

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in respect of M/s KBCL India Limited (PAN No. AACCK1768N) and its Directors, viz. Mr. Rakesh Kumar (PAN No. BDXPK7192Q), Mr. Vishvnath Pratap Singh (PAN No. BYYPS5946N) and Mr. Shashi Kant Mishra (PAN No. AHYPM9076H)

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") received several complaints, alleging illegal mobilization of funds through activities in the nature of '*collective investment scheme*' by KBCL India Limited. (hereinafter referred to as "**KBCL**")
2. As a matter of preliminary enquiry into the alleged illegal mobilization of funds, SEBI, vide several letters, particularly those dated 15.03.2013 and 21.05.2013 sought the following information from KBCL in relation to its business activity,
 - a. Memorandum and Articles of Association;
 - b. Names of the past and present promoters/ directors/ key management personnel;
 - c. Details of the past and present directors;
 - d. Date of Incorporation of the company;
 - e. Balance Sheets and Profit and Loss Accounts;
 - f. Brochures pertaining to schemes / offers;
 - g. Application forms to be submitted by investors / applicant;
 - h. Sample copies of the registration letter / certificates and allotment letter issued to the investors;
 - i. Sample Agreements, if any, that required to be entered into by investors/ applicants;

- j. Details of the scheme wise amount mobilized till date along with the number of investors under the schemes / offers;
 - k. Name, designation and contact details (viz: address, phone no., e-mail-id) of the contact person managing the schemes / offers;
 - l. Annual Returns of the company since incorporation;
 - m. Certified copy of audited financial statement for the FY 2009-10, 2010-11, and 2011-12;
 - n. Copy of Income Tax Return filed for the last three years;
 - o. Details of the regulatory approvals obtained for schemes;
 - p. Details of any other similar scheme(s) / offer(s), if any, floated by the company or group/associates company;
 - q. Number of plans/ schemes launched/ proposed;
 - r. Structure of such plans/ schemes;
 - s. Terms and conditions of each such plan/ scheme;
 - t. Number of investors and amount collected in each such plan/ scheme.
3. In the meanwhile, SEBI received another complaint via e-mail dated May 20, 2013, alleging illegal mobilization of funds by KBCL; enclosing a scanned copy of the "*Registration Certificate*" alleged to have been issued by KBCL to an investor.
4. KBCL, vide letters dated May 23, 2013 and June 24, 2013, had submitted the following information.
- i. Memorandum and Articles of Association;
 - ii. "*Brochure*" having general terms and conditions of the sale of property/flats/plots;
 - iii. The "*Application cum Agreement Form*";
 - iv. Copy of PAN Card of KBCL;
 - v. List of Directors including PAN and address proof;
 - vi. Photocopy of '*Sale deed*' made by KBCL in favour of customers;
 - vii. Attested copies of last three year Balance Sheet as submitted to ROC, Kanpur;
 - viii. Copies of Income Tax Return with computation in respect of last three years;

- ix. Sample "Registration Letter";
- x. Sample "Letter of land/plot allotment".

5. KBCL, vide aforesaid letter dated May 23, 2013 also contended "*KBCL India Ltd. is engaged in the business of real estate/sale/purchase of property and not operating any CIS based scheme*".

6. It is pertinent to mention here the Order dated July 13, 2012 passed by the Hon'ble High Court of Madhya Pradesh (Gwalior Bench), in the matter of *Dharmvir Singh and Anr. vs. Union of India & Ors.* [Writ petition No. 3332 of 2010 (PIL)], which has been forwarded by Department of Financial Services, Ministry of Finance vide letter dated September 21, 2012. Vide the said Order, the Hon'ble Court directed that copy of the said Order shall be forwarded to the various authorities including SEBI to take appropriate action in accordance with law. On perusal of the Order, it is observed that –

- i. The Petitioners therein had filed a Public Interest Litigation (hereinafter referred to as "PIL") seeking order of enquiry against various financial companies including KBCL. The petitioners had pleaded that thousands of persons of various districts in the State of Madhya Pradesh had been cheated by various finance companies under the garb of various schemes, which used to collect deposits from the persons with a promise to pay the money back with higher return of interest from 15%-20%.
- ii. Thereafter, the Hon'ble Court vide order dated July 5, 2011, directed the Central Bureau of Investigation (hereinafter referred to as "CBI") to conduct the preliminary investigation regarding the activities of such companies.
- iii. The findings of the CBI in respect of KBCL were as follows:
 - "*The company sells land under two plans - Single Installment Scheme (SIS) Plan and Multiple Installment Scheme(MIS). In the Single Installment plan it allots the land to the customer after a period of one year from the date of payment and in Multiple Installment Plan, the company allots it to the customer after the receiving of 50% of the full payment (without any default).*"

After the fulfillment of all these conditions as per agreement with the customer, the company provides allotment letter to the customers.

- After the allotment, the company registers the land in the name of the customer within 100 days of the completion of the tenure of the plan. The company Kalptaru Bio Tech Corporation Ltd./KBCL India Ltd. owns (since inception) land at Mathura, Meerganj Bariely, Gagan Bawra Kolhapur, Vidisha, Farukabad, Bulandsheher, Vyara, Palampur, Udaipur & Ajmer , totaling 2070822.95 sq. yds.*
- Since the inception of the company in 2002 , there have been a total of 3,97,532 customers with KBCL under different sale plans (3,87,410 under MIS plan and 10,122 in SIS Plan). The total units allotted to these customers add up to 15,51,381.5 sq. yds. (11,46,034 sq. yds. under MIS and 4,05,347.s under SIS).*
- Out of the total 3,97,532 customers of the company, 14,706 have been issued allotment letters for the allotment of land detailing the Khasra Number, Place etc. of such land allotted.*
- During this period since inception in March 2002, the company has executed only one sale deed jointly with 6 customers totaling registry of land equivalent to 0.2530 hectares (2790 sq. yds. Approx i.e. 2551.176 mtrs.) at Khasra No. 129, Mouza Bhadaya, Tehsil & Distt. Mathura.*
- Further, a total of 13,911 customers have been paid estimated value against their registration on completion of the maturity period. It may also be mentioned here that the Plan chart or other documents of the company do not mention anywhere that the customer can take away the estimated value instead of the plot offered to him at the end of the agreement period.*
- The company follows a 12 level structure of agents from the rank of sales representative to Executive Manager (C). A total of approximately 40 % of the amount which is received as sale deposits is given as commission to the all levels of hierarchy of agents of 12 levels in the first year which gets reduced to 10.20 % in the second year and 6.10 % in the third year onwards. The commission is distributed amongst all the 12 levels which goes on reducing from the first agent of the chain, to the topmost level of agent of hierarchy”.*

7. The material available on record i.e. correspondences exchanged between SEBI and KBCL alongwith the documents contained therein, the Order dated July 13, 2012 of

the Hon'ble Madhya Pradesh High Court and the complaints alongwith the documents contained therein have been perused. In this context, the issue for determination in the instant matter is whether the mobilization of funds by KBCL is a 'collective investment scheme' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

8. On an examination of the material available on record, it is *prima facie* observed that:

- a) KBCL, was originally incorporated on March 18, 2002 as Kalpataru Biotech Corporation Ltd. The name has been changed to KBCL India Ltd. (CIN No. U01407 UP2002 PLC026529) on August 20, 2008. KBCL has its registered office in 25th Mile Stone, Mathura - Agra Highway, Mathura - 281122 (UP). KBCL has three directors; viz. Mr. Rakesh Kumar, Mr. Vishvnath Pratap Singh and Mr. Shahshi Kant Mishra.
- b) As per the Memorandum of Association of KBCL, one of the main objects is..."to purchase acquire, take on lease or in exchange or any other such lawful manner any area, land, building, structures and turn the same into account to develop the same, and dispose of or maintain the same and to build townships, markets, or such other building or conveniences thereon and to equip the same or any part thereof with all or any amenities or conveniences, such as drainage facilities, electric and to deal with the same in any manner." KBCL offers various 'Schemes', inviting funds from the public in accordance with the 'Brochure' and the terms and conditions mentioned in the "Application Form cum Agreement" in order to carry out the aforementioned activities.
- c) On examination of the "Application Form cum Agreement", the following clauses are noted:-
 - "The land shall be registered/allotted to the buyer in case of:
 - a) **Cash down payment** after receipt of full payment within a reasonable time.
 - b) In case of **multiple installment Plan** company will allot the land/property after receipt of 75% of total consideration amount within a reasonable time not exceeding 120 days.

- Cost of plot includes, the cost of land, development charges, construction and other ancillary expenses.
- The management of the Company reserves all the rights to discontinue/amend any of the rules/regulations and may introduce new plans at any time at its sole discretion with or without notice.
- WHEREAS BUYER is desirous of purchasing plot (s) (.....sq. Yds.) of land / constructed property and getting the same developed and maintained through KBCL....., and has applied for the same to KBCL....by means of an application dated ... which is the basis of this agreement
- KBCL India Limited shall arrange for the aforesaid area of plot of land /property for BUYER, and **shall issue an Allotment letter** conveying the details of the same, within a reasonable period
- KBCL India **Limited shall arrange for the transfer of title of the said plot/** property in favor of BUYER, within a reasonable period, after the issuance of Allotment letter, by executing/procuring execution of sale deed in favour of BUYER and getting the same duly registered, (b) Where, however, transfer of such plot/property is prohibited by law or is otherwise not possible....KBCL shall arrange for the transfer of title of the said plot in favour of BUYER in **joint holding** with other like buyer. For the purpose.....**shall execute...joint sale deeds** in favour of the said buyer.....
- DEVELOPMENT: KBCL India Limited shall in conformity and in accordance with the opted plan by BUYER, develop and maintain the BUYER'S plot/property from the date of signing of this AGREEMENT, ... All matters pertaining to development, including survey, demarcation, construction, ... raising of crops, trees, plants, saplings, etc. use of fertilizers and pesticides , irrigation, harvesting, and all other activities allied or incidental thereto, **shall be finally decided by KBCL India Limited.**
- the total consideration for arranging and effecting the sale of the said plot / property in favour of BUYER and for the development and maintenance of the same, during the term of this AGREEMENT shall be Rs/comprising of Rs/- for the cost of plot, expenses for transfer of title of the same in favour of the BUYER, and external and internal development services and other ancillary charges/fees RS .../- for development of the same."

d) After execution of the "Application Form cum Agreement", a "Registration Certificate" (unit certificate) is issued to the "buyer" or investor, promising him to allot a plot/ land (which is yet to be identified) upon making payment as per the scheme opted by the 'buyer' or investor. It has also been agreed upon by the 'buyer' or investor that he shall give possession of such unidentified plot/ land to KBCL for development. Following are the clauses noted in the "Registration Certificate":-

- *"The land shall be allotted in the name of BUYER in the case of single installment schemes after receipt of full payment within a reasonable period generally not exceeding 365 days, in case of multiple installment scheme generally not exceeding 120 days after receipt of 50% of the consideration.*
- *It has been agreed that the buyer shall give possession of the proposed plot to the company for development, cultivation, plantation, ... and for the marketing of the produce thereof during the tenure of the agreement.*
- *Cost of plot(s) includes, the cost of land, development charges, other inputs saplings, plants, trees, crops, planting expenses, maintenance and other miscellaneous expenses.*
- *To facilitate easy liquidity, the company provides to Buyer the marketing services for sale of developed plots. The buyer must notify to the Company to that effect at least 60 days before the expiry of period of agreement. The sale can be made only at the end of the term opted by the Buyer in accordance with the payment scheme "the estimated realizable value at the end of term" or at such prices as may be actually agreed to by the Company from time to time. The sale price of plot is composite price for land, standing crops, saplings.....All the relevant papers along with the duly completed application of buyer for sale of land ...must be submitted to the Head office of the Company through relevant Branch Officer*
- *The company shall have the first charge on the land and produce for the outstanding dues such as development charges and other inputs, saplings, plants, crops, planting expenses, maintenance, service cost, management fees and other apportionable /allocable expenses.*
- *The original deeds shall be kept in the safe custody on the trustee(s) appointed for the said purpose*

- *In case of any dispute, the decision of Chairman/Managing Director of the company or any other person(s) nominated by him, shall be final and shall have legal binding on applicant/buyer*"

e) The contribution or investment to the 'Scheme' towards the purchase and development of plot/land may be made by a 'buyer' or investor as per the "Payment Schedule(s)", which differ on the basis of monetary payment either through "Multiple Installment Schemes" or "Single Installment Scheme" (Cash down payment). An "assured realizable cost" is also indicated in the "Payment Schedule(s)". One of such "Payment Schedule" culled out from the copy of the "Registration Certificate" alleged to have been issued by KBCL to one of its 'buyer' or investor is reproduced below for illustrative purpose:

Registration No. & date of commencement	Scheme No. & Term	Plot size (Sq. Yd.) & Consideration (₹)	Payment Mode & instalment amount	Tenure of Agreement	Expiry date of agreement	Assured Realizable Cost at the end of the terms. *
KB2309010007595	MIS Plan - E, 8.6 Year	2754 ₹1, 53,000 /-	Monthly ₹1500 /-	102 months	28-09-2021	₹3,06,000/-

**Estimated realizable cost at the end of Term denotes composite offer for value of Land, Standing Crops, Saplings, Plants, Trees and allied items thereon.*

f) It is noted that after the payment of 50% consideration in case of "Multiple Installment Scheme" or total consideration in case of "Single Installment Scheme", the plot/land is allotted to the 'buyer' or the investor. Upon allotment of the plot/land KBCL issues a "Letter of land/plot allotment" to the 'buyer'. In case of "Multiple Installment Scheme", allotment is made within 180 days and in case of a "Single Installment Scheme", it is within a reasonable time not exceeding 365 days. On perusal of the Sample copy of a "Letter of land/plot allotment", following clauses are noted:-

- "..... KBCL INDIA LIMITED reserves the right to change the location of this allotment and allot you an alternate site at any other place.

- This allotment and the subsequent conveyance of the aforesaid land to you shall remain subject to the 'Rules', contained in the Rule Book supplied to you, ' The General Terms and Conditions', contained in the application form signed by you;
- A sum of Rs.....paid you to KBCL INDIA LIMITED under single Installment no. has now been appropriated by KBCL INDIA LIMITED towards the cost which are to be met in procuring the said Land /Plot and conveying it to you, developing the same, planting the required samplings, plants, trees, ... and other ancillary and incidental expenses there to."

g) From the audited financial statements of KBCL for the FY 2009-10, 2010-11 and 2011-12, it is observed that the amounts mobilized under the 'Scheme' towards purchase and development of Plot/land have been recorded in the relevant Balance Sheet. The same is reproduced below:

Particulars	March 31, 2012 (₹)	March 2011 (₹)	March 2010 (₹)
Advance against allotment of plot.	1,186,913,663	975,330,995	809,351,015

h) From the audited financial statements of KBCL for the FY 2009-10, 2010-11 and 2011-12, it is observed that the amount expended as commission by KBCL are as follows:-

Particulars	2012 (₹)	2011 (₹)	2010 (₹)
Commission	104,888,028.40	95,127,025.62	40,289,535.31

8.1 The aforementioned details of the 'Scheme' towards the purchase and development of plot/land offered by KBCL have to be considered in light of Section 11AA of the SEBI Act. The said Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a 'collective investment scheme', reads as follows:

*“(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or [sub-section (2A)] ** shall be a collective investment scheme.*

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

(Inserted by Securities Laws (Amendment) Ordinance, 2013).**

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

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

8.1.2 In the context of the abovementioned Section 11AA of the SEBI Act, the 'Scheme' offered by KBCL, is examined as under:

- 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.*
- a. KBCL has launched the 'Scheme' for the purchase and development of plot/land inviting investment from the public. The contribution or investment made by a 'buyer' or investor is in accordance with the “Payment Schedule(s)”

offered under the aforesaid 'Scheme' i.e. participation in the form of "single installment plans" (cash down payment) or "multiple installment plans" towards purchase and development of plot/land of varying size. An equal monetary amount is collected from each 'buyer', without identifying the plot or land, depending on the size of the plot/land. The area of land, location of land or the price of land etc. are not mentioned in the "Application Form cum Agreement". No land unit is identified and described in the "Registration Certificate" which is issued to the 'buyer' at the time of initial payment of the first instalment. Admittedly, under the 'Scheme', the 'buyer' is not provided with details in respect of the plot/land to be purchased from and promised to be allotted by KBCL, until payment of the booking amount i.e. minimum payment of 50% of total consideration in accordance with the "Payment Schedule(s)" or total consideration in a single instalment is made. Even after the allotment of the land to the 'buyer' or investor by issuing the "Letter of land/plot allotment", KBCL reserves the right to change the location of the land/plot allotted and to provide an alternate land/plot. It is also pertinent to note that the sample "Sale Deed" furnished by KBCL does not contain any specifications including dimensions, precise location etc. of the land/plot conveyed to the 'buyer' or investor. Further, the cost of plot/land includes cost of land and development charges. KBCL invites money from investors under its 'Scheme' for the purchase and further development of land, which is yet to be identified. In this regard, it is clear that the payments collected from the 'buyer' under the 'Scheme' are being mobilized and utilised by KBCL for the purpose of the 'Scheme', offered by it. I, therefore, find that the instant 'Scheme' satisfies the first condition stipulated in section 11AA(2)(i) of the SEBI Act.

- 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.*
 - a. As has been stated in the preceding paragraph, the payments collected from the 'buyer' under the 'Scheme' are being used by KBCL towards development of the plot/land purchased and promised to be allotted to the 'buyer'. Subsequent to development of such plot/land, the 'buyer' gets the option of

selling the plot with the help of KBCL at a price agreed to by KBCL or receiving a monetary amount in the form of an "assured realizable cost" or estimated realizable value at the end of the term in accordance with the 'Scheme' opted by the 'buyer'. The 'buyers' or investors make contribution/payment with a view to receive the property or profits, income and return on their investments that may accrue to them upon the development of the land/ plot applied by them. The sale price of the plot or the "assured realizable cost" is the composite price for land, standing crops, saplings, plants, trees etc. In this regard, reference is drawn 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'. Hence, the second condition i.e. the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property' as stipulated in section 11AA (2) (ii) of the SEBI Act is also fulfilled.

iii. *The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.*

- a. The 'buyer' is promised an allotment of plot/land, under the 'Scheme' towards purchase and development of plot/land. Such 'buyer' is not provided with details in respect of the plot/land purchased from and promised to be allotted by KBCL under the 'Scheme', until payment of the booking amount in accordance with the 'Scheme' opted by the 'buyer' or investor. As already stated above, even after the allotment of the land to the 'buyer' or investor (by issuing the "Letter of land/plot allotment"), KBCL reserves the right to change the location of the allotment and to provide an alternate site different from the plot that is mentioned in the "Letter of land/plot allotment". Further, upon execution of the "Application Form cum Agreement" between the 'buyer' and KBCL in respect of the plot/land allotted under such 'Scheme', KBCL undertakes to develop such plot/land. This condition indicates that the right

of the 'buyer' is created at the time of making contribution or investment in an unidentified and non-distinguishable land unit. The identification of such plot/land to the 'buyer' is at KBCL's discretion, at the time of payment of the booking amount. Further, the 'buyer' does not take part in the development and management of the plot/land purchased by KBCL on behalf of him and neither does he manage his contribution or investment in the 'Scheme'; rather his contribution or investment is managed and utilized by KBCL. All the matters pertaining to development including survey, demarcation, construction, cultivation, planting, raising crops and all other activities allied or incidental thereto, shall be finally decided by KBCL. (Clause 4 of the "Application Form cum Agreement"). Further, the original deeds are kept in the safe custody of the trustees appointed for this purpose and the management of KBCL has the right to amend, alter, discontinue, modify any of the rules, regulations and plans with or without notice to the 'buyers' or investors. Therefore, it is clear that the 'buyer' or investor does not, at any stage, have any say in the management of the property, contribution or investment forming part of the 'Scheme' towards purchase and development of plot/land. I, therefore, find that the instant 'Scheme' also satisfies the third condition stipulated in section 11AA(2)(iii).

iv. *The investors do not have day-to-day control over the management and operation of the scheme or arrangement.*

- a. The 'buyers' or investors do not have any day-to-day control on the contribution/investments made by them as they are managed and utilized by the KBCL. The 'buyers' neither have any role in the management and operation of the 'Schemes' nor do they participate in the acquisition, development and management of the land. KBCL, in accordance with the opted plan by 'buyer' develop and maintain the plot/property and all the matters pertaining to the development are finally decided by KBCL. If the 'buyer(s)' or investors wish to sell the plot/land allotted to them, they have to necessarily approach KBCL at the end of the agreement term opted by the 'buyer' in accordance with the 'Scheme', at a price agreed upon by KBCL or is entitled for the "assured realizable cost", which is the composite price for land, standing crops, saplings,

plants, trees etc. In these facts and circumstance, it is clear that the 'buyer (s)' or investors do not have day-to-day control over the management and operation of the 'Scheme' towards purchase and development of plot/land. Hence, the fourth condition as stipulated in section 11AA (2) (iv) of the SEBI Act is also fulfilled.

8.2 In view of the above, I find that the fund mobilizing activity by KBCL under its 'Scheme' towards purchase and development of plot/land, fulfills essential conditions and characteristics of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act.

8.2.1 In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of *P.G.F Limited & Ors. vs. UOI & Anr.* (MANU/SC/0247/2013), wherein it had occasion to adjudge on a scheme having features similar to the instant 'Scheme', as a 'collective investment scheme' under Section 11AA of the SEBI Act. The Hon'ble Supreme Court of India had observed that:

“A conspectus consideration of the scheme of development of the land purchased by the customers at the instance of the PGF Limited and the promised development under the agreement disclose that there was wholesale uncertainty in the transactions to the disadvantage of the investor’ concerned. The above factors and the factors, which weighed with the Division Bench in this respect definitely disclose that PGF Limited under the guise of sale and development of agricultural land in units of 150 sq. yards. i.e. 1350 sq. ft. and its multiples offered to develop the land by planting plant, trees etc. and thereby the customers were assured of a high amount of appreciation in the value of the land after its development and attracted by such anticipated appreciation in land value, which is nothing but a return to be acquired by the customers after making the purchase of the land based on the development assured by the PGF Limited, part with their monies in the fond hope that such a promise would be fulfilled after successful development of the bits of land purchased by them.

.....All the above factors disclose that the activity of sale and development of agricultural land propounded by the PGF Limited based on the terms contained in the application and the agreement signed by the customers is nothing but a

scheme/arrangement. Apart from the sale consideration, which is hardly 1/3rd of the amount collected from the customers, the remaining 2/3rd is pooled by the PGF Limited for the so called development/improvement of the land sold in multiples of units to different customers. Such pooled funds and the units of lands are part of such scheme/arrangement under the guise of development of land. It is quite apparent that the customers who were attracted by such schemes/arrangement invested their monies by way of contribution with the fond hope that the various promises of the PGF Limited that the development of the land pooled together would entail high amount of profits in the sense that the value of developed land would get appreciated to an enormous extent and thereby the customer would be greatly benefited monetarily at the time of its sale at a later point of time..... 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. ... We therefore hold that Section 11AA of the SEBI Act is constitutionally valid."

8.3 The features of the 'Scheme' offered by KBCL, as discussed in the preceding paragraphs, when considered in light of the abovementioned observations of the Hon'ble Supreme Court of India, indicate that the activity of fund mobilization by KBCL under such 'Scheme' with a resultant promise of returns, *prima facie* falls within the ambit of 'collective investment scheme' as defined under Section 11AA of the SEBI Act.

8.4 KBCL in its letter dated May 23, 2013 has contended that "KBCL Ltd. is engaged in the business of real estate/sale-purchase and not operating any CIS based scheme". In this context, it is observed that merely calling any scheme as a real estate business or transaction is not determinative of its true nature and character; the same has to be determined with reference to the terms and conditions of such scheme, which articulate the intention of the parties. In this regard, it is pertinent to note that real estate transactions have certain common features such as, an agreement to sell immoveable property that is specifically identified and distinguishable; differential pricing depending upon the location and other factors including dimensions,

surroundings etc. of the land/plot. However, in the instant matter, as already mentioned in the preceding paragraphs, the plot/land purchased by the 'buyer' has not been identified or distinguished by KBCL even at the time of execution of the "Application Form cum Agreement". Further, it is noted that even in case of full payment of the consideration amount by the 'buyer', the land/plot is not transferred or allotted to the 'buyer' by KBCL, instead, as per the "Registration Certificate", the said land/plot is agreed to be allotted to the 'buyer' or investor by KBCL within a period not exceeding 365 days. The plot/land is proposed to be sold according to the plans offered under the 'Schemes' and not based on the pricing of land based on its location etc. The sample copy of "letter of land/plot allotment" provided by KBCL mentions that "KBCL INDIA LIMITED' reserves the right to change the location of this allotment and allot alternate site at any other place". Further, it is observed from the "Application Form cum Agreement" that at the time of registration of the land to the 'buyer' or investor, KBCL reserves the right to allot land to the 'buyer' or investor as per its discretion. Further, the 'buyers' or investors shall be deemed to be in joint possession of the land transferred in their names, in case where plot/property is transferred in joint holding. Therefore, it appears that the land allotment is not made vis-à-vis the 'buyer' or investor and the contribution is invited for the 'Scheme' towards the purchase and development of plot/land, which is neither identified nor distinguishable. In view of the aforesaid, it is observed that the 'Scheme' towards the purchase and development of plot/land does not show any resemblance to real estate business or transaction but rather operates as a disguise to mislead and attract investment from the general public towards the fund mobilizing activity of KBCL, which is in the nature of a 'collective investment scheme' as defined in Section 11AA of the SEBI.

9. I note that in terms of Section 12(1B) of the SEBI Act, "no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations". Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the CIS Regulations shall carry on or sponsor or launch a 'collective investment scheme'. Therefore, 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. In my view,

therefore, the launching/floating/sponsoring or causing to sponsor any '*collective investment scheme*' by any '*person*' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. In this regard, I note that KBCL has not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public, under the instant '*Scheme*' offered by it.

- 9.1 Upon a consideration of the aforementioned paragraphs, I am of the view that KBCL is *prima facie* engaged in fund mobilizing activity from the public, by floating/sponsoring/ launching '*collective investment scheme*' as defined in Section 11AA of the SEBI Act without obtaining a certificate of registration from SEBI as required under Section 12(1B) of the SEBI Act and the CIS Regulations.
10. I note that as part of the preliminary examination of the '*Scheme*' offered by KBCL, SEBI vide its letters dated 15.03.2013 and 21.05.2013 required KBCL to provide various information in respect of the said '*Scheme*' offered by KBCL. I note that even after having mobilized funds from investors, KBCL did not submit relevant information in respect of the '*Scheme*' such as; details of the scheme wise amount mobilized till date along with the number of investors under the schemes etc. I find it highly improbable that KBCL did not have such details to furnish to SEBI and its reluctance to furnish complete information, clearly indicates a lack of transparency on its part. In these circumstances, I find that reasonable opportunity has been afforded to KBCL to respond to SEBI and its refusal do so, when considered in light of the abovementioned *prima facie* finding at preceding paragraphs, leads me to believe that such refusal to submit the information sought was only to conceal the true nature and operation of its fund mobilizing activity under the '*Scheme*'.
11. As discussed at the preceding paras, I find that the instant '*Scheme*' offered by KBCL under the guise of "*business of real estate/sale-purchase*" is nothing but a smokescreen for its fund mobilizing activity. I find that such fund mobilizing activity falls within the ambit of '*collective investment scheme*' as defined under Section 11AA of the SEBI Act and the same has been carried on by KBCL without due registration from SEBI. In this context, I note that protecting the interests of investors is the first and foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure only

legitimate investment activities are carried on by KBCL and no investors are defrauded. It is further noted that Mr. Rakesh Kumar, Mr. Vishvnath Pratap Singh and Mr. Shashi Kant Mishra are the directors who are in charge of and responsible for the day to day affairs of KBCL. Further, in order to ensure that KBCL and its Directors do not collect further funds under the 'Schemes' and to safeguard the assets/property, acquired by KBCL and its promoters/directors from the funds of the investing public until full facts and materials are brought and final decision is taken in the matter, it becomes necessary for SEBI to take urgent preventive action by way of this interim measure. In the light of the same, I find no other alternative but to take recourse through an interim measure against KBCL for preventing it from further carrying on with its fund mobilizing activity by launching "*collective investment scheme*" without registration from SEBI in accordance with law.

12. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11B and 11(4) of the SEBI Act read with Regulation 65 of CIS Regulations, hereby direct KBCL and its Directors, viz. Mr. Rakesh Kumar, Mr. Vishvnath Pratap Singh and Mr. Shashi Kant Mishra,-

- a. not to collect any more money from investors including under the existing schemes;
- b. not to launch any new schemes;
- c. not to dispose of any of the properties or alienate any of the assets of the schemes;
- d. not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of KBCL.

13. The above directions shall take effect immediately and shall be in force until further orders.

14. This Order shall also be treated as a show cause notice. KBCL and its abovementioned Directors may show cause as to why appropriate directions under the SEBI Act and CIS Regulations including directions in terms of Regulations 65 and 73 of the CIS Regulations should not be taken against them.

15. KBCL and its abovementioned Directors shall, within 15 days from the date of receipt of this Order, file their reply, if any, to this order. KBCL and its abovementioned Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Date : September 12, 2013
Place: Mumbai

S RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA