***UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995***

**In respect of:**

1. Shree Sai Spaces Creations Ltd (PAN: AARCS9644N, CIN: U45200PN2012PLC144315)
2. Mr. Suresh Lal Shrivastav (PAN: ABTPS4472N)
3. Ms. Laxmi Suresh Lal Shrivastav (PAN: ARAPS3958G)
4. Mr. Riteh Kumar Shrivastav (PAN: CEBPS5607E)
5. Mr. Vivek Kumar Shrivastav (PAN: DRMPS4668Q)
6. Mr. Rajkumar Laxman Konde (PAN: ABXPK2421P)

In the matter of Shree Sai Space Creations Ltd

## BACKGROUND

1. Securities and Exchange Board of India(hereinafter referred to as "**SEBI**") observed that Shree Sai Space Creations Ltd bearing PAN: AARCS9644N (hereinafter, referred to as "**SSSCL**"), and its directors (on relevant date) viz, Mr. Suresh Lal Shrivastav bearing PAN: ABTPS4472N, Ms. Laxmi Suresh Lal Shrivastav bearing PAN: ARAPS3958G, Mr. Ritesh Kumar Shrivastav bearing PAN: CEBPS5607E, Mr. Vivek Kumar Shrivastav bearing PAN: DRMPS4668Q, and Mr. Rajkumar Laxman Konde bearing PAN: ABXPK2421P (hereinafter, individually referred to by their **respective name** or **by sl. no. they appear on top of this order**, and jointly referred to as "**Noticees"**] operated a collective investment scheme (hereinafter, also referred to as **"CIS"**) without obtaining necessary registration from SEBI, hence, allegedly violated the provisions of section 12(1B) of SEBI Act, 1992 (hereinafter, referred to as "**SEBI Act**") and Regulation 3 of SEBI (Collective Investment Scheme) Regulations, 1999 (hereinafter, referred to as "**CIS Regulations, 1999**"). Relevant findings of SEBI in brief and allegations in this regard are mentioned in following paras:

2. SSSCL offers various plans/schemes (One-time Payment Plans and Deferred Payment Plans) inviting funds from the public, towards its proposed Joint Venture Participation Project for Solar Energy Generation (hereinafter referred to as **"Project/Scheme"**). The marketing of the Project/scheme is done through the agents/Business Associate Service Provider (BASP) appointed by SSSCL.

3. The investors (hereinafter referred to as **"Investors/Contributors / JV participants"**) who were interested in the said Project/scheme are made to enter into a Memorandum of Understanding (hereinafter, referred to as "**MOU**") with SSSCL after filing an "Application for Joint Venture Participation" with it. The funds are collected by SSSCL from the contributors/investors against the produce, which they intend to purchase viz, solar energy generating panels and a contiguous piece of land to install and erect the Solar Energy Generating Panels.

4. Investors/Contributors / JV participants are required to select the option for their contribution / investment, made available in the 'JV Participation plan' / brochure / guide book and include range of deferred payment plans and one-time payment plans. The deferred payment plans offered by SSSCL were for periods ranging from 4 to 7 years and the one-time payment plans were for period ranging

from 4 to 6 years. All the plans had accidental death compensation feature and offered units sizes of 0.5 to 40 (1 unit= 500 Sq ft of land).

5. The said details of the various plans offered by SSSCL and the details in Acknowledgement Certificate issued by SSSCL reveals that at the end of the scheme/plan as opted by the investors/contributors/JV participants, they are offered an expected amount as profit, for instance a return approximately of 15% is received for the One-time Payment Plan (4 year), on the amount collected from the investors/contributors/JV participants. Even though the schemes were operated as Joint Venture, the 'JV Participation plan' / brochure / guide book doesn't provide for sharing of profit, and mentions fixed amount payable / expected to be payable to contributors / investors.

6. Scheme run by SSSCL fulfil the conditions of CIS as stipulated in Section 11AA(2) of the SEBI Act, which require registration from SEBI, based on following:

7. SSSCL collects money from the investors/contributors/JV participants against proposed development of the solar energy project. The said monies are mobilized and utilised for the purposes of the scheme, i.e. opportunity to own a developed unit of land which is equipped to generate solar energy. The MoU finds mention of the location and area of the land and the undivided area given to the investors/contributors/JV participants. The MOU further states that such undivided area has been demonstrated in the map prepared by the SSSCL. It is noted that no such map/schedule has been placed on record by SSSCL. Submissions of SSSCL vide its letter dated October 21, 2013, provide that the 'joint venture' participant executes MOU with the SSSCL that the advances given/ being given to the SSSCL is for and only against the purchase of land and to develop solar energy generating panel in the name of the participant. Such submission of SSSCL makes it clear that the monies collected from the investors/contributors/JV participants are utilized for the purposes of the scheme i.e. development of a unit of land which is equipped to generate solar energy. As per submissions by SSSCL with SEBI dated August 18, 2014, it keeps on buying the land and it had land holding of 43.36 acres, however, it is noted that this is very less when compared to the total no. of its investors/contributors/JV participants i.e, more than 12,512 as submitted by SSSCL.

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

8. The contribution/ payments are made by the investors/contributors/JV participants to SSSCL by selecting the options available as detailed in the 'JV Participation plan'/ brochure/guide book. The 'JV Participation plan'/brochure/guidebook themselves assures investors of profits as it expressly states about the expected refund of JV participation. Further, the 'acknowledgement certificate' and the

MOU also finds mention about the profits/ income. Hence, the said options and expected refund on the same make it clear that the investors/contributors/JV participants makes contribution/ payment with a view to receive the profits/ income/ property/ return on their initial investments that may accrue to them as applicable, thus satisfying the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

9. It is noted from the MOU that the SSSCL will look after the man power, machines, administration and financial aspects of the project. The investors/contributors/JV participants only gets the right to work in order to achieve the objects of the plan. However, the SSSCL has nowhere mentioned as to what work has to be done by the investors/contributors/JV participants.

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

Hence, it is noted that the investors/contributors/JV participants does not manage the property, contribution or investment forming part of schemes at any stage and the SSSCL manages the property that is part of its scheme on behalf of investors/contributors/JV participants. The same therefore, satisfies the third condition as stipulated in Section 11AA(2)(iii) of the SEBI Act.

10. The SSSCL in the MOU has specifically mentioned that it will look after the man power, machines, administration and financial aspects of the project/scheme. The contribution/ investment are managed by the SSSCL on behalf of the investors/contributors/JV participants, and they do not have any role in the management and operation of schemes/ arrangements of SSSCL. The investors/contributors/JV participants have no role to participate in the acquisition, development and management of the project. The investors/contributors/JV participants do not have accessibility to do anything on the proposed unit of the project/scheme. The investors/contributors/JV participants do not have any control on the money spent or on the nature of development of the project as they are managed by the SSSCL exclusively without any involvement of the investors/contributors/JV participants. Hence, it is noted that the investors/contributors/JV participants does not have day to day control over the plot of land/ property as the same remained in the custody/ use of SSSCL which satisfies the fourth and last condition as stipulated in Section 11AA(2)(iv) of the SEBI Act.

11. Thus, it has been alleged that plan/ schemes of SSSCL were in nature of a CIS as all the four conditions specified under Section 11AA(2) of SEBI Act are satisfied, and Noticees comprising SSSCL and its directors viz, Mr. Suresh Lal Shrivastav, Ms. Laxmi Suresh Lal Shrivastav, Mr. Ritesh Kumar Shrivastav, Mr. Vivek Kumar Shrivastav and Mr. Rajkumar Laxman Konde have allegedly engaged in fund mobilizing activity by floating/sponsoring/launching, unregistered/unauthorized CIS as defined in Section 11AA of SEBI Act, in violation of Section 12(1B) of SEBI Act, 1992 and Regulation 3 of CIS Regulations, 1999.

## APPOINTMENT OF ADJUDICATING OFFICER

12. SEBI vide order / communique dated March 30, 2017, in terms of Section 19 read with Section 15I(1) and 15I(2) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as "**SEBI Adjudication Rules, 1995**"), appointed an Adjudicating Officer to inquire into and adjudge the alleged violations as mentioned above and impose liable penalty as deem fit in terms of rule 5 of SEBI Adjudication Rules, 1995 and the provisions of Section 15D(a) of the SEBI Act, 1992. Subsequent to change in Adjudicating Officer, SEBI, vide order / communique dated May 18, 2017, SEBI transferred the adjudication proceedings in the present matter to undersigned. Accordingly, Adjudication proceedings were carried forward.

## SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

13. Show Cause Notice dated September 20, 2017 (hereinafter referred to as "**SCN**") was issued to the Noticees, mentioning the allegations against the Noticees and requiring them to show cause within 14 days of receipt of the SCN, as to why an inquiry should not be held and penalty be not imposed under Section 15D(a) of SEBI Act for the aforesaid alleged violations against the Noticees.

14. SCN was sent vide speed post AD to common address available on record viz, "*Sai Villa Bungalow, CDC-50, Vir Sawarkar Road, Purna Nagar, behind H.P. Petrol Pump, Chinchwad, Pune- 411019*", however, the SCN could not be delivered at the stated address. Scanned copy of SCN sent at e-mail address available on record viz, *chairman@shreesaicompanies.com, director@shreesaicompanies.com* and *vivek.shrivastav@shreesaicompanies.com* were also undeliverable.

15. Alternate address / e-mail of the Noticees were gathered, and subsequently vide letter dated November 13, 2017 sent through speed post AD, copies of SCN was once again sent at the aforesaid address of the Noticees along with one copy also sent at alternate address viz, for Shree Sai Spaces Creations Ltd at "*Malu Trade Centre, CDC- 25, Spine Road, Chikhali, Chinchwad, Pune- 411019*" and for Mr. Suresh Lal Shrivastav, Ms. Laxmi Suresh Lal Shrivastav, Mr. Ritesh Kumar Shrivastav and Mr. Vivek Kumar Shrivastav at "*House No. 13, Abhishek 6 CHS, Shahu Nagar, Near Mahabali Chowk, Chinchwad, Pune-411019*". The said letters dated November 13, 2017 were also not delivered.

16. Scanned copy of SCN was sent at alternate e-mail ID viz, *ritesh.shrivastav120588@gmail.com* vide e-mail dated December 4, 2017 addressing all the Noticees and requiring them to reply latest before December 18, 2017. In this regard, vide a revert e-mail dated December 13, 2017 from Mr. Ritesh Shrivastav it was inter-alia informed that *"We would like to take the opportunity to bring to your notice that the above case is already in the process of resolving. However, we would like to request you on behalf of Mr. Suresh lal Shrivastav, Mrs. Laxmi Shrivastav, myself Mr. Ritesh Shrivastav, Mr. Vivek Shrivastav and the company Shree Sai Spaces Creations Ltd to please grant us an opportunity of personal hearing in front of you so that we can put up our case. It would be very kind of you if you can provide us a date in the first week of January 2018 for the personal hearing as sir we are stuck in some personal emergency currently.* The information so provided was taken on record.

17. Considering the specific request to provide hearing in first week of January 2018, vide e-mail dated December 14, 2018 addressing to Noticees and sent at e-mail id *ritesh.shrivastav120588@gmail.com*, an opportunity of personal hearing was provided to Noticees on January 5, 2018. In the said e-mail it was

requested to provide contact details (address, e-mail id, phone, fax, etc) of all the Noticees including Shri Rajkumar Laxman Konde, so as to have clear line of communication till conclusion of the present adjudication proceedings. In e-mail reply received from Mr. Ritesh Shrivastave on behalf of Noticee no. 1 to 5, it was informed that "*We would like to thank you for providing us the opportunity of personal hearing on 5th of January 2018. As per telephonic discussion please find the mobile number of Mr. Rajkumar Konde (*phone no. details withheld for sake of privacy*). I am sorry to inform you that this is the only personal detail I have of Mr. Rajkumar Konde. I would like to request you that all the other noticees including the company, except for Mr. Rajkumar Konde, will be acknowledged by myself*". The information so provided was taken on record.

18. Noticee no. 1 to 5 availed the scheduled hearing on January 5, 2018 through their authorised representative Mr. Ritesh Shrivastav (one of the Noticee), who during the hearing *made oral submissions and sought permission to file detailed written submissions in the matter and for the same requested time till end of January 2018*. In this regard, Noticees at sl. no. 1 to 5 were granted time till January 30, 2018 to submit their written submissions.

19. Contact details of Mr. Rajkumar Laxman Konde were gathered. Vide letter and e-mail ( to *rajukonde@gmail.com*)) dated January 10, 2018 addressed to Mr. Rajkumar Laxman Konde, he was provided with a copy of SCN, and also an opportunity of personal hearing was granted to him on on January 24, 2018. Mr. Rajkumar Laxman Konde was also requested to submit his reply to SCN latest before January 24, 2018.

20. Mr. Rajkumar Konde availed the scheduled hearing on January 24, 2018 and made following submissions during the hearing: "*I reiterate my submissions made in my written reply dated January 21, 2018. I also submit copy of my earlier reply to SEBI dated March 18, 2014, copy of Form 32 (resignation from directorship) filed with MCA, and another written submissions dated January 24, 2018 (revised version of my earlier reply dated January 22, 2018). I further submit that except my short term association with SSCL, I have no association with securities markets. Considering my limited role in the matter and other factors as already submitted in my written submissions, I request you to take a lenient view while deciding the matter or imposing penalty, if any, in the matter. I would like to make an email submission with respect to these proceedings by January 25, 2018*".

21. Further, Mr. Rajkumar Konde made following key submissions in his written submissions dated January 22 / 24, 2018 and subsequent submissions in reply dated January 25, 2018:

<u>Key submissions in reply dated January 22 / 24, 2018</u>:

> *"I am a computer technician person and having my own small setup running for software development and support services. I provided these services to some corporates as well as some government departments like Police departments through partners. I submit that as I wanted to grow my business, I decided to associate with SSSCL (IT Company) which was already incorporated by Shree Sai Group. In view of my association, I was given directorship in SSSCL. However, I realized that the business of SSSCL was completely different from my own activities and then I never part in any business activity of SSSCL. I was just a nominal director without exercising any power of Director under provisions of Companies Act. I even did not draw any monitory benefit as a salary or honorarium or any other financial benefits attached to the office of director from the company (SSSCL).*
>
> *I humbly submit that my own office property including a server (which is my bread and butter) was with SSSCL which I wanted to take back and leave.*
>
> *I was planned to moved out of SSSCL effective from January 201 only, but due to my server and manpower settlement issues, I resigned from the directorship on 29th April 2013 but the company actually filled up form 32 only on 6th May 2013.*

*When I realize in December 2012 that SSSCL is doing business against SEBI norms, I started asking chairman that I do not want to be part of such business, but due to my server and Ma power was in the SSSCL premises, was continued to complete the Financial year 2012-13 and after chairman permits me to withdraw my property (server and manpower) from the premises, I resigned in April 2013 and relieved on 6th May 2013 and immediately moved out of the premises, after that is not accessible to office or any records of SSSCL.*

*Thus I submit that though I was with the SSSCL for a period of 8-9 months (technically), I never took part in any activities of the company. When I realized, I did not force any person to invest in any scheme created by company nor I myself or my family members, relatives or friends invested any money in the schemes nor did I derive any financial benefits of whatsoever nature from the company.*

*I submit that I have already submitted my reply earlier and the same is on the record with SEBI. My said reply was also considered by the honorable Board in its order dated 24th November 2014 (para 5(b)).*

*Further, I humbly submit that in its order dated 24th November 2014, the honorable Board in para 7(m) page 17 has clearly not held me responsible for any activity of the company in floating / sponsoring / unregistered/ unauthorized CIS, as defined in the section 11AA of SEBI Act.*

*I submit that even through the company has committed any irregularities. I was personally not involved in activity of the company and being director on the board of the company for a very short period of 8-9 months (technically), the honorable Adjudicating Officer may consider my case sympathetically and absolve me of all the allegations.*

*As directed by honorable Board, I was restrained from accessing the securities market for a period of two years which has already ended. I have meticulously and honestly followed the order of honorable board until today. I am law abiding citizen and any harsh penalties would amount to stigma on my career and on small business u am doing. I therefore pray that a) proceedings may kingly be dropped against me, b) my case may be viewed with sympathy, c) no any harsh penalties may be awarded to me which would jeopardise my career and business, b) pass any other order as deemed fit and necessary in the facts and circumstances of the enquiry / adjudication.*

Key submissions in reply dated January 25, 2018:

*"Apart from my submissions through email, personally submitted reply copy and one copy send through speed post AD on 22nd January 2018 which you must have received. I personally explained my role in the matter in brief. In view of all the submissions and explanation I have given and I belongs to middleclass family and not involved in this matter except my association of 8-9 months on paper. I also explained my current financial situation, my current job responsibilities, I therefore humbly request you that: a) my case may be viewed with sympathy and my involvement in this case, b) no harsh penalties may be awarded to me which would jeopardise my career, business and social work I am doing., c) please drop the financial penalties against me or take lenient view while deciding the matter or imposing penalty if any and close this matter."*

22. Mr. Ritesh Shrivastav vide e-mail dated January 29, 2018 referring to medical grounds, requested for extension of time by three weeks for submission of written submissions on behalf of Noticee no. 1 to 5. In this regard, vide e-mail and letter dated February 1, 2018, Noticee no. 1 to 5 were provided extension of time till February 15, 2018 for submission of their written submissions in the matter. Vide e-mail dated February 15, 2018, Mr. Ritesh Shrivastav sent scanned copy of written submissions on behalf of Noticee no. 1 to 5, key submissions from the same are as follows:

*"**I.** Noticee no. 1 to 5 are in receipt of the SCN……..*

………..

……….

***V.** Noticees deny each and every allegation levied upon them including violation of section 12(1B) of the SEBI Act, and the Regulation 3 of CIS Regulations and humbly submit that the allegations levied upon them are baseless and devoid of any evidence in support of them and the same shall be detailed out in detail in the para wise reply to the observations made in the SCN. The Noticees state that, the Notice has proceeded on an entirely different factual position. The factual position as stated in the Notice are totally different from the reality and therefore, the conditions drawn in the Notice are bound to be incorrect.*

***VI.** It is submitted that the Noticee company, is carrying on a true business activity which is very much authorized by the main object of the Company as per the registered memorandum of association of the Company.*

*__VII.__ The main object of the company for ready reference, areas follows "To carry on the business to promoter, own, acquire, erect, construct, establish, repair, maintain, improve, manage, assemble, alter, buy, sell, service, import, export, develop, design, lease / hire, and to act as agent, broker, vendor, consultants, contractor, sub-contractor for residential accomodations, house, buildings, aparments, halls, godowns, warehouses, slums, chawls, dwelling houses, office premises, shops, hotels, clubs, and various infrastructural projects such as road, highways, bridges, dams, reservoirs, cannels, aiports, port, shipping, railways and tramways, reclamation, water supply project, mining, irrigation project, drainage, sanitation and sewage system, project for power generation and distribution plant of convential and non-conventional energy, project of telecommunication ser vices, a project for housing and to develop and execute such infrastructural turkey prjects or any other projects of similar nature and real estate development on land acquired by purchase, lease, exchange, hire and preparing building sites by planting, paving, draining and cultivating land and by demolishing constructing, reconstructing, altering, improving, decorating, furnishing, maintaining, administrating, equipping the same and to sell, lease, let mortgage, manage or dispose off such real estate or to undertake construction contracts and to hold promoter, develop, improve land and hereditaments and to dispose off, transfer exchange or deal into real estates of all kind, land including freehold land, agri land, open plots and the rights including development rights, title and interest in such property and to join with any other person or company or enter into any joint ventures and collaboration in."*

*__VIII__. A background of the solar energy generation project – challenges and opportunities was provided in 3-4 paras.*

*__IX.__ In light of the said challenges and opportunities, the noticees used the impugned project for generation solar energy, which by no means was a falling within the realm of section 11AA of SEBI Act, inter-alia for the reasons stated as under:*

*a. Company / notice no. 1 had come up with a project to generate solar energy, vide which notice no. 1 and the prospective participants would enter into a joint venture structure, for which an amount is collected from the participants through various payments plans, which will allow the Noticee No. 1 to make a product (electricity in present case) and the participants will have complete right over the product. And as per the joint venture arrangement he may chose a method suitable to him, either to utilize the product or dispose the product as he may deem fit.*

*b. The said joint venture arrangement, allows various joint venture participants to participate in the project, desirous of owning a solar power generation unit, and production and supply of power to the state grid and / or in a manner agreed. As per the terms, the said joint arrangement will be governed by a memorandum of understanding duly executed by and between the participants and the Noticees along with the terms and conditions as contained in the Guide Book for Joint Venture Participation.*

*c. It is further submitted that, in the said project, the 'Joint Venture Participant / Business Associate had to purchase a Unit (which will inter alia include solar energy generating panel (s), ancillary machinery and certain right over the land on which the panel will be erected) as per the payment plan and as per the arrangement every unit is registered / allotted and maintained separately in the name of each joint venture participants / business associates. Further if the joint venture participants / business associates are desirous to transfer their unit(s) or product, they have right to transfer the said units to any person or individuals.*

*d. Further, the 'joint venture' participant upon development of the unit, will have an option to operate his / her unit on his own, or in co-ordination with the company and / or its associate, can withdraw from the project with a return. In other words, joint venture participants will have the option, either to operate, maintain and supply the generated power to GRID themselves or to do it in co-operation with the associate of the company. Thus, the Joint Venture Participants / Business Associates has complete independence as to the disposal / utilization of the product and company and / its associate has a very limited role to play on the entire disposal.*

*e. Further as per the joint venture arrangement, the participants / business associates, amount / investment will be safeguarded by way of any unsecured charge on the contiguous piece land on which the Unit is developed.*

*f. Further joint venture participants / business associates bring the funds to participate in the development of solar power generation plant and where the initial responsibility of the developing is with the company and for operating and maintaining the same either will be on joint venture participants / business associate and / or he can share the same with the associates of the company. In case upon development of the project, the joint venture participants / business associates is not an ideal investment but require full participation of the joint venture participants / business associates and the return on their investment is generated through sale / disposal of the product (electricity in the present) and there is no fixed / guaranteed / assured returns.*

*__g.__ Therefore, it is humbly submitted that there is no pooling of contributors, investors for collective utilization as each joint venture participants / business associates investment is treated separately and is made against a particular unit, which is registered or transferred in this name. As per the terms of the joint venture arrangement, the initial investment for the development of a unit is made by the company (noticee no. 1) and subsequently as and when, a unit is further developed as and when investment is received from a particular joint venture participant / business associate.* **Thus, all the transaction with the joint venture participant / business associate are separate, independent and the object of carrying out overall project / scheme, thus activity carried out by the company and**

***other noticees does not satisfy the first condition as stipulated in section 11AA(2)(i) of the SEBI Act, 1992.***

*h. It is submitted that the investment made by the joint venture participants / business associates was not ideal investment as it required greater participation from them in the management / operation of the units, therefore, the investment so made as per the scheme does not guarantee any ideal income / profit.*

*i. All the investment by the Noticees were on the basis of the scheme and such investment was to be made against the particular, identified units. Once the units are developed post gestation period, the same would convert solar energy to electricity (i.e, the product) and joint venture Participants /Business Associates has complete discretion on the disposal of the product including all means possible to monetize the same. It is submitted that, the joint venture participants / business associate does not receive any ideal income and / or guaranteed returns , the sale / utilization of the electricity generated by the units by individual unit holders are only source of the income which is received by them. There is no promised return or ideal income which a joint venture participants / business associate receives.*

*j. It is not the case that, in the joint venture arrangement they would not generate any income or profit and / return. But such income could only be generated on active participation of the business associate/joint venture participant and in a manner he decides to monetize the product. Therefore, the return or income generated in the scheme is not an ideal income or a guaranteed return.*

*k. It is pertinent to note that, section 11AA of SEBI Act covers those income, profit, and / or return either which are guaranteed and / or promised or of those nature which could be generated without any participation from the contributors. However, in the present case, the same is not true, as the income generated firstly is not guaranteed as promised, secondly the joint venture participants / business associate has complete discretion on disposal / manner of the monetization of the product. Therefore, the income generated in the scheme require active participation from the joint venture participants / business associate.*

*l. Further as detailed in the subsequent paras, the scheme allows a democratic participation of the joint venture percipients / business associate in selecting a management committee which is going to take all decisions as to management of the entire project (which include setting up of the individual units, maintain them, etc). Further, the joint venture participants/ business associate have inter alia have visitation rights, rights to seek explanation / details in relation to the status and working of the project.*

***m. Therefore, in the light of the aforesaid, it is submitted that, the income generated in the present scheme cannot be equated with the promised income, and / or guaranteed return and / or profits which are dealt in section 11AA2(ii) of the SEBI Act is not satisfied in the present case.***

*n. It is submitted that 'Joint Venture Participant' and the Noticees mutually will constitute the management committee for the said project for a tenure of five years. The said committee will act on behalf of the joint venture participants. The said committee will be comprising of five persons and the members of the said committee will be appointed by the company, after considering their relevant experience and qualifications. But if any person, who is debarred by SEBI or under any laws, declared insolven, or accused in criminal cases, such person cannot become member of the said committee.*

*o. The functions of the said committee is limited to the management and control of the project, but if decisions are taken by the company, then preference will be given to the company's decision.*

*p. However, if the joint venture participants thinks fit that, the said committee is not working efficiently they have a right to call meetings of the joint venture participants for passing a resolution for change in the said committee, and the decision of the said meeting will recommended to Board of directors of the company, and Board of Directors of the Noticees upon receiving of the recommendation of the joint venture participants will take an appropriate action. There should be at least 10% view of the joint venture participants for change in the said committee.*

***q. In the present case, the joint venture participants have right to manage the product and have the control on the project through the management committee. Hence, it is submitted that the present case does not satisfy the third condition as stipulated in section 11AA2(iii) of the SEBI Act.***

*r. It is submitted that, joint venture participants / business associate have a day to day control over the said project through a management committee, the said committee will act on behalf of the joint venture participants. The said committee, at any time is allowed to check or inspect the operation and management of part of the project, any financial information. If the management committee is not satisfied with the administration and management of the project, it will immediately report to the Noticee / Company.*

*s. Further, the joint venture participants are also allowed to visit / inspect the project site on prior approval and they have right to inspect, call for information such as employee details, machine / solar panel / land management details, its operation and joint venture participation, business financial, etc.*

***t. In the present case, joint venture participant / business associate has a day to day control on the project. Hence, the last condition as stipulated in Section 11AA(2)(iv) of the SEBI Act, is not satisfied in the present case.***

*X. Therefore, in light of the aforesaid it is submitted that the joint venture arrangement where the Noticees were does not fulfil the ingredients of section 11AA of SEBI Act, hence the joint venture arrangement of the Noticees with its business Associate cannot be termed as Collective investment scheme as defined under section 11 AA of the SEBI Act. Now, as the operation of the Noticees cannot be termed as collective in9vestment scheme, and therefore, Noticees have not violated the section 12(1B) of SEBI act or Regulation 3 of SEBI (Collective Investment Scheme) Regulations, 1999.*

***XI. Summary proceedings in the present matter***

*a) It is humbly submitted that, SEBI had passed an order dated November 24, 2014, concluding that the Noticees were engaged in a collective investment scheme without registering the same and so issued the directions against the noticees for contravention of Section 12(1B) of the SEBI Act, Regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1999.*

*b) Further, aggrieved by the said order of SEBI, the Noticees preferred a statutory appeal under Section 15T of SEBI Act before the Hon'ble Securities Appellate Tribunal, simultaneously a separate miscellaneous application for the stay of SEBI's order was also filed.*

*c) It is noted that , during the pendency of the Appeal, the Recovery Officer of SEBI issued incorrect amount of certificate bearing number 863 of 2016 dated February 24,2016, in the attachment proceeding No. 2451 and 2452 of 2016, said recover a sum of Rs. 39,22,03,162 (Rupees Thirty Nine Crores Twenty Two Lakhs Three Thousand and One Sixty Two only). Vide the said certificate, bank accounts and demat accounts of the Noticee were also attached with immediate effect. The notice aggrieved by the action of SEBI, (i.e. drawing certificate bearing number 863 of 2016 dated February 24, 2016), filed a fresh miscellaneous application bearing number 43 of 2016 before the Hon'ble Tribunal.*

*c) Hon'ble Tribunal post hearing passed an order directing SEBI not to initiate any coercive steps in the implementation of the order dated November 24, 2014 and directed the Noticees to submit the details of land which were referred in the miscellaneous application bearing number 43 of 2016.*

*e) It is to be noted that, the Hon'ble Tribunal after hearing both the parties had inter-alia passed an order dated on April 20, 2016 directing the Noticees to file a proposal before the Recovery Officer. In case the proposal is rejected by SEBI, the Noticees were given liberty to challenge the same before the Hon'ble Tribunal.*

*f) It is pertinent here to mention that the Noticees without any prejudice basis agreed to implement SEBI order dated November 24, 2014 and there was no judicial determination whether the business carried out by the Noticee falls under Section 11AA of the SEBI Act.*

*g) Thereafter, SEBI filed a complaint in the matter of Sai Prasad Foods Ltd. and Sai Prasad Properties Ltd. The Economic Offence Wing of Maharashtra Police raided the premise of the Noticees and confiscated/ seized various documents pertaining to the Noticees. Also, one of the Noticees was arrested and kept in judicial custody.*

*h) Further, in the meantime the Noticees filed a letter for the extension of time to submit the proposal before the Recovery Officer, SEBI. When the Noticees didn't received any communication from the Recovery Officer, SEBI, they vide a Miscellaneous Application No. 82 of 2016 approached the Hon'ble Tribunal approached on ground that the they are incapacitated from giving their valuable inputs because one of the Noticees is in the Judicial custody. After considering the said application, the Hon'ble Tribunal vide its Order dated April 20, 2016 granted the timeline.*

*i) Further as per the direction of the Hon'ble Tribunal, the Noticees submitted a proposal setting out the modalities of repayment to be made to the joint venture participants.*

*j) There after the Noticees appeared before the Recovery Officer, SEBI and discussed in detail the proposal submitted by the Noticees vide the letter dated May 26, 2016. The Noticees submitted that it would take 18-20 months for them to sell the properties and process the entire refund amount as due. Further in response, to the submissions made by the Noticees, the Recovery Officer, SEBI, suggested to the Noticee Company to identify the property worth Rs. 2 crores and sell the same within 3 months so that the repayment to the investors could partly commenced, and to the extent of rest of the dues of Rs. 2 crores, dispose of the property within 6 months and accordingly pay the rest of the investors.*

*k) The Recovery Officer of SEBI by completely disregarding the submissions made by the Noticees during the course of hearing passed an order on July 04, 2016, wherein he proceeded in attaching the properties of the Noticees and directing them to complete the refund process within 3 months from the date of the order.*

*l) Further, aggrieved by order of the Recovery Officer, the Noticees had filed an appeal before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT passed an interim order to deposit a sum of Rs. 44 lakh within a period of two weeks from the date of the order and further amount of Rs. 25 lakh to be deposited within a period of 4 weeks from the date of passing of the order in an escrow account with SEBI.*

*m) During the course of proceedings before the SAT, the Noticees submitted that they have submitted the original documents of land and are in the process of reaching an agreement with SEBI, regarding recovery proposal.*

*n) Thereafter, SEBI vide its Order dated 20/07/2017, ordered to sell the Property through E-Auction in satisfaction of dues. So far, SEBI has recovered Rs. 47,25,224 from the bank Account and Rs.16,62,031.88 from Units which were held in IDFC AMC and PMS account till August 2017.*

***XII. Technical Ground***

*The Noticees state that at best the violation alleged against the Noticees are o technical lapses on the part of the Noticees. In this regard your attention is drawn to the judgment of Siddharth Chaturvedi and Ors. Vs. Securities and Exchange Board of India (2016) 12 SCC 119, wherein, the Hon'ble Apex Court had made observations that;*

> *"We also find it a little difficult to accept what is stated in paragraph 5 of the judgment. It is very difficult, keeping in view, particularly, two important legal facets-one the doctrine of harmonious construction of a statute; and two, the fact that we are construing a penalty provision of a statute which is to be strictly construed, Section 15A, post amendment in 2002, is suddenly given a pride of place, and Section 15J is made to yield entirely to it. The familiar expression "notwithstanding anything contained" does not appear in the amended Section 15A. This being the case, it is a little difficult to appreciate as to how one can construe Section 15A, as amended, in isolation, without regard to Section 15). In fact, the facts of the present case would go to show that where there is allegedly only a technical default, and the three parameters of Section 15] would allegedly be satisfied by the Noticee, namely, that no disproportionate or unfair advantage has been made as a result of the default; no loss has been caused to an investor or group of investors as a result of the default; and there is in fact, no repetitive nature of default, no penalty at all ought to be imposed……..."(emphasis supplied)*

***XIII.*** *In the light of the observations of the Supreme Court of India, it is submitted that in the present case no disproportionate or unfair advantage has been made as a result of the default, no loss has been caused to an investor or group of investors a result of the default, and no repetitive nature of default has been made.*

***XIV.*** *It is humbly submitted that, in the present matter, SEBI had taken all the corrective measure and recovery proceeding already initiated. So, the violation of Section 12 (1B) of SEBI Act, 1992, has to be read with Section 15J of the SEBI Act, and after applying the factors of 15 J of the SEBI Act, it is clear that the violation of the Regulations become only technical in nature, and not involving any disproportionate gain to the Noticees, or unfair advantage or loss to any investor.*

***XV.*** *It is submitted that while taking a decision for the alleged violation the Learned Adjudicating Officer has to take in to account Section 15J of the SEBI Act, which specifies the factors to be considered before levying any penalty, which are as under:*

> *"(a) the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default."*

> *i. With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": the Noticees submit that the findings of the notice does not lead to the conclusion that there has been disproportionate gain or unfair advantage to the Noticees.*
> *ii. With regard to Clause (b);- "the amount of loss caused to an investor or group of investors as a result of the default" : the Noticees submits that there are no joint venture participants complaints filed to company, and there is no loss cause to the joint venture participants. The Noticees had already submitted the scheme to repayment to the participants.*
> *iii. With regard to Clause (c):- "the repetitive nature of the default." it is stated that the Noticees has never been held guilty for any violation of SEBI laws and therefore the issue of repetition does not arise at all.*

***XVI.*** *Further, having stated the factors of Section 15 J, the Noticees would like to draw the attention of your goodself to a few case laws, wherein the respective courts have dealt into the aspect of penalty and factors for levying any penalty on any delinquent. In this regard your kind attention is drawn to Hon'ble Supreme Court's decision in the case of Hindustan Steel vs. State of Orissa (AIR 1970 SC 253) where it was held as follows:*

> *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."*

*Again, the Hon'ble Apex Court in the case of Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212) inter alia held that:*

> *"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."*

*Further in the matter of Ranjit Thakur vs. Union of India (AIR 1987 SC 2386) it was held that:*

> *"The Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be*

*commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and the emphasis is that all powers have legal limits."*

***XVII.*** *In the instant case, it is pertinent here to mentioned that, the Noticees has without prejudice basis agreed to implement SEBI order dated November 24, 2014, and there was no judicial determination as to whether the business carried out by the Noticee falls under Section 11AA of the SEBI Act, Therefore, it is duly submitted that Noticees have not committed any wrong and no charge has been established against them even prima facie, to warrant any action.*

***XVIII.*** *It is further humbly submitted that, your goodself has not provided the Noticees, with the copy of the documents/details which are either collected by SEBI while investigating the present matter and relied upon by your goodself while issuing the Notice or/and otherwise necessary for effectively dealing with allegations made in the Notice. Therefore, it is humbly requested to your goodself to provide the Noticees with following relevant documents, in order to enable them to submit a further response in the matter:*

*I. Investigation Report prepared in the matter of Shri Sai Spaces Creation Pvt. Ltd*

*II. All documents collected during the course on an investigation carried out by SEBI in the matter of the Shri Sai Spaces Creation Pvt. Ltd*

*III. Correspondence exchange by SEBI and /or your good self with other authorities, including Maharashtra Police in relation to the present matter.*

*IV. Policy document of SEBI for dealing with enforcement action in cases relating to CIS.*

*V. Minutes of the meeting in which Whole Time Member, SEBI approved or provided/recorded reasons for initiating Enforcement Action against the Noticee, if any, file noting if any, in this regard.*

*It is submitted that these documents are extremely important and would greatly assist the Noticees to present an appropriate response in the matter.*

***XIX.*** *However, since we have neither received any documents from your good self, we are constrained to submit present reply based on the limited response, in absence of necessary and relevant documents.*

***XX.*** *It is humbly submitted that your good self had given the opportunity of the hearing on January 5, 2018, and same was availed by the Noticees . The Noticees state that at the time of hearing on January 05, 2018, the Noticees where not represented by a lawyer, as at the scheduled time did not have the means to appoint a lawyer. However, now some of the Noticees have been able to govern some funds to hire a lawyer and therefore, would like an effective hearing through its lawyers in view of the same the noticees request your good self to grant another opportunity of hearing in the present matter. The Noticees state that grave harm and prejudice would be caused to the Noticees if their request is not granted.*

***XXI.*** *In the instant case since no primary violation against the Noticees has been made out and as the Noticees have also explained the genuineness of the case, the question of imposition of any penalty does not arise. Therefore, it is duly submitted that the Noticees have not committed any wrong and no charge has been established against them.*

23. It was noted that Noticee no. 1 to 5 in their above submissions, contended that they were not provided with certain information / documents. In this regard, to address to their contentions and request, vide e-mail dated February 16, 2018, following was informed:

a) *With respect to information / documents sought in point XVIII of the said reply dated February 15, 2018, it is to mention that there is no investigation report in the matter and all the documents / information relied upon by the adjudicating officer have already been provided in the Show Cause Notice (SCN) dated September 20, 2017. Further as now desired by you scanned copy of relevant extracts of the approval of WTM for initiating present adjudicating proceedings is enclosed herewith for reference.*

b) *Communication with the Noticees is established through e-mail and delivery of notices have been acknowledged on behalf of Noticees and reply of Noticees have also been received through e-mal. However, It is to be noted that despite confirmation from Mr. Ritesh Shrivastav about the address of the Noticees, Original notices sent at stated address "Sai Villa Bungalow, CDC-50, Vir Sawarkar Road, Purna Nagar, behind H.P. Petrol Pump, Chinchwad, Pune- 411019" are not delivered. Noticees are once again advised to confirm this correspondence address or provide alternate address where delivery of subsequent notices, if any, can be undertaken.*

c) *It is also to be noted that SCN was issued on September 20, 2017, and upon request made in subsequent period, sufficient time and enough latitude has been granted to Noticees to make submissions in the matter. Request for additional information / document at this fag end of the present proceedings, appear to be delaying tactics as the same is received after grant of sufficient time to Noticees to make their submissions. It is to be noted that in case Noticees have any more submissions to make, same shall reach the Adjudicating Officer at the earliest and* **not later than February 21, 2018 before noon**. *On non-receipt of any submissions by the above date and time, it will be construed that Noticees have no further submissions to make and the matter shall be proceeded further based on reply / submission already on record.*

24. Shri Ritesh Shrivastav on behalf of Noticees no. 1 to 5, vide e-mail dated February 21, 2018,sent at 11:16 pm, made following submissions / contentions::

*"Noticees vide their reply dated February 15, 2018 inter alia in para XVIII had requested for certain information/ document and, if the same are not provided, the same would cause serious prejudice to the Noticees It is important here to note that the adjudicating proceeding need to consider the evidence which have been relied upon both by SEBI as well as the Noticees, while the documents relied upon by SEBI may have been provided along with the Show Cause Notice an appropriate discovery of documents which the Noticees wish to rely upon has to be done.*

*It is further submitted that in absence of the information /documents sought by the Noticees, they would not be in a position to put forward an appropriate response in the matter. Further, the documents sought for, will not only assist the Noticees to prepare an appropriate response in the matter, but may also assist your goodself to evaluate the present matter in totality and render justice. The Noticees submits that the information/ document sought for were based upon concrete logic and were not 'some documents which were sought to delay the present proceedings'. The documents which are sought for but yet to be provide are enlisted as under:*

| *Sl.* | *Particular of Documents* | *Rationale / Remarks* |
|---|---|---|
| *a)* | *Investigation Report prepared in the matter of Shree Sai Spaces Creation Ltd.* | *The findings of the present show cause notice eminates from the investigation report and hence it is extremely important for the Noticees to peruse and analyse the findings recorded and the basis for such finding.* |
| *b)* | *All documents collected during the course of the investigation carried out by SEBI in the matter of the Shree Sai Spaces Creation Ltd* | *Noticees understand that SEBI had collected a lot of papers and documents, during the course of the investigation done by them in the matter of Shree Sai Spaces Creation Ltd. as is being done by SEBi in several other cases including the details of the list of the Businees Associates/ joint venture participants, brochures amount invested by Businees Associates/ joint venture participants etc. These papers which are collected are extremely important and could assist the Noticees to prepare and present their case.* |
| *c)* | *Correspondence exchanged by SEBI and /or your good self with other authorities, including Maharashtra Police in relation to the present matterand/ or any other matter.* | *As stated in the Reply, the Noticees pursuant to the direction of Hon'ble SAT had submitted a proposal before SEBI and accordingly had surrendered all its properties, which are presently under attachment and control of SEBI.*<br><br>*Noticees are of the belief that, SEBI has disposed of with few of its properties and receipts of the same were also appropriated by SEBI. Noticeesintends to find out how much money has been appropriated by SEBI till date from monetising various of their assets.*<br><br>*Further, some of the Noticees' properties were attached by Maharashtra Police on taking cognizance of a compliant by SEBI. Noticees wish to get the copies of all the communications exchanged by SEBI with Maharashtra Police and other authorities in connection with the properties which were attached and what is the status of the properties and who has attachment and control on those properties as on date.*<br><br>*Further SEBI has communicated with various banks and financial institutions including mutual funds, where Noticees have accounts and appropriated assets of the Noticees lying with them. Noticees intend access the communication SEBI had with these institutions and understand how much of their assets were appropriated by SEBI.* |
| *d)* | *Policy document of SEBI for dealing with Enforcement Action, including the cases relating to CIS.* | *In cases of unregistered CIS, where Recovery Proceeding has already been initiated, Adjudicating Proceeding have not initiated. Therefore, Noticees wish to ascertain the policy of SEBI in this regard.* |

*It is submitted that these documents are extremely important and would assist the Noticee to prepare and present an appropriate response in the matter.*

*It is further submitted that the reply submitted by the Noticees in the present matter is preliminary in nature as the same is based on the documents which were provided to the Noticees along with the present SCN; and to place on record Noticees' complete defence in the matter, they would require the documents sought in the preceding paras. It is further submitted that,* *Noticees have always co-operated with SEBI and there was never an opportunity, where they have acted against the directions of SEBI or your goodself. Please note, Noticees were engaged, in a legitimate business activity and all throughout, have abided by existing rules and regulations. Further, when SEBI issued directions against the Noticees, including the direction of not continuing with their business, they acted in good faith and decided in a without prejudice manner to abide by the direction instead of going into the merit of the direction.*

*Subsequently, Noticees vide an appeal approached the Hon'ble Securities Appellate Tribunal against the impugned direction passed by SEBI against them. During the course of Appeal, it was proposed that, Shree Sai Space Creations Ltd. may be allowed to refund the monies collected by it from its Business Associate/ Joint Venture participants and would accordingly submit a proposal before SEBI for the same. It is submitted that Noticees accordingly had submitted a proposal before SEBI in pursuant to the direction of Hon'ble Securities Appellate Tribunal and have voluntarily surrendered all their assets in the disposal of SEBI so that the proposed repayment could be completed. Further, it is submitted during the course of their ongoing negotiation with SEBI for completion of repayment process, that Maharashtra Police acting on a complaint filed by SEBI in another matter, arrested Mr. Suresh Lal Shrivastav (one of the co-noticees and key managerial person He was until recently in judicial custody and therefore even after Noticees' best effort they could not present their case effectively before your goodself, including in the previous date of hearing (i.e. January 05, 2018). Therefore, Noticees humbly request your goodself to provide them with another opportunity of hearing in the present matter, preferably after two weeks from the date of grant of document sought or any date suitable to your goodself.*

*Further it is pertinent to note that the Maharashtra Police taking on the cognizance of SEBI's Compliant and during the course of the investigation have attached all the properties of the Noticees including their personal properties and/or self-acquired properties. Further all the properties of Shree Sai Spaces Creation Ltd and those of its Directors are presently under the attachment of SEBI and to their understanding few of them have already been disposed off. Therefore, it is most humbly submitted that, as on date the Noticees have no assets left with them or means available to monetize in case your goodself decides to impose any penalty qua them. It is most humbly submitted that, these facts including other necessary and relevant facts have not been brought to the notice of your goodself and Noticees wish to use an opportunity of hearing to put forward all the necessary facts on record so that your goodself could take cognizance of the same and render justice.*

*The Noticees state that grave harm and prejudice would be caused to the Noticees if a fresh hearing is not provided to the Noticees in the present matter. Further, it is stated that the balance of convenience is also in the favour of the Noticees as no inconvenience would be caused to any party if another opportunity of hearing is granted to the Noticees.*

*Further, regarding the observation of your goodself regarding the correspondence address of Noticees, it is submitted that the communication address of the Notice No. 1 to 5 is "Sai Villa Bungalow, CDC-50, Vir Sawarkar Road, Puma Nagar, behind H.P. Petrol Pump, Chinchwad, Pune-411019. It appears that since the Noticees have been tied up and have been running from pillar to post in order to comply with the directions or SEBI and/or to attend ongoing legal proceedings against some of the Noticees, the correspondence sent by your goodself may have been returned undelivered. The Noticees most humbly submit that no negative inference should be drawn owing to such non-delivery. The Noticees also request the goodself that any further correspondence may be sent to the Noticees on the present email id so that the issue of non-delivery does not arise in future*

*Noticees most humbly submit that, the present request in not a delaying tactic and request your goodself to consider the request favourably. "*

25. Since the Noticees once again raised request for access to certain information / documents, and also given importance to them to make their further submissions, it was important to address the same. In this regard, vide e-mail dated February 23, 3018 addressed to Noticee no. 1 to 5, following observations / remarks were conveyed w.r.t various documents / information sought by Noticees:

| *Sl.* | *Details sought* | *Reason quoted by Noticees* | *Observations of the AO* |
|---|---|---|---|
| *a)* | *Investigation Report prepared in the matter of Shree Sai Spaces Creation Ltd.* | *The findings of the present show cause notice eminates from the investigation report and hence it is extremely important for the Noticees to peruse and analyse the findings recorded and the basis for such finding.* | *As already been communicated to the Noticees vide email dated February 16, 2018, there is no "investigation report" in existence in the subject matter. Relevant findings and supporting documents relied upon in the present adjudication proceedings have already been provided to Noticees in the SCN dated September 20, 2017.* |

| Sl. | Details sought | Reason quoted by Noticees | Observations of the AO |
|---|---|---|---|
| b) | All documents collected during the course of the investigati on carried out by SEBI in the matter of the Shree Sai Spaces Creation . Ltd | Noticees understand that SEBI had collected a lot of papers and documents, during the course of the investigation done by them in the matter of Shree Sai Spaces Creation Ltd. as is being done by SEBi in several other cases including the details of the list of the Businees Associates/ joint venture participants, brochures amount invested by Businees Associates/ joint venture participants etc. These papers which are collected are extremely important and could assist the Noticees to prepare and present their case. | It is to be noted that SEBI collected information about the Noticees /Company from the Noticees itself. Since this information is of the Noticees and already with the Noticees there cannot be any inkling of any prejudice caused to the Noticees. The Noticees specifically mention the following documents:- the details of the list of the Business Associates/ joint venture participants, brochures amount invested by Business Associates/ joint venture participants etc.<br><br>It is clear that all of the above documents belong to the Noticees and it is already in the possession of these original documents while the SEBI possess copies of the same. Noticees are free to submit any other documents which are available to them, in their defense including those that have not yet been submitted to SEBI till date.<br><br>It may be noted that Noticees are using this ploy of documents at this stage merely to delay the instant proceedings as at no time earlier since the issuance of the SCN in September 2017 have they raised the issue. |
| c) | Correspondenc e exchanged by SEBI and /or your good self with other authorities, including Maharashtra Police in relation to the present matter and/ or any other matter. | As stated in the Reply, the Noticees pursuant to the direction of Hon'ble SAT had submitted a proposal before SEBI and accordingly had surrendered all its properties, which are presently under attachment and control of SEBI.<br><br>Noticees are of the belief that, SEBI has disposed of with few of its properties and receipts of the same were also appropriated by SEBI. Noticees intends to find out how much money has been appropriated by SEBI till date from monetising various of their assets.<br><br>Further, some of the Noticees' properties were attached by Maharashtra Police on taking cognizance of a compliant by SEBI. Noticees wish to get the copies of all the communications exchanged by SEBI with Maharashtra Police and other authorities in connection with the properties which were attached and what is the status of the properties and who has attachment and control on those properties as on date.<br><br>Further SEBI has communicated with various banks and financial institutions including mutual funds, where Noticees have accounts and appropriated assets of the Noticees lying with them. Noticees intend access the communication SEBI had with these institutions and understand how much of their assets were appropriated by SEBI. | It is to be noted that recovery proceedings initiated by SEBI are meant for recovery of amounts pooled by SSSCL by running unauthorised collective investment scheme. Information on the same as required to be, are shared with Noticees, and in case any further information is required, Noticees may approach concerned Recovery Division of SEBI.<br><br>It is to mention that the details which is being sought viz, recovery details, correspondence with police authorities, banks, etc, are not in the possession of the AO, and it is not the subject matter of the allegations and also not relied upon in present adjudication proceedings.<br><br>Noticees are inappropriately using the present proceedings to seek the details of a completely different enforcement proceedings.<br><br>It is to be noted that present proceedings are separate and distinct proceedings from the any other pending proceedings including recovery proceedings against the Noticeees, and the present adjudication proceedings are meant to adjudge into the alleged violations against the Noticees as mentioned in the SCN, and impose penalty, if any liable upon the Noticees.<br><br>. |
| d) | Policy document of SEBI for dealing with | In cases of unregistered CIS, where Recovery Proceeding has already been initiated, Adjudicating Proceeding have not initiated. | There is no such document in the knowledge of the AO, however, the Noticees may seek the document from the Enforcement Department 1 – Division of Regulatory Affairs 3 of SEBI. (contact details provided) |

| Sl. | Details sought | Reason quoted by Noticees | Observations of the AO |
|---|---|---|---|
| | *Enforcement Action, including the cases relating to CIS.* | *Therefore, Noticees wish to ascertain the policy of SEBI in this regard.* | |

26. Considering the request and on insistence of Noticee no. 1 to 5 for another hearing opportunity, vide e-mail dated February 23, 2018 addressed to Noticee no. 1 to 5, a final hearing was granted on March 8, 2018, 11:00 am. In the same e-mail, it was notified that in case noticees wish to submit any further written submissions, same shall be submitted positively latest by March 8, 2018.

27. Authorized representatives of Noticees no. 1 to 5, vide e-mail dated March 6, 2018 requested to reschedule / adjourn the hearing scheduled on March 8, 2018, 11:00 am to March 9, 2018, 3:30 pm or any other suitable date. The above request was acceded to and third opportunity of hearing was granted on March 9, 2018, 3:30 pm.

28. However, on the eve of the due date for filing of the reply, vide e-mail dated March 7, 2018, on behalf of Noticee no. 1 to 5, copy of which was also marked to Enforcement Department, SEBI, following submissions / request was made:

    *"As per your trailing mail dated February 23, 2018, your good self- allowed us to seek this documents from Enforcement Department.*

    *In this regard, it is humbly submitted that the matter is listed on March 8, 2018, before the Adjudicating Authority and in absence of the information /documents sought by the Noticees, we would not be in a position to put forward an appropriate response in the matter. Further, the documents sought for, will not only assist the Noticees to prepare an appropriate response in the matter but may also assist your good self to evaluate the present matter in totality and render justice.*

    *so, it is humbly requested your good self, kindly provide the policy documents of SEBI for dealing with Enforcement Action, including the cases relating to CIS."*

29. Enforcement Department, SEBI, vide its e-mail dated March 7, 2018, informed Noticee no. 1 to 5 stating that *"no policy regarding enforcement actions relating to CIS matters was in existence at the time of initiation of proceedings against you".*

30. On the now rescheduled date of hearing, authorised representatives of the Noticees no. 1 to 5, did not appear for hearing at the scheduled time. However at around 4:15 pm. the representatives showed up and requested that they be heard. Upon request to carry on the hearing proceedings, fourth opportunity was granted and the hearing proceedings were carried and in the same following submissions / undertaking were made on behalf of Noticee no. 1 to 5:

    *"Authorized Representatives (AR) reiterated the submissions made in reply dated February 15, 2018 and contended that no penalty may be imposed.*
    *AR also informed that funds mobilized by Shree Sai Space Creations Ltd (SSSCL) were merely around Rs. 3,95,18,304/- from around 3,080 investors / contributors / JV participants. Further, SSSCL are co-operating with the recovery proceedings with SEBI. AR requested that, in case penalty is to be imposed, the above factors may be considered as mitigating factors, and a lenient view may be taken.*
    *The documents committed to be submitted by March 19, 2018."*

31. On March 19, 2018, instead of submitting documents (as undertaken in the hearing) in support of their contentions, authorised representatives for Noticee no. 1 to 5 once again requested for seeking further time submit the documents. Vide e-mail dated March 19, 2018 from the authorised representatives of Noticee no. 1 to 5, following submissions / request:

*"Please refer to Show Cause Notice dated September 20, 2017, vide which your goodself grant an opportunity of personal hearing before your good self on March 9, 2018.The said hearing was duly attended by the authorized representative of the Noticees. At the onset, we thank your good self for grating a patient hearing.*

*During the Course of hearing your goodself had raised certain queries before the authorised representative and advised them to submit certain documents by March 19, 2018, in relation to the queries raised by your good self.*

*With regard to this, it is submitted that Due to the raid of the Economic Offence wing of Maharashtra Police, the documents and records are confiscated / seized by the EowM. Our Clients are facing some difficulty to arrange and submission of the document before your goodself. However, our clients are making some arrangement for the submission of same.*

*In this regard, we humbly request your good self to kindly give 7 days' time for the submission of the documents."*

32. Further, once again Noticee no. 1 to 5 raise the issue of policy. Vide e-mail dated March 20, 2018, on behalf of the Noticee No. 1 to 5, to Enforcement Department, SEBI, following submissions / request was made:

*"Please refer to the trail mails vide which we had sought the copy of the Enforcement Action Policy relating to the case pertaining to CIS. In response to the said mail, your goodself vide the trail mail dated March 07, 2018 had stated that at the time of issuance of the Show Cause Notice in the present matter, no Enforcement Action Policy relating to the case pertaining to CIS was prevalent and governing the issuance of the present Show cause notice and initiation of adjudication proceeding against us.*

*Accordingly, through this mail, we request your goodself to intimate us if there is any Enforcement Action Policy relating to the case pertaining to CIS available at present which will guide the decision of the Hon'ble Adjudicating Officer with regards to us in the present proceeding pending before him. Further, we request your goodself to provide us with the copy of the Enforcement Action Policy, if any prevailing and applicable in the present case.*

*In this regard, it is submitted that Enforcement Policy so sought will not only assist our case to put forward an appropriate response in the present matter but may also assist the Hon'ble Adjudicating Officer to analysis the facts and circumstances in the present matter in totality and render justice.*

*We humbly request your goodself to consider our request and provide the same at at the earliest instance."*

33. Enforcement Department, SEBI, vide e-mail dated March 21, 2018 to Noticees informed that the policy document being sought is an internal document and hence can't be shared, while applicability of policy to Noticees would be considered before passing of order by the Adjudicating Officer.

34. Vide letter dated March 26, 2018, Authorised Representatives made following key submissions on behalf of Noticee No. 1 to 5 and same were taken on record:

*"With respect to question of whether separate ledger account maintained for the joint venture participants/ business associates, it is submitted that our clients reiterate that no pooling of contribution / investment for collective utilisation of funds, and the said investments made by joint venture participants / business associates are identifiable, separate and independent, because each joint venture participants / business associates investment are treated separately and made against a particular unit, which is registered or transferred in their name. Copy of sample ledger account of joint venture participants / business associates hereto is annexued as Annexure A(hereunder, documents submitted by Noticees are viz, a) list of allocation of land to 370 investors, and b) ledger entries and MOUs in respect of 12 investors).*

*In relations to Management Committee, it is submitted and reiterated that joint venture participants / business associates have a day to day control over the solar power project through the management committee, and the said committee is mutually appointed by the joint venture participants / business associates and the company. Copy of the extract of the meeting of the joint venture participants / business associates and company is provided wherein the decision to constitute the management committee and its bylaws / code were passed and hereto annexed as Annexure B.*

*Furthermore, in relation to the question that whether the company has prepared any project report on the proposed solar power project, it is submitted that there is a project report on solar power project available for perusal by the joint venture participants / business associates. A certified copy the said project report is annexed hereto as Annexure C."*

## CONSIDERATION OF ISSUES AND FINDINGS

35. The issues as set forth in the SCN, the reply of the Noticee to SCN, submissions made in the personal hearing, and other material, if any, on record, culminate in consideration of following issues:
    a) Whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act and Regulation 3 of CIS Regulations, 1999 by running Collective Investment Scheme without obtaining registration from SEBI?
    b) If yes, does the violations attract monetary penalty under Section 15D(a) of the SEBI Act?
    c) If yes, what quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act t?

36. Before going to findings it is important to refer to the provisions of Section 12(1B) of SEBI Act and Regulation 3 of CIS Regulations, 1999, alleged to have been violated by the Noticees. The same read as follows:

**Section 12(1B) of SEBI Act**

> ***1B)*** *No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:*
> *Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.*
> *Explanation- For the removal of doubts, it is hereby declared that, for purposes of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.*

**Regulation 3 of CIS Regulations, 1999**

> ***No Person Other than Collective Investment Management Company to launch collective investment scheme***
> ***3.*** *No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.*

37. Further, it would be appropriate to bring on record details of requests made by the Noticees and how the same have been satisfied in the interest of principles of natural justice.

38. Notice no. 1 to 5 contended in their reply to SCN that they are not provided with the documents which are either collected by SEBI while investigating the matter, or relied upon by undersigned while issuing the SCN. In this regard, Noticees requested to provide copy of investigation report, all document collected during the course of investigation carried out by SEBI, correspondence exchanged by SEBI and Office of Adjudicating Officer, with other authorities including Maharashtra Police, policy document of SEBI for dealing with enforcement action in cases related to CIS, and

minutes in which WTM, SEBI approved or provided / recorded reasons for initiating enforcement action against the noticees.

39. In this regard, point wise information was provided to Noticees as detailed earlier in this Order, wherein inter-alia it has been informed that there is no investigation report in the matter, the relevant findings / information / documents relied upon in the present proceedings have been already provided in the SCN. Copy of the proceedings wherein enforcement action was initiated in the present matter was provided with. As regards to enforcement policy sought by Noticees, it has been informed to them that there was no such policy in existence at the time of initiation of enforcement actions against the Noticees, and further policy would be considered depending on applicability of the same in present case.

40. It is a matter of record that SCN was issued on September 20, 2017 and the same could not be delivered to Noticees no. 1 to 5 at their address viz, "*Sai Villa Bungalow, CDC-50, Vir Sawarkar Road, Purna Nagar, behind H.P. Petrol Pump, Chinchwad, Pune- 411019",* despite confirmation from Noticees, stating that the above is the current communication address. Subsequently, communication was established via e-mail mode as also preferred by Noticees no. 1 to 5. It is also a matter of record that enough opportunities have been given to Noticees to make their submissions, through various extension of times to make written submissions, and also four personal hearings have been given to them. Further, Noticees no. 1 to 5 have been provided with information / clarification on their queries sought by them after submission of their written submissions. Hence, it is clear that Noticees have been provided with all possible and sufficient opportunities, and enough latitude as part of the present proceedings to help make their submissions in the matter.

41. Noticees no. 1 to 5, in the hearing availed on March 9, 2018, had undertaken to provide further documents in support of their contention that the scheme run by them was not pooling of funds under scope of CIS. For the same they were provided with time till March 19, 2018, however, they failed to provide the said documents on time given, and additional submissions which were received at SEBI only on March 26, 2018 have been examined at relevant places in this order.

## FINDINGS

42. Document perused as part of the present proceedings include application for JV/scheme participation, acknowledgement certificate for JV/scheme participation, application for BASP, 13 MOUs for JV/scheme participation, guidebook / brochure for JV/scheme participation, reply of SSCL to SEBI vide letter dated October 21, 2013 and November 14, 2013, copy of which are already provided to Noticees along with the SCN. Further, list of investors/contributors/JV participants comprising their names and addresses have been referred which was provided by SSSCL to SEBI. On perusal of the said information / documents, following is noted about the scheme operated by SSSCL.

42.1 SSSCL collects money from the investors/contributors/JV participants against proposed development of the solar energy project / scheme. The said monies are mobilized and utilised for the purposes of the scheme, i.e. opportunity to own a developed unit of land which is equipped to generate solar energy.

42.2 Various plans offered under the scheme of SSSCL bear a certain reference number viz, SS01, SS02, SS03, SS04, SS05, SS06, SS07, for periods ranging from 4 to 7 years, wherein amount payable is on one time basis or in form of periodic instalments. All the plans have accidental death compensation feature, and offer units sizes of 0.5 to 40 (1 unit= 500 Sq ft of land).

42.3 The marketing of the Project/scheme was done through the agents/Business Associate Service Provider (BASP) appointed by SSSCL.

42.4 Application form for the scheme / JV participation captures all the basic details of investor/contributor/JV participant viz, Name, address, DOB, annual income, bank account details, and also details of plan being subscribed viz, plan no., term of plan, consideration value, date of commencement, payment made and its mode, etc.

42.5 Acknowledgement certificate captures the details of investors/contributors/JV participants, application form no., expected sum of JV participation on expiry of period (indicating expected returns) and separately in words the expected amount payable in words, expiry date of term, etc.

42.6 Investors/contributors/JV participants which are interested in the said project/scheme of SSSCL are made to enter into a MOU with SSSCL after filing the application for Joint Venture (JV) Participation. MOU is the key document which states terms of relation between SSSCL and the investors/ contributors / JV participants. As per own submissions of SSSCL in its letter dated October 21, 2013 to SEBI it was submitted that "*SSSCL is carrying on joint venture participation business which is in its true sense is completely based on MOU duly executed in between the intended participator and the SSSCL for the purpose of business and development of the product in the name of the participant and which will be only for the participants own purpose and benefit"*. Beside one copy of MOU placed on record in said letter dated October 21, 2013, SSSCL in its last submissions dated March 26, 2018 has further provided copies of 12 MOUs, and from the same inter-alia following information and agreement terms are noted:

a) *With a view to contribute in such a major problem (shortage of electricity) worldwide and to develop new source of energy generation for betterment of public at large the SSSCL has decided to develop (Chakan MIDC Pune Maharashtra) by name and style "Shree Sai non-conventional Energy Pvt Ltd". The SSSCL is willing to develop the said project in three phases. The SSSCL is producing different solar based equipment / products such as solar panel, solar invertor, solar refrigerator, solar energy, solar lighting, solar cooker, solar water heater, ec.*
b) *And whereas the investor/contributor/JV participant <u>hereby desires and agrees to participate in the project of the SSSCL by way of his participation only with limited liability for the amount paid by investor / contributor for either the time period mentioned or mutually agreed by both the parties</u>.*
c) *And whereas the SSSCL has undertaken projects for their business at Branch / head office / project office level, described in participation plans SS01, SS02, SS03, SS04, SS05, SS06, SS07 for various periods in pursuance of requirement, duration, tenure and nature of the project, indicating the participation and compensation thereof to the investor/contributor/JV participant, on completion , termination, breach of agreement, or mutual agreement, including indemnity of the return of the participation amount under these presents joint ventureship agreement to the investor/contributor/JV participant and shall co-operate in order to run the project and to achieve objective decided to participate in the said project, by these presents.*

d) *MOU mentions basic details viz, MOU number, Date, Name of investor / contributor, total amount invested by investor / contributor along with detail of instalment / deferred payment, period / duration of investment, expected amount of compensation / return on investment <u>which will be dependent on work done by investor / contributor during the participation period</u>.*
e) *This MOU is based on land (detail) described in the MOU. The said land detail mention / describe a land area (in acres) situated in certain village / tehsil / district of Maharashtra state, and it further mention that from the said undivided land, share of investor/contributor/JV participant is a smaller land part (in square feet) having part number "MH……." in the display document / map maintained by the company.*
f) *Irrespective of the success or otherwise of the projects undertaken by the SSSCL, <u>hereby undertake, and assure the consideration participation amount in pro rata or otherwise</u>, including the contingency of the project to the investor / contributor, subject to the agreement.*
g) *<u>SSSCL will look after the manpower, management machine, administration and monetary aspect of the project. And the investor/contributor/JV participant has entrusted full, absolute authority and performance of the project and agreed to co-operate in order to achieve the objectives of the project of the SSSCL</u>.*
h) *Project on joint venture shall be participated by the competent business associates or the investor / contributors, all over India.*
i) *<u>The company shall prepare, execute and implement the projects by engaging all the working staff</u> such as clerks, peons, accountants, cashiers, salesmen, officers, managers, associates, partners, and the technical staff, and the <u>same shall be appointed by the SSSCL only</u> and decide their emoluments and service terms and conditions in pursuance with the law.*
j) *The <u>SSSCL shall bear and own all the tangible and intangible assets of the projects, including the goodwill, license, permits, registrations, contracts and the investor/contributor/JV participant has agreed to aid and assist in the manner as required by the SSSCL</u>.*
k) *On completion of the project, the investor / contributor shall be entitled to withdraw from the said project.*
l) *Investor/contributor/JV participant agrees with the SSSCL that they shall not mortgage, lease, lien, charge, sub-let or take loan on the basis of participation in the project. The investor / contributor shall not claim partnership, nor assign, transfer, sell their participation in the joint venture, in the project of the SSSCL.*
m) *Investor / contributor / JV participant further agrees that on the basis of their participation in the project shall not stand as a guarantor, surety for any reason in respect of their participation amount in the project of SSSCL.*
n) *It has been specifically made clear and understood by both the parties that on completion of the project and respective obligation there shall be no nexus for any matter or any way either financial or otherwise between both the parties. And the participation of joint venture shall stand terminated automatically.*
o) *The SSSCL shall have option to revive, amend, add, alter, delete the project or the agreement of the participation, procedures without affecting the participatory benefits of the investor / contributor.*

42.7 From the list of investors / contributors / JV participants provided by SSSCL, it is noted that there are 12,512 records, including multiple records for a particular investor having same address. It is also noted from the said list that most of the investors / contributors / JV participants of SSSCL belong to States viz, UP, Haryana, Rajasthan, MP, Gujarat. Only less than 10 records were found which have address in state of Maharashtra.

**Issue a) - Whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act and Regulation 3 of CIS Regulations, 1999 by running Collective Investment Scheme without obtaining registration from SEBI?**

43. The first issue is whether the Noticees have violated the provisions of Section 12(1B) of SEBI Act, 1992 read with Regulation 3 of CIS Regulations by running Collective Investment Scheme without obtaining certificate of registration from SEBI. Section 12(1B) of SEBI Act and Regulation 3 of CIS Regulations, 1999, clearly specify that no person shall sponsor or carry on with inter-alia a collective investment scheme unless he obtains a certificate of registration from SEBI. A Collective Investment Scheme as defined in Section 11AA(2) of SEBI Act shall have following ingredients:

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;
(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;
(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
(iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.

44. With respect to allegations against the Noticees, Noticee no. 1 to 5 have made common submissions, while Noticee no. 6 made his submissions separately. From the said submissions of Noticees, it is noted that Noticee no. 1 to 5 have contended that the scheme run by SSSCL does not fall under ambit of SEBI Regulations and was not in nature of CIS. On the other hand, submissions of Noticee no. 6 included key submission that he believed that SSSCL was running schemes / activities prohibited under SEBI regulations which led to his decision to resign from being Director of SSSCL and end his association, his limited relation / exposure with the SSSCL and its activities during the short time he was Director in SSSCL. In this regard, separate submissions / contentions made by Noticees, have been dealt with separately in following paras:

**Findings with respect to submissions / contentions made by Noticee no. 1 to 5**

45. Detailed submissions of the Noticee no. 1 to 5 have been covered in pre-pages. Though due consideration has been given to said detailed submissions, key submissions and contentions have been referred while mentioning the findings herein under.

46. Noticee no. 1 to 5 in their reply to SCN have contended that "*there is no pooling of contributors, investors for collective utilization as each joint venture participants / business associates investment is treated separately and is made against a particular unit, which is registered or transferred in his name. As per the terms of the joint venture arrangement, the initial investment for the development of a unit is made by the company (noticee no. 1) and subsequently as and when, a unit is further developed as and when investment is received from a particular joint venture participant / business associate. Thus, all the transaction with the joint venture participant / business associate are separate, independent and the object of carrying out overall project / scheme, thus activity carried out by the company and other noticees does not satisfy the first condition as stipulated in section 11AA(2)(i) of the SEBI Act.*"

47. Further, said noticees in their submissions dated March 26, 2018 reiterated that "*there is no pooling of contribution / investment for the collective utilization of the funds, and the said investments made by investor / contributors are identifiable, separate and independent because each investor/contributor/JV participant is treated separately and made against a particular unit, which is registered or transferred in their name*". To substantiate this

claim, copies of 12 MOUs entered with eleven investors/contributors/JV participants and one page each of ledger entry showing investment by said investors/contributors/JV participants have been submitted.

48. Noticees have submitted ledger entries showing receipt of funds (in instalments) from investors / contributors, and the same shows that investments made by investors/contributors/JV participants in the scheme are identifiable. It is noted from the 12 MOUs and leger entries provided by Noticees, that SSSCL has pooled varied amounts as low as Rs. 25,000, Rs.50,000, etc, from investors / contributors / JV participants and that too in small instalments as low as Rs. 5,000, etc. It is not possible to treat and utilize these small amounts independently / separately specifically looking at the costly procurements for the scheme / project which include land, and solar energy generating equipment. Procurement of these assets require large amount of funds, which even if are advanced from the company funds, later required to be accounted against the larger pool of funds received from investors / contributors. Hence, contention of Noticees that the said investments are not pooled, and they were treated separately and are independent from each other, is not tenable.

49. As regards contention that subsequently land unit allocated to investor/contributor/JV participant is transferred in his name, it is noted from the MOUs and land allocation list provided in submissions dated March 26, 2018, that land unit shown allocated to investor/contributor/JV participant is not registered in their name as no such credible evidence has been provided.

50. It is to be noted that copy of MOU and list of land allocation prepared by SSSCL, is not a credible document to claim registration or transfer of land in the name of investor/contributor/JV participant. Further, all the said MOUs specifically mention that SSSCL bear and own all the tangible assets (project includes land as an important asset) of the scheme of SSSCL and thereby, investor/contributor/JV participant has no right over the same. This belies the claim of the noticees that the investors have segregation of ownership over their investments assets.

51. This is further substantiated by the clause in MOU stating that the investor / contributor cannot mortgage, lease, lien, charge, sub-let or take loan on the basis of participation in the project. If indeed the assets were to be individually demarcated, it would be reasonably expected for the investor to have access as prohibited in these clauses in the MoU.

52. It is also pertinent to note that the map of the land parcel identifying the land unit allocated to investor / contributor/JV participant, as mentioned in the MOU, is not made part of the MOU. It is clear that the said allocation of land unit to investor/contributor/JV participant as mentioned in the MOU, remains on paper only and no actual allocation happens and thereby investor/contributor/JV participant don't get right over the same.

53. On perusal of JV Participation plan/ brochure/guide book and sample MOUs submitted by SSSCL, it is noted that SSSCL collects money from the investors/contributors/JV participants against proposed development of the solar energy project / scheme. The said monies are mobilized and utilised for the purposes of the scheme, i.e. opportunity to own a developed unit of land which is equipped to generate solar energy. Hence, it is clear that the scheme offered by the SSSCL satisfies the first condition stipulated in section 11AA(2)(i) of SEBI Act which states that "*the contributions, or*

*payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement*".

54. Noticee no. 1 to 5 in their reply to SCN have contended that *investment made by the investor/contributor/JV participant was not ideal investment and it required greater participation from them in the management / operation of the units, therefore, the investment so made as per the scheme does not guarantee any ideal income / profit. There is no promised return or ideal income which a joint venture participants / business associate receives. Section 11AA of SEBI Act covers those income, profit, and / or return either which are guaranteed and / or promised or of those nature which could be generated without any participation from the contributors. However, in the present case, the same is not true, as the income generated firstly is not guaranteed as promised, secondly the joint venture participants / business associate has complete discretion on disposal / manner of the monetization of the product. Therefore, the income generated in the scheme require active participation from the joint venture participants / business associate. In the light of the aforesaid, it is submitted that, the income generated in the present scheme cannot be equated with the promised income, and / or guaranteed return and / or profits which are dealt in section 11AA2(ii) of the SEBI Act is not satisfied in the present case.*

55. MOU mentions that liability of the investor/contributor/JV participant is limited to money invested in the scheme for the period / duration of the scheme, however, contrary to the same it is also mentioned in the MOU that the extent of the expected compensation / return will depends on work done by investor/contributor/JV participant during the participation period. It is pertinent to note that though MOU on various places mention that investor/contributor/JV participant has to work to achieve the objects of the scheme, co-operate with the SSSCL, etc, however, nowhere in the MOU or otherwise in various submissions of Noticees as part of the present proceedings it is specified what work is required at the end of investor/contributor/JV participant.

56. On perusal of list of investors/contributors/JV participants of SSSCL, it is noted that most of them belong to States viz, UP, Haryana, Rajasthan, MP and Gujarat, and there are less than 10 of them belonging to state of Maharashtra where the site of the project/scheme of SSSCL is located. On perusal of the copy of MOUs provided by Noticees, it is noted that they have been allotted land in Raigarh district in Maharashtra, however, only 1 of the said 12 investors/contributors /JV participants is from Maharashtra, and rest 11 are from other states viz, Chhattisgarh (3), Madhya Pradesh (3), Uttar Pradesh (3), and Rajasthan (2). It is peculiar and impractical that how investors/contributors/JV participants residing in faraway places from the location of scheme/project were expected to actively participate in operation of land unit allocated to them in Raigarh, Maharashtra.

57. It is pertinent to note that, Noticees have not shown any actual instances where investors/contributors/JV participants were working, or would have possibly work on the project/scheme/units of SSSCL. Hence, given the findings above, the contention that the *"investment / contribution made by investor/contributor/JV participant was not ideal/promised income as it require greater participation from them in management/operation of the units"* is not tenable and same appears to have been made to merely misled.

58. It is noted that the contribution/payments are made by the investors/contributors/JV participants to SSSCL by selecting a particular investment option/plan tabulated in the 'JV Participation plan'/ brochure/guide book, wherein against the plan option expected refund amount is also given. Further, the 'acknowledgement certificate' and the MOU record the amount being invested, the tenure of the

plan, and expected compensation/refund (which include the principal and return) payable to investor/contributor/JV participant on completion of scheme. MOU also mentions that liability of the investor/contributor/JV participant is limited to money invested in the scheme for the period/duration of the scheme. Further, contrary to the claim of SSSCL, MOU does not mention that investor/contributor will receive developed piece of land/solar energy generating equipment, even though it specifically mention that investor/contributor/JV participant will get certain expected compensation/refund. MOU further specifically states that on completion of the project, the investor/contributor/JV participant shall be entitled to withdraw from the said project. Further, even if consideration is to be given to submission that investors/contributors/JV participant were to be provided in place of cash return, the rights over land and equipment/unit for solar energy generation, it is clear that some produce or property is being promised by the SSSCL for investment in the scheme/JV participation. Hence, it is clear that the scheme offered by the SSSCL satisfies the second condition stipulated in section 11AA(2)(ii) of SEBI Act which states that "*the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement*".

59. Noticee no. 1 to 5 in their reply to SCN have contended that "*In the present case, the joint venture participants have right to manage the product and have the control on the project through the management committee. Hence, it is submitted that the present case does not satisfy the third condition as stipulated in section 11AA2(iii) of the SEBI Act.".*

60. Noticee no. 1 to 5, in their later submissions dated March 26, 2018 reiterated that "*submitted and reiterated that joint venture participants/business associates have a day to day control over the solar power project through the management committee, and the said committee is mutually appointed by the joint venture participants/business associates and the company.* To substantiate its contention about the management committee, Noticees have submitted copy of the extract of a meeting of the investors/contributors/JV participants, business associates and company wherein the decision to constitute the management committee and its bylaws/code was made.

61. From the perusal of extracts of meeting dated April 17, 2013 submitted by Noticees in support of their contention about management committee, following is noted:
   a) *Meeting was held on April 17, 2013, agenda / subject of the meeting was Formation of Committee of Management for solar power plant, at address: Office no. 2, Plot no. 25, Malu Trade Center, Chikhali District Centre (CDC), Chikali – Pradhikaran, Chinchwad, Pune – 411019.*
   b) *Meeting was attended by Group of JV participants (**names not recorded**) and Suresh Lal Shrivastav, Ritesh Shrivastav, Vijay Khare, Surendra Patidar, Munesh Varma, H N Dangi, Paresh Baghel, Yogendra Lodi and Amit Pathak.*
   c) *Narration / Proceeds of the meeting were recorded as follows:*
      (i) *Meeting was called by Chairman Suresh Lal Shrivastav to discuss system of management of solar power plant and elect management committee to look after day to day activities of the project.*
      (ii) *After a detailed discussion it was decided to A. To form guideline and code of conduct for governing day to day activities of the proposed solar power plant, B. To procure and develop the land suitable for the project, C. To prepare project report of the plant, and D. To elect members of "Committee of Management".*
      (iii) *By majority of raising hands, Mr. Suresh Lal Shrivastav, Mr. Ritesh Kumar Shrivastav and Mr. Vijay Khare were elected "Committee members of Management".*
      (iv) *A document titled "Joint venture participants management committee code" is also enclosed with the minutes, which provides detailed code for management committee. It inter-alia mentions the functions of the Committee as to manage and control the solar power project and take decision on behalf of the joint venture participants provided that if decisions are taken by the company for the interest of all the joint venture participants, then preference will be given to the company decision after due consideration of opinion of management committee.*

62. It is pertinent to note that though the name of Directors of SSSCL and others have been recorded in the minutes, however, conspicuously no names of investors/contributors/JV participants- who were projected to be the key stakeholders in the Management Committee have been recorded and they are merely referred to as group of JV participants. Thus it is not a credible claim that the investors were indeed even present in the meeting. It also raises serious doubts as to whether any such meeting ever took place and also whether the document now produced is concocted.

63. Given the fact that meeting was held in Pune, Maharashtra and most of the investors/contributors/JV participants of SSSCL belongs to areas outside the state of Maharashtra, there are serious questions whether investors/contributors/JV participants actually attended the said meeting, and if yes, then in how many numbers they attended.

64. Further, decision in the said meeting electing three persons including Mr. Suresh Lal Shrivastav and Mr. Ritesh Kumar Shrivastav has strong conflict of interest as they are also the Directors of SSSCL, and is the strongest piece of evidence that the management of the schemes and assets were with the noticees and not with the investors as sought to be presented by the noticees.

65. It is also to be noted that no investor/contributor/JV participant is member of the management committee. In a gist, based on submissions of the Noticees, management committee was set up in a meeting where there is no credible record of attendance of investors/contributors/JV participants, the management committee so setup is comprising of Directors of SSSCL and no investor/contributor/JV participant is member, and further the scope/functions of management committee states that decision taken by management committee on behalf of investors/contributors/JV participants is not binding on SSSCL.

66. On perusal of 1 MOU already on record and 12 more MOUs submitted by the Noticees no. 1 to 5 (which are all signed after April 17, 2013 when management committee was set up), it is noted that nowhere in the said MOUs it is mentioned that investors/contributors/JV participants control the activities/project/scheme of SSSCL through the management committee. On the contrary, said MOUs specifically state that "*SSSCL will look after the manpower, management machine, administration and monetary aspect of the project. And the investor/contributor/JV participant have entrusted full, absolute authority and performance of the project and agreed to co-operate in order to achieve the objectives of the project of the SSSCL",* and further, the said MOUs also specify that "*The SSSCL shall prepare, execute and implement the projects by engaging all the working staff such as clerks, peons, accountants, cashiers, salesmen, officers, managers, associates, partners, and the technical staff, and the same shall be appointed by the SSSCL only and decide their emoluments and service terms and conditions in pursuance with the law"* .

67. It is pertinent to note that Noticees have portrayed the management committee as one of their main contention in the present proceedings only, and these contentions were not made in earlier reply / submissions of SSSCL to SEBI (copy of which also shared with the Noticees). Above findings clearly shows that it was only directors of SSSCL which were part of the so called management committee, and hence, it was SSSCL /its Directors who were managing the affairs of SSSCL. In absence of credible evidence in this regard, it is compelling to note that the façade of the management committee has been constructed, and is misleading. Thus, the contention of the noticees that investors/contributors/JV participants appointed the management committee, and through this management committee they had day to day control over the activities/solar power project of SSSCL, is not tenable.

68. The SSSCL, in the MOU, has specifically mentioned that SSSCL will look after the man power, machines, administration and financial aspects of the project/scheme. As further stated in the MOU, SSSCL will appoint clerks, accountants, cashier, salesman, officers, managers, assistants, associates, and technicians to prepare the project, to implement it, and also fix their remuneration, service conditions, etc as per law. It is clear that the investor/contributor/JV participant is merely required to make investment with assurance of certain compensation/refund at the end of tenure for which investment is made. It is SSSCL which manages the property, contribution/investment under the scheme of SSSCL on behalf of investors/contributors/JV participants. The same, therefore, satisfies the third condition as stipulated in Section 11AA(2)(iii) of the SEBI Act, 1992 which states that "*the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors*".

69. Noticee no. 1 to 5 have further contended that "*In the present case, joint venture participant/business associate has a day to day control on the project through the management committee which can inspect/check the operations/management, and also investor/contributor/JV participant can visit/inspect the project with prior approval. Hence, the last condition as stipulated in Section 11AA(2)(iv) of the SEBI Act, is not satisfied in the present case*"

70. It is noted that the contribution/ investment are managed by the SSSCL on behalf of the investors/contributors/JV participants, and they do not have any role in the management and operation of schemes/arrangements of SSSCL. The investors/contributors/JV participants have no role to participate in the acquisition, development and management of the project. The investors/contributors/JV participants do not have any control on the money spent or on the nature of development of the project as they are managed by the SSSCL exclusively without any involvement of the investors/contributors/JV participants, and even the so called management committee is run by Directors of SSSCL. The investors/contributors/JV participants do not have accessibility to do anything on the proposed unit of the project/scheme, and they merely have visitation rights with prior permission. The so called control on operations through the management committee is not real, as the management committee comprise of directors of SSSCL, none of the investors and also this committee has no decision making authority. Hence, it is clear that the contributors/ investors does not have day to day control over the scheme, and under the scheme over plot of land/property as the same remained in the custody/use of SSSCL. The above findings satisfies the fourth condition as stipulated in Section 11AA(2)(iv) of the SEBI Act which states that "*the investors do not have day-to-day control over the management and operation of the scheme or arrangement*".

## Findings with respect to submissions / contentions made by Noticee no. 6

71. Noticee no. 6 in his reply to SCN has submitted that he is having IT/computer background and was working with various entities including govt. bodies/establishments. As he wanted to grow his business, decided to associate with SSSCL. Being a nominal director, he *did not draw any monitory benefit as a salary or honorarium or nay other financial benefits attached to the office of director from the company (SSSCL). Even though the company has committed any irregularities, he was personally not involved in activity of the company and being director on the board of the company for a very short period of 8-9 months (technically), his case may be looked sympathetically and absolve him of all the allegations.*

72. From the records, it is noted that SSSCL was incorporated on August 07, 2012. Mr. Rajkumar Laxman Konde, was appointed as director of SSSCL on August 08, 2012 and resigned from the post on April 29, 2013, though the relevant 'Form 32' mentions resignation date as May 06, 2013. Mr. Rajkumar Laxman Konde was one of the director of SSSCL during period August 8, 2012 to May 6, 2013, a fact not disputed by Mr Konde. Mr Konde has contended on his limited role in the entire scheme of things, where he has mentioned that he was merely incharge of the software solutions being offered to the company and he was not aware of the exact business model. Further that he was offered to take on bigger role in the running of the company which he declined, and offered to resign as he was not comfortable with the whatever little business model of the company he came to know from executing the software solution for the company.

73. Be that as it may even if the contention of the Noticee is taken at face value, it is undeniable that he was the director during the operation of the collection of the moneys by the company. Being a director he cannot be excused from the responsibility for the actions that took during his directorship of the company. Hence, it is concluded that Mr. Rajkumar Laxman Konde is responsible for the violations committed by the SSSCL during the same period when he was the Director.

74. Though the scheme of SSSCL is portrayed (by SSSCL) as joint venture between SSSCL and investors / contributors who are called as joint venture participant, however, there are no traits of actual joint venture. As found above, scheme of SSSCL satisfies all four ingredients of Collective Investment Scheme, and to carry on with the same required a necessary registration from SEBI.

75. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations.

76. Regulation 3 of the CIS Regulations, 1999 provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'collective investment scheme'. A person can launch or sponsor or cause to sponsor a collective investment scheme only if it is registered with SEBI as a Collective Investment Management Company.

77. Therefore, the launching/floating/sponsoring/causing to sponsor any 'collective investment scheme' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations,1999 is in violation of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations, 1999.

78. Given the above findings, it is noted that the Noticees namely the company SSSCL and its directors launched a CIS Scheme without obtaining certificate of registration from SEBI, thereby violated the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations, 1999.

**Issue b) - If yes, does the violations attract monetary penalty under Section 15D(a) of the SEBI Act?**

79. Reference is made to the judgment of Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) wherein it was held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

80. Thus, it is clear that where there has been a violation, the penalty would follow. Violations established against the Noticees, attract monetary penalty under Section 15D(a) of the SEBI Act. The text of the said provision is as follows:

> ***15D.*** *If any person, who is—*
>
> ***(a)*** *required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees;*

**Issue c) - If yes, what quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act t?**

81. While determining the quantum of penalty under section 15A(b) of SEBI Ac, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as follows:

> ***Factors to be taken into account by the Adjudicating Officer***
>
> *While adjudging quantum of penalty under section 15-I of SEBI Act / section 23-I of SCR Act , the adjudicating officer shall have due regard to the following factors, namely:-*
>
> (a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> (b) *the amount of loss caused to an investor or group of investors as a result of the default;*
> (c) *the repetitive nature of the default."*

82. Noticee no. 1 to 5 have contended that in the present matter, SEBI had taken all the corrective measure and recovery proceeding already initiated. So, it is contended that the violation of Section 12 (1B) of SEBI Act, 1992, has to be read with Section 15J of the SEBI Act, and after applying the factors of 15 J of the SEBI Act, it is clear that the violation of the Regulations become only technical in nature, and not involving any disproportionate gain to the Noticees, or unfair advantage or loss to any investor.

83. Loss to investors and/or disproportionate gains to Noticees, are not ruled out in the present case, however, details related to its existence, if any, and extent are not placed on record.

84. It is noted that the recovery proceedings initiated by SEBI are separate proceedings (from present proceedings) and meant to recover funds pooled by SSSCL by running unregistered CIS. Given the above, it cannot be held as a penal measure but has to be seen as merely a corrective measure to recover funds.

85. Further, it is seen from the records that debarment directions passed by SEBI in respect of Noticees were for running unregistered CIS and are currently in force. Hence, the present adjudication

proceedings against Noticees are parallel proceedings in context of allegations of running unregistered CIS.

86. Noticees no. 1 to 5 have referred following judgements to contend that either penalty is not to be imposed, or a lower penalty is warranted in present case:

a) *Hon'ble Supreme Court's decision in the case of Hindustan Steel vs. State of Orissa (AIR 1970 SC 253) where it was held as follows: "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."*

b) *Hon'ble Apex Court in the case of Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212) inter alia held that:"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."*

c) *Ranjit Thakur vs. Union of India (AIR 1987 SC 2386) it was held that: "The Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and the emphasis is that all powers have legal limits."*

87. Given the findings in the present matter, it is clear that Noticees have violated the section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations, 1999 and for the same penalty has to accordingly follow. However, while deciding the quantum of penalty, factors requiring consideration include viz, gravity of misconduct, whether recovery proceedings or refund to investors have been completed, so that any harsh penalty should not jeopardise interest of investors since recovery process is still on.

88. In present matter, gravity of misconduct can also be seen in terms of no. of investors and amount pooled by SSSCL, which as per submissions of the Noticees comprise around 3,080 investors and pooled amount of Rs. 3.95 Crore. It is also matter of record that Noticee no. 6 was director of SSSCL for nine months during August 8, 2012 to May 6, 2013, hence, he is responsible for conduct of SSSCL during such period only. Further, there is no evidence on record showing that recovery proceedings have been completed, or repayment to investors has been done. After taking consideration of these factors, no leniency is warranted and a justifiable penalty is required to be imposed.

## **ORDER**

89. In view of the above, after taking into consideration all the facts and circumstances of the case, violation established as mentioned above, and after considering the factors enumerated in section 15Jof

the SEBI Act, I, under provisions of section 15D(a) of SEBI Act impose following penalty upon the respective Noticees:

**a)** Rs.25,00,000/- (Rupees Twenty Five Lakh only ), jointly and severally, upon Noticee no. 1 to 5 viz, Shree Sai Spaces Creations Ltd, Suresh Lal Shrivastav, Laxmi Suresh Lal Shrivastav, Riteh Kumar Shrivastav and Vivek Kumar Shrivastav; and

b) Rs.2,50,000/- (Rupees Two Lakh and Fifty Thousand only) upon Noticee no. 6 viz, Rajkumar Laxman Konde

90. The Noticees shall remit / pay the said amount (total amount Rs. Twenty Seven Lakh Fifty Thousand only) of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

| **Account No. for remittance of penalties levied by Adjudication Officer** | |
|---|---|
| Bank Name | State Bank of India |
| Branch | Bandra Kurla Complex |
| RTGS Code | SBIN0004380 |
| Beneficiary Name | SEBI – Penalties Remittable To Government of India |
| Beneficiary A/c No. | 31465271959 |

91. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action 3 [ EFD1-DRA3 ], SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name :
2. Name of Payee:
3. Date of payment:
4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

92. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

**Date: April 5, 2018**
**Place: Mumbai**

**Jeevan Sonparote**
**Adjudicating Officer**