

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

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

In the matter of Helios Corporation Limited and Helios Chemicals Limited

In respect of:

1. Helios Corporation Limited [CIN: U65191BR1995PLC006839],
2. Helios Chemicals Limited [CIN: U24110BR1994PLC005865],
3. Mr. Sanjay Kumar Singh [DIN: 01383164],
4. Mr. Rajeev Kumar Sharma [DIN: 02700971],
5. Mr. Kaushal Kishor Singh [PAN: BXEPS6726H; DIN: 02705837],
6. Mr. Basant Kumar Singh [PAN: BHSPS7697K; DIN: 02700926],
7. Mr. Sanjeet Kumar Sharma [PAN: AQAPS4323C; DIN: 03549592],
8. Mr. Anjani Kumar,
9. Mr. Virendra Prasad Sinha,
10. Mr. Govind Madhava Jha,
11. Mr. Satyendra Singh,
12. Ms. Prema Kumari,
13. Mr. Devendra Prasad Singh,
14. Mr. Rakesh Kumar,
15. Ms. Manju Pathak,
16. Mr. Surendra Nath Singh and
17. Ms. Krishna Devi.

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted a preliminary examination into the money mobilizing activities of two companies namely **Helios Corporation Limited** (hereinafter referred to as '**Helios Corporation**') and **Helios Chemicals Limited** (hereinafter referred to as '**Helios Chemicals**'). As regards, Helios Corporation, it was observed that Reserve Bank of India vide press release dated July 14, 1997, had *inter alia* prohibited Helios Corporation from accepting deposits from any person including the existing depositors/ certificate holders, in any form, whether by way of subscription/ installment to any scheme conducted by it or by way of renewal under any such schemes/deposits or otherwise, with immediate effect. It was also observed that the Reserve Bank of India had filed a petition (Comp. Pet. No.

04 of 2000) against Helios Corporation before the Hon'ble High Court of Judicature at Patna which appears to be pending.

2. During the course of examination, SEBI examined the filings made by Helios Corporation and Helios Chemicals with the RoC as available in the 'MCA - 21' portal maintained by Ministry of Corporate Affairs (hereinafter referred to as 'MCA'), Government of India. The same led to a *prima facie* finding that Helios Corporation and Helios Chemicals are group companies and have raised funds from the public by issuing shares/ debentures and/ or by launching various schemes, without complying with the regulatory requirements.
3. SEBI vide respective letter both dated December 03, 2013, advised both Helios Corporation and Helios Chemicals to *inter alia* submit the following information:
 - i. Copy of the Memorandum and Articles of Association.
 - ii. Copy of audited balance sheet and profit and loss account of the Company for last 3 years.
 - iii. Name, addresses and occupation of all the promoters/directors.
 - iv. Names and details of the key managerial personnel.
 - v. Other information in respect of shares/ debentures issued, viz. –
 - a. Copy of Prospectus/ Red Herring Prospectus/ Statement in lieu of prospectus/ Information memorandum filed with RoC for issuance of shares / debentures.
 - b. Date of opening and closing of the subscription list for the said shares/ debentures
 - c. Details regarding the number of application forms circulated inviting subscription for shares/ debentures.
 - d. Details regarding the number of applications received.
 - e. Details regarding the number of allottees and list of such allottees.
 - f. Number of shares/ debentures allotted and value of such allotment against each allottee's name.
 - g. Details regarding subscription amount raised.
 - h. Date of allotment of the shares/ debentures.
 - i. Copies of the minutes of Board/ committee meeting in which the resolution has been passed for allotment.
 - j. Date of dispatch of shares/ debentures certificates etc.
 - k. Details of the total number of applicants for each of scheme besides the list of final allottees.

