

**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 Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in the matter of M/s Susk India Limited (PAN:AAOCS2750A) and its Directors/Promoters, *viz.* Mr. Dinesh Saini (PAN:CUEPS7834L), Mr. Sunil Tiwari (PAN:CHXPS2858E), Mr. Narendra Singh Lodhi (PAN:AEDPL0722M), Mr. Durgesh Wankhade (PAN:ABUPW2904Q), Mr. Ravi Sankhla (PAN:CKNPS8191P), Mr. Jeevan Kharadiya (PAN : BGGPK8474H), Mr. Abhay Narvariya (PAN : AHRPN1442K), Mr. Kailash Singh Lodhi (PAN:BYGPS5769H), Mr. Bhagwati Bai Lodhi (PAN:ABVPL8322Q), Mr. Jitendra Singh Bhati, Mr. Man Singh Lodhi and Mr. Amit Singh Rathore.

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1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a complaint on December 20, 2013, alleging fund mobilization by M/s. Susk India Limited (hereinafter referred to as "**Susk India**" / "**the Company**") from the public, towards their scheme of "*selling of plots*". The complainant also forwarded the brochure of Susk India, "*Certificate*" issued by it in favour of an investor, "*Acknowledgment slip*", blank "*Application form*", "*Deposit Slip*", etc. It was also alleged that Susk India does not own any land/property.
 2. Thereafter, SEBI vide letter dated December 30, 2013, *inter alia* sought the following information/documents from the company, in relation to its business activities, *viz.*-
 - a) Copies of Memorandum and Articles of Association (MoA and AoA),
 - b) Details of past and present directors (including name, address, PAN and contact details (email/fax/contact no.)),
 - c) Brochures pertaining to schemes offered by Susk India, made available to the public,
 - d) Copies of applications forms that are required to be submitted by investors to participate in the scheme,
 - e) Sample copies of the agreement letter/contract required to be entered into by investor under the scheme,

- f) Details of the scheme-wise amount mobilized by Susk India till date along with the number of investors under the scheme,
- g) Name and addresses of all investors,
- h) List of all branches with addresses,
- i) Certified copies of audited financial statements for the FY 2009-10, 2010-11, 2011-12 and 2012-13,
- j) Copies of income tax return filed by the company from FY 2009-10 till date,
- k) Details of any other similar scheme(s), if any, floated by Susk India or group/associate company or companies in which Directors of Susk India are also Directors.

2.1 The documents/material furnished by the complainants such as booklet/brochure of the company, copies of certificates/receipts issued to certain investors (Mr. Nitin Kumar and Mr. Layek Singh), copies of blank application form, acknowledgment slip, receipt etc. were also forwarded to the company vide SEBI letter dated February 14, 2014, for their comments.

3. Susk India submitted the following documents/submissions (vide letter dated March 18, 2014):

- a) Copies of Memorandum and Articles of Association of Susk India,
- b) Details of past and present directors,
- c) Copy of brochure pertaining to schemes/offers of Susk India made available to the public,
- d) Blank application form required to be submitted by investors to buy a property,
- e) Blank copy of allotment letter,
- f) Blank copy of agreement ,
- g) Sample copies of the agreement letter required to be entered into by investor/applicant under the schemes,
- h) Details of scheme wise amount mobilized,
- i) List of investors under each scheme (Scheme1, 2, &3),
- j) Details of all branches with addresses,
- k) Certified copy of audited financial statement for FY 2011-12 and 2012-13,
- l) Copy of Income Tax return for FY 2012-13.

3.1 Vide the aforesaid letter, Susk India submitted as under:

- a. *"The vision of Susk was to acquire land at reasonable price and then develop it and sell it in small chunks to buyers. Accordingly Susk developed its land bank and opened booking for the plots of land from its land bank,*
- b. *Susk accepted amounts against booking from interested buyers. The plot of land shall be registered in the name of the buyer on receiving the full consideration. The amount against the land is payable as per the terms agreed between Susk and the buyer,*
- c. *This period of payment of principal towards acquisition of plot varied from 6 months to 60 months and the installment varied on the total amount and period of payment. Since most of the people buying land were from small towns their payments were received in cash. A cash receipt signifying the acceptance of money and an allotment letter have been issued to buyers.*
- d. *We had collected money from known circles, in order to assess the marketability and maintainability of the debt raised,*
- e. *We deny and dispute the documents as stated in point no. (a) to (e) to be the documents issued by our company. All the type of documents issued by our company are provided to you herewith in reply to para 5 of your captioned letter."*

4. As Susk India failed to provide complete information/documents sought by SEBI, another letter dated July 18, 2014 was issued by SEBI, seeking clarifications on the following points:

- a. Susk India, disputed the documents (furnished by the complainants to SEBI) forwarded to them by SEBI, such as the certificates & receipts alleged to have been issued by the company to one Mr. Nitin Kumar and Mr. Layek Singh and an affidavit filed by Mr. Layek Singh stating that the aforesaid documents were issued to him by Susk India. However, on perusal of the information/material furnished by the company, it was found that the names of the aforesaid investors were mentioned in the company's list of customers.
- b. Comments in respect of the allegation that they do not have any land.
- c. As per the balance sheet of 2010-11, the company had collected Rs. 1,28,84,775/- from 305 customers as advance for booking of plot. However, as per the data given by the company, as on date they have 294 customers and out of which 267 customers were of 2010-11.

4.1 Vide the aforesaid letter, the company was also required to furnish the following documents

- a. Details of the properties owned by the company and the details of development activities carried out by the company etc.
- b. Certified copies of application form submitted by customers named at Serial No. 11 to 20 of each of the lists for Scheme 1, 2, &3, application form submitted by Mr. Nitin Kumar and Mr. Layek Singh and allotment letters as well as agreement executed by the company with these persons,
- c. Year-wise commission paid by the company to their agents.
- d. List of customers indicating the mode of payment made by each of them,
- e. Copy of detailed trial balance from April 2013 till date.

4.2 Susk India vide letter dated July 26, 2014 sought 30 days time to furnish the aforesaid information/documents/clarification. Thereafter, Susk India vide letter dated August 7, 2014 provided following documents/clarifications:

- a. *"Mr. Layek Singh and Mr. Nitin Kumar have not been allotted the land as they had deposited only Rs. 200/-It is necessary to deposit at least one installment by company rules,*
- b. *The brochure forwarded by SEBI has been printed by one of their agents to boost his business,*
- c. *The company allotted agricultural lands to all the buyers, which the company buy back upon completion of agreement time,*
- d. *As per the balance sheet Rs. 1,28,84,775 is received as advance booking amount. Out of 306 customers, there was more than one entry of 38 customers, therefore 267 customers were mentioned because the yearly whole amount has been shown. In the same manner the total amount of 294 customers has been shown,*
- e. *The registration of the land bamuliya has been done on May 11, 2011. Before the registration, the entire amount was given to the seller on agreement basis. However, due to some inevitable reason land registry could not be done and therefore shown in balance sheet 2010-2011. Similarly in respect of Sundargarh land, registry was not done and 50% of the amount was paid to the seller and hence the same is shown in the balance sheet.*
- f. *The company has 352 agents/workers and commission amount of Rs. 57,86,140 has been distributed to them. Actually there are only 177 agents/workers. There are multiple entries therefore 352 agents shown in the List of Sundry creditors attached with the financials for FY 2010-11,*
- g. *Copies of sale deed documents pertaining to 3 lands,*
- h. *List of properties purchased by the company,*
- i. *List of agents of the company,*

j. Audited financials for the FY 2012-2013,

4.3 The company sought time to furnish the remaining documents/information. However, till date the company has not provided the remaining documents/information/clarification such as the application forms submitted by Mr. Nitin Kumar and Mr. Layek Singh and allotment letters as well as agreement executed by the company with these investors, certified copies of application form submitted by customers named at Serial No. 11 to 20 of each of the lists for Scheme 1, 2, &3, etc., sought by SEBI.

5. I have carefully perused the documents and materials available on record such as, the complaints received by SEBI against Susk India in relation to its funds mobilization activity; correspondence exchanged between SEBI and Susk India along with the documents contained therein; the submissions made by Susk India etc. The issue for determination in the instant matter is whether the mobilization of funds by Susk India is a '*collective investment scheme*' in accordance with Section 11AA of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

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

- i. Susk India Limited (**CIN:U70101MP2009PLC022782**) was incorporated on December 11, 2009, having its registered office is at: AADI Sagar Complex, 2nd floor, 50, Kamla Nehru mark, Greeganj, Ujjain (MP).
- ii. The Directors/Promoters of the company are Mr. Dinesh Saini, Mr. Sunil Tiwari, Mr. Narendra Singh Lodhi, Mr. Durgesh Wankhade, Mr. Ravi Sankhla, Mr. Jeevan Kharadiya, Mr. Abhay Narvariya, Mr. Kailash Singh Lodhi, Mr. Bhagwati Bai Lodhi, Mr. Jitendra Singh Bhati, Mr. Man Singh Lodhi and Mr. Amit Singh Rathore.
- iii. As per the MoA, the main objects of Susk India include, "*to carry on in India or abroad the business as builders, executers, contractors, agent, real estate Developer, construction of building, house, apartment and to build, layout, develop, construct, build, erect, demolish, re-erect, alter, repair or do any other in connection with any building scheme, roads, highways, buildings et..... and improve the property to the company or any other property and doing business on joint venture basis also.....*"

- iv. Susk India offers *schemes* inviting funds from investors towards "*selling of plots*". The investors who are interested in the said *schemes* offered by Susk India are made to enter into an "*Agreement to Sell*" with it after filing an "*Application Form for Provisional Allotment of Plot*". Subsequently, the company issues *Allotment Letter*' to investor who invested in the schemes of the company. Susk India had appointed agents for selling of its plots. For this purpose, the company enters into "*Agency Agreement*".
- v. Following clauses are noted from the "***Application Form for Provisional Allotment of Plot***" available on record -

"Application form for PROVISIONAL ALLOTTMENT OF A PLOT":

Purchaser has to fill in the application for provisional allotment of plot.

I have carefully examined the terms and conditions of this application form. After my satisfaction, I approve to abideI request a plot to be allotted to me as per company's terms and conditions."

I remit herewith a sum of Rs.____ vide bank draft __ drawn on __ in favor M/s.Susk India Limited payable at Ujjain, which may please be treated as ADVANCE TOWARDS SALE CONSIDERATION."

Details of plot to be purchased

Plot No... Type of Plot..... Block..... Area..... Sq.ft..... sq.mtr..... Basic price Rs..... per sq.ft./Rs..... per sq.ft..... Approx... PLC Rs..... others (if any) Rs..... Booking: Director through dealer/ Agent..."

- vi. It is also noted that the company has appointed agents for selling of plots. The company has entered into an agreement with the agents after executing agency agreement. From a sample copy of the agreement available on record, the following conditions are noted.

" The term of the agency created shall be, (PERIOD OF TIME), beginning unless sooner termination. In the case of normal lapse of the term, the Agent may submit a form for Renewal of the Agency (Clause 1).

THE AGENT'S EXPENSES *All expenses for travelling, entertainment, office, clerical, office and equipment maintenance, and general selling expenses that may be incurred by the agent in*

connection with this agreement will be borne wholly by the Agent. In no case shall the company be responsible or liable for such expenses (Clause 9)

COMMISSIONS *The agent, during the term of the agreement, shall receive a commission from the sale of the company's plots sold through the Agent. The Agent's commission on sales made pursuant to this agreement shall be as follows (DESCRIBE)... (Clause 12)*

WHEN COMMISSIONS ARE PAID - *Any commission to be received under this agreement shall not be credited to the Agent's account on the company's books until the purchaser has paid the sale consideration, in full or installment, either by cash or otherwise" (Clause 13)*

- vii. On examination of the format and contents of copy of "Agreement to Sell", it appears to be private agreement with the purchaser and has not been registered. As per the terms and conditions mentioned in the "Brochure", forwarded by the company, the company offers to develop the plot/land on behalf of the customer. A separate agreement for development of plots is being executed with the investors. It is however, noted that the company has not furnished the said agreement for development.
- viii. It is also seen that the allotment of plot is provisional. From a copy of "Allotment letter" issued by Susk India Ltd following are noted:

- *"We are pleased to inform you that against your booking, a plot of land has been allotted to you*
- *Relevant sale deed in respect of this allotment will be executed and registered only after receipt of full payment as per agreed plan.*
- *Received from you by the company under payment has now been appropriated by the company towards the cost which is to be met in procuring the said property and conveying it to you, management fees and other ancillary expenses incidental thereto."*

Terms and Conditions

- *At the time of booking, company shall allot the land to the buyer,*
 - *Registered sale deed will be executed only after receiving full value of plot of land, along with the late payment (if any)."*
- ix. It is however, observed that even though the sample copy provisional allotment letter furnished from the company contains some details of plot (as mentioned in Paragraph No. (v), above), the "Certificate" issued by Susk India to the "customer"/investor (acknowledging

the receipt of the payment (lumpsum or instalment) as per the plan opted by him/her) did not mention the details of any plot/land. The "Certificate" (furnished by the complainant), contains the following details:

- Details of the customer name/address and other details,
- Registration No. and date of commencement and Plan No. and term,
- Consideration of plot,
- Mode of payment,
- Details of "*expected cost of plot*" on expiry of the Agreement,
- Date of last instalment,
- Expiry date of the agreement,
- Instalment Amount.

x. Following are the "*Terms and Conditions*" mentioned in the aforesaid certificate,

- *"The land shall be allotted in the name of the applicant in case of cash down/lump sum payment after 180 days of receipt of full payment but in case of installment payment plans land shall be allotted after 60 days of receiving of 60% consideration amount.*
- *The customer has the facility of option of the allotment of the said property in his/her favour this option can be exercised by the customer by submitting specific request to SUSK to that effect. The payment received under said plan shall be refundable after deducting the actual expenditure of maintenance and development by SUSK*
- *SUSK shall have first charge on said property on account of its unpaid installments for service/development charges and for other incidental expenses incurred by SUSK. The said property cannot, in any other manner be sold, assigned, mortgaged, pledged or alienated without obtaining non due certificate from the company by the customer.*
- *To facilitate easy liquidity, SUSK provides to customer the marketing services for selling/dispersing of his/her developed land.*
- *The company reserves its right to discontinue/change/amend/modifies/alters prospectively/retrospectively any of the rules/regulation and plans and introduce new plan at any time at its sole discretion with or without notice"*

- xi. It is further observed from the "*Application Form*" forwarded by the complainant that the land ownership would be ordinarily transferred in the name of customer within a reasonable period after allotment.
- xii. The company has provided copies of registration documents of land acquired by it in different locations. The details of the same are as under:

S.No	Name of Seller	Name of purchaser	Address of property	Date of purchase	Area in hectre
1	Dinesh Gandhi	Susk India Ltd, Ujjain	Abhanpur, Raipur (CG)	22.11.10	0.789
2	Arvind Kumar Tapadiya	Susk India Ltd, Ujjain	Abhanpur, Raipur (CG)	22.11.10	0.214
3	Parvati Bai	Susk India Ltd, Ujjain	Vill: Bamuliya (MP)	11.05.11	1.386
4	Anju Bhirgu	Susk India Ltd, Ujjain	Baloda Bazar (CG)	08.05.12	0.623
5	Lalchand Sahu	Susk India Ltd, Ujjain	Sundargarh (Odisha)	21.08.12	0.894
6	Bimla Devi Sahu	Susk India Ltd, Ujjain	Sundargarh (Odisha)	21.08.12	0.894

- xiii. On perusal of the list of customers provided by the company for selling of plots *vis a' vis* above mentioned land bank, it is observed as under:

S.No	Address of property	Date of purchase	Observations
1	Abhanpur, Raipur (CG)	November 22, 2010	The company allotted the said property/plot to as many as 98 investors with effect from June 8, 2010. However, as per the sale agreement the company has purchased the land on November 22, 2010.
3	Vill: Bamuliya (MP)	May 11, 2011	The company allotted the said property/plot with effect from May 6, 2010 to as many as 82 persons. However, as per the sale agreement, the company has purchased the land on May 11, 2011.
4	Sundargarh (Odisha)	August 21, 2012	The company allotted the said property/plot to as many as 61 investors with effect from May 15, 2010. However, as per the sale agreement the company has purchased the land on August 21, 2012.

- xiv. From the "*Balance Sheet as on March 31, 2013*" of the company, following are observed:-

(a) Under the head "*Other Current Liabilities*", it is observed as under:

	March 31, 2011 (Amount Rs.)	March 31, 2012 (Amount Rs.)	March 31, 2013 (Amount Rs.)
Other Current Liabilities <i>(Commission and advance collected)</i>	1,80,92,775	4,07,79,468	5,65,44,994

(b) As per the "*Schedule forming part of the balance sheet*" as on March 2013, under the head "*Other Current Liabilities*", it is observed as under:

Sundry Creditors (commission payable to Agents)	(Amount Rs.)
FY 2010- 2011	52,08,000
FY 2011-2012	77,03,054
FY 2012-2013	42,48,447
Advance for booking of plots	
FY 2010- 2011	1,28,84,775
FY 2011-2012	1,49,83,639
FY 2012-2013	1,15,17,079
Total (cumulative of commission and advance for booking)	5,65,44,994

(c) Further under "*Inventories*" it is observed as under:

Asset	31.03.11 (Amount Rs.)	31.03.12 (Amount Rs.)	31.03.13 (Amount Rs.)
Inventories (land)	15,18,980	26,60,330	1,02,46,394

- xv. The aforesaid details indicate that the company has paid as commission a total of Rs.1,72,59,501/- during the 3 years period ending 2012-2013 for promoting their scheme. The total advances taken from the investors by the company, as on March 31, 2013 is Rs.3,93,85,493/-. It is thus clear that a significant portion of the amount collected from the customers/investors is being expended as commission.

- xvi. The "*Customers List*" furnished by the company (for the period from May 2010 to June 2014), which contains the details such as the names of customers, addresses, PAN numbers, date of booking, total cost of sale, Khasra and addresses of the plot etc., indicates that the company has collected an amount of Rs. 4,90,53,650/- from 224 investors through the schemes 1, 2 and 3. The details are as under:

S.No	Name of the Scheme	Amount Mobilized (in Rs)	No. of investors
1	Scheme A (Patan Road, Abhanpur (CG))	2,34,81,000	124
2	Scheme -B (Sundargarh (Odisha))	1,25,39,175	77
3	Scheme -C (Vill- Bamuliya (MP))	1,30,33,475	93
4.	Total	4,90,53,650	224

6. The details of the '*Scheme*' offered by the company 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."

7.1 In the context of the abovementioned Section 11AA of the SEBI Act, the *schemes/plans* offered by Susk India, 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 Susk as noted from the "*brochure*", "*Application Form*", "*Agreement*", and the "*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 (lump sum and installment plans). Various clauses of the "*Application Form*" state that the funds are utilized for land purchase and land development expenses. As per the terms and conditions mentioned in the certificate and application, "*The land shall be allotted [by way of an allotment letter] in the name of the applicant in case of lump sum payment after 180 days of receipt of full payment but in case of installment payment plans land shall be allotted after 60 days of receiving of 60% of consideration amount*". It is however observed that none of the aforesaid documents of the company specify any time period within which the land/plot is to be actually transferred to the "*applicant*"/investor by way of a sale deed. It is further noted from the "*Certificate*" issued by the company (provided by the complainant) which acknowledges the receipt the 1st installment does not contain any details of the location of the plot. The company in their replies admitted that they have mobilized money from general public for provisional allotment of plot by soliciting advance payments under its schemes of instalment payment plans and allotted the plots. It is relevant to note that the company was soliciting money without having any land in its possession. As can be seen from the table mentioned at Paragraph No. 5.1(xiii), that the company acquired land at Abhanpur (C.G) on November 22, 2010 whereas it started pooling money from general public from May, 2010 onwards. From the balance sheet for the year ending on March 31, 2011, it can be seen that the company had collected a sum of Rs.1,28,84,775/- for advance booking of plots. At that point in time, the company acquired land worth only Rs.15,18,980/- .

All these factors mentioned above, clearly indicate that Susk India was pooling money in the form of advance consideration for selling of plots to general public and utilizing the same for the purposes of such schemes.

Therefore, it is clear that the payments or the contributions collected from the "applicant"/investor are pooled and utilized by Susk India for the purpose of scheme. The instant 'scheme', therefore 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.

It is observed from the clauses/contents in the "certificate" issued to certain "customers"/investors available on record, the "customer"/investor would receive an amount as "expected cost of plot on expiry of the agreement"/profit/return. On perusal of the certificate issued by the company to one of the investors, it is seen that on his investment of Rs.12,000/- in "Plan R3- 5 years", he would receive a sum of Rs.17,200/- upon completion of 5 years. It is also noted that he would either get "expected cost of plot on expiry of the agreement"/profit/return or plot of land as indicated in the "Allotment Letter". It is observed from the clauses/contents in the "Allotment Letters" of Mr. Lakhan Lal Yad and Mr. Manoj Kumar Sahu forwarded by the company, that the customers/investors would receive either "expected cost of plot on expiry of the agreement"/profit/return or piece of plot upon maturity. On perusal of "Allotment letter" issued by the company to Mr. Manoj Kumar Sahu, it is seen that on his investment of Rs.3,60,000/-, he would receive a profit/return of Rs.4,20,000/- upon completion of 5 years. Further, it is also observed that the company in its reply dated August 07, 2014 stated that the company shall allot agricultural land to all the buyers and would buy back the same upon completion of time. In light of the above, it is *prima facie* observed that the investment is made with a view to receive profit/property, from the scheme of the company. Hence, the second condition, which stipulates that the contributions or payments are made to such scheme or 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.*

It is apparent from brochure, application form and the certificate that contributions by "customer"/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. Following clauses in the "certificate" indicate that contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed by Susk India, 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,

- *"Received from you by the company under payment has now been appropriated by the company towards the cost which is to be met in procuring the said property and conveying it to you, management fees and other ancillary expenses incidental thereto.*
- *The company reserves its right to discontinue/change/amend/modifies/alters prospectively/retrospectively any of the rules/regulation and plans and introduce new plan at any time at its sole discretion with or without notice. "*

The aforesaid clauses clearly indicate that the property, contribution or investment forming part of the scheme, is managed solely by Susk India on behalf of the investors and the investors do not have day-to-day control over the management and operation of the 'Scheme'. 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, 1992.

7. It is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of *PGF Limited Vs. Union of India* [AIR 2013 SC 3702]:

".....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. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. 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."

8. In view of the aforementioned observations of the Hon'ble Supreme Court of India in the PGFL case, and in view of the analysis and examination, as discussed in the preceding paragraphs, I find that the "*scheme*"/plan offered by Susk India with a resultant promise of returns when considered in light of characteristics and features of such scheme, *prima facie* satisfies all four conditions specified in Section 11AA (2) of the SEBI Act. Therefore, I am of the view that Susk India is engaged in the fund mobilizing activity from public, which is in the nature of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act.
9. 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 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, a person can launch or sponsor or cause to sponsor a 'collective investment scheme' only if it is registered with SEBI as a Collective Investment Management Company. In view of this, 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.
10. Upon a consideration of the aforementioned paragraphs, I find that the scheme/plan offered by Susk India by way of its sale of plots is nothing but a smokescreen for its fund mobilizing activity.

I am of the *prima facie* view that Susk India is engaged in fund mobilizing activity from the public, by floating/sponsoring/ launching '*collective investment scheme*' as defined in Section 11AA of the SEBI Act without obtaining a certificate of registration from SEBI as required under Section 12(1B) of the SEBI Act and the CIS Regulations. Considering the fact that no prior registration was obtained by Susk India in respect of the aforesaid activities in the nature of '*collective investment scheme*', I am of the view that Susk India 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.

11. Protecting the interest of investors is the first and foremost mandate of 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. I, therefore, note that Susk India has to be prevented from carrying on with the '*collective investment scheme*' activities without due registration from SEBI as required by law.
12. In view of the above, I, in exercise of the powers conferred upon me under Section 11(1), 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct M/s Susk India Limited (PAN:AAOCS2750A) and its Directors/Promoters, *viz.* Mr. Dinesh Saini (PAN:CUEPS7834L), Mr. Sunil Tiwari (PAN:CHXPS2858E), Mr. Narendra Singh Lodhi (PAN:AEDPL0722M), Mr. Durgesh Wankhade (PAN:ABUPW2904Q), Mr. Ravi Sankhla (PAN:CKNPS8191P), Mr. Jeevan Kharadiya (PAN : BGGPK8474H), Mr. Abhay Narvariya (PAN: AHRPN1442K), Mr. Kailash Singh Lodhi (PAN:BYGPS5769H), Mr. Bhagwati Bai Lodhi (PAN:ABVPL8322Q), Mr. Jitendra Singh Bhati, Mr. Man Singh Lodhi and Mr.Amit Singh Rathore.
 - a. *not to collect any fresh moneys from investors from its existing scheme;*
 - b. *not to launch any new scheme/plan,*
 - c. *not to float any new companies/firm to raise fresh moneys;*
 - d. *not to dispose of any of the properties or alienate the assets of the existing scheme;*
 - e. *not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company;*
 - f. *to immediately submit the full inventory of the assets owned by Susk India out of the amounts collected from the "customers"/investors under its existing schemes;*

g. to furnish all the information sought by SEBI, vide letter dated December 30, 2013 and February 14, 2014 including,

- i. copies of all the relevant documents of the company viz. copies of agreement for development, etc.,*
- ii. certified copies of application form submitted by customers named at Serial No. 11 to 20 of each of the lists for Schemes 1, 2, & 3,*
- iii. application form submitted by Mr. Nitin Kumar and Mr. Layek Singh and allotment letters as well as agreement executed by the company with these persons,*
- iv. the details of amount mobilized and refunded till date,*
- v. PAN Nos. of the directors, viz. Mr. Jitendra Singh Bhati, Mr. Man Singh Lodhi and Mr. Amit Singh Rathore,*
- vi. Scheme wise list of investors and their contact numbers and addresses, including,*
 - the list of investors to which land has been allotted and got registered, and*
 - list of investors who have been refunded.*

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

14. This Order shall also be treated as a show cause notice. Susk India and its abovementioned Promoters/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 issued against them.

15. Susk India 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: May 29, 2015

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