

SECURITIES AND EXCHANGE BOARD OF INDIA

DIRECTIONS UNDER SECTION 11B OF THE SEBI ACT 1992 READ WITH REGULATIONS 65, 68, 73 & 74 OF SEBI (COLLECTIVE INVESTMENT SCHEMES) - REGULATIONS, 1999.

IN THE CASE OF M/S BVR PLANTATIONS PVT. LTD. (BVR) having its office at T/1-B, 2nd Floor, Shahpurjat, New Delhi – 110049.

Pursuant to the Government of India Press Release dt. 18.11.97 SEBI vide its Press release (PR) dated 26.11.97, and Public notice (PN) dated 18.12.97 informed all the concerned that any entity desirous of taking benefit of the proviso 12(1B) of SEBI Act, 1992 was required to file information with it regarding its Collective Investment Schemes (CIS). BVR, however, did not file information pursuant to the said PR/PN of SEBI. It was brought to the notice of SEBI through investor complaints that BVR had been operating collective investment schemes and had mobilised funds from investors/public under the said schemes. SEBI vide its letter dated 3.8.98 informed BVR that since it did not file requisite information with SEBI, it was not eligible to mobilise funds under its existing schemes. In response to this, BVR vide its letter dated 22.10.98 claimed that it had never floated any CIS. SEBI tried to verify these contentions of BVR from the records of Registrar of Companies (ROC) but the same could not be done as it was informed by ROC that the company has not filed any accounts etc. with ROC after 1995.

SEBI (Collective Investment Schemes) - Regulations, 1999 (herein after referred to as Regulations) were notified on 15.10.99. SEBI by way of public notice dated December 10, 1999 intimated to all existing Collective Investment Schemes to comply with the Regulations.

In the meanwhile, BVR vide letter dated 7.12.99 admitted that it was a CIS entity in terms of the Regulations but expressed its inability to meet the eligibility criterion for seeking Registration under the Regulations.

In terms of Section 12(1B) of the SEBI Act :

" 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 :

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of Section- 30.

As per regulation 73, an existing Collective Investment Scheme which has failed to make an application for registration to the Board, has to wind up its schemes. For Winding up of the schemes, the existing CIS has to send an Information Memorandum (IM) to the investors who have subscribed to the schemes, within two months from the date of receipt of intimation from the Board, detailing the state of affairs of the scheme, the amount repayable to each investor and the manner in which such amount is determined.

The above requirements of the Regulations and the time frame provided under the relevant Regulations to comply with the said requirements were also brought to the notice of existing Collective Investment Schemes by way of Public Notice published by SEBI on 22.02.2000. Existing entities were again informed vide SEBI Public Notice dt. 27.3.2000 that the last date to make repayment pursuant to the winding up of the schemes was 28.5.2000.

As per record, BVR circulated Information Memorandum to the unit holders on 18.2.2000. It admittedly received positive consent from only two unit holders out of approximately 400 unit holders. Having failed to receive positive consent from more than 25 % investors, in terms of the Regulation 73(7), BVR was required to wind up the schemes & repay the investors in terms of the Regulations by 18.5.2000. Further, it was to file the winding up & repayment report with SEBI by 2.6.2000. However, the winding up of the schemes & repayment to the investors was kept in abeyance by BVR on some pretext or the other and as such the winding up and repayment report, in SEBI prescribed format, has not been filed by BVR till date.

SEBI vide letter dated 7.9.2000 asked BVR to explain as to why appropriate action should not be initiated against it for not complying with relevant provisions of SEBI Act, 1992 and SEBI (Collective Investment Schemes) - Regulations, 1999. Subsequently BVR made some payments to its unit holders in pursuance to its so called "winding up" proceedings. SEBI received investor complaints alleging the irregularities in the functioning of the schemes, manner of winding up, falsification of accounts, siphoning of funds, lack of transparency in the disposal & realization of assets. References were also received from Police Authorities corroborating the aforesaid irregularities.

While on one hand, BVR informed SEBI about its intention to wind up its schemes, on the other, it entered into a fresh MOU with the Association of unit holders on 21.10.1999 & 29.12.2000 which was in effect the continuation of CIS activities in violation of the Regulations. BVR misled SEBI with respect to the terms of the MOU. The said MOU was however, not honoured by BVR. The agreement dated 29.12.2000 was also not implemented allegedly due to conflict amongst the management of Association.

In September 2001, officials of BVR met Regional Manager, NRO. Pursuant to the meeting they agreed to file information sought from them with respect to their schemes & their winding up. They also promised to redress investor's complaints under intimation to SEBI. However, BVR has failed to file complete information pursuant to the aforesaid meeting and also has not furnished the status of the redressal of the investors' complaints till date.

BVR was granted an opportunity of hearing before me on 3.4.2002 which was attended by Shri Bharat Logani, Director of the company. Shri Logani submitted a "Winding up and Repayment Report" purportedly in terms of SEBI (CIS) Regulations. However, it was observed that the said report had numerous deficiencies and the said report was neither certified by Statutory Auditors nor was signed by all Directors. Therefore, while pointing out the deficiencies, during the hearing itself, BVR was directed to interalia furnish following information within 10 days from the date of hearing :

1. Information sought by SEBI vide letter No. 15/Plant/BVR/NRO2001 dt. 04.10.2001;
2. Winding up and repayment report in SEBI prescribed format signed by all the directors and certified by Statutory Auditors;
3. Confirmation from unit holders that they have either taken possession of their land or consent that they do not want possession of land. These confirmation/consent to be confirmed by the auditors; and
4. Undertaking from all the directors that they shall honor all the liabilities towards unit holders.

The said deficiencies and directions were communicated to the company vide SEBI's letter dt. 05.04.2002 also at its last known address. However, the said letter sent through speed post as well as through courier was returned undelivered with remarks "left without address" & " permanently locked" respectively.

Subsequently SEBI received a letter on 15.04.2002 from BVR dt. 10.4.2002 wherein a reference was made to SEBI's earlier letter dt. 19.3.2002. However, in this letter, no reference was made to the personal hearing held before me on 3.4.2002 and explanation/information sought from the company.

Vide said letter dt. 10.04.2002, BVR informed that it is not in a position to furnish winding up and repayment report certified by the auditors as the auditors are not willing to give such certificate. BVR however contended that the agreement entered between the company and the association of investors on 29.12.2000 amounted to winding up of schemes.

Further enquiries made by SEBI with regard to the company and investor complaints received inter-alia revealed that except for few initial payments, no payment as per agreed schedule were made to the investors; agreement dated 29.12.2000 entered between BVR and Association of investors was not acceptable to the majority of the investors since Association was not representative of investors and consisted of members actually representing the company and the investors do not have the physical possession of the land. These facts further corroborate the apprehension of SEBI that the affairs of the company have been conducted in a manner detrimental to the interests of the investors.

Vide letter dated 15.5.2002 which was forwarded through speed post, BVR was given a final opportunity to furnish the aforesaid information, latest by 20.5.2002. This letter also returned undelivered. On 30.5.2002, BVR filed balance sheets for the years ending 31.3.2000, 31.3.2001 signed by only one director. The said accounts were neither audited nor authenticated in terms of the provisions of the Companies Act,1956 and hence cannot be taken on record.

It, therefore, emerges that BVR has indulged in flagrant violation of the following provisions of SEBI Act 1992, and SEBI (Collective Investment Schemes) - Regulations, 1999:

1. Section 12 (1B) of SEBI Act 1992 which states that no person shall sponsor or cause to be sponsored or carry on or cause to be carried on any Collective Investment Schemes including Mutual Funds unless he obtains a certificate of registration from the Board in accordance with the Regulations;
2. Regulation 74 read with Regulations 73(8) by not making repayment to the investors within 3 months from the date of sending Information Memorandum;
3. Regulation 74 read with Regulation 73(9) by not filing the Winding up and Repayment report with SEBI;

Apart from the above, it is noted that the company has neither complied with various directions given by SEBI from time to time nor has honoured its commitments given to SEBI at different occasions.

Now, therefore, considering the gravity of charges against the company, non-compliance with statutory requirements of filing Winding-up and Repayment Report signed by all directors and audited by statutory auditors, the non-transparent winding up of the Collective Investment Schemes, adverse references received from investors and in the interest of investors, in exercise of the powers conferred upon me under section 11B of the SEBI Act,1992 read with Regulation 65 of the Regulations, I hereby direct the company not to collect any money from investors and not to launch any new scheme(s). I further direct the company to refund the money collected under the scheme(s) with returns which is due to the investors as per the terms of the offer within a period of one month from the date of this order failing which the following actions would follow:

1. Initiation of prosecution under section 24 of SEBI Act,1992 which prescribes imprisonment for a term which may extend to one year, or fine or with both against the company/its promoters/directors/ managers/persons in charge of the business of its scheme.
2. The company/its promoters/its directors/its managers/persons in charge of the business of its scheme would be debarred from operating in the capital market and accessing the capital market for a period of 5 years.
3. Writing to the state government/local police to register civil/criminal cases against the company for apparent offences of fraud, cheating, criminal breach of trust and misappropriation of public funds.
4. Writing to the Department of Company Affairs to initiate the process of winding up of the company.

Place: Mumbai

G.N. Bajpai

Date: August 26 , 2002

Chairman

Securities and Exchange Board of India