

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In continuation of interim order dated March 27, 2015 and final order dated September 20, 2016 passed in the matter of issuance of equity shares by Shivalik Cotex Limited

In consideration of the representation dated October 30, 2016 submitted by

- 1) Shivalik Cotex Limited,**
- 2) Mr. Subhash Chand Gupta,**
- 3) Mr. Summit Gupta,**
- 4) Ms. Shakshi Gupta,**
- 5) Ms. Sunita Gupta,**
- 6) Mr. Saurabh Gupta,**
- 7) Mr. Om Prakash Gupta,**
- 8) Mr. Yatender Kumar,**
- 9) Mr. Navin Gupta**

-
1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted a preliminary examination into the issuance of equity shares by Shivalik Cotex Limited (hereinafter referred to as 'SCL' or 'Shivalik') with a view to ascertain the possible violations of the public issue norms stipulated under the Companies Act, 1956 and other applicable laws pertaining to SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("DIP Guidelines") and pursuant to the same, SEBI passed an interim order-cum-show cause notice (SCN) dated March 27, 2015 (hereinafter referred to as "interim order") against SCL and its promoters/directors named above.
 2. After considering the facts and circumstances of the case the submissions of the noticees, SEBI vide order dated September 20, 2016, *inter alia*, apart from the restraint order, issued the following directions :-

- (i) The Noticees shall within a period of three months from the date of this order, jointly and severally refund the money collected through the issue of equity shares to the allottees with interest at the rate of 15% per annum from the date of receipt of money till the date of such refund. Such refund shall be made only in cash through a Demand Draft or Pay Order.
 - (ii) SCL and its directors shall within fifteen days from the date of this Order submit to SEBI complete details of their assets (along with proofs thereof) certified by a peer reviewed Chartered Accountant.
 - (iii) SCL and its directors are permitted to sell assets of the company and deposit the sale proceeds in an Escrow Account opened with a nationalized bank. Such proceeds shall be utilized for the sole purpose of making refund/ repayment to the allottees of equity shares till the full refund/ repayment as directed above is made.
3. Aggrieved by the said order, the Company SCL and a few of its promoter-Directors filed Appeal No.412 of 2016 before SAT. The Hon'ble SAT vide order dated December 20, 2016 directed SEBI to dispose of the representation dated October 31, 2016 of the appellants as expeditiously as possible. In the representation, Shivalik and its directors named above expressed their readiness to give an option to the shareholders for redemption and refund the amount collected along with interest in terms of Clauses 3 to 6 of CIR/CFD/DIL3/18/2015 dated December 31, 2015. In the aforesaid letter, SCL has also placed reliance on the SEBI order dated October 3, 2016 passed in the matter of Astha Green Energy Venture India Limited ("*Astha*" for short).
4. I have considered the request / representation given by the noticees vide letter dated October 31, 2016 and the order in *Astha*. In the SEBI order dated October 3, 2016 passed in *Astha*, while considering a similar representation, SEBI directed as follows:

“14. However, I find that there is a commonality between the SEBI order dated January 1, 2016 and SEBI circular dated December 31, 2015 that refund of monies to all the existing shareholders is mandatory on part of Astha. Considering that the primary objective of SEBI’s order dated January 1, 2016 is to ensure refund to all the existing shareholders of Astha, I allow Astha to follow the refund procedure prescribed in Clause 3 to 6 of the SEBI circular dated December 31, 2015 while making refund to the allottees.”

5. I note from the above direction that *Astha* was directed to mandatorily refund the monies to all the existing shareholders by following the refund procedure prescribed in Clause 3 to 6 of the December 2015 circular. The said circular deals with cases prior to April 1, 2014 where an offer or allotment of securities has been made to more than 49 upto 200 investors in a financial year by companies. This was pursuant to the change in provisions brought out by the Companies Act, 2013. The benefit of the increase in the higher cap of private placement was extended to those companies that have issued shares or debentures upto 200 investors prior to April 1, 2014 as well. In case of those companies, the circular provided that they may avoid penal action if they provide their investors an option to their investors to surrender the securities and get refund amount on the terms stipulated in the circular. The option to be provided by such companies was applicable strictly going by the number of investors as per the circular.
6. The December 2015 circular of SEBI would apply to cases where the allotment is made up to 200 allottees in a financial year. *Astha* had 208 investors and *Shivalik* had issued shares admittedly to at least 259 investors. The operative part of December 2015 circular is relating to avoidance of penal action against those companies which have issued securities upto 200 investors. As the allotment in both *Astha* and *Shivalik* have been made to more than 200

investors, the provisions of 2015 December circular do not apply to them. In other words, the recourse available to those companies that fall within the scope of the said circular to provide an option to their investors to take refund or retain the securities is not available to companies where the issue was made to investors beyond 200 in number. I note that the order dated October 3, 2016 directs *Astha* to mandatorily make refund to all its investors and does not permit *Astha* to extend the option to its investors either to take refund of amount or retain securities, as permitted under the circular. At the same time, *Astha* was allowed to follow the procedure for refund stipulated in clauses 3 to 6 of the December 2015 circular. The procedure therein is summed up as: (i) the offer to take refund shall be supported by proof of dispatch; (ii) the refund shall be made through banking channels; (iii) the refund shall be made after adjustment of interest or dividend already paid; and (iv) in case of transfer of securities by original allottees, the option for refund shall be made to the current holders of the securities.

7. Considering the fact that the primary objective of SEBI's order dated September 20, 2016 is to ensure refund to all the existing shareholders of SCL, SCL while doing so shall follow the refund procedure prescribed in Clause 3 to 6 of the SEBI circular dated December 31, 2015 while making refund to the allottees. The refund shall be made in terms of these directions within a period of two months from the date of this order.
8. The representation dated October 31, 2016 of Shivalik and its promoter's directors in this regard is disposed of accordingly.

DATE: May 16, 2017

G. MAHALINGAM

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA