

SECURITIES AND EXCHANGE BOARD OF INDIA**DIRECTIONS UNDER SECTION 11B OF THE SEBI ACT, 1992 READ WITH REGULATIONS 65 AND 73 OF THE SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999 IN THE MATTER OF M/S GURU TEAK INVESTMENTS (MYSORE) PVT LTD.**

1. M/s. Guru Teak Investments (Mysore) Pvt Ltd. (hereinafter referred to as 'company'), having its head office at No.874, "Raineo House", 1st floor, Dr. Modi Hospital Road, West of Chord Road, Bangalore-560086 was granted provisional registration with effect 01.07.2001 under the provisions of regulation 71(1) of SEBI (Collective Investment Schemes), Regulations, 1999 (hereinafter referred to as CIS Regulations). The said provisional registration was communicated vide letter dated 09.07.2001 subject to the conditions as specified under regulations 71. Such conditions inter alia included obtaining of credit rating of the schemes, appraisal of the scheme, creation of trust etc.
2. Pursuant to the grant of provisional registration the company vide its letter dated 20.06.2004 gave a written undertaking in terms of regulation 71(2) to comply with the conditions specified in regulations 71(1) of CIS Regulations.
3. The company however failed to comply with the conditions of provisional registration as contained in regulation 71(1) and did not get its scheme rated, appraised etc., within the period specified under the regulations. Further, it failed to form a trust in the manner as specified under the regulations and thus has violated the conditions of registration and was liable to wind up its scheme and repay the investors in the manner specified in regulation 73 of CIS Regulations.
4. SEBI vide its letter dated 27.11.2003 while informing the company that it had failed to comply with the conditions of provisional registration, advised it to wind up the existing schemes and repay the investors in the manner specified under regulation 73 of CIS Regulations. SEBI also forwarded the format of winding up and repayment report for their necessary compliance. The company was also advised to file the aforesaid report to SEBI within 3 ½ months from the date of Information Memorandum to be sent to the investors in terms of regulation 73(5) which was required to be sent to the investors within two months from the date of receipt of this letter. As a matter of fact the whole exercise was required to be completed within 5 ½ months from the date of receipt of the letter dated 27.11.2003 from SEBI.
5. The company vide its letter dated 11.12.2003 while admitting the delay on its part on complying with statutory requirements requested for the grant of additional time to comply with the regulations. Pursuant thereto SEBI vide its letter dated 23.01.2004 while rejecting their request for grant of additional time, advised it to comply with SEBI's letter dated 27.11.2003 and submit winding up and repayment report within the specified time. The company was forewarned that failing to comply with the aforesaid appropriate actions as per the provisions of Securities and Exchange Board of India Act, 1992 (SEBI Act) and Regulations will be taken against the company and its directors. Vide another letter dated 27.04.2004 the company was against advised to submit the winding up and repayment report on or before 12.05.2004 to avoid any adverse action against the company and its directors.
6. The company vide its letters dated 10.05.2004 and 15.05.2004 while submitting three albums of photographs of their plantations, one VCD and articles appearing in various newspapers with respect to their plantations, details of refund given to investors, sought more time to comply with their requirements of the regulations.

7. From the letter dated 02.05.2004 it was noted that the company had collected Rs.55 crores from the investors as on 31.03.2004, whereas as per the information submitted to SEBI at the time of grant of provisional registration the total amount collected was Rs.1.48 crores as on 31.03.2002. From this it is noted that the company had mobilised an additional amount of Rs.53.52 crores from the investors between 01.04.2000 to 31.03.2004 which was in violation of regulation 69 of CIS Regulation and also one of the condition of grant of provisional registration as communicated vide SEBI's letter dated 09.07.2001.
8. The company inspite of reminders/specific notice, failed to submit the report in violation of regulation 73(9). Regarding mobilisation of Rs.53.52 crores in violation of the regulations, the company vide its letter dated 02.06.2004 submitted that the subsequent mobilisation was made from the investors who had paid part amount against the units they had bought from the company. This submission however does not hold good in light of specific provision of regulation 69 which bars the existing collective investment schemes to raise money from the investors even under the existing schemes unless a certificate of registration is granted to it by the Board under regulation 10 of CIS Regulations.
9. Though it was clear case of failure to comply with the conditions of registration and violations of the provisions of the regulations, in compliance with the principles of natural justice the company was given a personal hearing before me on 05.11.2004 which was attended by Managing Director, General Manager and other directors of the company alongwith their practising Company Secretary. After hearing their submission at length as desired by the company it was given 30 days time to comply with the conditions of provisional registration, which was also communicated to it vide SEBI's letter dated 23.11.2004.
10. SEBI also received a brief note of the company on 05.11.2004 detailing the relevant information including companies moto/objects/achievements and the status of compliance of SEBI Regulations. In the said note company also claimed to have employed 50,000 field executives and have given employment to the unemployed youth. It has further claimed that it is encouraging nearly 30,000 villages in Karnataka to plant more and more plants to maintain ecological balance. The company also informed that it has been awarded Karnataka State Award in appreciation of its activities.
11. The company vide its letter dated 03.12.2004 submitted a compilation of documents in compliance of regulation 71(1) of CIS Regulation and requested for the grant of permanent registration certificate.
12. After examining the documents filed by the company as against the requirements of the regulations and the conditions for the grant of registration as communicated to the company vide SEBI's letter dt. 09.07.2001, my findings are as under :

Condition No.1

You shall not launch any new scheme or raise money from the investors even under the existing scheme(s).

I find that the company had mobilized Rs.53.52 crores from the investors during the period 01-04-2000 to 31-03-2004, which is a violation of the Regulation 69 of the said regulations and also the conditions prescribed in the Provisional Registration.

Condition No.2

You shall get your existing scheme(s) rated by a credit rating agency within one year from the date of grant of provisional registration;

The company has submitted a copy of letter dated December 3, 2004 received from ICRA Ltd., wherein it has been stated that the rating committee of ICRA has assigned "**CS 5**" rating to the Collective Investment Scheme of the company. The Rating indicates **high risk**.

Condition No.3

You shall get your existing scheme(s) audited by an auditor within a period of one year from the date of grant of provisional registration;

The company did not submit Auditor's report within a period of one year from the date of provisional registration. The company has submitted only the company audit report with balance sheets and profit and loss accounts for the year ended March 31, 2004. Further it did not submit the scheme-wise audit report.

The Audit report states that :

- a) The Company does not fulfil the requirements specified in The Companies (Auditor's) Report order, 2003 issued by the Central Government of India.
- b) The company has capitalized land to an extent of Rs.6,52,40,764/- in respect of which the land costing Rs.1,70,18,793/- has been held in the name of directors and agents.
- c) Further, the company GTIL has accumulated losses to an extent of Rs. 13,02,34,215/-.

Condition No.4

You shall get your existing scheme(s) appraised by an appraising agency within a period of one year from the date of grant of provisional registration;

The company has not appraised its existing schemes by an appraising agency within a period of one year from the date of grant of provisional registration. GTIL has submitted the appraisal report prepared by Agricultural Finance Corporation. However, there is no authentication received from the said appraisal agency about the appraisal report. Some of the observations made in the appraisal report are as under:

Technical evaluation

- a) **Majority of the farms are under open area without much natural vegetation cover, some of the plantation experience occasional high wind velocity.** As teak is shallow rooted, such high wind velocities are detrimental.
- b) In some of the farms, **soils are shallow and have poor fertility.** The plants are showing mal-nutritional disorders in their growth.
- c) With regard to water management, the **water is not uniformly distributed and erosion of top soil is observed.**
- d) Some of the farms, spacing of 1m x 1m is adopted and it appears to be too close. Initial spacing of 1.5 x 1.5 m is ideal.
- e) **As majority of plantations are located in low rainfall areas ranging from 435 to 900 mm** as against optimum rainfall of 1250 to 1800 mm, adequate supply of soil moisture is more.
- f) The company has so far acquired 1620 acres of land, out of which, about 845 acres are registered, 500 acres is under natural plantation of Neriya and the rest of 345 acres are used for cultivation of teak. **All the land used for teak cultivation is registered in the names of Managing Director, Directors and Advisory Committee Members.**

g) Financial Evaluation of Plantation scheme :

Among the crop development expenses, **the land development cost were found to be very high** as the company has spent considerable amount on land leveling and for supply of soils in huge quantities from outside source. This cost could be minimized. Similarly, **the company is spending huge expenses on other costs** which include construction of huge water storage structures and water harvesting structures like tanks / farm pumps. The cost on these structures could be completely eliminated.

Condition No.5

Over administration cost constitute a considerable percentage (59%) of the total expenditure of the company for the years 1996 – 2003. Commissions paid to marketing agents and vehicle hire / maintenance costs constitute major part of the administration cost at 27% and 30% respectively. Commission paid to the marketing agents accounted for 16% of the fund mobilized.

An analysis of ratio of fixed assets and crop development expenses to total amount mobilized indicates that **revenue expenses of the company are very high.** The company should initiate urgent steps towards increasing more areas under the plantation and introduce checks on revenue expenditure.

The company has proposed a planting density of a around 2000 plants per acre and 50 percent thinning operations in year 6 and 12 and thus maintaining around 500 plants per acre from 12th to 20/25th year. It has also projected a yield of **35 cft** wood from each tree at the end of 20th year and expects an income of Rs 1.0 cr0re per acre. The appraisers' assessment of teak yield that can be expected will be around **18 cft** per tree and states that the **projected yields and income of the GTIL are highly ambitious and optimistic.** It further states that **at the existing cost of cultivation, the company will have to bring in an additional area of 1970 acres under plantations, to meet the commitment made to the investors.**

In order to meet the interim payment to the investors the company has initiated steps for development of modern dairy at two locations. It also proposes to engage in trading activity in wood. **GTIL did not inform SEBI and obtain SEBI approval for such diversification.**

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Condition No.6

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You shall create a trust and appoint trustees in the manner specified in Chapter IV of the captioned Regulations within a period of one year from the date of grant of provisional registration;

- a) The company vide its letter dated December 3, 2004 has submitted a copy of Trust Deed executed by it. It is however noted that it has not appointed the trustees who is registered with SEBI as Debenture Trustee under SEBI (Debenture Trustee) Regulations 1993 in violation of the CIS Regulations.
- b) The trust so constituted is being administered by the Board of Trustees. There are 7 trustees, out of which, 2 are shareholders of the company which is a private limited company and is in violation of the provisions of Chapter IV of the CIS Regulations.

Condition No.7

You shall comply with accounting and valuation norms, in respect of your existing scheme(s), as specified in Part-II of the Ninth Schedule to the captioned Regulations within a period of one year from the date of provisional registration;

The company is not maintaining scheme-wise accounting and not comply with accounting and valuation norms as specified in Part II of the Ninth Schedule of CIS Regulation.

Condition No.8

You shall meet the minimum net worth of Rupees one crore within one year from the date of grant of provisional registration which shall be increased by Rupees one crore each within two years, three years, four years and five years from the date of grant of provisional registration;

The company did not submit network certificate as required above. It however submitted the network certificate dated December 21, 2004 which shows the **negative networth of Rs. 32,81,85,456/- as on March 31, 2004.**

Condition No.9

You shall not dispose off the scheme property except for meeting obligations arising under the offer document of the scheme. In this regard, your attention is invited to the interim orders dated 07-10-1998 and 13-10-1998 passed by the Hon'ble High Court, Delhi in CWP no:3352/98 – S.D. Bhattacharya and Ors. Vs. SEBI and Ors. The copies of the said orders are enclosed for your reference.

No information has been furnished by the company with regard to disposal of property.

Condition No.10

You shall comply with the conditions specified in Regulation 11 of the SEBI (CIS) Regulations, 1999. You shall forthwith inform the Board of any material change in the information or particulars previously furnished which have a bearing on the provisional registration granted to you.

No such information has been filed with SEBI, after provisional Registration. However, the appraisal report states that in order to meet the interim payment to the investors the company has initiated steps for development of modern dairy at two locations. It also proposes to engage in trading activity in wood. The company however did not obtain SEBI's approval for such diversion of funds which were as funds were mainly raised for teak plantation schemes, which is a serious violation of the regulations as well as the trust reposed by the investors upon the company.

Condition No.11

You shall comply with the Code of Conduct as also other instructions and other operational guidelines / directions / instructions etc. as may be issued by SEBI from time to time in the interest of investors. Any breach thereof would be treated as violation of the Regulations making you liable for action under the provisions of the said Regulations / SEBI Act, 1992.

In this regard I find that the company continued to collect money from the investors inspite of clear instructions from SEBI against it and also in violation of the provisions of Reg. 69 of the CIS Regulations.

Condition No.12

You shall keep and maintain the books of accounts and documents as specified in Regulation 40 and such other documents as may be required by the Board under the said Regulation from time to time and shall preserve the same for the minimum period as specified in the Regulations.

Regulation 40 says that CIMC shall keep and maintain proper books of accounts, records, and documents for each scheme, whereas in the instant case I find that the company did not maintain books of accounts scheme wise.

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Condition No.13

You shall abide by the SEBI (Collective Investment Schemes) Regulations, 1999 as amended from time to time in respect of the activities carried on by you.

As discussed above, I find that the company has failed to abide by the Regulations in as much as it continued to raise money after the grant of provisional registration in violation of the Reg. 69 as well as the conditions of provisional registration; it obtained credit rating of "high risk" category after the expiry of the period as specified under the regulations; it has not submitted the scheme wise audit report and books of accounts; appraisal report does not have any authentication from the appraising agency and also that the appraisal report reveals many adverse observations as discussed above; the trust was not formed in terms of the regulations; the net worth remains negative; company has diversified its business and thus breached the trust of the investors and also did not take any permission from SEBI for the diversion of funds which were raised for teak plantation.

13. Regarding the claim of the company about giving large scale employment and promoting plantation to maintain ecological balance and also the award given by the State of Karnataka, without going into the correctness of the said claim, I am of the view that any activity howsoever noble cannot be allowed to continue if it is in violation of the prevailing law of the land. The endeavour of SEBI is to ensure that all the activities of collective investment schemes are run strictly in accordance with the CIS Regulations to maintain the uniformity and to ensure that the interest of the investors at large is protected.

In the present case however, in light of the facts and circumstances as aforesaid, I find that the company has failed to comply with conditions of provisional registration and also has violated the provisions of Regulations 69 and 71 of the CIS Regulations. Therefore, in terms of Regulation 71(4) of CIS Regulations, the company is not eligible for the grant of permanent registration under Reg. 10 and thus is required to wind up its schemes and repay the investors in the manner specified in regulation 73.

14. **Order :**

Having regard to the above, I, in exercise of powers conferred upon me under Section 4(3) and Section 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 and 73 of the SEBI (Collective Investment Schemes) Regulations, 1999, direct M/s. Guru Teak Investments (Mysore) Pvt. Ltd to wind up the existing schemes and repay the investors in the manner specified in Regulation 73 within a period of 5 ½ months from the date of receipt of this order and submit the winding up and repayment report to SEBI in the format specified by SEBI.

Date: 18/02/2005

Place: Mumbai

G.N. Bajpai

Chairman

Securities and Exchange Board of India