

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/VB/AO/65-69/2017-18]

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

In respect of

1. IHI Developers India Limited (CIN: U70200PB2010PLC033974)
2. Mr. Harjit Singh (PAN: CGFPS6608M)
3. Mr. Ranjit Kaur (PAN: CIRPK5759F)
4. Mr. Kulbir Singh (PAN: BKHPS1704D)
5. Mr. Sanjeev Kumar (DIN: 01558230)

In the matter of IHI Developers India Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated Adjudication proceedings against IHI Developers India Limited(IHI) and its directors namely Mr. Harjit Singh, Mr. Ranjit Kaur, Mr. Kulbir Singh, Mr. Sanjeev Kumar (hereinafter individually referred to as Noticee-1/IHI/Company, Noticee-2 to 5 respectively and collectively referred to as '**Noticees**') as they were engaged in illegal mobilization of funds from the public by floating, sponsoring or launching schemes, which falls within the ambit of Collective Investment Scheme (hereinafter referred to as '**CIS**') as defined in Section 11 AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), without obtaining a certificate of registration from SEBI as required under the provisions of Section 12 (1B) of the SEBI Act and the SEBI

(Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as '**CIS Regulations**').

2. In the said matter, SEBI had also passed final order dated August 14, 2015 against the Noticees directing them, *inter-alia*, to abstain from collecting any money from the investors or carrying out/ launching any Collective Investment Schemes and to wind up the existing Schemes and to refund the monies collected from the investors through various schemes launched by them.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide communique dated July 03, 2017 under Section 15-I (1) and 15-I (2) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**'), Section 19 of the SEBI Act, 1992 to inquire into and adjudge under Section 15 D(a) of the SEBI Act, the violation of Section 12(1B) of the SEBI Act and Regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1999 (hereinafter referred to as '**CIS Regulations**') alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice (hereinafter referred to as '**SCN**') dated September 06, 2017 was issued to the Noticees under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticees and penalty, if any, be not imposed on them under the provisions of Section 15D(a) of the SEBI Act for the alleged violation by the Noticees. From the records, it is observed that the SCN addressed only to Noticee-1 has been delivered through RPAD while the remaining SCN returned undelivered.

5. Thereafter, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, Noticee-2 to Noticee-5 were granted a final opportunity to submit reply before October 14, 2017 and an opportunity of personal hearing on October 23, 2017 vide hearing Notice dated September 29, 2017. The undelivered SCN to Noticee-2 to Noticee-5 were also attached with the said hearing Notice. The Hearing Notice dated September 29, 2017 along undelivered SCN to Noticee-2 to Noticee-4 were delivered through hand delivery and was duly acknowledged. Further, the hearing Notice addressed to Noticee-5 along with undelivered SCN was affixed at the last known address of Noticee-5. In the meanwhile, vide hearing Notice dated October 13, 2017, Noticee-1 was granted a final opportunity to submit reply before October 21, 2017 and an opportunity of personal hearing on October 23, 2017. The said Notice to Noticee-1 was sent RPAD and by email to email address *pktangri@gmail.com* as noted from MCA website. The said Notice was noted to be delivered to the address on record as per postal records. On the scheduled date of hearing on October 23, 2017, none of the Noticees attended the hearing.
6. Subsequently, vide Hearing Notice dated November 01, 2017, the Noticees were granted a final opportunity of hearing on November 21, 2017. In the said hearing Notice it was clearly mentioned that in case Noticees fail to attend the scheduled hearing, the matter shall be proceeded on the basis of material available on record and no other opportunity would be provided. The hearing Notice dated November 01, 2017 was delivered to the Noticee-1 and was duly affixed at the last known address of Noticee-2 to Noticee-5. On the scheduled date of hearing on November 21, 2017, none of the Noticees attended the hearing.
7. Vide e-mail dated November 23, 2017 received from *rishimongafzr@gmail.com*, Noticee-2 on behalf of Noticee-1 produced a medical certificate advising him to take rest for 5 days and requested for adjournment of the hearing. The Noticee-1 was therefore granted another date of hearing on December 15, 2017 vide hearing Notice dated November 28, 2017 which was also served on the Noticees

as evident from the postal records. However, vide letter dated nil received vide fax dated December 15, 2017, Noticee-2 again sought an adjournment of hearing under the pretext of death of a family member and produced no document in support of the same. Still Noticee-1 was granted a final opportunity of hearing on December 28, 2017 vide Hearing Notice dated December 18, 2017. A scanned copy of the letter dated December 18, 2017 was also sent to the e-mail ID *rishimongafzr@gmail.com* from whom earlier correspondence was made. The letter dated December 18, 2017 was also served on the Noticee-1 by way of hand delivery and as per postal records. However, Noticee-1 or Noticee 2 on behalf of Noticee 1 neither responded to the aforementioned letter of SEBI nor attended the personal hearing. For the reasons mentioned above, I observe that the Noticees were provided with ample opportunity of being heard in the interest of natural justice. I am therefore proceeding with the inquiry taking into account the material / information made available on record

CONSIDERATION OF ISSUES AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case and the material available on record. issues that arise for consideration in the present case are :
 - a) Whether the Noticees have violated section 12(1B) of the SEBI Act, 1992 and Regulation 3 of CIS Regulations, 1999?
 - b) Does the violation, if any, attract monetary penalty under Sections 15D(a) of the SEBI Act?
 - c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
9. Before moving forward, it is pertinent to refer to the relevant provisions of the SEBI Act, 1992 and SEBI (CIS) Regulations, 1999 which read as under

Section 11 AA of the SEBI Act 1992:

11AA. (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) [or sub-section (2A)] shall be a collective investment scheme:

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

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

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

Section 12(1B) of SEBI Act. 1992:

"12(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations....."

CIS Regulations, 1999:

"3. No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme."

10. I observe from the records that the Noticees were provided with ample opportunity of being heard during the course of the proceedings on October 23, 2017 and November 21, 2017 to all Noticees and on December 15, 2017 and December 28, 2017 specifically to Noticee-1. However, Noticees failed to appear

for the personal hearing granted to them on various dates. I observe that the hearing notices were served on the Noticee-2 to Noticee-5 either by hand delivery or by affixture and to Noticee-1 by way of RPAD as is evident from the postal records and also from the e-mail records. I further observe that the Noticees specifically Noticee-1 were employing dilatory tactics to prolong the proceedings. Thus, in the instant matter, I am convinced that the Noticees were provided with adequate opportunity to present their case in line with the requirements of principles of natural justice.

11. I note that despite the SCN and hearing notices having been duly served upon the noticees, they failed to submit any reply to the SCN and have not refuted the charges. In this context, I would like to rely upon the observations of The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) wherein it, inter alia, observed that - "..... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them".

12. The Hon'ble SAT has again in the matter of Sanjay Kumar Tayal & Others v SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), inter alia, observed that – ".....As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices.....".

13. Before proceeding further, it would be appropriate to mention the relevant facts of the case leading to the present proceedings against the Noticees

- a) SEBI received a complaint dated October 07, 2011 against IHI alleging that the company has been raising funds from investors in the name of sale of land and

the company does not have any land in its name. It was mentioned in the complaint that company was operating also in the name M/s Imbowers Housing and Infrastructure Ltd. The complainant enclosed Registration Letter bearing number 0002377 besides also enclosing Application form for agency and brochures along with the complaint.

b) The Company was incorporated on May 31, 2010. The registered office of the Company is situated at Makhu Gate, Ferozpur City, Punjab-152002. The directors of the Company are Mr. Harjit Singh, Mr. Kulbir Singh Mr. Sanjeev Kumar and Ms. Ranjit Kaur.

c) It is observed that IHI has been accepting money from public for its activity namely developers and traders of land (both residential and commercial) wherein IHI buys large amount of land at cheaper rates, develops the same and make the land marketable, with a view to provide benefits to its investor. IHI has been inviting applications to book plots of land for residential / commercial /land / units(s) under its various plans with two payment options details of which are indicated below :

(i) **Payment Options:-**

- Cash Down Payment Plan
- Installment Payment plan

(ii) **Plans:-**

- IPP Plan "A" for 66 Months.
- IPP Plan "B" for 72 Months.
- IPP Plan "C" for 120 Months
- Cash Down Payment Plan for Various Period

d) It is noted that IHI issued a 'Registration Letter' based on the application made by the 'customers'/ investors and the agreement executed. The said 'Registration Letter' contains the details regarding the payment plan, cost of the plot, installment amount, date of acceptance, projected plot value on

expiry of the term, nominee details, plot size, estate unit code. The 'General Terms and Conditions' as noted from the back of Registration Letter No. 0002377 issued by IHI (Hereinafter referred to as 'Terms and Conditions') are as under:

- The Land shall be allotted in the name of the customer, in the case of cash down payment plan after receipt of full payment within a reasonable period generally not exceeding 270 days and in the case of installment payment Plan(s) within a reasonable period generally not exceeding 90 days after the receipt of 50% of the total amount of installment. Subject to the foregoing, land ownership all be transferred to the customer within a reasonable period after allotment.

... ..

- When the installment is not paid within the grace period the plot booking/contract stands discontinued. But same can be revived at any time within next 12 months on payment of all dues together with simple interest @ 12 % p.a. and the liquidated damages @ 5 % p.a. for the period of default. However payment of such shall be accepted by IHI developers India Ltd. only in cash/demand draft.

- The customers shall be the owner in possession of the said property. The possession of the said property shall rests in the hand of IHI Developers India Ltd. for the limited purpose of developing and for wherever considered appropriate by IHI Developers India Ltd. for cultivating raising crops, trees, plants, sapling etc. ...

... cost of the said property includes the cost of land, development charges, other inputs, saplings, plants, trees, crops, planting expenses maintenance and other muse expenses.

- The customer has the right to retain or sell the said property, as he/she may deem fit on expiry of the Tenure for this agreement. To facilitate easy liquidity, IHI developers India Ltd. provided(s) to customer(s) the marketing services for sale of developed plots. In case customer decides to avail aforesaid services, he/she must notify IHI developers India Ltd. That effect at least 180 days before the expiry of period of agreement. the sale can be made only at the end of the tenure of this agreement of such price which may be mutually agreed between the parties in the opinion of the company based on current market situations and related factors, a developed plot of land 650 sq. yds. Upon completion period and owing to value addition may fetch on estimated price as per details given below, depending up to the development period. The estimated value mentioned against each development period is the composite value of land, plants, trees etc. and structures thereon.

- ... *The sold Property cannot in any other manner be sold, assigned, mortgaged, pledged or alienated without obtaining NO DUE CERTIFICATE from the company in case of installment payment plan(s).*

- *The management of company reserves the right to discontinue/ amend/ modify or after prospectively only of the rules/ regulations and payment plan(s) and introduces new payment plan(s) of any times at its sole discretion with or without any notice.*

- *In case of joint sale deeds the title deeds performing to the sale of property shall be kept in the sole custody of trustee(s) appointed by IHI Developers Ltd. for the purpose, a certificate copy of the said title deed issued by the sub-registrar or by the public Notary as may be feasible or practicable, shall be made available to the customer by the said trustee(s). The name and address of trustee(s) shall be informed to the customer by the letter of allotment. The customer shall have the liberty the title deed of the office of frusta(s) during the normal working hours on any working day. After furnishing a formal writer request there for 15 day(s) in advance..”*

14. I note that the aforementioned schemes offered by IHI have to be considered in light of Section 11AA of the SEBI Act, 1992. The aforesaid Section 11AA of the SEBI Act, 1992, provides for the conditions to determine whether a scheme or arrangement is a ‘collective investment scheme’. The conditions as stipulated vis-à-vis the facts of the case are considered hereafter.

15. The first condition under the section 11AA(2) of the SEBI Act, 1992 is that *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.*

16. With respect to the first condition above, it is observed that IHI had floated various plans for the purchase of land as brought out earlier. Thereafter, IHI collected the contribution / investments of the investors / customers in accordance with its plans/ schemes as detailed above for the purchase of land and issued receipt cum acceptance letter. It is further observed that registration letter, receipt cum acceptance letter issued by IHI, did not contain any details of the land allocated to the investors/ customers. In view of the same, it is observed that IHI collects the money from the investors and the same remains with the Company till it procures the land and allots the plot to the customer. Hence, it is

noted that Schemes/Plans of IHI satisfies the first condition stipulated in Section 11AA (2) of the SEBI Act.

17. The second condition under the section 11AA(2) of the SEBI Act, 1992 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.*

18. It is observed that the Terms and Conditions also bear a clause regarding the estimated price of the plot according to its size. It is also observed that the Registration Letter bearing number 0002377 also provides for "Projected Plot Value of expiry of Agreement Term". Thus, with respect to the second condition referred to above, it is noted that investors are provided with option to buy back by IHI wherein the rate for the said transaction is specified at the time of issue of registration letter. From the above, it is observed that the investors/ customers made contribution/ payment with a view to receive the profits / income / property / return on their investments that may accrue to them as applicable, thus attracting the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

19. The third condition under the section 11AA(2) of the SEBI Act, 1992 is that *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.*

20. It is observed that the investors / customers were not provided with the specific/ identified plot details at the time of making payments. It is also observed from the plans of IHI that the customer/ investor only decides the plan number, term of the plan but neither had any role in the acquisition or development / management of the land nor managed their investments in the plans/ schemes. Their investments were managed and utilized by IHI, which in the end offered 'projected plot value of expiry of agreement term'.

21. It is observed further on perusal of Para no. (6) and (7) of the Terms and Conditions that the company exercises discretion for the limited purpose of possession of the property for developing, cultivating and allied activities which mean to indicate that all such plots, whether identified or not, which form part of the scheme(s) are managed by the company on behalf of the investors. It is also observed on perusal of Para no. (11) of the Terms and Conditions that IHI had made provisions for 'Joint Sale deeds' wherein, if on execution of sale deeds, the same will remain with the trustee(s) appointed by IHI.
22. It is observed from the above that the contribution, investment and property, if any, pertaining to the plans/ schemes were managed by the IHI and thus attracting the third condition as stipulated in Section 11AA(2)(iii) of the SEBI Act..
23. The fourth conditions under the section 11AA(2) of the SEBI Act, 1992 is that *the investors do not have day-to-day control over the management and operation of the scheme or arrangement.*
24. It is observed on perusal of Para no. (10) of the Terms and Conditions that IHI can vary, at any point in time, rules/regulations of the company, deposit scheme(s) /plan(s) of the company or payment plan(s) with or without any notice. This indicates that the management of the money/scheme(s)/p!an(s) lies with IHI and the investors do not have any day to day control over the management and operation of the scheme. It is also observed on perusal of Para no. (9) of the Terms and Conditions that regarding the provision for obtaining 'no dues certificate' from the Company for the purposes of sale/ mortgage/ pledge which indicates the total authority of IHI over the subject land(s). Thus, it is noted from the above that the customer/ investor did not have day to day control over the management and operations of the scheme or arrangement and thereby attracting fourth condition as stipulated in Section 11AA(2)(iv) of the SEBI Act.

25. In view of the aforesaid discussion / observations and material available on record, it can be concluded that the schemes /plans of the Noticees satisfy all four conditions of section 11AA of the SEBI Act. I, therefore, find that Noticees are engaged in the fund mobilising activity from public through investment contracts by floating / sponsoring / launching collective investment schemes as defined in section 11AA of the SEBI Act without having registration with the SEBI as mandated under section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations for sponsoring / launching collective investment schemes.
26. Incidentally, though not part of the present proceedings, I note that SEBI had issued appropriate directions to the Noticees vide Interim Orders dated August 11, 2014 in order to protect the interest of investors and also to secure the interest of the securities market. Thereafter, SEBI had also passed final order dated August 14, 2015 against the Noticees directing them, *inter-alia*, to abstain from collecting any money from the investors or carrying out/ launching any Collective Investment Schemes and to wind up the existing Schemes and to refund the monies collected from the investors through various schemes launched by them. However, I find that there is nothing on record to show that Noticees has complied with the said directions.
27. The Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006]} 5 SCC 361} held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary"*.
28. In view of the above, I am convinced that it is a fit case to impose monetary penalty on the Noticees under the provisions of Section 15 D(a) of the SEBI Act, which reads as under:

Penalty for certain defaults in case of mutual funds.

15D. If any person, who is—

(a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which he sponsors or carries on any collective investment scheme including mutual funds, or one crore rupees, whichever is less;

29. While determining the quantum of penalty under Section 15D(a) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

Section 15J - While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

30. Incidentally, I observe that, the Noticees have not submitted a winding up and repayment report (WRR). The material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the non compliance committed by the Noticees.

ORDER

31. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors

mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 1,00,00,000/- (Rupees One crore only) jointly and severally on the Noticees viz. IHI Developers India Limited(IHI) and its directors namely Mr. Harjit Singh, Mr. Ranjit Kaur, Mr. Kulbir Singh and Mr. Sanjeev Kumar under the provisions of Section 15D(a) of the SEBI Act. The amount of the penalty shall be payable jointly and severally by the Noticees. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

32. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

33. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C-4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051."

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

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

- a) IHI Developers India Limited (CIN: U70200PB2010PLC033974)
- b) Mr. Harjit Singh (PAN: CGFPS6608M)
- c) Mr. Ranjit Kaur (PAN: CIRPK5759F)
- d) Mr. Kulbir Singh (PAN: BKHPS1704D)
- e) Mr. Sanjeev Kumar (DIN: 01558230)

and also to the Securities and Exchange Board of India.

Date: December 29, 2017

Place: Mumbai

**K SARAVANAN
GENERAL MANAGER &
ADJUDICATING OFFICER**