

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 Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in respect of Swar Agrotech India Ltd. (CIN: U01403UP2012PLC048364) and its Directors viz., Mr. Rajesh Awasthi (PAN: AGMPA1004E), Mr. Pravesh Kumar Karowliya (DIN: 02104180), Mr. Rohit Gupta (PAN: APBPG3984P) and Mr. Shiv Kumar (PAN: BLGPK9508K).

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1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint on March 26, 2013 alleging that Swar Agrotech India Limited (hereinafter referred to as '**Swar Agrotech**' or '**the company**') was collecting money from the investors by promising allotment of land and that it had collected huge sums of money by promising to pay high returns from the profits received on the land. However, as per the complainant, the company was '*neither registered with RBI nor it has any license to raise money from the investors.*'
 2. As a matter of preliminary examination into the alleged illegal mobilization of funds, SEBI, vide letters dated May 09, 2013, *inter alia*, sought the following information/documents from Swar Agrotech in relation to its business activity :
 - a. Number of plans/ schemes launched/ proposed and terms and structure of such plans/ schemes
 - b. Terms and conditions of each such plan/scheme
 - c. Number of investors and amount collected in each such plan/ scheme
 - d. Brochures and Application Forms pertaining to the schemes/ projects.
 - e. Sample copies of certificates issued to the investors who subscribe to such schemes
 - f. Sample Agreements, if any, that are required to be entered into by investors/ applicants with the company at the time of joining the projects/ schemes.

- g. Details of location of current projects and proposed to be developed under various schemes.
 - h. Balance Sheets and Profit and Loss Accounts of the company since incorporation as filed with the concerned Registrar of Companies.
 - i. Memorandum and Articles of Association of the Company as filed with the Registrar of Companies.
 - j. Details of the past and present promoters, directors and key management personnel
 - k. Annual Returns of the company since incorporation as filed with the concerned Registrar of Companies
3. However, no information was received from Swar Agrotech. Meanwhile, SEBI vide letter dated June 12, 2013 also sought information from Registrar of Companies, UP and Uttarakhand ("**RoC**") regarding the latest registered office address of the company, details of past and present directors of Swar Agrotech including the period of directorship of each director, copies of Annual Returns, Form No. 32, Balance Sheets and Memorandum and Articles of Association, etc. In response, RoC, vide letter dated July 01, 2013 provided Memorandum and Articles of Association, Annual Return, Balance Sheet and Profit and Loss Statement filed by Swar Agrotech.
4. As no information was received from Swar Agrotech, SEBI vide reminder dated December 19, 2013 once again advised the company and its Directors to submit the complete information within 7 days from the date of receipt of the letter. In response thereto, Swar Agrotech vide letter dated December 30, 2013 sought extension of time for 30 to 35 days for submitting the relevant information.
5. In the meanwhile, SEBI received another complaint dated January 01, 2014, alleging that the company defaulted in repayment at the end of the term. The complainant also enclosed a copy of the "*Installment Payment receipts*" issued by Swar Agrotech.
6. As Swar Agrotech did not provide the information within the time limit, SEBI vide reminder dated January 13, 2014 once again advised the company to submit all the relevant information within 3 days. In response thereto, Swar Agrotech furnished the

following information/documents vide letter dated nil which was received on February 03, 2014:

- a. Memorandum and Articles of Association
 - b. List of clients along with the deposit
 - c. Sample "*Allotment Letter*"
 - d. Sample "*Receipt cum Acceptance Letter*"
 - e. Sample "*Agreement*"
 - f. Sale deeds of the land purchased by the company
 - g. Balance Sheet for the year 2011-12
 - h. Bank Statements
7. On perusal of the reply submitted by Swar Agrotech , it was observed that complete information in respect of schemes of the company were not submitted by Swar Agrotech, including the following:
- a. Structure, number and details of plans/scheme launched/proposed by the company
 - b. Terms and condition of each such plan/scheme
 - c. Brochures pertaining to their schemes/ plans
 - d. Details of the regulatory approvals obtained , if any, for the schemes.
 - e. Details of any other similar scheme(s) / offer(s), if any, floated by the company or its group/associates company.
 - f. Name, designation and contact details (viz: address, phone no., e-mail-id) of the contact person managing the schemes / offers.
8. SEBI vide letter dated July 03, 2014 also sought information/documents from the complainant. The complainant provided following documents to SEBI (received on July 08, 2014):
- a. "*Brochure*" detailing terms and conditions for investment schemes of Swar Agrotech;
 - b. Sample "*Agreement*";
 - c. Sample form for becoming a distributor of the company;
 - d. Commission Vouchers;
 - e. Royal Bonanza Scheme for distributors;
 - f. Copy of "*Registration Certificate*" and "*Receipt cum Acceptance Letter*";

- g. Post-dated cheques issued by the company.
9. I have carefully considered the material available on record such as correspondence exchanged between SEBI and Swar Agrotech along with the documents contained therein, submissions made by Swar Agrotech and the complaints from investors and the documents furnished by them, etc. In this context, the issue for determination is whether the mobilization of funds by Swar Agrotech 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 that:
- a. Swar Agrotech India Limited (CIN:U01403UP2012PLC048364) was incorporated on January 16, 2012 having its registered office at Shastri Chauraha, Near Hero Honda Showroom, Etawah - 206001 (UP). Mr. Rajesh Awasthi, Mr. Pravesh Kumar Karowliya, Mr. Rohit Gupta and Mr. Shiv Kumar are the Directors of Swar Agrotech.
 - b. The main objects of Swar Agrotech as per the MoA is "*to purchase acquire, take on lease or in exchange or any other such lawful manner any area, land, building, structures and turn the same into account to develop the same, and dispose of or maintain the same and to build townships, markets, or such other building or conveniences thereon and to equip the same or any part thereof with all or any amenities or conveniences, such as drainage facilities, electric and to deal with the same in any manner.*"
 - c. Swar Agrotech collects funds from the public for the scheme of allotment and development of land/plot. The amounts are collected by offering various "*Payment Plan(s) viz., Multiple Installment Payment Plans (MT-36, MT-48, MT-60, MT-100, MT-120, MT-180, MSP-180 and MT-240) and One Time Payment Plans*". The details of "*Multiple Installment or Single Installment Payment Plans*" as mentioned in the *brochure* is illustrated as under:

One Time Payment Plans								
Sr. No.	No. of Units	Installment (Rs.)	Expected return of Installment					Accidental Risk Cover
			75 Months	126 Months	180 Months	216 Months	240 Months	
1	0.25	3000	6000	12000	18000	30000	42000	3000
2	0.50	6000	12000	24000	36000	60000	84000	6000
3	0.75	9000	18000	36000	54000	90000	126000	9000
4	1.00	12000	24000	48000	72000	120000	168000	12000
5	1.25	15000	30000	60000	90000	150000	210000	15000
6	1.50	18000	36000	72000	108000	180000	252000	18000

MT-36								
Sr. No.	No. of Units	Installment Amounts				Total Installment (Rs.)	Estimated Realisable Value	Accidental Risk Cover
		Mly.	Qly.	Hly.	Yly.			
1	1.5	500	1485	2955	5880	18000	19665	18000
2	3.00	1000	2970	5910	11760	36000	39330	36000
3	4.50	1500	4455	8865	17640	54000	58995	54000
4	6.00	2000	5940	11820	23520	72000	78660	72000
5	7.50	2500	7425	14775	29400	90000	98325	90000
6	9.00	3000	8910	17730	35280	108000	117990	100000

- d. The “*applicants*”/investors who are interested in the aforesaid scheme of development and maintenance of land offered by Swar Agrotech are made to file an “*Application cum Agreement*” with Swar Agrotech. The application form contains basic details of the applicant (like name, address etc.), plan details (giving plan number, number of

land units, terms of plan, total consideration, lumpsum payment, regular installment plan, mode of payment), etc. Following are noted from the sample "Agreement":

- *The company sells agricultural land under two plans - Single Installment plan and Multiple Installment plan. In the Single Installment plan it allots the land to the customer within 90 days after a period of one year from the date of payment and in Multiple Installment plan, the company allots it to the customer within 120 days after receiving 50% of the full payment.*
- *The cost of the plot includes cost of the land and development expenses; such as, cost of irrigation, fertilizers, pesticides and other maintenance expenses.*
- *The rate of land under the schemes is fixed as Rs. 100/ Sq. ft.*
- *The buyer will have the ownership of the land; however during the tenure of the agreement, the company reserves the right over development and maintenance of the land, plantation, and sale proceeds of the crops.*
- *The buyer reserves the right at the end of the term to keep the land with themselves or sell the same .To facilitate the Buyer, the Company provides marketing services for sale of developed land. The buyer must notify to the Company to that effect at least 180 days before the expiry of the period of agreement.*
- *Buyer does not have right to sell land in parts.*

- e. After execution of the "Agreement", Swar Agrotech issues a "Registration Certificate" to the "buyer"/investor acknowledging the receipt of the payment (Single installment/Multiple installment) as per the plan opted by the "buyer"/investors. The 'Registration Certificate' issued by Swar Agrotech is reproduced as under:

Registration No. & Date of Commencement	Scheme & Term	Plot's unit(s) & consideration	Payment Mode & installment Amt.	Tenure of Agreement	Expiry Date of Agreement	Receipt No. & Date
02465	Mt-15	1.88	Monthly	1 Year	30-Mar-2014	R02465
30-Dec-2012	15	22500	1,500.00			30-Dec-2012
<i>Estimated Realizable Value</i>		23125				

f. The following Clauses are noted from the "Letter of land unit allotment" issued to the 'buyer'/investor:

- *"..... SAIL reserves the right to change the location of this allotment, and allot you an alternate site at any other place.*
- *The sale deed in respect of the Land Unit (s) allotted to you shall be executed and registered subject to the 'Rules', contained in the Rule Book supplied to you, The ' Terms and Conditions', contained in the agreement form signed by you;*
- *A sum of Rs.....paid by you to SAIL under single Installment scheme no..... has now been appropriated by SAIL towards the cost which are to be met in procuring the said property and conveying it to you, developing the same, planting the required samplings, plants, trees, and other ancillary and incidental expenses thereto."*

g. As per the list of plot buyers provided by Swar Agrotech, it is noted that the company had mobilized ₹94.79 lacs under its schemes from the customers, however the company has not specified the period during which such amounts were mobilized from the public.

11. The aforementioned details of the 'Scheme' towards the purchase and development of plot/land offered by Swar Agrotech 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."*

12. In the context of the abovementioned Section 11AA of the SEBI Act, the 'Scheme' offered by Swar Agrrotech 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.***

It is apparent from the scheme offered by Swar Agrrotech as noted from the "brochure", "Application cum Agreement", and the "Registration Certificate" that the company is collecting funds from general public towards its scheme for the "sale/purchase, development and maintenance of land" through various plans as detailed in Paragraph No.10 (c) above. The investments made by a 'buyer'/investor is in accordance with the "Payment Plan(s) viz., Multiple Installment Payment Plans (MT-36, MT-48, MT-60, MT-100, MT-120, MT-180, MSP-180 and MT-240) and One Time Payment Plans". It is observed from the schemes offered in the brochure, application form and the "Registration Certificate" that there is no specific mention of the location of the plot. Though the "Letter of land unit allotment" specifies the area, location and the khasra number of the land, it is noted that Swar Agrrotech reserves the right to change the location of the land/plot allotted and to provide an alternate land/plot. Furthermore, the buyers/investors are offered an "estimated realizable value" at the end of the term in accordance with the 'Scheme' opted by the 'buyer'. This clearly indicates that these are not plain real estate transactions. As per the list of plot buyers provided by Swar Agrrotech had mobilized ₹94.79 lacs under its schemes from the buyers/investors. Therefore, it is apparent that the payments or the

contributions collected from the 'buyer'/investor are pooled and utilized by Swar Agrotech for the purpose of the 'Schemes' offered by it. The instant 'Scheme', therefore, 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.***

From the "Registration Certificate" issued to an "applicant"/investor, it is noted that Swar Agrotech promises an "estimated realizable value" /return/profit after the expiry of the term. For instance, in 'Plan MT-15' ("Installment Payment Plan) for a period of 1 year, where the Consideration is mentioned as ₹45,000/-, after the expiry of the term the investor is entitled to an "expected cost of the product " of ₹46,250/- i.e. he/she is entitled to an amount of ₹1,250/- as profit/return. In light of above, it is *prima facie*, appear that the investments are made by the buyers/investors with a view to receive returns from the schemes. I, therefore, find that the instant *scheme* also 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.***
- iv. ***The investors do not have day-to-day control over the management and operation of the scheme or arrangement.***

It is noted from the *brochure, Application cum Agreement* and the *Registration Certificate* that contributions by "applicant"/investor (whether by installment or lump-sum payment) are given to the company who in turn manage these funds on behalf of investors during agreed term of plan. It is noted from the 'Registration Certificate' that an investor is promised return of "Estimated Realizable Cost" at the end of the term for his investment in the schemes of Swar Agrotech. As already stated

above, even after the allotment of the land to the 'buyer' or investor (by) issuing the "*Letter of land unit allotment*", Swar Agrotech reserves the right to change the location of the allotment and to provide an alternate site different from the land". As per the terms and conditions of the said 'Agreement', "*the buyer will have the ownership of the land; however during the tenure of the agreement, the company reserves the right over development and maintenance of the land, plantation, and sale proceeds of the crops.*"

In light of these facts and circumstances, it is clear that the property, contribution or investment forming part of the scheme/Plans are managed by Swar Agrotech on behalf of applicants/investors and they do not have any say whatsoever on the day-to-day control over the management of the schemes/Plans. In view of the above, I find that the instant '*Scheme*' satisfies the third and fourth conditions stipulated in Section 11AA(2) (iii) & (iv) of the SEBI Act.

13. In light of the above analysis and examination, *prima facie*, the activity of fund mobilization by Swar Agrotech under its '*Scheme*' with a promise of return/"*estimated realizable value*", when considered in light of peculiar characteristics and features of such scheme, as discussed in the preceding paragraphs satisfies all the four conditions specified in Section 11AA (2) 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 **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.*"

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. It is noted that Swar Agrotech has not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public, under the instant '*Scheme*' offered by it.

16. Further, the activity of illegal mobilization of funds by Swar Agrotech 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").
17. It is noted that Swar Agrotech was advised vide SEBI letters dated May 09, 2013 and December 19, 2013 to submit complete such as details of the scheme wise amount mobilized till date, brochures pertaining to the schemes, terms and conditions of each plan/schemes, etc However, Swar Agrotech has not furnished this information to SEBI till date despite being given several opportunities to do so. When considered in the context of the abovementioned *prima facie* finding, the inescapable conclusion is that non-submission of the information with respect to its schemes to SEBI is nothing but an attempt by Swar Agrotech to conceal the true nature and operation of its fund mobilizing activity.
18. 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 Swar Agrotech and its Directors do not collect further funds under the '*Schemes*' and to safeguard the assets/property, acquired by Swar Agrotech 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

same, I find no other alternative but to take recourse through an interim measure against Swar Agrotech and its Directors.

19. In view of the foregoing, I, in exercise of 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 Swar Agrotech India Ltd. (CIN: U01403UP2012PLC048364) and its Directors viz., Mr. Rajesh Awasthi (PAN: AGMPA1004E), Mr. Pravesh Kumar Karowliya (DIN: 02104180), Mr. Rohit Gupta (PAN: APBPG3984P) and Mr. Shiv Kumar (PAN: BLGPK9508K):

- 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 full inventory of the assets including land obtained through money raised by Swar Agrotech;*
- iv. not to dispose of or alienate any of the properties/assets obtained directly or indirectly through money raised by Swar Agrotech;*
- v. not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of Swar Agrotech;*
- vi. to furnish all the information/details sought by SEBI within 15 days from the date of receipt of this order, including,*
 - Details of amount mobilized till date,*
 - Scheme wise list of investors and their contact numbers and addresses,*
 - Details of investors repaid,*
 - Details of charges, if any, created on its assets by the company,*
 - Details of commission paid on amounts mobilized above,*
 - Details of agents along with their addresses, etc., and*
 - Audited Accounts for the last financial year*

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

21. This Order shall also be treated as a show cause notice. Swar Agrotech and its abovementioned Directors may show cause as to why appropriate directions under the

SEBI Act and CIS Regulations including directions for winding up of such plans/schemes in terms of Regulations 65 and 73 of the CIS Regulations should not be taken against them.

22. Swar Agrotech 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. They may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai

Date: March 30, 2015

S. RAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA