

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in respect of Sai Prasad Properties Ltd. and its Directors, Mr. Balasaheb K. Bhapkar and Mrs. Vandana B. Bhapkar

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had received a letter dated August 17, 2012, from the Office of the Registrar of Companies Goa, Daman & Diu (hereinafter referred to as "**ROC**"), regarding an inspection conducted in the matter of M/s. Sai Prasad Properties Ltd. (hereinafter referred to as "**SPPL**"), under Section 209A of the Companies Act, 1956. An extract of the Inspection Report of SPPL, as carried out by the ROC, was also enclosed with the said letter, which inter alia states that: "*it is observed from the details furnished by the company that the company is accepting amount from the associates for scheme with periods of investment ranging from 4 years to 9 years and executing joint venture agreements after 1 year and 3 years for the schemes of onetime payment and the installment scheme respectively*". The ROC, vide the above said letter, requested SEBI to take appropriate action against SPPL in respect of violation of Section 11AA of the SEBI Act, 1992.
2. Pursuant to the above, SEBI had sought the following documents/information from SPPL, vide letter dated September 12, 2012, as a part of preliminary enquiry and to see whether SPPL is carrying out any *collective investment scheme* (CIS) activities in terms of Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and/or SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations**"), : –
 - i. Memorandum and Articles of Association of SPPL as filed with the Registrar of Companies.
 - ii. Details of the past and present directors of the SPPL.

- iii. Brochures pertaining to schemes/ offers which were made available to the public.
 - iv. Copies of application forms that were required to be submitted by investors/applicant to participate in schemes offered by SPPL.
 - v. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to schemes offered by SPPL.
 - vi. Sample copies of the agreement letter/contract required to be entered into by investor/applicant under schemes offered by SPPL.
 - vii. Details of the scheme wise amount mobilized by SPPL till date along with the number of investors under the schemes offered by SPPL.
 - viii. Certified copy of audited financial statement for the FY 2009-10, 2010-11, and 2011-12.
 - ix. Copy of Income Tax Return filed by SPPL for the last three years.
 - x. Details of the regulatory approvals obtained by SPPL, if any, for provision of accidental death/disability benefits to investor, under schemes offered by SPPL.
 - xi. Details of any other similar scheme(s), if any, floated by SPPL or its group/associate companies.
3. Vide its reply dated October 26, 2012, SPPL submitted the following documents/information, viz. –
- i. Copies of Memorandum and Articles of Association
 - ii. List of Directors
 - iii. Copies of audited financial statement for FY 2009-10 and 2010-11
 - iv. Copies of income tax returns for the last three years
4. As SPPL, through its aforementioned reply, had furnished incomplete information, SEBI vide another letter dated April 5, 2013, had advised SPPL to furnish the remaining information as sought vide earlier letter dated September 12, 2012 and had also sought the following additional information, viz. –
- i) Details of "land bank" allotted to "joint venture associates" as guarantee/warrantee.
 - ii) Details of amount refunded to "joint venture associates".
5. SPPL, vide letter dated April 12, 2013, furnished a copy of annual report for the year ending 2011-12 and details of "land bank". However, the details of scheme wise amount mobilized

with number of investors , sample copies of the registration letter and allotment letter, agreement form, brochure, details of any other similar scheme(s), if any, floated by SPPL or its group/associate companies etc., as sought by SEBI, were not furnished by SPPL. SPPL also stated that they do not have any schemes and they are carrying out "*joint venture participation projects*". Further, it was also submitted by SPPL that "*expected refund of joint venture participation would be initiated from 01, September 2013, as per the joint venture agreement of SPPL with respect to the co-ventures*".

6. In the meanwhile, SEBI received a letter dated September 6, 2012 from Ministry of Finance enclosing a copy of the order dated July 13, 2012, passed by the Hon'ble High Court of Madhya Pradesh (Gwalior Bench) in the matter of *Dharmvir Singh and Anr. vs. Union of India & Ors. [Writ petition No. 3332 of 2010 (PIL)]*. Upon perusal of the aforesaid order, it was observed that –
 - i. The Petitioners therein had filed a Public Interest Litigation (hereinafter referred to as "**PIL**") seeking order of enquiry against various financial companies including SPPL. The petitioners had pleaded that thousands of persons of various districts in the State of Madhya Pradesh had been cheated by various finance companies under the garb of various schemes, which used to collect deposits from the persons with a promise to pay the money back with higher return of interest ranging from 15%-20%.
 - ii. Pursuant to the above petition, the Hon'ble Court, vide Order dated July 5, 2011 directed the Central Bureau of Investigation (hereinafter referred to as "**CBI**") to conduct the preliminary investigation regarding the activities of such companies.
 - iii. The findings of the CBI in respect of SPPL (as mentioned in the order dated July 13, 2012, passed by the Hon'ble High Court of Madhya Pradesh, Gwalior Bench)were as follows:
 - a. *The details provided by the company, M/s Sai Prasad Properties Ltd., has revealed that there are total 13,49,616 customers with the company in which 2,34,716 are under one-time payment plan while 11,14,900 are under installment plan. Further, only 157 customers have been issued allotment letters and the land allotted against these allotment letters is 1,64,495 sq. ft. No sale deed has been executed by the company with any of its customers while 456 customers have been given refund claims on completion of the agreement period.*
 - b. *In the details provided by the company during the enquiry it has been mentioned by the representative that no sale deed has been executed by the company with the customers, as*

the company has to execute the sale deed only if it fails to refund the agreed amount to the customers at the end of the agreement period. This clearly indicates that the company is only into accepting deposits and not into the sale of land. This indicates that both the company (SPPL & Sai Prasad Foods Ltd –a group company of SPPL) are simply collecting deposits from the investors without any registration with RBI.

- c. SPPL follows a hierarchy of agents involving 10 levels, for the purpose of getting business. These are from the level of Field Representatives to the level of Chief Controller. The company also gives commission to senior up-line members on the business brought by the junior most level against the booking of plots. In case of installment payment plan, the commission percentage is 20% for the Field Representative in the first year, and further commission is distributed till the highest level of Chief Controller but goes on reducing upwards the hierarchy and is 2 per cent at the top most level. In the similar way under cash down payment plan this is 6 to 9 % to the Field Representatives and is 0.5 % at the top most level.*
 - d. There have been several complaints against the company. The complaints were examined during the course of enquiry. It was revealed that neither the company nor its representatives / agents have at any time intimated the investors that the plan being offered by the company is in anyway related to purchase of land in its name. Some investors emphasized that had it been in their knowledge that the money was for allotment of land units, they would have never gone in for the investment plans. They also said that they invested with the company as the plans of the company seemed to be lucrative in comparison to that of Government sponsored schemes. Further, only a few investors had the knowledge that the company will be investing their deposits in land and at the end of the maturity period they would be getting the amount as mentioned in the certificates issued by the company. No allotment letters were found issued by the company to any of its customers who had made the required payments. The amounts of the investors who had made complaints with the Collector, Gwalior have been refunded without interest by the company. Examination of one of the investors also revealed that the company has also floated yearly Income Scheme in its policies/plans.*
 - e. Thus from the above it is indicated that the company is not actually into the business of sale of land as claimed by it but are receiving deposits and floating investment policies without registration with RBI.*
7. On the basis of the above report filed by CBI, the Hon'ble High Court vide the afore-mentioned Order dated July 13, 2012, observed that *"the authorities of the organizations are at liberty to take appropriate action in accordance with law."* The Hon'ble Court had directed the Principal Registrar to forward the copy of the said order to the various authorities including SEBI to take appropriate action in accordance with law.

8. It is also noted that SEBI also received a reference dated October 1, 2012, from the Ministry of Corporate Affairs (MCA) stating that “an inspection of Books and Accounts of SPPL was ordered by the Ministry vide its letter dated 08/07/2011. During the course of the said inspection it was observed by the concerned Inspecting Officer therein that SPPL had violated the provisions of Section 11AA of SEBI Act”. A copy of the relevant extract of the Inspection Report was also forwarded to SEBI by MCA for taking further necessary action. Further, SEBI had received a complaint dated October 15, 2012, against SPPL, from the Investors and Consumer Guidance Society inter alia alleging “*illegal collections to the tune of 1000’s of crores by Sai Prasad Properties Ltd Reg no U7200GA2008PLC005799- similar to Pearls Group- PACL-PGFL modus operandi.*” The complainant also forwarded brochures, Agreement Form, Rule Book and other documents pertaining to SPPL in respect of the scheme/plans, along with the complaint.
9. In view of the aforementioned reports and references from different authorities and the complaint received by SEBI in respect of the schemes launched by SPPL, and also in view of the aforementioned observations by the Hon'ble High Court of Madhya Pradesh, I find it necessary to proceed further with the matter, on the basis of available material on record. The issue under consideration is to ascertain whether or not the mobilization of funds by SPPL under the scheme is a 'CIS' in accordance with Section 11AA of the SEBI Act.
10. Upon perusal of the documents and other materials available on record, viz; the sample *Agreement for “Joint Venture Association”* (hereinafter referred to as ‘agreement’), Allocation letter, Rule Book, Brochure, Memorandum of Association and other materials in connection with the plan or schemes offered by SPPL, and also various references and reports from authorities like MCA, CBI etc., it is *prima facie* observed that –
- i. SPPL was incorporated under the Companies Act, 1956 (CIN: U70200GA2008PLC005799) on June 12, 2008 and has its registered office in Sai Plaza Complex, 4th Floor, Office No. 402, Opposite Gomantak Times, Panjim, Goa – 403301 and corporate office in Empire Estate, Building CB – 1, Office NO. 202 & 203, Chinchwad, Pune, Maharashtra – 411019.
 - ii. The Directors of SPPL are Shri Balasaheb K Bhapkar and Mrs. Vandana B Bhapkar.

- iii. As per the memorandum of association of SPPL and also as per the brochure, the main object of SPPL is to carry on the business of building and developing residential and commercial properties and to carry on the business as promoters, builders, developers, construction and maintenance contractors of industrial buildings, shed, warehouse, shopping malls, multiplexes, hutments and structures and for that purpose undertake development of land, buildings, renovate, enlarge, extend, pull down, re-build and prepare layouts for building and construction activities.
- iv. Further, it is noted from the brochure issued by SPPL that the following are shown under the header other objects:-
- *"to issue units to the public and associates to attain the main object of SPPL.*
 - *to acquire and develop agricultural land and to lease/rent out or sell the farm or farm house for agricultural purpose."*
- v. SPPL enters into agreement, which the SPPL refers as *"Agreement for Joint Venture Association"* (hereinafter referred to as 'agreement'), with investors or *"joint venture associates"*; as referred by SPPL in the sample agreement (hereinafter referred to as "associates"); to raise money, by issuing units.
- vi. I further note that SPPL has offered various schemes viz; installment payment plan (4 schemes), onetime payment plan (3 Schemes), monthly income plan (2 schemes) and yearly income plan (2 schemes). One of the plans from each category is illustrated below:

a) Instalments Payment Plan 'AP' for 54 months/ 4¹/₂ years:

No. of Units*	Total Participation (Rs.)	Participation Value (Rs.)				Expected Refund of Participation (Rs.)	Accidental Death Compensation (Rs.)
		M	Q	HLY	YLY		
0.50	6,000	112	330	655	1300	8250	9000
1.00	12,000	224	660	1310	2600	16500	18000
1.50	18,000	336	990	1965	3900	24750	27000
2.00	24,000	448	1320	2620	5200	33000	36000
2.50	30,000	560	1650	3275	6500	41250	45000
5.00	60,000	1120	3300	6550	13000	82500	90000
7.50	90,000	1680	4950	9825	19500	123750	125000

b) One Time Payment Plan 'EP' for 66 months/ 5 ¹/₂ years:

No. of Units*	Participation (Rs.)	Expected Refund of Participation (Rs.)	Accidental Death Compensation (Rs.)
0.25	3000	6000	4500
0.50	6000	12000	9000
1.00	12000	24000	18000
1.50	18000	36000	27000
2.00	24000	48000	36000
2.50	30000	60000	45000
5.00	60000	120000	90000
7.50	90000	180000	125000

* 1 Unit = 500 Sq. Ft. Area of land.

c) Monthly Income Plan 'HP' for 72 months/ 6 years:

S. No.	Participation (Rs.)	Net Sum Payable on Every Month	Expected Refund of Participation (Rs.)	Accidental Death Compensation (Rs.)
1	5000	60	5000	7500
2	10000	120	10000	15000
3	15000	180	15000	22500
4	20000	240	20000	30000
5	25000	300	25000	37500
6	50000	600	50000	75000
7	100000	1200	100000	125000

d) Yearly Income Plan 'JP' for 72 months/ 6 years:

S. No.	Participation (Rs.)	Net Sum Payable on Every Year	Expected Refund of Participation (Rs.)	Accidental Death Compensation (Rs.)
1	5000	900	5000	9000
2	10000	1800	10000	18000
3	15000	2700	15000	27000
4	20000	3600	20000	36000
5	25000	4500	25000	45000
6	50000	9000	50000	90000
7	100000	18000	100000	125000

- vii. In addition to the return offered under the relevant plan i.e. expected refund of participation, an "associate" is also offered accidental death compensation under the scheme
- viii. SPPL allocates land as per the ratio – 1 Unit or Rs. 12000 equivalent to 500 sq. ft. area of land. The 500 Sq. Ft. of undivided land is allocated as a guarantee to repay the maturity amount of the investment plan as per the certificate issued to the "associates". Determination of place of land depends on availability of land at the time of agreement.
- ix. As per Clause 15 (6) of Rule book, all development process would be performed by management of behalf of "associates".

10.1. Further, on examination of the various clauses in the agreement executed between SPPL and the "associates", the following clauses are noted:-

- *"WHEREAS the company is carrying on business of building and developing residential and commercial properties and to carry on the business as promoters, builders, developers, ..."*
- *"AND WHEREAS the company is hereby authorized to enter into Agreement for borrow, to raise money or secure the payment of money or receive money by way of Joint Venture or otherwise in such manner as the company may determine, and further authorized to invest or otherwise employ the money belonging or entrusted to the company in movable or immovable properties or in securities or in such other manner as may be deemed expedient".*
- *"AND WHEREAS the company has launched various schemes/ plans to borrow or raise the money, to raise money to secure the payment of money and launch the various plans including the installment , payment plans described in plan AP, BP, CP and KP so also one time payment plan EP, FP and GP for various periods in pursuance of rules and regulations made thereof including the expected sum payable on expiry of the said term and also consisting of the accidental compensation as contemplated in the said plans".*
- *"AND WHEREAS Company is issuing the certificates to enable the company to raise the finance especially described in the plan AP to EP, KP & GP hereinafter described and the party of the Second part came to know about the investment in said plan and agreed to investment in company & to join him in Joint Venture with a view to carryout and complete the said finance raising object as joint venture the party of the second part has number of meeting with company, discussed the scheme in detailed and other understanding the same fully agreed to enter into this Joint Venture ship Agreement on the terms and conditions mentioned herein".*

- *The party of the second part have contributed with the company the sum of Rs. _____ onwards Rs. Only of the _____ certificate in category _____ plans dated _____ and on maturity the sum assured is payable to the extent of Rs. _____ and the party of the second part will contribute such further amounts as may be desired by him from time to time for carrying out the said work and the amounts will be treated as a participation made by him to the company in the participation plans of the company repayable to the party of the second part as per terms and conditions of the Certificate, Rule book & Agreement.(Clause 2)*
- *The company will look after the financial side of the participation plans as well as look after the administration of the company and its said business and the party of the second part will have no nexus right of the shares or share capital of the company or to interfere the company or the management and the policies of the company or/ otherwise the board of directors will have sole and absolutely discretionary powers as per the companies laws.(Clause 4)*
- *"That the company has insured the life of Joint Venture with the New India Insurance Company's" (Clause 9)*
- *That through this Agreement the Company has being collateral secured for realization of amount of said plan as agreed, issued letter of allocation of land with a ratio of Rs. 12000 of participation equal to 500 sq.ft of land.....*
- *"It is agreed by & between the parties that this is Agreement for Joint Venture Associate and shall not be treated partnership with the company by joint venture. Once repayment of participation is made to the associate then this agreement along with allocation letter will be automatically cancelled." (Clause 19)*
- *"Once full and final payment of said certificate is paid to the associates, this joint venture agreement is automatically stands cancelled and the said land allocated to the associates, becomes free from holding of associate and company thereafter as full holding of land." (Clause 24)*

11. The abovementioned details of the scheme offered by SPPL, have to be considered in light of Section 11AA of the SEBI Act, which reads as follows:

"11AA (1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which,

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized 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 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."

12. In this context I note that -

12.1. SPPL, by way of the scheme, raises money by issuing units to the "associates". As per the terms and conditions of the agreement and the Memorandum of Association of SPPL, such mobilization of funds is to meet the main object, i.e carrying out business of building residential and commercial properties. It is also noted that SPPL, for the purpose of soliciting funds from public, has opened a number of "Associate Service Centres" and "Collection Centres" which are spread across the states of Maharashtra, Gujarat, Orissa, Tamil Nadu, Rajasthan, Karnataka, Jharkand, Chattisgarh, Madhya Pradesh etc. It is noted that such contribution made by "associates" in response to the plans offered under the scheme i.e. participation value in the form of monthly instalments or onetime payment in lieu of units are pooled and utilized by SPPL for the purposes of the plan.

12.2. It is observed that SPPL also undertakes to the "associates" to pay the estimated returns of investment plans on maturity as per the terms agreed. In this context, it is noted from the table (a) (related to plan offered by SPPL), shown in previous paragraphs, it can be seen that if participant invested Rs.6000 in AP plan, expected return is offered as Rs. 8250 along with accidental death compensation. Similarly, it can be seen from table (b) under the header "One time Payment Plan" that if a participant invested Rs. 3000 in EP plan, expected return offered is Rs. 6000 (after 66 months) along with accidental death compensation. Further, different returns were offered in different plans as stated in the abovementioned tables. Hence, the contribution was made by the "associates" with the view to receive profit or income (in case of monthly/yearly income plan).

- 12.3. On examination of the various clauses of the agreement, it is noticed that SPPL is managing the financial side of the participation plan as well as the administration of SPPL and its said business. The property of SPPL shall be used exclusively for the business of SPPL and the "associates" shall not have any right, title and interest in connection therewith. Further, it is noted that the allotment of units of land is only for the purpose of "collateral security" and no specification or identification of the land is given in the agreement. Hence it appears that the "associates" are not aware of the land purported to be allotted to them. Further, it is noted that the land so allocated can be disposed of only with the help of SPPL. Moreover, it is observed from the Rule book that all development process would be performed by SPPL of behalf of "associates". These particulars *prima facie* indicate that the property, contribution or investment forming part of the scheme, is managed by SPPL on behalf of the investors.
- 12.4. I further note that, Clause 15 (6) of the Rule Book clearly states that all development process would be performed by the management (SPPL) on behalf of "associates" and the "associates" do not have day to day control over the management and operation of the schemes, which *prima facie* satisfies the sub-clause (iv) of Section 11 AA(2).
13. In light of the above analysis, it appears that schemes offered by SPPL *prima facie* satisfy all the conditions referred in Section 11AA (2) of the SEBI Act.
14. Having *prima facie* found that SPPL is carrying out fund mobilization by way of CIS activities, I proceed further to examine the reply made by SPPL in respect of its scheme. As stated in the forgoing paragraph, SPPL in its reply dated 26/10/2012 and 12/04/2013 submitted as follows:-
- *"....the collective investment scheme indicated in your letter do not fall under any of the provisions laid down for the purpose of joint venture system of participation of our company's domain."*
 - *".....we do not have any such scheme for our joint venture participation projects under the different business domain and nor we have any such investors of the Company and in place we have co-venturers who actually participate in the joint venture projects of different dimensions we have joint venture agreements duly certified by the co-venturers....".*

15. I note that the main contention put forth by SPPL is that the scheme is for the purpose of a " *joint venture system of participation*". It is also noted that SPPL has referred the agreement entered into between SPPL and "associates" as "*Agreement for Joint Venture Association*" and the persons investing in the said scheme are referred as "*joint venturer*" or "*associates*". I further note that, in its letter dated 12/10/2012, SPPL has quoted the observations made by the Hon'ble Supreme Court of India in *New Horizons Ltd. vs. Union of India* [1995 (1) SCC 478] regarding the nature of a joint venture. The observations are as follows:-

"The expression 'joint venture' ... connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses. [Black's Law Dictionary; Sixth Edition, p. 839]."

16. I observe that the categorization of any scheme as "*joint venture*" is not determinative of its nature and character; the same has to be determined with reference to the terms and conditions of such scheme, which express the intention of the parties. Upon analysis of the instant "*joint venture*" offered by SPPL in terms of the "*Agreement for Joint Venture Association*" in the context of the abovementioned observations of the Hon'ble Supreme Court of India, I note the following –

- i. The "*joint venture*" in question is not a partnership between SPPL and the "associate" for the furtherance of a commercial enterprise but rather an arrangement which provides for a monetary return on the investment made by such "associate". Further, such "*joint venture*" stands cancelled once repayment of participation is made to such "associate".
- ii. Under the instant "*joint venture*", there is no shared control. The "associate" is excluded from the financial aspect of the "*joint venture*". Further, such "associate" or investor will have no right to interfere in the "*joint venture*" since SPPL exercises complete managerial and administrative control over the plans offered therein.

16.1. From the findings of the CBI (contained in the Hon'ble Madhya Pradesh High Court order dated July 13, 2012), it is noted that there are total 13,49,616 "associates" or investors with SPPL in which 2,34,716 are under one-time payment plan while 11,14,900 are under Installment Plan. In this context, I find it difficult to accept that SPPL has entered into a "*joint venture*" with such a huge number of "associates". I find that the claimed existence of a "joint venture" between SPPL and the "associates" is preposterous, since such venture has arisen from separate agreements between SPPL and 13,49,616 individual "associates". I find that such venture has also resulted in a common pool of contribution received from such individual "associates".

17. In view of the above analysis, I *prima facie* find that the scheme offered by SPPL having nomenclature "*joint venture*" is not a joint venture in accordance with law but rather such term has been used by SPPL to camouflage its fund mobilizing activity which is in the nature of a "*CIS*" in order to mislead and attract investment from general public. Therefore, the contention put forth by SPPL that it is carrying out a "*joint venture*" is not acceptable.

18. I note that the main characteristics of a '*CIS*' are *prima facie* found in the instant scheme offered by SPPL. In this regard, we may refer to the following observations of the Hon'ble Supreme Court of India in *P.G.F Ltd. & Ors. vs. UOI & Anr.* (MANU/SC/0247/2013);

"..... sub-section (2) of Section 11AA, held that: "*..sub-section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from.*"

19. In view of the abovementioned observations, I find that the SEBI Act is applicable to '*CIS*' that engage in inviting investment or contribution from investors for investing in any asset/property, etc. which interalia result in a return on such investment. In this regard, the activity of fund mobilization by SPPL under the instant scheme with a resultant promise of returns when considered in light of the other features of such scheme, as discussed in the proceeding

paragraphs, *prima facie* falls within the ambit of 'CIS' as defined under Section 11AA of the SEBI Act.

20. I note that in terms of Section 12(1B) of the SEBI Act, *"no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations"*. Regulation 3 of the CIS Regulations, provides that no person other than a Collective Investment Management Company which has obtained a certificate under the CIS Regulations shall carry on or sponsor or launch a 'CIS'. Therefore, the launching of any 'CIS' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. In this regard, I note that SPPL has not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public, under the instant scheme offered by it.
21. In view of the *prima facie finding* that SPPL is engaged in the fund mobilizing activity from public which satisfies all the ingredients of a 'CIS', without obtaining a certificate of registration from SEBI as required under Section 12 (1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, it has violated Section 12 (1B) of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations read with Section 11AA of the SEBI Act, 1992. It is further noted that Shri Balasaheb K Bhapkar and Mrs. Vandana B Bhapkar are the directors who are in charge of and responsible for the day to day affairs of SPPL.
22. As discussed in paragraphs 16 & 17 above, I find that the instant scheme offered by SPPL under the nomenclature *"joint venture"* is nothing but a camouflage for its fund mobilizing activity. I find such fund mobilizing activity falls within the ambit of 'CIS' as defined under Section 11AA of the SEBI Act and the same has been carried out by SPPL without due registration from SEBI. In this context I note that the protection of the interest of investors is the first and foremost mandate for SEBI. Further, in order to ensure that SPPL does not collect further funds under its schemes and to safeguard the assets/property, acquired by SPPL and its promoters/directors from the funds of the investing public until full facts and materials are brought and final decision is taken in the matter, it becomes necessary for SEBI to take urgent preventive action by way of this interim measure. In the light of the same and as SPPL did not submit complete details/information as sought by SEBI, I find no other alternative but to take recourse through an

interim measure against SPPL for preventing it from further carrying on with its fund mobilizing activity by launching " CIS' without registration from SEBI in accordance with law.

23. In view of the forgoing, I, in exercise of the powers conferred upon me under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Regulation 65 of CIS Regulations, hereby direct SPPL and its directors/promoters, including Shri Balasaheb K Bhapkar and Mrs. Vandana B Bhapkar;-

- a. not to collect any more money from investors under the existing schemes;
- b. not to launch any new schemes or plans;
- c. not to dispose of or alienate any of the properties or assets owned or acquired in respect of or in pursuance of the plans or schemes or earmarked /allotted to the "associates" under the plans/schemes.
- d. not to divert any fund raised from public at large which are kept in bank account(s) and/or in the custody of SPPL.

24. The above directions shall take effect immediately and shall be in force until further orders.

25. This Order shall be treated as a show cause notice and SPPL and its abovementioned directors may show cause as to why the plans/schemes identified in this Order should not be held as a 'CIS' in terms of Section 11AA of the SEBI Act and CIS Regulations and why appropriate directions under the SEBI Act and CIS Regulations, including directions in terms of Regulation 65 and 73 of the CIS Regulations should not be issued against them.

26. SPPL and its abovementioned directors shall, within 15 days from the date of receipt of this Order, file their objections/reply, if any, to this Order. SPPL and its directors may also indicate, in such reply, if they wishes to avail an opportunity of personal hearing in the matter.

Date : July 17, 2013
Place: Mumbai

S RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA