

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 HIGHWAY USERS CENTRES (I) LTD, Mumbai****C/ /2003/CIS/CIS**

1. M/s Highway Users Centres (I) Limited (herein after referred to as the company") mobilised funds from the 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, investor complaints were received by SEBI against the company regarding the company operating collective investment schemes and mobilising funds from the investors under the same as well as the non repayment of their invested money and the assured returns. It is noted from a letter dated February 4, 2002 addressed by the company to an investor that the company had informed the investor that the schemes launched by it are now under the purview of the regulations. An information memorandum, allegedly in terms of the Regulations, was also sent to the investors, in those schemes to wind up under the pretext of the Regulations.

3. Hence a notice dated July 18, 2002, was issued to the company asking the company to show cause as to why the action mentioned therein should not be initiated against the company and the promoters/directors/persons in charge of the scheme(s) in terms of the provisions of the SEBI Act, 1992 (hereinafter referred to as "the Act") and the regulations made thereunder. The company vide its reply dated August 30, 2002 inter-alia contended that as it was not operating any collective investment scheme, it was not required to file any information with SEBI and that the provisions of the Regulations are not applicable to it. It was further contended that no money had been mobilized from the investors or the public under the collective investment schemes. The company further requested that they may be afforded an opportunity of personal hearing in the matter before any action was taken on the show cause notice dated July 18, 2002.

4. Hence, the company was granted personal hearings. First of such personal hearings took place on November 30, 2002 before me. However as the company requested for an adjournment, the date of the hearing was scheduled for December 28, 2002. However, the company, vide its fax dated December 27, 2002 once again requested for an adjournment. Accordingly the hearing was fixed for February 12, 2002. During the course of the said hearing, Shri Burzin Somandy, Advocate appearing on behalf of the company reiterated the submissions made by the company earlier and inter-alia contended that the company had never mobilized money from the public either under a collective investment scheme or through an initial public offer. Shri Somandy further requested that the company be provided with inspection and copies of all the documents on the basis of which the show cause notice dated July 18, 2002 was issued to it. Accordingly permission was granted to the company to do the same. Thereafter Shri Surendra Khandhar, Director and Ms N.S. Bharati, Advocate visited the SEBI Office on February 14, 2002 and perused the said documents. Copies of investor complaints received by SEBI against the company and forwarded to the company earlier, were also sent by SEBI once again to the company. However, although M/s Vinod Mistry & Co, Advocates for the company, vide their letter dated February 21, 2003, confirmed, the perusal of the documents, till date, they have not send any further communication in this regard.

5. I have taken into consideration the facts and circumstances of the case and have also perused the relevant documents and other material evidence available on record.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. For the grant of the 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.

15. 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.

16. 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'.

17. 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.

18. In the facts of the case, 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.

19. 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.

20. In the case under consideration, 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, on the other hand it had forwarded a letter dated February 4, 2002 to some investors informing the investors that the schemes launched by them are now under the purview of the Regulations. Further under the pretext of the Regulations, an information memorandum was also sent to the investors".

21. Thus it is noted that while on the one hand, no information was filed with SEBI about the schemes of the company, on the other hand, while implying that these schemes are collective investment schemes, the information memorandum was sent to the investors in those schemes to wind up under the pretext of the Regulations and yet the investors were not repaid." Thus it appears that not only has the company issued contradictory statements; it has also made misleading statements to SEBI regarding its schemes. Moreover, it has neither 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,

22. I have also noted that a group company of Highway Users' Centres (India) Limited, M/s Suman Motels Limited, that is listed, solicited investment from the public by issuing "Highway Infrastructure Development Bond' through a brochure. The brochure was not addressed to any particular person(s) and hence the offer could be construed as a public offer. Yet I have taken cognizance of the fact that neither the company nor M/s Suman Motels Limited filed any offer document with SEBI. I have also noted from the records that SEBI had ordered M/s Suman Motels Limited, to wind up its collective investment schemes and repay the investors in accordance with the provisions of the Regulations within a period of one month. Thereupon M/s Suman Motels Limited challenged the said order before the Securities Appellate Tribunal. However the Hon'ble Tribunal vide its order dated January 13, 2002 was pleased to dismiss the appeal thereby upholding the order passed by SEBI. Thereafter SEBI has initiated action against M/s Suman Motels Limited, for its failure to wind up its collective investment schemes to repay the investors in accordance with the provisions of the Regulations.

23. Thus it is apparent that although the schemes of the company are in the nature of a collective investment scheme, the company has failed to wind up its schemes and repay its investors and is continuing with the schemes without filing the necessary information /application seeking registration with SEBI.

24. 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 on its request, the company has failed to act upon the same or issue any explanation for their failure to do so.

25. I have also 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.

26. 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.

G N BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

PLACE: MUMBAI

DATE: 24.4. 2003