1. Copies of the application forms, pamphlets, advertisements and other promotional material circulated for issuance of shares/ debentures.
 - m. Terms and conditions of the issue of shares/ debentures.
4. As the letters had returned undelivered, SEBI vide respective letters both dated February 07, 2014, sought similar information from the directors of Helios Corporation and Helios Chemicals. However, no reply was received in respect of the same. Thereafter, SEBI vide respective letters both dated August 12, 2014, issued reminder letters to the directors of Helios Corporation and Helios Chemicals.
5. In response, Helios Corporation vide its letter, received by SEBI on September 22, 2014, submitted *inter alia* that it is a closely held company and had not raised any funds from public since last many years. Further, it is making payment to its investors and the report thereof is being sent to Hon'ble High Court of Judicature at Patna, in *sub judice* matter of *Reserve Bank of India Vs. Helios Corporation Limited* which pertains to the winding up petition filed by the Reserve Bank of India in the year 2000. It also provided the fresh address for communication and submitted that its registered office is under lock and key of Official Liquidator, Patna. Helios Corporation along with its letter had submitted certain documents i.e. copy of Memorandum and Articles of Association, copy of last audited balance sheets for the years 2011-12 and 2012-13, list of promoters and directors along with addresses, details of key management personnel and orders of Hon'ble High Court of Judicature at Patna. As the information provided was not complete, SEBI vide its letter dated October 02, 2014, *inter alia* advised Helios Corporation to submit the complete information and documents as sought vide SEBI letters dated February 07, 2014 and August 12, 2014. Helios Corporation vide letter dated October 18, 2014, while reiterating the submissions made vide its earlier letter submitted that at the time of sealing of its registered office (i.e. on October 08, 1999) no inventory was made by the Official Liquidator. It further submitted that in the year 2004 by the order of Hon'ble High Court of Judicature at Patna the office was opened for inspection and for taking copies of the record and the records were submitted before the Hon'ble High Court of Judicature at Patna. Vide another letter dated November 25, 2014, Helios Corporation submitted the list of existing 'bond holders' as on March 31, 2014, which was taken on record.

6. In the meantime, SEBI vide its letter dated October 02, 2014, issued one more reminder letter to the directors of Helios Chemicals for replying to the SEBI letter. In reply, Helios Chemicals vide its letter dated October 25, 2014 submitted that it is a closely held industrial company and hold equity shares and bonds from friends, relatives, associates and from companies of group and provided fresh address for communication. Further, it is not collecting any funds from general public after the financial year 2005-2006 and is only making payment to the bond holders on maturity/ on surrender. It was also submitted that the registered office of Helios Chemicals is also under lock and key of the Official Liquidator due to liquidation of the group company namely Helios Finance and Investment Limited before the Hon'ble High Court of Judicature at Patna. Helios Chemicals along with its letter submitted certain documents i.e. copy of Memorandum and Articles of Association, copy of last audited balance sheets for the years 2011-12, 2012-13 and 2013-14; list of promoters and directors along with addresses and details of key management personnel. As the information provided was not complete, SEBI vide its letter dated November 07, 2014 advised Helios Chemicals to submit the complete information and documents as asked vide SEBI letter dated February 07, 2014, as well as the details of its bond holders. Helios Chemicals vide its letter dated November 25, 2014, sought 30 days' time to submit the asked information. As no information was received, SEBI vide letter dated December 19, 2014, issued a reminder. In reply to the same, Helios Chemicals vide letter dated January 22, 2015, submitted the list of existing 'bond holders' as on January 15, 2015, which was taken on record. Vide this letter it was also submitted that some of the documents were misplaced and were taken away by some workers at the time of the arrest of its chairman in the year 2005 and also at the time of shifting of the office.
7. On perusal and examination of the documents as submitted by Helios Corporation and Helios Chemicals, the information obtained from the 'MCA-21' portal maintained by Ministry of Corporate Affairs (MCA), etc., it is noted that the Helios Corporation and Helios Chemicals had issued 'Sun Bond' (described as '*optionally convertible into shares*'). At this stage, I note that the 'bonds' are covered within the definition of 'debentures' as per Section 2(12) of the Companies Act, 1956, which provides that '*debenture*' includes *debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the*

company or not. Further, ‘bond’ and ‘debentures’ are also securities in terms of the provisions of Section 2(h) of the Securities Contracts (Regulation) Act, 1956. The ‘Sun Bonds’ issued by Helios Corporation and Helios Chemicals had the option of being converted into shares. Therefore, the securities issued by Helios Corporation and Helios Chemicals can be said to in the nature of ‘Optionally Convertible Debentures’ (hereinafter referred to as ‘OCDs’).

8. On perusal and examination of the documents available on record, the *prima facie* observations made by SEBI in its examination are:

- i. **Helios Corporation**

- a. **Background:** Helios Coproration was incorporated on November 15, 1995. The CIN of Helios Corporation is U65191BR1995PLC006839 and its registered office is at Helios Bhavan, Station Road, P.S. Gandhi Maidan, Patna- 800001, Bihar.

- b. **Objects as per the Memorandum of Association of Helios Corporation:**

“(A) MAIN OBJECTS ...

1. ... to carry on the business of to develop and introduce amongst the masses the habit of savings by issue of saving scheme such as selling fixed endowment certificates, social, economic, child welfare family pension and such type of welfare savings endowment certificate and/ or also by small medium & large savings and to provide the scheme by declaring bonus, prizes and accidental insurance benefits which will be announced for aforesaid particulars and in circumstances of any change in schemes by the Company time to time for the purpose of savings and investments on large or small scale to be floated throughout the country unless otherwise permitted under the laws of the land.

...

(B) The objects incidental or ancillary to the attainment of main objects are:

...

2. To receive money in any form, borrow or raise money on such terms and conditions as the company may consider expedient and secure and discharge any debt or obligation or binding on the company in such manner as may be thought fit ...or by the creation and issue, on such terms as may be thought expedient, of shares, bonds debentures or debentures- stock perpetual or otherwise, or other security of any description, subject to the provision of Section 58A of the Companies Act, 1956,

...

7. To guarantee the payment, unsecured or secured or payable under promissory notes, bonds, debentures, debenture-stock contracts, mortgages, charges, obligations, instruments and securities of any company or of any persons whomsoever whether incorporated or not incorporated or not incorporated, and generally to guarantee and become sureties for the performance of any contracts or obligations.

8. To borrow or raise money and secure and discharge any debt or obligation or binding on the company in such manner as may be thought fit, and in particular by mortgage of the undertaking and all or any of the immovable and movable property (present and future) and the uncalled capital of the company or by the creation and issue, on such terms as may be thought expedient of debentures or debenture-stock, perpetual or otherwise or other securities of any description, provided that the company shall not carry on banking business as defined in the Banking Regulation Act, 1949.
...

- c. Details of Promoters and Directors of the Helios Corporation:** From the documents submitted by Helios Corporation, it is noted that the subscribers to its Memorandum of Association were Mr. Sanjay Kumar Singh, Mr. Anjani Kumar, Mr. Virendra Prasad Sinha, Mr. Govind Madhava Jha, Mr. Satyendra Singh, Ms. Prema Kumari and Mr. Devendra Prasad Singh. As per the Articles of Association of Helios Corporation Mr. Sanjay Kumar Singh, Mr. Anjani Kumar, Mr. Satyendra Singh and Mr. Devendra Prasad Singh were its first directors.

As per the details available on MCA-21 portal, the present director of Helios Corporation are Mr. Sanjay Kumar Singh, Mr. Rajeev Kumar Sharma, Mr. Kaushal Kishor Singh, Mr. Basant Kumar Singh.

As per the details available on MCA-21 portal, the past director of Helios Corporation was Mr. Sanjeet Kumar Sharma.

- d. Fund raising by Helios Corporation:** A perusal of the balance sheet of Helios Corporation for the financial year 2002–03, revealed ‘unsecured loans’ to the tune of ₹9,74,52,012 as on March 31, 2003. The schedule thereof showed that the amount of ₹6,96,08,582 was on account of ‘Sun Bond’ (described as ‘*Unsecured but optionally convertible into shares, transferred from Child Welfare Fund*’) (i.e. in the nature of OCDs) and ₹2,78,43,430 was the ‘interest accrued and due’. In the ‘Significant Accounts Policies and Notes to the Accounts for the year ended March 31, 2003: Schedule-10’ (part of the balance sheet for the financial year 2002-03), the auditor of Helios Corporation at Point 7 had stated that ‘*The company issued Sun Bond optionally convertible into shares to members, directors, friends, relatives and its associates by private placement in earlier years and the amount have been shown under the head of unsecured loans along with interest accrued*

and due there on. From, the balance sheets of Helios Corporation, it is seen that the ‘Sun Bond’ had varied tenures for redemption and rates of interest.

- e. From the balance sheets available on record, it is noted that Helios Corporation had issued unsecured ‘Sun Bonds’ (optionally convertible into shares) of ₹100 each during various financial years including 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08. The year wise details of the amount raised have been tabulated as under:

Financial Year	Principal amount (₹) raised through issuance of ‘Sun Bonds’
Up to March 31, 2003	6,96,08,582
2003-04	10,000
2004-05	1,42,73,905
2005-06	2,49,70,100
2006-07	9,35,000
2007-08	43,60,000
2008-09	53,77,000
Total	11,95,34,587

From the above, it is seen that Helios Corporation had mobilized huge funds over various financial years till 2008-09 in the form of OCDs. As per the balance sheet for the financial year 2013-14, Helios Corporation has a liability of ₹11,92,02,021 as on March 31, 2014, on account of ‘Sun Bond’ issued by Helios Corporation including the interest accrued thereon.

- f. Helios Corporation vide its letter dated November 25, 2014, had submitted a list of its **2,062 existing ‘Sun Bond’ (i.e. OCDs) holders** as on March 31, 2014, having the ‘year of purchase’ **between 2004 to 2009** and a uniform tenure of 120 months. The principal liability towards these bond holders was said to be ₹4,24,03,400. It was also submitted by Helios Corporation that there are approximately **2,000 other ‘Sun Bond’ holders**, who were issued bonds **during the years 1997/ 1998** and whose details are available with the Official Liquidator, Patna High Court. The principal liability towards the said 2,000 bond holders was said to be ₹3,62,44,586.

I note that Helios Corporation along with its submissions has also filed a certificate dated July 25, 2009, from the Chartered Accountant, in support of its claim that it had made repayments to ‘bond’ holders during the various financial years and has

provided only the list of existing bond holders. From the same, it can be inferred that **the total number of persons who had subscribed to ‘Sun Bonds’ (OCDs) of Helios Corporation were definitely more than the stated 4,062 persons.**

ii. Helios Chemicals

a. Background: Helios Chemicals was incorporated on April 28, 1994. The CIN of Helios Chemicals is U24110BR1994PLC005865 and its registered office is at Helios Bhavan, Station Road, P.S. Gandhi Maidan, Patna- 800001, Bihar.

b. Objects as per the Memorandum of Association:

“...
(B) The objects incidental or ancillary to the attainment of main objects are:
...
2. To borrow or raise or secure the payment of money by the issue of debenture bonus, obligation, deposit notes and securities of all kinds and to frame, constitute and secure the same, ...”

c. Details of Promoters and Directors: From the documents submitted by Helios Chemicals, it is noted that the subscribers to its Memorandum of Association were Mr. Sanjay Kumar Singh, Mr. Anjani Kumar, Mr. Rakesh Kumar, Ms. Manju Pathak, Mr. Virendra Prasad Sinha, Mr. Surendra Nath Singh and Ms. Krishna Devi. As per the Articles of Association of Helios Chemicals, Mr. Sanjay Kumar Singh, Mr. Anjani Kumar and Mr. Rakesh Kumar were its first directors.

As per the details available on MCA-21 portal, the present director of Helios Chemicals are Mr. Sanjay Kumar Singh, Mr. Rajeev Kumar Sharma and Mr. Kaushal Kishor Singh.

d. Fund raising by Helios Chemicals: The balance sheet of Helios Chemicals revealed the following ‘long term borrowings’ on account of issuance of ‘Sun Bond’ which had the description as *‘12% Sun bond @ 100/- each redemption after 5 years or optionally converted into shares unsecured’*:

Date	Liability
March 31, 2009	14,21,01,300
March 31, 2010	11,88,79,456
March 31, 2011	9,36,00,021

March 31, 2012	8,37,46,401
March 31, 2013	8,24,85,321
March 31, 2014	7,99,85,586

- e. Helios Chemicals vide its letter dated October 25, 2014, had submitted *inter alia* that it holds equity shares and bonds from friends, relatives, associates, the group companies. Vide this letter, it was further said that they are not collecting any fund from the general public after the financial year 2005-06 and are only making payment to the 'bond holders' on maturity or surrender. It was also said that Helio Chemical would clear its liabilities towards the existing 'bond holders' by December 2015.

Helios Chemicals vide letter dated January 22, 2015, has submitted the list of 4,810 existing 'Bond holders' as on January 15, 2015, who were issued 7,99,850 bonds (i.e. OCDs) during the financial years between 2003-04 and 2007-08, for principal amount of ₹7,99,58,000. **Further, Helios Chemicals vide its letter dated January 22, 2015 has also submitted that the details of the additional existing bond holders for 11,267 bonds are misplaced.**

- f. From the above, it is observed that Helios Chemicals had admittedly raised a principal amount of ₹7,99,85,000 from more than 4,810 existing bond holders (as on January 15, 2015) during the financial years 2003-04 to 2007-08. Further, as noted from the balance sheets of Helios Chemicals, the liability has decreased over the years from ₹14,21,01,300 as on March 31, 2009 to ₹7,99,85,586 as on March 31, 2014 and only the list of existing bond holders (as on January 15, 2015) has been provided by Helios Chemicals, it can be inferred that **the total number of persons who had subscribed to the 'Sun Bonds' (i.e. OCDs) issued by Helios Chemicals has far exceeded the stated 4,810 'bond holders'.**
- g. At this stage, I have also seen the copies of the 'Sun Bond' Certificate issued by Helios Chemicals (received by SEBI along with an investor complaint) all issued on December 28, 2004. The relevant part of the same reads as '*Above mentioned Bond Holder is/ are Holder(s) of (No. of Bonds in words) ... Sun Bond at total value Rs. ... fully paid up with value of ₹100/- each, which is accepted on minimum return of ... (Simple interest) per annum with Sale Bonus if any as par scheme applied, optionally fully convertible Sun Bonds*

into equity shares as per scheme offered, subject to the terms and conditions of Application Form and provisions made in Memorandum & Articles of Association of Helios Chemicals Ltd. Two of the said 'Sun Bond' Certificates (i.e. one for 190 bonds and other for 120 bonds) had a tenure of 60 months, with a lock-in period of 58 months and rate of interest @13% per annum. Another 'Sun Bond' Certificate is for 150 bonds (marked as 'Child Bond A+') had tenure of 90 months and a lock-in period of 89 months and provision for monthly payment of interest.

I note that the details of the above 'Sun bond' Certificates do not match with the details as submitted by Helios Chemicals vide letter dated January 22, 2015 and *prima facie* shows certain discrepancies with regard to the tenure of the bonds and the rate of interest.

9. Having considered the above, I proceed further with the matter. The issue for determination in the instant matter is whether the offer and issuance of 'Sun Bonds' in the nature of OCDs made by Helios Corporation and Helios Chemicals, as mentioned above, was on 'private placement' or a 'public issue'. In terms of Section 67(3), no offer or invitation shall be treated as made to the public by virtue of sub-sections (1) or (2), as the case may be, if the offer or invitation can properly be regarded, in all 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. In terms of the proviso to the aforesaid section, 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. Therefore, *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 receiving the offer or invitation.* The number of persons to whom the shares/ debentures have been allotted becomes relevant to judge whether an issue of shares is made to public or made on a private placement basis.
10. In the instant matter, it is noted that Helios Corporation had admittedly issued the 'Sun bond' (OCD) to approximately 4,062 persons. Similarly, Helios Chemicals has admitted

of having 4,810 existing bond holders. As discussed in **paragraph 8 above**, Helios Corporation and Helios Chemicals have not submitted the complete list of bond holders citing various reasons. The same suggests that the total number of persons who had subscribed to the 'Sun Bonds' (OCDs) issued by Helios Corporation and Helios Chemicals have far exceeded the stated number of 'bond holders'. I note that Helios Corporation and Helios Chemicals have not claimed to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act, 1956 and therefore, is not covered under the *second proviso* to Section 67(3) of the Companies Act, 1956. Further, there is nothing on record to show that the offer/ invitation was a domestic concern of the person making and receiving such offer in terms of Section 67(3)(a) and (b) of the Companies Act, 1956. Considering the facts and circumstances of the case, it is alleged that the offers made by Helios Corporation and Helios Chemicals were public in nature, thereby making such offer and subsequent issuance a 'public issue' of **optionally convertible debentures (i.e. 'Sun Bond')**.

11. Having *prima facie* observed that Helios Corporation and Helios Chemicals had made public issue of **optionally convertible debentures** (in the name of 'Sun Bond') during various financial years, Helios Corporation and Helios Chemicals were under an obligation to comply with the provisions of the Companies Act, 1956 read with Companies Act, 2013, SEBI Act, 1992 (hereinafter referred to as 'SEBI Act') and the SEBI (Disclosure and Investor Protection) Guidelines, 2003 (hereinafter referred to as 'DIP Guidelines') which regulated the public issue of convertible debentures at the relevant time. 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:

"... 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.

...

90. ... 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 observed that the **optionally convertible debentures** issued by Helios Corporation and Helios Chemicals are in the nature of public issue, these companies were required to comply with provisions of the Companies Act, 1956 and other relevant statutory provisions as applicable. I note that in the case of any public issue of securities, the relevant provisions of the Companies Act, 1956 *inter alia* Sections 60 read with Section 2(36) [*corresponding provision is section 2(70) of the Companies Act, 2013, notified on September 12, 2013*], 56(1), 56(3) [*corresponding provision is section 33(1) of the Companies Act, 2013, notified on September 12, 2013*] and Section 73 [*corresponding provision is section 40 of the Companies Act, 2013*] thereof needs to be complied with. In terms of Section 60 read with the Section 2(36) of the Companies Act, 1956, a company needs to file a prospectus with respect to its public issue with the RoC. Further, in terms of Section 60B(2) of the Companies Act, 1956, a company inviting subscription by an information memorandum is bound to file a prospectus prior to the opening of the subscription lists, at least three days before the opening of the offer. While Section 60B(3) stipulates that the 'Information Memorandum' shall carry the same obligations as are applicable in case of prospectus. Section 60B(9) requires Helios Corporation and Helios Chemicals to file a final prospectus with SEBI/ RoC. As per Section 2(36) of the Companies Act, 1956, '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/ debentures in a body corporate. As per the information available on record, Helios Corporation and Helios Chemicals did not file any prospectus/ information memorandum with respect to the said issues of OCDs and had also *prima facie* not complied with the above discussed provisions of the Companies Act, 1956.
13. By issuing OCDs to more than 49 persons, Helios Corporation and Helios Chemicals had to compulsorily list such securities in compliance with Section 73 of the Companies Act, 1956, in order to ensure that the subscribers to the shares have a facility to approach a stock exchange for having their holdings converted into cash, whenever they desire. The same also provides liquidity and exit opportunity to the investors. 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 companies are required to forthwith repay with interest all moneys received from the applicants. From the material available on record, Helios Corporation and Helios Chemicals, do not appear to have done so and thus, contravened the said provisions. It neither made an application seeking listing permission nor refunded the amounts on account of such failure. Helios Corporation and Helios Chemicals had also not complied with the provisions of Section 73(3) of the Companies Act, 1956 as it had not kept the amounts received from investors in a separate bank account and failed to repay the same in accordance with Section 73(2) of the Companies Act, 1956. In view of the above, it is alleged that Helios Corporation and Helios Chemicals had contravened the provisions of the Companies Act, 1956, which regulates the public issue of securities, including Sections 2(36), 56(1), 56(3) and 73 of the Companies Act, 1956, in respect of its collection of public funds towards the issue of equity shares.

14. I now discuss the regulatory powers and the jurisdiction of SEBI on the companies that raise funds, by issue of securities, from the public. In this regard, I refer to the section 55A of the Companies Act, 1956. In this regard, I refer to the Section 55A of the Companies Act, 1956. In terms of the relevant provisions of the said section, the provisions contained in 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 of the Companies Act, 1956, in 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. At the cost of repetition, I note that the term 'securities' as per Section 2(h) of the Securities Contracts (Regulation) Act, 1956 includes 'bond' and 'debentures'. I observe that Sections 56, 60, 67 and 73 of the Companies Act, 1956 are included in the list of the sections as mentioned in Section 55A of the Companies Act, 1956, and therefore, such sections are to be administered by SEBI.
15. As per the provisions of Section 55A of the Companies Act, 1956, the administrative authority on the subjects relating to public issue of securities is SEBI. For this purpose, SEBI can exercise the 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 equity

shares to fifty persons or more, but fail to comply with the applicable provisions of the aforesaid statutes. Therefore, in addition to the compliance with the provisions of the Companies Act, 1956, Helios Corporation and Helios Chemicals were mandated to comply with the applicable provisions of the DIP Guidelines.

16. I note that SEBI had framed the DIP Guidelines in exercise of the powers conferred upon itself under the SEBI Act. The Hon'ble Supreme Court in *Sahara Case* has observed that:

"DIP Guidelines had statutory force since they were framed by SEBI in exercise of its powers conferred on it under Sections 11 and 11A of the SEBI Act. Powers have been conferred on SEBI to protect the interests of the investors in securities and regulate the issue of prospectus, offer documents or advertisement soliciting money through the issue of prospectus. Section 11 of the Act, it may be noted has been incorporated, evidently to protect the interests of investors whose securities are legally required to be listed. DIP Guidelines were implemented by SEBI with regard to the listed and unlisted companies, which made public offer, until it was replaced by ICDR 2009".

The DIP Guidelines were applicable to all public issues by listed and unlisted companies. The DIP Guidelines (as applicable at the relevant time) operated as reasonable safeguards for the investors who subscribed or intended to subscribe in the public issues of securities. In this regard, I observe that Helios Corporation and Helios Chemicals have not complied with the following clauses of DIP Guidelines:

- Clause 2.1.1 (filing of offer document)
- Clause 2.1.4 (application for listing)
- Clause 2.1.5 (issue of securities in dematerialized form),
- Clause 2.8. (means of finance),
- Clause 4.1 (promoters contribution in a public issue by unlisted companies),
- Clause 4.11 (lock-in of minimum specified promoters contribution in public issues),
- Clause 4.14 (lock-in of pre-issue share capital of an unlisted company)
- Clause 5.3.1 (memorandum of understanding),
- Clause 5.3.3 (due diligence certificate)
- Clause 5.3.5 (undertaking)
- Clause 5.3.6 (list of promoters group and other details)
- Clause 5.4 (appointment of intermediaries)
- Clause 5.6 (offer document to be made public)
- Clause 5.6A (Pre-issue Advertisement)
- Clause 5.7 (despatch of issue material)
- Clause 5.8 (no complaints certificate)
- Clause 5.9 (mandatory collection centres and Clause 5.9.1.(minimum number of collection centres)
- Clause 5.10 (authorised collection agents)
- Clause 5.12.1 (appointment of compliance officer),
- Clause 6.0 (contents of offer documents)

- Clause 6.1 to Clause 6.15 (contents of prospectus)
- Clause 6.16 to Clause 6.34 (contents of abridged prospectus) including Clause 6.17.13
- Clause 8.3 (Rule 19(2)(b) of SC(R) Rules, 1957)
- Clause 8.8.1 (Opening & closing date of subscription of securities)
- Clause 9 (guidelines on advertisements by issuer company)
- Clause 10.1 (credit rating for issue of convertible debt instrument)
- Clause 10.2 (appointment of debenture trustee)
- Clause 10.3 (debenture redemption reserve)
- Clause 10.5 (redemption)
- Clause 10.6 (disclosure and creation of charge)
- Clause 10.9 (disclosures in respect of debentures)

17. I note that Helios Corporation and Helios Chemicals had allegedly issued **optionally convertible debentures** to the public during various financial years as mentioned in the above paragraphs. **The promoters/ directors/ past directors of Helios Corporation** are Mr. Sanjay Kumar Singh, Mr. Anjani Kumar, Mr. Virendra Prasad Sinha, Mr. Govind Madhava Jha, Mr. Satyendra Singh, Ms. Prema Kumari, Mr. Devendra Prasad Singh, Mr. Rajeev Kumar Sharma, Mr. Kaushal Kishor Singh, Mr. Basant Kumar Singh and Mr. Sanjeet Kumar Sharma. **The promoters/ directors of Helios Chemicals** are Mr. Sanjay Kumar Singh, Mr. Anjani Kumar, Mr. Rakesh Kumar, Ms. Manju Pathak, **Mr. Virendra Prasad Sinha**, Mr. Surendra Nath Singh, Ms. Krishna Devi, Mr. Rajeev Kumar Sharma and Mr. Kaushal Kishor Singh. The persons were *prima facie* instrumental in the formulation of the plan/ scheme of OCDs in the name of ‘Sun Bond’. In view of the same, it is alleged that the above stated promoters/ directors/ past directors of Helios Corporation and Helios Chemicals being the persons responsible for the conduct of the business, are responsible under Section 27(2) of the SEBI Act, for the contraventions committed by Helios Corporation and Helios Chemicals in its offer and issue of **OCDs**.

18. In the light of the above, I find that there is no other alternative but to take recourse through an *ex-parte interim* action against Helios Corporation and Helios Chemicals and its promoters/ directors/ past directors, for preventing them from further carrying on with its fund mobilizing activity under the ‘offer of optionally **convertible debentures**’ or any other securities. Further, the interest of the investors also need to be protected to ensure that public funds are not diverted and misappropriated. In the absence of such

preventive action, irreparable loss and damage could be caused to shareholders and investors at large.

19. Accordingly, I, in exercise of the powers conferred under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992 read with Section 19 thereof and Regulation 107 read with Regulation 111 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions:

- a. **The Companies namely Helios Corporation Limited [CIN: U65191BR1995PLC006839], Helios Chemical Limited [CIN: U24110BR1994PLC005865]** are restrained from mobilizing funds through the issue of **optionally convertible debentures (Sun Bonds)** 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. **The Companies and their respective promoters/ directors/ past directors including Mr. Sanjay Kumar Singh [DIN: 01383164], Mr. Rajeev Kumar Sharma [DIN: 02700971], Mr. Kaushal Kishor Singh [PAN: BXEPS6726H; DIN: 02705837], Mr. Basant Kumar Singh [PAN: BHSPS7697K; DIN: 02700926], Mr. Sanjeet Kumar Sharma [PAN: AQAPS4323C; DIN: 03549592], Mr. Anjani Kumar, Mr. Virendra Prasad Sinha, Mr. Govind Madhava Jha, Mr. Satyendra Singh, Ms. Prema Kumari, Mr. Devendra Prasad Singh, Mr. Rakesh Kumar, Ms. Manju Pathak, Mr. Surendra Nath Singh and Ms. Krishna Devi** 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. The Companies and their respective promoters and directors/ past directors 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.

- d. The Companies and their respective promoters and directors/ past directors shall not dispose off any of the properties or alienate the assets of the Company or dispose off any of their properties or alienate their assets.
 - e. The Companies and their respective promoters and directors/ past directors shall not divert any funds raised from public at large through the issuance of the impugned equity shares, kept in its bank accounts and/ or in the custody of the Company without prior permission of SEBI until further orders.
 - f. The Companies and their respective promoters and directors/ past directors 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.
 - g. The Company and their respective promoters and directors/ past directors shall co-operate with SEBI and shall furnish all the documents that they have been or shall be required to furnish.
 - h. The Companies and their respective promoters and directors/ past directors 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.
- 20.** The above directions shall come into force with immediate effect and shall continue to be in force till further directions.
- 21.** Helios Corporation Limited and Helios Chemical Limited and the above named promoters/ directors/ ex-directors shall show cause as to why suitable directions/ prohibitions, under the Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with 73(2) of the Companies Act, 1956 and the DIP Guidelines, 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 *equity shares* that are impugned in this Order, along with interest at 15% per annum from the date when the refunds became due to the investors till the date of repayment;
 - b. 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;
 - 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 access the capital market for an appropriate period.
22. Helios Corporation Limited and Helios Chemical Limited and the above named promoters/ directors/ ex-directors 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.
23. 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 Helios Corporation Limited and Helios Chemical Limited and the above named promoters/ directors/ ex-directors, in accordance with law.

Date : November 20, 2015
Place : Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA