

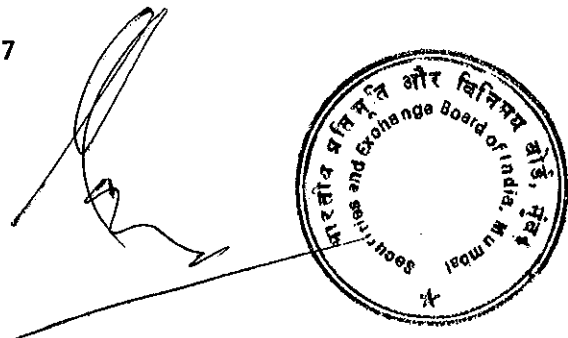
BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. RAMAN, WHOLE TIME MEMBER

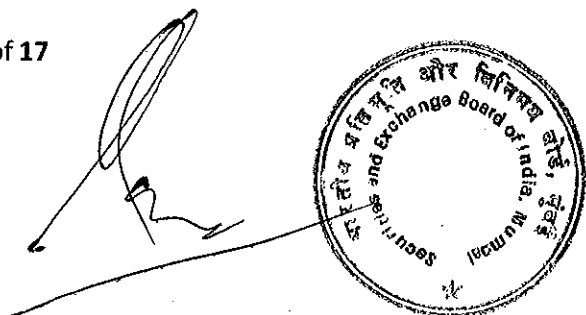
ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulations 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 in the matter of Wisdom Agro Tech India Limited and its Directors viz., Mr. Anantharaman Nallaperumal (DIN: 03174067), Mr. Govinda Pillai Reghukumaran (DIN: 03618674) Mr. Gilbert James Dhasan (DIN: 03618678) Ms. Kumaresan Vasanthakumari (DIN: 03618684) Ms. Jeyashoba Thankappan Rajam (DIN: 03618687) Mr. Prabhu Kannan (DIN: 03174001).

1. Securities and Exchange Board of India (hereinafter referred to as ("SEBI")) received a complaint vide e-mail dated August 25, 2013, wherein *inter-alia* it was alleged that a few companies in Tamil Nadu are collecting monies from public through various schemes. Wisdom Agro Tech India Limited (hereinafter referred to as "WATIL") is one of the companies mentioned in the said complaint.
2. As a matter of preliminary inquiry into whether or not WATIL was carrying on activities of 'collective investment scheme' in terms of Section 11 AA of the SEBI Act, 1992 ("SEBI Act"), SEBI vide letter dated August 26, 2013 sought information about the schemes operated by WATIL.
3. In response thereto, WATIL vide letter dated September 28, 2013, submitted the following information:
 - i. "WATIL was incorporated on September 20, 2010.
 - ii. The main objectives as per Memorandum of Association is purchase and sale of agricultural land, plantations and to organize, develop, undertake maintenance of farm houses, resort, plantations and commercial crops.



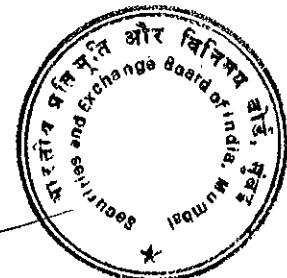
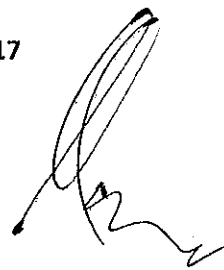
- iii. Initially, the company had purchased land from its own resources and allotted pieces thereof to the investors against onetime payment or instalment payments.
- iv. In a very short time after incorporation Mr. Prabhu Kannan, the then Managing Director, had resorted to malpractices and a substantial sum of monies had been misappropriated by him. The company had filed a criminal case against him vide FIR No. 34/12 dated March 27, 2012 at Central Crime Branch, Madurai. C.P. No. 149/2013 at JM-I Court, Madurai, is still in progress.
- v. Under these circumstances, the company is in the process of closing down its activities. Refund of money invested are being settled by way of sale of company's land. As soon as the court case gets completed, the management would be winding-up and dissolve the company as per law. "
4. Thereafter, SEBI vide letter dated October 03, 2013, sought the following additional information from WATIL :
- a. Details of amount collected - investor-wise, year-wise, and scheme-wise,
 - b. Details of amount refunded,
 - c. Brochures/pamphlets circulated by WATIL and
 - d. Audited financial statements for the last three years.
5. However, no reply has been received from WATIL. Subsequently, SEBI downloaded the documents filed by WATIL with Registrar of Companies, Chennai (ROC) from MCA- 21 Portal.
6. Upon perusal of the information available on the MCA-21 Portal, it was observed that ₹3.88 crores was mentioned as 'land advances' in its financial statements as on March 31, 2013. SEBI vide letter dated July 18, 2014 advised WATIL and its Directors to furnish information as to "land advances", modus-operandi of its operations and also sample copies of the documents to be submitted by/given to the investors. The said information was required to be furnished within ten days.
7. WATIL, vide letter dated July 31, 2014 submitted as under:
- i. "The act of not replying to SEBI's letter dated October 03, 2013 was an inadvertent omission on its part ;



- ii. As stated in its letter dated September 28, 2013, the company has not carried out any new activities. Hence brochures/pamphlets etc. advertising or explaining their schemes /plans etc. are not circulated. Such items printed earlier have been exhausted and hence, they are unable to provide copies.
- iii. The amount of Rs.3.88 Crores – Short Term Borrowings (Land Advances) represents the amount received from various investors from September 2010 to March, 2013 against the allotment of land, purchased partly from the company's resources and partly from amount received from investors initially.
- iv. Very short time after incorporation, the then Managing Director of the company had resorted to certain malpractices and a substantial sum of monies had been mis-appropriated by him. When this came to light, the company filed criminal case against him vide FIR no.34/12 dated March 27, 2012, at Central Crime Branch, Madurai, followed by CP no.149/2013 at JM_1 Court, Madurai, which is still in progress. Subsequently, a civil suit also has been filed, vide original Suit No.32/2014 at the 4th Additional District Judge, Madurai, which is also in progress.
- v. Under the circumstances, the company is in the process of closing down the activities. No fresh products have been launched. Under the instalment payment schemes already launched, the monthly instalment amounts being received are shown as "renewals".
- vi. The company is engaged in only one business segment viz. Allotment of land from its Land Bank against the monies collected from investors.
- vii. Full details like list of individual investor's name, instrument details, date of collection and amount, are under compilation. The same shall be submitted in a short time from hence, as the volume of work involved in culling out these details from the records is huge and time consuming.
- viii. Monies have only been collected in the names of the company and not in the name of promoter/director.

The company also provided a sample copy of the application form, that is required to be submitted by investors to participate in the schemes of the company, a sample copy of registration-cum-allotment letter and a sample copy of certificate issued to the investors, details of assets held by the company including details of land owned by the company.

- ix. No separate agreement/contracts were being executed. Detailed terms and conditions are furnished on reverse of the application and also on the reverse of the Certificate."



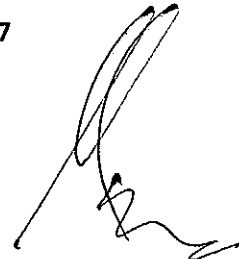
8. Vide the aforesaid letter WATIL has also furnished the following documents:

- a) Details of amounts received for plot sales during the period from September 2010 to March 2014 and number of investors from whom the amount were received;
- b) Copies of annual reports for the last three financial years;
- c) Sample copy of application form that are required to be submitted by investors;
- d) Sample copy of Registration cum Allotment letter;
- e) Sample copy of the Certificate;
- f) Details of total assets owned by company as on July 31, 2014;
- g) Details of Land banks owned by WATIL;"

9. I have carefully considered the material available on record such as correspondence exchanged between SEBI and WATIL, submissions made by WATIL, documents furnished by WATIL and documents downloaded from the MCA21 Portal, etc. In this context, the issue for determination is whether the mobilization of funds by WATIL under its schemes fall under the ambit of "Collective Investment Scheme" provided in Section 11AA of the SEBI Act.

10. On an examination of the material available on record, it is *prima facie* observed:

- i WATIL (CIN :U01119TN2010PLC077393) was incorporated on September 20, 2010 having its registered office at: 10/20A, First Floor, JK Plaza, Bye Pass Road, Madurai, Tamil Nadu - 625 010.
- ii The present Directors of WATIL are Mr. Anantharaman Nallaperumal (DIN: 03174067), Mr. Govinda Pillai Reghukumaran (DIN: 03618674) Mr. Gilbert James Dhason (DIN: 03618678) Ms. Kumaresan Vasanthakumari (DIN: 03618684) Ms. Jeyashoba Thankappan Rajam (DIN: 03618687). Further, Mr. Prabhu Kannan (DIN: 03174001) resigned from the Directorship of WATIL with effect from September 12, 2011.
- iii As per Audit Report dated August 23, 2013, major fraud to the tune of ₹62,36,137.90/- against the company was noticed and reported during the course of the audit. It is stated

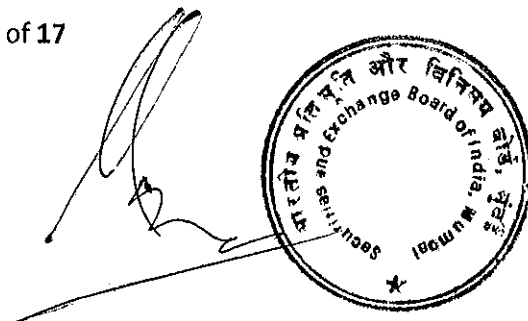


by the Board of Directors that legal action is under process against Mr. K Prabhu Kannan, former Managing Director.

- iv As per the financial statements filed by WATIL, it is observed that ₹3.88 crores is shown as Short Term Borrowings (Land Advances).

11. As per the information provided by WATIL vide reply dated July 31, 2014, the following is observed:

- i. The amount received by WATIL for the *plot for sale* from 5,365 investors under "*Instalment payment Plan*" from September 2010 to March, 2013 is ₹2.55 crores and amount received for *plot for sale* from 485 investors under "*Cash Down Payment Plan*" from September 2010 to March, 2013 is ₹1.33 crores, aggregating to total ₹3.88 Crores. The amount refunded to investors, who have surrendered the plot is stated to be ₹69.29 lakh as on March, 2013.
- ii. As on July, 31, 2014, WATIL has refunded ₹1.10 crores to 707 customers/investors. WATIL has provided refund details made to the customers/investors along with the name, customer ID and cheque number and date. Out of its 5,850 customers/investors, the continuing customers/investors are 1,218 and defaulting customers/investors are 4,632.
- iii. As on March 31, 2013, the land holding of WATIL is to the extent of 17.49 acres. From April 01, 2013 to March 31, 2014, additional lands to the extent of 1.94 acres have been purchased. Besides, a separate land bank comprising of land admeasuring 4.50 Acres has been created, which has been divided into 160 Plots (i.e. 70 Plots in Aruppukottai and 90 plots in Theni) to be sold in the market. Though WATIL has provided the details of village where the plot is situated, survey no., area of the aforesaid plots along with the letter, the same is not certified and cannot be verified, as no supporting documents are submitted.
- iv. As on July 31, 2014, WATIL is having assets to the tune of ₹3.42 crores.

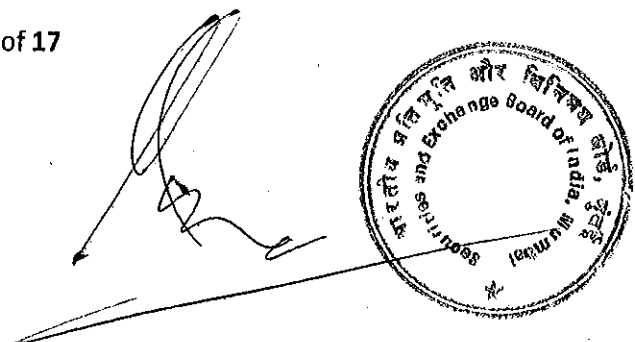


- v. As alleged by WATIL, the amount misappropriated by the Ex-Managing Director of the company is to the tune of ₹62 lakhs and a suit is also apparently been filed for an interest amount of ₹26 lakhs, aggregating to ₹88 Lakhs, which is shown as contingent assets.

12. As per the sample application form, registration-cum-allotment letter and certificate issued by WATIL the following 'terms and conditions' are noted :

- I. From the sample application form of one Mr. S.A. Suman, Customer ID: 113016385, for total consideration ₹30,000/- (First instalment ₹500/-), it is observed that there are columns for customer, name, address, product no., Area in Sq. Ft., term, total consideration, Application fees, name of the introducer. Agency code, etc. As per the 'General terms and conditions' on the reverse of the application form, following clauses are noted:

- a. *Clause 5: In case of instalment land purchase plans, if customer makes a default by not paying one or more instalment for the period of twelve consecutive months from such due date, such default shall be treated as breach of Agreement. If such breach occurs, the payment received till the last due date under said plan shall be refundable after deducting 20% of the consideration comprising various costs and other incidental expenses and remaining shall be entitled to a simple interest @ 12.5% p.a. and refunded after the completion of period of instalments.*
- b. *Clause 10: The management of the company reserves the right to discontinue/ change/ amend/ modify or alter prospectively any of the Rules / regulations and Plans and introduce new plans at any time at its sole discretion with or without any notice. (Emphasis added).*
- c. *Clause 12: In case, the agreement entered between the customer and the company could not be given effect to, because of enactment of any law by State or Central Government, the customers are entitled to rescind the agreement, in which event, the company shall refund the*

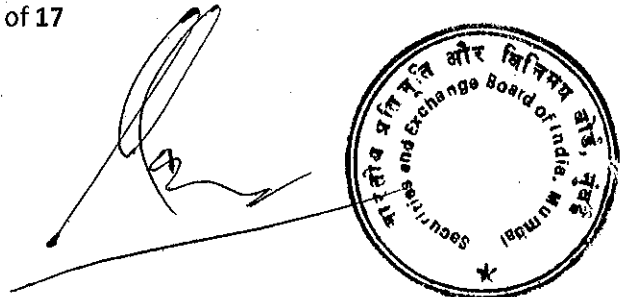


amount paid by customer together with simple interest @ 12.5% per annum from the date of the agreement.

- d. Clause 13: The Company reserves the right to change the location of the property allotment and allot you an alternative site at any other place. (Emphasis added)
- e. Clause 14: The sale deed in respect of product (land) after the completion of periodicity of instalments, the product allotted to you shall be executed and registered shortly where, however transfer of such small plot of land is prohibited by law or otherwise not possible/feasible/practicable, company shall arrange for transfer of the said plot in favour of customers in joint holding with other customers.

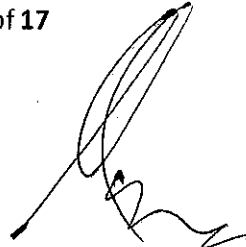
II. As per the sample "Certificate", issued by WATIL to one Mrs. J. Pitchaiyammal- Registration no: 123014705/ dated May 31, 2011, it is noted that for an amount of ₹50,000/- consideration an amount of ₹60,000/- is mentioned as 'Expected Resale Value' ('ERV') on expiry of term of 1.25 years. It also states "Certified that the person describe in schedule hereto is registered joint venture of consideration as shown in Schedule under the plan of the company, subject to the regular payment of subscription(s)." The certificate does not contain details regarding the plot allotted to the customer and details such as survey number, location at which the plot is situated, etc. The following "General Terms and Conditions" are mentioned on the reverse of the 'certificate':

- a. Clause 2: The land shall be allotted in the name of the customer, in case of cash down payment plans, after receipt of full payment, and the expiry of 36 months form the commencement of contact;
- b. Clause 3: In case of Instalment payment plan, the land shall be allotted in the name of the customer within a reasonable time of 180 days, after receipt of at least 75% of the total amount of instalments.
- c. Clause 4: The Company shall develop many projects for allotment of plots to existing customers. The company shall intimate the customer, the projects available for allotment to him at the time of intimation. The customer shall be having the right to choose his plot (all units in one lot) from any one of the projects intimated so, by the company. In case customer



not willing to chose his option at that time, he may intimate the company his willingness to choose from the future projects of the company. His right to exercise this option shall be expired 3 months before the end of the term of his agreement.

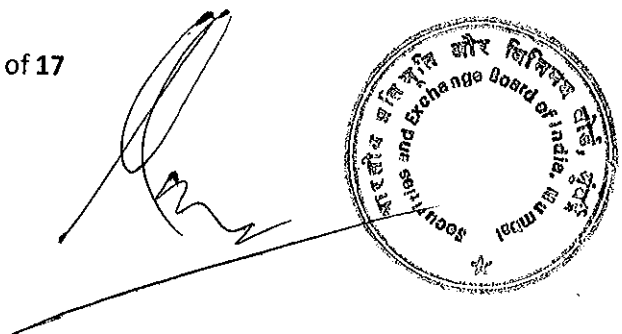
- d. Clause 5: The land ownership shall be transferred in the name of the customer within a reasonable period of 90 days from the date on which the customer accepted the allotment. The cost of registration shall be borne by the customer.
- e. Clause 10: In case of Instalment payment plans, , if the customer wishes to pre-close the agreement after expiry of 36 months from the date of the commencement of the agreement, but before accepting the allotment of land, the customer has to make a specific request to the company in this regard. In such case, the company shall settle the amount in which the discounted value of ERV at the end of term of the agreement, discounted at 12.5% p.a. of the reduced ERV shall be the value which is proportionate to the number of instalments paid to the number of instalment actually payable till the end of the term of the agreement...
- f. Clause 11: After the registration, the customer shall be the owner-in-possession of the said property . The possession of the said property rests in the hands of WATIL for the limited purpose of the developing and/or , wherever considered appropriate by WATIL for cultivating, raising crops, tree, plants, saplings, etc. harvesting and for carrying out all such activities as are allied and ancillary thereto. WATIL shall have no rights whatsoever over the property as a manger/ tenant, nor shall WATIL deemed to be manager/ tenant.
- g. Clause 12: Cost of said property includes, the cost of land, development charges, other inputs, sapling, plants, trees, crops, planting expenses, maintenance and other miscellaneous expenses.
- h. Clause 13: The Customer has the right to retain or sell the said property as he /she may deem fit, on expiry of the tenure of this agreement. To facilitate easy liquidity, WATIL provides to customer (s) the marketing services for sale of developed plots. In case customer decides to avail WATIL's aforesaid services, he/she must notify WATIL to that effect at least 90 days before the expiry of the period of the agreement. The sale can be made only at the end of the tenure of this agreement at such price which may be mutually agreed between the parties. In opinion of the company, based on current market situation and related factors, developed part of land (for the units specified in the agreement), upon completion of the development period (i.e. , at the end of the term of this agreement) and owing to value



addition, may fetch an guaranteed realizable price as printed in the agreement. The guaranteed realizable value is the composite value of land, plots, trees, etc.

- i. Clause 14: The customer is entitled for a special loyalty benefits and to be calculated n ERV at the end of the term, which shall be payable only at the end of the term of the agreement. The said benefits will be payable only if the entire consideration amount under the terms of the agreement is duly paid and the agreement is in force till the end of the term. The special benefit rate will be minimum of 6% and it may go upto 25% on ERV, depending upon the profitability of the company. The company reserves its right to decide upon the loyalty benefits.
- j. Clause 17: WATIL shall have first charge on the said property on account of its unpaid instalments for services/development charges and for other incidental expenses incurred by WATIL. The said property cannot, in any manner be sold, assigned, mortgaged, pledged, alienated without obtaining NO DUES CERTIFICATE from the company in case of instalment payment plan.
- k. Clause 18: The management of the company reserves right to discontinue/change/amend/modify or alter prospectively any of the Rules / regulations and payment plans and introduce new payment plan at any time at its sole discretion with or without any notice.
- l. Clause 19 : In case of joint sal(f)e deeds, the title deeds pertaining to the sale of the said property shall be kept in the sale custody of Trustee(s) appointed by WATIL for the purpose. A certified copy of the said title deed, issued by the sub-register or by the public notary, as may be feasible or practicable, shall be made available to the customer by the said trustee(s). The name and address of trustee(s) shall be informed to the customer by the letter of allotment. The customer shall have the liberty to verify the title deed during the normal working hours on any working day. After furnishing formal return request there fro 15 days in advance.

III. As per the sample "Letter of Allotment", provided by WATIL (belonging to one Mrs. J. Pitchaiyammal- Registration no: 123014705/ date January 23, 2012), contains details regarding the number of plots, area in cents, Khasra number, Plot number, Village,



Taluka, District, etc. Further the following terms are stated in the said letter of allotment:

- a. Here, Wisdom Agro Tech India Limited, reserves the right to change the location of this allotment, and allot you an alternative site at any other place: (Emphasis added)
- b. Sale Deed in respect of Plot(s), allotted to you shall be executed and registered shortly. On registration, the original title deeds shall be handed over to the Custodial Services Department of the company at Wisdom Agro Tech India Limited, .., which shall be holding the same in trust. A Certified copy of the registered sale deed shall be supplied by said custodial department of Wisdom Agro Tech India Limited. You shall have the right to verify the original title deeds on any working day during normal working hours, after sending a formal request in writing 30 days in advance.
- c. This allotment and the subsequent conveyance of aforesaid Plot(s) to you shall remain subject to the 'General Terms and Conditions' contained in the application form signed by you and the Terms and Conditions of the Agreement between you and Wisdom Agro Tech India Limited.

13. The aforementioned features of the scheme of 'sale/purchase and development of land' offered by WATIL have to be considered in light of the provisions of Section 11AA of the SEBI Act. Section 11AA provides for the conditions to determine whether a scheme or arrangement is a 'collective investment scheme'. It reads as follows:

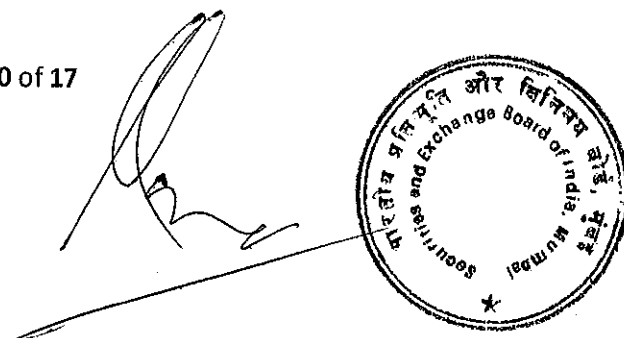
"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or sub-section (2A) shall be a collective investment scheme.

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.

(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;

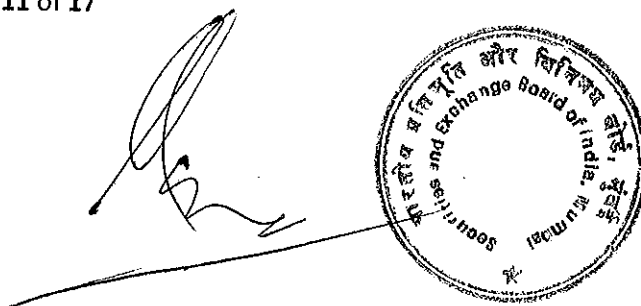
(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

14. In the context of the abovementioned Section 11AA of the SEBI Act, the scheme of Sale/Purchase and development of plot offered by WATIL 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.***

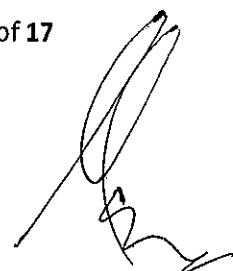
WATIL collects funds from the "customers"/investors under its schemes for the purchase of the plot/land and undertakes to develop the land forming part of various plans offered by it. The contribution or investments made by the "customer"/ investor are in accordance with the "Payment Plan(s)" viz., 'Cash down Payment Plan' and 'Instalment Payment Plan' offered under the Scheme. It is important to note that no plot/land is identified and demarcated at the stage when "customer"/investor accepts the offer of WATIL by making an application or at the time of obtaining "Certificate" from WATIL. The "Certificate" issued to the "customer"/ investor does not indicate the ownership aspect of the land/plot forming part of the scheme offered by WATIL. It certifies that "the investor is registered joint venture of consideration under the plan of the company, subject to the regular payment of subscription(s) subject to the general terms and conditions...". As per Clause 4 of the 'General terms and conditions' printed overleaf of the 'Certificate' it is noted that "the customer shall be having the right to choose his plot (all units in one lot) from any one of the projects intimated so, by the company. In case customer not willing to chose his option at that time, he may intimate the company his willingness to choose from the future projects of the company. "It is noted from the documents provided by WATIL that it only "allots" the land in the name of the customers/investors after receipt of full payment/ and the expiry of 36 months from the commencement of contract in case of 'cash down payment plans' and within a reasonable time of 180 days after receipt of at least 75% of the total amount of instalments in case of 'Instalment payment plans'. As per the information provided by WATIL vide letter dated July 31, 2014, the



amount received by the company from 5,365 investors under "Instalment payment Plan" from September 2010 to March, 2013 is ₹2.55 Crores and amount received for plot for sale from 485 investors under "Cash Down Payment Plan" from September 2010 to March, 2013 is ₹1.33 Crores, aggregating to a total of ₹3.88 Crores. Though the letter of allotment specifies the survey number and location of the land, the sale deed is not executed and registered even after the so called act of "allotment" by WATIL. As per the 'Allotment Letter', WATIL "reserves the right to change the location of the allotment of land and allot an alternative site at any other place." Thus, these schemes do not appear to be plain real estate transactions. Further, as per "terms and conditions" on the reverse of the application form, "if the transfer of such small plot of land is prohibited by law or otherwise not possible/feasible/practicable, WATIL shall arrange for transfer of the said plot in favour of customers in joint holding with other customers." Considering the aforesaid, it appears that WATIL also offers the land on pooled basis. In view of the aforesaid, it is evident that WATIL is collecting funds from the 'customer(s)'/ investors under its schemes and the contributions/funds collected from the 'customer(s)'/ investors are pooled and utilized for the purpose of the 'scheme' offered by WATIL. Hence, the instant 'scheme' satisfies the first condition of "pooling of contribution or payments", 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.*

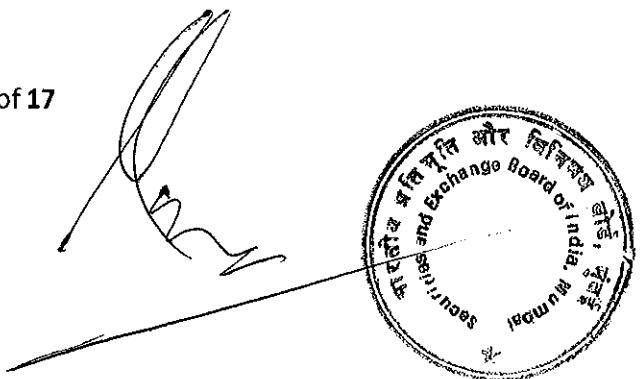
From the copy of "Certificate" and 'Allotment Letter' issued by WATIL to one of its investors, it is noted that if the customer/investor invested ₹ 50,000/- as a consideration amount for a plot of 125 cents for a term of 1.25 years, at the end of the said term, an 'Expected Resale Value' ('ERV') for the plot indicated is ₹ 60,000/-. Thus, the customer/investor is entitled to an amount of ₹10,000/- as profit/return. As per Clause 13 of the terms and conditions of the agreement "In the opinion of company, based on current market situation and related factors, developed part of land (for the units specified in the agreement), upon completion of the development period (i.e., at the end of the term of the agreement) and owing to value addition, may fetch a guaranteed realizable price as printed in the agreement. The guaranteed realizable value is the composite value of land, plots, trees, etc. Clause 14 states that "the customer is entitled for a special loyalty benefits and to be




calculated on 'ERV' at the end of the term, which shall be payable only at the end of the term of the agreement. The said benefits will be payable only if the entire consideration amount under the terms of the agreement is duly paid and the agreement is in force till the end of the term. The special benefit rate will be minimum of 6% and it may go upto 25% on ERV, depending upon the profitability of the company. The company reserves its right to decide upon the loyalty benefits." Hence, it is clear that the second condition, which stipulates that the contributions or payments are made to such scheme of 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 mentioned above, it is clear that the customer/investor does not receive any rights to the property and the same is managed by WATIL on behalf of its investors. It is noted from the sample copy of application form provided by WATIL that the allotment and the subsequent conveyance of the land/Plot(s) to the customer/investor shall remain subject to the 'General Terms and Conditions' contained in the application form and "Certificate" issued by WATIL. Further, as per the "General terms and conditions" mentioned in the "Certificate", the possession of the property rests in the hands of WATIL for the purpose of the developing cultivating, raising crops etc. Though the "Allotment letter" contains details of the land/plot, it is stated further that "the company reserves the right to change the given location of the allotment and allot an alternate site at any other place." Thus, even after "allotment" neither the ownership or nor possession of the land is transferred to the customer/investor. As per the "General Terms and Conditions" the 'customer'(s)/ investors neither, at any stage, manage the property, contribution or investment forming part of the 'Scheme' nor they have day-to-day control over the management and operation of the scheme or arrangement and the contribution or investment is managed and utilized by WATIL on behalf of the "customers"/investor. The same can be seen from the following Clauses:

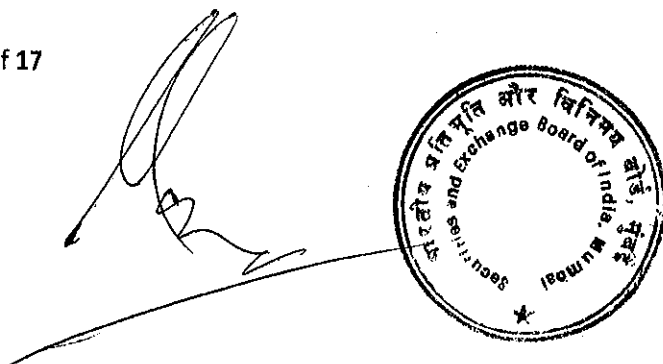


- a) *As per the "General Terms and Conditions", the management of the company reserves right to discontinue/change/amend/modify or alter prospectively any of the Rules /regulations and payment plans and introduce new payment plan at any time at its sole discretion with or without any notice.*
- b) *Even after registration, the possession of the property rests in the hands of WATIL for the limited purpose of the developing and/or , wherever considered appropriate by WATIL for cultivating, raising crops, trees, plants, saplings, etc. harvesting and for carrying out all such activities as are allied and ancillary thereto.*
- c) *On registration of Sale Deed in respect of Plot(s), allotted to the customer, , the original tile deeds shall be handed over to the Custodial Services Department of the company at Wisdom Agro Tech India Limited"*

In these facts and circumstances, it is amply clear that the 'customer(s)'/investors do not have day-to-day control over the management and operation of the 'Scheme(s)/ Plan(s)'. The 'customer'(s)/ investors do not at any stage, manage the property, contribution or investment forming part of the 'Scheme / Plan(s) 'and the contribution or investment is managed and utilized solely by WATIL. In view of the above, I find that the instant 'Scheme/ Plan(s)' satisfy the third and fourth conditions stipulated in section 11AA(2) of the SEBI Act.

15. In light of the above analysis and examination, it appears that the activity of fund mobilization by WATIL, under the 'schemes', 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.

16. 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)"...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*

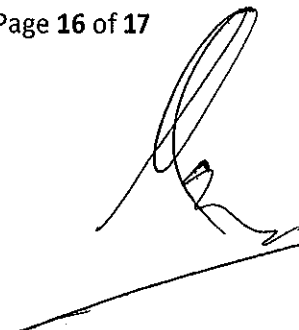


instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from."

17. In view of the abovementioned analysis and examination, I, find that WATIL is engaged in the activity of mobilization of funds from the general public which clearly falls within the ambit of 'collective investment schemes' as defined in Section 11AA of the SEBI Act.
18. 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.
19. It is observed that all the factors and characteristics of the activity of *sale/purchase and development of plot/land* propounded by WATIL as mentioned in the preceding paragraphs, is nothing but a smoke screen of its fund mobilizing scheme/arrangement from the public, and WATIL has not obtained any certificate of registration from SEBI as required under Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations. It is noted that Mr. Anantharaman Nallaperumal (DIN: 03174067), Mr. Govinda Pillai Reghukumaran (DIN: 03618674), Mr. Gilbert James Dhason (DIN: 03618678), Ms. Kumaresan Vasanthakumari (DIN: 03618684), Ms. Jeyashoba Thankappan Rajam (DIN: 03618687) are the directors who are in charge of and responsible for the day to day affairs of WATIL. Further, Mr. Prabhu Kannan (DIN: 03174001) was the Ex-Managing Director of the company, who stated to have resigned from the directorship of WATIL on September 12, 2011. However, the fund mobilization by WATIL started since September 2010. Further, as mentioned above, as per information provided by WATIL, a major fraud to the tune of ₹62.36 lakhs was committed by Mr Prabhu Kannan and a civil suit and a criminal case has been filed against him. Hence, he is also equally responsible for the violations committed by WATIL.



20. I also find that the activity of illegal mobilization of funds by WATIL through its schemes, *prima facie*, amounts to a fraudulent practice in terms of Regulation 4(2)(t) of SEBI(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), 2003 ("**PFUTP Regulations**").
21. As mentioned in para 7 (v), WATIL had submitted vide its letter dated July 31, 2014 " *Under the circumstances, the company is in the process of closing down the activities. No fresh products have been launched. Under the instalment payment schemes already launched, the monthly instalment amounts being received are shown as "renewals"*. It is however a fact that the entire fund raising activity undertaken by WATIL has been an illegal exercise as detailed in this Order. Furthermore, WATIL itself has alleged that one of its Directors siphoned of the funds from the company hence, it appears that there is no safeguard for the investments made by the investors. Considering all these facts and circumstances, an immediate course of action is warranted in the instant case.
22. Protecting the interests of the investors is the first and foremost mandate of SEBI and therefore, SEBI has to take immediate steps to prevent activities if companies or persons defrauding the investors and damaging the orderly development of the securities market. In order to ensure that WATIL and its Directors (past and present) do not collect further funds under its scheme/plans and to safeguard the assets/property acquired by WATIL and its 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 above, I find no other alternative but to take recourse to an interim order against WATIL and its past and present Directors for preventing them from further carrying on with the fund mobilizing activity by launching '*collective investment scheme*', without obtaining registration from SEBI in accordance with law.
23. 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 read with Regulation 65 of CIS Regulations, hereby direct Wisdom Agro Tech India Limited and its Directors viz., are Mr. Anantharaman Nallaperumal (DIN: 03174067), Mr. Govinda Pillai Reghukumaran (DIN: 03618674) Mr. Gilbert James Dhason



(DIN: 03618678) Ms. Kumaresan Vasanthakumari (DIN: 03618684) Ms. Jeyashoba Thankappan Rajam (DIN: 03618687) Mr. Prabhu Kannan (DIN: 03174001):

- (i) *not to collect any fresh money from investors under 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 latest inventory of the assets including land obtained through money raised by WATIL;*
- (iv) *not to dispose of or alienate any of the properties/assets obtained directly or indirectly through money raised by WATIL;*
- (v) *not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of WATIL.*

24. The above directions shall take effect immediately and shall be in force until further orders in this regard.
25. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against WATIL and its Directors (past & present) in accordance with law.
26. The *prima facie* observations contained in this Order are based on the material available on record. In this context, WATIL and its abovementioned Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate 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.

Place: Mumbai

Date: December 10, 2014



S. RAMAN

WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

