BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/S./2023-24/29050-29052]

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) RULES, 1995

In respect of

Noticee No.	Name of Noticees	PAN/DIN
1.	Bakil Singh	BBUPS0147N/01716961
2.	Sanjeev Singh	AXYPS2851E/01808069
3.	Rajveer Singh	AXYPS2842R/01872965

("*hereinafter collectively referred to as Noticees*")

In the matter of Sunshine Infrabuild Corporation Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') vide Order dated September 04, 2015 read with corrigendum to the said Order dated September 07, 2015 (hereinafter referred to as "**SEBI Order**"), passed by Hon'ble Whole Time Member under Sections 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), held that Sunshine Infrabuild Corporation Limited ("hereinafter referred to as "**the Company/Sunshine**") and its directors, including the Noticees, by issuance of different types of debentures, such as Fully Paid Secured Redeemable Non-Convertible Debentures, Partly Paid Optionally Convertible Unsecured Debentures, Fully Paid Unsecured Debentures, had collected Rs. 26,62,81,300/- from 8,071 investors during the financial years ("**FY**") 2010-11, 2011-12 and 2012-13 and had further raised Rs. 8,78,60,000/- by issuance of fully paid secured redeemable non-

convertible debentures ('**NCDs**') during the financial year 2013-14, in violation of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 ("**ILDS Regulations**") and Companies Act, 1956 ("**CA 1956/CA 56**"). Vide the said order, SEBI issued directions to Sunshine and its directors including Noticee 1, Noticee 2, Noticee 3, Dharm Singh Kushwah, Mukesh Singh, Banwari Lal Baghel, Surendra Singh Baghel, *inter alia,* directing them to forthwith refund the money collected by Sunshine through the issuance of aforesaid debentures. Sunshine is a public company incorporated on September 24, 2008 and is registered at Registrar of Companies, Delhi (**"RoC-Delhi"**). Noticees 1 and 2 were the directors of Sunshine from September 24, 2008 to June 01, 2011, and Noticee 3 was a director of Sunshine from August 27, 2009 to June 01, 2011 (Noticees 1 to 3 are hereinafter collectively referred to as "**Noticees**").

2. SEBI observed that Sunshine and its directors, including the Noticees, had failed to refund the money collected through issuance of various types of debentures in terms of the said SEBI order dated September 04, 2015, and have, thus, failed to comply with the said order. In view of the same, SEBI initiated adjudication proceedings against Noticees under Section 15HB of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated February 01, 2023, SEBI appointed the undersigned as the Adjudicating Officer under Section 15-I read with Section 19 of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge, under Section 15HB of SEBI Act, the alleged non-compliance of SEBI Order by Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice dated June 13, 2023 (hereinafter referred to as '**SCN**') was issued to Noticees under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them for the alleged non-compliance of SEBI Order by them.

5. The relevant extracts of the allegations levelled against Noticees 1 to 3 in the SCN are as under:

"3. SEBI, vide the Order dated September 04, 2015 and corrigendum to the said Order dated September 07, 2015, inter alia, issued the following directions against Sunshine Infrabuild Corporation Limited and the Noticees:

…Company, namely, Sunshine Infrabuild Corporation Limited and its directors Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Mukesh Singh, Shri Banwari Lal Baghel, Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh shall forthwith refund the money collected by the Company 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.

…Sunshine Infrabuild Corporation Limited had repaid/redeemed the debentures as stated in its reply dated April 15, 2015 to its investors as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions from 12.1 (c) to (f), shall be applicable for the amounts due to be returned to remaining investors. However, such repayments/redemption by the Company as stated in its reply dated April 15, 2015, made as per requirement laid down in para (c) below, shall be certified by Chartered Accountants, as directed in sub-paragraph (f) below.

5. In compliance with the aforesaid order passed by Hon'ble SAT, SEBI appointed the independent auditor on August 07, 2017. The independent auditor submitted its audit report ("hereinafter referred to as "audit report" and placed at Annexure - 3") in the matter to SEBI vide letter dated November 25, 2017. It was observed from the said audit report that Noticees had not repaid Rs. 44,68,894/- towards the principal amount and the interest due to 5,450 investors to whom debentures were issued by Sunshine during FY 2010-11 and FY 2011-12, i.e. during the time when Noticees were directors of Sunshine, i.e., the audit report did not confirm the report of two peer reviewed Chartered Accountants which had been submitted by the Noticees before the Hon'ble SAT. Therefore, in compliance of the directions at para 6 of the Hon'ble SAT's order dated July 27, 2017, copies of the aforesaid audit report were sent to the Noticees via SPAD and Email dated February 08, 2018 ("Annexure - 4"). A copy of the said audit report was also delivered by hand to Noticee

1. Vide letter dated April 03, 2018 to SEBI, Noticee 1 acknowledged the receipt of the audit report and presented pay orders amounting to Rs. 21,28,112 on behalf of the Noticees ("Annexure - 5"). Thus, the said audit report was duly served on the Noticees. However, it was observed by SEBI that Noticees did not submit their comments or file any objections/representation with respect to the said audit report in terms of para 6 of the Hon'ble SAT's order dated July 27, 2017."

…

6. Since the Noticees did not make any representation/objections with respect to the said audit report within the time stipulated in Hon'ble SAT's order dated July 27, 2017, it was observed that the Hon'ble SAT's direction to SEBI in its aforesaid order, for considering the Noticees' representation for final disposal of the matter by the Hon'ble Whole Time Member was no longer applicable and thus, the SEBI order attained finality in the matter. It was therefore observed that Noticees neither filed any objection to the findings of the audit report nor did they provide any proof of refunding the amount of Rs. 44,68,894/- to the investors. Thus, it was observed that the Noticees have failed to repay the amounts raised by Sunshine from the aforesaid 5,450 investors to whom debentures were issued by Sunshine during the time when Noticees were directors of Sunshine. Therefore, it is alleged that the Noticees have failed to comply with the directions of the SEBI Order….

…

7. The Noticees' alleged non-compliance of SEBI Order passed by the Hon'ble Whole Time Member, if established, makes Noticees liable for monetary penalty under the provisions of 15HB of SEBI Act.

…

8. Noticees are therefore called upon to show cause as to why an inquiry should not be held against them in terms of Rule 4 of Adjudication Rules read with Section 15I(1) & (2) of SEBI Act, and penalty, if any, be not imposed on them under Section 15HB of SEBI Act, for the aforesaid alleged contravention by them…."

6. The SCN was despatched to the Noticees 1 to 3 by Speed Post Acknowledgement Due ('**SPAD**') and digitally signed email dated June 13, 2023. The SCN was duly served upon the Noticees via digitally signed email. Thereafter, vide email dated June 27, 2023, Noticee 1 requested for grant of extension of 4 weeks' time for submitting reply to the SCN. Vide Hearing Notices dated July 03, 2023, Noticees were granted an opportunity of hearing on July 20, 2023. Considering the request for extension made by Noticee 1, Noticee 1 was

granted an extension of time for filing reply to the SCN, vide the Hearing Notice dated July 03, 2023. Thereafter, Noticee 1 filed its reply to the SCN vide email dated July 17, 2023. On the date of hearing the authorized representative ("**AR**") of Noticee 1, Corporate Pleaders, Advocates, appeared for the hearing and reiterated their earlier submissions made in reply vide email dated July 17, 2023. However, Noticees 2 and 3 did not appear for the hearing on July 20, 2023. The relevant extracts of the submissions made by Noticee 1 vide email dated July 17, 2023 are given hereunder:

1. *"It is a matter of record that on November 25, 2017. M/s. N. D. Kapur & Co. prepared a report and the same was received by the Noticee on or about March 16, 2018... It is a matter of record that the Noticee upon receipt of the report prepared by ND Kapur… had accepted the calculation of interest done by the auditors"*
2. *"It is a matter of record that upon receipt of the aforesaid report of N. D. Kapur & Co) the Noticee issued 3 separate pay orders for the abovementioned interest amounts of Rupees 13,03,823/-, Rupees 613, Rupees 8,23,658 in favour of SEBI and vide a letter dated April 3, 2018 (i.e. within the time stipulated by SAT)….the Noticee submitted the said 3 pay orders with SEBI and requested SEBI to place the necessary facts before the concerned WTM for vacating the WTM's order dated September 4, 2015."*
3. *"It is also a matter of record that since the Noticee did not receive communication from SEBI in response to his aforesaid letter dated April 3, 2018, the Noticee was compelled to address a reminder letter June 7, 2018 whereby the Noticee once again requested SEBI to take necessary steps for compliance of the directions issued by the SAT vide its consent order dated July 27, 2017."*
4. *"I say that since there was no communication from SEBI inspite of aforesaid reminder, Noticee bonafidely believed that SEBI must have taken necessary steps and the WTM's order dated September 4, 2015, must have been set aside qua the Noticee."*
5. *"It is submitted that recently the Hon'ble SAT while dealing with Appeal No. 519 of 2023 has considered an issue whether it is open for SEBI to initiate proceedings for imposition of penalty under Section 15HB of the SEBI Act, in case an order of the WTM passed under Section. 11B is not complied. In this Appeal the Appellant had challenged an Order passed by an Adjudicating Officer of SEBI whereby a penalty was levied under section 15HB for non-compliance of directions issued by the WTM. The Hon'ble SAT by its Order dated June 28, 2023 has set aside the said penalty order issued by an Adjudicating Officer of SEBI and inter alia held that provisions of Section 15HB cannot be utilized for imposition of penalty for non-compliance of an order of the*

WTM passed under Section 11B of the SEBI Act Hereto annexed and marked as Exhibit- G is a copy of the said order dated June 28, 2023 passed by the Hon'ble SAT in Appeal No. 519 of 2023. It is submitted that the present proceeding is squarely covered by the said SAT order. On this ground itself the present proceedings shall be dropped."

