

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11(1), 11(4), 11A(1)(b) and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 107 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and regulation 25 of the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993

In the matter of Sunshine Hi-Tech Infracon Limited

In respect of

1. Sunshine Hi-Tech Infracon Limited (PAN : AARCS2487F) and its Directors,
2. Mr. Ramesh Chandra Nayak [PAN: AERPN2244Q],
3. Mr. Parmanad Prajapat [PAN:AKQPP0632H],
4. Mr. Dinesh Nayak [PAN:AHQPN4086L],
5. Mr. Rakesh Arya [PAN:BAHPA6188D],
6. Mr. Dinesh Bhuriya [PAN:BIMPB9488A] and
7. Mr. Deepak Kumar Gehlot [PAN:AKSPG7055R]

1. During an Investor Awareness Program, the Securities and Exchange Board of India (hereinafter referred to as "the **SEBI**") received certain documents including a Brochure pertaining to the mobilization of funds from members of the public by a company, namely, Sunshine Hi-Tech Infracon Limited (hereinafter referred to as "**the Company**" of "**SHIL**") through the issue of Partly-Paid Optionally Convertible Unsecured Debentures. The Brochure *inter alia* contained the following information :

(a) The Cover page contained the name of the Company with registration no. 69165. The registered office address was mentioned therein as "403, Unique Tower, Opp. Hotel Surya, Sayajigunj, Vadodara-390 005 (Guj.), Phone - 0265-3928336, 3928337, E-mail: info@sunshinebitech.com and Website: www.sunshinebitech.com.

(b) Certificate of incorporation - As per this certificate (*issued by the Registrar of Companies, Gujarat, Dadra and Nagar Haveli (RoC)*), the Company was incorporated on February 24, 2012 and the Company's Corporate Identification Number (CIN) is 'U70101GJ2012PLC069165'.

(c) Certificate of Commencement of Business - This Certificate was issued by the RoC on March 07, 2012.

(d) Certificate of quality of services - As per this certificate issued by KVQA Certification Services Pvt. Ltd., the certificate is valid for the following product or service range - "*Provide management consultants,*

Financial Consultant.... Consultancy Service in various filed such as Financial, Industrial, Public Relation, Real Estate Consultant, Foreign Collaborations, Joint Venture Agreement, Debentures, Foreign Investment, Transfer or Exchange of Technology between India and/or Foreign Companies."

(e) Permanent Account Number (PAN) Card of the Company - PAN : AARCS2487F.

(f) Notice dated April 02, 2012 issued by the Company in the 'Business Standard' soliciting subscription to the its issue of 5000 Partly Paid Optionally Convertible Unsecured Debentures of Rs.3000/- each at par of the aggregating nominal value of Rs.1.5 crores on private placement basis carrying interest (as per terms and conditions) under the authority of the resolution passed by the Company in its Extra-Ordinary General Meeting held on March 16, 2012.

(g) Copies of Form-23.

(h) The Company offers various payment/subscription plans with respect to its issue of Partly Paid Optionally Convertible Unsecured Debentures (OCDs). These plans were in the nature of installment plans and lump sum payment plans. Various plans as mentioned in the Brochure were the following :

Plan SHD - 1 : Installment Plan (3 years)

Plan SHD - 2 : Installment Plan (5 years)

Plan SHD - 3 : Installment Plan (6 years)

Plan SHD - 4 : Installment Plan (4 years)

Plan MIP-A : Installment Payment (6 years)

Plan SHF-1 : one time fully paid debenture (3 years)

Plan SHF-2 : One time fully paid debenture (5 years)

As example, the details of one installment plan and one lump sum payment plan are given hereunder:

Plan SHD - 1 : Installment Plan (4 years)							
Sr. No.	Debenture Amt.	Monthly	Quarterly	Half Yearly	Yearly	Maturity	A.D.C.
1	2,400	50	150	300	600	3,216	3,600
2	4,800	100	300	600	1,200	6,432	7,200
3	7,200	150	450	900	1,800	9,648	10,800
4	9,600	200	600	1,200	2,400	12,864	14,400
5	12,000	250	750	1,500	3,000	16,080	18,000
6	14,400	300	900	1,800	3,600	19,296	21,600
7	16,800	350	1,050	2,100	4,200	22,512	25,200
8	19,200	400	1,200	2,400	4,800	25,728	28,800
9	21,600	450	1,350	2,700	5,400	28,944	32,400
10	24,000	500	1,500	3,000	6,000	32,160	36,000
11	48,000	1,000	3,000	6,000	12,000	64,320	72,000
12	72,000	1,500	4,500	9,000	18,000	96,480	1,08,000
13	96,000	2,000	6,000	12,000	24,000	1,28,640	1,25,000
14	1,20,000	2,500	7,500	15,000	30,000	1,60,800	1,25,000

Plan SHF - 1 : One time fully paid debenture (3 years)			
Sr. No.	Debenture Amt.	Maturity	A.D.C.
1	5,000	7,100	Nil
2	10,000	14,200	Nil
3	20,000	28,400	Nil
4	25,000	35,500	Nil
5	50,000	71,000	Nil
6	1,00,000	1,42,100	Nil

(i) The Company had also mentioned that it would soon be coming out with 'Sunshine Hostel', 'Sunshine Education Campus', Soya Plant & Ginning Factory'.

(j) The Company had Branches at Vadodara, Dahod (Gujarat), Rajpipla (Gujarat), Ujjain (Madhya Pradesh), Ahmednagar (Maharashtra), Gondia (Maharashtra) and Banswara (Rajasthan). The Brochure also mentioned that the Company had plans to open branches in locations in the States of Gujarat, Madhya Pradesh, Rajasthan, Maharashtra, Uttar Pradesh, Chhattisgarh, Haryana and Delhi.

(k) Brochure also mentioned the various 'collection centres' of the Company.

2. On receipt of the above information and documents, SEBI initiated a preliminary examination into the money mobilization activities of the Company from the public to ascertain that the same were being carried in compliance with the applicable law including the SEBI Act, 1992, the Companies Act, 1956 and the relevant regulations.

3. In pursuance thereof, SEBI vide letter dated November 28, 2013 advised the Company to *inter alia* furnish the following information/documents:

- a) A copy of offer document /offer letter in respect of Issue of the OCDs.
- b) to confirm Company's compliance with the provisions of section 117B (*which prescribes that the prospectus/ offer letter should, on the face of it, indicate that the debenture trustee has consented to be appointed so*) of the Companies Act, 1956.
- c) Copies of all documents filed by the Company with the RoC with respect to its Issue of OCDs.
- d) Details of OCDs Issued till date - (a) Name and address of the debenture holders, (b) PAN, (c) No. of debentures held, (d) Date of allotment of debenture and (e) Relationship of debenture holder with promoters/directors of the Company.
- e) Copies of all annual reports of the Company for the last five financial years.
- f) to confirm whether the provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("the ILDS Regulations") have been complied with in respect of the issuance of the OCDs by the Company.
- g) Details of past and present shareholders of the Company, and

- h) Details of past and present directors of the Company and its group companies / associate companies.

4. In response, the **Company vide letter dated December 21, 2013** submitted as under:

- a) SHIL has offered and issued OCDs amounting to Rs.1,02,96,000/- through private placement to **thirty eight (38) individuals** without a right of renunciation in favour of others. The said OCDs are not offered to the public and hence the requirement of filing offer document/offer letter with SEBI is not applicable.
- b) Compliance with section 117B of Companies Act, 1956 and the ILDS Regulations are not required as the OCDs are not offered to general public and the Company did not intend to list the OCDs.
- c) The Company has complied with RoC formalities.

The Company contended that the OCDs issued by it through private placement do not fall under the jurisdiction of SEBI as the number of persons to whom private placement was made did not exceed 49. As debentures are allotted to 38 persons, the *proviso* to section 67(3) of the Companies Act, 1956 does not apply and therefore the requirement of listing them in terms of section 73(1) is not attracted. The Company further contended that powers granted to SEBI under section 55A of the Companies Act, 1956 becomes ineffective in its case.

The Company submitted copies of -

- (i) Form 20 {*registration of resolution(s) and agreement(s)*},
- (ii) Form 10 (*particulars for registration of charges for debentures*),
- (iii) Form 8 {*particulars for creation or modification of charge (other than those related to debentures) including particulars of modification of charge by asset reconstruction companies in terms of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("the SARFAESI Act")*},
- (iv) Details of 38 individuals to whom OCDs were (*claimed to be*) issued. The information was in a tabular format containing details such as *Name of person, Address, PAN, number of debentures held, date of allotment of debentures and relationship of the debenture-holders with promoters (directors of the company)*.
- (v) Income Tax Return Acknowledgement for Assessment Year 2013-2014 and the Computation of Income, Depreciation chart.
- (vi) Details of directors. As per this list, the following are the present directors:

Sr. No.	Name and Address of the Directors	PAN	Date of appointment	Date of cessation	Relationship with promoters

Sr. No.	Name and Address of the Directors	PAN	Date of appointment	Date of cessation	Relationship with promoters
1	Ramesh Chandra Nayak, 81, Gram Chhayan, Seemalkhedi, Ta Ranankpur, Ji Jhabua- 457993 Madhya Pradesh India	AERPN2244Q	2/21/2012	NA	Non Related
2	Parmanand Prajapat H.No.62,Subhash Marg, Ranapur, Ranapur Dist. : Jhabua - 457993	AKQPO632H	2/21/2012	NA	Non Related
3	Dinesh Nayak, 81, Gram Chhayan, Seemalkhadi, Ta, Ranankpur, Ji, Jhabua - 57993, Madhya Pradesh, India	AHQPN4086L	2/21/2012	NA	Brother of Ramesh Ganapat Nayak
4	Rakesh Arya C. S. Azad Marg, Ranpura Dist. Jhabua 457933, Madhya Pradesh, India	BAHPA6188D	03/05/012	NA	Non Related
5	Dinesh Bhuriya, Vill Datad, Ta Ranapur, Jhabua, Madhya Pradesh 457661, India	BIMPB9488A	03/05/012	NA	Non Related
6	Deepak Ghehot, At Post. Sondwa, Dist. Alirajpur, Jhabua- 457888, Madhya Pradesh, India	AKSPG7055R	03/05/012	NA	Non Related

(vii) The present shareholders of the Company are Ramesh Nayak (35.94%), Parmanand Prajapat (23.24%), Rakesh Arya (14.67%), Seema Meravat (0.61%), Vibhuti Gehlot (0.60%) and Dinesh Nayak (16.71%).

5. Subsequently, the Reserve Bank of India (hereinafter referred to as '**RBI**') forwarded a copy of their letter dated March 18, 2014 addressed to *The DIG of Police, Anti-Economic Offences Wing, Gandhinagar*. This letter enclosed a copy of the complaint dated February 07, 2014 of one Mr. Ram Krishna Gajendra. While referring to the complaint, RBI has observed that "*Accordingly, the company is collecting monies from general public in the name of Pension Plan, Fixed Deposits etc. It is also observed from the charts enclosed to complaint that the company is collecting deposits in the garb of debentures*". Further, RBI has confirmed in the said letter

that the company is not registered with it as a Non-Banking Finance Company ("NBFC"). RBI also forwarded copy of a letter from Pandri Police Station (Raipur) to the Small Savings Office, Raipur which sought information about the Company, whether it is registered or authorized to collect money from public and whether the financial transactions of the Company are in violation of any law. Copies of documents including the Certificate of Registration of Mortgage under section 132 of the Companies Act, 1956, and brochure of the Company with various plans/schemes for investment/returns, commission chart/percentage of incentives, were also annexed with the complaint.

6. Thereafter, SEBI vide letter dated March 24, 2014, advised the debenture trustee (to the issue of OCDs; as mentioned in the Trust Deed), **Guru Krupa Trustee Company Pvt. Ltd.** (hereinafter referred to as "**Guru Krupa**" or "**the Debenture Trustee**") to submit information/documents as sought in the SEBI letter dated November 28, 2013 (ref. para 2 above) including its registration details with SEBI. However, no response was received from Guru Krupa.

7. SEBI also made enquiries in Raipur (State of Chhattisgarh) with the help of Raipur Police and had collected copies of more than 50 debenture (OCD) certificates issued to 48 individuals.

8. SEBI also received another letter dated May 8, 2014 from the RBI forwarding copy of a letter submitted to District Small Saving Officer, Raipur, Chhattisgarh by the Company. This letter was a reply to the notice dated February 02, 2014 (*copy not available with SEBI*) issued by the District Small Saving Officer, Raipur. In the said letter, the Company *inter alia* stated that -

- o It was not required to be registered with the RBI. Its principal business is not that of finance.
- o The Company was registered under the Chhattisgarh Shops and Establishment Act and that the Company had only one office in the District of Raipur.
- o The Directors of the Company are Mr. Ramesh Chandra Nayak, Mr. Dinesh Bhuriya and Mr. Deepak Gehlot.
- o To fulfill the financial needs of the growing business, the Company's Board of Directors decided to raise money by issuing 4000 nos. of privately placed **fully paid-up optionally convertible secured redeemable debentures** of face value of Rs.5000/- per debenture **aggregating Rs.200 lakhs** ; 9000 nos. of privately placed **partly paid-up optionally convertible secured redeemable debentures** of face value of Rs.2400/- per debenture **aggregating Rs.216 lakhs** ; 26,700 numbers of privately placed **partly paid-up optionally convertible secured redeemable debentures** of face value of Rs.3000/- per debenture **aggregating Rs.801 lakhs** ; and 22,500 nos. of privately placed fully paid-up optionally convertible secured redeemable debentures of face value of Rs.3600/- per debenture **aggregating Rs.810 lakhs**, on private

placement. The same was approved in the meeting of the BoD held on July 10, 2012 and the shareholders in their meeting held on January 31, 2013.

- o The Company had appointed Guru Krupa, a company registered under the Companies Act, 1956, as Trustee of the Debentures issued vide Trust Deed dated March 15, 2013. The Company had hypothecated various properties of its group company.
- o The Company had complied with all the formalities as per the Companies Act, 1956 with respect to the private placement of OCDs. The Company had, out of the permissible and approved limit for issuance of debentures offered and issued OCDs amounting to Rs.1,02,96,000/- through private placement without a right of renunciation in favour of others.

This RBI reference also enclosed a copy of the debenture certificate (Partly Paid Optionally Convertible Unsecured Debentures of Rs.3000/- each) dated 21.02.2014 issued to one Sanjay Sharma. Brochure containing the schemes of the Company was also enclosed. As per this certificate, the holder was allotted 2 debentures for an amount of Rs.6000/-; Scheme-SHD ; Rs.100/- to be paid monthly for a period of 5 years; redemption value Rs.8550/- and 21.02.2019 was the date of redemption. The above matches with plan 'SHD-2 (Installment Plan 5 years)' mentioned in the Brochures issued by the Company, as available with SEBI.

9. SEBI, has thus received the details of 87 allottees of OCDs (38 *names as intimated by the Company + 1 name as per complaint forwarded by RBI + 48 individuals whose details were collected by SEBI in its enquiry*) by the Company. The above therefore indicates that the Company had issued OCDs to more than 49 investors. SEBI vide its letter dated August 12, 2014, communicated to the Company and its directors, Mr. Deepak Kumar Gehlot, Mr. Ramesh Chandra Nayak and Mr. Dinesh Bhuria, that the Company did not furnish the complete information and advised the Company to submit complete details as sought vide SEBI letter dated November 28, 2013 and also advised it to submit the following :

- a. Certified copy of Board Resolution authorizing issuance of OCDs
- b. Certified copy of the audited annual accounts for the period ended March 31, 2013 and March 31, 2014.
- c. Terms of conversion of debentures

SEBI also sent a letter dated August 21, 2014 to Guru Krupa stating that it had failed to respond to the SEBI letter dated March 24, 2014 and advised it to furnish information as sought vide that letter and also to provide information as sought above from the Company. The Company and the debenture trustee, Guru Krupa were also put on notice that appropriate action would be taken in accordance with the SEBI Act and regulations if no response was received. The above said letter was delivered on the Company and two of its directors, namely, Mr. Deepak Kumar Gehlot and Mr. Ramesh Chandra Nayak. As regards the letters sent to Mr. Dinesh Bhuria and Guru Krupa, though the acknowledgement

was not received, the said letters did not return. The above said Company, its directors and debenture trustee did not forward their responses to the above said letters till date.

10. Accordingly, I proceed to consider the material available on record including the details of the Company available on the portal of the Ministry of Corporate Affairs ("MCA"). From such documents, the following are observed :

a. The Company was incorporated on February 24, 2012 with the RoC, Ahmedabad vide CIN No. U70101GJ2012PLC069165. The registered office of the Company is situated at 402, Unique Tower, Opp. Hotel Surya, Sayanji Gunj, Vadodara - 390 005 (Gujarat).

b. The Directors of the company are **Mr. Ramesh Chandra Nayak, Mr. Parmanad Prajapat, Mr. Dinesh Nayak, Mr. Rakesh Arya, Mr. Dinesh Bhuriya and Mr. Deepak Kumar Gehlot**

c. The authorised capital of the Company is Rs.10,00,00,000/- and the paid-up capital is Rs.9,98,520/-.

d. As per resolution dated January 31, 2013, as available on the MCA portal, the Board of the Company had approved the issuance of (a) Fully Paid-up Optionally Convertible Secured Redeemable Debentures of Rs. 5000/- each aggregating Rs.200 lakhs, (b) Partly Paid Optionally Convertible Secured Redeemable Debentures of Rs.2400/- each aggregating Rs.216 lakhs, (c) Partly Paid-up Optionally Convertible Secured Redeemable Debentures of Rs.3000/- each aggregating Rs.801 lakhs and (d) Partly Paid-up Optionally Convertible Secured Redeemable Debentures of Rs.3600/- each aggregating Rs.810 lakhs, all the above aggregating Rs.20.27 crores.

e. As per copies of brochure received by SEBI (in the investor awareness programme as mentioned in paragraph 1 above and also from one of the investors, as forwarded by RBI), the Company has floated various plans/schemes inviting subscription.

f. The Company, in its reply, had forwarded a list of 38 allottees of the 'Fully Paid Optionally Convertible Secured Redeemable Debentures'. From this list, it is noted -

- o The Company claimed to have issued a total of 2860 debentures to 38 investors;
- o The total value of such debentures were claimed to be Rs.1,02,96,000/-;
- o All such debentures were allotted to such investors on March 30, 2013 (Financial Year : 2012-2013).

g. As stated above, SEBI during its enquiry had, through the Raipur Police, collected 50 debenture certificates (issued by the Company) pertaining to 48 investors. From such debenture certificates, it is noted -

- o All these certificates pertained to Partly Paid OCDs and belonged to 48 investors.
- o The certificates were issued on various dates - April 09, 2014, December 31, 2013, December 30, 2013, December 26, 2013 and December 13, 2013 (i.e., during FY 2013-14 and 2014-15). The certificates had mentioned different investment amounts, different plans and different redemption periods.
- o The names of these 48 persons are not present in the list of 38 investors as provided by the Company.

h. SEBI is also in receipt of another partly paid OCD certificate (*of an investor, Sanjay Sharma*) which was issued on February 21, 2014 (Financial Year : 2013-2014). This certificate was forwarded by the RBI.

i. The Company, in its response to the Distt. Small Savings Officer, has stated that the Company resolved to issue capital through the Fully Paid OCDs and Partly Paid OCDs and that the same was approved in the meeting of the BoD held on July 10, 2012 and by the shareholders in their meeting held on January 31, 2013.

j. The exact number of allottees of such fully paid OCDS and partly paid OCDS could not be ascertained by SEBI as the Company failed to furnish complete details including the comprehensive list of allottees. However, considering -

- (i) the submission of the Company that it had resolved to issue OCDs for meeting its financial needs,
 - (ii) the number of investors {i.e., atleast 87 investors} which have come to light during the SEBI enquiry, and
 - (iii) the Company's conduct in not providing the complete information as sought by SEBI,
- leads to an inference that the Company has made an offer and issued OCDs to more than 49 persons as referred in section 67(3) of the Companies Act, 1956 and is trying to conceal information in this regard.

11. In the context of the abovementioned details of the issue of OCDs, it is to be seen whether the mobilization of funds by the Company through the OCDs, is in accordance with the provisions of the SEBI Act, 1992 ("SEBI Act"), the Companies Act, 1956 read with the Companies Act, 2013, the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "ICDR Regulations") and the SEBI (Debenture Trustees) Regulations, 1993. As it has been *prima facie* observed that the Company had issued OCDs to more than 49 persons, it is important to refer to the provisions of section 67(1) and 67(3) of the Companies Act, 1956, which read as under :

"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) ...

(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)."*

A reading of the above, makes it clear that in terms of the first *proviso* to section 67, the provisions of Section 67(3) shall not apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. Given the above discussions, it is alleged that the Company has issued OCDs to more than 49, and has therefore made a 'public issue' of OCDs. Merely by stating that the issue of securities is a 'private placement' would not absolve a company from the statutory obligations related to the issue of securities to the public.

The Company has contended that it had made a private placement of securities. However, the mere fact that it had made an advertisement in the newspaper 'Business standard' would show that the Company had made its offer and invited public investors to subscribe to the same. If its offer was to a select group and was on private placement, there would have been no need to publicise its offer in a widely read finance news daily.

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

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is

to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation. ...

... .. that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

[Emphasis supplied]

12. Having allegedly made a public offer of OCDs, the Company ought to have complied with all the applicable provisions of the Companies Act, 1956. The same *inter alia* includes compliance with sections 56, 60 and 73 of the Companies Act, 1956. In terms of the section 2(36) of the Companies Act read with section 60 thereof, a company needs to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. There is no material on record to say that the Company had complied with section 60. 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, contain disclosures as specified. The Company has not allegedly complied with these provisions of law.

13. Further, by allegedly offering and issuing OCDs to more than 50 persons, the Company 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, a company is required to make an application to one or more recognised stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. The Company appears to have contravened the said provisions as it has neither made an application seeking listing permission nor refunded the amounts on account of such failure. The Company 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 and failed to repay the same in accordance with section 73(2) as observed above. In the matter of the *Sahara*, the Hon'ble Supreme Court of India, while examining the provisions of section 73 of the Companies Act, 1956 has observed as under :

"93. Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act.

94. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons. A company cannot be heard to contend that it has no such intention or idea to make an application to the stock exchange. "

14. In terms of section 55A of the Companies Act, 1956, sections 55 to 58, 59 to 81 (including Sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to the issue and transfer of securities shall be in the case of listed public companies and in the case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by SEBI. From the above, it could be noted that sections 67 and 73 of the Companies Act, 1956 are included in the list of sections under section 55A of the Companies Act, 1956, and therefore, such sections are to be administered by SEBI.

15. In view of the above, it is alleged that the Company has contravened the provisions of the Companies Act, 1956 which regulates the issue of securities, including sections 60 read with section 2(36), 56(1), 56(3) and 73 of the Companies Act, 1956 read with the provisions of the Companies Act, 2013, in respect of its issuance of OCDs.

16. Under sections 11 and 11A of the SEBI Act, SEBI could regulate *inter alia* the issue of capital by companies and the contents of prospectus for such issue. Whenever a company raises capital from the public through issue of securities, it has to comply with the SEBI Act and the rules, regulations and guidelines framed thereunder in addition to the provisions of the Companies Act. As per the nature and nomenclature of the securities so issued by the Company, i.e., Optionally Convertible Securities and the

statement made by the Company in the newspaper advertisement dated April 02, 2012 (as found in the Brochure), that the 'security' has a 'Convertible Option' that it is convertible into equity shares at the option of the investor, the ICDR Regulations would be applicable.

17. In this regard, I refer to regulation 2(1)(k), which defines a 'convertible security' as a security which is convertible into or exchangeable with equity shares of the issuer at a later date with or without the option of the holder of the security and includes convertible debt instrument and convertible preference shares. Further, as per regulation 2(1)(zi), 'specified securities' means equity shares and convertible securities. Therefore, the OCDs issued by the Company are therefore 'specified securities' within the ambit of regulation 2(1)(zi) of the ICDR Regulations. Therefore, in addition to its compliance with the provisions of the Companies Act, 1956, the Company was mandated to comply with the applicable provisions of the ICDR Regulations.

18. The ICDR Regulations lays down eligibility norms, disclosure norms and other procedural requirements for compliance by a company intending to raise capital through issue of 'specified securities' from public. Such conditions are mandated to ensure the protection of investors who apply for subscribing to such securities. In terms of Regulation 3 of the ICDR Regulations, *inter alia* all public issues are required to comply with the ICDR Regulations. The relevant provisions of the ICDR Regulations which had to be complied by the Company in respect of its alleged issuances of OCDs by the Company are:

- *Application for listing of specified securities on one or more recognized stock exchange (Regulation 4(2)),*
- *Appointment of merchant banker and other intermediaries (Regulation 5),*
- *Filing of draft offer document with SEBI and the designated stock exchange and RoC (Regulation 6),*
- *Obtaining in-principle approval from the recognized stock exchanges in which the specified securities are to be listed (Regulation 7),*
- *Satisfy the conditions of initial public offer (Regulation 25 and 26),*
- *Lock-in of specified securities held by promoters and persons other than promoters (Regulation 36 and 37)*
- *Keeping the public issue open for the specified period (Regulation 46),*
- *Pre issue advertisement for public issue (Regulation 47)*
- *Manner of disclosures in the offer documents (Regulation 57)*
- *Refrain from offering any incentive to any person making application for allotment of specified securities (Regulation 59).*

There is neither any record available at this stage nor documents submitted by the Company stating that it has complied with the applicable provisions of the ICDR Regulations. In view of the same, the Company is alleged to have contravened the obligations imposed under the relevant provisions of the ICDR Regulations in respect of its public offer and issue of OCDs.

19. The Company has stated that **Mr. Ramesh Chandra Nayak, Mr. Parmanad Prajapat, Mr. Dinesh Nayak, Mr. Rakesh Arya, Mr. Dinesh Bhuriya and Mr. Deepak Gehlot** are its directors.

Accordingly, they are responsible for the affairs of the Company and the policy decisions of the Company including the alleged irregular mobilisation of funds from the public through issuance of OCDs by the Company.

20. As regards the debenture trustee, it is seen that the Company has engaged Guru Krupa to be its Debenture Trustee. To perform the functions or act as a debenture trustee, SEBI has, under section 12(1) read with section 11(2)(b) of the SEBI Act, mandated that a trustee (in respect of debentures) who is associated with the securities market shall buy, sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from SEBI in accordance with the regulation made under the SEBI Act. SEBI has also framed the SEBI (Debenture Trustees) Regulations, 1993 ("the DT Regulations"), prescribing the conditions, responsibilities and obligations of a debenture trustee. Chapter II thereof deal with 'Registration of Debenture Trustees'. Regulation 3 prescribes about the manner of making an application for registration, regulation 5 states that such application should conform to requirements and regulation 6A deals with criteria for fit and proper person. Further, regulation 7 stipulates that only (i) a scheduled bank carrying on commercial activity or (ii) a public financial institution within the meaning of section 4A of the Companies Act, 1956 or (iii) an insurance company or (iv) body corporate shall be entitled to act as a debenture trustee. It is observed that Guru Krupa is not registered with SEBI to act as a debenture trustee. Therefore, it is alleged that Guru Krupa has contravened provisions of section 12(1) of the SEBI Act and the DT Regulations.

21. I also note that the Company, in its submissions dated December 21, 2013 to SEBI, stated that it had issued 2860 fully paid OCDs for Rs.1,02,96,000/-. Considering the number of securities issued and the money mobilized, the face value of one OCD comes to Rs.3600/-. This is not in line with the resolution (as seen from the MCA portal) passed by the Company for issuance of 4000 nos. of fully paid-up OCDs of face value of Rs.5000/- per debenture aggregating Rs.200 lakhs (i.e., Rs.2 crore). Further, it also appears that the Company would continue to mobilize funds under the fully paid OCDs as only 2860 OCDs have been issued.

22. Further, as per the newspaper advertisement dated April 02, 2012 (*in Business Standard; copy of the same found in the Brochure of Company as discussed in para 1 above*), the Company has solicited subscription to its "Issue of 5000 Partly Paid Optionally Convertible Unsecured Debentures of Rs.3000/- each at par of the aggregating nominal value of Rs.1.5 crores on private placement basis carrying interest under the authority of the resolution passed by the Company in Extra-Ordinary General Meeting on 16-03-2012 pursuant to powers vested in the Company as per the provision of the Companies Act, 1956 and the memorandum & articles of association of the company". In this advertisement, the Company has mentioned about an EGM held on March 16, 2012. It therefore appears that the EGM held during January 2013 for issue of fully-paid and partly-paid OCDs was in

addition to the EGM held during March 2012. The very act of placing a newspaper advertisement takes the issue out of the domain of private placement.

23. In view of the above alleged violations committed by the Company in raising money from public by issuing OCDs, its failure to provide complete information regarding its offer and issuance of OCDs and to restrain the Company from carrying on such activities, if any, done allegedly in contravention of the law, it becomes necessary for SEBI, as the regulator for the securities market, to intervene and issue suitable directions. Further, the interest of the investors also need to be protected to ensure that public funds are not diverted and misappropriated. Accordingly, I, in exercise of the powers conferred under Sections 11(1), 11(4), 11A(1)(b) and 11B of the Securities and Exchange Board of India Act, 1992 read with section 19 thereof and regulation 107 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and regulation 25 of the Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993, hereby issue the following directions :

a. The Company, namely, **Sunshine Hi-Tech Infracon Limited** and its promoters and directors including **Mr. Ramesh Chandra Nayak [PAN: AERPN2244Q]**, **Mr. Parmanad Prajapat [PAN:AKQPP0632H]**, **Mr. Dinesh Nayak [PAN:AHQPN4086L]**, **Mr. Rakesh Arya [PAN:BAHPA6188D]**, **Mr. Dinesh Bhuriya [PAN:BIMPB9488A]** and **Mr. Deepak Kumar Gehlot [PAN:AKSPG7055R]** are restrained from mobilizing funds through the issue of Optionally Convertible Unsecured Debentures or through the issuance of equity shares or through any other form of securities, to the public and/ or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.

b. **Sunshine Hi-Tech Infracon Limited** and its promoters and directors including and its promoters and directors including **Mr. Ramesh Chandra Nayak, Mr. Parmanad Prajapat, Mr. Dinesh Nayak, Mr. Rakesh Arya, Mr. Dinesh Bhuriya and Mr. Deepak Kumar Gehlot** 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.

c. **Sunshine Hi-Tech Infracon Limited** and its promoters and directors including and its promoters and directors including **Mr. Ramesh Chandra Nayak, Mr. Parmanad Prajapat, Mr. Dinesh Nayak, Mr. Rakesh Arya, Mr. Dinesh Bhuriya and Mr. Deepak Kumar Gehlot** shall not dispose of any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.

d. **Sunshine Hi-Tech Infracon Limited** and its promoters and directors including and its promoters and directors including **Mr. Ramesh Chandra Nayak, Mr. Parmanad Prajapat, Mr. Dinesh Nayak, Mr. Rakesh Arya, Mr. Dinesh Bhuriya and Mr. Deepak Kumar Gehlot** shall not divert any funds raised from public at large through the issuance of the impugned Optionally Convertible Unsecured Debentures, kept in its bank accounts and/or in the custody of the company without prior permission of SEBI until further orders.

e. **Sunshine Hi-Tech Infracon Limited** and its promoters and directors including and its promoters and directors including **Mr. Ramesh Chandra Nayak, Mr. Parmanad Prajapat, Mr. Dinesh Nayak, Mr. Rakesh Arya, Mr. Dinesh Bhuriya and Mr. Deepak Kumar Gehlot** are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, till further directions.

f. The above named company and its promoter and directors including the above named persons shall co-operate with SEBI and shall furnish documents, as required by SEBI vide letters November 28, 2013 and August 12, 2014.

g. **Sunshine Hi-Tech Infracon Limited** and its promoters and directors including and its promoters and directors including **Mr. Ramesh Chandra Nayak, Mr. Parmanad Prajapat, Mr. Dinesh Nayak, Mr. Rakesh Arya, Mr. Dinesh Bhuriya and Mr. Deepak Kumar Gehlot** are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.

24. **Guru Krupa Trustee Company Private Limited** is prohibited from continuing with its present assignment as debenture trustee in respect of the issue of optionally convertible debentures of the Company 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.

25. The above directions shall come into force with immediate effect.

26. **Sunshine Hi-Tech Infracon Limited** and its promoters and directors including and its promoters and directors including **Mr. Ramesh Chandra Nayak, Mr. Parmanad Prajapat, Mr. Dinesh Nayak, Mr. Rakesh Arya, Mr. Dinesh Bhuriya and Mr. Deepak Kumar Gehlot** are advised to show cause as to why suitable directions/prohibitions, under the sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the ICDR Regulations, including the following, should not be taken/imposed against them :

- a) directing them jointly and severally to refund the money collected through the issue of Optionally Convertible Unsecured Debentures that are impugned in this Order, along with interest that is promised to the investors ;
- b) directing them to not to issue 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, for an appropriate period;
- c) directions restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period;
- d) directing them and other companies in which their directors hold substantial or controlling interest, to not to access the capital market for an appropriate period.

27. **Guru Krupa Trustee Company Private Limited** is directed to show cause as to why suitable directions/prohibitions including restraining it from accessing the securities market and further restraining it from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.

28. **Sunshine Hi-Tech Infracon Limited**, its promoters and directors including **Mr. Ramesh Chandra Nayak, Mr. Parmanad Prajapat, Mr. Dinesh Nayak, Mr. Rakesh Arya, Mr. Dinesh Bhuriya and Mr. Deepak Kumar Gehlot** and **Guru Krupa Trustee Company Private Limited** may file their replies/submissions within a period of 21 days from the date of receipt of this Order and may also indicate whether they desire to avail an opportunity of personal hearing in the matter.

29. This Order is without prejudice to the right of SEBI to take any other action including prosecution proceedings under section 24 of the SEBI Act and section 621 of the Companies Act, 1956 read with the relevant provisions of the Companies Act, 2013 and adjudication proceedings under the SEBI Act, against **Sunshine Hi-Tech Infracon Limited**, its promoters and directors including **Mr. Ramesh Chandra Nayak, Mr. Parmanad Prajapat, Mr. Dinesh Nayak, Mr. Rakesh Arya, Mr. Dinesh Bhuriya and Mr. Deepak Kumar Gehlot** and **Guru Krupa Trustee Company Private Limited**, in accordance with law.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: March 17th, 2015
Place: Mumbai