the company was not provided by any of them.

4.6. From the complaints received by SEBI, it was gathered that the company had issued RCPS to atleast 103 investors during 2012-13 and the company had raised atleast about Rs.71,55,500/- Thus it was alleged that the company was involved in mobilizing funds from the public through the issuance of RCPS to more than 49 investors during 2012-13 without following the norms for public issue of securities. Further, the company has not complied with the provisions of the SEBI circular dated 31.12.2015 and has failed to refund the money to the investors.

4.7. As the above said offer of RCPS was deemed to be public issue, it was alleged that the company and its directors by issuing RCPS to more than 49 persons each in F.Y. 2012-13, thereby violated the provisions of Section 56 (1), (3), Section 60 read with Section 2(36), Section 67(3), Section 73(1), (2) & (3) of the Companies Act, 1956 read with Section 5 of the Companies Act, 1956 read with Section 465(2) of the Companies Act, 2013.

5. The SCN dated 10.05.2024 was attempted to be delivered through Speed Post with Acknowledgment Due (SPAD). Wherever, the delivery was not successful through SPAD, the same was attempted through affixture and newspaper publication. The status of the delivery of the SCN is as follows:-

Noticee No.	Name	Mode of delivery of SCN	Date of delivery	Remarks, if any
1.	GM2ML	Affixture Newspaper	28.06.2024 08.08.2024	Hindustan Times (English) & Amar Ujala (Hindi)
2.	Chhotelal Shukla	SPAD	25.05.2024	Replied to SCN vide letter dated 07.06.2024
3.	Shiv Anand Mishra	Affixture Email	30.06.2024 03.07.2024	Affixture notice was received by brother of noticee i.e Paxxxxxxd Mixxxa. SCN also requested by email by noticee vide email dated

				03.07.2024. The same was acknowledged by noticee.
4.	Deena Nath Maurya	Newspaper	08.08.2024	Letter refused by noticee during affixture. Hindustan Times (English) & Amar Ujala (Hindi)
5.	Mukesh Kumar Khare	SPAD	25.05.2024	
6.	Arvind Tiwari	Newspaper	08.08.2024	Affixture was not permitted. Hindustan Times (English) & Amar Ujala (Hindi)
7.	Pashupati Nath Dixit	SPAD	18.05.2024	
8.	Rajesh Kumar Sharma	SPAD	18.05.2024	
9.	Ramendra Prasad Sharma	Newspaper	08.08.2024	Affixture was not successful "incorrect address". Hindustan Times (English) & Amar Ujala (Hindi)
10.	Raj Kumar Verma	Affixture Newspaper	28.06.2024 08.08.2024	Hindustan Times (English) & Amar Ujala (Hindi)
11.	Ram Vishal Prajapati	SPAD	29.05.2024	
12.	Bharat Subhash Prasad Maurya	Newspaper	08.08.2024	Affixture was not successful . Reason stated was "No such consignee". Hindustan Times (English), Pratahkal (Hindi) and Prahar (Marathi)
13.	Surendra Singh	Hand Delivered	28.06.2024	Received by son of noticee.
14.	Ram Kishor Prajapati	SPAD	30.05.2024	
15.	Rajesh Singh Yadav	SPAD	28.05.2024	

16.	Sita Ram Prajapati	SPAD	24.05.2024	
17.	Vishwa Bandhu Vashistha	SPAD	18.05.2024	

6. An opportunity of personal hearing was scheduled on 23.07.2024 for those noticees to whom the SCN was delivered and the same was informed to them vide hearing notice dated 26.06.2024. Thereafter, the hearing for the remaining noticees was scheduled on 20.08.2024 which was informed to them vide hearing notice dated 29.07.2024. The status of the delivery of the hearing notices issued to the noticees is as follows:-

Sl. No.	Name	Mode / Date of Hearing Notice	Delivered on	Whether noticee appeared for the hearing
1.	GM2ML	SPAD & Newspaper 29.07.2024	SPAD returned undelivered. Hindustan Times (English) Amar Ujala (Hindi) on 08.08.2024	No
2.	Chhotelal Shukla	SPAD 26.06.2024	03.07.2024	No
3.	Shiv Anand Mishra	SPAD & Newspaper 29.07.2024	SPAD returned undelivered. Hindustan Times (English) Amar Ujala (Hindi) on 08.08.2024	No
4.	Deena Nath Maurya	SPAD & Newspaper 29.07.2024	SPAD delivered on 06.08.2024. Hindustan Times (English) Amar Ujala (Hindi) on 08.08.2024	Yes. The Noticee appeared on Webex for the hearing scheduled on 20.08.2024.
5.	Mukesh Kumar Khare	SPAD 26.06.2024	02.07.2024	No.
6.	Arvind Tiwari	SPAD & Newspaper 29.07.2024	SPAD returned undelivered. Hindustan Times (English) Amar Ujala (Hindi) on 08.08.2024	Yes. The authorized representative i.e. Sarvendra Singh, Advocate appeared on behalf of the Noticee for the hearing held on 20.08.2024.
7.	Pashupati Nath Dixit	SPAD 26.06.2024	01.07.2024	Yes. The Noticee appeared on Webex for the hearing scheduled on 23.07.2024

8.	Rajesh Kumar Sharma	SPAD 26.06.2024	01.07.2024	No
9.	Ramendra Prasad Sharma	SPAD & Newspaper 29.07.2024	SPAD returned undelivered. Hindustan Times (English) Amar Ujala (Hindi) on 08.08.2024	No
10.	Raj Kumar Verma	SPAD & Newspaper 29.07.2024	SPAD returned undelivered. Hindustan Times (English) Amar Ujala (Hindi) on 08.08.2024	No.
11.	Ram Vishal Prajapati	SPAD 26.06.2024 SPAD & Newspaper 29.07.2024	SPAD of 26.06.2024 returned undelivered. SPAD of 29.07.2024 delivered on 05.08.2024 Hindustan Times (English) Amar Ujala (Hindi) on 08.08.2024	No.
12.	Bharat Subhash Prasad Maurya	SPAD & Newspaper 29.07.2024	SPAD returned undelivered. Hindustan Times (English), Pratahkal (Hindi) and Prahar (Marathi) 08.08.2024.	No.
13.	Surendra Singh	SPAD Newspaper 29.07.2024	SPAD Returned undelivered. Hindustan Times (English) Amar Ujala (Hindi) on 08.08.2024	No.
14.	Ram Kishor Prajapati	SPAD 26.06.2024	01.07.2024	No.
15.	Rajesh Singh Yadav	SPAD 26.06.2024	02.07.2024	No.
16.	Sita Ram Prajapati	SPAD 26.06.2024 SPAD & Newspaper 29.07.2024	SPAD Returned undelivered. Hindustan Times (English) Amar Ujala (Hindi) on 08.08.2024	No.
17.	Vishwa Bandhu Vashistha	SPAD 26.06.2024	04.07.2024	Yes. The authorized representative i.e. Kuldeep Kumar, Advocate appeared on behalf of the Noticee for the hearing held on 23.07.2024.

7. As can be seen from the above table, although the SCN and hearing notice have been served on all the noticees, out of the 17 noticees only 4 noticees have availed the opportunity of personal hearing that was granted to them on 23.07.2024 and 20.08.2024. All the noticees except 3 noticees i.e the company viz GM2ML (Noticee 1), Ramendra Prasad Sharma (Noticee 9) and Bharat Subhash Prasad Maurya (Noticee 12) have submitted their replies either on receipt of the SCN or the hearing notice. I note that these 3 noticees have cooperated neither during the examination nor during the current proceedings. No reply was filed by them nor have they availed the opportunity of personal hearing. I am of the view that they have nothing to submit and the matter is being proceeded ex-parte on the basis of material available on record. 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*, observed 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*". Therefore, it can be presumed that the noticees have admitted to the charges levelled against them as they did not file any reply to the SCN.
8. Further, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), has also, *inter alia*, observed that: "*..... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*". Additionally, the same position has been reiterated by the Hon'ble SAT in the matter of *Dave Harihar Kirtibhai vs SEBI* (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under: "*...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non- receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not*

being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...”

9. Considering the aforesaid, I am of the view that the principles of natural justice have been adhered to, as the SCN and the Hearing Notices were duly served upon the Noticees (the proof of delivery is available on record) and opportunity was granted to them to reply to the SCN and appear for the personal hearing. The 3 noticees i.e the company viz GM2ML (Noticee 1), Ramendra Prasad Sharma (Noticee 9) and Bharat Subhash Prasad Maurya (Noticee 12) have neither replied to the allegations in the SCN nor have they availed the opportunity of personal hearing which was granted to them. Therefore, I deem it appropriate to proceed ex-parte for these noticees, based on the material available on record.
10. The remaining 14 Noticees have submitted their replies which are summarized as follows:-
- 10.1 Chhotelal Shukla i.e Noticee 2 : Noticee replied (in Hindi) to the SCN dated 10.05.2024 and has stated the following vide reply dated 31.05.2024. He was working in Jaig Polymers Ltd. and was appointed as a Supervisor from 29.12.1988. The company was taken over by Dr.P.P.S. Sethi on 01.11.1996. Many employees left the company as there was no production nor salary. As Dr. Sethi assured Noticee 2 that he would receive his entire remaining remuneration, he continued with the company. It was only in 24.04.2015 after receiving a letter from SEBI that he realized that Dr. Sethi had misused his name and document. He then realized that he has been made a director in 26 companies. He has filed his complaint before EOW, SFIO and Delhi Police.
- 10.2 Shivanand Mishra i.e Noticee 3 : Noticee replied to the SCN dated 10.05.2024 vide letter dated 17.07.2024 which was sent through email. Noticee worked as a Commercial Officer in Vamshi Exports Ltd. (presently Vamshi Chemical Ltd). in Barabhanki, UP since 16.12.2003 and was looking after the sales and stock management of the company. In 2014 after the unit closed, noticee started working elsewhere. Dr.P.P.S.Sethi was the owner of the company and as they

did not provide consent their signature was forged. The noticee was never involved in any collection of money in any company of Dr.P.P.S.Sethi.

10.3 Deena Nath Maurya i.e. Noticee 4: The Noticee replied (in Hindi) vide reply dated 27.08.2024. The noticee has provided his reply post personal hearing held on 20.08.2024 which he attended through Webex. Noticee has stated that he was a Lab Technician with Vamshi Exports Ltd. He joined the factory on 07.10.2003 on a salary of Rs.3500/- p.m. He had to submit his academic records to the factory manager. Dr.Prithi Pal Singh Sethi misused his documents. He has neither attended any meeting as a director nor has he signed any documents. Noticee tried to file an FIR several times, but the police has not registered it. SEBI has arrayed him as a party before the Patiala House Court Delhi in the matter of Vamshi Chemical Ltd. (En Aromatic Limited) wherein he has given his submission by presenting before the Court. Being made as a party to the aforesaid case, his other two colleagues namely Chhotelal Shukla and Mukesh Kumar Khare have on 08.08.2023 filed an application before the EOW, SFIO, Commissioner, New Delhi. Complaint has been registered by EOW, New Delhi on 09.08.2023 which is currently being investigated. On October 27, 2023, EOW, New Delhi has informed that the complaint has been forwarded to SSP, Sultanpur for investigation. Noticee has never worked as a director in any company and many other employees have been framed by Dr. Sethi by misusing their documents. Fake signatures have been used to fraudulently appoint him as director.

10.4 Mukesh Kumar Khare i.e Noticee 5 : The Noticee replied (in Hindi) vide reply dated 09.07.2024 to the hearing notice dated 26.06.2024. Noticee was pursuing his M.A.when he was offered a job in the dispatch. He was not given any appointment letter but was offered the job orally. Dr. P.P.S.Sethi was the managing director of the company. In 2010-11, for the purpose of PF, documents such as ration card, aadhar card, pancard and bank account number were sought from the employees. In 2015-16 as the company was delaying salary payments, he left the company. On realizing that his name has been used as a director, he approached Amit Mishra, Manager who assured him that his name would be removed. The company has cheated him. The noticee tried to file FIR but was informed to either go to Allahabad or file it online.

He was unable to file online FIR. In 2018 w.r.t a summon he went to Delhi Patiala Court w.r.t En Aromatic where he met others whom he did not know and who were facing similar investigations from EOW, CBI, SFIO and hence together they engaged a lawyer.

- 10.5 Arvind Tiwari i.e Noticee 6 : The authorized representative has filed a reply to the SCN dated 10.05.2024 on behalf of the Noticee vide letter dated 18.08.2024 which was submitted during the personal hearing held on 20.08.2024. Noticee was given a job in Versatile Plantation Ltd. where he met Mr.P.P.S.Sethi. In 1998 Versatile started facing problems w.r.t repayments of the funds of the investors. The noticee on realizing that the company is facing problems, started the job as an LIC agent. In 2002-03, Versatile made certain payments to the customers. During that period, the noticee meet Mr. Sethi who offered him a job in a cosmetic company which he refused. In 2006, Mr Sethi approached noticee w.r.t business of insurance on a large scale. Vide appointment letter dated 22.04.2008 he was appointed as Chief Insurance Executive in M/s Keytrade Insurance Company on a comparable better salary. During his appointment, Mr. Sethi called the noticee at New Delhi and asked him to sign several documents. On enquiring he was informed that the documents related to routine work of the company. In March 2015, when he appeared before CBI in the matter of Basil International Ltd. he became aware that Mr. Sethi had misused his name and documents.As noticee was under fear and duress created by Mr. Sethi, he did not lodge any criminal complaint against Dr. Sethi. He started working as a sales manager in another insurance company in the month of September 2015. He had filed his resignation from GM2ML with ROC vide his letter dated 13.04.2016 specifically pointing that his signature in the appointment were forged by the company which was acknowledged by ROC. He was fraudulently made a director in many other companies operated by Mr. Sethi. Noticee has emphasized that during 2012-13, he was not a director in GM2ML. He has not collected any money from the public. Mr .Sethi has fraudulently shown noticee as a director by forging letters of appointment. Notice was never a beneficiary of any amounts collected by the company.
- 10.6 Pashupati Nath Dixit i.e Noticee 7 : The Noticee replied (in Hindi) vide email dated 24.07.2024 post personal hearing which was held on 23.07.2024.

Noticee has stated that he is not associated with the company in any form. Noticee came in contact with another noticee viz Ramendra Prasad Sharma who is from Philibit. Noticee is a TV mechanic and from a very poor background. In March 1999, he was appointed as a driver by Sharma who later introduced him to a person named Madan in Delhi . His driving licence and voting card was taken by Madan. He worked for 3 months as a driver and was paid Rs.5000/- and was made to sign a voucher. Thereafter he did not receive any money. In 2014, he became aware that he was a manager in a company when the CBI came to investigate the matter. The noticee has been constantly getting letters from CBI and ED. He has no other information.

- 10.7 Rajesh Kumar Sharma i.e Noticee 8 : The Noticee replied (in Hindi) vide letter dated 25.07.2024 which was sent vide email in response to the hearing notice dated 26.06.2024. Noticee stated that due to financial constraints he could not attend the said hearing. Noticee is not connected to the company in anyway and he has no idea as to how he has been made a director in the company. The noticee was working with Vamshi factory at Barabanki from 2005 to 2012. Many documents like voter ID, PAN card, photograph, bank pass book and other documents were taken by the owner and the noticee has no idea as to how he has become director of GM2ML.
- 10.8 Raj Kumar Verma i.e Noticee 10 : The Noticee replied (in Hindi) vide letter dated 16.08.2024 pursuant to the newspaper publication of the SCN and hearing notice. Noticee does not have evidence or documents which he can present to SEBI. His letter may be considered as his submissions. Due to financial constraints he could not attend the personal hearing. Noticee is not highly qualified. Dr. P.P.S Sethi was the Chairman & Mr. Avadhut Kumar Mandal was General Manager in the company. The company's chairman and general manager and Ram Asare Prajapati from Fatehpur have schemed together and misused their documents and made them a director. He became aware of it in 2020. He then approached ROC Kanpur where he became aware that he was made a director on a single day in various companies for a period of 3 or 6 months to maximum 20 months. He was fraudulently made a director in GM2ML in 2008 and had no knowledge as to when he was made a director and as to when he resigned in this company. Apart from being an agent in the

company he has no further information to furnish. He has filed an FIR No. 0296/2022 on 15.05.2022 with Fatehpur Police Station. The proceedings are still on.

- 10.9 Ram Vishal Prajapati i.e Noticee 11 : The Noticee replied (in Hindi) vide letters dated 18.07.2024 and 14.08.2024 in reply to the hearing notice dated 26.06.2024. The noticee has made his submissions on similar lines as Noticee 10. Noticee has also stated that in 2007, he joined Togo Retail Marketing Ltd. as an agent. He had to submit all his documents at the time of joining the company. He has filed an FIR No. 0789/2022 on 16.10.2022 with Fatehpur Police Station.
- 10.10 Surendra Singh i.e Noticee 13 : The Noticee replied (in Hindi) vide letter dated 18.07.2024 and 14.08.2024 in reply to the hearing notice dated 26.06.2024. The noticee has made his submissions on similar lines as Noticee 10. He has filed an FIR No. 0875/2022 on 21.11.2022 with Fatehpur Police Station.
- 10.11 Ram Kishor Prajapati i.e Noticee 14 : The Noticee replied (in Hindi) vide letter dated 15.07.2024 in reply to the hearing notice dated 26.06.2024. The noticee has made his submissions on similar lines as Noticee 10. He has filed an FIR No. 0805/2022 on 20.20.2022 with Fatehpur Police Station.
- 10.12 Rajesh Singh Yadav i.e Noticee 15 : The Noticee replied (in Hindi) vide letter dated 18.07.2024 in reply to the hearing notice dated 26.06.2024. The noticee has made his submissions on similar lines as Noticee 10. He has filed an FIR No. 0940/2022 on 23.12.2022 with Fatehpur Police Station.
- 10.13 Sita Ram Prajapati i.e Noticee 16 : The Noticee replied (in Hindi) vide letters dated 17.07.2024 and 16.08.2024 in reply to the hearing notice dated 26.06.2024. The noticee has made his submissions on similar lines as Noticee 10. He has filed an FIR No. 0213/2022 on 26.03.2023 with Fatehpur Police Station.
- 10.14 Vishwa Bandhu Vashistha i.e Noticee 17 : The authorized representative for Noticee 17 submitted the reply on behalf of the noticee vide letter dated 13.07.2024. He was never a director of the said company. In 2012-13, he was working for Vamshi Chemicals and his PAN card was taken from Vamshi and used in GM2ML. Signature was forged and the documents of the noticee were misused by unknown person to make him the director of the company. Noticee

has already filed his complaint with various authorities. The Noticee has not signed any documents of the company, did not attend AGM, did not sign any financial document nor was he the signatory for the company's bank accounts as he was never a director in GM2ML. Noticee was not aware of any NCLT proceedings. The noticee has also provided his reply to earlier SEBI letter of 14.09.2023. Noticee has attached an undated and unsigned copy of letter sent to CBI informing about the misuse of PAN and forgery of his signature to make him director in about 18 companies.

11. During the personal hearing held on 23.07.2024, Pashupati Nath Dixit (Noticee 7) attended the hearing on Webex and made his submissions which are also given in his written submissions above. Vishwa Bandhu Vashistha (Noticee 17) was represented by his advocate wherein he has stated that the noticee was an employee of Vamshi Chemicals Ltd. and that his documents have been misused. Accordingly, the noticee was advised to obtain appropriate documents / orders from the competent authority to prove that he was fraudulently appointed as a director in GM2ML. However, I note that the noticee has not provided any document from the appropriate authority to substantiate his claims.
12. During the personal hearing held on 20.08.2024, Deena Nath Maurya (Noticee 4) attended the hearing on Webex and reiterated the submissions made by him during the examination i.e he is not aware of the company and that his documents have been misused to make him a director without his consent. Arvind Tiwari (Noticee 6) was represented by his advocate who reiterated his written submissions inter alia, that the name and identity of the noticee has been misused by Dr. Prithi Pal Singh Sethi and the noticee was fraudulently made a director in the company by Dr. Sethi. The noticee was advised to obtain appropriate documents / orders from the competent authority to the effect that his documents have been misused and that he was fraudulently appointed as a director of the company. However, I note that the noticee has not provided any documents from the appropriate authority to substantiate his claims.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have considered the allegations made in the SCN and the documents available on record. I note that the issue for consideration is;

- (I) Whether the company came out with the Offer of RCPS in violation of Sections 56, 60, 67 (3) and Sections 73(1),(2) and (3) of the Companies Act, 1956 read with Section 465(2) of the Companies Act, 2013?
- (II) If the findings are found to be affirmative, who shall be liable for the violations committed ?

14. The relevant provisions of the Companies Act, 1956 alleged to have been violated by the Noticees are as follows:-

Companies Act, 1956

"56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN 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)

(3) No one shall issue any form of application for shares 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.”

“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) of the Companies Act, 1956

(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.”

“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).”*

73. ALLOTMENT OF SHARES AND DEBENTURES TO BE DEALT IN ON STOCK EXCHANGE

(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 recognised 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 sub-section (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 subsection (2) ; and if default is made in complying with this subsection, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees.”

Companies Act, 2013

465. REPEAL OF CERTAIN ENACTMENTS AND SAVINGS

(1)...

(2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,- -

- (a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;*
- (b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;*
- (c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;*
- (d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;*
- (e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;*
- (f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;*

- (g) *the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;*
- (h) *all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;*
- (i) *any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;*
- (j) *any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and*
- (k) *any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 (1 of 1956) before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal."*

Issue 1: Whether the company came out with the Offer of RCPS in violation of Sections 56, 60, 67(3) and Section 73(1), (2) and (3) of the Companies Act, 1956 read with Section 465(2) of the Companies Act, 2013?

15. Before proceeding with the issue, I note that Section 55A of the Companies Act, 1956, noted below, empowers SEBI to take action in matters related to issue and transfer of securities: -

"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.”.

16. I note that SEBI has received complaints from 103 different investors w.r.t the issue of 188 RCPS by GM2ML during 2012-13. Further, on perusal of various forms filed by the company with ROC viz Form 20B (Form for filing annual return), Form 23AC (Form for filing balance sheet) and the various annexures filed with ROC for F.Y. 2012-13, it is noted that there are no filings made by the company w.r.t the issue of RCPS by it. Further, during examination, SEBI vide its letter dated 25.12.2020 (which was sent to the available four addresses of the company) drew attention and compliance to the provisions of the SEBI circular No. CIR/CFD/DIL3/18/2015 dated 31.12.2015 regarding the refund procedure to be followed by it w.r.t the deemed public issue involving offer / allotment of securities to more than 49 persons and less than 200 persons in a financial year. The company was also advised to obtain a certificate of compliance in order to avoid penal action. However, these letters returned undelivered.

17. Accordingly, SEBI also sought information from 15 directors of the company vide letter dated 28.05.2021 which was issued to Noticees 2 to 16. Although replies were received from 7 directors i.e Noticees No. 2, 3, 4, 11, 13, 14 and 15, none of these directors have provided relevant information regarding the issuance of RCPS by GM2ML nor have they denied the issuance of RCPS by the company during 2012-13. SEBI further sent letter dated 16.06.2023 to the remaining 5 directors i.e. Noticees 7, 8, 10, 12 and 17 and also letter dated 14.09.2023 to the company and directors regarding the compliance with SEBI's Circular dated 31.12.2015.

18. SEBI's letter dated 14.09.2023 was replied by certain noticees, as stated above. However, the noticees / directors have neither provided relevant information nor have they denied the issuance of RCPS by the company.

19. Thus, despite specific information being sought from company and the directors, no information is received w.r.t the issuance of RCPS by the company. Further, there are no filings made by the company regarding issuance of these securities.

However, based on the complaints received by SEBI, it is observed that GM2ML has issued 188 RCPS to 103 investors (the figure could be higher also). I further note from the complaint details and the copies of the certificates that the date of allotment of the RCPS is 17.12.2012 with the redemption dates as either 17.12.2015 or 17.12.2018. Further, these complaints have been mainly received from the states of Uttar Pradesh, Madhya Pradesh, and West Bengal.

20. SEBI has received complaints from 103 investors complaining about the non receipt of their funds w.r.t the issuance of RCPS during 2012-13 by GM2ML. I also note that the company/directors have not made the refund to the investors as was directed in terms of SEBI Circular dated 31.12.2015. On a perusal of the replies received during examination or to the SCNs, it is seen that none of the directors have refuted the alleged issuance of RCPS by GM2ML during the year 2012-13.

21. The alleged violations of provisions in the SCN are applicable to the Offer of RCPS made to the public. Therefore, the primary question that arises for consideration is whether the issue of RCPS is 'public issue'. Hence, a reference may be made to Sections 67(1) and 67(3) of the Companies Act, 1956:-

“67 CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC

(1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

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

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

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

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

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

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

22. In this regard, it would be pertinent to note the following 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)*, while examining 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.”

23. Section 67(3) of the Companies Act, 1956 provides for situations when an offer is not considered as one to the public. Under 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) of the 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 the Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the first proviso.

24. On examination of the material available on record, It is seen that GM2ML is not a non-banking financial company or public financial institution within the meaning of Section 4 of the Companies Act, 1956. In view of the aforesaid, GM2ML is not covered under the exception mentioned at second proviso to Section 67(3) of the Companies Act, 1956.

25. In the instant matter, based on the complaints, I find that GM2ML issued RCPS to 103 investors in the financial year 2012-13 thereby raising atleast Rs.71,55,500/-. The above findings lead to the conclusion that the Offer of RCPS by GM2ML was a “public issue” within the meaning of the first proviso to Section 67(3) of the

Companies Act, 1956. Hence, the offer of RCPS by GM2ML is deemed to be public issue and GM2ML was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

26. The Companies Act, 1956, has been repealed by the Companies Act 2013 and 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.

27. Further, Section 2(36) of the Companies Act read with Section 60 thereof, mandates a company to register its prospectus with the Registrar of Company (RoC), before making a public offer / issuing the prospectus. As per 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 offer of RCPS was a deemed public issue of securities, GM2ML was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that there is no material on record to indicate that GM2ML has registered a prospectus with the RoC, in respect of the offer of RCPS. Therefore, I find that GM2ML has not complied with the provisions of Section 60 of the Companies Act, 1956.

28. Section 56(1) of the Companies Act, 1956 provides for every prospectus issued by or on behalf of a company to state the matters specified in Part I and set out the reports specified in Part II of Schedule II of the 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 GM2ML has issued prospectus containing the disclosures mentioned in Section 56(1) of the Companies Act, 1956 or issued application forms accompanying the abridged

prospectus. In view of the above, I find that GM2ML has not complied with Sections 56(1) and 56(3) of the Companies Act, 1956.

29. The offer of RCPS being a public issue of securities, such securities shall also have to be listed on a recognised stock exchange, as mandated under Section 73 of the Companies Act, 1956. A company under Section 73(1) and (2) of the Companies Act, 1956 is required to make an application to one or more recognised 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 sought for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. No material is produced before me to show that GM2ML had made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure or to show that the amount collected by GM2ML is kept in a separate bank account. In view of the same, it is noted that GM2ML has not complied with Sections 73(1), (2) and (3) of the Companies Act, 1956.

30. The public companies, whether listed or unlisted, when they issue and transfer securities, the jurisdiction of SEBI is governed by 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 the *Sahara Case* (supra) has 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 recognised stock exchange in India.”

“SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of the SEBI Act and Regulation 107 of the 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 recognised stock exchange.”

31. SEBI has to administer Section 67 of the Act, in so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed as mentioned at Para 15. While interpreting the phrase ‘intend to get listed’ in the context of deemed public issue, the Hon’ble Supreme Court in the matter of *Sahara Case* (supra) observed the following;-

“....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 recognised 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....”

32. In view of the above, I find that GM2ML engaged in fund mobilising activity from the public, through the offer of RCPS and has contravened the provisions of Section 56(1), 56(3), Section 60 read with Section 2(36), Section 67(3) and Section 73(1), (2) and (3) of the Companies Act, 1956 read with Section 465 (2) of the Companies Act, 2013.

Issue No. 2 : If the findings on Issue No.1 are found in the affirmative, who shall be liable for the violations committed?

33. I note that as per Section 7 of the Insolvency and Bankruptcy Code, 2016, the Corporate Insolvency Resolution Process (CIRP) was initiated against the company, vide order dated 24.08.2022 of the National Company Law Tribunal,

Allahabad Bench, Prayagraj. On a perusal of the order of NCLT I note that the CIRP proceedings were initiated by 132 financial creditors against the company. The order also states *“The facts of the case as briefly stated in the petition are that corporate debtor has launched an investment scheme during the period of 2011 and 2012 and the financial creditors had invested their money in the alleged scheme for which the corporate debtor had issued alleged certificates..... After attaining maturity of the alleged Scheme, the financial creditors had requested for the maturity amount, however the Corporate Debtor failed to pay the maturity amount and thus committed the default with respect to the payment of assured return.”* I note that the company has defaulted in payment of earlier investment schemes launched by it. Further, vide Order dated 21.11.2023 the CIRP initiated against the company has been withdrawn. Thus, the company also becomes liable for the violations in the current proceedings.

34. With regard to the liability of the directors, from the details submitted by MCA, I note that GM2ML had the following directors:-

Noticee No.	Director Name (Noticee No.)	Designation	Date of appointment	Date of cessation
1.	Chhotelal Shukla (2)	Director	06.03.2012	12.02.2015
2.	Shivanand Mishra (3)	Director	06.03.2012	17.04.2013
3.	Deena Nath Maurya (4)	Director	06.03.2012	12.02.2015
4.	Mukesh Kumar Khare (5)	Additional Director	25.08.2014	12.02.2015
5.	Arvind Tiwari (6)	Additional Director	29.01.2015	13.04.2016
6.	Pashupati Nath Dixit (7)	Additional Director	29.01.2015	11.06.2019
7.		Director	25.04.2011	13.03.2012

Noticee No.	Director Name (Noticee No.)	Designation	Date of appointment	Date of cessation
	Rajesh Kumar Sharma (8)	Additional Director	29.01.2015	02.02.2015
8.	Ramendra Prasad Sharma (9)	Additional Director	29.01.2015	03.02.2015
9.	Raj Kumar Verma (10)	Director	03.02.2015	
10.	Ram Vishal Prajapati (11)	Director	03.02.2015	
11.	Bharat Subhash Prasad Maurya (12)	Additional Director	23.04.2018	31.08.2018
12.	Surendra Singh (13)	Additional Director	17.08.2018	01.10.2019
13.	Ram Kishor Prajapati (14)	Additional Director	17.08.2018	11.06.2019
14.	Rajesh Singh Yadav (15)	Additional Director	17.08.2018	11.06.2019
15.	Sita Ram Prajapati (16)	Director	30.09.2019	
16.	Vishwa Bandhu Vashistha (17) *	Additional Director	17.04.2013	12.02.2015
17.	Giriraj Vashistha	Director	22.06.2007	07.02.2009
18.	Gyanendra Kumar Singh	Director	30.06.2007	25.09.2009
19.	Munish Lal Tewari	Director	07.02.2009	14.09.2000
20.	Shaukeen Pathak	Director	27.06.2006	25.04.2011
21.	Manoj Kumar Joshi	Director	31.07.2009	13.03.2012
22.	Puma Chandra Dash	Director	14.09.2010	13.03.2012

*Noticee No.17 i.e Vishwa Bandhu Vashistha: As per Annual Return filed by the company for 2012-13, Noticee 17 was a director from 06.03.2012 to 17.04.2013. He was appointed as an Additional Director w.e.f. 17.04.2013.

The directors at Sr. Nos. 17 to 22 in above Table were directors prior to the impugned issue and allotment of RCPS and hence not noticees in the present proceedings.

35. Sections 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. There is no material on record w.r.t the prospectus. Therefore, in the instant matter the company and the directors are held liable for the violations of Section 56(1), 56(3) and 60 of the Companies Act, 1956.

36. With respect to the liability for non-compliance of Section 73 of the Companies Act, 1956 is concerned, Section 73(2) of the said Act states that 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 are 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%.

37. I have observed from the copies of the certificates sent by the complainants which are available on record that the date of allotment of the RCPS by GM2ML is 17.12.2012 i.e. during 2012-13. Mr. Chhotelal Shukla (Noticee 2), Mr. Shivanand Mishra (Noticee 3) and Mr. Deena Nath Maurya (Noticee 4) were the directors of the company at the time of impugned issue and allotment of RCPS (as mentioned in the Table at Para 34 which has been provided by MCA) and were responsible for the affairs of the company. I further also note from the annual return i.e. Form 20B filed by the company for the F.Y. 2012-13 that Vishwa Bandhu Vashistha (Noticee 17) was also a director during this period i.e. 06.03.2012 to 17.04.2013. He was appointed as an additional director w.e.f. 17.04.2013. As evident from the details of the appointment and resignation of the directors of GM2ML at Para 34 above and further findings from the annual return filed by the company, it is noted

that Noticees 2, 3 4 and 17 were directors at the time of issuance of the RCPS during 2012-13.

38. As per Section 5 of the Companies Act, 1956, “*officer who is in default*” means (a) the managing director(s); (b) the whole-time director(s); (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; (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.

39. 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 the Companies Act, 1956 or any specified director of GM2ML was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. I also note that in the matter of *Manoj Agarwal vs SEBI*, the Hon’ble SAT vide its Order dated 14.07.2017 had stated, inter alia, the following:

“

....Section 5 of the Companies Act, 1956 defines the expression ‘officer who is in default’ to mean the officers named therein. Section 5(g) provides that where any company does not have any of the officers specified in clauses (a) to (c) of Section 5, then any director who may be specified by the Board in that behalf or where no director is so specified then all the directors would be “officer who is in default”. 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 or any specified director of BREDL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. In such a case, as per Section 5(g) of the Companies Act, 1956 BREDL and all the directors of BREDL are liable....

Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve

the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956. Admittedly, the appellant was a director of BREDL when amounts were collected by BREDL in contravention of the public issue norms and there is nothing on record to suggest that any particular officer/director was authorised to comply with the public issue norms. In such a case, all directors of BREDL including the appellant would be “officer in default” under Section 73(2) read with Section 5 of the Companies Act, 1956....”

40. Hence in accordance with Section 5(g) of the Companies Act, 1956, Noticees 2, 3, 4 and 17 who were directors during the fund mobilisation period are the officers in default alongwith the company i.e Noticee 1. Accordingly, they are liable to make refund, jointly and severally, alongwith interest at the rate of 15% per annum under Section 73(2) of the Companies Act, 1956.

41. Further, I also note that these four noticees in their replies have all stated that they were not the directors of the company and were mere employees in other companies. They have further stated that their documents have been misused or their signatures have been forged and they have filed their complaints with various authorities.

42. I have considered the submissions of these noticees. However, in cases where persons claim forgery or misuse of their documents, the burden of proof lies upon the person who claim such defence. In the instant matter, the obligation to prove the same lies upon the said noticees. The said principle has also been recognised by various courts in a catena of cases. In this regard, I note the following observations of the Hon'ble Securities Tribunal in the matter of Kalidas Dutta vs. SEBI (decided on January 23, 2018) “ *we are of the considered opinion that this appeal can be disposed of with a direction to the appellant to obtain appropriate documents/orders from the competent authority to the effect that he was fraudulently appointed as director of the company in question on 10th February, 2015. For this purpose, the appellant is granted time up to one year to do the needful and submit the same to SEBI*”.

43. In this regard, I have noted that these noticees were arrayed as noticees in other orders passed by SEBI in the past w.r.t similar allegation of deemed public issue wherein they had taken a similar plea of alleged forgery. For example, in the Order dated 11.07.2019 in the matter of Togo Retail Marketing Ltd. (earlier known as *M/s. Multi-Ex Marketing & Communications Ltd.*) all the aforesaid directors viz Chhotelal Shukla, Shri Shivanand Mishra, Deena Nath Maurya and Vishwa Bandhu Vashistha, in the Order dated 27.06.2019 in the matter of *M/s Q&B Retail Limited (earlier known as M/s. Basil Express Ltd.)* the noticees viz Chhotelal Shukla, Deena Nath Maurya and Vishwa Bandhu Vashishta alongwith Arvind Tiwari and in the Order dated 29.05.2019 in the matter of *Nixcil Pharmaceuticals Specialities Ltd (now known as Heivero Pharmaceuticals Ltd.)*, the noticees i.e Deena Nath Maurya alongwith Arvind Tiwari were granted 365 days' time to obtain appropriate order from the competent authority with respect to their allegation of forgery. I note that despite passage of five years since these orders have been passed, the aforesaid noticees viz Chhotelal Shukla, Shri Shivanand Mishra, Deena Nath Maurya and Vishwa Bandhu Vashistha have still not produced the appropriate order from the competent authority with respect to their allegation of forgery. Also, in the instant matter, the noticees were aware that they have been arrayed as noticees in the proceedings regarding the alleged violation of issue of securities to the public. I am unable to accept their defense that their documents have been misused or forged as no cogent evidence have been provided by them in the current proceedings as well. Hence, the company (Noticee 1) alongwith the directors i.e Noticees 2, 3 4 and 17 are officers in default who are liable to make refunds to the investors for the issuance of RCPS during 2012-13.

44. Further, the other directors of GM2ML i.e Noticees 5 to 16 were appointed subsequent to the issuance of RCPS i.e they were not the directors in the company during the issuance and allotment of RCPS and hence are not liable for refund. However, they were obligated to ensure compliance of the refund during their respective tenure. A person cannot assume the role of a director in a casual manner. The position of a 'director' in a public company / listed company along with

the 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.

45. The noticees viz Mukesh Kumar Khare (Noticee 5), Arvind Tiwari (6) Pashupati Nath Dixit (Noticee 7) and Rajesh Kumar Sharma (Noticee 8) have also alleged that their names / documents have been misused but have not provided any evidence for it. It is also seen that Noticee No.6 viz Arvind Tiwari who was represented by his authorised representative at the personal hearing in the current proceedings, was already granted sufficient time through the past orders as stated at Para 43, to obtain appropriate documents / order from the competent authority to the effect that his documents have been misused and that he was fraudulently appointed as a director of the company. However, Arvind Tiwari was unable to provide the appropriate order from the competent authority in the current proceedings as well.
46. The Noticees i.e Ramendra Prasad Sharma (Noticee 9) and Bharat Subhash Prasad Maurya (Noticee 12) have neither replied to the SCN nor have appeared before me in these proceedings and hence are considered to have admitted the allegations levelled against them.
47. The other six Noticees i.e. Raj Kumar Verma (Noticee 10), Ram Vishal Prajapati (Noticee 11), Surendra Singh (Noticee 13), Ram Kishor Prajapati (Noticee 14), Rajesh Singh Yadav (Noticee 15) and Sita Ram Prajapati (Noticee 16) have furnished their replies containing similar submissions. They have alleged that certain officials of the company i.e. Dr.Prithi Pal Singh Sethi, Avadhut Kumar Mandal and Ram Asare Prajapati who are not part of the current proceedings have misused their documents and have made them directors in various companies. They have stated that they had no knowledge as to when they were appointed or resigned as directors from the company. They have stated to have filed FIRs, however, there is no final outcome on the same.

48. The Noticees i.e 5, 6, 7, 8, 10, 11, 13, 14, 15 and 16 have alleged that their documents were misused or forged and they were made directors in the company. Although the noticees were aware that SEBI was seeking information with respect to the issuance of securities to the public by GM2ML during examination and also during the current proceedings, they have not demonstrated with cogent evidence that their documents were misused (except for filing FIRs by some of them, outcome of which is not yet decided). These noticees were appointed as directors in the company only post mobilisation of funds and not liable for refund directions. However, as these noticees have provided their important personal documents which have been misused to show them as directors, they are liable to be debarred from securities market for appropriate period of time.

49. 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 GM2ML and its directors Chhotelal Shukla, Shivanand Mishra, Deena Nath Maurya and Vishwa Bandhu Vashistha to refund the monies collected, with interest to such investors. Further, GM2ML has the continuing obligation to repay the amounts collected in violation of deemed public issue. Such liability can be ensured only by the directors. It is noted in the light of the continued non-compliance of refund liability by the company, the directors who joined subsequent to the issuance and allotment of RCPS i.e Noticees 5 to 16 have also failed to ensure that the company has made a timely refund of the money to the allottees with interest. Hence, in order to safeguard the interests of investors, to prevent further harm to investors and to ensure orderly development of securities market, all the noticees become liable to be debarred for an appropriate period of time.

50. In view of the above, appropriate action in accordance with law needs to be initiated in the instant matter.

DIRECTIONS

51. 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 of the SEBI Act, hereby issue the following directions :

- a. Geoshine Mines 2 Metals Ltd., Chhotelal Shukla, Shivanand Mishra, Deena Nath Maurya and Vishwa Bandhu Vashistha shall, forthwith refund the money to the investors, jointly and severally, collected by the Company through the issuance of RCPS in FY 2012-13 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. Geoshine Mines 2 Metals Ltd., Chhotelal Shukla, Shivanand Mishra, Deena Nath Maurya and Vishwa Bandhu Vashistha shall issue a 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 person such as names, addresses and contact details, within 15 days of coming into force of this direction.
- c. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments.
- d. Geoshine Mines 2 Metals Ltd., Chhotelal Shukla, Shivanand Mishra, Deena Nath Maurya and Vishwa Bandhu Vashistha are prevented from selling the 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 nationalised bank. Such proceeds shall be utilised for the sole purpose of making refunds to the investors till full refund as directed above is made. Further, the banks are directed to allow debit only for the purpose of making

refunds to the investors of the issuance of RCPS, as directed in this order, from the bank accounts of the noticees.

- e. After completing the aforesaid refunds, Geoshine Mines 2 Metals Ltd., Chhotelal Shukla, Shivanand Mishra, Deena Nath Maurya and Vishwa Bandhu Vashistha shall file a report of such completion with SEBI addressed to the “Division Chief, Northern Regional Office, SEBI, Plate B, 8th Floor, Office Tower-1, NBCC Complex, East Kidwai Nagar, New Delhi 110023, within a period of 15 days, after completion of three months from the coming into force of the directions at Paras 51 (a) and (b) above, duly certified by an independent Chartered Accountant and the direction at Para 51 (d) above shall cease to operate upon filing of such report on completion of refunds to the investors.
- f. In case of failure of the Noticees viz Geoshine Mines 2 Metals Ltd., Chhotelal Shukla, Shivanand Mishra, Deena Nath Maurya and Vishwa Bandhu Vashistha to comply with the aforesaid directions in sub-paragraphs 51 (a) and (e), SEBI, on the expiry of the stipulated time period therein from the date of coming into force of this order, may recover such amounts, from the Noticee, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws;
- g. The noticees viz Geoshine Mines 2 Metals Ltd., Chhotelal Shukla, Shivanand Mishra, Deena Nath Maurya and Vishwa Bandhu Vashistha are restrained from accessing the securities market, issuing prospectus, offer document or advertisement soliciting money from the public, directly or indirectly and are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of **two (2)** years from the date of this order or till the expiry of two years from the date of completion of refunds to the investors as directed in Para 51 (a) above, whichever is later.
- h. The Noticees viz Geoshine Mines 2 Metals Ltd., Chhotelal Shukla, Shivanand Mishra, Deena Nath Maurya and Vishwa Bandhu Vashistha 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 **two (2) years** from the date of this order or till the expiry of two years from the date of completion of refunds to the investors as directed in Para 51 (a) above, whichever is later.

- i. The remaining Noticees viz Mukesh Kumar Khare, Arvind Tiwari, Pashupati Nath Dixit, Rajesh Kumar Sharma, Ramendra Prasad Sharma, Raj Kumar Verma, Ram Vishal Prajapati, Bharat Subhash Prasad Maurya, Surendra Singh, Ram Kishor Prajapati, Rajesh Singh Yadav and Sita Ram Prajapati are restrained from accessing the securities market, issuing prospectus, offer document or advertisement soliciting money from the public, directly or indirectly and are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of **three (3) months** from the date of this order. Further, they 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 **three (3) months** from the date of this order.

52. It is hereby clarified that if the Noticees have any open position in any exchange traded derivative contracts, as on the date of this order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticees are permitted to settle the pay in and pay out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

53. The direction for refund, as given in Para 51(a) above, does not preclude the investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

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

55. A copy of this order shall be sent to all the noticees, recognized Stock Exchanges, banks, depositories and Registrar and Transfer Agents of mutual funds to ensure that the directions given above are strictly complied with.

56. 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.

Date : October 30, 2024

Place: Mumbai

DR. ANITHA ANOOP

CHIEF GENERAL MANAGER

SECURITIES AND EXCHANGE BOARD OF INDIA