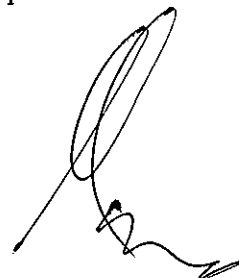
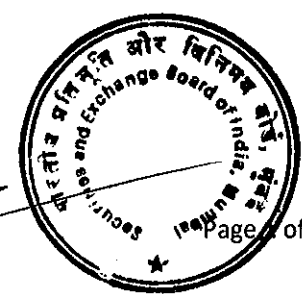


**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11(1), 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulations 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 against NICL India Limited (PAN-AADCN4728Q) and its Directors Mr. Phool Singh Choudhary, Mr. Harish Sharma and Mr. Abhishek S. Chauhan

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") came across a news report published in a newspaper on July 07 & July 08, 2013 in respect of fund mobilization from general public by NICL India Ltd. (hereinafter referred to as the "NICL"/company). The new report also stated that another group company of NICL, viz. Nirmal Infrahome Corporation Ltd. was issuing debentures to investors. It was alleged that this group companies were offering high commission to their agents.
2. As a matter of preliminary examination into the alleged fund mobilization by NICL, SEBI examined the details of the company available on MCA website. Based on the information available at the website, including the details regarding the registered office of the company and details of its directors/promoters/share holders, SEBI vide letter dated December 03, 2013, *inter alia* sought the following information from NICL, in relation to their business activities.
 - a. Memorandum and articles of Associations of the Company as filed with the Registrar of Companies.
 - b. Details of the past and present directors of NICL including name, address, PAN and contact details (Email/fax/contact no);
 - c. Brochures pertaining to the schemes/plans which were made available to the public by NICL;
 - d. Copies of application forms that are required to be submitted by investors to participate in the schemes;

- e. Sample copies of the registration letter and allotment letter issued to the investors who subscribed to the schemes;
- f. Sample copies of the agreement letter/contract required to be entered into by investor under the schemes;
- g. Details of the scheme- wise amount mobilized by NICL till date alongwith the number of investors under the schemes;
- h. Certified copy of audited financial statements for the FYs 2009-10, 2010-11 and 2011-12;
- i. Copy of income tax return filed by NICL for the last three years;
- j. Details of any other similar scheme(s), if any, floated by the company or its group /associates companies.

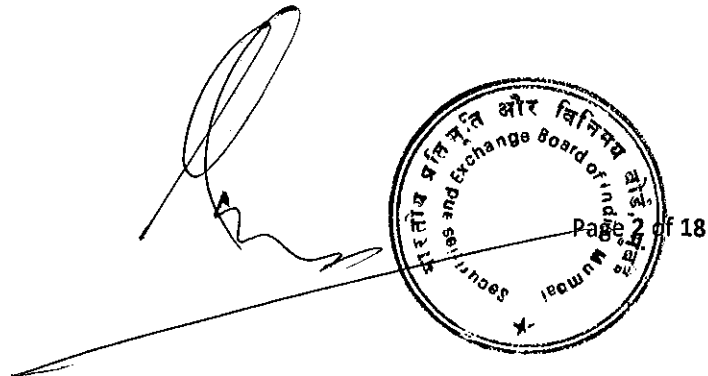
2.1 The copies of the aforesaid letter were also forwarded to the directors of NICL. The letters sent to the company at its registered office were returned undelivered by postal authorities. Though the letters sent to one of the directors was acknowledged, there was no response from him.

3. In view of this, a SEBI official visited the office of NICL located at H. No.50, G-3, PalashParisar, Nav Door Sanchar Colony, Gulmohar, Bhopal, Madhya Pradesh-462016 on December 19, 2013. It was found that the company was operating from another premises at 12, Archana Complex, 1st floor, Zone II, M.P. Nagar, Bhopal-11 (M.P.). One Mr. AshishChauhan, (Asst. General Manager of the company) was available at the office. He claimed to be the brother of Managing Director of the company Mr. Abhishek S. Chauhan. The letter dated December 3, 2013 was served on Mr. Ashish Chauhan.

4. SEBI, received the following documents in respect of fund mobilization activity of NICL, on December 19, 2013:

- "Brochure" issued by NICL giving details of various schemes.
- Sample "Association Form" to be submitted for becoming business associate of the company.

5. Subsequent to this, a letter dated January 28, 2014 was sent to NICL, enclosing a copy of the aforesaid brochure wherein the company offered various payment plans to the public.



5.1 In response, SEBI received a letter dated February 14, 2014 from NICL, seeking additional 15 days time to provide the information. This was allowed by SEBI, vide letter dated February 18, 2014. Later, a letter dated March 31, 2014 was received from the company wherein it was contended *"we were not aware of the fact that there is some SEBI Regulations which we probably have, unknowingly contravened. On analyzing the scheme we realized that the aforesaid scheme does not fall exactly fall into the CIS Regulations,yet the schemes have been closed down w.e.f. March 27, 2014"*. It was also informed that the company is preparing to refund the money to the investors. The company again sought additional 15 days time to submit the information to SEBI.

6. Subsequently, the company vide its letter dated April 11, 2014 provided partial information to SEBI, as below:

- (a) MOA and AoA of the company,
- (b) Certificate of incorporation of the company,
- (c) PAN of the company,
- (d) "Brochure" of the company,
- (e) Audited balance sheets of the company as on March 31, 2011, 2012 and 2013,
- (f) The "Investors' Data" containing the details of scheme-wise list of investors, funds collected, etc. for the quarters 2010-2011, 2011-2012 and 2012-2013.

7. On perusal of the aforesaid information/material furnished by the company, the following are observed:

- On examining the scheme-wise list of investors, it is observed that in addition to the plans as per the brochure provided by the company, NICL is also collecting funds from the investors through various other payment plans, such as Plan B5, D1, D5, D6, D7, G6, M6, N8, P1 to P4, etc., the details of which were not provided in the brochure.
- The details containing the scheme-wise list of investors, funds collected, etc. were provided only upto financial year 2012-13.
- NICL failed to furnish the following relevant documents/information:
 - Copies of the application forms, agreements/contracts, allotment letter/registration letter in respect of the scheme offered by the company,


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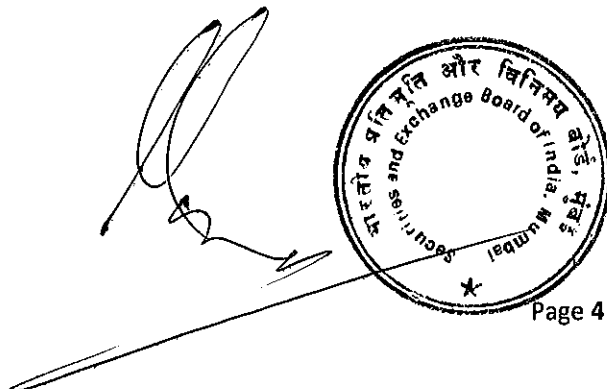
- List of properties acquired by the company,
- Past and present directors of the company ,
- The addresses of investors, plan code, plot size, number of plots applied, number of plots allotted, date of allotment, redemption date etc. were not furnished along with the scheme-wise details of amount mobilized.

7.1 SEBI, vide letter dated June 4, 2014 (with copies marked to all the directors of NICL), sought clarification from the company in respect of the aforesaid observations and also required NICL to furnish, all the remaining documents/information sought by SEBI, vide its earlier letter dated December 3, 2013. The company was also required to submit *inter alia* the following additional information/documents:

- List of bank accounts maintained by the company,
- Details of commission structures including incentives paid to the agents.

7.2 In response to this, NICL, vide letter dated June 16, 2014, made the following submissions:

- *"The company had not done/ doing any Collective Investment Scheme business. ...they were in business of real estate and had collected amount from customers for developing land in realizable profit sharing basis as per the agreement.*
- *That the company has mobilized fund through the schemes of which information was furnished to you. Though the company has total 20 schemes but company had not received funds in all the schemes. We have not printed any brochures of the remaining schemes.*
- *Company had stopped collecting amount from new customers for developing land in realizable profit sharing basis as per the agreement with effect from 1st October 2012.*
- *The information about scheme wise collection of amount was already furnished to you and there were no new collection after 1st October 2012. So information provided earlier regarding scheme wise collection of amount is complete and true in all respect.*
- *That the information sought as per paragraph 2 (d) [the "Investors' Data" did not contain the details such as addresses of investors, plot size, number of plots applied etc.]of your letter will be furnished by the company within one month of this letter.*



- That the branches of NICL INDIA LIMITED were closed soon after 1st October 2012. At present we are in process of giving money back to our customers as per the specified time and therefore we are doing it through Bhopal office only.
- We have not transferred the property or registered in the name of customers.
- No director is related to any other company which is floating collecting investment schemes.
- The company has only one account, details of which is given below :

Name of Account Holder : NICL INDIA LIMITED

Banker : : Bank of India

Account no. : 900920110000171

Account Type : Current Account

Branch : Gulmohar, Bhopal Madhya Pradesh

Branch Code: ---

IFSC Code : BKID0009009

Authorised Signatory : Either or Survivor

Abhishek S Chauhan, CMD

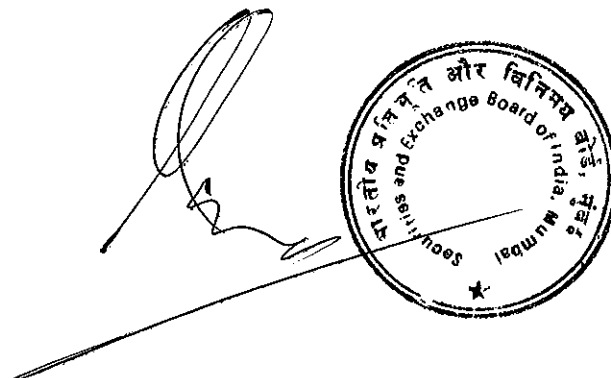
Harish Sharma, MD

- This account is maintained for returning the amount of customers as per their specified and agreed time only.
- Company has not put any of its property in Hypothecation or pledge. All the properties are in the safe hands of the company.
- Company has already stopped collecting amount so no commission / incentive is payable.
- The amount reflected in the details is the gross amount received by the company without deduction of any commission whatsoever by any agent or business associate."

7.3 As the company has not furnished the complete information, SEBI, vide letters dated June 19, 2014 and July 14, 2014 called upon NICL to provide the information/documents sought by SEBI, vide letter dated June 03, 2014 with necessary supporting documents. The said documents were required to be submitted by July 21, 2014. SEBI also forwarded the copy of "Association Form" alleged to have been issued by NICL for joining the scheme, along with the said letter. The company was also required to offer their comments, in respect of the following:



- NICL stated that they are in the business of real estate and had collected amount from customers for developing land in realizable profit sharing basis as per the agreement. NICL, however, failed to furnish the copies of Application Form, Agreement, Allotment Letter, Registration Certificate etc. of the company despite reminders.
- It was claimed that they are enclosing printed stationery, however same was not found attached with the letter of the company.
- A perusal of the data of investors list provided by NICL shows that mobilization were done in 21 plans (& not 20 plans). Thus the company was advised to provide the details (including applicable tables) of these plans.
- It was informed that NICL stopped collecting funds from new customers for developing land in realizable profit sharing basis as per agreement with effect from October 01, 2012. Incidentally, the company vide letter dated March 31, 2014 had mentioned that it had closed its schemes w.e.f. March 27, 2014 and are preparing to refund the money. Further, it is noted from details of scheme-wise list and investor's data provided by NICL that funds were mobilized in 4th quarter of 2012-13 also. In view of this, the company was asked to provide the correct information and evidence in support of their contention.
- The brochure issued by the company had mentioned that the existing branches of the company are at Mathura, Neemuch, Nagpur, Gondia and Parbhani. Thus customers attached with these branches and details of funds mobilized from them in various schemes from start till date be provided.
- In respect of SEBI's request for providing details of directors, copies of sample application forms, copies of sample allotment letter and copies of sample agreement, it was contended that these were already provided to SEBI. SEBI however, never received these documents.
- The company was again called upon to provide information of year-wise commission paid to each agent/business associate from 2010-11 onwards. It was also advised to provide designation and address of these agents/ business associate.
- It is noted from the balance sheets that the outstanding advances towards purchase of land for the year ended March 31, 2013 was ₹ 4,01,40,040/-. NICL also informed that they had not yet taken possession of any land till then. In view of this, the



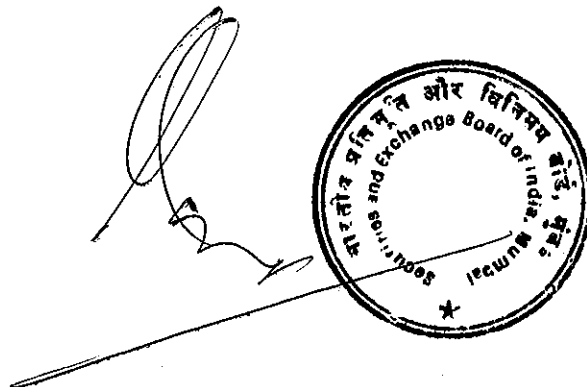
company was advised to provide, the name/address to whom advances were given, copies of agreement executed with these persons, location of land, etc., and the reasons as to why possession of these plots was not taken by the company.

- As per the information provided by the company, ₹ 11,08,617/- was refunded to 38 investors on maturity/or pre-maturity withdrawal from whom money was earlier raised from 2010-11 to 2012-13. It was sought to know the mode of payment. Also, whether the payment were as per the terms of agreement.
- The company was also asked to provide the names & addresses of its existing customers as well as new customers from whom funds mobilized from April 01, 2013 onwards.
- The names, addresses, dates and amounts refunded to investors till date.

7.4 Vide the said letter NICL was also advised that failure on the part of NICL to submit the required documents/information and clarification regarding the fund mobilizing activity of the company sought by SEBI would be tantamount to violation of the provisions of SEBI Act, 1992 and SEBI is empowered to initiate appropriate enforcement action against the company. The company was given one final opportunity to provide the desired information (duly certified by its directors) by July 21, 2014.

7.5 Copies of all the aforesaid letters along with the enclosures were also marked to the directors of the company. However, no reply has been received from the company or their directors, till date.

8. In view of the above, it is clear that the company & its directors are not cooperating with SEBI. They are neither providing documents sought by SEBI in various letters issued to them nor providing any evidence as sought to substantiate their contentions. In view of the same, I am proceeding on the basis of documents available with us. I have carefully perused the aforesaid documents and material available on record such as, correspondence exchanged between SEBI and NICL along with the documents contained therein; the submissions made by NICL; other information/material received by SEBI, such as "Brochure", copy of "Association Form", etc. of NICL. The issue for determination in the instant matter is whether the mobilization of funds by NICL is a 'collective investment scheme' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act").



8.1 On an examination of the aforesaid material available on record, it is *prima facie* observed that:

i. NICL India Ltd. (CIN No. U70100MP2010PLC024803) was incorporated on November 24, 2010. The Registered Office of the company is at H. No.50, G-3, Palash Parisar, Nav Door Sanchar Colony, Gulmohar, Bhopal, Madhya Pradesh-462016. The following persons are the Directors of the company:-

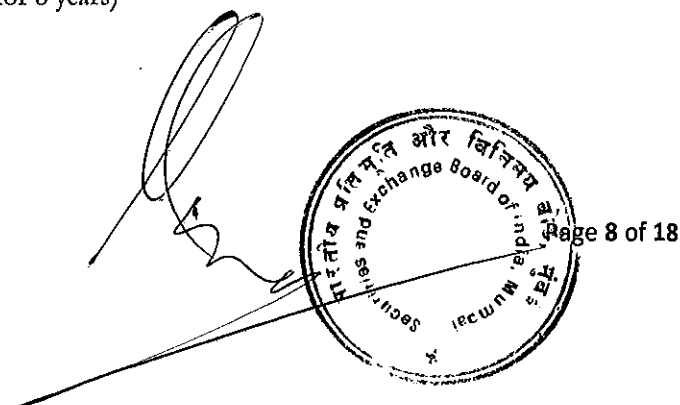
- a. Mr. Phool Singh Choudhary, residing at Vill-Tindoniya, Dist:-Rajgarh, Narsinghgarh, Madhya Pradesh:- 465669
- b. Mr. Harish Sharma residing at Karmchari Colony, Kalapipal, Shajapur, Madhya Pradesh:- 465001
- c. Mr. Abhishek S. Chauhan residing at Kalapipal, Dist:-Shajapur, Madhya Pradesh:- 465001

ii. As per the MoA of NICL, the main object of the company is to carry on business of infrastructure activities like development of plots and construction of building of residential premises, real estate, construction of residential and commercial premises and including business centres and offices, factories, technology park, development of township, city and regional level urban infrastructure facilities including roads and bridges.

iii. As per the "Brochure" furnished by the company, it is observed that NICL collects money from the public through its various payment plans for the "scheme" of purchase and development of land, wherein investors can opt for plots of various sizes whose cost is mentioned in the brochure.

iv. The plans are broadly divided into,

- "One Time Land Link Deal"/Plan (P 2 -for 3 years, P3 -for 5 years, P4 -for 7 1/2 years, P5 -for 10 years and "Growth Return Deal" -for 6 years).
- "Instalment Payment Deal"/Plan (S1 for 3 years, S2 for 5 years, R8/5 for 8 years, S3 for 6 years and R8 for 8 years)



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A sample table of "One Time Land Link Deal" and "Instalment Payment Deal" is given below:-

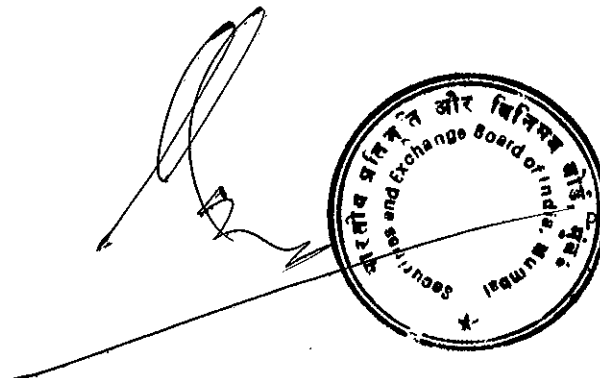
One time land link deal P3 for 5 years

Plan code	Plot Size Sq. Ft.	Cost of Plot	Estimated Value at the end of term	Accidental Risk Cover
01:05.1	20	5000	10000	5000
01:05.2	40	10000	20000	10000
01:05.3	80	20000	40000	20000
01:05.4	200	50000	100000	50000
01:05.5	400	100000	200000	100000

Instalment payment deal R8 for 8 years

Plan Code	Plot Size	Cost of plot	MLY	QLY	HLY	YLY	Estimated Value at EOT (End of term)	Accidental Risk cover
8.2	76	19200	200	590	1160	2300	38400	25000
8.3	115	28800	300	885	1740	3450	57600	50000
8.4	153	38400	400	1180	2320	4600	76800	75000
8.5	192	48000	500	1475	2900	5750	96000	100000
8.6	384	96000	1000	2950	5800	11500	192000	150000

- v. The "estimated value at the end of term"/profit is also mentioned against each payment options.
- vi. As per the brochure, the company has branches in Bhopal, Biaora, Neemuch (in Madhya Pradesh), Chandrapur, Nagpur, Gondia, Sangli, Parbhni (in Maharashtra), Raipur and Dhamtari (in Chhatisgarh), Agra and Mathura (Uttar Pradesh), Sambalpur and Balangir (Orissa). It also says that many new branches of the company were coming up at various locations across India.
- vii. The "Association Form" of NICL received by SEBI from the office of Excel Samachar, appears to be an application form to be submitted for joining as an "Associate"/agents of the company. Following are observed from the said form:
- The "associates"/agents should be capable of achieving necessary minimum business target.



- The "associates"/agents are also made to contribute/invest to the scheme offered by NICL.
- The "associates"/agents joining the company will be given provisional appointment in ranks ranging between "Business Associates" to "Zonal Manager".
- Following are noted from the terms and conditions mentioned in the form:
 - "Atleast one debenture unit is compulsory to purchase at the time of submission of Association Form,
 - The company does not accept any responsibility for issuing notice to Association for payment of the instalments and non-receipt of notice shall not be accepted as valid ground for non-payment of an instalment.
 - The company shall reserve the right to reject any application for Association without assigning any reason thereof"

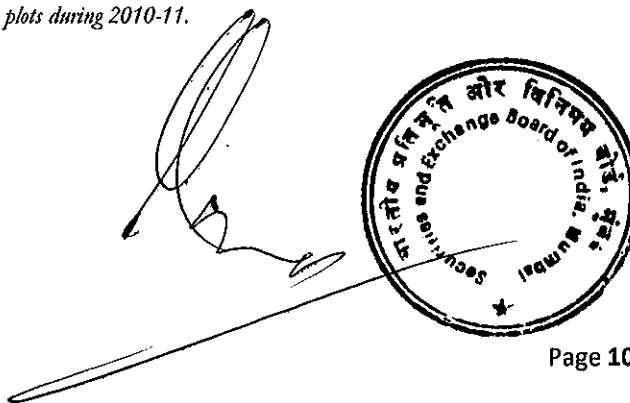
viii. The scheme-wise amount mobilised from investors through various payment plans by NICL, during 2010-2011, 2011-2012 and 2012-2013 are tabulated as below:-

2010-11

Plan Name	Number of investors	Amount Received
M6	4	40,000
P1	4	1,70,000
P2	3	55,000
P3	5	40,000
P4	11	1,05,000
R4	2	40,400
S1	17	26,850
S2	2	80,500
S3	18	1,45,520
S4	2	36,500
	68	7,39,500

* It is noted from the investors' data provided by the company, all the investors were attached with the Bhopal branch. It has been mentioned that out of the money mobilised ₹2,63,760/- was refunded on maturity/ or pre-maturity withdrawal by 10 investors.

** A perusal of the balance sheet as on March 31, 2011 shows advance received against plot ₹7,39,500/-. The company had given advance of ₹13,00,000/- for various plots during 2010-11.



2011-12

Plan Name	Number of investors	Amount Received
M6	17	3,20,000
P1	9	70,000
P2	17	1,95,000
P3	23	2,20,000
P4	15	1,95,000
R1	5	6,300
R4	1	2,900
R8	6	10,400
S1	56	75,030
S2	741	8,30,100
S3	65	3,66,100
S4	10	49,700
S8	6	4,470
D5	21	2,70,000
D6	4	45,000
	996	26,60,000

**It is noted from the investors' data provided by the company all the investors were attached with the Customer Service Centres (CSC) located at Bhopal, Chandrapur and Dhamtari. It has been mentioned that out of the money mobilised ₹3,60,655 was refunded on maturity/ or pre-maturity withdrawal by 17 investors.*

*** A perusal of the balance sheet as on March 31, 2012 shows advance received against plot ₹33,99,500/-. The company had outstanding advances of ₹28,00,000/- for various plots as on March 31, 2012.*

2012-13

Plan Name	Number of investors	Amount Received
B5	164	44,82,000
D1	24	5,25,000
D5	430	72,15,000
D6	83	16,65,000
D7	31	5,85,000
G6	222	51,34,000
M6	170	67,90,200
N8	34	7,02,000
P2	90	25,05,000
R1	21	1,36,900
R8	69	3,93,510
R9	1	11,500
S1	350	11,82,060
S2	4330	2,47,76,395
S3	1585	99,28,910
S4	1	11,500
S8	58	4,10,345
	7683	6,64,54,320

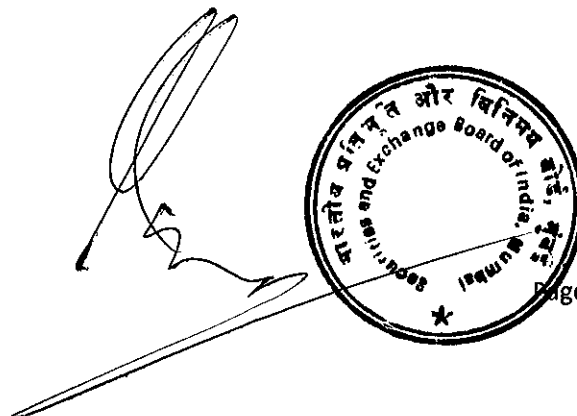
** It is noted from the investors' data provided by the company the investors were attached with the Customer Service Centres (CSC) located at Bhopal, Yamuna Nagar, Agra, Latur, Baloda Bazar, Biaora, Bolangir, Mahasamund, Sambhalpur, Sangali, Rajnandgaon, Chandrapur, Dhantari and Raipur. It has been mentioned that out of the money mobilised ₹4,84,202/- was refunded on maturity/ or pre-maturity withdrawal by 11 investors.*

*** A perusal of the balance sheet as on March 31, 2013 shows advance received against plot ₹6,98,53,812/-. The company had outstanding advances of ₹4,01,40,040/- for various plots as on March 31, 2013.*

9. As has been observed earlier, the company & its directors have neither provided all the documents sought by SEBI in various letters issued to them nor provided any evidence to substantiate their contentions. The following points are observed, on the basis of the submissions made by the company, vide their letter dated April 11, 2014 and June 16, 2014:-

- a. The company submitted that they collected amount from customers for developing land in realizable profit sharing basis as per the agreement.
- b. The balance sheet as on March 31, 2013 indicates that the company has collected around ₹6,98,53,812/- as advance against plots from the investors and the company had given advances of ₹4,01,40,040/- for various plots as on March 31, 2013. It is, however, observed from the letter dated June 16, 2014 of NICL that the company has not yet taken possession of any plot against which advances have been taken from investors and has not transferred or registered the property in the name of investors.
- c. As per the information provided by the company, ₹11,08,617/- was refunded to 38 investors on maturity/ or pre-maturity withdrawal.

10. The details of the 'Scheme' towards the purchase and development of plot/land offered by NICL India Ltd. have to be considered in light of Section 11AA of the SEBI Act. The said 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.

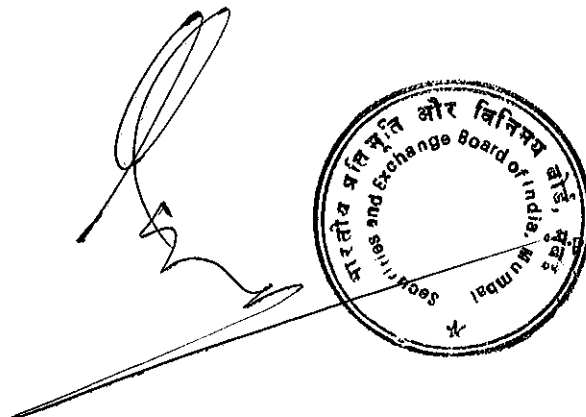
(2) Any scheme or arrangement made or offered by any person under which,

- (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."*

10.1 In the context of the abovementioned Section 11AA of the SEBI Act, the "Scheme" offered by NICL India Ltd. is examined as under on the basis of documents available:

(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.

The brochure as well as investors data provided by the company does not show that funds collected from investors are towards any particular or identifiable plot or piece of land. The balance sheets for 3 years provided by the company indicate that funds collected are pooled by the company and deployed as advances for purchase of land. It is also relevant to note that NICL, in their letter dated June 16, 2014 stated that the company had not yet taken possession of any land for which advances have been paid. The investors' data provided by the company also indicate that funds are being collected through various plans ((M6, P1, P2, P3 etc.) from the public and pooled for the purpose



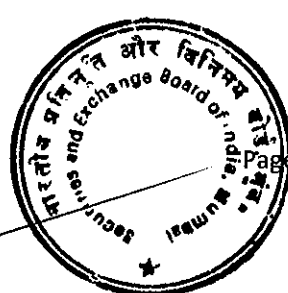
of the scheme. It is, thus clear that the instant 'scheme' satisfies the first condition of "pooling of contribution or payments", stipulated in Section 11AA(2)(i) of the SEBI Act.

(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.

The details of plans including installments payable and "estimated value at the end of the term"/return etc. are mentioned in the brochure/booklet, in respect of their scheme. It has been admitted by the company themselves that they collected amount from investors "for developing land in realizable profit sharing basis as per the agreement". For instance, an investor opting for "One Time Land Link Deal -P3" for 5 years, has to pay ₹5000/- as the cost of plot (of size 20 sq.ft). The investor will be entitled to get an amount of ₹8500/- at the end of the 5 year term period as "estimated value at the end of term"/profit. As per the plan, he is also entitled for an amount ₹5000/- as accidental risk cover. In view of above, it is apparent that contributions by customers (whether by installments or lump sum payment) are made to such scheme or arrangement with a view to receive profit 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, and
(iv) The investors do not have day-to-day control over the management and operation of the scheme or arrangement.

From the material available on records, it is clear that the contributions by customer (whether by instalment or lump sum payment) are given to the company who in turn manage these funds on behalf of investors during the agreed term of the plan. It is apparent that once the funds are given to the company they utilize the same entirely as per their decision. There is no clause in the brochure which indicates that the investor has any say in the management of the scheme(s). The investor is merely assured of payment of "estimated value at the end of term" after the agreement period. It is apparent that control over the management and operation of funds collected for developing plots acquired in accordance with the scheme vest entirely with the company.

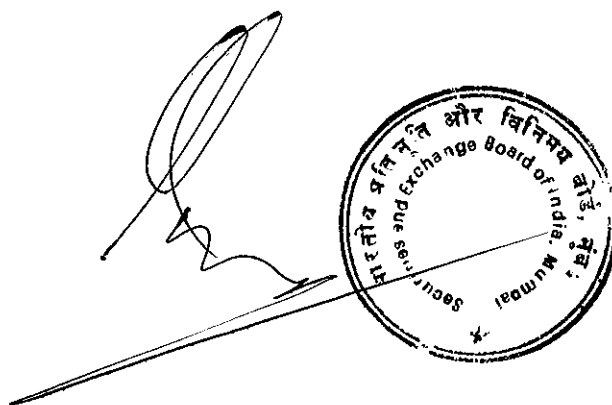



In the facts and circumstances as mentioned above, the only reasonable conclusion that can be drawn is that contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed by NICL, on behalf of the investors and the investors do not have day-to-day control over the management and operation of the scheme or arrangement. In view of the above, I find that the instant 'Scheme'/Plan satisfies the third and fourth conditions stipulated in Section 11AA(2) (iii) & (iv) of the SEBI Act, 1992.

11. The Hon'ble Supreme Court of India in *P.G.F Limited & Ors. vs. UOI & Anr.* (MANU/SC/0247/2013) (hereinafter referred to as "PGFL Case"), while analyzing the scope of sub-section (2) of section 11AA, held that: "...sub-section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from."

12. I find that the scheme offered by NICL in the name of real estate business is nothing but a smokescreen for its fund mobilizing activity with a resultant promise of returns, which *prima facie* satisfies all four conditions of Section 11AA of the SEBI Act. I, therefore, find that the NICL India Ltd. is engaged in fund mobilizing activity from public through such 'collective investment schemes' as defined in Section 11AA of the SEBI Act.

13. 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") provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'collective investment scheme'. 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

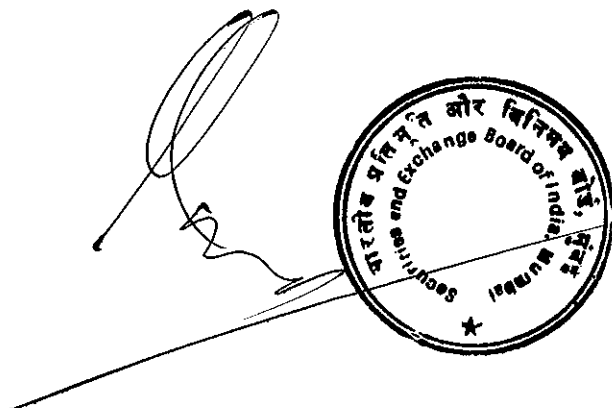


and Regulation 3 of the CIS Regulations. Since NICL has launched 'collective investment scheme' without obtaining certificate of registration from SEBI, it has contravened provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

14. It is further noted that Mr. Phool Singh Choudhary, Mr. Harish Sharma and Mr. Abhishek S. Chauhan are the directors of NICL. The activity of illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to carry on any collective investment scheme by any person 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. Considering the fact that no prior registration was obtained by NICL in respect of the aforesaid activities in the nature of collective investment scheme, I am of the view that NICL 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.

15. NICL was advised to respond to the preliminary inquiry conducted by SEBI, through several SEBI letters dated December 03, 2013, June 04, 2014, July 14, 2014, etc. However, on all these occasions, NICL, either failed to furnish complete information/documents sought by SEBI or gave misleading and contradictory replies to the queries raised by SEBI. In these circumstances, I am of the view that non-co-operation on the part of NICL with the preliminary inquiry conducted by SEBI, when considered in the light of the abovementioned *prima facie* findings, lead to the inescapable conclusion that such refusal to furnish the information sought by SEBI was only to conceal the true nature and operation of the fund mobilizing activity.

16. 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. In order to ensure that NICL and its directors/promoters do not collect any further funds under its schemes and to safeguard the assets/property acquired by NICL and its promoters/directors from the funds of the investing public until full facts and materials are brought about and a final decision is taken in the matter, it becomes necessary for SEBI to take urgent preventive action by way of an interim measure. In the light of the same, I find



no other alternative but to take recourse through an interim measure against NICL and its promoters/directors.

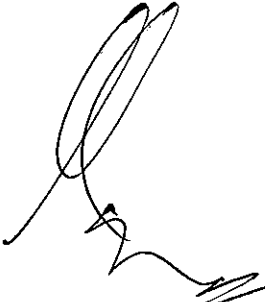
17. In view of the above, I, in exercise of the powers conferred upon me under Section 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct M/s NICL India Limited (PAN-AADCN4728Q) and its directors, viz. Mr. Phool Singh Choudhary, Mr. Harish Sharma and Mr. Abhishek S. Chauhan:

- a. not to collect any fresh moneys from investors from its existing scheme;
- b. not to launch any new scheme/plan or float any new companies/firm to raise fresh moneys;
- c. not to dispose of any of the properties or alienate the assets of the existing scheme;
- d. not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company;
- e. to immediately submit the full inventory of the assets owned by NICL out of the amounts collected from the "customers"/investors under its existing schemes;
- f. to furnish all the information sought by SEBI, including,
 - i. scheme wise list of investors as on date and their contact numbers and addresses,
 - ii. the details of amount mobilized till date,
 - iii. the details of amount refunded till date along with the details of mode of payment, duly certified by a CA,
 - iv. Commission/incentives paid to the agents/business associates for the promotion of the scheme, since inception till date,
 - v. PAN of all the directors of NICL,
 - vi. all documents/information and clarifications sought by SEBI, vide letters dated December 03, 2013, June 04, 2014 and July 14, 2014 and not yet submitted.

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

19. The *prima facie* observations contained in this Order are made on the basis of the material available on record. This order is without prejudice to the right of SEBI to take any other action that may be initiated against M/s NICL India Ltd. and its Directors/Promoters in accordance with law.

20. M/s NICL India Ltd. and its abovementioned 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.




M/s NICL India Ltd. and its Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai
Date: January 14, 2015


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