6. *"It is denied that the Noticee has failed to comply with the WTM's Order dated September 4, 2015. It is a matter of record that the Noticee upon receipt of the report prepared by ND Kapur, auditors in March 2018 had accepted the calculation of interest done by the auditors and had accordingly vide his letter dated April 3, 2018 submitted 3 pay orders for a total amount of Rs. 21,28,094/- with SEBI and in view of the said deposit of interest amount, Noticee had requested SEBI to place the necessary facts before the concerned WTM for necessary directions. In the absence of any communication from SEBI. Noticee bonafidely believed that SEBI must have taken necessary steps and the WTM's order dated September 4, 2015, must have been set aside qua the Noticee."*
7. *"Upon perusal of the said letters it appears that atleast till July 201&, the report prepared by N D Kapur & Co., was under SEBI's examination. However, since the SEBI's letter dated August 23, 2018, whereby SEBI had sought Noticee's para-wise/ point-wise comments on the auditors report, was never delivered to the Noticee the Noticee was never aware that any kind of proceedings are pending against the Noticee. In this context, Noticee would like to state that in and around April 2018. the Noticee had shifted to his village and was not available at the address "B-63. Navkunj Apartments. IP Extension, Patparganj, Delhi 110092" therefore SEBI's letters returned undelivered. In these circumstances, N D Kapur &. Co. and/or SEBI could have called upon the Company and/or the Bank to produce the relevant bank statements of lndusind Bank and lCICI Bank., in order to verify the repayments of Rs. 23,40,800/- and complete the process of verification as directed by the Hon'ble SAT vide its Order dated July 27, 2017."*
8. *"…that the IPRCA's (Sadana & Co. and Bansal, Mukesh & Associates) had while certifying the repayments had verified the said bank statements of lndusind Bank and ICICI Bank and the same very much reflects in the Annexures to their certificates dated August 31, 2016 (issued by Sadana & Co.) and November 12, 2016 (issued by Bansal Mukesh & Associates). Please refer to the said Certificates alongwith their calculations at page nos. 41 to 280 of the Affidavit-in-Rejoinder filed in Appeal No. 486 of 2015.*

Please note, details of repayments relating to Fully Paid. Redeemable Non-Convertible Secured Debentures is at page nos. 49 to 140 of the said Affidavit-in-Rejoinder."

9. *"…that the present Show Cause notice states that as per the report prepared by N D Kapur & Co., Auditors, out of the total repayment of Rs. 4,74,87,300/- made to the investors, payments amounting to Rs. 23,40,800/- could not be verified "as the same was either not appearing in Bank statement or bank statement was not provided for our verification". Therefore, it is dear \hat it is not an observation made by the Auditors that this amount of Rs. 23,40,800/- is not repaid. This was merely an observation which could have been further examined by SEBl and/or ND Kapur & Co. by calling upon the Company or the Bank, to provide relevant Bank statements. Therefore, it is clear that this repayment of Rs. 23,40,800/- is unverified and not actually disputed by the auditors."*
10. *"It is important to note that the Noticee did not had any grievance with the report prepared by N D Kapur & Co., and therefore the Noitcee had deposited the amounts indicated in the report by way of 3 pay orders. In view of Noticee's acceptance to the amounts indicated in the ND Kapur's report, there was no question of ·Noticee 'filing any objections/comments to the report prepared by N D Kapur & Co. Therefore, it cannot be said that the Noticce has not complied with the directions of SEBI or the Hon'ble SAT."*
11. *"Noticee resigned from Company at the time of audit conducted by ND Kapur & Co. ln fact it is also on record that there is an inter-se dispute between the Noticee and the Company as well which was litigated before the Hon'ble Delhi High Court… It is the Company who was providing bank statements and details to the auditors. Therefore, in the absence of Bank Statements, or any other document for verification Noticee cannot be held responsible. ln any event, it is not SEBI's case that the Noticee was responsible for providing the bank statements and other documents to ND Kapur & Co. or it is the Noticee who is liable for not providing the same."*
12. *"It is submitted that, assuming if, SEBI is of the view that there was failure on part of the Noticee to comply with the WTM's Order, it cannot be said that this was a will-fuIl failure on the part of Noticee. In this context the Noticee craves leave to refer and rely upon the findings recorded by SAT in its above referred Order dated June 28, 2023 passed in Appeal No. 519 of 2023.."*

7. Vide Hearing Notices dated July 21, 2023 Noticees 2 and 3 were granted another opportunity of hearing on July 28, 2023. However, I observe that Noticees 2 and 3 have neither filed any replies nor appeared for personal hearing. Thus, I note that the Noticees have been granted sufficient opportunities of hearing and for making submissions in the instant adjudication proceeding and Noticees 2 & 3 have failed to avail the said opportunities. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal ('**Hon'ble SAT'**) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has *inter-alia*, held that, *"…the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". It is also pertinent to note that the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs. SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, held that: *"…appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted the charges levelled against them in the show cause notices..."* Thus, in the facts and circumstances as noted above, I am of the view that the principles of natural justice have been complied with in the instant proceeding and Noticees 2 and 3 have nothing to submit in respect of the allegations made in the SCN. Thus, in terms of Rule 4(7) of the Adjudication Rules, the matter is being proceeded with ex-parte based on material available on record with respect to Noticees 2 and 3.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against the Noticees, reply filed by Noticee 1, and documents/evidence available on record. The issues that arise for consideration in the present case are:

   I) Whether Noticees have violated directions contained in SEBI Order dated September 04, 2015?

   II) Do the violations, if any, attract a monetary penalty under Section 15HB of SEBI Act?

III) If the answer to the aforesaid issues is in the affirmative, then what should be the quantum of monetary penalty?

<u>Issue No. I - Whether Noticees 1-3 have violated directions contained in SEBI Order dated September 04, 2015 passed by Hon'ble WTM?</u>

9. I note that SEBI, vide the Order dated September 04, 2015 and corrigendum to the said Order dated September 07, 2015, had held that Sunshine and its directors, including the Noticees, by issuance of different types of debentures, such as Fully Paid Secured Redeemable Non-Convertible Debentures, Partly Paid Optionally Convertible Unsecured Debentures, Fully Paid Unsecured Debentures, had collected Rs. 26,62,81,300/- from 8,071 investors during the financial years ("**FY**") 2010-11, 2011-12 and 2012-13 and had further raised Rs. 8,78,60,000/- by issuance of fully paid secured redeemable non-convertible debentures during the financial year 2013-14, in violation of Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(4), 5(2)(b), 6, 7, 8, 9, 12, 14, 15, 16(1), 17, 19, and 26 of ILDS Regulations and sections 56(1) & (3), 60, 73(1), 73(2), 73(3), 117B and 117C of CA 56. The SEBI Order *inter alia*, issued the following directions against Sunshine and its directors, including the Noticees:

a) "*The Company, namely, Sunshine Infrabuild Corporation Limited and its directors Shri Surendra Singh Baghel, Shri Dharm Singh Kushwah, Shri Mukesh Singh, Shri Banwari Lal Baghel, Shri Bakil Singh, Shri Sanjeev Singh and Shri Rajveer Singh shall forthwith refund the money collected by the Company 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*.

b) *If the Company, Sunshine Infrabuild Corporation Limited had repaid/redeemed the debentures as stated in its reply dated April 15, 2015 to its investors as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions from 12.1 (c) to (f), shall be applicable for the amounts due to be returned to remaining investors. However, such repayments/redemption by the Company as stated in its reply dated April 15, 2015, made as per requirement laid down in para (c) below, shall be certified by Chartered Accountants, as directed in sub-paragraph (f) below*.

c) *The repayments and interest payments @ 15% per annum compounded at half yearly intervals, to investors shall be effected only through Bank Demand Draft or Pay Order*.

d) *Sunshine Infrabuild Corporation Limited and its present management is permitted to sell the assets of the Company for the sole purpose of making the repayments including interest, as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank*."

10. From perusal of the copies of Form 32 uploaded by Sunshine and available from Ministry of Corporate Affairs website, I note the following directorship details of the Company:-

Name of the directors	**Date of appointment**	**Date of cessation**
Banwari Lal Bagehel	24-Sep-08	Continuing
Surender Singh Bagehel	August 27, 2009	Continuing
Dharam Singh Kushwah	August 27, 2009	Continuing
Sanjeev Singh	24-Sep-08	June 1, 2011
Rajveer Singh	27-Aug-09	June 1, 2011
Bakil Singh	24-Sep-08	June 1, 2011
Mukesh Singh	September 23, 2014	Continuing

11. From the aforementioned copies of Form 32, I note that Noticees 1 and 2 were directors of Sunshine from September 24, 2008 to June 01, 2011, and Noticee 3 was a director of Sunshine from August 27, 2009 to June 01, 2011. I further note from the attachments to the said Form 32 that Noticees 1-3 had submitted their resignation from Sunshine with effect from June 01, 2011. I note from the SEBI order that during the Extra Ordinary General Meetings (EGM) held on June 28, 2010, September 22, 2010, and October 22, 2010, the Board of Directors which includes Noticees 1-3 had passed resolutions approving the issuance of 20,25,000 debentures of various types to the public. As per the resolution passed in the EGM dated June 28, 2010, Noticee 1 was authorised to sign and file all Forms and other relevant documents with the Registrar of Companies and to do all necessary acts and things for giving effect to the issuance of said debentures. I also note from the audit report submitted by M/s N.D. Kapur & Co. that Sunshine had mobilized funds from public the tune of Rs. 4,74,87,300/- during FY 2010-11 and Rs. 11,95,95,000 during FY 2011-12.

12. I further note that the Noticees filed an appeal against the SEBI Order before the Hon'ble Securities Appellate Tribunal ("**Hon'ble SAT**") vide Appeal No. 486 of 2015, and an order

dated July 27, 2017 was passed by the Hon'ble SAT, disposing of the aforesaid appeal and, *inter alia*, directing as follows:

"2. Respondent (SEBI) has appointed M/s N. D. Kapur & Co., Auditors. to verify the aforesaid Reports issued by the independent peer review Chartered Accountants, as filed by the Appellant.

3. The Appellants shall deposit a sum of Rs. 40,000/- with the Respondent towards fee payable to M/s N.D. Kapur & Co., for the mandate specified in paragraph 2 above, within a period of two weeks from today. The Appellants shall provide all relevant documents/information, if required by M/s N.D. Kapur & Co. as available with them.

4. The Respondent shall instruct "M/s N. D. Kapur& Co. to submit their report, within a period of eight weeks after the deposit of the fee by the Appellants, along with the computation of the total amount of interest payable to the debenture holders.

5. (a) If M/s N.D. Kapur & Co., confirm the aforesaid Reports of the independent peer review Chartered Accountants, the Respondent shall take necessary steps for presenting the appropriate facts relating to the matter before the concerned W.T.M. to vacate the Impugned Order dated 04th September, 2015 qua the Appellants.
(b) This is, however, without prejudice to Respondent's direction to the appellants to deposit such amounts towards interest payable to investors for the debentures issued prior to 01.06.2011, as the Respondent may deem fit, considering the date of issue of the debentures and the date of the repayment. Upon such quantified interest amount being communicated to the Appellants, the appropriate facts for vacation of the Impugned Order dated 04th September, 2015 qua the Appellants, shall be presented to the concerned WTM within one week after the deposit of the interest amount by the Appellants.

6. A copy of the report prepared by M/s N.D. Kapur & Co. shall be furnished by the Respondent to the Appellants. In the event that M/s N.D. Kapur & Co., disputes the said reports of the two independent peer review Chartered Accountants, the Appellants may be permitted to file objections / representations against the said Report, within a period of four weeks along with such documents as the Appellants may deem fit and the said objections/ representations shall be disposed of by the Respondent within four weeks thereafter. The Appellants shall be entitled to file fresh Appeals against the same."

13. I note that as per the directions in the Hon'ble SAT's order, the Noticees were required to submit requisite documents before the auditor appointed by SEBI, M/s N.D. Kapur & Co. ('**independent auditor**') and the independent auditor would verify the report of two peer reviewed Chartered Accountants which had been submitted by the Noticees/appellants in support of their contention that the amounts collected by the company during the tenure of their directorship had been duly refunded. As per the Hon'ble SAT's direction, the independent auditor had to submit the audit report within eight weeks from the deposit of fees by the Noticees/appellants. The Hon'ble SAT's order also directed that in respect of debentures issued during the tenure of Noticees' directorships i.e. up to June 01, 2011, the Noticees shall deposit the entire interest amount payable to investors in terms of direction in the SEBI Order, after the said interest amount is quantified and communicated by SEBI to the appellants. The aforesaid order of Hon'ble SAT directed that if the audit report of the independent auditor were to find any amounts which were yet to be paid or if the audit report rejects the claims made by Noticees, the said Noticees would be entitled to file objections/representations against the independent auditor's report before SEBI within the specified time period. The Hon'ble SAT further held that if the Noticees cooperate with the examination by the independent auditor and make representations within four weeks in respect of the audit report submitted by the said independent auditor, the Hon'ble Whole Time Member ('WTM') shall, within four weeks thereafter, take into consideration the facts presented by the Noticees and decide whether or not the SEBI Order may be vacated.

14. As noted above, Noticees 1-3 were directors of Sunshine from September 24, 2008 to June 01, 2011. I note that in compliance with the aforesaid order passed by Hon'ble SAT, SEBI appointed the independent auditor, M/s N.D. Kapur & Co. in the matter on August 07, 2017. I also note that the debentures issued by Sunshine by virtue of the resolutions approved in the EGMs held on held on June 28, 2010, September 22, 2010, and October 22, 2010 i.e. during during the directorship of the Noticees were covered within the scope of the audit. Thereafter, the independent auditor submitted its audit report in the matter to SEBI vide letter dated November 25, 2017. As per the said audit report, the Noticees had not repaid Rs. 23,40,800/- towards the principal amount and Rs. 21,28,094/- towards the interest due to the investors to whom debentures were issued by Sunshine in FY 2010-11 and FY 2011-12, i.e. during the time when Noticees were directors of Sunshine. I also

note that the audit report did not confirm the report of two peer reviewed Chartered Accountants earlier submitted by the Noticees before the Hon'ble SAT. From the available records, I note that in compliance of the directions at para 6 of the Hon'ble SAT's order dated July 27, 2017, copies of the aforesaid audit report were sent to the Noticees via SPAD and Email dated February 08, 2018. The SPAD had returned undelivered but the email enclosing the audit report was delivered on the official email addresses of the directors. Thus, the audit report was duly served on the Noticees. A copy of the said audit report was also delivered by hand to Noticee 1 which he acknowledged and subsequently, presented pay orders amounting to Rs. 21,28,112/- on behalf of the Noticees vide letter dated April 03, 2018 to SEBI. However, it was observed by SEBI that Noticees did not submit any comments or file any objections/representation with respect to the said audit report findings in terms of para 6 of the Hon'ble SAT's order dated July 27, 2017. I also note that instead of making representation/objections with respect to the audit report's findings regarding unpaid amounts to investors, Noticee 1 submitted pay orders to SEBI. Since the Noticees did not make any representation/objections with respect to the said audit report within the time stipulated in the aforementioned order of Hon'ble SAT, I am of the view that the audit report findings were undisputed and a total amount of Rs. 44,68,894/- still remained unpaid to investors. I further note that the Hon'ble SAT's direction to SEBI in its aforesaid order, for considering the Noticees' representation for final disposal of the matter, was no longer applicable and thus, the SEBI order attained finality in the matter. In view of the foregoing, I observe that the Noticees had failed to comply with the directions contained in the SEBI Order i.e. refunding monies to the investors of Sunshine to the extent of the principal amount along with the interest amount applicable on the said principal amounts received in respect of debentures approved for issuance during the directorship of the Noticees.

15. In his reply to the SCN, Noticee 1 has stated that he did not have any grievance or objection to make with respect to the findings of the audit report. Noticee 1 has further stated that as per the findings of the audit report, interest payments to the tune of Rs. 21,28,094/- were due to the investors of Sunshine. Noticee 1 has stated that he had accepted the calculation of interest done by the independent auditor. This shows that Noticee 1 has admitted to the findings of the audit report as regards unpaid interest amount due to investors. Noticee 1 has also contended that it did not submit any representation against the audit report and had submitted pay orders for a total amount

of Rs. 21,28,094/- with SEBI and that in view of the said pay orders, Noticee 1 believed that SEBI must have taken necessary steps to vacate the SEBI Order qua the Noticees. I note that in terms of the SEBI Order, Noticees were under an obligation to ensure the refund of amounts raised from investors along with interest at the rate of 15% per annum. I note that pay orders of Noticee 1 were in favour of SEBI and not in favour of the investors of Sunshine to whom the said amount was due. However, the SEBI Order had not given any direction to the effect that Noticees should remit any amount to SEBI towards the amounts due to investors. Noticee 1 has also contended that it was only during the recovery proceedings that he had received the SEBI's letters dated July 12, 2018 and August 23, 2018 requesting his comments to the audit report and the said letters had not been delivered to him because he was not available at his address. In this regard, I note from records that the audit report was duly served on the Noticees vide email dated February 08, 2018. The said audit report was also delivered by hand to Noticee 1 which was duly acknowledged by him. Noticee 1 presented pay orders amounting to Rs. 21,28,112/- on behalf of the Noticees vide letter dated April 03, 2018 to SEBI. Noticee 1 has also contended that SEBI had encashed the 3 pay orders submitted by SEBI. However, I note from available records that SEBI had not encashed the pay orders submitted by Noticee 1. Thus, I find that the aforesaid contention of Noticee 1 is incorrect and therefore being rejected.

16. Noticee 1 has further contended that the independent auditor could not verify the refund of the principal amount to the tune of Rs. 23,40,800/- since the bank statements had not been provided to the independent auditor or the payment of the said amount was not appearing in the bank statement. Noticee 1 has also contended that the aforesaid amount had been refunded to investors of Sunshine. In support of his contention, Noticee 1 has placed reliance upon the certificates issued by CAs Sadana & Co., and Bansal, Mukesh & Associates which were also filed by the Noticee 1 in the aforementioned appeal before Hon'ble SAT. As already noted, Noticee 1 has stated in his reply that he had accepted the calculation provided in the audit report and therefore, deposited the interest portion as calculated in the audit report to SEBI which indicates that the findings of the audit report have not been disputed by Noticees. In any case, Noticee 1 did not file any representation/objection before SEBI in respect of the said calculation within the time granted by Hon'ble SAT, which would have enabled SEBI to consider and appropriately

dispose of the representations/ objections made. I observe that even after being granted ample opportunity by Hon’ble SAT to file their representation before SEBI in respect of the audit report findings, Noticee 1 did not file any representation. Therefore, assailing the findings of the audit report in the present adjudication proceedings is not acceptable.

17. Noticee 1 has also contended that Noticee 1 cannot be held responsible for the non-payment of due amounts stated in audit report findings because he had resigned from the company at the time of the independent audit. I note that vide Adjudication Order No. EAD-2/SS/SK/2018-19/1199-1201 dated August 28, 2018, it has been established that Sunshine and its directors, namely, Dharm Singh Kushwah (PAN: ASCPK7713Q; DIN:02656013) and Mukesh Singh (PAN:CCBPS5904G; DIN:03410478) had failed to comply with and thereby violated the directions contained in the SEBI Order. The aforesaid adjudication order has not been challenged in appeal and therefore the said adjudication order has attained finality. As noted earlier, during the directorship of Noticee 1, the Board of Directors passed resolutions approving the issuance of 20,25,000 debentures of various types to the public. As per the resolution passed in the EGM dated June 28, 2010, Noticee 1 was authorised to sign and file all Forms and other relevant documents with the Registrar of Companies and to do all necessary acts and things for giving effect to the issuance of said debentures. I further note from the SEBI order that Memorandum of Private Placement for the issuance of issue of 10,00,000 Partly Paid Optionally Convertible Unsecured Debentures of Rs. 3600 each aggregating Rs. 360 crores carried the name of Noticee 1 as one of the directors of Sunshine. Thus, I note that the resignation of Noticee 1 with effect from June 1, 2011 does not absolve him of his liability for the violations committed during his tenure as a director of Sunshine. In this regard, I place reliance on the judgement of Hon’ble Delhi High Court in Anita Chadha vs Registrar Of Companies [74 (1998) DLT 537] in which it was held that the directors who have resigned can be held liable for the violations committed by them during their directorship in a company and accordingly held as under:

“14. However, the question which still remains to be decided is whether the petitioner could be convicted of the offences under Sections 159 and 220 of the Act as she had resigned as director of the company on December 12, 1990. It was urged that the petitioner after the resignation would no longer come under the expression "officer who is in default" as contemplated by Sections 5, 159 and 220 of the Act. A reading of Section

5 shows that even after the retirement of the petitioner, she would come under the definition of an officer in default. If it is not held so any managing director, director, manager or secretary would escape the provisions of Sections 159 and 220 of the Act by simply tendering their resignation as the office bearer of the company."

18. I find it pertinent to refer to Section 291 of the CA 56, the provisions of which are reproduced as under:

"***Section 291 of the Companies Act,1956***

General powers of Board.

(1) Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do: Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting: Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulation made by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made."

19. I note that Sunshine is a company limited by shares and is an artificial legal person and all the acts of the company are carried out by the directors of the company. I note that Section 291 of the CA 56 empowers the Board of Directors to do all acts and things which a company can do. When powers are vested in the Board of Directors, naturally, the Board is to shoulder all responsibilities also. Therefore, I am inclined to the view that as per Section 291 of the CA 56, the responsibilities for the conduct of the business of Sunshine lies on its directors, including Noticees, by virtue of them being on the Board of Directors of Sunshine.

20. I also place reliance on the judgement of Hon'ble Supreme Court in the matter of Official Liquidator vs. PA. Tendolkar [(1973) 1 SCC 602] wherein it had been held that, "*It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company*." I also draw reference to the Hon'ble SAT's judgement in Soumen Ghosh vs. SEBI (Appeal No. 171 of 2020; Decided on March 07, 2022), in which it had held that, *"In view of the aforesaid decision, a director who is closely connected and associated with the management of the Company would be deemed liable for the fraud in the conduct of the business of a Company. Thus, it is irrelevant for this Tribunal to go into the issue as to whether any personal benefit was derived by the appellants in the scheme floated by the Company. The contention that the interim order dated April 10, 2013 cannot be made part of the show cause notice is patently erroneous. We are of the opinion that a reference to the interim order in the show cause notice does not vitiate the show cause notice. It only highlights that the Company was carrying out an unregistered CIS activity which has become final and conclusive insofar as the Company was concerned. Through the impugned show cause notice an opportunity was given to the appellants to contest this finding if so required. But in the instant case, the appellants have not disputed the fact that the Company was running a scheme which comes under the category of the CIS and was also not registered."*

21. Considering the aforementioned judgments and provisions of CA 56, I find that Noticee 1, being a director of the company, albeit for limited period, would be deemed liable for the acts committed in the conduct of the business of Sunshine during his tenure as its director.

Therefore, I note that the resignations of Noticees 1-3 do not affect their liability as persons responsible for the issuance of debentures. In any case, I also note that the fact that Noticee 1 was no longer a director of Sunshine after June 01, 2011 is of no relevance to the audit report findings because the said findings relate to the period when Noticee 1 was a director of Sunshine. Therefore, I find no merit in the aforesaid contentions of Noticee 1.

22. Therefore, in view of the foregoing, I find that the allegation that Noticees 1 to 3, who were Directors of Sunshine at the relevant time, have violated the directions contained in SEBI Order dated September 04, 2015, stands established.

Issue No. II- Do the violations, if any, attract a monetary penalty under Section 15HB of SEBI Act?

23. It has been established in the foregoing paragraphs that the Noticees have violated the directions contained in SEBI Order dated September 04, 2015. In the context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had 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...….*"

24. In this regard, Noticee 1 has contended that provisions of Section 15HB of SEBI Act cannot be utilized for imposition of penalty for non-compliance of an order passed by WTM under Section 11B of the SEBI Act. In support of the aforesaid contention, Noticee has placed reliance upon the Hon'ble SAT's Order in the matter of Annaswamy Venkatramani vs. SEBI (Appeal No. 519 of 2023; decided on June 28, 2023). The aforesaid Order was passed by Hon'ble SAT in an appeal preferred against the Adjudication Order dated June 28, 2022 passed in the matter of Sanraa Media Ltd. I also note that the said Adjudication Order was challenged before the Hon'ble SAT in separate appeals (Appeal Nos. 714 of 2022, 616 of 2022 and 519 of 2023). Vide Order dated September 30, 2022 (Appeal No. 616 of 2022) and Order dated October 20, 2022 (Appeal No. 714 of 2022), Hon'ble SAT set aside the aforesaid adjudication order placing reliance upon its ruling in Bhargav Ranchhodlal Panchal and Anr. vs. SEBI (Appeal No. 471 of 2020; Decided on July 05, 2022). Thereafter, Hon'ble SAT reiterated its earlier rulings in the matter of Sanraa Media

Ltd. vide its Order dated June 28, 2023 in Annaswamy Venkatramani vs. SEBI (Appeal No. 519 of 2023). I note that SEBI had preferred an appeal before the Hon'ble Supreme Court in the matter of Bhargav Ranchhodlal Panchal vs. SEBI (Supra) vide Civil Appeal No. 6514/2022 and vide its Order dated November 04, 2022, the Hon'ble Supreme Court held as follows:

"*Until further order, having regard to the fact that this Court is seisin over the dispute involved in both these appeals, the order impugned will not be treated as a precedent by the Tribunal*."

25. I note that SEBI had also preferred appeals before the Hon'ble Supreme Court vide Civil Appeal Nos. 9183/2022, 9184-9186/2022 in the matter of Sanraa Media Ltd. in respect of Hon'ble SAT's orders dated September 30, 2022 and October 20, 2022. I note that vide Hon'ble Supreme Court's order dated January 02, 2023, the said appeals were tagged along with Civil Appeal No. 6514/2022. I further note that SEBI had preferred appeal before Hon'ble Supreme Court vide Diary No. 35465/2023 in the matter of Sanraa Media Ltd. against the Hon'ble SAT's Order dated June 28, 2023. I note that all the said appeals involve the same legal question of applicability of Section 15HB in matters of non-compliance with WTM orders. Since Hon'ble Supreme Court has directed that the Hon'ble SAT's view in favour of non-applicability of Section 15HB of SEBI Act is not to be considered a binding precedent, I am inclined to give due consideration to the aforesaid direction of Hon'ble Supreme Court in cases of such nature. In view of the foregoing, I am of the view that the Noticee's contention in this regard is not tenable.

26. Therefore, in view of the foregoing findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violation of directions contained in SEBI Order dated September 04, 2015, will attract monetary penalty under Section 15HB of SEBI Act. The respective provisions as applicable at the time of the violations are reproduced as under:

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 shall not be less than one lakh rupees but which may extend to one crore rupees.*

<u>Issue No. III - What should be the quantum of monetary penalty</u>?

27. While determining the quantum of penalty under Section 15HB of SEBI Act, it is important to consider the factors as stipulated in Section 15J of SEBI Act, which reads as under:-

<u>SEBI Act</u>

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I, 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.

28. In this regard, I note from available records that the Company had collected Rs. 16,70, 82,300/- crores from investors of Sunshine by illegally issuing various types of debentures during FY 2010-11 and FY 2011-12. I further note from the audit report that Rs. 44,68,894/- due to the investors had remained unpaid as on November 25, 2017. I note that Noticees were involved in the illegal public issue of debentures and thereby mobilsed funds from unsuspecting investors. I note that such illegal public issue of debentures was severely detrimental to the interest of investors and integrity of securities markets. I also note that in the Hon'ble Supreme Court's judgement in the matter of *Sahara India Real Estate Corporation Limited vs. SEBI* (Civil Appeal No. 9813 of 2011; decided on August 31, 2012), the Hon'ble Supreme Court has highlighted and emphasised upon SEBI's paramount role in safeguarding investors from such illegal public issues. Thus, even though the available records do not indicate repetitive default on the part of the Noticees, the aforesaid unpaid dues to investors amounted to a disproportionate gain made by the Noticees at the expense of the said investors who had lost both the principal and interest amounts in relation to the debentures issued by Sunshine.

29. As established above, Noticees had not complied with the directions contained in the SEBI Order. I am of the view that the brazen defiance and wilful disobedience by the Noticees towards directions of SEBI merits serious consideration in deciding the penalty in the instant case. I am of the opinion that such conduct on the part of Noticees demonstrates a complete disregard for the directions of the regulator which is very harmful for the integrity of securities market. Therefore, I am of the view that a severe penalty under section 15HB of the SEBI Act will be commensurate with the violations committed by Noticees in the instant case.

ORDER

30. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee 1 and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in the exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs Only), jointly and severally, on Noticees under Section 15HB of SEBI Act for the aforementioned violation.

31. Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, said Noticees may contact the support at portalhelp@sebi.gov.in.

32. The Noticees shall forward the said confirmation of e-payment made in the format as given in the table below which should be sent to "The Division Chief, EFD – DRA - 6, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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)	

33. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of SEBI Act for the realisation of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

34. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**
Date: August 31, 2023 **ADJUDICATING OFFICER**