WTM/PS/37/CIS/ERO/MAY/2012

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

DIRECTIONS UNDER SECTIONS 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATIONS 65 AND 73 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999 AGAINST MPS GREENERY DEVELOPERS LIMITED.

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received an application dated March 10, 2000 from MPS Greenery Developers Limited (for short "MPS") for grant of certificate of registration under the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (for short "CIS Regulations").

2. The aforesaid application was considered and Chairman, SEBI who passed an Order dated September 3, 2002 wherein he inter-alia directed as under, directing as under:

   "……. Having regard to the above, I am of the considerate view that the company has raised the money in violation of SEBI Circular dated 24.02.98 and Hon'ble Delhi High Court's order dated. 7.10.98 whereby all the plantation companies including the company herein were directed to strictly comply with the circular of SEBI dated 24.02.98. The raising of money by the company without grant of registration by SEBI is also in violation of

Regulation 69 of the SEBI (Collective Investment Scheme) Regulations, 1999, which prohibits raising money by a CIS even under the existing scheme, unless a certificate of registration is granted to by SEBI.

Further, in light of the SEBI Inspection Report, the company has failed to satisfy me that the affairs of the company are not being conducted in a manner detrimental to the interest of the investors in terms of Regulation 70 (1) (b) of the aforesaid Regulations.

In view of the aforesaid as company has not shown any compliance and respect to the legal requirements and the directions of the Hon'ble Delhi High Court by illegally continuing to raise the money as aforesaid and still has failed to refund the money to the investors, in spite of being given number of opportunities. This gives me the reason to believe that the affairs of the company are being conducted in a manner which is detrimental to the interest of investors and therefore I hereby reject the application of the company for the grant of registration.

Therefore, as an existing Collective Investment Scheme, in terms of Regulation 73 of the captioned Regulations, the company is required to wind up its existing schemes and make repayments to the investors. Accordingly, the company is required to send an information Memorandum to the investors, who have subscribed to the scheme(s) within two months from the date of receipt of this intimation in terms of Regulation 73 (2) from SEBI.

Further, on completion of the winding up and repayment to the investors in terms of Regulation 73, the company is required to file a detailed Winding

up and Repayment report in the SEBI prescribed format (copy enclosed) so as to reach SEBI within three and half months of the date of the Information Memorandum. Please note that a part of the report as at "Annexure A" is to be maintained by the company for a minimum period of 5 years from the date of the Information Memorandum and therefore should not be sent to SEBI."

3. Thereafter, MPS had filed a Writ Petition no. 1971/2002 before the Hon'ble High Court at Calcutta, challenging SEBI order dated September 03, 2002, in which the High Court at Calcutta vide its interim order dated September 24, 2002 directed that "Pending hearing of this petition parties are directed to maintain status quo as on date in respect of the affairs and functioning of the petitioner company." SEBI has filed a contempt petition bearing CC 29/2007 on January 31, 2007 against the company for continuing to raise funds from the schemes in violation of the status quo order of the High Court at Calcutta dated September 24, 2002. Pending this contempt petition, the Writ Petition no. 1971/2002 before the Hon'ble High Court at Calcutta was disposed off, vide order dated June 25, 2009, holding, inter-alia as under:

"…….Since the propriety of the order has not been gone into, the writ petitioners are permitted to furnish their best documents to SEBI within a period of four weeks from date for SEBI to reconsider the matter and revisit the issue as to whether the registration as sought by the petitioner company can be granted. The petitioners would be required to satisfy SEBI that the deposits obtained by the petitioners till date are secured and protected and that such funds have been deployed reasonably and keeping the interests of the depositors in mind.

If further material as aforesaid is furnished by the petitioners to SEBI within a period of four weeks from date, SEBI will reconsider the matter by giving an opportunity of hearing to the petitioner company and pass a reasoned order within a period of four weeks from the date of deposit of the documents. It is made clear that if within the time permitted to the petitioner all materials are not deposited, SEBI will be entitled to proceed only on the basis of the materials received till the deadline and pass a reasoned order in accordance with law.

W.P. No. 1971 of 2002 is disposed of on the above basis without any order as to costs.

The interim order of September 24, 2002 stands vacated. ***The embargo imposed on the company by SEBI's order of September 3, 2001 will remain in force till SEBI reconsiders the matter****……"* (emphasis added)

4. MPS, thereafter preferred an Appeal No. 194 of 2009 before Division Bench of the Hon'ble High Court at Calcutta against the aforesaid Order dated June 25, 2009 in Writ Petition No.1971 of 2002.

5. The said Appeal No. 194 of 2009 was dismissed as not pressed on August 26, 2009 since the appellants did not wish to proceed with the Appeal.

6. Thereafter, pursuant to an application made by MPS, a provisional registration certificate was granted by SEBI on August 21, 2009, under the provision of

Regulation 70(1) read with Regulation 71(1) of SEBI (Collective Investment Schemes) Regulations, 1999 and were instructed not to launch any new scheme or raise money from the investors even under the existing scheme, unless a certificate of registration is granted by the Board under Regulation 10.

7. Further, the provisional registration was granted subject to the following conditions, as specified in Regulation 71 of the CIS Regulations shall be complied by MPS within 2 years from the date of grant of provisional registration:

    a) *that the existing scheme(s) are to be rated by a credit rating agency;*

    b) *that the existing scheme(s) be audited by an auditor;*

    c) *that the existing scheme(s) be appraised by an appraising agency;*

    d) *that MPS shall create a trust and appoint trustees in the manner specified in Chapter IV of the captioned Regulations in respect of the assets;*

    e) *that MPS shall comply with accounting and valuation norms, in respect of existing scheme(s), as specified in Part-II of the Ninth Schedule to the captioned Regulations;*

    f) *that MPS 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;

g) *that MPS shall not dispose off the scheme property except for meeting obligations arising under the offer document of the scheme.*

h) *that MPS shall comply with the conditions specified in Regulation 11 of the SEBI (CIS) Regulations, 1999; that MPS 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.*

i). *that MPS 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.*

j). *that MPS shall 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.*

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

8. MPS had failed to transfer the properties and assets in favour of the trust so created as required by SEBI's letter dated August 21, 2009. The transfer of property and assets in favour of the trust is essential to ensure the protection of the interest of the investors who had invested in the various schemes of MPS. Since MPS has failed to fulfill the conditions laid down for provisional registration by SEBI, the provisional registration stands expired on August 20, 2011.

9. Meanwhile, MPS had issued a letter dated January 15, 2009 and on various other dates thereafter, addressed to its agents, interalia asking them to refrain from collecting any money on behalf of the company. A few persons claiming to be marketing agents/ development executives of the company filed suits at different civil courts in West Bengal against MPS for granting injunction against the said letters of MPS so that the agents could continue mobilization of money from the investors. It appears that the injunctions were used to circumvent SEBI restrictions and to collect further money. One such suit TS 02/2009 in Civil Court (Junior Division) Garbetta, was filed by none other than two directors of the company which shows the collusive nature of the Civil Suits. Upon dismissal of such suit in favour of SEBI, an appeal was also filed by the same directors of the company. Registrar of Companies, Kolkata vide letter dated November 15, 2010 informed SEBI about filing of some of these suits where SEBI was not a party. SEBI thereafter filed impleading applications where it was not a party and all courts except one, where the matter is pending for hearing, have vacated the injunctions. However, it is a civil dispute between MPS and its marketing agents/development executives and there is no

prohibition for SEBI from passing appropriate directions in accordance with its regulations read with the SEBI Act, 1992.

10. MPS, vide their letter dated February 17, 2011, submitted that it had raised ₹439 crores between August 21, 2009 (ie the date of grant of provisional Registration) and January 31, 2011,. Hence, it is evident that MPS has been raising money from the public despite the prohibition contained in the Provisional Registration letter from SEBI from launching any new scheme or raising money from the investors even under the existing scheme(s),

11. Further, in complete disregard of the SEBI directions vide the provisional registration letter and the High Court order dated June 25, 2009, MPS had published a newspaper advertisement in Business Standard, Kolkata edition, dated March 30, 2012 wherein the Managing Director of MPS has wrongly quoted the Order dated June 25, 2009 passed by the Hon'ble High Court at Calcutta and stated that the Hon'ble High Court has permitted them to continue its business. The following is extracted from the said newspaper advertorial:

> *"……so on one hand the provisional registration provided by SEBI is valid and as we MPS Group has the verdict of the Hon'ble Calcutta High Court to continue their business on an interim basis on the other hand. In regard to this Mr. Manna of MPS Group stated that despite the legal battle with SEBI, SEBI has never issued any*

statement derogating MPS Greenery Developers Limited and neither have they imposed any ban on the activities of the company. On the other hand discussions with SEBI are on regarding permanent registration of the company in SEBI ranks……"

"…..to develop the said projects investment of 30,000 crores of rupees will be required, 80% of which will be raised through collective investment schemes……"

"…..At present there are 14 lakh of investors, 1 lakh 25 thousand marketing members, 4 thousand direct and indirect laborers and more than 6 thousand workers and officers associated with MPS Group…."

The company vide this advertorial has stated that it is allowed to raise money from public and hence this clearly shows the intention of the company to raise further money. Hence, the advertorial hides the fact that the company is not allowed to raise money as per the conditions of provisional registration by SEBI.

12. Further, ICRA Limited has stated that as per the audited results of MPS, the company had raised funds as under.

March 31, 2010 –₹457.27 crores

March 31, 2011 – ₹ 837.33 crores

As per the information furnished by MPS to ICRA Limited, the total outstanding balance as on January 25, 2012 is ₹1169.39 crores.

Hence, it is evident that the company has been collecting money from the public even though it was prohibited to raise any money in any new or existing schemes.

13. Continuous collection of funds in such opaque schemes of MPS is in breach of terms of the provisional registration, wherein it was specifically prohibited from launching any new scheme or raising money from the investors even under the existing scheme, unless a certificate of registration is granted by the Board under Regulation 10 of SEBI (CIS) Regulations, 1999. Once an existing collective investment scheme, after obtaining provisional registration, fails to comply with the conditions of such registration, it has no other option but to wind up the existing schemes. In the present matter, MPS had not only failed to comply with the conditions but also violated the specific mandate of SEBI not to raise any further funds. MPS, prima facie is continuing the business of collective investment schemes and raising funds from the public in blatant violation of the regulations framed by SEBI which is not in public interest and may have disastrous consequences on the general public at large. SEBI cannot remain silent spectator while certain activities jeopardizing the integrity of the securities market continue with impunity. As a regulator, it is the duty of SEBI to protect the interest of investors by such measures as it thinks fit.

14. In view of the above, I am of the view that there is an imminent threat to the safety of the huge public funds raised by MPS in disregard to SEBI's letter dated August 21, 2009. The Hon'ble High Court at Calcutta, vide order dated June 25, 2009 inter alia directed SEBI to reconsider the matter by giving an opportunity of hearing to MPS and to pass a reasoned order within a period of four weeks, as stated therein. Accordingly, SEBI had granted provisional registration to MPS with certain conditions as stated above in this order. Therefore, any violation of such conditions by MPS is in violation of the aforesaid Regulations and would also in all probability tantamount to contravening the order of the Hon'ble High Court. Therefore, I find that, irreparable damage would be caused to the interest of the investors and the securities market, if MPS continues with its activities and urgent steps are not taken to preserve and protect the subject matter i.e. capital raised through the public.

15. Therefore now, in exercise of the powers conferred upon me under Section 11B & 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulations 65 and 73 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, I hereby direct MPS Greenery Developers Limited to deposit with a nationalized bank in an interest bearing Escrow Account, an amount of ₹1169.39 crores, which it has raised through its collective investment schemes, without obtaining certificate of Registration and in contravention of the conditions imposed by Securities and Exchange Board of India while granting provisional registration dated

August 21, 2009 and the aforesaid Regulations and also in violation of the Hon'ble High Court at Calcutta order dated June 25, 2009, within 15 days of this Order .

16. MPS Greenery Developers Limited is further:-

i. directed not to collect any money from investors or to launch any scheme

ii. directed not to dispose of the properties of the scheme acquired in violation of the provisions of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999

iii. prohibited from operating in the capital market and from accessing the capital market

till such time MPS Greenery Developers Limited deposit the amount as ordered above in paragraph 13.

17. This order may be treated as a show cause notice and MPS Greenery Developers Limited may make its submissions, if any, against the same and also to show cause as to why an order for winding up of the schemes of MPS should not be issued under Regulation 73 of the SEBI (CIS) Regulations, 1999. The submissions, if any, shall be furnished within fifteen days from the date of receipt of this order and MPS may indicate whether it would wish to avail of personal hearing.

18. This order is without prejudice to any other action that may be initiated against MPS Greenery Developers Limited in accordance with law.

19. The order shall come into force with immediate effect.

PRASHANT SARAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

DATE: MAY 11, 2012.

PLACE: MUMBAI