

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11, 11(4) and 11B of Securities and Exchange Board of India Act, 1992 in respect of Interim Order cum show cause notice dated March 17, 2015 in the matter of Sunshine Hi-Tech Infracon Limited (SHIL).

In respect of:

SR. No.	NOTICEES	PAN/DIN
COMPANY		
1.	Sunshine Hi-Tech Infracon Limited	AARCS2487F
PROMOTERS / DIRECTORS		
2.	Ramesh Chandra Nayak	AERPN2244Q
3.	Parmanad Prajapat	AKQPP0632H
4.	Dinesh Nayak	AHQPN4086L
5.	Rakesh Arya	BAHPA6188D
6.	Dinesh Bhuriya	BIMPB9488A
7.	Deepak Kumar Gehlot	AKSPG7055R
8.	Labana Hadayabhai Bharatbhai	07770899
DEBENTURE TRUSTEE		
9.	Guru Krupa Trustee Company Private Limited	NA

- Securities and Exchange Board of India (“SEBI”), after a preliminary enquiry, had passed an ex-parte interim order cum show cause notice dated March 17, 2015 (“interim order”), wherein it had *prima facie* observed that Sunshine Hi-Tech Infracon Limited (“SHIL” or “the company” in short), was involved in public issue of securities [Partly Paid Optionally Convertible Unsecured Debentures (OCDs)] without complying with the provisions of the Companies Act, 1956 read with the Companies Act, 2013; the Securities and Exchange Board of India Act, 1992 (“SEBI Act”), the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (“ICDR Regulations”) and the SEBI (Debenture

Trustees) Regulations, 1993. Accordingly, the following directions *inter alia* were issued against SHIL and its directors, namely Ramesh Chandra Nayak, Parmanad Prajapat, Dinesh Nayak, Rakesh Arya, Dinesh Bhuriya and Deepak Kumar Gehlot, vide the interim order:

- “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 **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 **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 **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 Optionally Convertible Unsecured Debentures, kept in its bank accounts and/or in the custody of the company without the prior permission of SEBI until further orders.*

- e. **Sunshine Hi-Tech Infracon Limited** 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 **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.”*
2. SHIL and its abovementioned promoters / directors were also advised, vide the interim order, to show cause as to why suitable directions / prohibitions under 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 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.*

3. SEBI, vide the interim order, also directed Guru Krupa Trustee Company Private Limited, the Debenture Trustee of the company, 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. Further, Guru Krupa Trustee Company Private Limited was 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 interim order till further directions.
4. SHIL and its directors, namely Ramesh Chandra Nayak, Parmanad Prajapat, Dinesh Nayak, Rakesh Arya, Dinesh Bhuriya and Deepak Kumar Gehlot and its Debenture Trustee, namely Guru Krupa Trustee Company Private Limited, are hereinafter collectively referred to as Noticees.
5. The interim order came into force with immediate effect. The interim order was served on the company and all its above named promoters / directors and Debenture Trustee by way of Registered Post Acknowledgment Due. The Noticees vide their respective letters dated April 13, 2015 sought additional time to file their reply. SEBI vide letters dated April 22, 2015 granted additional 15 days' time to the company and the Noticees directors to reply to the interim order. SEBI vide letter dated April 28, 2015 also granted additional time to the Debenture Trustee. Thereafter, the Noticees vide respective letters dated May 11, 2015 sought further additional time to file reply and also an opportunity of personal hearing. Thereafter, an authorized representative of the Company, vide email dated May 29, 2015 sought details of the allottees of OCDs, as referred to in para 9 of the interim order. Thereafter, SEBI granted an opportunity of inspection of documents to the company, Ramesh Chandra Nayak, Dinesh Nayak, Rakesh Arya and Deepak Kumar Ghelot on June 05, 2015, which was availed by their authorized representative. However, the Noticees did not file any reply to the interim order, thereafter.
6. An opportunity of personal hearing was granted to all the Noticees by scheduling it on June 15, 2016. The Noticees vide an email dated June 13, 2016 requested for 6 to 8 weeks'

time for filing replies. Another opportunity of personal hearing was granted to the Noticees on August 02, 2016. The personal hearing was rescheduled to August 11, 2016. However, on request of the Noticees received vide email dated August 11, 2016, the hearing was further rescheduled to September 06, 2016. All Noticees, except Noticee no. 8, attended the hearing on the said date. During the personal hearing, Shri Parmanand Prajapat, Shri Rakesh Arya and Shri Dinesh Nayak submitted written submissions. However, the company along with Shri Ramesh Chandra Nayak, Shri Dinesh Bhuriya and Shri Deepak Kumar Gehlot, during the hearing, requested that the hearing in the matter be adjourned by a week so as to enable them to make detailed submissions in the matter. However, they did not make any submissions subsequently.

7. Shri Parmanand Prajapat, Shri Rakesh Arya and Shri Dinesh Nayak vide their respective written submissions have submitted *inter alia* the following:
 - (a) Shri Dinesh Nayak and Shri Parmanand Prajapat joined the Board of Directors of SHIL as a director on 21.02.2012 and Shri Rakesh Arya joined on 03.05.2012 pursuant to their interest in development activities with regard to land and the opportunities available with like-minded people coming together for such activity. They had made an initial contribution of 16.71%, 23.23% and 14.68% in the capital of the Company amounting to approx. Rs.16 Lacs, Rs.23 Lacs and 14 Lacs, respectively. Traditionally, they are involved in family business in agriculture / trading in articles. In the capacity of a director of the company, they were drawing a monthly salary of Rs.35,000/-. Due to personal reasons, they decided to resign from directorship in the company. Their resignation was effective from 09.01.2014.
 - (b) After their resignation from directorship, they are not any more associated with the company nor are concerned with the affairs of the company. However, after receiving the interim order, they conducted discussions with the present directors of the company regarding the compliance of the directions contained in the interim order. They are given to understand that the present directors have already started taking the necessary steps to comply with SEBI's directions and to refund the monies and have stopped accepting fresh subscriptions of OCDs etc. Further, it was explained that the present directors are facing difficulties with regard to selling of certain lands in which

they have deployed the proceeds and they are directly going to take up this issue with SEBI and seek remedies.

- (c) During their tenure of directorship, the company at its board meeting /EGM decided to raise finance by issue of OCDs and necessary resolutions for the same were passed. Based on the same, the company allotted OCDs to some subscribers. As on 21.12.2013 (date of SEBI letter seeking information from the company), the number of debenture holders of the company was 38 who collectively had been issued debentures valued at Rs.1.02 crores.
- (d) The company had floated the schemes of issues of debentures during their tenure, with the idea of providing optimal return to small depositors, who are also business associates and persons close to the company. The company never had issued any fixed deposit certificates or any other certificates to the subscribers. The company has issued debentures which were strictly in accordance with the resolutions passed in the meeting of the Board, EGM and as per Form 23 filed with the ROC. He refutes the allegations as pointed out under para 5 of the interim order that the company was collecting deposits in the garb of debentures.
- (e) The sums collected from the debenture holders during their tenure had been utilized for the specified objective of acquisition of land in order to develop it. There was no diversion of funds from the stated objectives.
- (f) The debentures allotted under the various categories, as approved under the Board of Directors meeting held on 10.07.2012 and the shareholders' meeting held on 31.01.2013 were on a private placement basis, without any public announcement/advertisement issued and were intended for subscription by friends, associates, group companies, employees or any person associated with the company. The company is an unlisted company and the debentures issued were not intended to be listed on any exchange.
- (g) The company proposes to refund the investment in a phased manner so that the sums are realised and the values are optimised, as real estate activity involves long gestation period for value realisation.
- (h) They have not violated Section 73 of the Companies Act and provisions of ICDR Regulations, as alleged.

8. The abovementioned three Noticees also have submitted copies of Form 32 filed with the ROC regarding their resignation from the directorship of the company.
9. A fresh opportunity of personal hearing was granted to all the Noticees on August 09, 2017 before me. The Notices of hearing were served on the Noticees by SPAD/email. However, none of the Noticees turned up for the hearing on the said date. In view of the same, I am convinced that sufficient opportunities have been granted to the Noticees to present their case. In view of these facts and circumstances, I deem it appropriate to decide the matter on the basis of material available on record.
10. I have examined the allegations levelled against the Noticees in the interim order and the material available on record. According to the interim order, information obtained from the company revealed that SHIL had issued OCDs to at least 87 allottees as per the following details:

TABLE-A

Number of OCD holders reported by the Company	38
No. of OCD holders in whose respect SEBI has collected details in its enquiry, apart from those reported by the Company	48
No. of additional OCD holders whose details have been received from RBI, enclosed with a complaint	1
Total	87

11. The interim order had observed that though the company had claimed to have issued OCDs only to 38 persons on private placement basis, SEBI's enquiry revealed that SHIL had issued OCDs to a minimum number of 87 persons, as per details provided in the 'Table-A' above. The interim order reached a *prima facie* finding that since the number of persons, to whom the said issuance of OCDs was made, was above the limit of 49 persons as prescribed under the *first proviso* to Section 67(3) of the Companies Act, 1956 the said issuance of OCDs qualified as a public issue of securities under the said provision. The interim order further observed that since the issue of OCDs was a public issue of securities, the securities had to be compulsorily listed on a recognised stock exchange, as mandated

under the provisions of Section 73(1) of the Companies Act, 1956 and further attracted the compliance with the provisions of Section 73(2) and 73(3) of the Companies Act, 1956. The interim order reached the *prima facie* conclusion that SHIL had failed to comply with the provisions of Section 73 of the Companies Act, 1956 in respect of the said issue of OCDs.

12. In respect of the said issuance of OCDs, the interim order had reached further *prima facie* conclusion that SHIL had failed to comply with the provisions of Section 56 (requirements pertaining to prospectus and form of application) and Section 60 (requirement of compulsory registration of prospectus with the ROC before making a public offer or issuing the prospectus) of the Companies Act, 1956. The interim order further made a *prima facie* finding that SHIL, in respect of the said issuance of OCDs, had failed to comply with the following provisions of the ICDR Regulations:

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

13. I observe that the basic allegation against SHIL and its promoters / directors is that they were involved in public issue of securities through the aforementioned issuance of OCDs, which was in contravention of the abovementioned provisions of the Companies Act, 1956 and the ICDR Regulations. As stated above, the Noticees have failed to address the *prima facie* conclusions in the interim order regarding the said violations.

14. I have perused the contents of the interim order and do not find any reason to differ with the *prima facie* conclusion arrived at in the interim order. I note from records that the company had issued a newspaper advertisement in the 'Business Standard', whereby it

solicited subscription to its OCDs, as referred to in para 22 of the interim order. Considering the same, I agree with the *prima facie* finding in the interim order that by placing a newspaper advertisement, the company has solicited subscription to OCDs from public. I have also considered the submissions of the Noticee no. 3, 4 & 5 and do not find them satisfactory. In the absence of any evidence provided to refute the *prima facie* findings in the interim order, I reiterate that the aforementioned issuance of OCDs as described in the interim order amounts to violation of the abovementioned provisions of the Companies Act, 1956 and the ICDR Regulations.

15. I note from available records that Ramesh Chandra Nayak, Parmanad Prajapat, Dinesh Nayak, Rakesh Arya, Dinesh Bhuriya and Deepak Kumar Gehlot are the promoters / present & past directors of SHIL. Hence, these present & past directors are accountable for the acts of the company and are liable for abovementioned contraventions and are liable to refund the money mobilized through the said issuance of OCDs, to the respective applicants, in terms of the provisions of Section 73(2) of the Companies Act, 1956 read with Section 27(2) of the SEBI Act.
16. It is further noted from the interim order that M/s. Guru Krupa Trustee Company Private Limited, the Noticee no. 9, has acted as the debenture trustee, as per the Trust Deed dated March 15, 2013, in respect of the OCDs issued by the company, without having registration from SEBI, thereby violating Section 12(1) of the SEBI Act. I note that none of the Noticees including Noticee no. 9, has responded to the said allegation and has offered any explanation in this regard. I thus find that Noticee no. 9 has violated the provisions of Section 12(1) of the SEBI Act by acting as a debenture trustee without holding a valid certificate of registration as such.
17. Considering the violations committed by the Noticees in respect of the abovementioned offer of equity shares and the huge money collected pursuant to the same from the investors, I deem it necessary to issue appropriate directions to the Noticees.

DIRECTIONS

18. In view of the foregoing and in the interest of investors and the securities market, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A(1)(b) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992 and Regulation 111 of the ICDR Regulations, hereby issue the following directions:

- (a) The Noticee nos. 1 to 7 i.e. SHIL and its directors, namely Ramesh Chandra Nayak, Parmanad Prajapat, Dinesh Nayak, Rakesh Arya, Dinesh Bhuriya and Deepak Kumar Gehlot, shall jointly and severally refund the money collected through the offer and allotment of OCDs, with an interest of 15% per annum (the interest being calculated from the date when the repayments became due in terms of Section 73(2) of the Companies Act, 1956 till the date of actual payment) or with the interest promised to the investors, whichever is higher, within a period of 90 days from the date of receipt of this Order;
- (b) The refund as directed hereinabove shall be made through banking channels such as demand draft or electronic mode of transfer and a trail of such refunds shall be maintained by the Noticee nos. 1-7 for verification, if necessitated at a later date;
- (c) The Noticee nos. 1-7 i.e. SHIL and its above named promoters / directors, shall not alienate or dispose of or sell any of the assets of SHIL or any other asset acquired out of the funds collected from investors of SHIL, except for the purpose of making refunds to its investors as directed above.
- (d) Within seven days of completion of refund as directed hereinabove, Noticee nos. 1-7 shall file a certificate of such completion with SEBI from two independent Chartered Accountants certifying that the refund to all the equity shareholders has actually been made.
- (e) Till the refund, as directed above, is complete, Noticee nos. 1-7 are hereby—
 - (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and

- (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.
 - (f) For a period of four years from the date of completion of the refund, as directed above, Noticee nos. 1-7 are hereby–
 - (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating themselves, with any listed public company or any public company which intends to raise money from the public.
 - (g) In the event of Noticee nos. 1-7 failing to comply with the directions of refund as stated above, SEBI shall initiate recovery proceedings in accordance with the provisions of the SEBI Act, 1992.
 - (h) The Noticee no. 9, namely Guru Krupa Trustee Company Private Limited, shall refrain from acting as a debenture trustee for the OCDs issued by SHIL and shall not take up any new assignment in a similar capacity, involving issues of securities, in future. Further, Guru Krupa Trustee Company Private Limited, for a period of one year, is hereby:
 - (a) restrained from accessing the securities market;
 - (b) prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, directly or indirectly; and
 - (c) restrained from associating itself with any listed public company or any public company which intends to raise money from the public.
19. This order shall come into force with immediate effect, in respect of the Noticee nos. 1 to 7 & 9.
20. I note that Noticee no. 8, namely Labana Hadayabhai Bharatbhai, has become a director of the company post the interim order, on March 23, 2017. Thus, the Noticee no. 8 is hereby called upon to show cause as to why the directions issued against Noticee nos. 2 to

7, as contained in para 18 of this Order should not be made applicable to him. Noticee no. 8 shall file his reply to SEBI, within 30 days of receipt of this order and may also indicate whether he desires an opportunity of a personal hearing. In the event of SEBI not receiving any reply from Noticee no. 8 within 30 days of receipt of this order by him, the directions contained in para 18 of this Order, issued against other directors of SHIL, shall automatically become operational and final against him.

21. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on the companies and directors.

Date: June 06, 2018

Place: Mumbai

**G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**