BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/RM/2022-23/18098-18099]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of –

1. **Banwari Lal Baghel** S/o Sh. Ram Deen Baghel, **PAN: AMUPB0580E** having address at - Flat No. 13, Sudarshan Apartment, I.P. Extension, Patparganj, New Delhi - 110092

2. **Surendra Singh Baghel** S/o Sh. Puttu Singh Baghel, **PAN: AQDPB0485F** 97/26, Gali No.3, M J S College ke Peeche, Vinod Nagar, Bhind, Madhya Pradesh - 477001

In the matter of Sunshine Infrabuild Corporation Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings under Section 15HB of SEBI Act, 1992 (hereinafter referred to as, '**SEBI Act**') against Banwari Lal Baghel (**Noticee 1**) and Surendra Singh Baghel (**Noticee 2**) for Non-compliance of directions issued vide Order dated September 04, 2015. Noticees 1 and 2 are collectively referred to as, '**Noticees/You**'.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer *vide* order dated May 18, 2021 to inquire into and adjudge under Section 15HB of SEBI Act the aforesaid alleged violation against the Noticees. The appointment of the Adjudicating Officer was communicated vide communique dated May 19, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/HP/10242/2022 dated March 10, 2022 (hereinafter referred to as '**SCN**'), was issued to the Noticees in terms of Rule 4 (1) of Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticees in terms of Section 15HB of SEBI Act for the aforesaid alleged violations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

5. SEBI had passed an Order dated September 04, 2015 read with corrigendum to the said Order dated September 07, 2015 in the matter of Sunshine Infrabuild Corporation Limited (hereinafter referred to as, '**SICL/Company**') wherein it was held that during the FY 2010-11 to 2012-13, SICL had collected total of Rs.26,62,81,300/- from 8,071 investors by issuance of different types of debentures, such as Fully Paid Secured Redeemable Non-Convertible Debentures, Partly Paid Optionally Convertible Un-secured Debentures, Fully Paid Unsecured Debentures. It was also held that during the financial year 2013-14, SICL had further raised Rs.8,78,60,000/- by issuance of fully paid secured redeemable non-convertible debentures.

6. In the said Order dated September 04, 2015, it was *inter-alia* directed that SICL and its directors including Noticee 1, Noticee 2, Dharm Singh Kushwah, Mukesh Singh, Bakil Singh, Sanjeev Singh and Rajveer Singh shall refund the money collected by SICL through the issuance of various types of debentures including the money collected from investors, till date, pending allotment, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act,

1956) to the investors till the date of actual payment. It was also directed that they shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Hindi) with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect. Further, after completing the aforesaid repayments, they shall file a report of such completion of repayment with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. It was also mentioned in the Order that in case of failure of them to comply with the aforesaid directions, SEBI, on the expiry of the three months period from the date of this order may *inter-alia* initiate appropriate action including adjudication proceedings against them in accordance with law.

7. It was observed that Noticee 1 and 2 along with other entities failed to refund the money collected through issuance of various types of debentures in terms of the aforesaid Order, and have, thus, failed to comply with the said Order. The order was served upon the Noticees by public notice on February 11, 2021. It is also seen that Adjudication Order was passed against SICL, Dharm Singh Kushwah and Mukesh Singh on August 28, 2018 for non-compliance of aforesaid directions.

8. In view of the above, it was alleged that Noticees are in non-compliance of directions issued vide Order dated September 04, 2015.

9. The aforesaid alleged violation, if established, make the Noticees liable for monetary penalty under section 15HB of SEBI Act.

10. SCN was served to the Noticees by SPAD on their last known address, but was returned undelivered. SCN was then served upon the Noticee 1 through his email address blbaghel2012@gmail.com which was obtained through NSDL and CDSL as being the email –id given by him for his demat account. SCN was served on the Noticee 2 at the email address sunshinefinlink@gmail.com obtained from Form 32 filed with MCA in respect of another company where Noticee 2 was director. i.e. BPN Investment and Finance Ltd. The email to the Noticees did not bounce back.

Opportunity of hearing was provided to the Noticees vide Hearing Notices served by email on 10.06.2022 and 25.07.2022 at the aforesaid email addresses, granting hearing through video conferencing on 19.07.2022 and 27.07.2022. The Noticees neither appeared on the scheduled date of hearing nor any reply to the SCN was received from the Noticees.

11. I note that through the SCN and Hearing Notice, the Noticees were advised to furnish their reply, if any, within stipulated time, failing which, it shall be presumed that the Noticees had no reply to submit and the matter will be proceeded with on the basis of the material available on record.

12. As sufficient opportunity was given to the Noticees to submit reply and no response was received from them, the adjudication proceeding against the Noticees are undertaken ex-parte on the basis of material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

13. The issues that arise for consideration in the instant matter are:

Issue No. I	Whether the Noticees are in non-compliance of directions issued vide SEBI Order dated September 04, 2015
Issue No. II	If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HB of the SEBI Act.
Issue No. III	If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether the Noticees are in non-compliance of directions issued vide SEBI Order dated September 04, 2015**

14. I note that an order was passed by SEBI on September 04, 2015 read with corrigendum to the said Order dated September 07, 2015 wherein it was held that

during the FY 2010-11 to 2012-13, SICL had collected total of Rs.26,62,81,300/- from 8,071 investors by issuance of different types of debentures without complying with norms for public issue if debentures. During the financial year 2013-14, SICL had further raised Rs.8,78,60,000/- by issuance of fully paid secured redeemable non-convertible debentures. Hence, SICL and its directors including Noticee 1, Noticee 2, Dharm Singh Kushwah, Mukesh Singh, Bakil Singh, Sanjeev Singh and Rajveer Singh were directed to refund the money collected by SICL from investors with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment. It was also directed that they shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Hindi) with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect. Further, after completing the aforesaid repayments, they shall file a report of such completion of repayment with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. The order was also served upon the Noticees by public notice on February 11, 2021.

15. I note that another order was passed by SEBI on 28.08.2018 against the company SICL and two of its directors, Dharam Singh Kushwah and Mukesh Singh wherein it was held that they had failed to comply with the directions issued by SEBI in its order dated September 04, 2015. Accordingly a penalty of Rs. 1 crore was imposed upon them jointly and severally under Section 15HB of the SEBI Act.

16. I find that the allegation against Noticee 1 and 2 is the same allegation as against SICL and two of its directors, Dharam Singh Kushwah and Mukesh Singh. I further note that the non-compliance with the directions passed by SEBI in its order dated September 04, 2015 continues till date and that there is no record of refunds as directed by SEBI being made by SICL. I also note that SEBI had initiated recovery proceedings against SICL and its directors including Noticees 1 and 2 for failure to make refunds as directed by issuing Recovery Certificate on March 31, 2016.

17. Hence, I find that the allegation against Noticees 1 and 2 of non-compliance of directions issued vide SEBI Order dated September 04, 2015 is established.

Issue No. II	**If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act. and**
Issue No. III	**If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?**

18. It is established that Noticees 1 and 2 have failed to comply with the directions passed in the SEBI order dated September 04, 2015. As noted in preceding paras, SEBI had passed an order 28.08.2018 against SICL and two of its directors, Dharam Singh Kushwah and Mukesh Singh for non-compliance with the same directions whereby a penalty of Rs. 1 crore was imposed upon them jointly and severally under Section 15HB of the SEBI Act, text of which is reproduced as under:

SEBI Act

Penalty for contravention where no separate penalty has been provided.
15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

19. I note that the maximum penalty has been imposed upon the company and two of its directors already vide the order dated 28.08.2018 for non-compliance with directions. I further note that this penalty amount has not been paid and recovery proceedings have been initiated by SEBI for recovery of penalty vide Certificate no. 2612 dated November 14, 2019.

20. Considering that maximum penalty has already been imposed for non-compliance with directions, and that the directions made in SEBI order dated September 04,

2015 were made jointly to the company and its directors, I am of the view that Noticee 1 and 2 are jointly and severally responsible for non-compliance and shall be jointly and severally liable along with SICL and two of its directors, Dharam Singh Kushwah and Mukesh Singh for payment of penalty, and hence no separate penalty needs to be imposed upon Noticee 1 and 2.

ORDER

21. After taking into account the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I(2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby order that the Noticees 1 and 2 shall be jointly and severally liable along with SICL and its two other directors, Dharm Singh Kushwah and Mukesh Singh, towards the penalty of Rs. 1 crore imposed under Section 15HB of SEBI Act in the matter of SICL vide the order No. EAD-2/SS/SK/2018-19/1199-1201 dated 28.08.2018. No separate penalty is imposed upon the Noticees.

22. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules and Rule 6 of the Depository Adjudication Rules.

MANINDER CHEEMA

Digitally signed by MANINDER CHEEMA
Date: 2022.07.28 17:48:48 +05'30'

DATE: July 28, 2022
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER