

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in respect of M/s Swar Agroteak and Housing (India) Private Limited (CIN: U74999UP2004PTC029042) and its Directors viz. Mr. Rajesh Awasthi (PAN: AGMPA1004E), Mr. Pravesh Kumar Karowliya, Mr. Raghuvir Singh, Mr. Dharmendra Kumar Pal, Mr. Jitendra Kumar Porwal (PAN: AJIPP3718P) 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 Agroteak and Housing (India) Private Limited (herein referred to as '**SAHIPL**' 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 whether or not SAHPIL was carrying on activities of '*collective investment scheme*' in terms of Section 11 AA of the SEBI Act, 1992 ("**SEBI Act**"), SEBI, vide letters dated May 09, 2013 and December 19, 2013 sought the following information/documents from SAHIPL 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 SAHIPL. 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 SAHIPL 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 SAHIPL.
4. As no information was received from SAHIPL, 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, SAHIPL vide letter dated December 30, 2013 sought extension of time for 30 to 35 days for submitting the relevant information. SAHIPL did not furnish the relevant information within the time limit. Hence, SEBI vide reminder dated January 13, 2014 once again advised the company to submit all the relevant information within 3 days. In response thereto, SAHIPL furnished the following information/documents vide its 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 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12
 - h. Bank Statements.
5. On perusal of the reply submitted by SAHIPL, it was observed that complete information in respect of schemes of the company was not submitted by the company, 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.
6. In the meanwhile, the Complainant furnished the following information/documents to SEBI (received on September 23, 2014) with respect to the business activities of SAHIPL:
- a. Payment Receipts;
 - b. Passbook cum certificate;
 - c. Registration certificate;
 - d. Application for Realizable Value Payment/Loan Against Registration Certificate/ Surrender Value;
 - e. Realizable Value Payment Slip.
7. I have carefully considered the material available on record such as correspondence exchanged between SEBI and SAHIPL along with the documents contained therein, submissions made by SAHIPL 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 SAHIPL under its schemes fall under the ambit of "*Collective Investment Scheme*" provided in Section 11AA of the SEBI Act.
8. On an examination of the material available on record, it is *prima facie* observed that:

- a. Swar Agroteak and Housing (India) Private Limited (CIN: U74999UP2004PTC029042) was incorporated on September 09, 2004 as Golden Triangle Sales Private Limited and later changed its name to Swar Agroteak and Housing (India) Private Limited with effect from September 30, 2005. The registered office of the company is at Shastri Chauraha, Near Hero Honda Show Room, Etawah -206001 (UP). Mr. Rajesh Awasthi, Mr. Raghuvir Singh, Mr. Pravesh Kumar Karowliya and Mr. Shiv Kumar are the Directors of SAHIPL. Mr. Dharmendra Kumar Pal and Mr. Jitendra Kumar Porwal had resigned from the directorship of the company with effect from September 14, 2005 and November 20, 2011 respectively.
- b. As per the MoA of SAHIPL, one of the main objects 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. SAHIPL collects funds from the public for the scheme of allotment and development of land/plot. The amounts are collected by SAHIPL by offering various "Payment Plan(s) viz., Regular Installment Payment Plans (MT-72, MS-60, MS-100, MS-120, MS-180, MS-132 and MS-240) and Single Installment Payment Plans". The details of "Regular Installment or Single Installment Payment Plans" as mentioned in the brochure is illustrated as under:

Single Installments			Estimated Realisable Value					Acc. Risk Cover
SL. No	Plot size (sq.ft.)	Booking Amt	75 months	99 Months	126 Months	180 Months	240 Months	
1	10	1000	2000	-	4000	6000	14000	1000
2	20	2000	4000	-	8000	12000	28000	2000
3	50	5000	10000	-	20000	30000	70000	5000
4	100	10000	20000	25000	40000	60000	140000	10000
5	500	50000	100000	125000	200000	300000	700000	50000

MS- 132 Regular Installment 5 years								
SL.	Plot size (sq.ft.)	Estimated Realisable Value				Booking	Estimated Realisable Value	Acc. Risk Cover
No		Mthly	Qtly	Hly	yearly	Amt		
1	180	300	891	1773	3528	18000	50000	18000
2	360	600	1782	3546	7056	36000	100000	36000
3	540	900	2673	5319	10584	54000	150000	54000
4	720	1200	3564	7092	14112	72000	200000	72000
5	900	1500	4455	8865	17640	90000	250000	90000

d. The “*applicants*”/investors who are interested in the aforesaid scheme of development and maintenance of land offered by SAHIPL are made to file an “*Application cum Agreement*” with SAHIPL. 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, lump-sum payment, regular installment plan, mode of payment), etc. The following clauses are noted from the “*Agreement*”:-

- *The company sells 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/land 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. feet.*
- *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.*
- *Buyer does not have right to sell land in parts*

e. After execution of the “*Agreement*”, SAHIPL 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 details of the "Registration Certificate" are reproduced as under:

Registration No. & Date of Commencement	Scheme & Term	Asset Value & Plot Size	Payment Mode
00023334 22-Nov-2009	DS60 60	36000 72	Daily
Ist Receipt No.	Instalment Amount in (Rs.)	Estimated Realisable value at the end of the term	Worker Code
15860	20	48000 11-Nov-2014	00205

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

- *"..... SAHIPL 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 SAHIPL under single Installment scheme no..... has now been appropriated by SAHIPL 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 SAHIPL, it is noted that the company had mobilized ₹ 56.80 lacs under its schemes from the customer, however, SAHIPL has not specified the period during which such amounts were mobilized from the public.
9. The aforementioned details of the 'Scheme' towards the purchase and development of plot/land offered by SAHIPL 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. In the context of the abovementioned Section 11AA of the SEBI Act, the 'Scheme' offered by SAHIPL, 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 SAHIPL 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.8(c) above. The investments made by a 'buyer'/investor is in accordance with the "Payment Plan(s) viz., Regular Installment Payment Plans (MT-72, MS-60, MS-100, MS-120, MS-180, MS-132 and MS-240) and Single Installment 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 precise 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 SAHIPL *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'. As per the list of plot buyers provided by the Company, SAHIPL had mobilized ₹ 56.80 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 SAHIPL 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 SAHIPL promises an "estimated realizable value" /return/profit after the expiry of the term. For instance, in 'Plan MS-132' ('Installment Payment Plan) for a period of 5 years, where the Consideration is mentioned as ₹18,000/-, after the expiry of the term the investor is entitled to an "expected cost of the product " of ₹50,000/- i.e. he/she is entitled to an amount of ₹32,000/- 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 SAHIPL. As already stated above, even after the allotment of the land to the '*buyer*' or investor (by) issuing the "*Letter of land unit allotment*", SAHIPL reserves the right to change the location of the allotment and to provide an alternate site different from the land". Upon execution of the "*Agreement*" SAHIPL undertakes to develop such plot/land. During the tenure of the agreement, company reserves the right over development and maintenance of the land, plantation and sale proceeds of the crop. 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 SAHIPL 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.

11. In light of the above analysis and examination, *prima facie*, the activity of fund mobilization by SAHIPL 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.

12. 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):

"A conspectus consideration of the scheme of development of the land purchased by the customers at the instance of the PGF Limited and the promised development under the agreement disclose that

there was wholesale uncertainty in the transactions to the disadvantage of the investor' concerned. The above factors and the factors, which weighed with the Division Bench in this respect definitely disclose that PGF Limited under the guise of sale and development of agricultural land in units of 150 sq. yards. i.e. 1350 sq. ft. and its multiples offered to develop the land by planting plant, trees etc. and thereby the customers were assured of a high amount of appreciation in the value of the land after its development and attracted by such anticipated appreciation in land value, which is nothing but a return to be acquired by the customers after making the purchase of the land based on the development assured by the PGF Limited, part with their monies in the fond hope that such a promise would be fulfilled after successful development of the bits of land purchased by them.

.....All the above factors disclose that the activity of sale and development of agricultural land propounded by the PGF Limited based on the terms contained in the application and the agreement signed by the customers is nothing but a scheme/arrangement. Apart from the sale consideration, which is hardly 1/3rd of the amount collected from the customers, the remaining 2/3rd is pooled by the PGF Limited for the so called development/improvement of the land sold in multiples of units to different customers. Such pooled funds and the units of lands are part of such scheme/arrangement under the guise of development of land. It is quite apparent that the customers who were attracted by such schemes/arrangement invested their monies by way of contribution with the fond hope that the various promises of the PGF Limited that the development of the land pooled together would entail high amount of profits in the sense that the value of developed land would get appreciated to an enormous extent and thereby the customer would be greatly benefited monetarily at the time of its sale at a later point of time..... In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion. ... We therefore hold that Section 11AA of the SEBI Act is constitutionally valid."

13. The features of the 'Scheme' offered by SAHIPL, as discussed in the preceding paragraphs, when considered in light of the abovementioned observations of the Hon'ble Supreme Court of India, indicate that the activity of fund mobilization by SAHIPL under such 'Scheme' with a resultant promise of returns, *prima facie* falls within the ambit of 'collective investment scheme' as defined under Section 11AA of the SEBI Act.
14. 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 SAHIPL 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.

15. Further, the activity of illegal mobilization of funds by SAHIPL 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").
16. It is noted that SAHIPL was advised vide SEBI's 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, SAHIPL 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 SAHIPL to conceal the true nature and operation of its fund mobilizing activity.
17. Protecting the interests of investors is the first and foremost mandate for SEBI. Under the circumstances, SEBI has to take immediate steps to prevent activities of companies or entities defrauding investors and damaging the orderly development of the securities market. In order to ensure that SAHIPL and its Directors do not collect further funds under the '*Schemes*' and to safeguard the assets/property, acquired by SAHIPL 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 SAHIPL and its Directors.
18. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11B and 11(4) of the SEBI Act read with CIS Regulations and PFUTP Regulations, hereby direct Swar Agroteak and Housing (India) Private Limited (CIN: U74999UP2004PTC029042) and its Directors, viz. Mr. Rajesh Awasthi (PAN:

AGMPA1004E), Mr. Pravesh Kumar Karowliya, Mr. Raghuvir Singh, Mr. Dharmendra Kumar Pal, Mr. Jitendra Kumar Porwal (PAN: AJIPP3718P) 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 SAHIPL;*
- iv. not to dispose of or alienate any of the properties/assets obtained directly or indirectly through money raised by SAHIPL;*
- v. not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of SAHIPL;*
- 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*

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

20. This Order shall also be treated as a show cause notice. SAHIPL and its abovementioned Directors may show cause as to why appropriate directions under the SEBI Act and CIS Regulations including directions in terms of Regulations 65 and 73 of the CIS Regulations should not be taken against them.

21. SAHIPL and its abovementioned Directors may, within 21 days from the date of receipt of this Order, file their reply, if any, to this order. SAHIPL and its abovementioned Directors 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