

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11, 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 the matter of Raghav Capital & Infrastructure Limited (CIN: U75302UP2008PTC036216) and its Directors, viz. Mr. Raj Kumar Raghav (DIN: 00714893, PAN: AJIPR8427K), Ms. Nirmala Raghav (DIN: 02463394, AHWPN9045M) and Ms. Ritu Verma (DIN: 03182411, PAN: AGPPV1332D)

1. Securities and Exchange Board of India ("**SEBI**") received a newspaper report published in "*Hindustan*" newspaper dated November 13, 2013 (Patna edition) that eight non-banking companies in Chhapra district have collected huge amounts of money from the public without obtaining any registration/ permission from SEBI or Reserve Bank of India (RBI) and Raghav Capital & Infrastructure Limited ("**RCIL**") was one such company alleged to have collected money from the public.
2. As a matter of preliminary inquiry into the alleged mobilization of funds by RCIL, SEBI, vide letter dated January 06, 2014, *inter alia* sought the following information from RCIL and its Directors in relation to its business activities viz.-
 - i. *Memorandum and Articles of Association of RCIL as filed with the Registrar of Companies('RoC'),*
 - ii. *Details of all the Promoters/Directors and key managerial personnel,*
 - iii. *Sample Copies of Brochure, Pamphlets, Application forms, agreement letter/ contract, registration letter and allotment letter pertaining to the schemes.*
 - iv. *Copies of certificates issued to the investors to subscribe to the schemes:*
 - v. *Structure/ terms and conditions of the schemes,*
 - vi. *Number of investors and amounts collected under various schemes,*

- vii. *Details of regulatory approvals, if any,*
 - viii. *Copies of Annual Returns, audited Balance Sheet and Profit & Loss Accounts of RCIL since incorporation as filed with RoC,*
 - ix. *Copies of audited financial statements and Income Tax Returns filed by RCIL for the last three financial years.*
3. In response thereto, vide letter dated January 23, 2014, Ms. Ritu Verma, one of the Directors of RCIL sought extension of time upto February 20, 2014 for submission of information. Thereafter, RCIL vide letter dated February 28, 2014 *inter alia* submitted that "*...company is engaged in the business of real estate where plots are made available by them to needful individuals and provide services of buy/ sell of flats/ developed plots*",
4. RCIL also submitted the following documents vide the aforesaid letter:
- i. Memorandum and Articles of Association of RCIL;
 - ii. Name, Address, PAN No. and Contact details of Directors of company;
 - iii. Brochure of scheme by RCIL;
 - iv. Sample copy of "*Application form*" and receipts for the Schemes of RCIL;
 - v. Sample Copy of "*acknowledgement receipt*" for the Schemes of RCIL;
 - vi. Copies of Audited Balance Sheet and Profit & Loss Accounts of RCIL for the financial years 2010-11 to 2012-13;
 - vii. Copies of Income Tax Returns for the financial years 2010-11 to 2012-13;
5. As the information provided by RCIL was inadequate, SEBI vide letter dated May 23, 2014, advised RCIL to furnish complete information in respect of its schemes.
6. RCIL vide letter dated June 07, 2014 submitted copy of Receipt cum Certificate, Copies of Agreement, Scheme Brochure etc. and submitted as under:
- i. *"RCIL issues Receipt cum Certificate and enter into agreement with its investors.*
 - ii. *RCIL does small business of Real estate, hence, no regulatory approval is required.*
 - iii. *RCIL is not engaged in any other activities apart from Real Estate business.*
 - iv. *RCIL hasn't taken unsecured loan from any entity."*

7. On perusal of information/documents furnished by RCIL, it has been found that, RCIL failed to provide following information:
- i. Number of investors and amount collected in each such plan/ scheme of RCIL.
 - ii. Details of amount mobilised till June 30, 2014 under such plan/ scheme of RCIL.
 - iii. Details of total land acquired by RCIL till June 30, 2014 under such plan/ scheme of RCIL.
 - iv. Copies of agreements for land acquired by RCIL till June 30, 2014 under such plan/ scheme of RCIL.
8. Subsequently, SEBI vide letter dated July 08, 2014 advised RCIL to submit above mentioned information and RCIL vide letter dated July 14, 2014 provided the aforesaid information with supporting documents.
9. I have carefully perused the documents and materials available on record such as the newspaper report, correspondence exchanged between SEBI and RCIL along with the documents contained therein, the submissions made by RCIL etc. In this context, the issue for determination is whether the mobilization of funds by RCIL is a '*collective investment scheme*' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "*SEBI Act*").
10. On an examination of the material available on record, it is *prima facie* observed:
- i. RCIL(CIN: U75302UP2008PTC036216) was incorporated on October 30, 2008 as Raghav Capital Index Securities Private Limited and later changed its name to Raghav Capital and Infrastructure Limited with effect from October 18, 2010. It has its registered office at 19 B, Manas Nagar, Jiya Mau, Near Cancer Hospital, Hazratganj, Lucknow - 226001, Uttar Pradesh. The Directors of RCIL are Shri Raj Kumar Raghav, Ms. Nirmala Raghav and Ms. Ritu Verma.
 - ii. As per the Memorandum of Association ("**MoA**"), the main objects of RCIL are "...to carry on the business of builders, contractors, designers, architects, interior decorators, furniture,

consultants, contractor of all type of buildings and structures; to acquire, develop, buy, sell, estate, multistoried or other buildings and group housing schemes....."

As stated by RCIL vide its replies that it offers various schemes/ plans, inviting funds from investors towards its various schemes for availing the "Land/Plots." The investors are required to enter into an "Agreement" with it after filling an "Application Form". On perusal of the sample copies of "Application Forms" and "Agreement" submitted by RCIL in respect of its schemes for availing the "Land/Plots", it is observed that the schemes are classified into "Monthly Installment Scheme", "Daily Installment Scheme" and "One Time Payment Scheme". The details of various schemes offered by RCIL are illustrated as under:

a) Monthly Installment Scheme

S. No.	Area of plot	Booking amount	Time period and installment amount	Total plot amount(₹)	Adjusted amount (₹)	Plan number
1	50 yard	3000	60 months = 30000/- (₹500 per month * 60 months)	33000/-	44,000/-	M50
2	100 yard	3000	60 months = 57000/- (₹950 per month * 60 months)	60,000/-	80,250/-	M100
3	150 yard	2900	84 months = 107100/- (₹1275 per month * 84 months)	1,10,000	1,60,000	M150
4	200 yard	3100	108 months = 126900/- (₹1175 per month * 108 months)	1,30,000	2,10,000	M200

b) Daily Installment Scheme

S. No.	Area of plot	Booking amount	Time period and installment amount	Total plot amount	Adjusted amount	Plan number
1	100 yard	3300	63 months = 56700/- (₹30 per day * 30 days*63 months)	60,000/-	80,000/-	D 631
2	100 yard	2400	48 months = 56700/- (₹40 per day * 30 days*48 months)	60,000	72,000	D481

c) One time Installment Scheme

S. No.	Area of plot	Lumpsum plot amount	Adjusted amount 5yrs 11 months	Adjusted amount 7yrs 10 months	Adjusted amount 9yrs 9 months	Adjusted amount 14yrs 8 months	Plan number
1	25 yard	12,500	25,000	31,250	50,000	87,500	S 25
2	50 yard	25,000	50,000	62,500	1,00,000	1,75,000	S 50
3	100 yard	50,000	1,00,000	1,25,000	2,00,000	3,50,000	S 100
4	150 yard	75,000	1,50,000	1,87,500	3,00,000	5,25,000	S 150
5	200 yard	1,00,000	2,00,000	2,50,000	4,00,000	7,00,000	S 200

- iii. Following clauses are noted from the "Brochure", "Receipt cum Certificate", "Application Form" and "Agreement" for the scheme of "RCI SAI Greens", a project offered by RCIL:
- a. *"If applicant doesn't take the land/plot allotted to him, applicant will receive an adjusted amount at the end of the term period as per the scheme under which applicant has applied.*
 - b. *If applicant failed to deposit continuously 3 installments, RCIL will cancel his application without any intimation to applicant.*
 - c. *In case of cancellation of application the amount will be refunded to applicant at simple interest rate at the end of the term as per the scheme under which applicant has applied.*
 - d. *RCIL has right to make any changes in residential/ commercial land/plot.*
 - e. *Applicant has to take No Objection Certificate ('NOC') from RCIL before making any structure on land/plot allotted to him.*
 - f. *In case, RCIL fails to provide land/plot to applicant under the project scheme for which investor has applied, RCIL will provide land/plot to applicant in any other project scheme of company as per mutually agreed terms. Applicant have to return previous papers to company and papers pertaining to new land/plot will be issued to applicants."*
- iv. As per the details of investors submitted by RCIL it is noted that there are approximately 303 investors (residents of Uttar Pradesh, Bihar and Jharkhand)who had invested in the schemes of RCIL. The total fund mobilized by RCIL under the scheme of *Land/plots* during May 01, 2012 to May 31, 2014 amounted to ₹ 25,93,600/-.

11. The aforementioned features of the various schemes of "*lands/plots*" offered by RCIL appears to be a "*scheme*". In view of this, the aforementioned details of the "*schemes*" offered by RCIL, 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 subsection (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.

(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."

12. In the context of the abovementioned Section 11AA of the SEBI Act, the "schemes" offered by RCIL, 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.***

RCIL invited investment from the general public through its scheme for "land/plots" viz. "RCI SAI Greens". An investor who is desirous of investing in the said scheme has to make an application and opt for "Monthly Installment Scheme", "Daily Installment Scheme" or "One Time Payment Scheme". In each of the three schemes "Adjusted amount" has been mentioned for various time period ranging from 48 months to 14 yrs 8 months. It is noted from the terms and conditions that in case of cancellation of application or non submission of installments, amount deposited till date will be refunded at simple interest rate at the end of term of the opted plan. Further, in case of *applicant* doesn't take the land/plot allotted to him, applicant will receive an "adjusted amount" at the end of term opted for. It is also pertinent to note that neither the "Agreement" nor the "Application Form" contain any details or specification of the plot/land allotted to applicants. This indicates that the funds initially collected from the applicants/investors, which are locked in for a particular period are pooled and utilized for

the "*scheme*". Therefore, it is observed that the contributions or investments received from the "*applicants*"/investors are pooled and utilized solely for the purpose of the "*schemes*". I, therefore, find that the instant "*scheme*" satisfies the first condition stipulated in Section 11AA(2) 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.***

It is observed from the "*brochure*" of RCIL that the "*adjusted amount*" offered under "*one time/ daily/ monthly installments*" schemes for various time period ranging from 48 months to 14 yrs 8 months is profits/income from such scheme or arrangement. For instance, if the "*applicant*"/investor is investing in "*One time Installment plan*" for an amount of Rs 12,500/- for a plot size 25 yards, he/she will get the return in the form of "*adjusted amount*" amounting to Rs 25,000/- after 5years and 11 months. The "*adjusted amount*" will increase with the passage of time and RS 87,500/- will be given to the investor after 14years and 8 months. In light of above, it is *prima facie*, observed that the investments are made by the applicants/investors with a view to receive profits or returns from the *schemes*. Hence, I find that the instant scheme of RCIL satisfies the second condition stipulated in section 11AA (2) 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, and***
- iv. ***The investors do not have day-to-day control over the management and operation of the scheme or arrangement.***

It is noted that the investments made by the '*applicants*'/investors (in the form of application money/ one time/ daily/monthly installments) are managed and utilized by RCIL. As stated above at para 10 (iii), the investors do not have any say in the allotments/ management of the scheme. The "*Application form*" provided by RCIL does not mention about the details of the property being offered to the investor under the scheme of "*RCI SAI Greens*". Further, the "*Agreement*" duly signed by the investor also does not indicate the details of the property of "*RCI Sai Greens*". The said "*Agreement*" merely states the general terms and conditions for

allotting the unidentified "*land/plots*" to the applicant/investors. Further, if RCIL fails to provide *land/plot* to the applicant/investors under the scheme for which investor has applied, RCIL agrees to provide *land/plot* to the applicant in any other project/ scheme of RCIL. In such case, the applicant has to return the documents to RCIL and papers pertaining to new land/plot will be issued to applicants. RCIL has also retained the right to make any changes in residential/ commercial land/plot. It is also noted that applicant/ investor has to obtain NOC from RCIL before making any structure on land/plot allotted to him. This clearly indicates that RCIL has the complete control of the schemes and the '*applicants*'/investors do not have any say in the operation of the schemes/ arrangement. Therefore, it is clear that the "*applicants*"/investors do not have any day-today control over the management and operation of the said schemes. I, therefore, find that the instant schemes also satisfy the conditions stipulated in Section 11AA(2)(iii) and (iv) of the SEBI Act.

13. From the above analysis, I find that the "*schemes*" offered by RCIL with a promise of returns when considered in light of peculiar characteristics and features of such scheme, as discussed in the preceding paragraphs, *prima facie*, satisfy all the four conditions specified in Section 11AA (2) of the SEBI Act. Therefore, I am of the view that RCIL 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.
14. In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of PGF Limited Vs. Union of India (MANU/SC/0247/2013) that "...*sub-section (2) of Section 11AA, 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 therefrom.*"

15. 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 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 RCIL has not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public under its schemes of *land/plot*.
16. I also find that RCIL is illegally mobilizing funds from the public, which *prima facie* amounts to a fraudulent practice in terms of Regulation 4(2) (t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 ("PFUTP" Regulations).
17. Protecting the interests of investors is the first and foremost mandate for SEBI. Under the circumstances, SEBI has to take immediate steps to prevent activities of companies or entities defrauding investors and damaging the orderly development of the securities market. It is noted from the material available on record that Shri Raj Kumar Raghav, Ms. Nirmala Raghav and Ms. Ritu Verma are the Directors who are in-charge of responsible for the day-to-day affairs of RCIL. Further, in order to safeguard the assets/property acquired by RCIL and its Directors using the funds collected from the investing public until full facts and materials are brought and final decision is taken in the matter, I find no other alternative but to take recourse to an interim order against RCIL and its Directors for preventing them from further carrying on with its existing fund mobilizing activity by launching '*collective investment scheme*', without obtaining registration from SEBI in accordance with law.
18. In view of the above, I, in exercise of the powers conferred upon me under Sections 11 (1), 11(4) and 11B of the SEBI Act read with CIS Regulations and PFUTP Regulations, hereby direct Raghav Capital & Infrastructure Limited (CIN: U75302UP2008PTC036216) and its Directors viz. Shri Raj Kumar Raghav (DIN: 00714893, PAN: AJIPR8427K), Ms. Nirmala

Raghav (DIN: 02463394, AHWPN9045M) and Ms. Ritu Verma (DIN: 03182411, PAN: AGPPV1332D):

- i. not to collect any fresh money from investors from its existing "schemes":*
- ii. not to launch any new schemes or plans or float any new companies to raise fresh moneys;*
- iii. to immediately submit the full and detailed inventory of the assets including land owned by RCIL through money raised by RCIL;*
- iv. not to dispose of any of the properties or alienate properties/assets obtained directly or indirectly through money raised by RCIL;*
- v. not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of RCIL;*
- vi. to furnish the scheme-wise list of "applicants"/investors, their contact numbers and addresses along with the details of amount mobilized till date.*

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

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

21. The prima facie observations contained in this Order are made on the basis of the material available on record. RCIL and its aforesaid directors shall, within 21 days from the date of receipt of this Order, file their reply, if any, to the prima facie observations made herein. RCIL and its aforesaid directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai

Date: November 24, 2014

S. RAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA