BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11, 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER SUNSHINE INFRA BUILD CORPORATION LIMITED (CIN: U45400DL2008PLC183645; PAN:AAMCS9355B) AND ITS DIRECTORS SHRI SURENDRA SINGH BAGHEL (PAN:AQDPB0485F; DIN:02604750), SHRI DHARM SINGH KUSHWAH (PAN:ASCPK7713Q; DIN:02656013), SHRI MUKESH SINGH (PAN:CCBPS5904G; DIN:03410478), SHRI BANWARI LAL BAGHEL (PAN:AMUPB0580E; DIN:01750579), SHRI BAKIL SINGH (PAN:BBUPS0147N ; DIN: 01716961); SHRI SANJEEV SINGH (PAN:AXYPS2851E; DIN:01808069); SHRI RAJVEER SINGH (PAN:AXYPS2842R; DIN:01872965) AND ITS DEBENTURE TRUSTEE, VIZ. HR TRUSTEE COMPANY PRIVATE LIMITED (PAN: AACCH4966R).

Date of Hearing:	August 21, 2015.
Appearances:	
For Noticees:	Adv. Ashish Agarwal, Adv. Amit Bhatnagar, Adv. Abhinav Bhatia.
For SEBI:	Dr. Anitha Anoop, Deputy General Manager. Mr. N Murugan, Assistant General Manager. Mr. Gautam Kumar, Assistant General Manager. Mr. Nilesh Ghuge, Assistant Manager.

1.1 Sunshine Infrabuild Corporation Limited ("SICL" or "Company") was incorporated on September 24, 2008 with the RoC, Delhi as Sunshine Infrabuild Limited. Subsequently, a fresh certificate of incorporation consequent upon change of name to Sunshine Infrabuild Corporation Limited was issued in May 26, 2010 by RoC, National Capital Territory of

Delhi and Haryana. SICL with its as CIN U45400DL2008PLC183645, is having its registered office at Royal Palace Complex, First Floor, G-55, Vikas Marg Laxmi Nagar, Delhi- 110092.

1.2 On enquiry, SEBI found that the Company had made, in FY 2010-11 to 2012-13, offers and issuances of Unsecured Redeemable Debentures, Secured Redeemable Non-Convertible Debentures and Partly Paid Optionally Convertible Unsecured Debentures (hereinafter referred to as 'issuance of Debentures'), to more than 49 persons and collected Rs. 26,62,81,300.

2.1 As the above said Offer of debentures were found prima facie in violation of respective provisions of the SEBI Act, 1992 ("SEBI Act") the Companies Act, 1956 and SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI passed an *ex-parte* interim order dated April 1, 2015 and issued directions mentioned therein against SICL and its Directors and Debenture Trustee.

2.2 *Prima facie findings/allegations*: The said interim order recorded the following *prima facie* findings/allegation. SICL passed resolutions in its EGM pursuant to the Board Resolutions, as shown in the following table for issuance of the different type of debentures as mentioned below:

Table No.1

Date of EGM	**Type of' Debentures to be issued**	**No. of Debentures**	**Amount (in Crores)**
June 28, 2010	Unsecured Redeemable Debentures	25,000	25.00
September 22,2010	Secured Redeemable Non-Convertible Debentures (Series Bl, B2, B3 & B4)	10,00,000	100.00
October 22, 2010	Partly Paid Optionally Convertible Unsecured Debentures (Series C)	10,00,000	360.00

2.3 As an instance, the company offered the following interest rates in respect of the series of debentures, viz., B1, B2, B3 & B4, as part of the terms and conditions for the issuance of 10,00,000 Secured Redeemable Non-Convertible Debentures amounting to Rs. 100 crore pursuant to the resolution passed by the Company in Extra Ordinary General meeting held on September 22,2010.

Table No. 2

Series	Amount invested	Maturity Value compounded	interest	Terms(months)
B1	1,000	1,600	11.92%	48
B2	1,000	1,800	11.93%	60
B3	1,000	2,288	12.00%	84
B4	1,000	2,595	12,10%	96

2.4 Pursuant to the resolutions, the Company issued different types of debentures to more than 49 investors and collected money as shown in the following Table No. 3.

Table No.3

Year	Type of Debentures	Amount Raised in Rupees	No of debentures issued	No of investors
2010-11	Fully paid Secured Redeemable Non-Convertible Debentures	3,62,15,800.00	36,215	2,011
2010-11	Party Paid Optionally Convertible Un-secured Debentures	1,71,500.00	572	73
2010-11	Fully Paid Unsecured debentures	1,11,00,000.00	11,100	241
2011-12	Fully paid Secured Redeemable Non-Convertible Debentures	11,95,95,000.00	1,19,595	3,126
2012-13	Fully paid Secured Redeemable Non-Convertible Debentures	9,91,99,000.00	*99,199*	*2,620*
Total		**26,62,81,300.00**	**2,66,681**	**8,071**

2.5 SICL had issued and allotted various types of Debentures to 8,071 investors and raised an amount of approximately Rs. 26.62 Crores during the financial years from 2010-11 to 2012-13.

2.6 HR Trustee Company Private Limited(hereinafter referred to as noticee) was appointed as the Debenture Trustee vide Trust Deed dated September 22, 2010. The Company created a charge of Rs.100 crores on August 24, 2012 in favor of the charge holder, HR Trustee Company Private Limited.

2.7 The present Directors in SICL are Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Mukesh Singh and Shri Banwari Lal Baghel. The former directors of SICL, namely, Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh resigned on June 01, 2011.

2.8 The Offer of debentures was a deemed public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956, Accordingly, SICL, its directors and debenture trustee did not comply with the relevant provisions of Section 60, Sections 56(1) and (3), Sections 73(1), (2) and (3) and 117B and 117C of the Companies Act, 1956 and the Debt securities Regulations.

2.9 In view of the prima facie findings on the violations committed by the Company and the directors, the following directions were issued in the said interim order dated April 1, 2015 with immediate effect.

I. SICL shall forthwith cease to mobilize any fresh funds from investors through the Offer of NCDs or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;

II. SICL and its Directors, viz. Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Banwari Lal Baghel, Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh (hereinafter referred to as "other directors"), Shri Mukesh Singh (The Company, other directors and Shri Mukesh Singh hereinafter referred to as "noticees" collectively) are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;

III. SICL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;

IV. SICL shall provide a full inventory of all its assets and properties;

V. SICL's abovementioned Directors shall provide a full inventory of all their assets and properties;

VI. SICL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of NCDs, without prior permission from SEBI;

VII. SICL and its abovementioned Directors shall not divert any funds raised from public at large through the Offer of NCDs, which are kept in bank account(s) and/or in the custody of SICL

VIII. SICL shall furnish complete and relevant information within 21 days from the date of receipt of this Order;

IX. SICL shall provide to SEBI all information regarding repayments made to the holders of Secured and Unsecured Redeemable Non-Convertible Debentures including name of the debenture holder, address, amount mobilized, number of Secured and Unsecured Redeemable Non-Convertible Debentures issued, promised maturity amount with date of maturity, amount refunded and date thereof;

X. The Debenture Trustee, viz. HR Trustee Company Private Limited, is prohibited from continuing with its present assignment as a debenture trustee in respect of the Offer of NCDs of SICL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this Order till further directions.

3.1 Vide the said interim order, SICL and its abovementioned directors and debenture trustee were given the opportunity to file their reply, within 21 days from the date of receipt of the said interim Order. The interim order further stated that the concerned persons may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

4.1 *Service of the interim order*: The copies of the said interim order was sent to the above mentioned entities vide letter dated April 27, 2015 through registered post. The copies of interim order sent to Shri Rajveer Singh, Shri Bakil Singh and the Company were delivered.

However, the same returned undelivered in respect of Shri Banwari Lal Baghel, Shri Surender Singh Baghel, Shri Mukesh Singh and Shri Dharam Singh Kushwah.

5.1 *The Reply of the noticees:* Subsequent to the interim order, SICL filed its reply dated April 15, 2015. The submissions of the Company in brief are as follows:

a) The Company collected money by way of different types of debentures from 2010-11 to 2013-14. However, it also redeemed the debentures. The details of the money collected through debentures and the money redeemed are shown in the following Table 4.

Table 4

	Type of Debentures	**Amount collected (in Rs.)**	**Amount Redeemed (in Rs.)**	**Outstanding as on date (in Rs.)**
2010-11	Fully paid secured redeemable non-convertible debentures	3,62,15,800	3,62,15,800 in the financial year 2011-12	Nil
2010-11	Fully Paid Optionally Convertible unsecured Debenture	1,71,500	1,71,500 in the financial Year 2011-12	Nil
2010-11	Partly Paid Optionally Convertible unsecured Debenture	1,11,00,000	1,11,00,000 in the financial year 2011-12	Nil
2011-12	Fully paid secured redeemable non-convertible debentures	11,95,95,000	(i) 5,00,62,00 in the financial year 2013-14 (ii) 4,25,00,000 (approx) in financial year 2014-15	2,70,33,000
2012-13	Fully paid secured redeemable non-convertible debentures	9,91,99,000	7,23,83,000 in the financial year 2012-13	2,68,16,000
2013-14	Fully paid secured redeemable non-convertible debentures	8,78,60,000	Nil	8,78,60,000
	Total Outstanding Amount			14,17,09,000

b) SICL did not collect any money by way of debentures, equity, and fixed deposit or by any other means during the financial year 2014-15 and the company has decided not to raise any money by any means in future.

c) The company undertook to redeem the outstanding debentures about Rs. 14,17,09,000 upto March 31, 2016 though none of the debentures would become due for payment.

d) The company undertook that Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh had resigned from directorship since June 1, 2011 and they are not associated with the company now. SEBI has issued directions against them in the interim order. The copies of the Form 32 in respect of them are enclosed.

e) Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Mukesh Singh are the present Directors in SICL.

f) The company undertook not to divert the funds if it is kept in bank account or as an asset.

g) The Company further undertook not to, issue any offer documents for soliciting money from the public for issuance of securities, access the securities market, buy, sell or deal in securities.

h) The company undertook not to issue any securities without prior permission of SEBI or any statutory authority.

5.2 One of the directors of the Company, Bakil Singh filed his reply dated May 16, 2015 to the interim order. His submissions in brief are as follows:-

a) Shri Bakil Singh was appointed on September 24, 2008 and he resigned on June 01, 2011. He transferred his shareholding of 7300 shares in the Company to one RRN Financials Pvt Ltd on June 3, 2011. His name was removed as shareholder from the Annual Return of the Company and Form 32 to that effect was filed by the Company.

b) Coming to know that the Company was still using his name as director in their publicity and other materials, he issued two public notices dated October 17, 2013 which were published on October 21, 2013 in "The Statesman", (New Delhi edition) and "Veer Arjun"(New Delhi edition).

c) He also filed a civil suit (OS No. 192/2014) before Hon'ble High court of Delhi for permanent injunction against the Company and its men, from representing him as director of the Company. The Company filed an affidavit undertaking not to use his name. On that basis, permanent injunction was granted vide judgment dated February 19, 2014 passed by Hon'ble High court of Delhi.

d) SEBI passed the interim order without any notice to him in violation of principles of natural justice without showing his role in the impugned issues, knowing well that he had resigned from the Company on June 3, 2011. He issued a legal notice dated May 05, 2015 calling upon the Company to supply copy of necessary details of replies sent to SEBI. The company by letter dated May 15, 2015 supplied to him the copies of the replies of the Company sent to SEBI and the notices to him.

e) At the time of directorship, he was not involved in the day today affairs of the Company and never was in charge of, or, responsible for the day today affairs of the company.

f) The resolutions passed during his tenure at EGM was not signed by him. He cannot be considered as person responsible or concerned for the impugned issues.

g) For violations if any, only the "officer in default" as defined in section 5 of Companies Act,1956 can be penalized. Directions under the Debt Securities Regulations can be passed only against the person concerned, or director, or promoter. The word "person concerned" should be harmoniously read with "officer in default".

h) He is not managing director, or whole time director or manager, or secretary or any other category of persons falling within the definition of "officer in default". He is also not a promoter since he has transferred his holding on June 3, 2011. The Company has managing director and he was authorized to do necessary acts for giving effect to the resolutions passed in EGM relating to the impugned issues during his tenure.

i) Without prejudice, the amount raised through the issuances during his tenure in FY 2010-11 was redeemed in FY 2011-12. The Company vide its reply dated November 3, 2014 to SEBI has already informed about the redemption. Thereafter, no sum was raised in 2011-12 during his tenure.

j) According to the Company, the first allotment was made on June 30, 2011(vide Company's reply to SEBI dated September 19, 2014) after his resignation.

k) Any person who at one point of time was acting as director cannot be presumed that he was continuously discharging his function on behalf of the Company. In order to fasten vicarious liability on the officer of the company for the offence, if any, committed by the Company, a clear case has to be spelt out against the person.

5.3 Subsequently, Shri Bakil Singh also filed an appeal before the Hon'ble Securities Appellate Tribunal as Appeal No.331 /2015. He prayed for the relief of setting aside the interim order passed by SEBI qua the appellant. Hon'ble SAT vide order dated August 7, 2015, directed SEBI as follows:-

"2 Counsel for SEBI states that to consider the plea of the Appellant, hearing of the impugned order-cum-show-cause notice is fixed on 21st August, 2015 and that after hearing the Appellant, appropriate order qua the Appellant, would be passed within a period of two weeks from 21st August, 2015.

3. Statement made by the Counsel on behalf of SEBI is accepted"

5.4 In view of the statement made by the Counsel for SEBI, Counsel for the Appellant sought to withdraw the Appeal. Accordingly, Appeal was allowed to be withdrawn in the aforesaid terms with no order as to costs.

6.1 *Notice of hearing*: SEBI vide letter dated August 4, 2015 sent the notice of hearing scheduled on August 21, 2015 all the noticees. The notices of hearing were delivered to SICL, Shri Bakil Singh, Shri Rajvir Singh. Thereafter, SEBI notified the date of hearing through Public notice dated August,14 2015 in Times of India and Dainik Bhasker in respect of HR Trustee Company Private Limited, Surendra Baghel, Dharam Singh, Mukesh Singh, Banwarilal Baghel and Sanjeev Singh.

7.1 *Personal hearing:* Shri Amit Bhatnagar, Advocate appeared for Shri Banwari Lal Baghel, Shri Dharam Singh Kushwaha, Shri Mukesh Singh, Shri Surender Singh Baghel. It was submitted that a reply dated April 15, 2015 had already been filed. On request by the counsel, time was granted till August 25, 2015 for filing written submissions. Shri Abhinav Bhatia, Advocate, appeared on behalf of Shri Sanjeev Singh and submitted that whatever money collected during the tenure of Shri Sanjeev Singh has been already repaid by the company.

7.2 Shri Bakil Singh, appeared along with his advocate Shri Ashish Agarwal. The counsel filed written submissions and argued on the lines of submissions made therein. It was reiterated that Shri Bakil Singh resigned on June 1, 2011 and whatever amount collected by the Company during his tenure has been repaid by the Company.

7.3 Shri Banwari Lal Baghel, Shri Dharam Singh Kushwaha, Shri Mukesh Singh, Shri Surender Singh Baghel in the personal hearing held on August 21, 2015 submitted that the Company had already made its submissions vide its letter dated April 15, 2015. No further submissions were made. Other noticees did not appear.

7.4 I have considered the allegations, and material on record including the replies, pleadings in Appeal No.331 /2015, oral and written submissions made at the time of personal hearing.

On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

1. Whether the company came out with the offer of various types of Debentures and pursuant to that collected money, as alleged?

2. If so, whether the said issuances are in violation of Section 60, Section 56(1) and 56(3), Sections 73(1), (2) and (3) and Section 117C of Companies Act, 1956 and relevant provisions of the Debt Securities Regulations, mentioned in the interim order?

3. Whether SICL has appointed HR Trustee Company Private Limited as Debenture Trustee for the said offer of Debentures, in violation of Section 117B of the Companies Act, 1956 and whether the HR Trustee Company Private Limited has violated Section 12(1) of SEBI Act?

4. If the findings on question No.2 and 3 are found in the affirmative, who are liable for the violation committed?

8.1 *Whether the company came out with the offer of various types of Debentures and pursuant to that collected money, as alleged?*

8.2 SICL in its reply dated April 15, 2015 admitted the issuance of different types of debentures such as Fully Paid Secured Redeemable Non-Convertible Debentures, Partly Paid Optionally Convertible Unsecured Debentures, Fully Paid Unsecured Debentures. SICL did not dispute the number of debentures and the financial years in which they were allotted and the number of allottees and the amount raised pursuant to the issuance of the various types of debentures. Hence, I hold that during the financial years 2010-11, 2011-12 and 2012-13 as alleged in the interim order and as brought out in Table No. 3, SICL had collected Rs. 26,62,81,300 from 8,071 investors. I find that SICL also stated in its reply dated April 15, 2015 that it had raised Rs. 8,78,60,000 in the financial year 2013-14 by issuance of fully paid secured redeemable non-convertible debentures.

9.1 *If so, whether the said issuances are in violation of Section 60, Section 56(1) and 56(3), Sections 73(1), (2) and (3) and Section 117C of Companies Act, 1956 and relevant provisions of the Debt Securities Regulations, mentioned in the interim order?*

9.2 The provisions alleged to have been violated and mentioned in this issue for consideration, are applicable to the offer made to the public. Therefore, the primary question that arises for consideration is whether the issuances of various types of debentures covered in Issue No 1 are public issues. At this juncture, reference may be made to section 67(1) & (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 sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*

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

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

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

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

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

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

9.3 The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011)* (hereinafter referred to as the '*Sahara Case*'), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

*"84. **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.*

85. 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….."

9.4 Section 67(3) 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 {(section 67(3)(a)}, or, if the offer is the domestic concern of the persons making and receiving the offer {(section 67(3)(b)}, 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.

9.5 As shown in Table 3, various types of debentures were issued to more than 49 persons in every financial year. The Company vide letter dated September 19, 2014 provided the details of the allotment made in the financial year 2011-2012 as follows:-

Table 5

Date of allotment	No of allottees	Number of debentures	Amount in Rs.
30/06/2011	115	5,269	52,69,000
30/09/2011	130	5,157	51,57,000
31/12/2011	155	7,515	75,15,000
26/03/2012	2,726	1,01,654	10,16,54,000
Total	**3,126**	**1,19,595**	**1,19,59,5000**

9.6 Therefore, I find that the offer and allotment of various debentures falls within the first proviso of section 67(3) of Companies Act, 1956 making them as public issue of debentures. In addition to this, I find, from copy of the newspaper clipping uploaded along with the *Form 23* filed for the issuance of 10,00,000 Partly Paid Optionally Convertible Unsecured Debentures of Rs. 3600 each, approved in EGM held on October 22, 2010, that this issue was made to the public at large through the newspapers, Financial Express and and Jansatta on October 28, 2010, indicating that offer of such issues were directly made to the public under section 67(2) of the Companies Act, 1956. Thereby, the said public issue of various debentures were mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

9.7 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. 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.

9.8 Neither the company nor the directors produced any record to show that SICL had issued Prospectus containing the disclosures mentioned in section 56(1) of the Companies Act, 1956, or filed a Prospectus with ROC or issued application forms accompanying the abridged prospectus. Therefore, I find that, SICL and the persons responsible for the failure to issue prospectus, has not complied with Section 56(1), 56(3) and 60 of the Companies Act, 1956.

9.9 Further, by issuing impugned debentures to more than forty nine persons, as stated above, SICL had to compulsorily list such securities in compliance with section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus, is required to make an application, before such offer, 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.

9.10 The allegation of non-compliance of the above provisions were not denied by the company or directors. I find that no records have been submitted to indicate that it has made an application seeking listing permission from stock exchange. Thus, SICL has contravened the said provisions. SICL or the directors have not provided any record to show that the amount collected by SICL is kept in a separate bank account. Therefore, I find that SICL has also not complied with the provisions of section 73(3) as it has not kept the amounts received from investors in a separate bank account.

9.11 In terms of section 73 of Companies Act, 1956 is concerned, as stipulated in section 73(2) of the said Act, where the listing 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 <u>forthwith</u> repay without interest all moneys received from applicants in pursuance of the prospectus. If not so repaid, 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 money collected, 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. In addition to this, SEBI also has powers under section 11 and 11B of the SEBI Act to pass direction of refund along with interest. The Hon'ble Bombay High court in ***B.P.Plc (Formerly B.P.Amoco Plc) vs SEBI*, (**2002 (4) Bom CR 79), held that that SEBI has powers to award interest in exercise its power under section 11 and 11B of SEBI Act, as stated below

> "Applying the principles regarding award of interest as has been held by the Apex Court in Secretary, Irrigation Department Vs. G.C.Roy (supra) to the effect "a person deprived of the use of money to which he is legitimately entitled to has a right to be compensated for the deprivation, call it by any name. It may be called "interest, compensation or damages," the investors are entitled to be compensated by way of interest for delayed payment.
>
> Under these circumstances we find no substance that there is no power to award such an interest."

9.12 Therefore, the liability to pay interest arises under sections 11 and 11B of SEBI Act also. As regards the repayment, the Company vide its letter dated April 15, 2015, subsequent to the interim order stated that Rs. 3,62,15,800 raised by issuance of fully paid secured Redeemable non-convertible debentures, were redeemed in the FY 2011-12. Similarly, the Company stated vide the said reply stated that Rs.1,71,500, collected through Partly Paid Optionally Convertible Unsecured Debentures and Rs.1,11,00,000 collected in 2010-11, through Fully Paid Unsecured Debentures, were redeemed in the FY 2011-12. The details of redemption as stated by the Company is stated in Table 4**.** The Company did not adduce any supporting documents to substantiate statement of details of redemption.

9.13 The Company vide its reply stated that it had redeemed the debentures. As per the reply the same amount of money collected by the Company had been repaid. Neither the Company nor Shri Bakil Singh of any other directors, did make any submission that the repayments were made as per section 73(2) forthwith. No details of the date of receipt of money from debenture holders was given by the Company or by Shri Bakil Singh or by other directors**.** The said detail is required for ascertaining whether the company made repayment within eight days from the date from which its liability repay without interest begins. There is no submission that there was no failure on the part of the Company to pay within the said eighth day as stipulated in section 73(2) of Companies Act,1956. It may be noted beyond the eighth day interest needs to be paid by the Company and the directors who are officers in default. In view of the liability to pay the interest not less than four per cent and not more than fifteen per cent, from the eighth day of failure of the company to repay, it cannot be said that the repayment of the money, even if made, collected during the tenure of Shri Bakil Singh or those directors who have resigned, has been repaid by the Company as per the requirement of section 73(2) of the Companies Act,1956 read with section 11 and 11B of the SEBI Act.

9.14 Therefore, I find that the company or other directors have not produced any evidence to support the repayment to various investors. Even assuming that such repayment was made, there is no evidence on record to hold that the repayment was made in accordance with Section 73(2) of the Companies Act, 1956, read with section 11 and 11B of the SEBI Act. Hence I hold that the Company and directors have violated this provision.

9.15 Further as regards the violation of Debt Securities Regulations, it may be seen that the word, 'debt securities' has been defined as 'non-convertible debt securities which create or acknowledge indebtedness, and include debenture'. In view of the finding that SICL has made a public issue of debt securities, the Debt Securities Regulations is also applicable to the instant offer of NCDs. Therefore, I find that the Company has violated the following provisions of the aforesaid Regulations, which contain inter alia conditions for public issue and listing of debt securities, viz.

i. Regulation 4(2)(a) – *Application for listing of debt securities*
ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
iii. Regulation 4(2)(c) – *Credit rating has been obtained*
iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
v. Regulation 4(4) – *Appointment of Debenture Trustee*

vi. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*

vii. Regulation 6 – *Filing of draft Offer Document*

viii. Regulation 7 – *Mode of disclosure of Offer Document*

ix. Regulation 8 – *Advertisements for Public Issues*

x. Regulation 9 – *Abridged Prospectus and application forms*

xi. Regulation 12 – *Minimum subscription*

xii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*

xiii. Regulation 15 – *Trust Deed*

xiv. Regulation 16(1) – *Debenture Redemption Reserve*

xv. Regulation 17 – *Creation of Security*

xvi. Regulation 19 – *Mandatory Listing*

xvii. Regulation 26 – *Obligations of the Issuer, etc.*

9.16 As regards the allegation of violation of section 117C of the Companies Act, 1956, it may be seen that the said provision mandates the company to create a debenture redemption reserve for the redemption of such debentures, to which every year, adequate amounts should be credited out of its profits, until such debentures are redeemed. None of the noticees denied this allegation. No material on record was brought to notice by the noticees to show that such debenture reserve was created. Therefore, I hold that the company has violated section 117C of the Companies Act, 1956.

9.17 In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 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.

9.18 In view of the forgoing findings, I am of the view that SICL is engaged in fund mobilizing activity from the public, through the offer and issuance of various debentures and has contravened the provisions of sections 56, 60 and 73 and through the issuance of various debentures has contravened section 117C of the Companies Act, 1956.

10.1 *Whether SICL has appointed HR Trustee Company Private Limited as Debenture Trustee for the said offer of Debentures, in violation of Section 117B of the Companies Act, 1956 and whether the HR Trustee Company Private Limited has violated Section 12(1) of SEBI*

Act?

10.2 On perusal of the document "Terms and Conditions" for the issue of 10,00,000 Fully Secured Redeemable Non-Convertible Debentures of Rs.1000 each aggregating to the nominal value of Rs.100 crores (approved by EGM on September 22, 2010), annexed to the Company's letter dated November 3, 2014 to SEBI, I find that HR Trustee Company Private Limited was appointed by SICL as the Debenture Trustee vide Trust Deed dated September 22, 2010. The "Index of Charges" uploaded in the MCA website by the Company, further shows that the Company created a charge of Rs.100 crores on August 24, 2012, in favour of the Debenture Trustee HR Trustee Company Private Limited.

10.3 Further no material was brought to the notice by any of the noticees, that any debenture trustee registered with SEBI, was appointed in respect of the issuance of the debentures which were approved by the EGM held on June 28, 2010 and October 22, 2010.

10.4 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 trustee 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.

10.5 By virtue of Section 12(1) of the SEBI Act " 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". HR Trustee Company Private Limited also did not claim that it had received certificate of registration issued by SEBI.

10.6 In view of above, I find that HR Trustee Company Private Limited has been involved in the issue of debentures as debenture trustee, without having a certificate of registration as Debenture Trustee issued by SEBI in violation of Section 12(1) of the SEBI Act, 1992. Since the company has appointed the said entity who does not have a certificate of registration issued by SEBI, in respect of the issuance of debentures approved in EGM dated September 22, 2010, the appointment of the same is in violation of section 117B of the Companies Act, 1956. Further, the Company has violated Section 117B of the

Companies Act, 1956 by not appointing any debenture trustee, in respect of the issuance of the debentures which were approved by the EGM held on June 28, 2010 and October 22, 2010.

11.1 *If the findings on question No.2 and 3 are found in the affirmative, who are liable for the violation committed?*

11.2 Section 56(1) and 56(3) read with section 56(4) imposes the liability for the compliance of the said provisions, on the company, every director, and other persons responsible for the issuance of the prospectus, 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 section.

11.3 As far as the liability under section 117B and 117C of the Companies Act, is concerned, the liability is on the company and its directors to comply with the said provisions. In respect of the liability under section 12(1) of the SEBI Act, the liability is on the Trustees who act so without the Certificate of Registration from SEBI as debenture trustee.

11.4 Therefore**,** SICL and its directors, namely, Shri Bakil Singh, Shri Sanjeev Singh, Shri Rajveer Singh, Shri Banwari Lal Bagehel, Shri Surender Singh Bagehel and Shri Dharam Singh Kushwah are liable for the violations of Sections 56, 60,117B and 117C of the Companies Act, 1956.

11.5 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.

11.6 As per the List of directors uploaded by the Company and available Form 32, I find that the following persons have been appointed and resigned as directors, as shown in the following tabular column.

Table 6

Name of the directors	Date of appointment	Date of cessation
Banwari Lal Bagehel	24-Sep-08	Continuing
Surender Singh Bagehel	August 27, 2009	Continuing
Dharam Singh Kushwah	August 27, 2009	Continuing
Sanjeev Singh	24-Sep-08	June 1, 2011
Rajveer Singh	27-Aug-09	June 1, 2011
Bakil Singh	24-Sep-08	June 1, 2011
Mukesh Singh	September 23, 2014	Continuing

11.1 As submitted by company Shri Bakil Singh was appointed on September 24, 2008 in SICL. The said fact is not disputed by Shri Bakil Singh. There is no dispute on the date of resignation of Shri Bakil Singh. Admittedly, as found in the interim order, Shri Bakil Singh had resigned on June 1, 2011. Therefore, usage of his identity in publicity materials by the Company subsequent to his resignation by the Company cannot be considered as an evidence against him subsequent to the resignation.

11.2 In this background, the fact that he filed a civil suit (OS No. 192/2014) before Hon'ble High court of Delhi for permanent injunction against the Company and its men, from representing him as director of the Company, subsequent to his resignation and the permanent injunction granted vide judgment dated February 19, 2014, is noted.

11.3 Regarding the contention of Shri Bakil Singh that he is not an 'officer in default', especially in view of the existence of Managing director in SICL, reference may be made to the definition of "officer in default" under section 5 of the Companies Act, 1956, which states as follows

> 5. *Meaning of" officer who is 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.

11.4 However, SEBI, as per section 27(2) of the SEBI Act, has the powers to proceed against different directors. In cases of financial fraud, the role of directors in prevention of the same is of utmost importance. They are required to take diligent measures in preventing the same. They are also required not to be neglectful in the affairs of the company which results in the violation of various laws such as deemed public issue in violation of law. In deemed public issue in violation of law, money is collected from innocent, ill-informed and gullible public, without the Company giving the statutory protection available to those investors under the law such as, full and necessary disclosures about the company, an exit opportunity by way of listing of the shares. The purpose of refund in such cases as per law, is to protect the investors who have parted their money without having any opportunity of exit and without full disclosures about the Company which deprives their informed consent. If the argument of Shri Bakil Singh is to be accepted that only Managing director is responsible as 'officer in default', the same will go against the collective responsibility of Board imposed under law. Otherwise, those directors despite their complicity in an act constituting violation of Companies Act, can go scot free. Companies which intend to defraud the investing public would then not have the names of any of the directors in their resolutions/meetings and documents and would hood-wink the ill-informed and gullible public investors and the regulator. The due process of law cannot be interpreted to result in such a consequence of violators going without legal accountability. SEBI having the statutory mandate to protect the interests of investors in the securities market is obligated not to create such a dangerous situation. In this respect the following paragraphs of Hon'ble Supreme court in ***SEBI vs. Ajay Agarwal*** (Order dated February 25, 2010) may be referred to.

> "39. If we look at the legislative intent for enacting the said Act, it transpires that the same was enacted to achieve the twin purposes of promoting orderly and healthy growth of securities market and for protecting the interest of the investors. The requirement of such an enactment was felt in view of substantial growth in the capital market by increasing participation of the investors. In fact ***such enactment was necessary in order to ensure the confidence of the investors in the capital market by giving them some protection.***
>
> 40. The said Act is pre-eminently ***a social welfare legislation seeking to protect the interests of common men who are small investors.***
>
> 41. It is a well-known canon of construction that when ***Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it."(Emphasis supplied)***

11.5 The public interest demands such violators who have knowledge or consent or connivance in the act or omission which constitutes violation of the provisions of the deemed public issue or who have neglected in preventing the deemed public issue be accountable to the investors by way of refunding the money collected from them.

11.6 On examination of the copy of the resolution of EGM dated June 28, 2010 held at the registered office, I find that reference is clearly made therein about the resolution of the Board dated May 1, 2010 which has authorized the issue of 25,000 Unsecured

Redeemable Debentures of Rs. 1000 each for a total amount of Rs. 25 crore. On perusal of the Form 23 filed for the issuance of 10,00,000 Secured Redeemable Non-Convertible Debentures of Rs. 1000 each aggregating to Rs. 100 crore, I find that the Board of SICL has passed necessary resolution in its meeting held on August 27, 2010. The fact of Board Resolution on August 27, 2010 is reflected in the Explanatory statement under section 173(2) of the Companies Act, 1956 enclosed along with the Form 23. On perusal of the Form 23, filed for the issuance of issue of 10,00,000 Partly Paid Optionally Convertible Unsecured Debentures of Rs. 3600 each, I find that Board of SICL had passed necessary resolution in its meeting held on September 29, 2010. The fact of Board Resolution on September 29, 2010 is reflected in the Explanatory statement under section 173(2) of the Companies Act, enclosed along with the Form 23. As stated earlier, the invitation for subscription of this issue was made to the public at large through the newspaper, Financial Express on October 28, 2010.

11.7 It is neither the case of Shri Bakil Singh nor that of any other directors that, they are not aware of impugned issuance made at their tenure, or they did not attend any of the Board Meetings, or objected to the issuance of said number of shares in the Board meetings. Neither did they take a position that they acted diligently during their tenure. In fact, in the EGM held on June 28, 2010, Shri Bakil Singh is authorized to sign and file all Forms and other relevant papers documents with the Registrar of Companies and to do all necessary acts and things for giving effect to the resolution of EGM. Shri Bakil Singh did not deny this fact. However, he stated that his signature is not present in the minutes of the EGM. Further perusal of "Memorandum of Private Placement of for the issuance of issue of 10,00,000 Partly Paid Optionally Convertible Unsecured Debentures of Rs. 3600 each aggregating Rs. 360 crores" carries his name as one of the directors.

11.8 In instant case, apart from consenting to the relevant board resolutions, Shri Bakil Singh and other directors omitted to take necessary steps which would have prevented the deemed public issue in violation of law. The fact that Shri Bakil Singh has not signed in the minutes of EGM only shows that he did not prepare the minutes of EGM. That does not indicate that Shri Bakil Singh is not responsible for the issue of debentures.

11.9 Reference may also be made to the ratio of the Hon'ble High court of Madras in ***Madhavan Nambiar vs Registrar Of Companies*** (2002 108 Comp Cas 1 Mad) which observed "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"

11.10 It is further observed that the liability of the directors to refund is derived not only on the basis of section 73(2) of the Companies Act but also by virtue of SEBI's powers under SEBI Act without recourse to section 73(2) of the Companies Act. In this context the following paragraph from Hon'ble Supreme court, in ***Sahara's case*** may be mentioned

> "….Sub-section (1) of section 11 of the SEBI Act casts an obligation on the SEBI, to protect the interest of investors in securities, to promote the development of the securities market, and to regulate the securities market, "by such measures as it thinks fit". It is, therefore, apparent that the measures to be adopted by the SEBI in carrying out its obligations are couched in open-ended terms, having no pre-arranged limits. In other words the extent of the nature and the manner of measures which can be adopted by the SEBI for giving effect to the functions assigned to the SEBI, have been left to the discretion and wisdom of the SEBI. It is necessary to record here, that the aforesaid power to adopt "such measures as it thinks fit" to promote investors' interest, to promote the development of the securities market and to regulate the securities market, has not been curtailed or whittled down in any manner by any other provisions under the SEBI Act, as no provision has been given overriding effect over sub-section (1) of section 11 of the SEBI Act. Coupled with the clear vesting of the power with SEBI referred to above, sub-section (2) of section 11 of the SEBI Act illustratively records the measures which can be adopted by the SEBI…."
>
> "…Furthermore, sub-section (2) of section 11 of the SEBI Act, after making a

reference to the measures generally referred to in sub-section (1) empowers/authorizes that SEBI "may provide for" a series of measures, which are delineated in clauses (a) to (m) thereof (of sub-section (2) of section 11 of the SEBI Act). The use of the words "may provide for" besides indicating the discretion vested in the SEBI, demonstrates that, the measures depicted in clauses (a) to (m) are illustrative and not exhaustive, more so, because sub-clause (2) of section 11 of the SEBI Act does not dilute the power vested in the SEBI under sub- section (1) thereof."

"... From a collective perusal of sections 11, 11A, 11B and 11C of the SEBI Act, the conclusions drawn by the SAT, that on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a stand-alone enactment, and the SEBI's powers thereunder are not fettered by any other law including the Companies Act, is fully justified…"

11.11 Therefore, I hold that SEBI has power under sections 11, 11B of SEBI Act to pass directions of refund along with interest, in the interest of the investors, in addition to the liability of refund imposed under Section 73(2) of Companies Act against persons responsible for the issue of debentures in violation of law. Without prejudice the powers available under sections 11, 11B of SEBI Act, SEBI also has powers under reg. 28(1) of Debt Securities Regulations, to order the refund from the issuer Company. In view of that, the argument of Shri Bakil Singh for having no responsibility on the basis of his not being an 'officer in default' is of no significance.

11.12 Therefore, I hold that the Company, Shri Bakil Singh, Shri Sanjeev Singh, Shri Rajveer Singh, Shri Banwari Lal Bagehel, Shri Surender Singh Bagehel and Shri Dharam Singh Kushwah, responsible for the issue of debentures in violation of law and regulations and hence co-extensively responsible along with the Company for making refunds along with interest.

11.13 The fact that Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh had resigned on June 1, 2011, does not take away their liability for the violations committed by them during the time of their tenure. Reference may be made to the judgment rendered in

Hon'ble High court Delhi in ***Anita Chadha vs Registrar Of Companies*** {74 (1998) DLT 537}. The ratio of this judgment would show that the directors who have resigned still can be proceeded against for the violations committed by them during their tenure. Therefore, the resignation of Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh, does not affect their liability as persons responsible for the issuance of debentures.

11.14 The liability of the company to repay under section 73(2) read with sections 11, 11B and 24 of the SEBI Act, is continuing and such liability continues till all the repayments are made. Therefore, the directors who joined subsequent to the impugned public issuance are also responsible for making the refund, if the company does not repay the money collected, as mandated in section 73(2) of the Companies Act, 1956 read with sections 11, 11B and 24 of the SEBI Act.

11.15 Shri Mukesh Singh who joined as director subsequent to the impugned issues, has not exercised necessary diligence while taking charge of directorship in the Company. The very inaction by him against the previous management (for violating the public issue norms as stipulated under the Companies Act, 1956), even after passing of the interim order, leads one to conclude on collusion at his end with the Company and its previous management. Further, this director has also not taken any step to remedy the violations committed. Therefore, I hold that Shri Mukesh Singh is also liable for making refunds.

11.16 In view of the finding that that there is no evidence that Company has repaid as per section 73(2) of the Companies Act, 1956 read with sections 11, 11B and 24 of the SEBI Act, the contention of Shri Bakil Singh that whatever money collected during his tenure has been repaid by the company, does not alter his liability. Further the Board Resolutions and EGM resolutions for all the issues were passed during his tenures as director. The position remains same in respect of all directors who resigned.

11.17 The contention of Shri Bakil Singh that as per the reply of the Company, the first allotment of debentures, was made only after he resigned from the Company, does not have a bearing on his liability because the same is factually incorrect. Moreover, the requirements for the deemed public issue of debentures trigger much before the allotment. For example, the requirement under section 56(1) of the Companies Act, 1956 that 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 and the requirement under section 56(3) of the Companies Act, 1956 that 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, triggers much before the actual allotment of debentures. Surprisingly, in order to mislead SEBI to show that first allotment was made by the company after his resignation, Shri Bakil Singh is selectively bringing to the notice of SEBI the company's letter dated September 19, 2014 which gives the details of allotment made in financial year 2011-2012. However, the fact is that the Company had admitted the allotment of securities in the financial year 2010-11 itself vide its several letters including the letter dated April 15, 2015. Shri Bakil Singh or other directors who resigned on the same date of resignation of Shri Bakil Singh, did not dispute the same. Therefore, it does not absolve the liability of Shri Bakil Singh.

11.18 In respect of the contention of Shri Bakil Singh that he is not the concerned person for the issuance of the debentures at the time of his tenure and the submission that the "concerned person" should be harmoniously read with the "officer in default", I observe that the very fact that the phrase "officer in default" was not specifically used in the "Debt securities Regulations, and a much broader term of "concerned person" was used therein, shows that the ambit of Debt Securities Regulations, are much broader in the scope of liability. By being the directors at the time of the issuance of debentures, Shri Bakil Singh and all other directors are concerned persons for the issuance of debentures.

11.19 In so far as the contention that SEBI has passed the interim order without notice, to Shri Bakil Singh, it is settled law that powers under section 11B and section 11(4) of SEBI Act,1992, can be invoked, pending enquiry. The interim order in compliance of principles of natural justice provided for an opportunity of hearing as stated in para 18 and 20 of the interim order.

11.20 In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public and not making repayments, is to direct SICL and its Directors, viz. Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Mukesh

Singh, Shri Banwari Lal Baghel, Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh to refund the monies collected, with interest to such investors. Orderly development of the securities market depends on the participation of law abiding entities in securities market. In view of the violations committed by the Company and its directors and debenture trustee, to safeguard the interest of the investors who had subscribed to such debentures issued by the Company and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other noticees.

12.1 In view of the foregoing 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(1), 11(4), 11A and 11B thereof, hereby issue the following directions :

a) The Company, namely, Sunshine Infrabuild Corporation Limited and its directors Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Mukesh Singh, Shri Banwari Lal Baghel, Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh shall forthwith refund the money collected by the Company through the issuance of various types of debentures including the money collected from investors, till date, pending allotment, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.

b) If the Company, Sunshine Infrabuild Corporation Limited had repaid/redeemed the debentures as stated in its reply dated April 15, 2015 to its investors as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions from 12.1 (c) to (f), shall be applicable for the amounts due to be returned to remaining investors. However, such repayments/redemption by the Company as stated in its reply dated April 15, 2015, made as per requirement laid down in para (c) below, shall be certified by Chartered Accountants, as directed in sub-paragraph (f) below.

c) The repayments and interest payments @ 15% per annum compounded at half yearly intervals, to investors shall be effected only through Bank Demand Draft or Pay Order.

d) Sunshine Infrabuild Corporation Limited and its present management is permitted to sell the assets of the Company for the sole purpose of making the repayments including interest, as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank.

e) Sunshine Infrabuild Corporation Limited and its directors Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Mukesh Singh, Shri Banwari Lal Baghel, Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Hindi) with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.

f) After completing the aforesaid repayments, Sunshine Infrabuild Corporation Limited and its directors Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Mukesh Singh, Shri Banwari Lal Baghel, Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh, shall file a report of such completion of repayment 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").

g) In case of failure of Sunshine Infrabuild Corporation Limited and its directors Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Mukesh Singh, Shri Banwari Lal Baghel, Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh, to comply with the aforesaid directions, SEBI, on the expiry of the three months period from the date of this order,-

   i. shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.

iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and

iv. would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.

h) Sunshine Infrabuild Corporation Limited and its directors Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Mukesh Singh, Shri Banwari Lal Baghel, Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh, 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 4 years from the date of completion of refunds to investors as directed above. 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 4 years from the date of completion of refunds to investors.

i) HR Trustee Company Private Limited is restrained from acting as any intermediary, accessing the securities market and further restrained from buying, selling or dealing in securities, in any manner whatsoever, directly or indirectly, for a period of 4 years.

j) The above directions shall come into force with immediate effect.

12.2 This Order is without prejudice to any action, including adjudication and prosecution proceedings that might be taken by SEBI in respect of the above violations committed by the Company, its promoters, directors and other key persons.

12.3 Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

12.4 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.

12.5 This order, as far as disposing of issues raised by Shri Bakil Singh is concerned, is also passed in compliance the Hon'ble SAT order dated August 7, 2015 in Appeal No.331 of 2015.

Date :Sept 4th, 2015
Place: Kolkata

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

WTM/PS/50/EFD/SEPTEMPER/2015

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORRIGENDUM

TO THE ORDER DATED SEPTEMBER, 4 2015 BEARING REFERENCE NUMBER WTM/PS/49/EFD/SEPTEMPER/2015

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI"), issued an order dated September 4, 2015 in the matter of Sunshine Infrabuild Limited(Company) against the said company, its directors and its debenture trustee.

2. Reference to section 27(2) of the SEBI Act is made in para 11.4 of the said order. However, in paragraph Nos. 11.14 and 11.16 of the said order, section 24 of SEBI Act is mentioned inadvertently instead of Section 27(2) of SEBI Act. The said section 24 of SEBI Act, in the said paragraphs shall be read as Section 27(2) of SEBI Act.

3. The said Order shall always be read with this Corrigendum.

Date :Sept 07, 2015
Place: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA