

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11B OF THE SEBI ACT 1992 READ WITH REGULATIONS 65 & 73 OF THE SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS 1999, IN THE MATTER OF**M/S GOLDEN TREES PLANTATION LTD, AHMEDABAD**

1. M/s Golden Trees Plantation Limited (herein after referred to as the company) mobilised funds from investors/public under the collective investment schemes being operated by it. Despite the same, the company had neither filed any information with the Securities and Exchange Board of India (hereinafter referred to as SEBI) nor did they apply for registration under the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the Regulations) for carrying on a collective investment scheme.

2. Furthermore, several investor complaints were received by SEBI against the company regarding the non payment of their invested money or the assured returns. Upon a perusal of a sample of an allotment letter enclosed with one of the investor complaints, it was noted that the company had allotted one teak sapling under its scheme to an investor in March 1996. The receipt issued by the company showed two dates, i.e. March 30, 1996 and March 18, 1998 while the acknowledgment issued by the company was dated March 18, 1998.

3. Hence, SEBI vide its letter dated November 13, 2001 forwarded the complaint to the company for their comments. In reply to the same, the company, vide their letter dated November 22, 2001 stated that it had stopped operating the scheme with effect from September 30, 1997 and further informed that the duration of the said scheme was for a period of 15 years. However, notwithstanding the statement of the company of having stopped operating its scheme as on September 30, 1997, from the perusal of the receipts issued by the company dated March 30, 1996 and March 18, 1998, and the acknowledgment issued by the company on March 18, 1998, it was prima facie evident that it had mobilised money in the year 1998.

4. In view of the same, SEBI issued a notice dated July 18, 2002 to the company to show cause within 15 days from the date of receipt of the notice, as to why appropriate action should not be initiated against the company and the promoters/directors/persons in charge of the scheme(s) in terms of the provisions of SEBI Act, 1992 (hereinafter referred to as the Act) and the Regulations, for non compliance of the various statutory requirements as laid down in the Act and the Regulations.

5. The company vide its letters dated July 31, 2002, August 14, 2002 and November 30, 2002 inter alia, submitted that it had not issued any Agro Bonds or Plantation Bonds and it had not given any assurances to any person for the return or earning of any amount of profit or produce in any manner and had not issued any advance cheque to any person. The company further submitted that as it was not operating collective investment schemes, the regulations were not applicable to it. It was further submitted that vide letter dated March 29, 2000, although the company had made an application seeking registration with SEBI, it had not received any response to the said letter. The company further submitted that as it was not running any collective investment schemes, it was not required to obtain registration. However, if SEBI came to the conclusion that the company had to seek registration, the application made by the company through its letter dated March 29, 2000 be treated as an application for registration.

6. Subsequently, before proceeding further in terms of the said show cause notice dated July 18, 2002, the company was granted a personal hearing before me on November 30, 2002. During the course of the said hearing, representatives appearing on behalf of the company reiterated the submissions made by them earlier. Thereupon SEBI called upon the company to furnish information relating to details of the various schemes managed by the company such as the total amount of money mobilised in each of the schemes, the total number of investors in each of the schemes, duration of the schemes, period of collection, details of promised returns, post dated cheques issued etc. The company was also asked to furnish the names and addresses of the directors and promoters, details of the shareholding pattern of the company, copy of the memorandum of association and article of association, amount of commission paid to the agents if any, details of infrastructure facilities such as land, office space, systems etc and latest audited annual accounts of the company, before the next date of personal hearing granted to the company on December 28, 2002. The company submitted certain information on the said date of hearing regarding the details of the schemes, the names and addresses of the directors, copy of the Memorandum of Association and Articles of association, details of the commission paid to the agents, the administrative expenses and the provisional accounts as on December 15, 2002. The company reiterated that it has not issued post dated cheques, has not promised assured returns to any member, has not issued Agro Bonds or plantation bonds and is not running collective investment scheme.

7. I have taken into consideration the facts and circumstances of the case and have also perused the documents filed by the company with SEBI and other material available on record.

8. For the relevance of the company being necessarily registered for running a collective investment scheme, reference has to be made to the press release issued by the Government of India on November 18, 1997 which inter alia directed all schemes

through which instruments such as agro bonds, plantation bonds etc. are issued, to be treated as a collective investment scheme that would come under the regulatory purview of the SEBI. Thereafter, SEBI issued a press release dated November 26, 1997 as well as a public notice dated December 18, 1997 which was published in all the leading newspapers of India, whereby it directed all the entities running collective investment schemes to file with it the necessary information about their schemes by January, 15, 1998.

9. Thereafter, vide its circular issued by way of a press release on February 24, 1998, SEBI directed that the existing collective investment schemes could mobilise money from the public or from the investors under their existing schemes only if a rating from any one of the credit rating agencies mentioned therein has been obtained.

10. In the case of S.D. Bhattacharya and others vs. The Union of India and others, the Delhi High Court issued various directions from time to time which are applicable to all the plantation/agro based companies/entities situated all over India. Vide its order dated October 7, 1998, the court, inter-alia passed the following directions:-

- (i) Plantation companies, agro companies and companies running Collective Investment Schemes shall get themselves credit rated from credit rating companies approved by SEBI.
- (ii) The companies shall furnish a list of their assets and liabilities.
- (iii) The companies shall furnish the list of their present Directors alongwith details of their assets including date, cost and present value of acquisitions.
- (iv) The companies are restrained from selling, disposing of and/or alienating their immovable properties or parting with the possession of the same. The Directors of these companies would also be interdicted from transferring their immovable properties in any manner whatsoever. They should also not part with the possession thereof.
- (v) The companies shall not float new schemes to raise further funds without the permission of the court.
- (vi) In so far as the existing schemes are concerned, the companies should strictly comply with the Circular of SEBI dated February 24, 1998.

11. Subsequently vide its order dated October, 13, 1998, the High Court further clarified that the aforesaid directions would apply to all the plantation companies running collective investment schemes irrespective of the fact whether their names were mentioned in the court proceedings or not. Thereafter, vide its order passed on October 29, 1998, the court clarified that in the event of the failure to comply with its earlier directions within the stipulated time, the question of initiation of proceedings for contempt of court and attachment of properties/appointment of receiver of the defaulting companies shall be considered.

12. Notice of the aforementioned directions was given by SEBI to all the plantation/agro based companies/entities by way of newspaper advertisement/notice which was published in all editions of the Indian Express on October 21, 1998 and November 9, 1998.

13. Subsequently, in exercise of its powers under Section 30 of the Act, SEBI notified the Regulations on October 15, 1999 to regulate the activities of collective investment schemes.

14. In terms of Section 11 AA of the Act, 1992, any scheme or arrangement made or offered by a company that satisfies the following conditions shall be a collective investment scheme:

- i. the contributions, or payments made by the investors, by whatever name called, are pooled and utilised 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 moveable or immovable from such scheme or arrangement;
- iii. the property, contribution or investment forming part of the 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 the operation of the scheme or arrangement.

15. Further in terms of section 12(1B) of the Act, and the provisions of the Regulations, no entity is permitted to carry on or sponsor or launch a collective investment scheme without obtaining a certificate of registration under the Regulations. Further under the provisions contained in Chapter IX of the Regulations, no existing collective investment scheme is permitted to launch any new scheme or raise money from the investors even under the existing schemes, unless a certificate of registration is granted to it by SEBI under the Regulations.

16. For the grant of certificate of registration, existing collective investment scheme entities were required to make an application within a period of 2 months from the date of notification of the Regulations. Accordingly, the last date for making an application by the existing collective investment schemes was December 14, 1999. However having regard to the interest of the

investors and the requests received from various entities, SEBI extended the last date for submitting applications for grant of registration by existing entities upto March 31, 2000.

17. Towards the same, several press releases and newspaper advertisements/notices were issued by SEBI from time to time in all the leading newspapers of India for the information of all the investors and the persons concerned.

18. In terms of regulation 68(1) of the Regulations, every collective investment scheme which was in operation at the time of commencement of the Regulations, shall be deemed to be an existing collective investment scheme and would be required to comply with the provisions of Chapter IX of the Regulations including Regulations 73 and 74 of the Regulations. According to the explanation to regulation 68 (1), the expression 'operating a Collective Investment Scheme includes carrying out the obligation undertaken in the various documents entered into with the investors who have subscribed to the scheme'.

19. In terms of Regulation 73 of the Regulations, the entity which is operating an existing collective investment scheme and fails to make an application for registration with SEBI, is required to wind up its schemes and repay its investors in the manner specified therein. Further under Regulation 74 of the Regulations, the entity operating an existing collective investment scheme which is not desirous of obtaining provisional registration from SEBI, is required to formulate a scheme of repayment and make repayment to the existing investors in the manner specified in Regulation 73.

20. In the case under consideration, I have noted that neither has the company applied for registration under the Regulations nor has it taken any steps for winding up of the scheme(s) and make repayment to the investors in the manner provided under the Regulations. On the contrary, from a perusal of the records, I have noted that while on the one hand, the company is contending that it does not require to get registered as a collective investment scheme since it is not running any kind of collective investment scheme, it has forwarded a letter dated March 29, 2000 to SEBI requesting that the said letter be treated as an application for registration.

21. In this context it would be necessary to note that in terms of regulation 5 of the Regulations, an application for the grant of a certificate of registration should be made in Form A and contain such particulars as are specified therein. Upon perusing the contents of the letter of the company dated March 29, 2000, it is clear that the same can not be treated as an application in terms of the Regulations. That apart, it would also be necessary to consider as to whether the activities of the company are in the nature of collective investment schemes as defined under Section 11AA of the Act.

22. A collective investment scheme as defined in Section 11AA of the Act has the following features:

- (i) The contributions or payments made by the investors, by whatever name called, are pooled and utilised 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.

23. Upon perusing the documents submitted by the company including the details of the company and the scheme(s), the Articles of Association and Memorandum of Association as well as the names and addresses of the promoters of the company, it is noted that the company is presently running two kinds of schemes i.e. teak memberships scheme and mango membership scheme. Under the teak membership scheme, there are 61,549 investors and a total amount of Rs. 9.18 crores is stated to have been mobilised by the company under the said scheme. I have also noted the contents of the teak sapling sale certificate issued by the company and have also perused the prospectus of the scheme. In terms of the same, it is noted that the investor is required to pay an amount of Rs. 550 (which amount was subsequently raised to Rs. 850) and become an owner of a teak plant. Under the mango membership scheme, there are 237 investors and an amount of Rs. 0.08 crores is stated to have been mobilised by the company under the scheme which is of 15 years duration.

24. Upon the perusal of the Memorandum of Association of the company, it is noted that the promoters of the company are also shown under the head of 'directors of the company'. It is noted that Rs. 0.99 crores has been paid as commission by the company to the agents, while an amount of Rs. 0.82 crores has been shown as administrative expenses of the company. Further, instead of the company submitting its latest audited annual accounts, the provisional accounts as on December 15, 2002, has been submitted.

25. It can be seen from the documents submitted by the company that the funds of the investors are pooled and utilised for the purpose of the scheme. The investors have entered into the agreement with a view to receive a consolidated amount from such a scheme. It is also seen that the property forming part of the scheme is managed on behalf of the investors and they do not have day-to-day control over the management of the aforesaid property as the company has exclusive control for managing and developing the property.

26. Thus it is apparent that the schemes of the company are in the nature of a collective investment scheme in as much as there is a pooling of resources, investments are made with a view to profit, property is managed on behalf of the investors and the investors do not have day to day control. However details of the ownership of the land on which the saplings are stated to have been planted, have not been provided. Having regard to the above, I am of the considered view that the schemes floated by the company fall squarely within the definition of the Collective Investment Scheme as defined under Section 11AA of SEBI Act.

27. I have further noted that several complaints have been made by the investors to the effect that the company was not redressing the grievances of the investors with regard to the return of the dues. Despite forwarding the same to the company, it has failed to take any steps to redress the same.

28. I have noted that although several press releases and newspaper advertisements/notices were issued by SEBI from time to time in all the leading newspapers of India bringing to the notice of the investors and the persons concerned, the various instructions issued by SEBI from time to time as well as the statutory requirements as contained under the Act and the Regulations, the company has failed to comply with the same. Therefore the company has violated the provisions of Section 12(1B) of the SEBI Act, 1992 and Regulation 5(1) read with regulations 68 (1), 68(2), 73 & 74 of the Regulations.

29. In view of the same, on the basis of the facts of the case, I, in exercise of powers conferred upon me under Section 11B of the SEBI Act read with Regulation 65 of the Regulations, hereby direct the company, as an existing collective investment scheme, to wind up its existing scheme(s) and refund the money collected under the scheme(s) with returns which are due to the investors as per the terms of offer within a period of one month from the date of the order, failing which the following actions would follow :

1. Initiation of prosecution proceedings, under Section 24 of the SEBI Act, 1992, against the company / its promoters / directors / managers / persons in charge of the business of its scheme(s),
2. Debarring the company / its promoters/ directors / managers / persons in charge of the business of its schemes (s) 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 and its promoters / directors for apparent offences of fraud , cheating, criminal breach of trust and misappropriation of public funds, and
4. Writing to the department of company affairs, to initiate the process of winding up of the company.

PLACE: MUMBAI

DATE: MARCH 14 , 2003

G N BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA