

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 M/s Adel Landmarks Limited (formerly known as M/s Era Landmarks Limited CIN: U45203DL2005PLC134375) and its Directors.

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received several complaints against M/s. Adel Landmarks Limited (formerly known as M/s Era Landmarks Limited) (hereinafter referred to as "ALL") regarding the scheme launched by ALL for pre-booking of plots in *Cosmocity at Sector 103, Gurgaon*. The complainants alleged that vide the said scheme, ALL had mobilized crores of rupees from investors and failed to refund the same within the stipulated time. Complainants also forwarded copy of the agreement entered into alongwith the payment receipts issued by ALL.
2. As a matter of preliminary inquiry, SEBI, vide letter dated June 10, 2013, advised ALL to submit, *inter alia*, the following details/documents with respect to the schemes operated by ALL:
 - a) Number of plans/schemes launched/proposed,
 - b) Structure of such plans/schemes,
 - c) Terms and conditions of each such plans/schemes launched by ALL,
 - d) Brochure pertaining such schemes/projects,
 - e) Sample copies of the Application forms/agreements that are required to be entered into by investors/applicants at the time of joining ALL's

Projects/Schemes and certificates issued to the investors who subscribe to such schemes,

- f) Details of location of projects, current and proposed to be developed under various scheme, Balance Sheets and Profit and Loss Accounts of ALL since incorporation as filed with the concerned Registrar of Companies (RoC),
- g) Memorandum and Articles of Association ("MoA" and "AoA") of the company as filed with the RoC,
- h) Annual Returns of ALL since incorporation as filed with RoC,
- i) Details of past and present Directors of ALL.

3. In reply to the aforesaid letter, ALL vide letter dated June 24, 2013 requested time for submitting the information. Thereafter, vide letter dated July 01, 2013, ALL furnished the following information and submitted that it is in the business of development of Real Estate and its activities are not akin to CIS.

- a) MoA and AoA of ALL as filed with RoC;
- b) Copy of Sale Deed;
- c) Number of plans/schemes launched/proposed, Structure of plans/schemes, Number of investors and amount collected and details of location of projects current and proposed to be developed under various schemes;
- d) " Brochure" issued by ALL;
- e) Sample copy of Application form;
- f) Sample copies of certificates issued to the investors;
- g) Sample agreements that are required to be entered into by the investors with ALL;
- h) Balance sheets and Profit & Loss accounts of ALL;
- i) Details of past and present directors of ALL;
- j) Annual Returns of ALL since incorporation as filed with RoC.

4. As the information provided by ALL was inadequate, SEBI vide letter dated July 04, 2013 advised ALL to furnish complete information in respect of scheme of pre booking of plots, such as:
- a) Sample application form and filled up forms/ buyers agreement
 - b) The details/salient features of the scheme
 - c) Advertisement material/brochure/pamphlets of the schemes
 - d) Whether ALL is the owner/possessor of the land which forms part of the scheme
 - e) License from the authorities/agencies for development of plots
 - f) Total amount mobilised and the number of investors
 - g) Whether the scheme had any lock-in period or any buy back option is given to the buyers of the plots.
5. In response to the aforesaid letter, ALL vide letter dated July 15, 2013, *inter alia*, submitted the following information:
- a) Sample Application form
 - b) Sample Agreement (filled in);
 - c) Copy of application to Director General Town and Country Planning, Gurgaon, Haryana through the associate of ALL to get license for residential plots.
6. On an examination of the material available on record, it is *prima facie* observed that:
- a) ALL (CIN: U45203DL2005PLC134375) was incorporated on March 24, 2005 as Era Infrastructure (India) Ltd and later changed its name to Era Developers Ltd in August 07, 2009. Thereafter, the said company changed its name to Era Landmarks Ltd *w.e.f.* October 12, 2009. In this regard and as per the information obtained from MCA21 portal, it is seen that the company is presently known as Adel Landmarks Ltd with its registered office at B-39, Ground Floor, Friends Colony (West),

New Delhi- 110 065. Mr.Sumit Bharana, Mr. Arvind Kumar Birla, Ms. Manisha Bharana and Rakesh Kumar Gupta are the present directors of the said company.

- b) As per the MoA of ALL, the main objectives are ,*inter alia*, to carry on the business as promoters, developers, builders, colonizers, engineers, consultants, contractors for roads, highways, multiplex, shopping mall, housing complex, colonies, building schemes, bridges, dam, canals, industrial complex or any other structural architectural and mechanical project of any kind in India and abroad.
- c) As stated by ALL vide its reply dated July 01, 2013, they invite applications to book plots of land for residential/commercial units under its various schemes viz., " *Cosmocity at Gurgaon Sector 103*" (hereinafter referred to as "**Cosmocity**"), " *Era Green World at Sector 8, Palwal*" (hereinafter referred to as " **Greenworld**") and " *Redwood Residency at Sector 78, Faridabad* " (hereinafter referred to as "**Redwood**"). Further, as per Annexure-C to the above mentioned reply ALL had collected ₹ 51,82,70,000/- from 432 investors for Cosmocity, ₹80,06,11,000/- from 571 investors for Green World, and ₹1,19,78,92,000/- from 618 investors for Redwood.
- d) Investors who were interested in the aforesaid plans are required to execute an agreement with ALL. From the copy of "*Agreement*" dated December 10, 2011 entered into by one of the Complainant with ALL with respect to Cosmocity, the following aspects are noted:
 - Applications are invited for the purchase of future land for developing residential plot in a future residential colony by ALL and they have agreed to reserve an area/land to be allotted within 12 months with a grace period of 6 months from the effective date (Clause 3).

- Further, the applicants are given the option of two payment plans viz., "down payment plan" and "construction/development linked plan".
- Investors are required to make payment by cheque or demand draft as per the payment plan mentioned in the agreement.
- It is expressly stated in the agreement that the same shall not be construed as Agreement for sale of developed residential plots.
- Hence, the agreement is for pre booking and development of future plot to be purchased by ALL after getting necessary approvals/licence from the competent authority.

7. The aforementioned features of so-called "*purchase and development of a future land*" by ALL appears to be a "*scheme*". In this context, the issue for determination is whether the mobilization of funds by ALL is a '*collective investment scheme*' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

"Collective Investment Scheme

11AA (1) *Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-section (2A) shall be a collective investment scheme:*

(2) *Any scheme or arrangement made or offered by any person 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. In the context of abovementioned Section 11AA of the SEBI Act, the scheme of pre booking of plots offered by ALL 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.

As noted from the copy of the agreement dated November 11, 2011, provided by ALL as well as complainants, ALL collects funds from applicants/investors for the purchase of land in its own name. Subsequently, after development of the land, ALL will allot land to the applicant/investor in case they so desire. Therefore, it is clear that for the purpose of said scheme, ALL will pool the monies collected from all the investors/applicants/customers for the purpose of purchasing land in its own name. Considering the fact that there is a pooling of contribution made by the applicants for the purposes of scheme/arrangement, it is seen that the first condition of pooling of resources /contributions mentioned in Section 11AA of SEBI Act is fulfilled.

(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;

Investors have the option to get a plot of land which will be purchased and developed by the ALL by pooling the amounts collected from the investors. It is noted from Clause 13 of the agreement dated December 10, 2011, entered into by one Mr. Deepak Sehgal who had invested ₹55,44,000/- in Cosmocity that in case ALL fails to obtain the license and consequential right for the sale or allotment of the land within 18 months as stipulated in clause 3, investor shall be entitled to get an

assured return of ₹18,14,000/- along with the refund of existing investment . Hence, the second condition, which stipulates that the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property as stipulated in Section 11AA (2) (ii) of the SEBI Act is also fulfilled.

(iii)the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors; and

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

As has been noted in the preceding paragraphs, ALL agrees to allot a future plot to the investor upon execution of the “Agreement”. However, at the time of execution of agreement, the land is not identified. It is further noted that the said execution of the agreement shall not be construed as agreement to sell. From this, it is clear that the investor is making contribution or investment in an unidentified land/unit. The allotment of such plot/land to the investor is at ALL's discretion. Till the time, the plot of land is actually transferred in the name of investor (in case he opts to take a plot of land), by executing a sale deed, the land to be purchased and developed will remain in the control of ALL on behalf of such investor(s). As has been observed in the preceding paragraph, ALL, collect monies from investors for the scheme of “Purchase and development of plot” without identifying the land/plot, indicating “expected return” in the form of compensation. Further, the investors do not have any say in choosing a particular property or in the further development of the property. This indicates that the investors do not, at any stage, manage the property, contribution or investment forming part of the 'Scheme' and the

contribution or investment is managed and utilized by ALL on behalf of the investor. In view of the above, I find that the instant 'Scheme' satisfies the third and fourth conditions stipulated in Section 11AA(2)(iii) and (iv) of the SEBI Act.

9. In light of the above analysis and examination, it appears that the activity of fund mobilization by ALL, under the 'scheme' with a resultant promise of returns when considered in light of peculiar characteristics and features of such scheme, as discussed in the preceding paragraphs, *prima facie* satisfies all four conditions specified in Section 11AA (2) of the SEBI Act. Therefore, I am of the view that ALL is engaged in the fund mobilizing activity from public, which is in the nature of a 'collective investment scheme' as defined in Section 11AA of the SEBI Act.

10. It is noted from the contentions raised by ALL, it is carrying out only real estate activities and not CIS activities. 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 the Hon'ble Court had occasion to adjudge on a *scheme having features similar to the instant Scheme* of "Purchase and development of plot", 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. 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..... 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."

11. The features of the scheme of "*Purchase and development of a future land*" offered by ALL, 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 ALL 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.
12. 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*". Further, Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations**"), also prohibits carrying on CIS activities without obtaining registration from SEBI. Therefore, the launching/ floating/ sponsoring/ 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 all the factors and characteristics of the '*scheme*' offered by ALL as already mentioned in the preceding paragraphs, *prima facie* disclose that the activity of purchase and development of plot/land propounded by ALL based on the terms and conditions contained in the "*Application Form*" and "*Agreement*" signed by the applicants/investors is nothing but a scheme/arrangement and ALL has not obtained any certificate of registration under the CIS Regulations for its existing fund mobilizing activity from the public, under the instant '*Scheme*' offered by it.

13. Protection of the interest of investors is the first and foremost mandate for SEBI and therefore, steps have to be taken to ensure that ALL does not collect further funds under its schemes. It is noted from the reply dated July 01, 2013 of ALL that Ms. Rashmi Bharana, Mr. Sanjay Chawla, Mr. Hem Singh Bharana, Mr. Ishwar Singh Gulia, Mr. P.P.Mainra, Mr. Krishna Kant, Mr. Amarjit Gupta, Mr. Anil Kumar Mehta, Mr. J.L.Khushu, Mr. Bijander Singh, Mr. A.K.Seth, Mr. B.K.Vinayak, Mr. N.V.Singh were the former directors of ALL. Further, as noted from the *MCA21 portal*, the present directors and the persons in charge of the affairs of ALL are Mr. Sumit Bharana (DIN:01401758), Mr. Arvind Kumar Birla (DIN: 00037602), Ms. Manisha Bharana(DIN: 03342342)and Mr. Rakesh Kumar Gupta (DIN: 06820178). In this regard, it is a *prima facie* assumption that the aforementioned 13 former directors were also involved in the fund mobilizing activity carried out by ALL during the period they were directors in ALL. Further, in order to safeguard the assets and property, acquired by ALL and its directors using the funds collected from the investing public until full facts and materials are brought and a final decision is taken in the matter, it is incumbent on SEBI to take preventive action by way of this interim measure. In the light of the above, I find no other alternative but to take recourse through an interim order against ALL and all its past and present directors for preventing them from further carrying on with its fund mobilizing activity by launching '*collective investment scheme*' without obtaining registration from SEBI in accordance with law.

14. In view of the above, I, in exercise of the powers conferred upon me under sections 11(1), 11B and 11(4) of the SEBI Act, 1992 read with Regulation 65 of CIS Regulations, hereby direct Adel Landmarks Ltd. and its Directors:

- *not to collect any fresh money from investors under its existing scheme;*
- *not to launch any new schemes or plans;*
- *to immediately submit the full inventory of the assets owned by ALL;*
- *not to dispose of any of the properties or alienate the assets of the existing scheme;*

- *not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company;*
- *to furnish all the information/details sought by SEBI within 15 days from the date of receipt of this order, including,*
 - i. Details of amount mobilized and refunded till date,*
 - ii. Scheme wise list of investors and their contact numbers and addresses,*
and
 - iii. PAN of the aforementioned Directors.*

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

16. This order is without prejudice to the right of SEBI to take any other action that may be initiated against ALL and its Directors, in accordance with law.

17. The *prima facie* observations contained in this Order are made on the basis of the material available on record. In this context, ALL and its Directors shall, within 15 days from the date of receipt of this Order, file their objections/reply, if any, to this Order. ALL and its abovementioned Directors may also indicate, in such reply, whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

S. RAMAN

Date: June 05, 2014

WHOLE TIME MEMBER

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA