

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

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999

IN THE MATTER OF SHREE SAI SPACES CREATIONS LIMITED

In respect of Shree Sai Spaces Creations Limited and its Directors, viz., Mr. Suresh L. Shrivastav, Ms. Laxmi S. Shrivastav, Mr. Ritesh K. Shrivastav, Mr. Vivek K. Shrivastav and Mr. Rajkumar Laxman Konde

Date of Hearing: June 18, 2014

Appearances:

For Noticees: Mr. Saurabh Kalia, Advocate
Mr. Harshal Wate, Practising Company Secretary
Mr. Rajkumar Laxman Konde, Director

For SEBI: Ms. Anitha Anoop, Deputy General Manager
Mr Manish Vashist, Assistant General Manager
Mr. Pradeep Kumar, Assistant Legal Adviser

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') on receipt of a complaint came to know that certain companies of the group namely 'Shree Sai' were illegally collecting money from the public. SEBI in order to examine whether the activities of the said group companies were that of a 'Collective Investment Scheme' (hereinafter referred to as 'CIS'), advised 'Shree Sai Group' to submit certain details/ documents including Memorandum and Article of Association, contact details, email id, fax numbers of the companies and their designated persons, details of the past and present directors, brochures pertaining to the schemes/ arrangements, application forms, sample copies of the registration letter and allotment letter issued to the investors, sample agreements, scheme wise/ year wise amount mobilized along with the number of investors under the schemes, audited financial statement, list of investors along with the address and contact details, regulatory approval obtained, etc.
 2. In reply to the same, *inter alia*, the company namely Shree Sai Spaces Creation Limited (hereinafter referred to as 'SSSCL' or 'the company'), a group company of 'Shree Sai Group' vide its letter dated October 21, 2013, wrote to SEBI, whereby it submitted the documents

such as the Memorandum and Articles of Association, copy of executed agreement, contact details, details of present and past directors and copy of Joint Venture Participation plans. SSSCL vide its letter also contended that it is inviting contribution from public for 'joint venture participation'.

As SSSCL had failed to provide the complete details, SEBI vide its letter dated October 28, 2013, again advised it to submit such details. SSSCL vide its letter dated November 14, 2013, replied to SEBI and submitted that the Company is not involved in any kind of investment proposal activity or running a scheme as such. It was also said that the Company is not carrying on any business which involves pooling of fund from public under any CIS and filed a specimen copy of the application form for 'joint venture participation'. As regards the audited financial statements and tax returns, SSSCL submitted that it was incorporated on August 07, 2012 and its Annual General Meeting is due in December, 2013 for adoption of the audited financial statements and once the same is adopted, the same will be furnished to SEBI.

3. Seeing that SSSCL has failed to provide the complete information even after affording sufficient opportunities, SEBI proceeded further and based on the material available on record, *prima facie* found that SSSCL, its directors namely Mr. Suresh L. Shrivastav, Ms. Laxmi S. Shrivastav, Mr Ritesh K. Shrivastav, Mr Vivek K. Shrivastav and Mr Rajkumar Laxman Konde (hereinafter collectively referred to as 'noticees') are engaged in 'fund mobilizing activity' from the public, by floating/ sponsoring/ launching CIS as defined in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') without obtaining a certificate of registration from SEBI for operating CIS as required under Section 12(1B) of the SEBI Act read with Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as 'CIS Regulations'). Accordingly, SEBI vide an *ad interim ex-parte* order dated January 23, 2014 (hereinafter referred to as the '*interim* order') directed the noticees as under:

"a. not to collect any money from investors from its existing "projects"/ scheme or to launch any new "project"/ scheme;

b. to immediately submit the full inventory of the assets owned by Shree Sai Spaces out of the amounts collected from the "Participants"/ investors under its existing "Projects"/ schemes;

c. not to dispose of any of the properties or alienate the assets of the existing "Project"/ scheme;

d. not to divert any fund raised from public at large, kept in bank account(s) and/ or in the custody of the company;

e. to furnish all the information sought by SEBI with regard to schemes wise list of investors and their contact numbers and addresses along with the details of amount mobilized and refunded."

The *interim* order advised the noticees to treat the order as a show cause notice and explain why appropriate action under the SEBI Act and CIS Regulations, including directions in terms of the Regulations 65 and 73 of the CIS Regulations should not be issued against them. The *interim* order also afforded an opportunity to the noticees to file their reply, if any, in the matter and also an opportunity of personal hearing in the matter.

4. SSSCL vide its letter dated February 12, 2014, sought an extension for filing of the reply to the SCN. Later, on March 11, 2014, it replied to the *interim* order and also submitted the audited financial statements, income tax return, list of all investors and requested for an opportunity of personal hearing. Accordingly, SSSCL was afforded an opportunity of personal hearing on May 28, 2014. Mr. Suresh L. Shrivastav, one of the directors of SSSCL, vide his email dated May 20, 2014, requested for rescheduling of the personal hearing. His request was acceded to and the matter was adjourned to June 18, 2014, before me. On the date fixed for the personal hearing, Mr. Saurabh Kalia, Advocate, appeared along with Mr. Harshal Wate, Practicing Company Secretary for the Company and its directors, before me and made submissions. The noticee namely Mr. Rajkumar Konde also appeared for the personal hearing on the said date and submitted a copy of his letter dated March 18, 2014, wherein he had submitted that as he was not aware of the technicalities of the finance schemes of the Company, he resigned from the directorship of SSSCL w.e.f. April 29, 2013.
5. The submission of the noticees made vide letter dated March 11, 2014, in brief are as under:
 - a. The Company and its directors vide letter dated March 11, 2014, submitted as under:
 - The business activities carried on by the Company are in the interest of all the stakeholders and the public at large. The business activity of SSSCL is authorised and in consonance with the main object as per the registered Memorandum of Association.
 - The proposed solar project is an ambitious project to which the Company and stakeholders are keenly looking forward. For the development of the project the Company has invited various 'joint venture' participants to participate in the project who are desirous of owning a solar power generation unit, production and supply of power to the state grid. It will also enter into the 'joint venture' agreement, which is also

referred to as the Memorandum of Understanding (hereinafter referred to as the 'MoU') between the 'joint venture' participant and the Company.

- The MoU is the gist of the terms and conditions of the 'joint venture' association, which is wilfully entered by the aspiring 'joint venture' participant who have full and complete knowledge of the project in the normal course of business. The whole project and every process involved therein are absolutely transparent.
- The development of the project is in line with any other real estate project where upon development, the owner can either opt to retain the product or to withdraw with a certain estimated return. There is no mobilisation of funds by the Company or any of its associates through the project which could be considered as a CIS. The project provides for an opportunity to own a developed unit of land which is absolutely equipped to generate solar energy. The Company will allocate individual unit to each of its 'joint venture' participant.
- The 'joint venture' participant (as in the present case) brings in the funds to participate in the development of a solar power generation plant and where the initial responsibility of developing is with the promoting company and of operating and maintaining the same will be shared between the 'joint venture' participant and Shree Sai Non-Conventional Energy Pvt. Limited. In case, upon development of the project, the 'joint venture' participant does not want to continue to own the unit, then he can claim his money back with an estimated return. It does not amount to be an idle investment out of which the participants earn passive returns.
- The Company has no other projects of similar nature. The required land for installing the solar power generating panels has been acquired, the project report is ready and the same has to be filed with the concerned state authorities for necessary approvals.
- The funds brought in by all the 'joint venture' participants will be employed in the acquisition of further utilities of the project such as solar power generating panels.
- There is no pooling of funds from the gullible public. The Company is giving an option through its payment plan to its business associates, who do not have ready cash to own a solar power generating unit in the project. The funds brought in by the 'joint venture' participants are utilised for the purpose they are brought for and the Company cannot deal with these in any other manner.
- The brochure circulated by the Company is to create awareness, which gives the exact nature of the project and contains various payment plans which can be opted by 'joint venture' participant in accordance with the suitability. The payment plans are provided

only to facilitate a comfortable payment mechanism for 'joint venture' participant who do not have ready cash. The Company could either by itself or by hiring a professional service provider reach to its future 'joint venture' participant.

- The project is being promoted by the Company and its directors have contributed funds towards the acquisition of land. The project will eventually be operated and maintained by the dedicated wing, namely Shree Sai Non-Conventional Energy Pvt. Limited, which is engaged in the manufacturing of the utilities and solar power generation panels. The same is very clearly understood by all the 'joint venture' participant as well as other stakeholders and there has never been any ambiguity about it. Shree Sai Non-Conventional Energy Pvt. Limited is not at all interlinked with the general terms and conditions of 'joint venture' agreement.
- 'Joint venture' participants do not have any right or liability on any assets of the SSSCL and upon development of the project, the 'joint venture' participants will be handed over the control and possession of their own solar power generation units. The same is for the purposes that the right, if any, can be raised w.r.t to only a unit rather than the total land and its assets and liabilities therein.
- There is no scheme to pool funds from public involved in the project and the very activity of funding the project is also not a passive investment, the 'joint venture' participant upon development will either operate his unit on his own or in co-ordination with the company namely Shree Sai Non-Conventional Energy Pvt. Limited or will withdraw from the project with an assured return. 'Joint venture' participants will have the option, either to operate, maintain and supply the generated power to the GRID themselves or to do it in co-operation with the Shree Sai Non-Conventional Energy Pvt. Limited.
- 'Joint venture' participant is given the acknowledgement certificate and a copy of the MoU evidencing funds brought in under the opted payment plan and his participation in the joint venture.
- All its payment plans provided for the returns. After a period of six years, upon development of the project, the 'joint venture' participant, if, does not opt to operate the solar power generation unit allotted to him either on its own or in co-ordination with the Company, then an exit route in the form of withdrawal from the project with an assured return on the funds brought in, is provided to every 'joint venture' participant.
- Once the project is developed each 'joint venture' participant will be having their own power generating units and operating it either in co-ordination with Shree Sai Non-

Conventional Energy Pvt. Limited in which case, there will be sharing of both profits as well as liabilities or otherwise, if they opt so will be running their units separately.

- The project is in agreement with the views of the Hon'ble Supreme Court of India in the matter of *New Horizon Limited Vs. Union of India* [1995 (1) SSC 478], that the expression 'joint venture' connotes to a legal entity in the nature of partnership, mutual agency and profit sharing.

b. The submission of Mr. Rajkumar Laxman Konde made vide his letter dated March 18, 2014 are as under:

- He is in the business of software development and was the founder partner of Bizgaine Technologies and a director/ shareholder in Bizgaine Technologies Pvt. Limited. As the said companies were in need of funds, it was decided to associate with Mr. S.L. Srivastava group. As part of the association, he agreed to become the director of SSSCL and was duly appointed as director on August 08, 2012.
- He was not aware of the technicalities of the finance schemes of SSSCL.
- He did not have any banking authority and had not signed any cheques or documents related to banks. He did not draw any salary during the tenure as director and has not derived any benefit from the association.
- Later as the association with Srivastava group was not moving forward, he decided to disassociate with the Company and resigned as a Director w.e.f. April 29, 2013, though the copy of the 'form 32' states that the date of resignation is May 06, 2013.
- He was associated with SSSCL for a period of only 8-9 months and during this period, he has not benefitted in any way from the mentioned pooling of funds under CIS. He vide his written submission also asked for dropping of the proceedings.

6. I have considered the *interim* order, the oral and written submissions of SSSCL, the documents furnished by SSSCL and the material available on record. The main allegation against SSSCL is that the plans/ schemes operated by it are in the nature of CIS and that SSSCL is offering these schemes without obtaining registration from SEBI in contravention of the provisions of Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations read with Section 11AA of the SEBI Act, 1992. The directors of SSSCL have also been alleged to be responsible for the illegal conduct of the business of SSSCL. The issue that now arise for my consideration is: Whether SSSCL is operating a CIS without obtaining registration from SEBI?

7. Whether SSSCL is operating a CIS without obtaining registration from SEBI?

- a. The *interim* order has discussed in detail about the 'brochure', which talks about the plans/ schemes operated by SSSCL and marketed through the agents/ business associates/ service providers appointed by it. It is noted that SSSCL offered two plans i.e., 'Deferred Payment Plans' and 'One Time Payment Plans'. This indicates that the Company has 'plan' with respect to its transactions with its contributors/ investors. SSSCL in its submissions has argued that it is establishing a solar power generation venture, for which it invited 'joint venture' participants, who are desirous of owning a solar power generation unit. As per the submission of the Company, the persons who were interested in its project had to execute documents such as 'application for joint venture participation', MoU, etc. It has been said that on filing of the 'application for joint venture participation', the applicant gets himself registered with the Company, thereafter, an MoU is executed between the intended participant and SSSCL.
- b. I have perused the copy of the sample application form, acknowledgement certificate and MoU as submitted by SSSCL and a brief analysis of these given below. The sample 'application for joint-venture participation' mentions that the contributors/ investors express their desire of joining SSSCL's project as a business associate. The same is a pre-printed document with blanks to be filled and contains the details such as the name, father's name of the applicant, address, etc. The sample application form also provides for JV (joint venture) participation plan number, term of plan, consideration value, etc. A reading of the same suggests that SSSCL had offered various plans to its contributors/ investors. The relevant terms and conditions of the application form are as under:

"7. Participation refund shall be repaid after expiry of Term only as per MOU Before three weeks of expiry of term, all requisite papers must be submitted to the Business Associate Service Centre."

... ..

9. The Company reserves the right to reject any application for Contributor without assigning any reason thereof."

The use of the word 'contributor' under 'the terms and conditions' of the application form gives an impression that investments are being collected. Acknowledgement which also forms part of the application form also finds mention about the contributor and plan.

- c. The second document is the 'Acknowledgement Certificate', which confirms and certifies that the business associate has participated in SSSCL and is registered as a 'joint venturer'. It also finds mention of the details of the contributor/ investor like name, age, address, plan number/ term, subscription amount, expected sum of JVP (joint venture participation) on expiry of the period, expiry date of the term, unit size, etc. The certificate in addition to the above has a column for 'expected amount payable'. From the same, it is noted that SSSCL had provided for 'estimated returns' at the expiry of the period of its plans.
- d. There is another document named MoU which states that SSSCL is developing a solar power project and refers to its plans. The said document also states as follows:
- The 'joint venture' participant will continue his participation, in the project of SSSCL for approximately five years. On the completion of project the 'joint venture' participant will get the compensation of, subject to the work done by the participant.
 - SSSCL will look after the man power, machines, administration and financial aspects of the project and the 'joint venture' participant will also work in order to achieve the objects of the plan.
 - The 'joint venture' participant shall not have any right or liability on any assets/ rights (tangible or intangible) in the project of SSSCL.
 - After the completion of the project and other formalities, the parties to the MoU will not keep any financial relationship with each other and the 'joint venture' participation will be over on its own.
 - SSSCL reserves the right to cancel the MoU without giving any prior notice if the 'joint venture' participant *inter alia* reveals any undisclosed information about the plan and scheme.

A reading of the MoU suggests that it is a one sided document favoring the Company, as the same discusses only the rights of the Company and is silent about the rights of the contributors/ investors. It does not speak about the returns, in case the participant is willing to continue with the project. Further, there is also no mention about the completion date of the project or the duties of SSSCL to ensure the timely completion of the project, etc. Also, the MoU is silent on the aspects, which are essential to a 'joint venture' agreement, it does not talk about the profit sharing ratio between SSSCL and the participant and as to what will happen in the end of the said 'joint venture' except its getting over on its own. It is also not clear as to what the contributor/ investor gets at the

end of the MoU, except the compensation and what work the contributor/ investor has to do for achieving the objects of the plan.

- e. In my view, a proper 'joint venture' always promises to share profits and losses and also delineates the rights and duties of all the 'joint venture' participants. However, the MoU referred herein between SSSCL and the 'joint venture' participants only seem to be mentioning about the responsibilities and returns on exiting the project and the same clearly says that the parties to the MoU will not keep any financial relationship with each other and the 'joint venture' participation will be over on its own. Furthermore, the MoU does not mention anything about the sharing of profits on the completion of the project. The same only talks about the fixed amount payable to contributor/ investor after completion of periods ranging from 4 to 7 years, which is akin to a fixed return scheme. Considering the discussion above, one can say that the MoU is just an agreement for fixed returns to be given to the investor/ contributor as mentioned in the SSSCL's brochure/ payment plan.

At this stage, I note that the submission of SSSCL, regarding the completion of period which is contrary to its own submission made vide letter dated March 11, 2014, wherein the period has been stated to be of six years.

- f. While proceeding further, I also note that by its own admission SSSCL had 12,512 contributors/ investors (i.e. the list submitted along with the letter dated March 11, 2014). I note that SSSCL vide its letter dated October 21, 2013, had provided its 'JV Participation plans', which offers contributors units, with 'unit size' ranging from 0.5 to 40 (as per the explanation in 'JV Participation plans' one (1) unit is equivalent to 500 sq. ft. of land).

During the course of personal hearing, the representatives appearing for SSSCL were asked as to how much land holding the Company has in its name. In reply to the same, the representatives of the Company submitted that SSSCL owns about 20 acres of land, i.e. 8,71,200 sq. ft. Based on a simple calculation that each contributor/ investor will obtain 250 sq. ft. in the least (i.e. the smallest 'unit size' offered by SSSCL), then with the available land bank, 12,512 contributors/ investors will manage to get 69.0629 sq. ft. each, which is far less than the smallest unit size as offered by SSSCL.

SSSCL vide its email dated August 18, 2014, submitted that it keeps on buying the land and its current land holding is 43.36 acres. Even if, this submission of SSSCL is accepted then

also the holding per contributor/ investor will come to only 150.95 sq. ft., which is also less than the minimum 'unit size' of 250 sq. ft. offered by SSSCL.

A quick analysis of the above shows that the scheme of SSSCL cannot even ensure allocated units to match its total admitted land holdings inspite of revising the figures twice. Further, I also note that SSSCL has not submitted any proof in respect of its claim of holding either 20 acres or 43.36 acres of land.

g. From the above discussion and the *interim* order, I note the following:

- i.** For applying the contributor/ investor necessarily have to execute an MoU with the Company which only talks about the rights of the Company and the returns.
- ii.** On execution of the MoU, the contributor/ investor has to agree that the Company will look after the man power, machines, administration and financial aspects of the project. As per the Company, the contributor/ investor only gets the opportunity to work in order to achieve the objects of the plan. It is important to note that none of the documents available on record mentions as to which work is to be done by the contributor/ investor in order to achieve the objects of the plan. Further, the contributor/ investor of SSSCL are scattered in various places in India. Therefore, it becomes all the more relevant to specifically mention in the MoU as to what work the Company wants the contributors/ investors to do.
- iii.** The contributor/ investor only gets a right to inspect the land, accounts statements, etc.
- iv.** It is not clear whether on completion of the MoU, the contributor/ investor will get land and solar power panel or only solar power panel. Solar power panel alone will be of no practical use to the contributor/ investor in normal circumstances. The same leads to an inference that the Company wants to give ownership of solar panel and not a piece of land. Therefore, it can be said that SSSCL is only trying to give the colour of 'real estate transactions' to its projects.
- v.** The Company guarantees assured returns on completion of the term mentioned in the MoU.
- vi.** In case of any dispute, the decision of Chairman/ Managing Director of SSSCL or person nominated by him, shall be final and shall be binding on applicant.

- vii. It is not clear whether the land on which the project has to come up has been purchased by the Company as its total land holding is far less, if compared to the total number of its customers.
- viii. Further, I also note that the MoU entered into by SSSCL and the contributors/ investors does not provide for transfer of title of the plot of land on which the solar panels are installed and allocated to the contributors/ investors. It is also noted that a contributor/ investor who had invested money with SSSCL were mandatorily required to accept the authority for the development and maintenance of the solar power unit on the allocated land to SSSCL. I note that without the unit of land allocated to the contributors/ investors and 'grid' for transmission of solar power, the solar panels alone may not have any substantial value. Thus, one can say that all essential resources and facilities are controlled and managed by the Company. The contributors/ investors only gets a fixed amount at the end of the 'joint venture'.
- h. From the observations as noted above, it can be inferred that the transactions of the Company are not in the nature of the 'joint venture' rather it can be said to be an investment scheme. The 'acknowledgement certificate' also appears to be a certificate of investment.
- i. Having considered the above, now I proceed to deal with the charges leveled against SSSCL. The main allegation leveled against SSSCL is that it is operating CIS without obtaining registration from SEBI. Before proceeding further in the matter, it is necessary to note the background of CIS Regulations and how the provisions came to be framed. Several entities were mobilizing huge money by issuing various instruments and offering very high rates of return inconsistent with the normal rate of returns and then mis-utilising these funds, for the purposes not disclosed at the time of inviting the investments, thereby not only causing loss to the investors who lost their life savings to such unscrupulous entities, but also eroding the confidence of the general public. Considering the high element of risk associated with such schemes, the Government of India felt that it was necessary to set up an appropriate Regulatory framework to regulate such entities. Hence, in order to protect the interest of the investors and to ensure that only legitimate investment activities are carried on, vide press release dated November 18, 1997, the Government of India communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc., are issued by the entities, would be treated as Schemes under the provisions of the SEBI Act and directed SEBI to formulate Regulations

for the purpose of regulating these CISs. It was against this background that Section 11AA of the SEBI Act and the CIS Regulations came to be framed. Thereafter, several press releases and newspaper advertisements/ notices were issued by SEBI from time to time in the leading newspapers bringing to the notice of the investors and the persons concerned, the various instructions issued by SEBI/ Central Government from time to time in respect of the functioning of the CIS. The press releases further stated that instruments such as agro bonds, plantation bonds should be treated as CIS coming under the SEBI Act. All the companies having such activities were required to file information with SEBI. Moreover, general public was also informed that no person can sponsor or cause to be sponsored any new CIS and thereafter raise further funds. Meanwhile, a committee was formed to examine and finalize the draft regulations for CIS to structure a comprehensive regulatory framework. Subsequently, the notification of SEBI (Collective Investment Schemes) Regulations 1999 was issued on October 15, 1999. As per the CIS Regulations, any person who has been operating a CIS at the time of commencement of the CIS Regulations was required to make an application to SEBI for the grant of registration under the provisions of the regulation, within a period of two months from the date of the notification. No entity was allowed to run a CIS scheme without obtaining the Certificate of Registration from SEBI.

- j. The definition for 'collective investment scheme' was inserted in the SEBI Act, vide the Securities Laws (Amendment) Act, 1999 w.e.f. February 22, 2000. According to the definition, CIS means any scheme or arrangement which satisfies the conditions specified in Section 11 AA of the SEBI Act, which provides as under:

"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or [sub-section (2A)]¹ shall be a collective investment scheme.

[Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under the exemptions from CIS sub-section (3), involving a corpus amount of one hundred Crore rupees or more shall be deemed to be a collective investment scheme.]²

(2) Any scheme or arrangement made or offered by any [person]³ under which,
(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;
(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

¹ Inserted by Securities Laws (Amendment) Ordinance, 2014

² Inserted by Securities Laws (Amendment) Ordinance, 2014

³ Substituted for 'company' by The Securities Laws (Amendment) Ordinance, 2014

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement."

The term '*securities*' in section 2(h) of the Securities Contracts (Regulation) Act, 1956 was amended vide the Securities Laws (Amendment) Act, 1999, w.e.f. February 22, 2000, to include units or any other instrument issued by any collective investment scheme to the investors in such schemes.

k. Thus, I note that a scheme, in order to qualify as a CIS, has to satisfy all the four conditions mentioned in Section 11AA(2) of the SEBI Act:

- i.** The first condition, under Section 11AA(2), is that the contributions, or payments made by the investors, by whatever name called, are pooled and utilised for the purposes of the scheme/ arrangement. In the instant case, SSSCL admittedly collects the money from the contributors/ investors and offers plans/ schemes. The contributor/ investor cannot proceed, if he does not enter into the MoU. In the instant case, the Company collects money from the contributors/ investors against proposed development of the solar energy project. The said monies are mobilized and utilised for the purposes of the scheme, i.e. opportunity to own a developed unit of land which is equipped to generate solar energy. I note that the MoU finds mention of the location and area of the land and the undivided area given to the contributors/ investors. The MoU further states that such undivided area has been demonstrated in the map prepared by the Company. I note that no such map/ schedule has been placed on record by SSSCL inspite of ample opportunities made available to it. SSSCL has argued that the development of its project is in the lines with any other real estate project. SSSCL vide its letter dated October 21, 2013, has argued that the 'joint venture' participant executes MoU with the Company that the advances given/ being given to the Company is for and only against the purchase of land and to develop solar energy generating panel in the name of the participant. Such submission of SSSCL makes it clear that the monies collected from the contributors/ investors are utilized for the purposes of the scheme i.e. development of a unit of land which is equipped to generate solar energy. SSSCL in its submission has claimed that the collection of payments, development of land and sale/ purchase of land is an ongoing and continuing process. However, the details of the land bank available with the Company as on the last communication with SEBI dated August

18, 2014, it has only 43.36 acres of land which as demonstrated earlier is very less, when compared to the total number of its contributors/ investors.

Therefore, it is clear that the Company accepts contributions from the contributors/ investors for collective utilization and pools the investment, with the object of carrying out the overall scheme/ arrangement. Further the application form as provided by SSSCL, does not contain any column to specify the details of land/ plot allocated to the contributors/ investors as is being stated in the MoU. Thus, the sequence of facts and the number of contributors/ investors enrolled with SSSCL suggest that the investments of contributors/ investors were being pooled and utilized for the overall scheme/ arrangement. Therefore, it becomes clear that SSSCL is pooling payments from its contributors/ investors and utilising it for the purposes of the scheme/ arrangement, thus, satisfying the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act.

- ii. The second condition, under section 11AA(2), is that the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement. In this regard, I note that the contribution/ payments are made by the contributors/ investors to SSSCL by selecting the options available as detailed in the 'JV Participation plan'/ brochure. The 'JV Participation plan'/ brochure themselves assures investors of profits as it expressly states about the expected refund of JV participation. Further, the 'acknowledgement certificate' and the MoU also finds mention about the profits/ income. Those options make it clear that the contributor/ investor makes contribution/ payment with a view to receive the profits/ income/ property/ return on their initial investments that may accrue to them as applicable, thus attracting the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.
- iii. The third condition is that the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors. It is noted from the copy of the MoU that the Company will look after the man power, machines, administration and financial aspects of the project. The contributor/ investor only gets the right to work in order to achieve the objects of

the plan. As noted in earlier paragraphs, the Company has nowhere mentioned as to what work has to be done by the contributors/ investors.

I also note that in the schemes/plans of the Company, at the time of making the initial contribution/ payment, the contributor/ investor decides *inter alia* the plan number, term of the plan, etc. At this stage, the land unit is not identified as it is non-distinguishable. The contributor/ investor does not take part in the acquisition, development or management of property i.e. land/ plot. He also does not manage his investments in the schemes rather his investments are managed and utilized by the Company. The project as submitted by the Company vide its letters will be operated and maintained by another Company namely Shree Sai Non-Conventional Energy Pvt. Limited.

Thus, from the above, it is clear that the contributor/ investor does not manage the property, contribution or investment forming part of schemes at any stage and the Company manages the property that is part of its scheme on behalf of contributors/ investors. The same therefore, satisfies the third condition as stipulated in Section 11AA(2)(iii) of the SEBI Act.

- iv. The fourth condition is that investors do not have day to day control over the management and operation of the scheme or arrangement. The Company in the MoU has specifically written that it will look after the man power, machines, administration and financial aspects of the project. Thus, it shows that this condition is also fulfilled. Further, as discussed above, the contribution/ investment are managed by the Company on behalf of the investors, they do not have any role in the management and operation of its schemes/ arrangements. The contributors/ investors have no role to participate in the acquisition, development and management of the project. The contributors/ investors do not have accessibility to do anything on the proposed unit. The contributors/ investors do not have any control on the money spent or on the nature of development of the project as they are managed by the Company exclusively without any involvement of the contributors/ investors. This makes it clear that the contributor/ investor does not have day to day control over the plot of land/ property as the same remained in the custody/ use of SSSCL which satisfies the fourth and last condition as stipulated in Section 11AA(2)(iv) of the SEBI Act.

1. Considering the above discussion, it can be said that the transactions between SSSCL and its contributor/ investor are not real estate transactions, rather they satisfy all the ingredients of a CIS as defined under Section 11AA of the SEBI Act. In this regard, I place my reliance on the observations of the Hon'ble Supreme Court, made in the matter of *PGF Limited & Ors. Vs. Union of India & Anrs.* (Civil Appeal No. 6572 of 2004):

"Therefore, the paramount object of the Parliament in enacting the SEBI Act itself and in particular the addition of Section 11AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with the fond hope that such investment will get appreciated in course of time. Certain other Section of the people who are worstly affected are those who belong to the middle income group who again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.

38. Since it was noticed in the early 90s that there was mushroom growth of attractive schemes or arrangements, which persuaded the above vulnerable group getting attracted towards such schemes and arrangements, which weakness was encashed by the promoters of such schemes and arrangements who lure them to part with their savings by falling as a prey to the sweet coated words of such frauds, the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act. ...

... ..

40. It will have to be stated with particular reference to the activity of the PGF Limited, namely, sale and development of agricultural land as a collective investment scheme, the implication of Section 11AA was not intended to affect the development of agricultural land or any other operation connected therewith or put any spokes in such sale-cum-development of such agricultural land. It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded It is, therefore, apparent that all other schemes/arrangements operated by all others, namely, other than those who are governed by sub-section 3 of Section 11AA are to be controlled in order to ensure proper working of the scheme primarily in the interest of the investors.

... ..

42. Therefore, in reality what sub-section (2) of Section 11AA intends to achieve is only to safeguard the interest of the investors whenever any scheme or arrangement is announced by such promoters by making a thorough study of such schemes and arrangements before registering such schemes with the SEBI and also later on monitor such schemes and arrangements in order to ensure proper statutory control over such promoters and whatever investment made by any individual is provided necessary protection for their investments in the event of such schemes or arrangements either being successfully operated upon or by any misfortune happen to be abandoned, where again there would be sufficient safeguards made for an assured refund of investments made, if not in full, at least a part of it.

... ... In the light of our above conclusions on this ground it will have to be held that Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development.

... ...

It is needless to state that as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion.

...

53. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of the PGF Limited, namely, the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act and consequently the order of the second respondent dated 06.12.2002 is perfectly justified and there is no scope to interfere with the same. In the light of our above conclusions, the PGF Limited has to comply with the directions contained in last paragraph of the order of the second respondent dated 06.12.2002"

m. In view of the foregoing, I am of the considered view that the plans/ schemes of SSSCL is in the nature of a CIS as all the four conditions specified under Section 11AA (2) of the SEBI Act are satisfied. I, therefore, find that the Company is engaged in the fund mobilising activity from the public by floating/ sponsoring/ launching 'collective investment schemes' as defined in Section 11AA of the SEBI Act. It is clear that the business run by the SSCCL is nothing but that of a CIS, as all the conditions of Section 11AA of the SEBI Act are satisfied by the plans/ schemes operated by SSSCL. Therefore, I have no hesitation in holding that SSSCL and its directors, viz., Mr. Suresh L. Shrivastav, Ms. Laxmi S. Shrivastav, Mr. Ritesh K. Shrivastav and Mr. Vivek K. Shrivastav are engaged in the fund mobilising activity by floating/ sponsoring/ launching, unregistered/ unauthorised CIS, as defined in the Section 11AA of the SEBI Act.

As regards, Mr. Rajkumar Laxman Konde, it has been said that he was appointed as director on August 08, 2012 and resigned from the post on April 29, 2013. I note from the records that the Company was incorporated on August 07, 2012. As per the copy of the relevant 'Form 32', it is mentioned that Mr. Rajkumar Laxman Konde had resigned as a director only on May 06, 2013. In view of the same, he is responsible for the contraventions committed by the Company as noted above for the period he was acting as a director.

8. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations. SSSCL has clearly failed to do so. Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'collective investment scheme'. A person can launch or sponsor or cause to sponsor a collective investment scheme only if it is registered with SEBI as a Collective Investment Management Company. Therefore, the launching/ floating/ sponsoring / causing to sponsor any 'collective investment scheme' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. I note that SSSCL has launched a CIS without obtaining certificate of registration from SEBI, it has contravened the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.
9. Therefore, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11B and 11(4) thereof and Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:
- a. Shree Sai Spaces Creation Limited [PAN: AARCS9644N] and its directors namely Mr. Suresh L. Shrivastav [PAN: ABTPS4472N], Ms. Laxmi S. Shrivastav [PAN: ARAPS3958G], Mr. Ritesh K. Shrivastav [PAN: CEBPS5607E] and Mr. Vivek K. Shrivastav [PAN: DRMPS4668Q] shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in this Order.
- b. Shree Sai Spaces Creation Limited and its directors namely Mr. Suresh L. Shrivastav, Ms. Laxmi S. Shrivastav, Mr. Ritesh K. Shrivastav and Mr. Vivek K. Shrivastav, shall wind up the existing Collective Investment Schemes and refund the monies collected by the said company under the schemes with returns which are due to its investors as per the terms of offer within a period of three month from the date of this Order and thereafter, within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of

funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.

- c. Shree Sai Spaces Creation Limited and its directors namely Mr. Suresh L. Shrivastav, Ms. Laxmi S. Shrivastav, Mr. Ritesh K. Shrivastav and Mr. Vivek K. Shrivastav, shall not alienate or dispose off or sell any of the assets of Shree Sai Spaces Creation Limited except for the purpose of making refunds to its investors as directed above.
- d. Shree Sai Spaces Creation Limited and its directors namely Mr. Suresh L. Shrivastav, Ms. Laxmi S. Shrivastav, Mr. Ritesh K. Shrivastav and Mr. Vivek K. Shrivastav are also directed to immediately submit the complete and detailed inventory of the assets owned by Shree Sai Spaces Creation Limited.
- e. In the event of failure by Shree Sai Spaces Creation Limited and its directors namely Mr. Suresh L. Shrivastav, Ms. Laxmi S. Shrivastav, Mr. Ritesh K. Shrivastav and Mr. Vivek K. Shrivastav, to comply with the above directions contained in sub-paragraphs (a) to (d) above, the following actions shall follow:
 - i. Shree Sai Spaces Creation Limited and its directors namely Mr. Suresh L. Shrivastav, Ms. Laxmi S. Shrivastav, Mr. Ritesh K. Shrivastav and Mr. Vivek K. Shrivastav, shall remain restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, till all the Collective Investment Schemes of Shree Sai Spaces Creation Limited are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them. This would be without prejudice to the directions contained in paragraph 16(e) above.
 - ii. SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against Shree Sai Spaces Creation Limited, 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
 - iii. SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, Shree Sai Spaces Creation Limited.
 - iv. SEBI shall also initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.

- f. Without prejudice to the above, Shree Sai Spaces Creation Limited and its directors namely Mr. Suresh L. Shrivastav, Ms. Laxmi S. Shrivastav, Mr. Ritesh K. Shrivastav and Mr. Vivek K. Shrivastav are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of four (4) years.
- g. Mr. Rajkumar Laxman Konde [PAN: ABXPK2421P] is restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities market for a period of two (2) years.
10. This order shall come into force with immediate effect.
11. Further, for the contraventions as found in this Order and the contravention of Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, SEBI may examine whether to initiate appropriate proceedings under Sections 11(4) and 11B of the SEBI Act read with Regulation 65(e) of the CIS Regulations and Chapter VI A of the SEBI Act against Shree Sai Spaces Creation Limited and its directors namely Mr. Suresh L. Shrivastav, Ms. Laxmi S. Shrivastav, Mr. Ritesh K. Shrivastav, Mr. Vivek K. Shrivastav and Mr. Rajkumar Laxman Konde.
12. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

DATE : November 24th, 2014
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA