

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with regulations 65 and 73 of the Securities and Exchange Board of India Act (Collective Investment Schemes) Regulations, 1999 in the matter of Alchemist Infra Realty Limited

In respect of Alchemist Infra Realty Limited and its present and past directors, Mr. Brij Mohan Mahajan, Mr. Balvir Singh, Mr. Sunil Kanti Kar, Mr. Chandra Shekhar Chauhan and Mr. Narayan Madhav Kumar

Date of hearing : June 15, 2013

Appearance

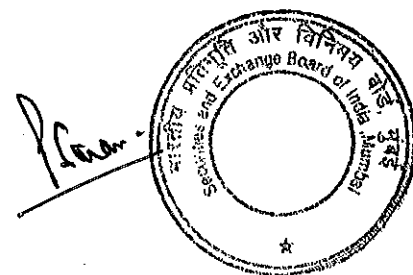
For Alchemist Infra Realty Limited, Mr. Brij Mohan Mahajan, Mr. Chandra Shekhar Chauhan and Mr. Narayan Madhav Kumar :

1. Mr. Rishad Madora, Advocate
2. Mr. Shatadru Chakrabarty, Advocate

For the Securities and Exchange Board of India :

1. Mr. Narendra Rawat, Deputy General Manager
2. Mr. T. Vinay Rajneesh, Assistant Legal Adviser
3. Mr. Ratan Lal, Assistant Legal Adviser
4. Ms. Shalini Shah, Assistant Legal Adviser

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received an anonymous letter on May 25, 2011, which alleged that a company, Alchemist Infra Realty Limited (hereinafter referred to as "the Company") was mobilising money from the investors. In order to examine/ascertain whether the Company was operating collective investment schemes, SEBI initiated an inquiry and vide letter dated August 08, 2011 drew the Company's attention to the provisions of sections 11AA and 12(1B) of the Securities and Exchange Board of India Act, 1992



(hereinafter referred to as "the SEBI Act") and advised it to forward certain documents including brochures pertaining to the schemes/projects, applications forms, sample agreements entered into with its customers, balance sheets, profit and loss accounts, details of present and past directors, details of funds mobilized under various schemes etc.

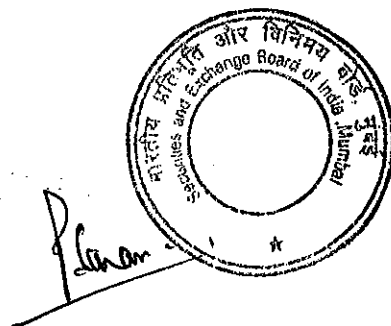
2. SEBI, vide letter dated August 8, 2011, also sought for the following information from the Registrar of Companies (RoC), Delhi

- a. Latest registered office address of the company
- b. Any other address for correspondence of the company, available on record
- c. Names of all the past & present directors of the company since incorporation along with their particulars such as addresses, father's name
- d. Period of directorship of each director
- e. Copy of the annual returns, balance sheet, copy of board resolutions and Form 32 filed with ROC office.

The RoC vide letter dated August 29, 2011 provided copies of all documents available in the portal of MCA.

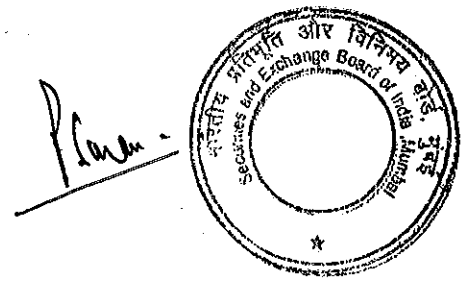
3. Pursuant to the Company's request for time to submit documents, the Company vide letter dated September 15, 2011 *inter alia* made the following submissions :

- a) Letters of SEBI addressed to the Company are issued without jurisdiction and hence the request of SEBI to supply copies of the documents is unsupportable ;
- b) The Company is not running any scheme which is in the nature of a collective investment scheme and that it is aware of the provisions of the SEBI Act as well as the provisions of the SEBI (Collective Investment Schemes) Regulations, 1999 ("the CIS Regulations") and its business operations are not covered under the provisions of either the said Act or the said regulations ;
- c) The Company was incorporated as public limited company under the Companies Act, 1956 on April 2, 2008 having *inter alia* the business of development of real estate as its main object.
- d) It is the registered owner of land in diverse location, and is currently involved in, *inter alia*, sale as well as development, working, control and supervision of the said land owned by it;



- e) The persons who are interested in purchasing land from the Company and having the same developed/ worked/ controlled/ supervised by it for diverse periods of time, submit an application along with the consideration;
- f) The Company is having the sole discretion to either accept or reject the application. If the application is rejected, the application amount is refunded within a period of 60 days from the date of the application;
- g) The applicant executes an indenture/ deed of conveyance wherein the Company is vendor and the applicant is buyer/ purchaser;
- h) The applicant/ buyer/ purchaser also enters into a supervision agreement with the Company wherein it agrees to develop, work, control and supervise the land for a fixed period of time and the applicant/ buyer/ purchaser hands over such land to the Company for a management fee. The indenture/ deed of conveyance are handed over to Company and a Certificate of Property is issued to the applicant/ buyer/ purchaser wherein the expected value of land is mentioned after a fixed period of time. In terms of the supervision agreement, the Company develops, works and supervises the land in such a manner so as to ensure that the applicant/ buyer/ purchaser may receive the expected and estimated value of the land after the expiry of the fixed period of time. The applicant/ buyer/ purchaser has an option of requesting the Company to identify a suitable party for purchasing the land and for a consideration to be mutually agreed;
- i) If the applicant/ buyer/ purchaser exercise this option, the Company promises to facilitate sale by either identifying suitable party to purchase the land or it purchases the land on mutually agreed price;
- j) The term of the supervision agreement can be extended on terms and conditions to be mutually agreed upon by the applicant by making a request 6 months before the expiry of the agreement;
- k) In terms of the Supervision Agreement, the applicant/ buyer/ purchaser has to execute a Special Power of Attorney in favour of the Company's nominee, who is one of its authorised representative, to enable the nominee to take necessary steps in respect of the development, working and supervision of the land; and
- l) The business transactions carried out by the Company are pure sale and purchase transactions of land and are not akin to collective investment schemes as defined under the SEBI Act and/or CIS Regulations;

The Company also submitted copies of the following documents along with the aforesaid letter :

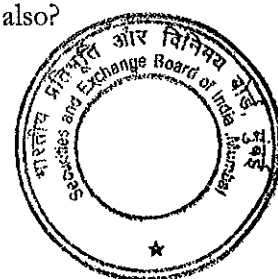


- (i) Memorandum and Articles of Association ;
- (ii) Certificate of incorporation ;
- (iii) Certificate for commencement of business ;
- (iv) List of directors ;
- (v) Sample application form ;
- (vi) Deed of indenture ;
- (vii) Sample agreement with respect to the management, control and supervision of the plot ;
- (viii) Sample certificate of property ;
- (ix) Special power of attorney ;
- (x) Auditor's report ;
- (xi) Balance sheets as at March 31, 2010 and March 31, 2009 ;
- (xii) Annual return for 2009 and 2010 ;
- (xiii) List of shareholders as on September 30, 2010 and September 30, 2009 ;

4. As the information furnished by the Company was incomplete in terms of the information sought, viz. the annual accounts for the year ended March 31, 2011, the Brochures, the details of funds mobilized from investors etc, SEBI vide letter dated November 04, 2011 advised the Company to submit the following documents :

- (i) Copy of annual accounts for the year ended 31st March 2011;
- (ii) Names of all purchasers of its land, along with their contact details, amount invested, promises or assurances made to them;
- (iii) Sample copies of agreements entered into with the customers;
- (iv) To explain how many complaints regarding the fixed deposit schemes of the Company are found in the internet;
- (v) Name of the contact person and his contact details;
- (vi) To explain whether any buyback option is being given to the investor;
- (vii) Whether the rates on which the plots were sold were comparable to the circle rate of the area?
- (viii) How does the Company invite people to purchase land? Are there any brochures/advertisements being released by the Company?
- (ix) How long the agreements are entered with the purchaser?
- (x) Which are the operations mainly carried out by the Company and which area are the investors mainly from?
- (xi) Is the Company only having cash down payment plan or instalment plan also?

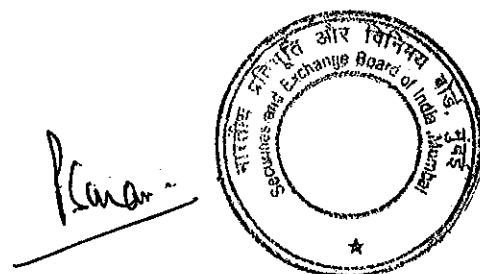
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- (xii) In case the Company is having instalment plan, what happens if there is a default in payment of instalment by purchaser?
- (xiii) To specify if any interest is being paid on the instalments paid by the customers;
- (xiv) Is it possible to buy the land being sold by the Company without taking the development facility offered by it?
- (xv) To specify in which area the land is located;
- (xvi) To specify whether the Company is part of Alchemist Group as the name of the Company is not appearing in the group of companies of Alchemist as available on the website of company.

5. In response to the information/documents as sought for in the letter mentioned above, the Company, after initially seeking time, *inter alia* made the following statements vide its letter dated December 06, 2011 :

- (i) It does not give any assurance nor makes any promise to its purchasers except as stated in *paragraphs 6 and 7* of its letter dated September 15, 2011 ;
- (ii) It does not have any fixed deposit schemes and is not aware of any complaints on the internet;
- (iii) The contact person is Mr. Narayan Madhav Kumar, its director;
- (iv) No buyback options are available except as stated in its September 15, 2011 letter;
- (v) It carries out business for profit and its rates are commensurate with the 'circle rate'.
- (vi) It does not issue any advertisement or circular or any brochures for its business transactions and that most of its purchasers are known to each other and contact the Company by spread of information by mouth;
- (vii) The deed of conveyance executed between the Company and the customer are not limited to a specified period of time as there is a transfer of title and ownership in respect of the land being sold;
- (viii) The Supervision Agreements are for diverse periods of time as mutually agreed between itself and customer;
- (ix) Purchasers are from diverse part of India;
- (x) There is no instalment plan;
- (xi) It is not possible for the purchasers to purchase land from it without taking the development facility offered by it. The purchasers are aware about the same before they transact with the Company. The purchasers are not under any compulsion whatsoever to purchase land from it;



- (xii) It has lands in diverse parts of India;
- (xiii) It is not a group company of Alchemist.

6. Thereafter, SEBI vide letters dated December 15, 2011 and January 31, 2012 sought further clarification/information and documents from the Company. The Company, in its response (letter dated February 14, 2012), referred to its letters dated September 15, 2011 and December 06, 2011 and the submissions made therein. It also stated that SEBI has not furnished '*the alleged materials available on record*' which has been mentioned in the letters of SEBI and *inter alia* submitted that it is still in the process of compiling data regarding the details of its purchasers. The Company also stated the following :

- (i) It is holding money in fixed deposits in view of the management's commercial and business decisions. Since it is engaged in the business of real estate, the funds may be utilised for acquisition of properties as and when available;
- (ii) The Company does not issue and/or publish any advertisement or brochure for its business transactions. In the balance sheet for the year ending March 31, 2011, the expenses of ₹3098/- shown as '*administrative expenses*' are primarily petty expenses for teas and snacks of visitors and employees and ₹11.6 lakhs shown as '*advertisement expenses*' were paid *inter alia* for organising various awareness events which can be termed as 'corporate social activities';
- (iii) The business transactions are pure sale and purchase transactions of land. Once the deed of conveyance is executed, the title ownership of such land stands transferred to the aforesaid purchasers. The Company agrees to supervise the land.
- (iv) The certificate of property issued by the Company is merely an acknowledgement for sale of land to the purchaser and is given in view of the fact that the conveyance deed/indenture is handed over to the Company by the purchaser;
- (v) Once the land is sold the Company is sold to the purchaser, the Company is no longer is the owner but would only supervise, develop, work , control the same for a fixed period of time. The Company develops the land by *inter alia* levelling the same, providing sources or systems of irrigation and drainage, if necessary tests and treats the soil, takes appropriate measures for supplementing the deficiency of salts in the land. The Company also constructs check dams on the boundaries of the land if the land is prone to floods and takes all steps for development, care and safety of land;
- (vi) Substantial portion of the land owned by the Company is in the state of Madhya Pradesh;
- (vii) Pricing of land is done on the basis of various factors like the location, nature of land etc.

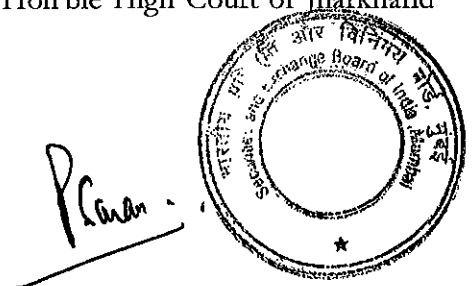
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7. SEBI, thereafter, vide letter dated April 18, 2012, advised the Company to *inter alia* provide copies of some registered sale deeds, filled-in application forms, executed supervision agreements, certificates of properties, special power of attorney etc. The Company vide letter dated April 30, 2012 and May 23, 2012 submitted copies of a few of the above said documents to SEBI.

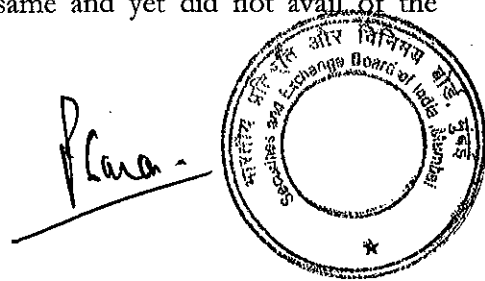
8. On consideration of the aforesaid documents, SEBI having *prima facie* found that the schemes/arrangement of the Company is in the nature of 'collective investment schemes', issued a show cause notice dated November 21, 2012 ("the SCN") to the Company and its directors namely Mr. Brij Mohan Mahajan, Mr. Balvir Singh, Mr. Sunil Kanti Kar, Mr. Chandra Shekhar Chauhan and Mr. Narayan Madhav Kumar (hereinafter collectively referred to as "the noticees"), advising them to show cause as to why appropriate action including directions under sections 11 and 11B of the SEBI Act read with regulation 65 of the CIS Regulations, should not be issued against all of them for the alleged violations. The SCN indicated that the noticees may send their replies within 21 days from the date of receipt of the same. The Company vide letter dated December 18, 2012 submitted that it is analysing the contents of the SCN and requested time of sixty days for filing reply. The request was also made on behalf of all the other noticees.

9. I note that the Company had filed writ petitions (W.P. (C) No. 1195 and 1198 of 2013) during February 2013 before the Hon'ble High Court of Jharkhand at Ranchi, praying the Hon'ble Court *inter alia* for unsealing its office which has been sealed by the law enforcement agency and to permit it to carry on business without any hindrance. SEBI was subsequently impleaded as one of the respondents in the proceedings before the Hon'ble Court. The Hon'ble Court, while taking note that SEBI had issued the SCN to the Company, did not consider it proper to direct unsealing of the premises of the Company. Vide its Order dated May 10, 2013, the Hon'ble Court disposed off the petition with a direction to SEBI to conclude the inquiry and pass order in respect of the same within a period of six weeks from the date of receipt of copy of the order, without being influenced by any observations made in the order. The Company and the other noticees did not file any reply till then to the SCN. In order to comply with the above direction of the Hon'ble High Court and in the interest of justice, the noticees were afforded opportunity of personal hearing and the same was scheduled on May 30, 2013, communicated to the noticees vide SEBI letter dated May 17, 2013. It is noted that the Company has preferred Letters Patent Appeals (nos. 175 and 176 of 2013) before the Hon'ble High Court of Jharkhand against the aforesaid order.



10. With respect to the opportunity for hearing granted on May 30, 2013, the Company vide letter dated May 18, 2013, stated that SEBI has not provided to them the copies of all relied upon documents and requested for enlargement/extension of time by 10 days to submit their reply to SEBI. SEBI advised the Company to submit the reply to the SCN on or before the hearing date i.e May 30, 2013. Vide letter dated May 23, 2013 the Company stated that on account of summer vacations and pre-occupations, the concerned directors would not be available on 30th May 2013 and sought adjournment for hearing to be scheduled after two months. Alchemist also sought extension of time to file reply to the show cause notice. The Company vide another letter dated May 28, 2013 while referring to the order dated May 10, 2013 and their LPA filed before the Hon'ble Jharkhand High Court, again requested for adjournment for two months and submitted that if no adjournment is granted than they shall depute their executive officer to appear before SEBI without any legal help. Again, vide letter dated May 29, 2013 the Company reiterated their request for postponement of hearing. In view of such request, personal hearing was adjourned and the same was fixed on June 07, 2013. The noticees were accordingly informed.

11. The Company filed another writ petition (W.P. (C) 3917/2013 and CM No. 7308/2013) before the Hon'ble High Court of Delhi on June 04, 2013, praying *inter alia* that SEBI should be directed to furnish copy of the investor complaint and to prohibit SEBI from proceeding further without providing such complaint. The Hon'ble Court had directed that the hearing fixed by SEBI on June 07, 2013 shall be adjourned. The Company was granted time to file its reply to the SCN, as a final opportunity, on or before 11th June 2013. The Hon'ble High Court directed that the matter would be heard on or before 18th June 2013 but not earlier than 14th June 2013 and that the final decision would be passed on 26th June 2013. In compliance with the Order, SEBI adjourned the personal hearing scheduled on June 07, 2013 and posted the same on June 15, 2013. The Company filed its reply dated June 11, 2013 to the SCN. During the personal hearing, the advocate who represented the Company, Mr. Brij Mohan Mahajan, Mr. Chandra Shekhar Chauhan and Mr. Narayan Madhav Kumar, did not make submissions on merits and instead requested only for an adjournment of the personal hearing. Though the advocate was offered a short adjournment of two hours on the same day for preparing the case and making submissions/seeking necessary help, the same was not availed. In view of the time frame fixed by the Hon'ble High Courts, as mentioned above, I was not able to accommodate the Company/noticees in further adjourning the hearing. I also note that the Hon'ble Delhi High Court had specifically directed that the hearing be held on any day between June 14, 2013 and June 18, 2013. The Company/noticees are aware of the same and yet did not avail of the

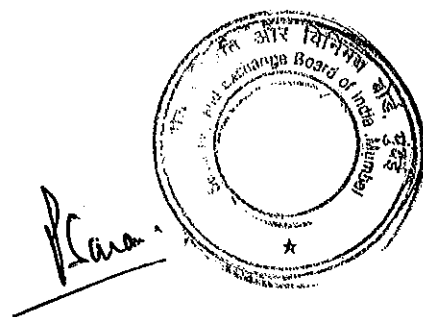


opportunity to make oral submissions. Therefore, the hearing was concluded. I also note that the application of the Company seeking a consent order with respect to the charges in the SCN has been rejected by SEBI on the ground that the subject matter involves rights of the investors.

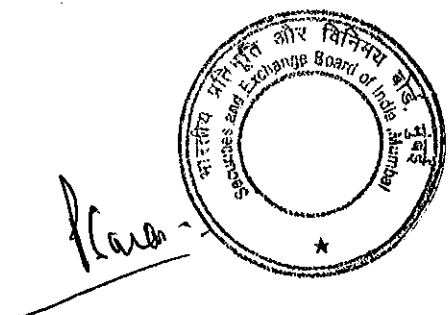
12. I also note that the writ petition (No.3995 of 2013) as well as the application for modification/clarification in Writ Petition No.3917 of 2013, both filed by the Company has been withdrawn stating that they have become infructuous as the application for consent was rejected. Further, in an application filed by SEBI seeking suitable modification/clarification of the order passed in W.P. No.3917 of 2013, the same was allowed by the Hon'ble High Court at Delhi with the direction that the final order be passed on or before June 26, 2013 and not before June 21, 2013.

13. The submissions made by the Company in its reply dated June 11, 2013 are as follows :

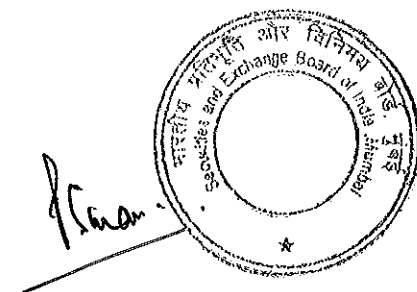
- (i) It has filed an application for a consent order and consequently it filed a short reply to the SCN. It reserves its right to file a detailed reply and/or request SEBI to permit it to file a detailed reply, if necessary and also requested for an opportunity of personal hearing before SEBI.
- (ii) The Company has been advised and accordingly states that the said SCN has been advised without jurisdiction and consequently the instant proceeding initiated is unsupportable, not tenable, not maintainable and unlawful.
- (iii) The Company is not running any scheme which is in the nature of a Collective investment Scheme. Since its business operations are not covered under the provisions of either the said Act or the CIS Regulations, it is not required to obtain a certificate of registration from SEBI in terms of the said Act or the CIS Regulations.
- (iv) The Company does not deal with or transact in "securities", as defined under the Securities Contracts (Regulation) Act, 1956 and nor is the Company listed on any stock exchange.
- (v) The Company does not have any intention to list its shares on any Stock Exchange and its affairs are regulated and administered by Ministry of Corporate Affairs, Government of India under the provisions of the Indian Companies Act, 1956.
- (vi) Land Transactions : The Company acquired an interest in /ownership over land situated at Yamunagar by entering into an agreement of sale dated October 30, 2008 with M/s Alchemist Ltd and pursuant to the same, possession of the aforesaid land was handed over to it on 18.3.2009. Thereafter, the Company has purchased land in diverse locations and is currently involved in *inter alia*, sale as well as development, working, control and supervision of the aforesaid land owned by it.
- (vii) Clients interested in purchasing land from it and having the same developed/worked /controlled /supervised by the Company for diverse periods of time engage with it and pay consideration in respect of the said land.



- (viii) The Company has the sole right to accept or reject a proposal upon receipt of the same without assigning any reason. If it rejects an application /proposal, it returns the aforesaid amount paid by the prospective client within 60 days from the date of the said application.
- (ix) If an application is accepted, an indenture/ a deed of conveyance is executed by and between the Company as the vendor and the aforesaid applicant /buyer/purchaser in respect of the land being sold and purchased. The aforesaid indenture /deed of conveyance is registered before the concerned authority and applicable stamp duty is also paid in accordance with the provisions of the Indian Stamp Act. Since inception over 4000 deeds have been registered for such conveyance of land to clients by it.
- (x) The applicant buyer/purchaser also enters into an agreement (hereinafter referred to as " the said supervision agreement") whereby the Company agrees to develop, work, control and supervise the said land for a fixed period of time and the applicant /buyer/purchaser hands over possession of the said land to the Company for such purpose for a management fee.
- (xi) The aforesaid indenture /deed of conveyance is handed over to it, and a Certificate of Property is issued to the applicant /buyer/purchaser wherein the expected and estimated value of the said land after the expiry of the aforesaid fixed period of time is stated.
- (xii) In terms of the said Supervision Agreement, the Company endeavours to develop, work and supervise the land in such a manner so as to ensure that the applicant/buyer /purchaser may receive the aforesaid expected and estimated value of the said land after the expiry of the aforesaid fixed period of time. The applicant /buyer/purchaser has an option of requesting the company to identify a suitable party for purchasing the said land at and for a consideration to be mutually agreed. Such consideration has no connection whatsoever with the aforesaid estimated and expected value of the said land.
- (xiii) If the applicant /buyer/purchaser exercises such an option, Company facilitates such sale by either identifying a suitable party to purchase the said land from the applicant buyer /purchaser or the Company itself purchases the said land at the consideration mutually agreed to.
- (xiv) The applicant /buyer /purchaser also has an option to extend the term of the said Supervision Agreement on terms and conditions to be mutually agreed upon provided the applicant /buyer/purchaser make such a request to the company six months prior to the expiry of the aforesaid fixed period of time. It is thus clear that the applicant /buyer/purchaser is under no obligation to sell the said land purchased by him either to company or to a third party and nor is the applicant buyer/purchaser under any obligation to extend the term of the said Supervision Agreement.
- (xv) In terms of the said Supervision Agreement, the applicant/buyer/purchaser also executes a Special Power of Attorney in favour of his/her nominee being one of its authorized representative to enable the nominee to, inter alia, take necessary steps in respect of the aforesaid development, working and supervising of the said land. Such Power of Attorney is duly notarized.
- (xvi) To summarise, the business transactions carried out by the Company are pure sale and purchase transaction of land.

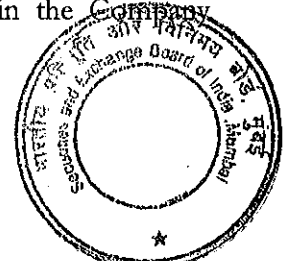


- (xvii) Its business transactions are not in the nature of "collective investment schemes" since none of the four conditions specified in section 11AA of the SEBI Act are met in as much as (a) the company was the owner of the land prior to it entering into transactions with its customers /clients and was not offering any scheme or arrangement ; (b) company transactions concern sale and purchase of land as well as development, supervision and working of the land being sold for a fixed period of time ; (c) There are no investors ; (d) The purchasers of the land cannot be called as investors ; (e) The purchasers of the land become registered owners of the land being sold and the company has no right in respect of the title of such land after the sale is concluded; (e) The purchasers of the said land may, at their discretion, sell the same in the future or may continue to retain the same without the company being involved in any manner whatsoever in the future ;(f) The payments made by the purchasers are not pooled or utilized for the purposes of the alleged scheme or alleged arrangement or the company's business transactions; (g) There is no arrangement between the purchaser and the company to share any profit ;(h) All decisions taken by the purchasers are individual decisions; (i) The common objective of all the business and /or commercial transactions is to make profit ; (j) The purchaser obtains ownership of the land as consideration and the company receives money as consideration by virtue of the business transactions entered into by and between the purchasers and the company ; (k) the company does not guarantee any profit to the purchaser ; (l) The sale consideration received by the company is not being managed by the company on behalf of the purchasers ; and (m) The purchasers are free to take any action in respect of the said land, and are under no obligation and/or compulsion whatsoever to deal with them in pre determined manner.
- (xviii) The Honble Rajasthan High Court had held, in a judgment reported in (2004) 120 Comp Cas 470 (Raj), that the activity of the company concerned in that case was not in the nature of collective investment schemes. Recently, in February 2013, hearing in the appeal against the decision of the Hon'ble Rajasthan High Court, the Hon'ble Supreme Court of India remanded the matter to SEBI for fresh consideration.
- (xix) In another matter, related to a company called PGF Limited by a judgement dated March 12,2013 reported JT 2013 (4) SC 146, the Hon'ble Supreme Court of India has ruled for the first time on a real estate business in the context of law governing collective investment schemes.
- (xx) The Company has conducted itself in a manner that would not render it a collective investment scheme.
- (xxi) All the ingredients of a 'sale' as defined under the Transfer of Property Act, 1882, are present in the instant case. The Company has already provided copies of some of the sale deeds executed by it in favour of the buyers and the existence of the same and their valid execution and registration has not been doubted by SEBI in the said SCN. It is further reiterated that after the development period, the buyer of the land is free that after execution of necessary documents in favour of the buyer including the sale deed, he becomes sole and absolute owner of the land to the exclusion of the rest of the world, including the Company. This conclusively establishes that the absolute title in the land has moved from it to the buyer in the exact terms of a sale of land as defined under the

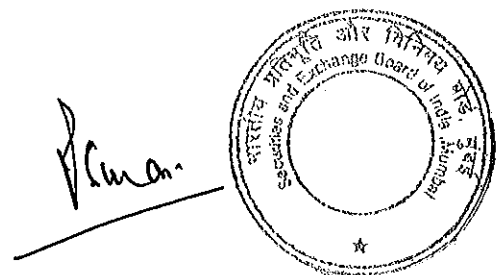


- Transfer of Property Act, 1882 read with the Indian Contract Act, 1972, which regulate the transactions /contracts pertaining to sale and purchase of immovable property.
- (xxii) After the development period, the Company does not have any control over the land. The buyer is free to use the land in any manner he wishes, including sale to anyone of his choice. It is further clarified by way of abundant caution that the only restriction on use of land is during the period of development and that such restriction is also not absolute but arises out of prudent business practices prevailing in similar trades. It is reiterated that even during development period, the buyer remains the absolute legal owner of the land.
- (xxiii) The tenure of the supervision agreement could at the option of the owner of the land be extended in the event the land could not be developed due to an emergent and unforeseen situation. The extension of the period of development does not dilute the quality of title to the land in the hands of the buyer in any manner. The sale of land and the transfer of title is absolute and mere extension of time of supervision does not in any way dilute the title of the owner.
- (xxiv) The vesting of authority to execute certain acts related to the sale of plot on behalf of the buyer does not take anything away from the essential characteristic of the transaction being a sale / purchase of land. The Special Power of Attorney has been executed for business efficiency and administrative convenience. Efficient, profitable and legal business transactions are now being impugned and entangled in administrative red-tape.
- (xxv) It is further submitted that the said SCN has erroneously based the bulk of the allegations contained therein against the company on the basis of some of the preliminary document(s) that were executed between the buyer and the Company. Such agreements stand superseded and replaced by the sale deeds that have been executed between the buyer and the Company and validly registered in favour of the buyer. Unlike the preliminary document(s), the sale deeds are compulsorily registrable documents and have in fact been registered.
- (xxvi) Section 11 AA mis-applied: Even if all the four ingredients specified in Section 11AA (2) of the SEBI Act 1992 are sought to be shown as being in existence, it should be remembered that unless there is a 'scheme of arrangement' in place there would be no collective investment scheme in operation in the eyes of law. It is submitted that a scheme/arrangement has not been defined in the SEBI Act, 1992 or elsewhere. It is submitted that full meaning has to be given to every word in the statute. It is submitted that a plain reading of Section 11AA(2) of the SEBI Act, 1992 would reveal that a 'scheme of arrangement' should contain the four ingredients and does not mean that any transaction which contains any of the four ingredients become a 'scheme of arrangement'
- (xxvii) A scheme would imply at the very least amongst other things that there exists mechanism whereby the purported 'investor' gets a fixed / predetermined sum of money at the end of a fixed period of time. In the instant case, the land which is made available to the purported 'investor' who is factually and legally a buyer of land is transferred at a price determined by market forces. The existence of a scheme/arrangement would also provide that instruments are executed *inter se* the parties which would guarantee the payment of fixed sums of money at the end of a certain period. No such instruments are executed in the instant case. There is no such scheme of arrangement wherein the Company

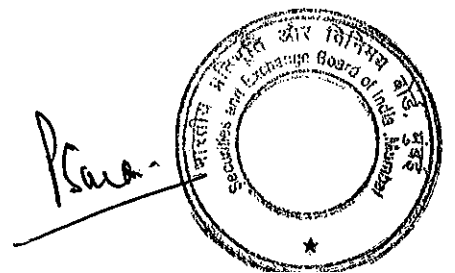
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- guarantees any fixed or predetermined amount or return to the buyers of the land on any account whatsoever. The development and selling of land has been achieved in pursuance of duly executed agreements that have also been registered as and when necessary.
- (xxviii) The intention of the Legislature while bringing the present legislation into being was to curb unregulated deposits from the public. It is submitted that the intention of the present piece of legislation was never to curb genuine business transactions involving the sale / development of land and promotion of infrastructure in the country. It is submitted that if the meaning of a scheme / arrangement is taken to mean the mere summation of the ingredients specified in Section 11AA(2) of the SEBI Act 1992, then the intention of the Legislature would essentially be defeated resulting in impossibility of carrying on business activities by business entities including companies like the Company.
- (xxix) The Companies Act 1956 when read with the Transfer of Property Act, 1982 and the Indian Contract Act, 1872 would imply that the objects for which a company has been incorporated should be allowed to be realised to their fullest extent. The provisions of section 11AA of the SEBI Act, 1992 cannot be extended to such an extent that ordinary business transactions that are not about floating schemes for raising public money are curbed.
- (xxx) Not a Scheme / Arrangement: The existence of a scheme would necessitate that something would be done 'at a later point of time' in pursuance of the acceptance of the alleged amount of money accepted as 'deposits'. It is submitted that the title is transferred forthwith and not at a later point of time. There is no 'pooling of resources' for a concrete objective. Each transaction is a stand-alone transaction and there is no grand 'scheme / arrangement' which was to be achieved in furtherance of such alleged 'pooling of resources'. It is submitted that there is no 'scheme / arrangement' in existence. It is submitted that there is merely a sale / purchase of land between the buyer and the Company.
- (xxxi) The land sold by company to various buyers has been acquired by it from its own resources. The essence of a scheme would also imply that some 'benefits' should have a nexus with the 'scheme/arrangement'. There exists no benefits that are accruing due to the machinations of the alleged 'scheme / arrangement' in the instant case. Mere 'transfer of an immovable asset for valid consideration' cannot be categorised as a 'benefit'. It would be an artificial and unwarranted complication to state that mere sale/ purchase of land is a 'scheme/arrangement' that has resulted in the 'benefits' from the scheme. A clear distinction must be drawn between a 'legally purchased immovable asset' on the one hand and the 'benefits accruing from the scheme / arrangement' on the other hand.
- (xxxii) The copies of audited annual accounts of the Company evidence the fact that the amount received by the Company from the buyers of land is classified as consideration against 'stock in trade' and not as deposits received from the general public or loan or borrowing from creditors.
- (xxxiii) Section 11 AA(2) inapplicable: The requirements of Section 11AA(2)(i) of the SEBI Act 1992 have not been fulfilled in the instant case. Mere sale/purchase of land would not elevate a person from a 'buyer' to an 'investor'. The clause also uses the words 'pooled or utilized' in a context that warrants the implication that 'investment' is made in furtherance



- of a 'scheme of arrangement' and not some sale simpliciter. In the instant case is merely of a sale/purchase and not of an 'investment' where 'pooling of resources' is involved.
- (xxxiv) The requirements of Section 11AA(2)(ii) of the SEBI Act, 1992 are also not fulfilled in the instant case. The purport of the said clause is that the 'property' (or profit, produce etc.) should emanate from the 'scheme of arrangement'. The necessary implication of the said clause is that the property should not be identifiable at the time the 'contribution or payment' is made but becomes identifiable by the operation of the said "scheme of arrangement". This is clearly not the case in the instant matter. There exists no 'scheme of arrangement' which operationalizes itself to make the land crystallised / identifiable. The land is crystallised / identifiable at the same time as the purported 'contribution or payment' is made. In view of the same, it is submitted that the requirements of Section 11AA(2)(ii) of the SEBI Act, 1992 are also not met in the instant case.
- (xxxv) The requirements of Section 11AA(2)(iii) of the SEBI Act, 1992 are also not fulfilled in the instant case. The sub-section stipulates that the 'property' should be 'managed on behalf of the investors'. The clause is not attracted in the instant case as there are no 'investors'. A plain reading of the clause would also imply that the scheme / arrangement should 'necessitate' the management on behalf of the purported investors in a manner in which the investors are left with no choice in the matter of handing over of management. This is clearly not the case in the instant matter as the buyers can sell the land to whomsoever they wish. They can also exit from the development agreement in terms thereof. The payment made by the buyer is not of a variety that would 'lapse' or would otherwise become not payable if the buyer asks for the sale consideration before the development period is completed. In view of the same, the requirements of Section 11AA(2)(iii) of the SEBI Act, 1992 are also not met in the instant case.
- (xxxvi) The requirements of Section 11AA(2)(iv) of the SEBI Act, 1992 are also not met in the instant case. There exists no scheme/arrangement and accordingly there is no question of there being the management or operation of such a scheme. The management and operation of the scheme is a myth and a concoction of the said SCN. It is submitted that the said SCN has brought on record nothing to show that there exists any 'management or operation' of any 'scheme or arrangement' that is occurring on a 'day-to-day' basis. The 'day-to-day' control that is envisaged under this sub-section is that of the purported 'scheme of arrangement' and not of the 'property'. The purported purpose of the scheme as per the said SCN is the obtainment of the property by the purported 'investor'. This fruition of the purported 'scheme of arrangement' is attained at the time when the sale is completed. In view of the same, it is submitted that there is no 'day to day' control that is coterminous with the tenure of the purported 'scheme or arrangement'. Thus, there exists no scheme/arrangement and much less any 'day to day' control thereof.
- (xxxvii) In view of the foregoing, none of the criterion that have been laid out in Section 11AA(2) has been fulfilled in the instant case.
- (xxxviii) No Client/ Grievance: The Company is not aware of any "investor compliant" as referred to in paragraph 1 of the SCN. No copy has been provided. SEBI has also categorically submitted to the Hon'ble Delhi High Court that SEBI would not be relying on any such alleged document. By a letter dated May 3, 2013, SEBI had annexed the letter allegedly received by it from alleged investors regarding the alleged collection of



money by the Company from the general public. Although SEBI had enclosed certain documents with the aforesaid letter dated May 3, 2013, none of the same have been written by any alleged investor and neither are any of such documents addressed to the SEBI. The said document provided by the SEBI: (a) is not written by any alleged investor; (b) is not addressed to the SEBI, but addressed to some undisclosed channel; (c) is undated; (d) is unsigned; (e) contains diverse false and baseless allegations without any supporting document and / or evidence and/or proof; and (f) has been written with an ulterior and mala fide motive to cause loss of reputation and goodwill to the Company and harass it.

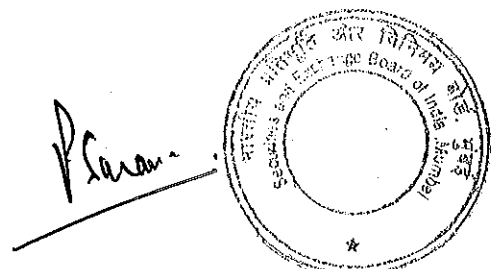
The Company has requested SEBI to drop the matter and not proceed further.

14. I have considered the SCN issued to the Company and the other noticees, the correspondence exchanged between SEBI and the Company, the documents and submissions provided/made by the Company, as mentioned above.

15. The charge against the Company, as per the SCN, is that its schemes /arrangement are in the nature of Collective Investment Schemes and that the Company was offering them/launching them without obtaining registration from SEBI for carrying on or launching such collective investment schemes in contravention of section 12 (1B) of the SEBI Act, 1992 and regulation 3 of the SEBI (CIS) Regulations. The directors, both present and past, have been alleged to be responsible for the conduct of the business of the company which is in violation of the aforesaid provisions.

16. I have perused the documents which have been furnished by the Company with respect to its operations and such documents have also been made part of the SCN, issued to the noticees.

17. Before proceeding with the merits of the case, I wish to address two preliminary submissions. The first is the submission of the Company that it has filed an application for a consent order and that it be afforded opportunity to file detailed reply and grant opportunity of personal hearing. As already mentioned above, the application filed by the Company for a consent order has been rejected by SEBI. In view of the same, there is no requirement to keep the order in abeyance. The Hon'ble High Court at Delhi had directed the Company to file its reply to the SCN, as a final opportunity, on or before 11th June 2013. SEBI was directed to hear the Company on or before 18th June 2013 but not earlier than 14th June 2013. The Company has filed its reply dated June 11, 2013 and SEBI has afforded an opportunity of personal hearing on June 15, 2013, in compliance with the directions of the Hon'ble Court. Since the time frame



was fixed by the Hon'ble High Court before which SEBI was also a party, I am unable to grant another opportunity of hearing or further time for filing another reply, as it would tantamount to breach of the Hon'ble Court's directions. It is also to be noted that on June 19, 2013 when the Hon'ble High Court at Delhi had modified its earlier order, it directed SEBI to pass final order on or before 26th June 2013 and not earlier than 21st June 2013.

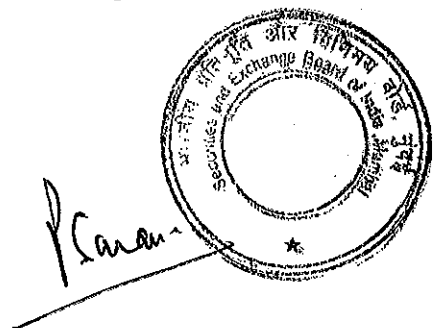
18. The second submission that I have to deal with is regarding the investor complaint. The inquiry by SEBI in this matter was triggered by the letter which is mentioned in paragraph 1 of the SCN. I note that the said letter received by SEBI on May 25, 2011 was also shared with the Company vide SEBI letter dated May 03, 2013. However, the same has not been the basis for any charges against the Company and the other noticees. The Company has been informed that all documents that are relied upon by SEBI have already been furnished to it vide the SCN. The SCN has relied upon documents such as application forms, conveyance deeds, etc and all those documents were made part of the SCN issued to the Company and the other noticees. Incidentally, all the documents that have been relied upon have been submitted by the Company itself.

19. Having made the above findings on the preliminary submissions, I proceed to consider the documents placed before me vide the SCN. The documents required by the Company from its investors, as can be seen from its submissions and also the documents provided by it, are the following – Application form, indenture, conveyance deed, supervision/development agreement and the special power of attorney. I have perused such documents and my observations are as below :-

20. From the sample application form (no. 01315115), I note that the same *inter alia* contains the following statements :

"I / We, intend to purchase and / or acquire, and avail your services for development of, immovable properties available with you. I / We, make payment of Rs. by Cash / Cheque / Demand draft no. for acquiring plot at Shimpuri (M.P.) with development tenure of years. In order to enable you to complete the documentation for transfer and / or development, I / We, given hereunder our / my particulars."

Thereafter, the application form contains a table which captures details like the name of applicant, father's/ husband's name, address, legal heir, bank particulars, signature etc.. Below the table, the application contains the following statements :



"You may allot me / us a suitable plot at your said project. I/ We shall not raise any objection with regard to the allotment made by you. Please allot me/us such a plot, which would be able to give me /us the expected valuation as indicated. As agreed, please complete the allotment within 60 days.

Please further note that, I /we, have appointed Constituted Attorney for the purpose of executing all further deeds/ agreements with regard to the aforesaid. The original Power of Attorney is sent herewith for your record.

I/We confirm having perused the terms of Development Agreement and hereby accept the same.

I/we, also declare that I /we shall abide by all other rules and regulations with regard to the development of the property. "

21. Under the general instructions which was annexed to the sample application form, it was *inter alia* stated that the application form duly completed must be accompanied by either cash (not exceeding Rs. 20000/-) or account payee demand draft or account payee cheque drawn in favour of the Company and delivered to the authorised representative or the office of the Company. I have also perused the sample deed of indenture and note that it contained the following statements /clauses :

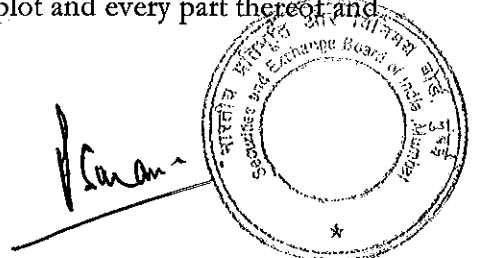
"WHEREAS the vendor owns and possess ALL THAT land measuring 1762.20 Kanal at BEHANTA & TILA, Tehsil KOLARAS , District SHIVPURI (M.P.), morefully described Schedule I written hereunder :

AND WHEREAS the said COMPANY has undertaken certain development of the said land and has caused the same to be divided into several plots and has been carrying on diverse types and kinds of activities thereat, giving substantially yields and profits.

AND WHEREAS the purchaser herein has evinced interest to associate with the vendor in developing the said property and has agreed to acquire plot therein and thereafter authorise the vendor to work, manage and supervise as separately agreed.

AND WHEREAS the parties hereto have agreed that the said plot of land as detailed in Schedule I hereto be sold, conveyed and transferred to the purchaser on terms and conditions as stated hereinafter.

22. The deed of indenture records the consideration paid by the investor. It also states that on payment of consideration by the investor or immediately before the execution of the deed, the vendor (the company) would grant, sell, convey and transfer, assign and assure a purchaser all that interest in the land measuring 1762.20 Kanala at Behanta and Tila, Tehsil Kolaras, District Shivpuri (Madhya Pradesh). It was also stated that the purchaser shall and may at all times peacefully and quietly enter into, hold, possess and enjoy the said plot and every part thereof and



receive the yields and profits thereof, without any lawful eviction. Schedule I refers to all that land measuring 1762.20 Kanala at Behanta and Tila, Tehsil Kolaras, District Shivpuri (Madhya Pradesh). Schedule II refers to all that said plot in land measuring 1762.20 Kanala at Behanta and Tila, Tehsil Kolaras, District Shivpuri (Madhya Pradesh). Thus, in the indenture signed between the Company and the purchaser, the area of plot being purchased by the customer is not even mentioned. Wherever the share of the customer is mentioned, it is always denoted as proportionate undivided interest and that the purchaser shall not be entitled to claim division and/or partition of the said proportionate undivided interest and shall continue to hold and enjoy the same with its co-owners without any objection.

23. There is another document (called the Supervision agreement or Development agreement) which deals with the management, work and supervision of the plot situated at Behanta and Tila, Tehsil Kolaras, District Shivpuri (Madhya Pradesh). This document refers to the investor's application regarding working, management, control and supervision of the plot acquired by virtue of the deed of indenture executed between the company and its customer. The document mentions that the Company has agreed to work, manage, control and supervise a customer's plot situated at Behanta and Tila, Tehsil Kolaras, District Shivpuri (Madhya Pradesh) for a "period of months" for and on behalf of the customers and the company shall endeavour to ensure that at the end of the said tenure the customer may receive consideration as per the expected value of the plot after expiry of the "tenure of ... months". The said document also states as follows :

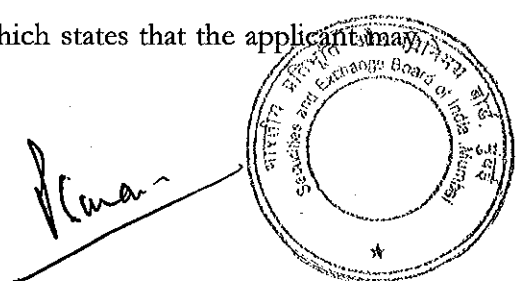
1. *"We have agreed to work , manage, control and supervise your plot situated at Behanta and Tila, Tehsil Kolaras, District Shivpuri (Madhya Pradesh) hereinafter to as the above plot (morefully described in the schedule written hereunder for a a period of _____ months for and on your behalf and shall made endevaour to ensure that at the end of the said tenure you may receive a consideration as per the expected value of the plot after the expiry of the tenure of _____ months.*
2. *You have handed over possession in respect of the said plot to us and also made payment of the management fee of Rs. _____ (Rupees _____)*
3. *During the term aforesaid, we shall not claim ownership vis-à-vis your interest and /or any other right in the said plot save and except to maintain the same for and on your behalf as stated hereinabove.*



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4. Similarly, during the term aforesaid, you shall not deal with dispose and /or encumber your interest without express consent in writing from us. You have deposited the document of title i.e. Indenture date _____ with us for being held on your behalf.
5. We shall be at liberty to undertake and /or carry on such work and activities at the said land as it may deem fit and appropriate and may undertake construction of structures (temporary or pucca dig tubewells , install irrigations or electrical facilities and or /such other infrastructure as may be thought fit and appropriate, subject to it being expressly agreed that you shall not be liable for payment for any cost, charges or expenses, on account thereof either during the term or after expiry thereof.
6. We shall at our own costs and expenses and without any right to seek reimbursement of such costs and expenses from you, be at liberty to :
 - (a) Pay all taxes and other dues/ levies.
 - (b) Carry on cultivation, planting and raising of crops, trees, plants, saplings, use of fertilizers and pesticides, harvesting and such other activities there at as thought fit and proper.
 - (c) Arrange sale of produce, if any, out of the said plot, either in the wholesale market and /or in semi-wholesale market, and/ or in one or marketing company.
 - (d) Avail services of such agro consultants and experts as it may be necessary, to evolve our own method and mode for maintaining the said land.
 - (e) Employ our own technical experts, advisers, and other personnel, as may be necessary.
 - (f) Keep accounts of income and expenditure incurred and /or to be incurred pertaining to the working, controlling, managing and supervising of the said land.
 - (g) Take such other steps as may be required and /or necessary in connection with and /or in relation to working, managing, controlling and supervising the said land....."

24. The document also states that the customer /applicant shall grant a special power of attorney to Company's authorised representative for the purpose of working, managing, controlling and supervising the plot in the said land. During the term (development/supervision period), the applicant shall be entitled to inspect the said land and /or activities carried on there at. The inspection was to be done with due notice and intimation to the company. It was also stated that the applicant shall not interfere with the working, managing, controlling and supervising of the said plot in any manner whatsoever. The applicant was not entitled to make any claim in respect of the facilities provided by the company in the said land and the company was entitled to remove all its installation and/or facilities upon termination of the agreement unless otherwise agreed. This document contained a clause which states that the applicant may

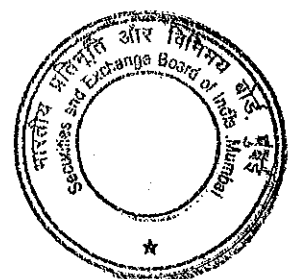


request the company to identify a suitable party for purchasing the said plot for a consideration to be mutually agreed. In the event of the applicant exercising the said option, the company shall either identify the suitable party or shall purchase the said plot for a consideration as stated above and shall ensure that such transfer is completed within 30 days from the expiry of the term (the tenure of development/control by company). It was also provided that upon receiving the consideration, the applicant shall not have any other claim against the company and shall cease to have any right, title and interest in the said land. For the purpose of affecting sale of the plot, the applicant had to grant a special power attorney in favour of the company's nominee. The agreement also provided that notwithstanding the aforesaid, the applicant may make a request six months prior to the expiry of the term for further extension, whereupon the Company at its discretion may accept such extension on terms as may be mutually agreed. This agreement is a standard agreement which required the applicant to confirm and accept its terms.

25. I have also perused a copy of the sample certificate of property. This is the certificate, which according to the company is issued to the applicant who has entered into an agreement vide a deed of indenture and has deposited the said deed with the company and has availed the services of the company to work manage, control and supervise the plot situated in the area mentioned in schedule I to the indenture deed. The certificate records the details of the applicant, the date of indenture deed executed between the applicant and the company and that the original of the indenture deed has been deposited with the company in terms of the development agreement. This certificate also mentions the amount paid by the certificate holder, which includes the development charges. The certificate also mentions that the estimated value of the said undivided share (in the land) after development is expected to be not less "than Rs./- on expiry of tenure on (date)" under the said agreement. However, the certificate does not specify the area or the exact location of the plot.

26. I have also perused the sample special power of attorney which gives the power to the authorised representative of the company in connection with the execution of documents and /or deeds, on behalf of the applicant.

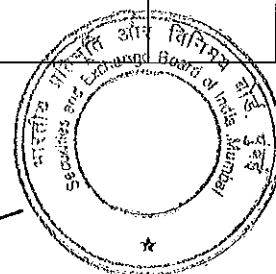
27. The Company has furnished copies of filled-in documents (*application form, indentures, special power of attorney and supervision agreements*) pertaining to seven of its investors to SEBI. From such documents, I note the following details :



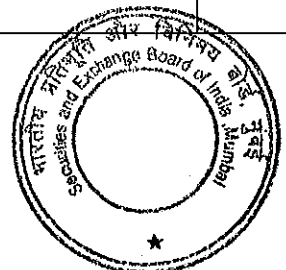
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Sr.No.	Name of the investor	Date of Documents	Details of the Property	Value (₹)	Plan Type	Development Charges	Tenure
1	Prakash Mondal	October 9, 2010	All that proportionate undivided interest in land measuring 905.016 Kanal at Behanta and Tila, Tehsil Kolaras, District Shiv Puri, MP.	100000	Plan B6	48750	72 months
2	Prakash Mondal (vide another application)	October 9, 2010	All that proportionate undivided interest in land measuring 905.016 Kanal at Behanta and Tila, Tehsil Kolaras, District Shiv Puri, MP.	100000	Plan B6	48750	72 months
3	Meera Debi Singh	October 19, 2010	All that proportionate undivided interest in land measuring 905.016 Kanal at Behanta and Tila, Tehsil Kolaras, District Shiv Puri, MP.	125000	9 years	61000	108 months
4	Sathi Chakraborty	October 25 2010	All that proportionate undivided interest in land measuring 1762.20 Kanal at	200000	Plan B6	148500	72 months

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			Behanta and Tila, Tehsil Kolaras, District Shiv Puri, MP.				
5	Tarun Patra	September 30, 2010	All that proportionate undivided interest in land measuring 905.016 Kanal at Behanta and Tila, Tehsil Kolaras, District Shiv Puri, MP.	80000	9 years (c)	38700	108 months
6	Radhagobinda Das	September 21, 2010	All that proportionate undivided interest in land measuring 1762.20 Kanal at Behanta and Tila, Tehsil Kolaras, District Shiv Puri, MP.	200000	6 years / B	46500	72 months
7	Abha Santra	August 25, 2010	All that proportionate undivided interest in land measuring 1762.20 Kanal at Behanta and Tila, Tehsil Kolaras, District Shiv Puri, MP.	200000	16 years	148500	192 months

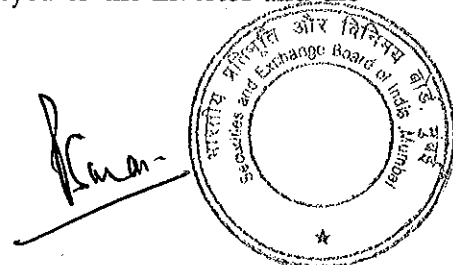


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8	Asima Maity Patra	September 22, 2010	All that proportionate undivided interest in land measuring 1762.20 Kanal at Behanta and Tila, Tehsil Kolaras, District Shiv Puri, MP.	200000	12 years	148500	144 months
9	Shibaji Das	July 31, 2010	All that proportionate undivided interest in land measuring 1762.20 Kanal at Behanta and Tila, Tehsil Kolaras, District Shiv Puri, MP.	70000	16 years	34000	192 months

All the above persons have authorised one Gagnish Arora as their attorney for the purposes of executing, performing and exercising all their rights and obligations with respect to the purchase and management of the said plot. It is also stated in such special power of attorney that the said Mr. Gagnish Arora is duly authorised by the company to sign, execute and implement the power of attorney and exercise all rights and power enumerated therein. I note from the application form that the Special Power of Attorney for appointing Mr. Gagnish Arora, authorized representative of the Company, has to be mandatorily signed by all the applicants at the time of making the application. The name of Mr. Gagnish Arora, is pre-printed in the special power of attorney form, to enable him to exercise all the rights and obligations of the applicant with respect to the purchase and management of the plot. The details of the land have been left blank.

28. I also note that in the application form of few investors including Mr. Prakash Mondal, the development tenure is specified as **Plan B - 6**. The same indicates that the Company has 'plans' with respect to its transactions with its investors. The application form or the documents that are enclosed with them do not state the extent of land conveyed to the investor and the



identity of the plot.

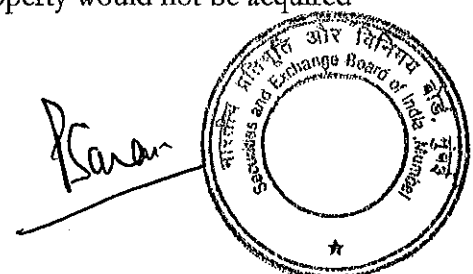
29. On an analysis of the filled up application form, it is observed that following facts did not appear in the sample application form provided by Alchemist vide letter dated September 15, 2011, namely:

- i. *"The application can be made for a minimum amount of Rs 1000/- & in multiple of Rs 1000/-.*
- ii. *Under category F, Alchemist allots immovable property in consideration to the amount paid to the company, and such land can be leased out to the company under 'Fixed term tenancy Agreement'. To enter this agreement minimum land holding should be of 300 sq ft (if not specified otherwise) and additional holdings should be in the multiples of 100 sq ft. Presently the lease amount is fixed at Rs 3300/- per annum for a period of 3 years on an area of 300 sq ft. The amount will be increased proportionately in accordance with the land holdings. This amount will be made available to the 'allottee' in equated monthly installments spread through the lease period."*

30. Further, at point no. 8 of the application form, the details of Alchemist group have been mentioned stating that *"Alchemist Group is engaged in diverse activities such as Steel, Food & Beverages, Information & Technology, Health Care, Media, Aviation, Realty, Hospitality, Education & Tea Estate etc. having asset base of over Rs 5000 Crores"*. Thus, an investor/applicant is misled to believe that the company, Alchemist Infra Realty Limited is part of the *Alchemist Group*, whereas the Company has contended that it is not associated with the Alchemist group.

31. From the above, the following points emerge clearly :

- (i) While applying, the investors necessarily have to execute a supervision/development agreement with the Company. Without executing the same, an investor would not be eligible to file the application;
- (ii) The plot of land as mentioned in the conveyance deed cannot be identified. The investor does not know where his property is as he gets only an undivided interest in a large land holding;
- (iii) On termination of the development agreement, there is no indication that the land will get conveyed fully to the investor. On the other hand, the investor gets the option, either to extend his tenure of development/supervision or to request the Company to find a suitable purchaser;
- (iv) The Company guarantees a certain value below which the property would not be acquired

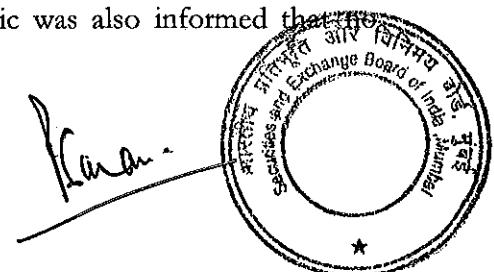


back from him.

- (v) Pursuant to entering into the development agreement, the investor has no right to interfere with the working, managing, controlling and supervising of the said plot in any manner whatsoever. He only gets a right to inspect the land and that too the entire land holding and not his plot as the same cannot be identified as mentioned above, and the inspection could be done with due notice and intimation to the company.

32. The observations/findings on the manner of operations of the Company, leads to one clear inference that the transactions of the Company is not at all a land purchase-sale transaction. The Company definitely has charted out a plan/scheme and it even mentions plan/scheme at certain places. The "Certificate of Property" is the only document that the so called purchaser holds with him. This mentions the amount given by the purchaser and its tenure. The sample copy of the certificate of property even states " *The Estimated value of the said undivided share after development is expected to be not less than Rs. (Rupees) on expiry of tenure on under the said Agreement*". This gives clear impression that rather than being a certificate of property, it is a certificate of investment.

33. Having made my observations and findings on such documents, I now proceed to deal with the charge levelled in the SCN. The charge against the Company is that it is operating collective investment schemes without obtaining registration from SEBI, it first needs to be determined that the schemes/arrangement of the Company is in the nature of collective investment schemes. While testing the same, the relevant legal provisions in that regard needs to be referred. Before dealing with the legal provisions, it is relevant to note as to how the provisions came to be framed in the first place. Following the collection of money by various agro-based and plantation companies in 1990s, the Government of India, vide its press release dated November 18, 1997, decided that an appropriate regulatory framework for regulating entities which issue instruments like agro bonds, plantation bonds etc., has to be put in place. The government decided that the schemes through which such instruments are issued would be treated as "Collective Investment Schemes" (CIS) coming under the provisions of the SEBI Act. Accordingly, SEBI vide its press release dated November 26, 1997 and December 18, 1997, prohibited collective investment schemes from sponsoring any new scheme till the CIS regulations are notified under the provisions of Section 12 (1) (B) of the SEBI Act, 1992. The press releases further stated that instruments such as agro bonds, plantation bonds should be treated as CIS coming under the SEBI Act, 1992. All the companies having such activities were required to file information with SEBI. Moreover, general public was also informed that no



person can sponsor or cause to be sponsored any new collective investment scheme and thereafter raise further funds. Meanwhile, a committee was formed to examine and finalize the draft regulations for CIS to structure a comprehensive regulatory framework. Subsequently, the notification of SEBI (Collective Investment Schemes) Regulations 1999 was issued on October 15, 1999. As per the CIS regulations, any person who has been operating a Collective Investment Scheme at the time of commencement of the CIS Regulations was required to make an application to SEBI for the grant of registration under the provisions of the Regulation, within a period of two months from the date of the notification. No entity was allowed to run a CIS scheme without obtaining the Certificate of Registration from SEBI.

34. Vide the Securities Laws (Amendment) Act, 1999 w.e.f February 22, 2000, the definition for "collective investment scheme" was inserted in the SEBI Act, 1992. According to the definition, Collective Investment Scheme means any scheme or arrangement which satisfies the conditions specified in section 11 AA of the SEBI Act. As per Section 11AA of the SEBI Act, a Collective investment scheme is any scheme or arrangement, which satisfies the following conditions:

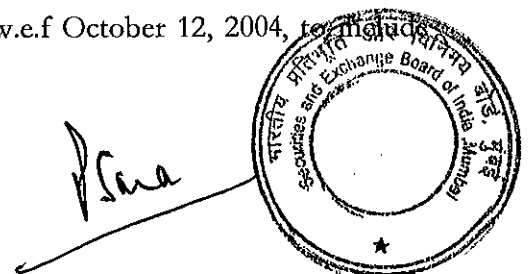
- (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;
- (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce 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.

The following activities have been exempted from the CIS Regulations:

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;

The term "securities" in section 2(h) of the Securities Contracts (Regulation) Act, 1956 was amended vide the Securities Laws (Amendment) Act, 2004, w.e.f October 12, 2004, to include



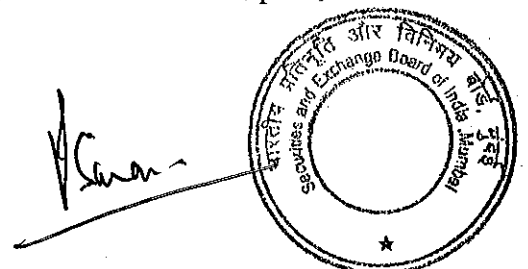
units or any other instrument issued by any collective investment scheme to the investors in such schemes.

35. A scheme, in order to qualify as a collective investment scheme, has to satisfy the four conditions mentioned in section 11AA(2) of the SEBI Act. The first condition is that the contributions, or payments made by the investors, by whatever name called, are pooled and utilised for the purposes of the scheme or arrangement. In the instant case, the Company collects money from the investors ostensibly against sale of plot of land. The said monies are mobilized and utilised for the purposes of the scheme, which is 'development' of land. It needs to be strongly emphasised that an investor cannot purchase plot from the Company if he does not enter into a Supervision / Development agreement with the Company. The same is borne from express submissions made by the Company in its reply. The following portions from the application form would support the same:

"AND WHEREAS the purchaser herein has evinced interest to associate with the vendor in developing the said property and has agreed to acquire plot therein and thereafter authorise the vendor to work, manage and supervise as separately agreed."

The agreement also contains clauses which state that the investor can either request the Company to extend the tenure of such supervision and development or to find a suitable purchaser to purchase the proportionate interest of the investor in the land.

The Company is accepting money from investors in the form of payment for land and its development. In the application form, it is mentioned that the applicant is applying for undivided interest in the land situated in the state of Madhya Pradesh. The area of specific plot or the location of the plot is not mentioned in the application form and the "Certificate of Property". The indenture states that the purchaser shall not be entitled to claim division and/or partition of the said proportionate undivided interest and shall continue to hold and enjoy the same with its co-owners without any objection. Wherever the plot is mentioned, it is always denoted as proportionate undivided interest. Thus, it is clear that in its activities of sale and development of land, the Company accept contributions from investors/customers, for collective utilization and further, that the Company pools the investment made by customers/investors, with the aim /object of carrying out the overall scheme/arrangement. On perusal of the application form on record, I note that it does not contain any column to specify the details of land/plot, which is



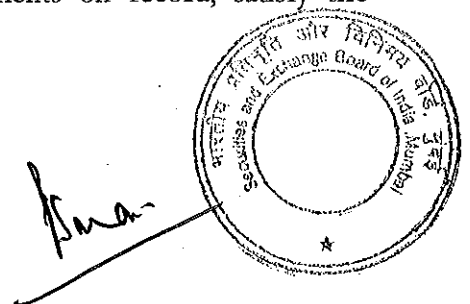
very unlikely for a realty project. Thus, it is clear that the contributions or payments received from investors were pooled and utilized by the Company for the purposes of the schemes/arrangements of the Company. I, therefore, find that the schemes/arrangements of the Company satisfy the first condition stipulated in section 11AA(2) (i) of the SEBI Act.

36. The second condition, under section 11AA(2), 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 this regard, I note that the application itself assures investors of yields and profits as it has been expressly stated as follows :

"AND WHEREAS the said COMPANY has undertaken certain development of the said land and has caused the same to be divided into several plots and has been carrying on diverse types and kinds of activities thereat, giving substantially yields and profits."

I also note that from the sample certificate of property that the same also mentions the estimated value of the said undivided share (in the land) after development is expected to be not less than "Rs./-" on expiry of "tenure on (date)" under the said agreement. The agreements also states, as mentioned above, that the Company could find a purchaser in order to purchase the plot/interest of the investor in the land under development. Further, the Company has admitted that it does developmental works in the land, which in my opinion is with a view to generate returns and profits from the said land. The Company in its letter dated June 11, 2013 has stated *"The aforesaid indenture / deed of conveyance is handed over to it, and a Certificate of Property is issued to the applicant / buyer/purchaser wherein the expected and estimated value of the said land after the expiry of the aforesaid fixed period of time is stated."*

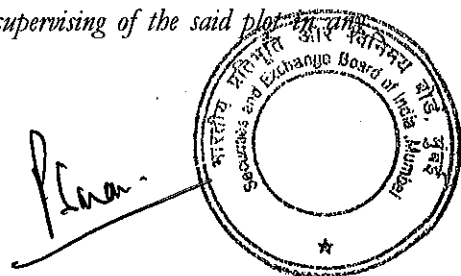
37. Under the schemes/arrangements of the Company, the investors make contribution/payment with a view to receive the property or profits, income and return on their initial investments that may accrue to them as applicable on the land/ plot applied by them. In this regard, I refer to the judgment of the Hon'ble Punjab and Haryana High Court in the matter of *PGF Limited vs. Union of India & others*, wherein the Hon'ble High Court held that *"when each customer/investor is a recipient of 'property' it is apparent that each customer/investor is admittedly a recipient of one of the benefits contemplated under section 11AA (2) (ii), namely, 'property'".* Thus, the schemes/plans of the Company as evidenced from the documents on record, satisfy the condition stipulated in section 11AA (2) (ii) also.



38. 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 Company has admitted in its reply that an investor cannot acquire plot from it without entering into an arrangement for supervision and development of the land. It is also noted from the conveyance agreements that the plot conveyed cannot be identified. In the paragraphs which have discussed about such deeds, it has been observed that an investor gets only an undivided interest in the entire land holding. The deeds have no schedule that helps an investor or anyone else to identify the area of plot in the land holding claimed to be allotted to the investor. The Company has also stated in their letter dated December 06, 2011 that *"It is not possible for the purchasers to purchase land from it without taking the development facility offered by it. The purchasers are aware about the same before they transact with the Company."*

39. I note that in the schemes/plans of the Company, at the time of making the initial contribution/payment, the investor only gets a promise to be allotted a piece of land/plot in the properties developed and managed by the noticee or to get repaid along with promised benefits. At this stage, the land unit is not identified as it is non- distinguishable. The investor does not take part in the acquisition, development or management of property i.e. land /plot. He also does not himself manage his investments in the schemes rather his investments are managed and utilized by the Company. Thus, it is clear that the investor does not manage the property, contribution or investment forming part of schemes at any stage under the schemes. As discussed above, the right of an investor is created at the time of making initial contribution/payment in an unidentified and non-distinguishable land unit. Thus it clearly shows that the Company is managing the property that is part of its scheme on behalf of investors. The aforesaid facts and circumstances, in my view, therefore, lead to the only possible conclusion that the land purchased by customers/investors and their contribution or investment are managed by the Company on behalf of the investors in the schemes/plans of the noticee. I, therefore, find that the schemes/plans of the Company satisfy the third condition stipulated in section 11AA (2) (iii) also.

40. The fourth and last condition is that investors do not have day to day control over the management and operation of the scheme or arrangement. This condition is also met as it is seen that the Company has expressly stated in its Supervision/Development agreement that the applicant *"shall not interfere with the working, managing, controlling and supervising of the said plot."*

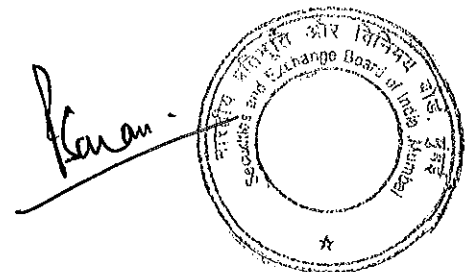


manner whatsoever." Further, the investor was also not entitled to make any claim in respect of the facilities provided by the company in the said land and the company was entitled to remove all its installation and/or facilities upon termination of the agreement unless agreed otherwise. As per clauses 6(c) and 6(d) of the agreement (Agreement for working, management, control & supervision entered between the Company and purchaser), the Company has the sole discretion regarding the sale of produce out of this plot. The Company also has the right to avail services of Agro consultants and Experts to evolve own method and mode of maintaining land. As per clause 13, for effecting the sale of the plot, the customer needs to grant a special power of attorney in favour of nominee of the Company to do all acts related to sale of plot on behalf of customer.

41. It is further noted that since the contribution/ investment/and the land/plot are managed by the Company on behalf of the investors, they do not have any role in the management and operation of its schemes/arrangements. They do not participate in the acquisition, development and management of the land. The investors do not have accessibility to do anything on the land unit that has not been identified and allotted to them. It is impossible for these investors to have a day to day control over the plot to be allotted to him. The investors do not have any control on the amount spent or on the nature of development of the land as they are managed and used by the Company exclusively without any involvement of the investors. In these facts and circumstance, I find that the only possible conclusion can be that the investors do not have day to day control over the management and operation of the schemes/plans of the noticee and they fully satisfy the fourth condition stipulated in section 11AA (2)(iv).

42. I also note from the agreement that the investor is situated in Kolkata, the representative under the special power of attorney is at Noida and the land under the transaction is situated in a district in the State of Madhya Pradesh. The fourth condition is very important to hold any scheme/plan a 'collective investment scheme' as observed by the Hon'ble Supreme Court in its judgement in **P.G.F. LTD. & ORS. versus Union of India** in following words:

"Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified"



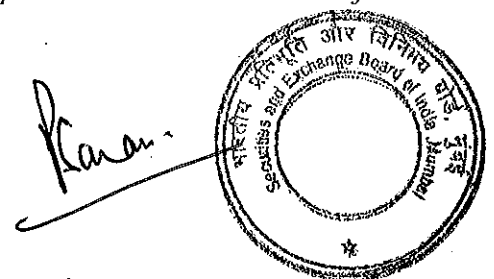
43. As regards the contention of the Company that it does not deal with or transact in securities as defined under the SCRA, I note that the definition of the term "securities" has been amended to include units or any other instrument issued by any collective investment scheme to the investors in such schemes. It is an admitted position that the investors are allotted an unidentified portion of land from the Company's land holding. Those small plots can very well be considered as units of the large land holding. The schemes of the Company has been found to be collective investment schemes. Therefore, this contention is without any merit.

44. In the light of the above, there is no doubt in the mind that the so called real estate business run by the Company is nothing but a collective investment scheme under section 11AA of the SEBI Act. Further, the scheme appears to be prima facie unfair to the investor in as much as in one case, out of ₹2 lakh application money, the development charge levied was ₹1,48,500/- i.e., around 75% of the application amount.

45. In view of the above findings as to how all the conditions of section 11AA of the SEBI Act are satisfied by the scheme/operations of the Company, the Company cannot pass off its transactions as a pure land sale-purchase transaction. While giving my findings/observations, I am guided by the following observations of the Hon'ble Supreme Court, made in the matter of PGF Limited (CIVIL APPEAL NO(s). 6572 OF 2004 decided on March 12, 2013) :

"Therefore, the paramount object of the Parliament in enacting the SEBI Act itself and in particular the addition of Section 11AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with the fond hope that such investment will get appreciated in course of time. Certain other Section of the people who are worstly affected are those who belong to the middle income group who again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.

38. *Since it was noticed in the early 90s that there was mushroom growth of attractive schemes or arrangements, which persuaded the above vulnerable group getting attracted towards such schemes and arrangements, which weakness was encashed by the promoters of such schemes and arrangements who lure them to part with their savings by falling as a prey to the sweet coated words of such frauds, the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud*



such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act.....

40. It will have to be stated with particular reference to the activity of the PGF Limited, namely, sale and development of agricultural land as a collective investment scheme, the implication of Section 11AA was not intended to affect the development of agricultural land or any other operation connected therewith or put any spokes in such sale-cum-development of such agricultural land. It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded..... It is, therefore, apparent that all other schemes/arrangements operated by all others, namely, other than those who are governed by sub-section 3 of Section 11AA are to be controlled in order to ensure proper working of the scheme primarily in the interest of the investors.

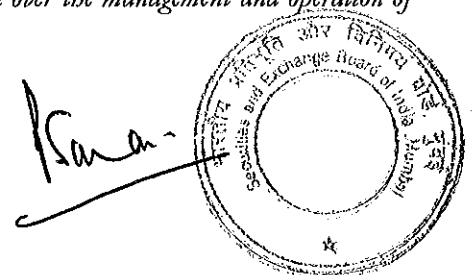
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42. Therefore, in reality what sub-section (2) of Section 11AA intends to achieve is only to safeguard the interest of the investors whenever any scheme or arrangement is announced by such promoters by making a thorough study of such schemes and arrangements before registering such schemes with the SEBI and also later on monitor such schemes and arrangements in order to ensure proper statutory control over such promoters and whatever investment made by any individual is provided necessary protection for their investments in the event of such schemes or arrangements either being successfully operated upon or by any misfortune happen to be abandoned, where again there would be sufficient safeguards made for an assured refund of investments made, if not in full, at least a part of it.

.....In the light of our above conclusions on this ground it will have to be held that Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development.

...

It is needless to state that as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for the customers to have day to day control over the management and operation of



the scheme/arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion.

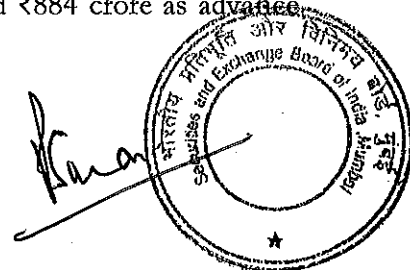
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53. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of the PGF Limited, namely, the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act and consequently the order of the second respondent dated 06.12.2002 is perfectly justified and there is no scope to interfere with the same. In the light of our above conclusions, the PGF Limited has to comply with the directions contained in last paragraph of the order of the second respondent dated 06.12.2002....."

46. In view of the foregoing, I am of the considered view that the schemes/arrangement/operations of the Company is in the nature of a collective investment scheme as all the four conditions specified under section 11AA (2) of the SEBI Act are satisfied. I, therefore, find that the Company is engaged in the fund mobilising activity from the public by floating/sponsoring/launching 'collective investment schemes' as defined in section 11AA of the SEBI Act.

47. 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 provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'collective investment scheme'. A person can launch or sponsor or cause to sponsor a collective investment scheme only if it is registered with SEBI as a Collective Investment Management Company. 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. Since the Company has launched 'collective investment schemes' without obtaining certificate of registration from SEBI, it has contravened provisions of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations.

48. As stated in the SCN, the balance sheet of the Company for the year ended March 31, 2011, an amount of ₹203 crore was shown as advance against land and ₹884 crore as advance

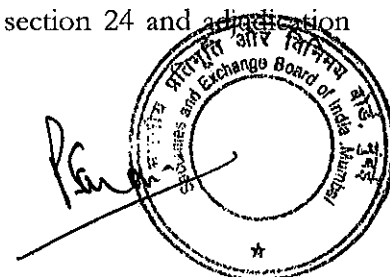


against development charges. The corresponding figures for the year ended March 31, 2010 were ₹83 crore and ₹365 crore respectively. The advances against land and the development charges have to be presumed to be from investors in the schemes of the Company. From the above, it can be seen that the Company has mobilized funds to the tune of ₹1087 crores as of March 2011.

49. As regards the liability of the directors, I note from the information provided by the Company that Mr. Brij Mohan Mahajan, Mr. Sunil Kanti Kar and Mr. Narayan Madhav Kumar are its present directors. Therefore, they are liable for the violation committed by the Company in not obtaining registration to offer/launch collective investment schemes. According to the Company, Mr. Balvir Singh was its director during the period – 02.04.2008 to 09.02.2009 and that Mr. Chandra Shekhar Chauhan was its director from 04.02.2009 to 20.02.2009. The said details also figure in the annual return of the Company for 2009. I also note that the Company vide letter dated June 13, 2013 has informed that Mr. Sunil Kanti Kar expired on July 21, 2012. No document with respect to the death issued by the concerned Municipal Authority was forwarded. As regards Mr. Balvir Singh, it was stated that he had ceased to be a director from 09.02.2009 onwards and the Company is not aware of his whereabouts. I note from the records that the Company was incorporated on April 02, 2008 and obtained its certificate of commencement of business on April 07, 2008.

50. Therefore, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 and sections 11 and 11B thereof and regulations 65 and 73 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions to safeguard the interest of the investors :

- a) Alchemist Infra Realty Limited shall not collect any money from investors or launch or carry out any scheme which has been identified as a collective investment scheme in this Order.
- b) Alchemist Infra Realty Limited and its directors including Mr. Brij Mohan Mahajan, Mr. Sunil Kanti Kar and Mr. Narayan Madhav Kumar shall wind up the existing collective investment schemes and refund the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, failing which the following actions shall follow:
 - (i) SEBI would initiate prosecution proceedings under section 24 and adjudication

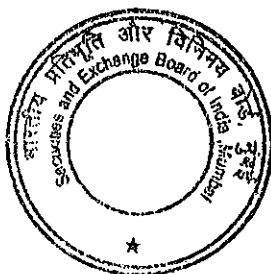


proceedings under Chapter VI of the Securities and Exchange Board of India Act, 1992 against Alchemist Infra Realty and its directors ;

- (ii) SEBI would make a reference to the State Government/Local Police to register a civil/criminal case against Alchemist Infra Realty Limited and its directors and its managers/persons in-charge of the business and its schemes for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds ; and
 - (iii) SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, Alchemist Infra Realty Limited.
- c) Alchemist Infra Realty Limited and its directors Mr. Brij Mohan Mahajan, Mr. Narayan Madhav Kumar, Mr. Balvir Singh, Mr. Chandra Shekhar Chauhan and Mr. Sunil Kanti Kar are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market till all the collective investment schemes are wound up by the Company and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.

51. The above directions shall come into force with immediate effect.

52. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.



PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : June 21, 2013

Place : Mumbai