BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/GR/KG/2020-21/10113-10117)

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

In respect of:

1	**Nicer Green Housing and Infrastructure Developers Limited**	**AACCN5652N**
2	**Mr. Pipal Singh Sidhu**	**BVEPS9613M**
3	**Mr. Ranjit Singh**	**BZWPS3360K**
4	**Ms. Surinder Kaur**	**ASGPK7961G**
5	**Mr. Karanjit Singh**	**CRCPS3999H**

In the matter of Nicer Green Housing and Infrastructure Developers Limited

BACKGROUND:

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had, *prima facie* observed that Nicer Green Housing and Infrastructure Developers Limited (hereinafter referred to as 'the **Noticee No.1**' or 'the **Company'**) was engaged in fund

mobilizing activities from the public during the Financial Years (“FY”) 2009-10 and 2010-11, which was allegedly in the nature of a Collective Investment Scheme (hereinafter referred to as '**CIS**') as defined in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘the **SEBI Act’**), without obtaining a certificate of registration from SEBI as required under Section 12(1B) of the SEBI Act and Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as ‘the **CIS Regulations’**). Mr. Pipal Singh Sidhu (**Noticee No.2**) and Mr.Ranjit Singh (**Noticee No.3**) are Directors of the Company since incorporation till date. Ms. Surinder Kaur (**Noticee No.4**) was also appointed as Director of the Company at the time of incorporation and subsequently ceased to be the Director of the Company with effect from November 30, 2010. Mr. Karanjit Singh (**Noticee No.5**) was appointed as Director of the **Noticee No.1** on November 30, 2010 and is currently one of the Directors of the **Noticee No.1**.

<u>APPOINTMENT OF THE ADJUDICATING OFFICER</u>

2. The Competent Authority has, vide order dated July 1, 2020, appointed the undersigned as the Adjudicating Officer (hereinafter referred to as the “**AO**”) under section 15I(1) read with section 19 of the Securities and Exchange Board of India Act, 1992 and Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**Adjudication Rules**”) to enquire into and adjudge under Rule 4 of the Adjudication

Rules and to impose penalty, if the alleged non-compliance is established, under section 15D(a) of the SEBI Act, 1992.

FACTS OF THE CASE:

3. SEBI had received several complaints from investors, wherein it was alleged that the Noticee No.1 had not repaid the investors the amount due to them on maturity. The complainants have enclosed copies of certificates wherein it is shown that the customer is promised a higher amount on maturity under a buy back agreement (repurchase of plot).

4. During the examination of the scheme of the Noticee No. 1 for *"purchase and development of agricultural land under 'Cash Down Payment Plan (CDPP)/ Installment Payment Plan(IPP)*" it was *prima facie* observed that:

    a) As per the Memorandum of Association, one of the main objects of the Company is *"To carry on the business of real estate and properties including purchase of real estate and development of land/premises/building/housing, creation of plots…."*

    b) The following facts are noted from the Balance Sheet of the Noticee No.1 for the FY 2010-11:

        i. The Noticee No.1 has shown inventory (land at cost) to the tune of Rs. 13.12 crores during FY 2010-2011. The Chartered Accountant has remarked in the Notes to Accounts that *"the Company purchased land from the collections made from customers*".

ii. Advances from creditors of the Noticee No.1 have increased from Rs. 48.49 crores as on March 31, 2010 to Rs. 66.70 crores as on March 31, 2011.

iii. the Noticee No.1 paid Commission expenses to the tune of Rs. 2.05 crores and Rs. 3.23 crores during FY2009-2010 and FY2010-2011, respectively.

iv. the Noticee No.1 provided an unsecured loan of Rs.3.76 crores to M/s. Sky Net Land Developers Pvt Ltd during FY2010-2011. M/s. Sky Net Land Developers Pvt Ltd acts as a custodial services company for NGHIDL and holds the original trustee deeds executed between NGHIDL and the customer.

v. the Noticee No.1 provided advance for 'Property & Others' to the tune of Rs. 31.71 crores during FY2010-2011.

vi. the Noticee No.1 provided loan of Rs. 20.96 lakh to M/s. NGHI India Ltd and Rs.20 lakh to M/s. Nicer Paper Mills Ltd (group companies having common Directors).

vii. the Noticee No.1 provided loan of Rs.2 lakh to the Director, Mr.Pipal Singh Sidhu.

c) From the Copy of the ‘Application Form’ and ‘Agreement’, following aspects were noted:

i. Applications were invited for purchase of plot and its development under the Cash down payment plan or Instalment Payment Plan.

ii. Following clauses were noted in the “*Application Form*”,

- *Payment according to the payment plan(s) has to be made by cheque/demand draft/money order/banker’s cheque/cash, separately for each application.*

- *The Company reserves the right to, prospectively, discontinue, change, amend or modify any of the rules/regulations and plans and introduce new plans at any time at its sole discretion with or without any notice.*

iii. The investors were required to make payment as per the payment schedule opted after executing the Agreement with the Noticee No.1 and the said agreement was considered as a confirmation from the customers for booking and development of plot to be purchased by the Noticee No.1 . Following are the clauses noted in the “Agreement”:

- *AND Whereas the Company organizes the sale of undeveloped agricultural land of different sizes, to prospective buyers and* *undertakes, at option of the Customer, the development of the same.*

- *AND Whereas the Company has made arrangements for purchasing/procuring the land with clear and marketable title and with possession, which forms a part of the various plans launched by the Company.*

- *AND Whereas the Company, by means of an Application, which is the basis of this Agreement and which contains the salient terms and condition of the various Plan, has/have expressed his/her/their desire of buying the said agricultural land and also opted to have the same developed by the Company.*

- *AND Whereas the Company has agreed to arrange for the sale of the PLOT in favour of the Customer and to develop the same at its expense, by undertaking various development activities, in which the Company possesses the requisite expertise and skill.*

- *AND Whereas the Plan shall mean cash down payment plan (CDPP), and instalment payment plan (IPP).*

- *SALE OF PLOTS*

  The land shall be allotted in name of Customer, in case of Cash Down Payment Plan after completion of nine months from the date *of agreement and in Instalment Payment Plans after having receipt of 50% of the Consideration amount of the plot and development charges within the period of 270 days.*

- *DEVELOPMENT OF LAND*

The Customer has exercised the option to get the Plot developed by the Company and this Agreement shall be construed as a confirmation thereof.

- *SALE OF PRODUCE*

Unless specifically otherwise directed by the Customer, the Company shall be responsible for arranging the sale of the produce, if any, out of the plot, on behalf of the Customer. For the purposes of arranging the sale of the produce, as aforesaid, the Company shall have the sole discretion to decide as to whether the produce shall be sold in the wholesale market and/or in the semi-wholesale market, and/or to one or more marketing Company, or may decide to sell it to any other market which the Company may consider appropriate for the sale of a particular grade of the produce.

- *SALE PRICE*

The task of sale of the produce, undertaken by the Company, shall be subject to the condition that depending upon the grade of the *produce harvested from the plot, market conditions and other relevant factors, the Company may decide to sell the produce at such price which it may deem fit and reasonable in the circumstances prevailing at that point of time. It shall be the endeavour of the Company to sell the product at the best prevailing prices and terms. The Customer shall accept the net sale proceeds, so obtained by the Company from the sale of the said produce, as final and no dispute shall be raised in respect of the same.*

iv. Upon execution of the Agreement, it appeared that the investors were issued a receipt which entitled the customer/holder for certain square yards of plot after a certain period or the customer/holder was entitled to a higher amount at the end of the period. Following were noted in a receipt enclosed with a complaint received by SEBI.

- *Received with thanks from …. a sum of rupees 10,00,000 under company's for 2 years on the terms and conditions printed overleaf. He will be allotted/transferred a plot of 5000 square yards on maturity of (the period of repurchase the plot for Rs. 12,30,000.*

d) From the letter of allotment and list of allottees submitted by the Noticee No.1, it is noted that:

i. the Noticee No.1 reserved the right to change the location of allotment and allot an alternative site.

ii. It was stated that the sale deed in respect of the said allotment shall be executed shortly. It indicates that the sale deed has not been executed yet. It is noted that these applications were submitted to the Company during 2008 and 2009, and the Agreement is dated in 2011.

e) As noted from the preceding paragraphs, the Noticee No.1 invited customers/investors to apply for '*purchase and development of agricultural land under Cash Down Payment Plan/ Installment Payment Plan'*. The investors had to apply with application monies in cash/ cheque/ demand draft/ money order. The Noticee No.1 reserved the right to discontinue, change, amend or modify the plan and introduce new plans at any time at its sole discretion. The investors have to execute an agreement on the basis of the application at the time of making payment of application money. The agreement stated that the consideration paid by the customer was towards purchase and development of the plot by the Noticee No.1 . Upon execution of the agreement, a receipt was issued to the investor wherein buy back option at a pre specified price was mentioned.

f) It was observed from the application form that customers were given the option to get the plot developed, whereas, the agreement states that the customer has exercised the option to get the plot developed by the Noticee No.1 and that the agreement shall be construed as confirmation. The overall security of the plot shall, however, be the responsibility of the Noticee No.1 till the expiry of the development period of the Plan opted by the customer. The Noticee No.1 undertook to irrigate it, plant saplings, crops, trees and use fertilizers, pesticides on the crops and plants. The Noticee No.1 also undertakes to arrange for the sale of produce from such land on behalf of the customer. It also decided where to sell the produce (in whole sale market or in semi- wholesale market), the price at which the same is to be sold depending upon the grade of the produce and thereafter give the net sale proceeds to the customer. The customer has no role to play and merely accept the sale proceeds and raise no dispute in this regard.

5. The features of the schemes offered by the Noticee No.1 as discussed in the preceding paragraphs, *prima facie* showed that the activity of fund mobilization by the Noticee No.1 under its 'scheme(s)/plan(s)' with a resultant promise of returns, fell within the ambit of 'collective investment scheme' as defined under Section 11AA of the SEBI Act.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEES AND HEARING

6. There being a *prima facie* case that the Noticee No.1 was engaged in the mobilization of funds from public under its schemes '*purchase and development of agricultural land under Cash Down Payment Plan/ Installment Payment Plan'*, which was in the nature of a 'collective investment scheme', a notice to show cause (hereinafter referred to as the "**SCN**") was issued with respect to the Noticees on November 12, 2020, *inter alia*

containing the allegations as have been stated above. It is alleged therein that the Noticees were in non-compliance of Regulation 3 of the CIS Regulations read with section 12(1B) of the SEBI Act, 1992, while running a CIS without obtaining registration from SEBI. The alleged contravention makes the Noticees liable for monetary penalty under Section 15D(a) of the SEBI Act, 1992. In the said SCN the Noticees No. 2-5 were *prima facie* held to be the directors of the Noticee No.1 at the time when the aforesaid alleged violation of mobilization of funds under an unregistered CIS was undertaken and therefore liable for the actions of the Noticee No.1, which is a juristic entity.

7. The Noticees filed a common reply dated December 18, 2020, to the SCN. The submissions made vide the said reply are summarized as follows:

    a. The company is in the business of sale and purchase of real estate and properties and also in development of the lands in accordance with its main object as enshrined in the object clause of its Memorandum of Association. (paragraph no. 2)

    b. At paragraph no 3, while describing the contents of the “registration letter”, nowhere do the Noticees say that it specifies the exact plot of land that is to be allotted to a customer.

c. At paragraph no. 10 of the said reply, it has been stated that the scheme indicates “expected” increased value of land, it nowhere promises such return. It is only indicative of the expected appreciation in the value of the land without any obligation on the part of the company to pay such amount. The contribution or payment by every customer is made mainly for the purchase of land and for its development. The customer may be paid such appreciated value of land if he/ she exercises such option and the company agrees to the same.[emphasis supplied]

d. At paragraph no. 9 of the said reply, it has been stated that the company enters into an agreement with each customer for selling specified piece of land and subsequently the said piece of land is transferred in the name of the customer by way of a registered sale deed. The piece of land for sale is fully identified and the customer becomes an absolute owner of the said piece of land on registration of the sale deed in his favour. The customer has no right on the other assets of the company. Payment by the customer is also not made to run the business of the company, nor there is any profit sharing scheme with the customers. As such it cannot be said that the amount paid by the customers is pooled for the purpose of any scheme of the company, as observed in the SCN. In this regard, it is noted that this submission directly contradicts the highlighted submissions at sub paragraph (c) above.

e. At paragraph no. 11 of the said reply, it has been stated that there is hardly any question of management of the customer's piece of land. It is rather a case of development of the land which has been purchased by the customer from the company and the company is expected to develop it and handover to the customer. The company only exercises certain developmental rights over such pieces of land as per the agreement.

f. Noticee No. 4 is the wife of the Noticee No. 2 and was not actively involved in the day to day affairs of the company. She had resigned from the directorship on November 30, 2010 and she may be dropped from the proceedings.

g. The order of SEBI against NGHI Developers India Limited passed by SEBI was challenged before the Hon'ble SAT where the said order was upheld. The order of SAT has been challenged before the Hon'ble Supreme Court, which has admitted the appeal and the same is pending as on date.

h. The jurisdiction of SEBI is restricted to the Collective Investment Schemes which are operating in the securities market. Further the intention of law was to regulate CIS which were/ would be operating in the securities market by issuing securities in the form of unit certificate and the Company has not been issuing any unit certificate or plantation/ agro bond which can be treated as 'securities' within the meaning of Section 2(h)(ib) of the Securities Contracts (Regulations) Act, 1956

8. Thereafter, during the hearing held on December 22, 2020, the authorized representative of the Noticees while reiterating the submissions already made vide the reply dated December 18, 2020, additionally submitted that since the Hon'ble Supreme Court is seized of the appeal with respect an analogous dispute (whether the schemes floated are CIS under section 11AA(2) of the SEBI Act) pertaining to a group company (NGHI Developers India Limited) of the Noticee No. 1 (under same management as the Noticee No.1), the present proceedings may be kept in abeyance till the said appeal is disposed. He further submitted that out of the total dues payable to the customers/ subscribers to the scheme of the Noticee No.1, only Rs. 2.5 Crores is left to be rapid. Balance sheets of the Noticee No. 1 were provided in support of this submission. Further, copies of several judgments of the Hon'ble SAT and the Hon'ble Supreme Court passed in the matter of the schemes/ business run by the Noticee No. 1 and its group company referred above, were submitted.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

9. The following issues arise for consideration in the present case:

    a. Whether the Noticees were operating a CIS without obtaining registration from SEBI?

    b. If the answer to the question above is in the affirmative, does that violate Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations?

c. If the answers to the questions raised above are in the affirmative, what should be the quantum of penalty that can be imposed on the Noticees under Section 15D(a) of SEBI Act, 1992?

10. Before proceeding further in the case, the contents of the aforementioned provisions of law is reproduced herein below:

SEBI Act 1992

12 (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:

SEBI (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.

11. From the features of the plan/schemes operated by the Noticees as discussed above, it is observed that the Noticees were running a scheme/ plan containing the following features:

i. As per the 'agreement', the Noticee No. 1 had made arrangements for purchasing/ procuring the land. This suggests that the Noticee No. 1 did not have the land/plots under its ownership on the date of application/ agreement.

ii. The Noticee No. 1 had two plans i.e. cash down payment plan and installment payment plan. As per the agreement, the customer has an option to choose from the aforesaid two plans.

iii. Under the cash down payment plan, the land had to be allotted to the customers after completion of nine months from the date of the agreement. Under the installment payment plan, the land had to be allotted within a period of 540 days after the receipt of 50% of the cost of the plot.

iv. The Noticee No. 1, as per the agreement, had extended the facility of 'opting out' only to the customers who had made the investment under the cash down payment plan.

v. The Noticee No. 1 reserved its right to discontinue/ change/ modify the rules and plans.

vi. The land is owned and possessed by the Noticee No.1 till the expiry of the scheme.

vii. The application form speaks of agreement of deposit between the customer and the Noticee No.1.

viii. Though the application form gives an option for development and choice of State, however, the development is integral in the agreement and the land allotment is at the choice of the Noticee No.1.

ix. The customer is said to be the owner of plot after execution of the sale deed, however, no sale deed has been placed on record to show that the Company had executed sale deeds.

x. The security of the plot is retained by the Company. The sale of produce along with wastage is retained by the Noticee No.1.

xi. The primary initial document i.e. the application form and the agreement contains the clauses that the customer is applying for the ‘farm land plot’ and for development of the same by the Noticee No. 1. It is noted that the customer cannot enter into an agreement unless he/ she gives the development rights to the Noticee No.1.

xii. Customer does not get any claim over the common facilities provided by the Company.

xiii. The Company provides the accidental insurance cover to its customers/ investors.

12. Having considered the above, now I proceed to deal with the charges levelled against the Noticee No. 1. The main allegation levelled against the Noticee No.1 is that it is operating CIS without obtaining registration from SEBI. CIS means any scheme or arrangement which satisfies the conditions specified in Section 11 AA of the SEBI Act, which provides as under:

"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or sub-section (2A) shall be a collective investment scheme:

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any person under which,

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely 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.

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

(3) Notwithstanding anything contained in sub-section (2) [or sub-section (2A)], any scheme or Arrangement:

i. made or offered by a co-operative society

ii. under which deposits are accepted by non-banking financial companies

iii. being a contract of insurance

iv. providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund

v. under which deposits are accepted under section 58A of the Companies Act, 1956

vi. under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society

vii. falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982(40 of 1982);

viii. under which contributions made are in the nature of subscription to a mutual fund;

ix. such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,

shall not be a collective investment scheme."

The term '*securities'* in section 2(h) of the Securities Contracts (Regulation) Act, 1956 was amended vide the Securities Laws (Amendment) Act, 1999, with effect from February 22, 2000, to include units or any other instrument issued by any collective investment scheme to the investors in such schemes.

13. I now, proceed to test the characteristics of the impugned schemes/ plans floated and carried on by the / against the four conditions under Section 11AA(2) of the SEBI Act.

i. The first condition is 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*. The Notiee No. 1 took the contribution/ investments of the customers in accordance with its plans for the purchase of 'farm land plot'. The amount paid by the investors remains with the Company till the end of the term. It is noted that at the stage of application form and agreement, the Noticee No. 1 do not identify the land to be sold to the customer. The 'agreement' only states that the Noticee No. 1 has 'made arrangements for purchasing/ procuring the land', the same suggests that the Company on the date of agreement only made arrangements for procuring the land.

The registration letter also does not identify the land and only provides for the size of the plot and the 'expected value' of the land which had to be allotted. By its own admission, the Noticee No. 1 alloted the land under the ‘cash down payment plan’ after completion of nine months from the date of the agreement, while under the ‘installment payment plan’, the land was to be allotted within a period of 540 days after the receipt of 50% of the cost of the plot and development charges. Further, while allotting the land vide the allotment letter, the Noticee No. 1 reserves its right to change the location of the allotment of land. Also, at paragraph no. 10 of the reply dated December 18, 2020, the Noticee No. 1 admits that “*The contribution or payment by every customer is made mainly for the purchase of land and for its development”*. These facts suggest that the Noticee No. 1 pools the investment made by the customers, with an aim/ object of carrying out the overall scheme/ plan.

Further, from the ‘notes on accounts’ of the Statutory Auditor of the Company for the Financial Year ending 2011, it has been noted that the Company had purchased land from the collections made from customers. I consider these events/ information as sufficient to hold that the *'contributions, or payments made by the investors, are pooled and utilised’* by the Noticee No.1 for the purposes of the ‘scheme or arrangement', thus, satisfying the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act.

ii. The second condition is 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*. In the registration letter, the customer is provided with the 'estimated realizable value'/ 'expected value' on the investment made. The Noticee No.1 in its reply has submitted that 'estimated realizable value'/ 'expected value' is only an expected appreciation in the value of the land without any obligation on the part of the Company to pay such amount. I note that mere promise of 'estimated realizable value' higher than the amount invested shows that the investment/ contributions were made with a view of earning profits. Further, the Company also provides for 'personal accidental risk' cover as an additional facility to its customers. The same makes it clear that the investors made contribution/ payment with a view to receive the profits/ income/ property/ return on their investments that may accrue to them as applicable, thus attracting the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

iii. The third condition is that *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors*. The fourth condition is that *the investors do not have day to day control over the management and operation of the scheme or arrangement*. In this regard, I note that the Company takes the consent of the customer/ investor for the Company itself to look after the day to day maintenance of the 'farm land plot'. Thus, it is clear that the land as mentioned in the allotment letter is not managed by the customers at any stage of the plan.

The Noticee No.1 by its reply dated December 18, 2020, had submitted that it retains only the developmental rights over the plot of land. It is however noted that the land/plot solely remains in the possession of the Noticee No.1. It provides irrigation system, employs its own technical experts/ advisors and arranges the sale of the produce, if any, out of the plot. This makes it clear that the contribution, investment and property, if any, pertaining to the schemes/ plans were managed by the Company. In view of the same, the customer/ investor does not have any day to day control over the management and operation on the 'farm land plot'. Such day to day control over management and operations of such plans were also looked after by the Noticee No.1.

14. As all the four conditions specified under Section 11AA(2) of the SEBI Act are satisfied in this case, I hold that the schemes/ plans promoted, launched, carried on and operated by the Company are in the nature of CIS in terms of Section 11AA(1) of the SEBI Act.

15. I note that in terms of Section 12(1B) of the SEBI Act, "*no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations*". Regulation 3 of the CIS Regulations also prohibits carrying on CIS activities without obtaining registration from SEBI. 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 is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. In this regard, I note that the Noticee No. 1 had not obtained any Certificate of Registration under the CIS Regulations for its fund mobilizing activity from the public, under the scheme offered by it. Therefore, I hold that the Noticee No.1 had launched a CIS without obtaining certificate of registration from SEBI, contravening the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

16. I note that the Hon'ble Supreme Court, in the matter of *N Narayanan v. Adjudicating Officer, SEBI* (Civil Appeals No. 4112-4113 of 2013) has observed asunder:

> *"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be 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 business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

17. From the material available on record, it is observed that Mr. Pipal Singh (DIN-00751858), Mr.Ranjit Singh (DIN-00922498) and Mr.Karanjit Singh (DIN – 02986346) are the present Directors/ persons in charge of the business of the Noticee No.1. Further, it is noted that Ms. Surinder Kaur was also appointed as Director of the Company at the time of incorporation and subsequently ceased to be the Director of the Company with effect from November 30, 2010. Immediately from November 30, 2010, Mr Karanjit Singh was appointed as a Director of the Noticee No.1. The Noticee No.4, namely Ms. Surinder Kaur, has submitted that she is the wife of the Noticee No. 2 and had never taken any part in the activities of the Noticee No.1. It has so been submitted that she had resigned from the Noticee No.1 on November 30, 2010. I note that the resignation of Ms. Surinder Kaur does not absolve her from the charges levelled in the SCN order in light of the incorporation of the Company on February 08, 2007 and period during which she was the director of the Company. Therefore, I hold that the Noticee No.1 and its directors namely Mr. Pipal Singh Sidhu, Mr. Ranjit Singh, Ms. Surinder Kaur and Mr. Karanjit Singh were engaged in the illegal fund mobilising activity by floating/ sponsoring/ launching, unregistered/ unauthorised CIS, as defined in the Section 11AA of the SEBI Act.

18. The Noticees have also sought to argue that the jurisdiction of SEBI is restricted to the Collective Investment Schemes which are operating in the securities market. It has also been said that the intention of law was to regulate CIS which were/ would be operating in the securities market by issuing securities in the form of unit certificate and the Noticee No.1 has not been issuing any unit certificate or plantation/ agro bond

which can be treated as 'securities' within the meaning of Section 2(h)(ib) of the Securities Contracts (Regulations) Act, 1956. It has already been discussed in the preceding paragraphs as to how the schemes of the Noticee No.1 are in the nature of CIS and fulfills the conditions as specified under Section 11AA(2) of the SEBI Act. As the schemes are found to be in the nature of CIS, the same shall come under the jurisdiction of SEBI under Section 11(2)(c) of the SEBI Act. Irrespective of whether a Company launching or carrying on CIS, issues units or any other instrument it would be amenable to the jurisdiction of SEBI, if it satisfies all the four conditions as stated in the Section 11AA(2) of the SEBI Act.

19. SEBI had framed the CIS Regulations to regulate the activities of CISs, in exercise of the powers conferred under Sections 11 and 30 of the SEBI Act. Regulation 3 of the CIS Regulations 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 CIS. Therefore, launching/ floating a CIS by any person without obtaining a certificate of registration in terms of the provisions of the CIS Regulations, is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. As discussed above, the plans of Noticee No.1 were in the nature of CIS and it has failed to comply with the applicable provisions of the SEBI Act and the CIS Regulations. In view of the above, the submissions of Noticee No. 1 are without any merit and it is amenable to the jurisdiction of SEBI.

20. I note from the argument of the Noticees that an appeal in an analogous *lis* concerning a group entity of the Noticee No.1 (admittedly both the Noticee No. 1 and the group company come under the same management) is presently pending before the Hon'ble Supreme Court *inter alia* involving the question whether the schemes such as those of the Noticee No. 1 can be considered as CIS. For such reasons the Noticees have prayed that the present proceedings be kept in abeyance till the disposal of the said appeal by the apex court. I cannot accept this argument. Admittedly the entity which in appeal before the Hon'ble Supreme Court (NGHI Developers India Limited) is a distinct and separate juristic entity from the Noticee, although both may come under the same management. Further, no order of stay has been granted by the Hon'ble Supreme Court in the said matter or on any proceedings in any analogous matter. I also note that SEBI has already passed an order under section 11B of the SEBI Act against the Noticees which was challenged before the Hon'ble Securities Appellate Tribunal ("SAT"). However, although the Noticcees seem to have contended that their schemes as described in the preceding paragraphs do not qualify as CIS, the said point was never pressed before the Hon'ble SAT and instead, the Noticees had in principle agreed to comply with the said directions of SEBI contained in the said order. Therefore, the said appeal was disposed of by the Hon'ble SAT without any observation on the merits of the said order of SEBI. Therefore, the inferences arrived at in the said order of SEBI with respect to the nature of the schemes undertaken by the Noticees for mobilization of funds from the public, had attained finality as on the date of the said SAT order.

21. In view of what has already been stated in the preceding paragraphs, I hold the Noticees liable for penalty under section 15D(a) of the SEBI Act, the contents whereof is reproduced herein below:

<u>Penalty for certain defaults in case of mutual funds.</u>

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]];

22. With respect to the quantum of penalty thatshall be imposed upon the Noticees, refrences are made to the provisions of section 15J of the SEBI Act, which are reproduced herein below:

> ***"15J- Factors to be taken into account by the adjudicating officer***
>
> ***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."

Explanation- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

23. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgment dated February 28, 2019, it is noted that the factors under Section 15J are not exhaustive but are inclusive. It is also important to mention that the Noticee No. 1 had collected significant quantum of monies from the public at large canvassing their schemes for earning profit through an unregistered CIS. The violations of the relevant laws by the Noticee is serious considering the interests of the larger public who have been enrolled into the illegal schemes of the Noticee No.1. Further, in the peculiar facts and circumstances of this case the default has occurred not due to any ignorance of the Noticees but with their full intention. Considering the quantum of

monies raised through the illegal schemes, in my view, the default is grave and the gravity of this matter cannot be ignored. Therefore, no lenient view should be taken in this matter and the case deserves imposition of monetary penalty proportionate to the default as found in this case.

ORDER

24. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of **Rs. 70,00,000/- (Rupees Seventy Lacs)** on the Noticees under section 15D(a) of the SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

25. The amount of penalty shall be paid jointly/severally either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at linkhttps://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

26. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department I-DRA-3, the Securities and Exchange Board of India,

SEBI Bhavan, Plot No. C4 – A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

28. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to CARE Ratings Limited and also to the Securities and Exchange Board of India.

Date : January 18, 2021 **G. Ramar**

Place : Mumbai **Adjudicating Officer**