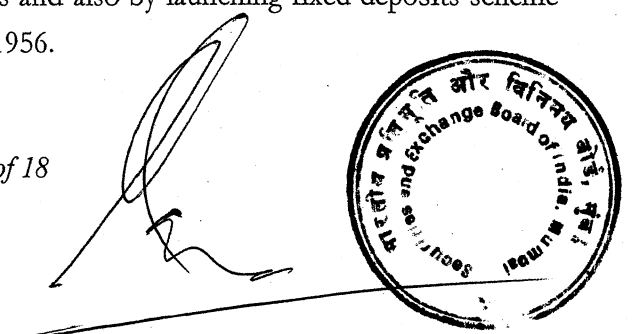


BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11 (1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Sunshine Infrabuild Corporation Limited (CIN: U45400DL2008PLC183645; PAN: AAMCS9355B) and its Directors, viz. Shri Surendra Singh Baghel (PAN: AQDPB0485F; DIN: 02604750), Shri Dharm Singh Kushwah (PAN: ASCPK7713Q; DIN: 02656013), Shri Mukesh Singh (PAN: CCBPS5904G ; DIN: 03410478), Shri Banwari Lal Baghel (PAN: AMUPB0580E; DIN: 01750579) Shri Bakil Singh (PAN: BBUPS0147N ; DIN: 01716961); Shri Sanjeev Singh (PAN: AXYP2851E ; DIN: 01808069); Shri Rajveer Singh (PAN: AXYP2842R; DIN: 01872965) and its Debenture Trustee, viz. HR Trustee Company Private Limited (PAN: AACCH4966R)

1. Securities and Exchange Board of India ("SEBI") received a reference vide letter dated March 27, 2014 from the Office of the Collector, Rajnandgaon, Chattisgarh forwarding some papers regarding Sunshine Infrabuild Corporation Limited ("SICL") to SEBI to examine possible violations of SEBI Act 1992. The following documents *inter alia* pertaining to SICL were also attached with the aforesaid letter :-
 - a. MOA and Articles of Association of SICL;
 - b. Form 23 for registration of resolution for issue of 10,00,000 partly paid optionally convertible unsecured debentures of Rs.3,600/- each;
 - c. Application form for fixed/cumulative schemes;
 - d. Application form for subscription of debentures of SICL;
 - e. Copies of the deposit certificate and debenture certificate
 - f. Trust Deed;
 - g. Details of the business activities of the company;
 - h. Terms and conditions for issue of redeemable non-convertible debentures;
 - i. Copy of letter from SICL to the Office of Collector, Rajnandgaon;
 - j. Copy of letter from SICL to the Office of Collector, Raipur;
- 2.1 A perusal of the above mentioned documents, *prima facie* indicated that SICL had mobilized funds via issuance of debentures and also by launching fixed deposits scheme under Section 58A of the Companies Act 1956.



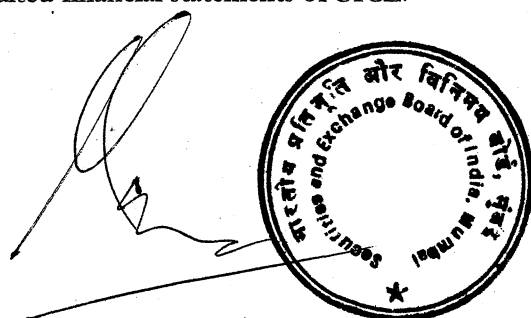
2.2 As a matter of preliminary inquiry, SEBI, vide letters dated August 22, 2014 advised SICL, its Directors and its Auditors, viz. Makhan Lal Singla & Co., to furnish *inter alia* the following information in respect of collection of funds through issue of debentures, viz. –

- i. Name, addresses and PAN numbers of all the promoters/ directors of the company;
- ii. Audited Balance Sheets and profit and loss accounts of the company for the period – April 01, 2010 to March 31, 2014;
- iii. Copies of Annual Report and Annual Return filed with Registrar of Companies (“RoC”) for the period April 01, 2010 to March 31, 2014;
- iv. Details of mobilisation of funds with respect to each issue of debentures;
- v. Details of allottees;
- vi. Copies of resolutions passed by Board of Directors/AGM/EGM authorising issue of debentures;
- vii. Copies of application forms, RHP, pamphlets, advertisements and other promotional material circulated for issuance of debentures including terms and conditions of the issue;
- viii. Any other information in connection with the matter.

2.3 In response to SEBI’s letter, SICL vide letter dated August 25, 2014 *inter alia* submitted the details of promoters/directors, copies of extracts of minutes of extra ordinary general meeting authorizing the issue of debentures, copies of audited balance sheet, profit and loss account, annual report and annual return for the financial year 2010-11, 2011-12 and 2012-13. SICL also informed that the amount outstanding with respect to the debentures issued is as follows:

Financial Year	Amount Outstanding (₹)
2010-11	3,62,15,800
2011-12	11,95,95,000
2012-13	14,64,11,000

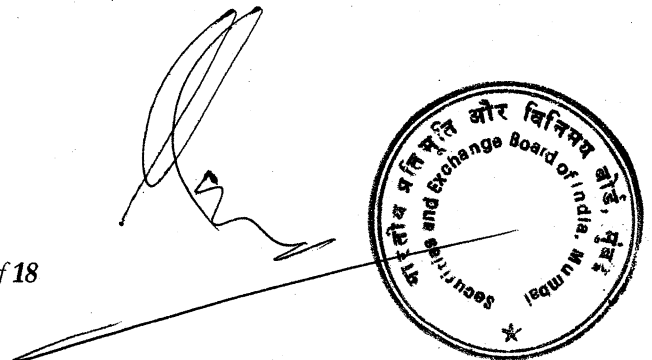
2.4 The Auditors of SICL, Makhan Lal Singla & Co., vide letter dated August 29, 2014 *inter alia* provided details of directors and copies of audited financial statements of SICL.



- 2.5 Thereafter, SICL vide letters dated September 12, 2014, September 19, 2014 and September 22, 2014 provided the list of debenture holders for the financial year 2010-11, 2011-12 and 2012-13. The information provided by SICL can be summarised as under:-

Year	No. of Allottees	Number of Debentures Issued	Total Amount (₹)
2010-11	2011	36215	3,62,15,800
2011-12	3126	119595	11,95,95,000
2012-13	720	26816	2,68,16,000
Total	5857	182626	18,26,26,800

- 2.6 SEBI vide letter dated October 21, 2014 referred the matter of fund mobilization by SICL in the form of fixed deposit schemes to the Ministry of Corporate Affairs.
- 2.7 On perusal of documents / information submitted by SICL, it was observed that there were discrepancies with respect to the information submitted by SICL vis-a-vis the details of debentures indicated in the auditor's report provided by SICL vide their letter dated August 25, 2014. In this regard, SEBI vide letters dated October 22, 2014 and November 18, 2014 sought clarifications with regard to these discrepancies.
- 2.8 SICL vide letter dated November 03, 2014 (received at SEBI on November 18, 2014) *inter alia* provided clarifications with regard to the discrepancies observed by SEBI, details of which are tabulated as under:



Year	Amount raised as per SICL's reply (₹)	Amount raised as per Auditor's Report (₹)	SICL's reply
2010-11	36215800	36215730 as secured debentures and 11271500 as unsecured debentures	The amount of secured debentures is Rs.36215800/- (clerical mistake in the Auditor's Report). The details of unsecured debentures amounting to Rs.11271500/- attached.
2011-12	119595000	120670000 as secured debentures	The outstanding amount of secured debentures is Rs.119595000/-. The amount of secured debentures as per Auditor's Report also includes the amount of deposits raised during the year amounting to Rs.1075000/-.
2012-13	26816000	99199000 as secured debentures	The amount of secured debentures issued amounts to Rs.9,91,99,000/- and out of this secured debentures amounting to Rs.7,23,83,000/- were redeemed during the year.

3. I have perused the material available on record i.e. the correspondence exchanged between SEBI, SICL and SICL's auditor along with the documents contained therein; information/documents submitted by the Office of Collector, Rajnandgaon, Chattisgarh and information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'. On an examination of the same, it is observed that—

i. SICL was incorporated on September 24, 2008 with the RoC, Delhi as Sunshine Infrabuild Limited. Subsequently, a fresh certificate of incorporation consequent upon change of name to Sunshine Infrabuild Corporation Limited has been issued on May 26, 2010 by RoC, National Capital Territory of Delhi and Haryana. SICL has CIN U45400DL2008PLC183645 and is having its registered office at Royal Palace Complex, First Floor, G-55, Vikas Marg Laxmi Nagar, Delhi- 110092.

ii. The present Directors in SICL are Shri Surendra Singh Baghel (PAN:AQDPB0485F; DIN:02604750), Shri Dharm Singh Kushwah (PAN:ASCPK7713Q;



DIN:02656013), Shri Mukesh Singh (PAN:CCBPS5904G ; DIN:03410478) and Shri Banwari Lal Baghel (PAN:AMUPB0580E; DIN: 01750579).

iii. Shri Bakil Singh (PAN:BBUPS0147N; DIN:01716961); Shri Sanjeev Singh (PAN:AXYPS2851E; DIN:01808069) and Shri Rajveer Singh (PAN:AXYPS2842R; DIN:01872965) who were formerly Directors in SICL resigned on 01/06/2011.

iv. As per the Certified True Copy of the Resolution passed at different Extra Ordinary General Meetings (EGM), SICL passed resolutions to issue Debentures through private placement as follows:

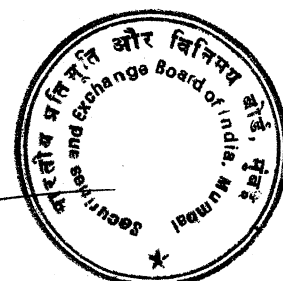
Date of EGM	Type of Debentures to be issued	No. of Debentures	Amount (₹ in Crores)
June 28, 2010	Unsecured Redeemable Debentures	25,000	25.00
September 22, 2010	Secured Redeemable Non Convertible Debentures (Series B1, B2, B3 & B4)	10,00,000	100.00
October 22, 2010	Partly Paid Optionally Convertible Unsecured Debentures (Series C)	10,00,000	360.00

v. As per details available in 'MCA 21 Portal', it is observed that on August 24, 2012 a charge of ₹100 crores was created by SICL and the charge holder is HR Trustee Company Private Limited.

vi. A perusal of Trust Deed dated September 22, 2010 indicates that SICL appointed HR Trustee Company Private Limited as Debenture Trustee.

vii. SICL has vide letter dated November 03, 2014 provided copies of terms and conditions to three issues of debentures. The terms and conditions of one of the issue of debenture *inter alia* reads as follows:

"Issue of 10,00,000 Fully Secured Redeemable Non-Convertible Debentures of Rs.1000/- each at par of the aggregating nominal value of Rs.100,00,00,000/- (Rupees One Hundred Crores Only) on private placement basis, carrying interest as mentioned below terms and conditions under the



authority of the resolution passed by the Company in Extra Ordinary General meeting held on 22-09-2010, pursuant to powers vested in the company as per the provisions of the Companies Act, 1956 and the Memorandum & Articles of Association of the Company.

Terms and Conditions

1. Terms of the Debentures:

Face Value:Rs.1000/- per Debenture

Series	Amount Invested	Maturity Value	Compounded Interest (% p.a.)	Terms (months)
B1	1,000	1,600	11.92%	48
B2	1,000	1,800	11.93%	60
B3	1,000	2,288	12.00%	84
B4	1,000	2,595	12.10%	96

2. Terms of Payment.....

3. Allotment

The Company shall allot the Debentures to valid applicants....."

viii. As per details provided by SICL vide letter dated November 03,2014, SICL has issued various types of debentures during the financial years 2010-11, 2011-12 and 2012-13, details of which are tabulated as under:-

Year	Type of Debentures	Amount Raised (₹)	No of debentures issued	No of investors
2010-11	Fully paid Secured Redeemable Non Convertible Debentures	3,62,15,800.00	36215	2011
2010-11	Partly Paid Optionally Convertible Unsecured Debentures	1,71,500.00	572	73
2010-11	Fully Paid Unsecured Debentures	1,11,00,000.00	11100	241
2011-12	Fully paid Secured Redeemable Non Convertible Debentures	11,95,95,000.00	119595	3126
2012-13	Fully paid Secured Redeemable Non Convertible Debentures	9,91,99,000.00	99199	2620
Total		26,62,81,300.00	266681	8071



ix. As per the details mentioned above, SICL had issued and allotted *Fully Paid Secured and Unsecured Redeemable Non Convertible Debentures* ("Offer of NCDs ") to 7998 investors and raised an amount of approximately ₹ 26.61 Crores during the financial years 2010-11 to 2012-13. Further, SICL has submitted that Secured Debentures amounting to ₹.3,62,15,800/- were redeemed during the year 2011-12 and amounting to ₹.7,23,83,000/- were redeemed during the year 2012-13. SICL had also issued and allotted *Partially Paid Optionally Convertible Unsecured Debentures* to 73 investors and raised an amount of ₹.1.72 lakhs during the financial year 2010-11. The issuance and allotment of *Partly Paid Optionally Convertible Unsecured Debentures* by SICL is being examined separately by SEBI.

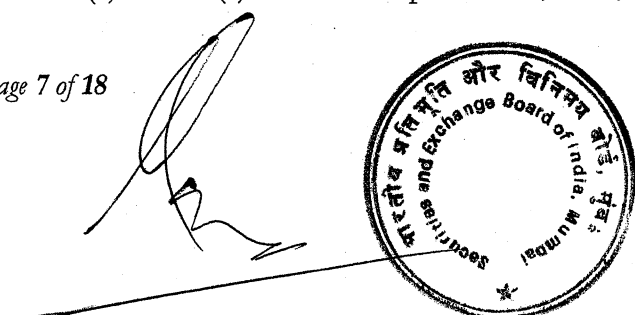
4. In the context of the abovementioned details of the *Offer of NCDs*, the issue for determination in the instant matter is whether the mobilization of funds by SICL through the aforesaid, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**") read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("**Debt Securities Regulations**"); the Companies Act, 1956.

5. I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, when they issue and transfer securities at the relevant time flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in **Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)** (hereinafter referred to as the "**Sahara Case**"), had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

6. In this regard –

i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced 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) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

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

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

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

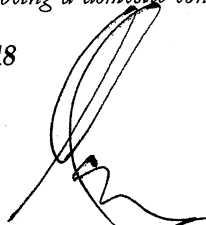
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Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

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)."

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sahara Case* 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, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. ...

I may, therefore, indicate, subject to what has been stated above, in India 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. ..."

- iii. In the instant matter, for ascertaining whether the Offer of NCDs is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.
- a. Although the Offer of NCDs is stated to have been made on a private placement basis, it is observed from the details submitted by SICL vide their letter dated November 03, 2014 that SICL issued Fully Paid Secured and Unsecured Redeemable Non Convertible Debentures to at least 7998 investors in a series of allotments and raised an amount of approximately ₹26.61 Crores during the financial years 2010-11 to 2012-13. The number of investors to whom the Offer of NCDs was made by SICL in the three financial years was way beyond the prescribed limit of forty nine persons as stated in the table in para 3(viii) of this Order. Though, it is mentioned in the copy of the resolutions submitted by SICL, that SICL was making an Offer of NCDs on a private placement basis, from the facts and circumstances of the case, it is abundantly clear that the issue was offered to the general public. Hence, merely stating the issue as a private placement shall not make it as such. In view of the above stated facts, the Offer of NCDs by SICL prima facie qualifies as a public issue of securities under the first proviso to Section



67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the *Sahara Case*.

- b. In addition, SICL is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act and therefore, is not covered under the *second proviso* to Section 67(3). It is also observed that in the document "*Details of the business activity of the company*" forwarded by the Office of the Collector, Ranjnandgaon, Chattisgarh to SEBI, SICL has indicated that the company is not a non-banking financial company.
- c. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

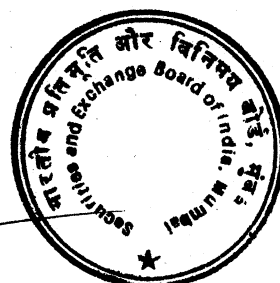
7. I note that –

- i. From the abovementioned para, it will follow that since the *Offer of NCDs* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard, reference is made to Sections 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which is reproduced as under:

"73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred



under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

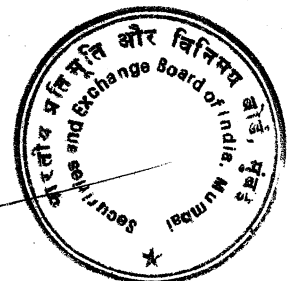
(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2); and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees."

- ii. In the *Sahara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that –

"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.

Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons.

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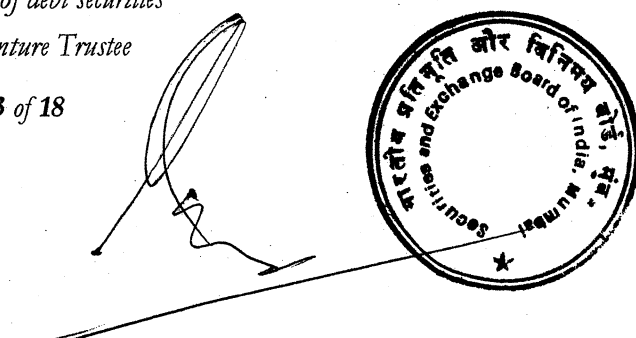


... Section 73(2) says that every company and every director of the company who is an officer in default, shall be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed. The scope of the above mentioned provisions came up for consideration before this Court in *Raymond Synthetics Ltd. & Ors. V. Union of India* (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since *Sabaras* had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."

- iii. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, since the *Offer of NCDs* is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956 and also compliance with provisions of Sections 73(2) and 73(3) of that Act.
 - iv. In the facts of the instant case, it *prima facie* appears that SICL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the *Offer of NCDs*.
8. Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the RoC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, since the *Offer of NCDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, SICL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. In the instant case, there is no evidence on record to indicate whether or not SICL has filed a prospectus. In view of the same, I find that *prima facie*, SICL has not complied with the provisions of Section 60 of Companies Act, 1956.

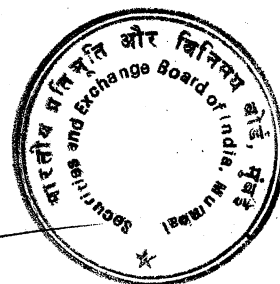


9. Under Section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that SICL has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore *prima facie*, has violated the aforesaid provisions.
10. Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. Further, under Section 117C of the aforesaid Act, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. Based on the material available on record, I find that SICL has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.
11. In addition to the above, reference may be made to the Debt Securities Regulations, which were framed by SEBI in exercise of its powers under Section 30 of the SEBI Act and are applicable to the public issue and listing of debt securities. It may be relevant to note that under the aforesaid Regulations, 'debt securities' have been defined as 'non-convertible debt securities which create or acknowledge indebtedness, and include debenture...' In this context, I find that SICL, through the Offer of NCDs, which is a public issue of debt securities, has *prima facie* violated the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.
- Regulation 4(2)(a) – *Application for listing of debt securities*
 - Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
 - Regulation 4(2)(c) – *Credit rating has been obtained*
 - Regulation 4(2)(d) – *Dematerialization of debt securities*
 - Regulation 4(4) – *Appointment of Debenture Trustee*



- vi. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- vii. Regulation 6 – *Filing of draft Offer Document*
- viii. Regulation 7 – *Mode of disclosure of Offer Document*
- ix. Regulation 8 – *Advertisements for Public Issues*
- x. Regulation 9 – *Abridged Prospectus and application forms*
- xi. Regulation 12 – *Minimum subscription*
- xii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiii. Regulation 15- *Trust Deed*
- xiv. Regulation 16- *Debenture Redemption Reserve*
- xv. Regulation 17 – *Creation of security*
- xvi. Regulation 19 – *Mandatory Listing*
- xvii. Regulation 26 – *Obligations of the Issuer, etc.*

12. Upon a consideration of the aforementioned paragraphs, I am of the view that SICL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCDs* and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Section 117B, Section 117C) and the Debt Securities Regulations.
- 13.1 From the material available on record, it is observed that SICL created a charge of ₹100 Crores on August 24, 2012 and appointed *HR Trustee Company Private Limited* as Debenture Trustee for the *Offer of NCDs* by that company.
- 13.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Further, SEBI (Debenture Trustees) Regulations, 1993 ("**Debenture Trustees Regulations**") specifies the eligibility criteria for being a debenture trustee. In the instant case, there is no evidence on record to indicate whether or not *HR Trustee Company Private Limited* satisfies the specified eligibility criteria.
- 13.3 Based on the material available on record, I find that *HR Trustee Company Private Limited* has acted as unregistered Debenture Trustee, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debenture Trustees Regulations.



14. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956 administrative authority on the subjects relating to public issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 over companies who issue *Secured and Unsecured Redeemable Non Convertible Debentures* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts and the Debt Securities Regulations. Steps therefore, have to be taken in the instant matter to ensure only legitimate fund raising activities are carried on by SICL and no investors are defrauded. In light of the same and considering the huge amount mobilized from a large number of investors, I find there is no other alternative but to take recourse through an interim action against SICL and its Directors along with its Debenture Trustee, viz. *HR Trustee Company Private Limited* for preventing that company from further carrying on with its fund mobilising activity under the *Offer of NCDs*.
15. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustees Regulations, hereby issue the following directions –
- SICL shall forthwith cease to mobilize any fresh funds from investors through the *Offer of NCDs* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - SICL (CIN: U45400DL2008PLC183645; PAN: AAMCS9355B) and its Directors, viz. Shri Surendra Singh Baghel (PAN: AQDPB0485F; DIN: 02604750), Shri Dharm Singh Kushwah (PAN: ASCPK7713Q; DIN: 02656013), Shri Mukesh Singh (PAN: CCBPS5904G; DIN: 03410478), Shri Banwari Lal Baghel (PAN: AMUPB0580E; DIN: 01750579) Shri Bakil Singh (PAN: BBUPS0147N; DIN: 01716961); Shri Sanjeev Singh (PAN: AXYP2851E; DIN: 01808069) and Shri Rajveer Singh (PAN: AXYP2842R ; DIN: 01872965), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from

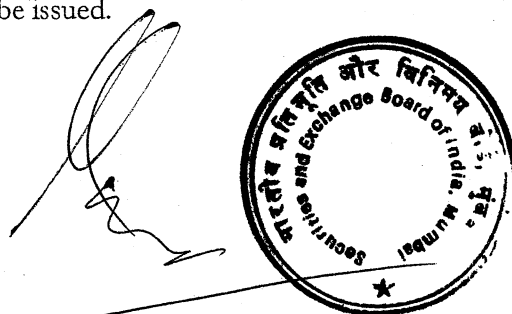


the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;

- iii. SICL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
- iv. SICL shall provide a full inventory of all its assets and properties;
- v. SICL's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. SICL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of NCDs*, without prior permission from SEBI;
- vii. SICL and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of NCDs*, which are kept in bank account(s) and/or in the custody of SICL;
- viii. SICL shall furnish complete and relevant information within 21 days from the date of receipt of this Order;
- ix. SICL shall provide to SEBI all information regarding repayments made to the holders of *Secured and Unsecured Redeemable Non-Convertible Debentures* including name of the debenture holder, address, amount mobilized, number of *Secured and Unsecured Redeemable Non-Convertible Debentures* issued, promised maturity amount with date of maturity, amount refunded and date thereof;
- x. The Debenture Trustee, viz. *HR Trustee Company Private Limited*, is prohibited from continuing with its present assignment as a debenture trustee in respect of the *Offer of NCDs* of SICL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this Order till further directions.

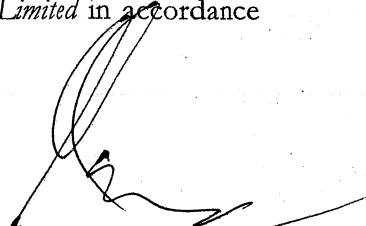


16. The above directions shall take effect immediately and shall be in force until further orders.
17. The *prima facie* observations contained in Order are made on the basis of the material available on record i.e. the correspondence exchanged between SEBI, SICL and SICL's Auditor along with the documents contained therein; information/documents submitted by the Office of Collector, Rajnandgaon, Chattisgarh and information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'. In this context, SICL and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:
- i. Directing them jointly and severally to refund money collected through the *Offer of Secured and Unsecured Redeemable Non Convertible Debentures* along with interest, if any, promised to investors therein;
 - ii. Directing them 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;
 - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
18. SICL and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their replies, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
19. Similarly, the Debenture Trustee, viz. *HR Trustee Company Private Limited*, is advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act 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.



20. The Debenture Trustee, viz. *HR Trustee Company Private Limited* may, within 21 days from the date of receipt of this Order, file its reply, if any, to this Order and may also indicate whether it desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
21. This interim order cum show cause notice is without prejudice to the right of SEBI to take any other action that may be initiated against SICL and its abovementioned Directors; its Debenture Trustee, viz. *HR Trustee Company Private Limited* in accordance with law.

Place: Mumbai
Date: April 01, 2015


S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

