

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

ORDER

Under sections 11(1), 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in the matter of M/s Maitreya Plotters and Structures Private Limited (PAN No. AAFCM9944B) and its Directors, viz. Mrs. Varsha Madhusudan Satpalkar (PAN No. ACEPS9276L) and Mr. Janardan Arvind Parulekar (PAN No. AKNPP6001B).

1. The Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a complaint dated February 13, 2013, alleging illegal mobilization of funds through activities in the nature of ‘*collective investment scheme*’ by M/s Maitreya Plotters and Structures Private Limited (hereinafter referred to as “MPSPL”).
2. As a matter of preliminary enquiry into the alleged illegal mobilization of funds, SEBI, vide letter dated April 3, 2013, sought the following information from MPSPL in relation to its business activity, viz. –
 - a. Memorandum and Articles of Association of the company, as filed with the Registrar of Companies (hereinafter referred to as “ROC”);
 - b. Details about past and present directors and promoters;
 - c. Brochures pertaining to the schemes or offers made available to the public;
 - d. Copies of application forms required to be submitted by investors participating in the schemes or offers made available to the public;
 - e. Sample copies of registration letter and allotment letter issued to investors who subscribed to the schemes or offers made available to the public;
 - f. Sample copies of Agreement letter/contract required to be entered into by investors under the schemes or offers made available to the public;

- g. Details of the scheme-wise amount mobilized till date alongwith the no. of investors under the schemes or offers made available to the public;
 - h. Certified copies of audited financial statements for the FY 2009-10, 2010-11 and 2011-12 alongwith annexures, if any;
 - i. Copies of Income Tax Return filed for the last 3 years;
 - j. Details of regulatory approvals obtained, if any, for provision of accidental death/disability benefits to investors under the schemes or offers made available to the public;
 - k. Details of other similar scheme(s), if any, floated by MPSPL or its group or associate company.
3. MPSPL vide letter dated April 25, 2013, replied to the SEBI letter dated April 3, 2013, stating that as its legal consultant in the matter was away from office, it would revert back to SEBI upon his return.
4. Subsequent to the abovementioned letter dated April 25, 2013, SEBI received another complaint dated May 14, 2103, alleging illegal mobilization of funds by MPSPL and wherein the following documents were annexed, viz. –
- i. Copy of brochure containing various *“payment schedules”* in connection with the schemes *offered* by MPSPL;
 - ii. Sample copy of an *“Agency Application form”*;
 - iii. Sample copy of *“Application for booking of plot/purchase of plot”*;
 - iv. Sample copy of *“Agreement for sale”*.
5. SEBI vide letter dated July 2, 2013, once again advised MPSPL to submit the information sought vide letter dated April 3, 2013.
6. In reply to the SEBI letter dated July 2, 2013, MPSPL while stating that *“The Company is still in the process of compiling the remaining information relating to the offers made by the*

Company to its customers from time to time. ... We request you to allow us 10 days' time to submit the remaining information required by your letter dated April 3, 2013", had submitted the following documents, viz. –

- i. Memorandum and Articles of Association of the company, as filed with the ROC;
 - ii. Details about past and present directors and promoters;
 - iii. Certified copies of audited financial statements for the FY 2009–10, 2010–11 and 2011–12 alongwith annexures;
 - iv. Copies of Income Tax Return filed by the company for the FY 2009–10, 2010–11 and 2011–12.
7. Pursuant to the above, SEBI was in receipt of an extract of the Inspection Report under Section 209–A of the Companies Act, 1956, in the matter of MPSPL as forwarded by the Ministry of Corporate Affairs (hereinafter referred to as " MCA") vide letter dated August 2, 2013. Through the aforesaid letter, the MCA had requested SEBI to take appropriate action in the matter. It is pertinent to note that as per the extract of the Inspection Report, the following observations were recorded on the activities of MPSPL:

"From the study of Pro forma of the agreement for plot sale and para no. 12 and 13 of the same, it appears that provisions of the section 11(AA) of Collective Investment Scheme are attracted. That the investor is given the option to sell the plot after the expiry of the term of the agreement which indicates that it is an investment scheme. Further, in other cases when any one purchases any property then on payment of total sale consideration and on execution of sale deed/ agreement, the original sale deed/agreement thereof is given to purchaser of the property, whereas in this scheme of the company the said sale deeds/agreements pertaining to the sale of the said property shall be kept in the safe custody of Trustees appointed by vendor company for the purpose which appears not the prevailing the market practice and hence not convincing."

- 8.1 The material available on record i.e. correspondences exchanged between SEBI and MPSPL alongwith the documents contained therein; the complaints dated February 13, 2013 and May 14, 2103 alongwith the documents contained therein and the MCA's letter dated August 2, 2013, have been perused. In this context, the issue for determination in the instant matter is whether the mobilization of funds by MPSPL is a 'collective investment scheme' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").
- 8.2 On an examination of the material available on record, it is *prima facie* observed that:
- i. MPSPL was incorporated on April 18, 2009 under the Companies Act, 1956 (CIN: U70102MH2009PTC191800) and has its registered office in 1st Floor, Indrakunj, Behind Balaji Hospital, Virar East, Maharashtra – 401303. MPSPL has 2 Directors, viz. Mrs. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar.
 - ii. As per the main objects of the Memorandum of Association, MPSPL is engaged in the business of real estate i.e. of buying, selling, plotting, sub-plotting, letting out all types of land such as agricultural land, barren land, farmland, etc. and to sub-divide the land into small pieces and to sell, lease out or otherwise dispose of any such land. Further, MPSPL is also engaged in the business as builders, developers and executors of projects, etc. In order to carry out the aforementioned activities, MPSPL purchases the land in different States in large quantity, divides it into smaller plots as per the requirement of the customers and then sells such smaller plots to the customers on one-to-one basis. After execution of an 'Agreement to Sale' and issue of an Allotment Letter, MPSPL undertakes the development work on behalf of the buyer in the plot allotted within a period of 4 to 6 years. MPSPL operates through 120 branches spread across 8 States and sale proceeds of the plots are collected at respective branches and then transferred to the Head Office for further investment in various sectors including real estate, etc.

iii. MPSPL has launched *“Scheme towards Booking or Purchase of Plot of Land”* inviting investment from the public in accordance with the following terms and conditions, viz. –

- a. *“The company offers to sell plot(s) of land to the prospective buyers in two categories:*
 - i. *Purchaser(s) can book a plot of land by making the payment as per payment schedule. The booking amount of plot(s) is minimum 50% of the total consideration. The said booking amount can be paid in equal installments.*
 - ii. *Purchaser(s) can pay the entire consideration in single installment and buy the plot(s) of land.*
- b. *The company will allot the plot(s) of land to the Purchaser(s) within 180 days after the receipt of minimum 50% amount of total consideration in case of installment plan or on receipt of total consideration in case of single installment. Thereafter the company will also execute an agreement in favour of the Purchasers(s).*
- c. *After the receipt of the first installment of the booking amount, the company shall issue an Acceptance Letter and payment receipt to the Purchasers(s).*
- d. *If the Purchasers(s) fail to pay one or more installment of the booking amount as per the payment schedule for a period of 12 consecutive months from the due date, it shall be treated as a breach of contract. In that case the company will refund at the end the amount received against the said plot of land, after deducting 1% of the amount received by the company till that date, without interest ...*
- e. *The purchaser(s) who has paid the consideration for the plot of land in single installment can avail the facility of opting out of the contract at any time before allotment of plot of land by written request to the company. In such circumstances, the company shall deduct 20% amount of total consideration towards cost and other incidental expenses and balance consideration will be refunded to the purchaser(s) ...*
- f. *The company undertakes the development work of the said plot at the option of the purchaser(s), which includes all preliminary work relating to the development of the said plot of land. On completion of the development work, as per the opinion of company, there may be an appreciation in value of the plot of land to the extent of 10 to 20% approximately and it depends upon many other factors prevailing at that time.*

- g. The Purchasers(s) is/are entitled to know the exact location & other details of the plot of land after payment of the booking amount.
- h. The cost of plot of land includes cost of land and development charges. The charges for registration & stamp duty shall be borne by the Purchaser(s) at the time of registration."
- iv. The contribution or investment to the "Scheme towards Booking or Purchase of Plot of Land" may be made by a 'Purchaser' or investor as per various "Payment Schedule(s)", which differ on the basis of monetary payment either through "Equal Installment Schemes" (7 such schemes where payments are collected on monthly, quarterly, half yearly and yearly basis with tenure ranging between 4 - 6 years) or "Single Installment Scheme" (one-time payment). An estimated realizable value is also indicated against each payment option in the "Payment Schedule(s)". One of such "Payment Schedule" is illustrated below:

Payment Schedule 28				Duration of Payment - 4 years		
Plot Size (Sq. Yd. (₹))	Consideration (₹)	Equal Installment				Estimated Realizable Value of Developed Plot (₹)
		MLY. (₹)	QLY. (₹)	HLY. (₹)	YLY. (₹)	
150	16,800	350	1,040	2,080	4,100	21,600
225	25,200	525	1,560	3,120	6,150	32,400
300	33,600	700	2,080	4,160	8,200	43,200
375	42,000	875	2,600	5,200	10,250	54,000
450	50,400	1,050	3,120	6,240	12,300	64,800
525	58,800	1,225	3,640	7,280	14,350	75,600
600	67,200	1,400	4,160	8,320	16,400	86,400
675	75,600	1,575	4,680	9,360	18,450	97,200
750	84,000	1,750	5,200	10,400	20,500	108,000
825	92,400	1,925	5,720	11,440	22,550	118,800
900	100,800	2,100	6,240	12,480	24,600	129,600
1,125	126,000	2,625	7,800	15,600	30,750	162,000
1,350	151,200	3,150	9,360	1,720	36,900	194,400

1,575	176,400	3,675	10,920	21,840	43,050	226,800
1,800	201,600	4,200	12,480	24,960	49,200	259,200
2,250	252,000	5,250	15,600	31,200	61,500	324,000
2,700	302,400	6,300	18,720	37,440	73,800	388,800
3,150	352,800	7,350	21,840	43,680	86,100	453,600
3,600	403,200	8,400	24,960	49,920	98,400	518,400
3,900	436,800	9,100	27,040	54,080	106,600	561,600

- v. After making a contribution or investment in accordance with the abovementioned *"Payment Schedule(s)"*, a 'Purchaser' or investor in the *"Scheme towards Booking or Purchase of Plot of Land"* in promised an allotment of plot of land and has to execute an *"Agreement for Sale"* with MPSPL in that regard. As per the aforesaid Agreement, *"The transaction between parties is a transaction simplicitor of sale and purchase of plot of land, on principal-to-principal basis, with or without obligation to develop the said plot of land."* Further, after the allotment of plot and execution of the aforesaid Agreement, *"the symbolic possession of said plot is handed over to the purchaser ... "*. The *"Agreement for Sale"* also provides for MPSPL to develop such plot of land by rendering various preliminary activities in order to make the plot suitable for cultivation purpose.
- vi. From the audited financial statements of MPSPL for the FY 2009-10, 2010-11 and 2011-12, it is observed that the amounts mobilized under the *"Scheme towards Booking or Purchase of Plot of Land"* have been recorded in the relevant Balance Sheet under the head '*Other Current Liabilities*'. The same is reproduced below:

Particulars	As at March 31, 2012 (₹)	As on March 2011 (₹)	As on March 2010 (₹)
Advances from customers:			
(i) Advance against Booking Amount	12,632,606	2,803,716	1,330,194
(ii) Booking Amount	7,043,015,131	3,583,525,581	1,074,161,617
(iii) Installments received from Plot Holders	672,460,968		
(iv) Advance against Dhule Plots	4,092,959		
Total	7,732,201,664	3,586,329,297	1,075,491,811

- vii. From the audited financial statements of MPSPL for the FY 2009–10, 2010–11 and 2011–12, it is observed that the fixed assets of MPSPL were as follows:

Particulars	As at March 31, 2012 (₹)	As on March 2011 (₹)	As on March 2010 (₹)
Fixed Assets	343,664,457	178,547,668	88,713,843

- 8.3 The aforementioned details of the “Scheme towards Booking or Purchase of Plot of Land” offered by MPSPL, have to be considered in light of Section 11AA of the SEBI Act. The aforesaid Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a ‘collective investment scheme’, reads as follows:

“(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or [sub-section (2A)] ** shall be a collective investment scheme.

[Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under the exemptions from CIS sub-section (3), involving a corpus amount of one hundred Crore rupees or more shall be deemed to be a collective investment scheme.**] (**Inserted by Securities Laws (Amendment) Ordinance, 2013).

(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.”

8.4.1 In the context of the abovementioned Section 11AA of the SEBI Act, the “*Scheme towards Booking or Purchase of Plot of Land*” offered by MPSPL, is examined as under:

- 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.***

MPSPL has launched the “*Scheme towards Booking or Purchase of Plot of Land*” inviting investment from the public. The contribution or investment made by a ‘Purchaser’ or investor is in accordance with the various “*Payment Schedule(s)*” offered under the aforesaid *Scheme* i.e. participation in the form of equal instalments or onetime payment towards purchase of plot of land of varying size. An equal monetary amount is collected from each ‘Purchaser’ depending on the size of the plot of land irrespective of its location, etc. Admittedly, under the “*Scheme towards Booking or Purchase of Plot of Land*”, the ‘Purchaser’ is not provided with details in respect of the plot of land to be purchased from and promised to be allotted by MPSPL, until payment of the booking amount i.e. minimum payment of 50% of total consideration in accordance with the “*Payment Schedule(s)*” or total consideration in a single installment. Further, the cost of plot of land includes cost of land and development charges. Subsequent to the execution of the “*Agreement for Sale*” between the ‘Purchaser’ and MPSPL in respect of the plot of land purchased under the *Scheme*, MPSPL undertakes to develop such plot of land by rendering various preliminary activities in order to make the plot suitable for cultivation purpose. In this regard, it is clear that the payments collected from the ‘Purchaser’ under the “*Scheme towards Booking or Purchase of Plot of Land*”, are being used by MPSPL towards development of the plot of land purchased and promised to be allotted to the ‘Purchaser’. In view of the aforesaid, the contributions or investments received from the ‘Purchaser(s)’ are pooled and utilized for the purpose of the “*Scheme towards Booking or Purchase of Plot of Land*”. I, therefore, find that the instant *Scheme* satisfies the first condition stipulated in section 11AA(2)(i) of the SEBI Act.

- 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.*

As has been stated in the preceding paragraph, the payments collected from the 'Purchaser' under the "Scheme towards Booking or Purchase of Plot of Land", are being used by MPSPL towards development of the plot of land purchased and promised to be allotted to the 'Purchaser'. Subsequent to development of such plot of land, the 'Purchaser' gets the option of being allotted that land or receiving a monetary amount in the form of an estimated realizable value of developed plot as indicated in the "Payment Schedule(s)". MPSPL has stated that on completion of the development work, the value of the land is projected to increase to the extent of 10 to 20% approximately. In view of the aforesaid, it is clear that the contributions or investments are made by the 'Purchaser' under the "Scheme towards Booking or Purchase of Plot of Land" with a view to receive profits or returns. I, therefore, find that the instant Scheme also satisfies the second condition stipulated in section 11AA(2)(ii) of the SEBI Act.

- iii. *The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.*

Under the "Scheme towards Booking or Purchase of Plot of Land", the 'Purchaser' is promised either an allotment of plot of land or a monetary amount in the form of an estimated realizable value of developed plot. Such 'Purchaser' is not provided with details in respect of the plot of land purchased from and promised to be allotted by MPSPL under the "Scheme towards Booking or Purchase of Plot of Land", until payment of the booking amount in accordance with the various "Payment Schedule(s)". Further, upon execution of the "Agreement for Sale" between the 'Purchaser' and MPSPL in respect of the plot of land purchased under such Scheme,

MPSPL undertakes to develop such plot of land. The aforesaid clearly indicate that the right of the 'Purchaser' is created at the time of making contribution or investment in an unidentified and non-distinguishable land unit. The identification of such plot of land to the 'Purchaser' is at MPSPL's discretion, at the time of payment of the booking amount. Further, the 'Purchaser' does not take part in the development and management of the plot of land purchased by him and neither does he manage his contribution or investment in the *Scheme*; rather his contribution or investment is managed and utilized by MPSPL. Therefore, it is clear that the 'Purchaser' or investor does not, at any stage, manage the property, contribution or investment forming part of the "*Scheme towards Booking or Purchase of Plot of Land*". I, therefore, find that the instant *Scheme* satisfies the third condition stipulated in section 11AA(2)(iii) also.

- iv. *The investors do not have day to day control over the management and operation of the scheme or arrangement.*

It is noted that since the contribution or investment is managed by MPSPL on behalf of the 'Purchaser(s)', they do not have any say in the management and operation of such *Scheme*. The 'Purchaser(s)' do not participate in the development and management of the plot of land. The investors do not have accessibility to do anything on the plot of land that is yet to be identified and allotted to them. It is therefore practically impossible for the 'Purchaser(s)' to have a day-to-day control over the plot of land to be allotted to them. The 'Purchaser(s)' do not even have any control on the contributions or investments made by them as they are managed and utilized by MPSPL exclusively without any involvement of the investors. In these facts and circumstance, it is clear that the investors do not have day to day control over the management and operation of the "*Scheme towards Booking or Purchase of Plot of Land*". In view of the aforesaid, I find that the condition stipulated in section 11AA (2)(iv) of the SEBI Act is satisfied.

8.4.2 In view of the above, I find that the “Scheme towards Booking or Purchase of Plot of Land” offered by MPSPL, appears to have all the ingredients of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act.

8.4.3 In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of *P.G.F Limited & Ors. vs. UOI & Anr. (MANU/SC/0247/2013)*, wherein it had occasion to adjudge on a scheme having features similar to the instant “Scheme towards Booking or Purchase of Plot of Land”, as a 'collective investment scheme' under Section 11AA of the SEBI Act. The Hon'ble Supreme Court of India had observed that:

“A conspectus consideration of the scheme of development of the land purchased by the customers at the instance of the PGF Limited and the promised development under the agreement disclose that there was wholesale uncertainty in the transactions to the disadvantage of the investor’ concerned. The above factors and the factors, which weighed with the Division Bench in this respect definitely disclose that PGF Limited under the guise of sale and development of agricultural land in units of 150 sq. yards. i.e. 1350 sq. ft. and its multiples offered to develop the land by planting plant, trees etc. and thereby the customers were assured of a high amount of appreciation in the value of the land after its development and attracted by such anticipated appreciation in land value, which is nothing but a return to be acquired by the customers after making the purchase of the land based on the development assured by the PGF Limited, part with their monies in the fond hope that such a promise would be fulfilled after successful development of the bits of land purchased by them.

..... It is imperative that the transaction of the PGF Limited vis-a-vis its customers has necessarily to be examined as to its genuineness by subjecting itself to the statutory requirement of registration with the second respondent followed by its monitoring under the regulations framed by the second respondent. All the above factors disclose that the activity of sale and development of agricultural land propounded by the PGF Limited based on the terms contained in the application and the agreement signed by the customers is nothing but a scheme/arrangement. Apart from the sale consideration,

which is hardly 1/3rd of the amount collected from the customers, the remaining 2/3rd is pooled by the PGF Limited for the so called development/improvement of the land sold in multiples of units to different customers. Such pooled funds and the units of lands are part of such scheme/arrangement under the guise of development of land. It is quite apparent that the customers who were attracted by such schemes/arrangement invested their monies by way of contribution with the fond hope that the various promises of the PGF Limited that the development of the land pooled together would entail high amount of profits in the sense that the value of developed land would get appreciated to an enormous extent and thereby the customer would be greatly benefited monetarily at the time of its sale at a later point of time. It is needless to state that as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-neigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion. ... We therefore hold that Section 11AA of the SEBI Act is constitutionally valid."

8.4.4 The features of the "Scheme towards Booking or Purchase of Plot of Land" offered by MPSPL, as discussed in the preceding paragraphs, when considered in light of the abovementioned observations of the Hon'ble Supreme Court of India, indicate that the activity of fund mobilization by MPSPL under such Scheme with a resultant promise of returns, *prima facie* falls within the ambit of 'collective investment scheme' as defined under Section 11AA of the SEBI Act.

- 8.5 I note that the “*Scheme towards Booking or Purchase of Plot of Land*” has been camouflaged by MPSPL as a real estate business or transaction as is evident from a clause in the “*Agreement for Sale*” i.e. “*The transaction between parties is a transaction simplicitor of sale and purchase of plot of land, on principal-to-principal basis, with or without obligation to develop the said plot of land.*” In this context, it is observed that the categorization of any scheme as a real estate business or transaction 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 enunciate the intention of the parties. In this regard, it is pertinent to note certain common features of a real estate transaction, viz. an agreement to sell is executed for purchase of immoveable property that is identified and distinguished; even within the same location, there may be differential pricing, taking into account the factors including dimension, surroundings, situation of plot, etc. In the instant matter, as already mentioned in the preceding paragraphs, the plot of land purchased by the ‘*Purchaser*’ has not been identified or distinguished by MPSPL at the time of inviting contribution or investment from the general public under the “*Scheme towards Booking or Purchase of Plot of Land*”. The plot of land is only promised to be allotted to the ‘*Purchaser*’. Further, an equal monetary amount is collected from the ‘*Purchaser*’ depending on the size of the plot of land irrespective of its location, etc. and there is no demarcation in terms of pricing of land in the “*Payment Schedule(s)*” offered by MPSPL. In view of the aforesaid, it is observed that the “*Scheme towards Booking or Purchase of Plot of Land*” does not show any resemblance to real estate business or transaction but rather operates as a disguise to mislead and attract investment from the general public towards the fund mobilizing activity of MPSPL, which is in the nature of a ‘*collective investment scheme*’ as defined in Section 11AA of the SEBI.
- 8.6 From the audited financial statements of MPSPL for the FY 2009–10, 2010–11 and 2011–12 [reproduced in a tabular format at paragraph 8.2.(iv)], it is observed that the amounts mobilized under the “*Scheme towards Booking or Purchase of Plot of Land*” have been recorded in the relevant balance sheet under the head ‘*Other Current Liabilities*’.

The liabilities, as per the balance sheets for the FY 2009–10, 2010–11 were ₹107 Crores and ₹358 Crores respectively. It is noted that the increase in the current liabilities of MPSPL to an amount of ₹773 Crores as on March 31, 2012, is mainly due to the increase in the collection of booking amount and installment amount from the investors for the purpose of the scheme. In this regard, it is pertinent to mention that there is no corresponding increase in the fixed assets of MPSPL during the FY 2011-2012 [reproduced in a tabular format at paragraph 8.2.(v)]. The fixed assets of MPSPL as on March 31, 2010; March 31, 2011 & March 31, 2012 were ₹8 Crores, ₹17 Crores & ₹34 Crores respectively, as reflected in its balance sheet. It is also noted that MPSPL had short-term assets reflected as "*short-term loans and advances*" of ₹214 Crores as on March 31, 2012. Thus, it is noted that the fixed assets and the said short-term assets together (which amount to a approximately ₹248 Crores) are much less than the advance amounts collected from '*Purchaser(s)*' thereby indicating that the assets available with MPSPL are insufficient to meet its repayment obligation under the "*Scheme towards Booking or Purchase of Plot of Land*".

- 9.1 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 '*collective investment scheme*'. Therefore, a person can launch or sponsor or cause to sponsor a '*collective investment scheme*' only if it is registered with SEBI as a Collective Investment Management Company. In my view, therefore, the launching/floating/sponsoring or causing to sponsor any '*collective investment scheme*' 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 MPSPL 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.

- 9.2 Upon a consideration of the aforementioned paragraphs, I am of the view that MPSPL is *prima facie* engaged in fund mobilising activity from the public, by floating or sponsoring or launching 'collective investment scheme' as defined in Section 11AA of the SEBI Act without obtaining a certificate of registration from SEBI as required under Section 12(1B) of the SEBI Act and the CIS Regulations.
10. I note that MPSPL was advised to provide information (sought vide SEBI letters dated April 3, 2013 and July 2, 2013) towards the preliminary examination conducted by SEBI in respect of its business activity in light of the "*Scheme towards Booking or Purchase of Plot of Land*". I note that vide letter dated July 12, 2013, MPSPL only submitted the following documents, viz. Certified copy of Memorandum and Articles of Association; Certified copies of audited financial statements for the FY 2009-10, 2010-11 and 2011-12 alongwith Annexures; Details about past and present directors and promoters and Copies of Income Tax Return filed by the company for the FY 2009-10, 2010-11 and 2011-12. However, I note that MPSPL failed to provide other relevant information in respect of the "*Scheme towards Booking or Purchase of Plot of Land*" such as details regarding registration letter and allotment letter issued to investors who subscribed to the schemes or offers made available to the public, scheme-wise amount mobilized till date alongwith the no. of investors under the schemes or offers made available to the public, etc. I note that even after having *prima facie* mobilized funds from investors, MPSPL did not provide such fundamental details pertaining to the "*Scheme towards Booking or Purchase of Plot of Land*" to SEBI. I find it highly improbable that MPSPL did not have such details to furnish to SEBI and its reluctance to furnish complete information, clearly indicates a lack of transparency on its part. In these circumstances, I find it is essential to determine how MPSPL mobilized funds running into several tens of Crores of rupees without conforming to statutory norms governing such *Scheme*. I find that reasonable opportunity has been afforded to MPSPL to respond to SEBI and its refusal do so, when considered in light of the abovementioned *prima facie* finding at paragraphs 8.1-8.6, leads me to believe that such refusal to submit the information sought was only to conceal the true nature

and operation of its fund mobilising activity by way of the "*Scheme towards Booking or Purchase of Plot of Land*".

11. As discussed at the preceding paras, I find that the instant scheme offered by MPSPL under the nomenclature "*Scheme towards Booking or Purchase of Plot of Land*" is nothing but a smokescreen for its fund mobilising activity. I find that such fund mobilising activity falls within the ambit of '*collective investment scheme*' as defined under Section 11AA of the SEBI Act and the same has been carried on by MPSPL without due registration from SEBI. In this context, I note that protecting the interests of investors is the first and foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure only legitimate investment activities are carried on by MPSPL and no investors are defrauded. In this regard, it is pertinent to note that MPSPL's Directors, viz. Mrs. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar, are also Directors in Maitreya Services Pvt. Ltd. (hereinafter referred to as "**MSPL**"). I note that vide SEBI's order dated March 25, 2013, MSPL and the aforementioned Directors were directed not to access the capital market and were further restrained and prohibited from buying, selling or otherwise dealing in the securities market till all collective investment schemes of MSPL are wound up and all the monies mobilized through them are refunded to the investors. The aforesaid SEBI Order has been upheld by the Hon'ble Securities Appellate Tribunal (SAT) vide its order dated July 23, 2013. It appears to me that the Directors viz. Mrs. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar, are in the business of mobilizing money from the public through collective investment schemes carried on by various companies under their management. It therefore becomes necessary to ensure that such individuals do not carry on further with their illegal fund mobilization activities. In light of the same, I find it reasonable to take recourse through an interim action against MPSPL and its Directors for preventing them from further carrying on with fund mobilising activity related to '*collective investment scheme*', without registration from SEBI.

12. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11B and 11(4) of the SEBI Act read with Regulation 65 of CIS Regulations, hereby direct MPSPL and its Directors, viz. Mrs. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar, -
- a. not to collect any more money from investors including under the existing schemes;
 - b. not to launch any new schemes;
 - c. not to dispose of any of the properties or alienate any of the assets of the schemes;
 - d. not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of MPSPL.
13. The above directions shall take effect immediately and shall be in force until further orders.
14. This Order shall also be treated as a show cause notice. MPSPL and its abovementioned Directors may show cause as to why appropriate directions under the SEBI Act and CIS Regulations including directions in terms of Regulations 65 and 73 of the CIS Regulations should not be taken against them.
15. MPSPL and its abovementioned Directors shall, within 15 days from the date of receipt of this Order, file their reply, if any, to this order. MPSPL and its abovementioned Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai
Date: August 30, 2013

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA