

WTM/SR/ SEBI-NRO:CHLO/IMD/ 135 /06/2015
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 respect of Emerging India Infra Limited (CIN: U45209CH2009PLC031826)and its Directors viz., Shri Gurpreet Singh Sidhu (DIN-02783457), Shri Gurlal Singh (DIN-02992706) and Shri Harminder Singh (DIN-02992650), Shri Ashok Kumar (DIN-02525771)and Shri Sunil Singh (DIN-02787520) and Shri Prashant Sharma (DIN-02992706).

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1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received several complaints alleging illegal mobilisation of money from the general public in Punjab, Haryana, Rajasthan and Chandigarh by Emerging India Infra Limited (hereinafter referred to as “EIIIL”). One of the complainants alleged that various entities of “*Emerging Group of companies*” are in operation since 2009 and mobilised more than ₹300 crores by resorting to “*ponzi schemes*” and Collective Investment Schemes activities. It is also stated that the “Emerging Group” is paying high commissions to its agents to solicit monies from the public. The complainants provided sample of the brochure of EIIIL.
 2. As a matter of preliminary inquiry, SEBI vide separate letters dated April 28, 2014 sought information regarding Emerging Group companies (15 companies) including EIIIL such as Memorandum and Articles of Association, names and addresses of past and present directors, brochures pertaining to schemes/plans/offers/ projects, application forms, certificates issued to investors, financial statements of the companies, type of business activities, etc.
 3. In response thereto, EIIIL vide letter dated May 14, 2014 (received on May 27, 2014) denied that they promoted any scheme of mobilisation of money from the public. As EIIIL did not furnish the complete information to SEBI, the company was asked to come

over to SEBI's Northern Regional Office at New Delhi on July 17, 2014. One of the Directors of the company viz., Shri Harminder Singh attended the meeting. Shri Harminder Singh was advised to submit details about money mobilised by EIIL. Thereafter, EIIL vide letter dated July 22, 2014 submitted certain details of nature of its business. However, EIIL has till date failed to submit the complete information sought by SEBI.

4. I have carefully considered the material available on record such as correspondence exchanged between SEBI and EIIL, submissions made by EIIL and the evidence furnished by the complainants, etc. In this context, the issue for determination is whether the mobilization of funds by EIIL under its schemes fall under the ambit of "*Collective Investment Scheme*" provided in Section 11AA of the SEBI Act.
5. On an examination of the material available on record, it is *prima facie* observed that:
 - (a) **EIIL** (CIN: U45209CH2009PLC031826) was incorporated on October 23, 2009 having its registered office at SCO 46-47, Sector 9D, Near Matka Chowk, Madhya Marg, Chandigarh-160009 and another office at SCO 188-189, First Floor, Sector 8C Madhya Marg Chandigarh-160009.
 - (b) Its present Directors are Shri Gurpreet Singh Sidhu (DIN-02783457), Shri Gurlal Singh (DIN-02992706) and Shri Harminder Singh (DIN-02992650). It is noted that Shri Ashok Kumar (DIN-02525771) and Shri Sunil Singh (DIN-02787520) resigned from the directorship of EIIL in March 2010 and Shri Prashant Sharma (DIN-02992706) resigned on December 2012.
 - (c) As per the Memorandum and Articles of Association of EIIL, its main objects are "*to purchase, sell, lease, let on hire, develop any kind of land, and/or to act as a contractor, builders, agent for construction, erection, repair of houses, farm houses, bridges, roads, factories, plants, towns, facilities for any person, firm, company, government authority both in India and abroad.*"
 - (d) As per the *brochure* of EIIL, it is noted that the company offers several investment plans for all types of investors viz., farmers, retired persons, salaried class and professionals. EIIL in its *brochures* promises '*good yield, growth and safety*' to its investors and assures them that the amounts invested in their real estate schemes are safe.

- (e) The various schemes/plans mentioned in the *brochure* of EIIL are Regular Payment Plans for 36 months (3 years); 72 months (6 years); 120 months(10 years) and Single Payment Plan for 3 to 10 years and Children Plan for 18 years. The details of Regular Payment Plan and Single payment plan are illustrated as under:

Regular Payment Plan for 36 months(3years)

In Rs.

S. No	Mode of Payment				Consideration value	Payout on maturity	Plot Sq/ft	Help in case of accidental death
	Yearly	Half Yearly	Quarterly	Monthly				
1	3,333	1700	875	292	10,000	12,182	200	10,000
2	6,667	3400	1750	584	20,000	24,364	400	20,000
3	10,000	5100	2625	875	30,000	36,546	600	30,000
4	16,667	8500	4375	1458	50,000	60,909	1000	50,000
5	33,333	17000	8750	2917	1,00,000	1,21,819	2000	1,00,000
6	83,333	42500	21875	7291	2,50,000	3,04,547	5000	2,00,000
7	1,66,667	85,000	43,750	14,583	5,00,000	6,09,093	10,000	2,00,000

- (f) Under these plans EIIL accepts yearly, half yearly, quarterly or monthly instalments from the investors and promises that on maturity the investor is entitled to a payout amount or a plot of land. Amount received from investors is invested in land and the investors are allotted a plot @Rs.50/- per sq ft. The company also has a feature of help in case of accidental death.
- (g) Single Payment Plan is intended for investors having lump sum funds for investment and an indicative table from the brochure of EIIL mentioning the interest paid over different time periods is as under:

Yield Amount	1 year	2years	9years	10years	Plot Sq Ft	Help in case of accidental death In Rs.
	10%	11%	12.50%	13%		
5,000	5500	6161	14433	16973	100	5000
10,000	11000	12321	28865	33946	200	10000
20,000	22000	24642	57730	67891	400	20000
50,000	55000	61605	144325	169728	1000	50000
100,000	110000	123210	288651	339457	2000	100000
2,50,000	275000	308025	721627	848642	5000	200000
5,00,000	550000	616050	1443254	1697284	10000	200000
1000000	1100000	1232100	2886508	3394567	20000	200000

- (h) The above plan offered with a minimum investment of ₹5,000/- for one year or more. The company has promised to give plot or the redemption value as mentioned in the above table along with benefit of help in case of accidental death.

(i) Single Payment Plan for benefit of Next Generation(Children Plan)

Children Plan (for 18 years)			In Rs.
Certificate Amount	Children Plan	Plot Sq. Ft.	Help in case of death
5,000	50,000	100	5,000
10,000	1,00,000	200	10,000
20,000	2,00,000	400	20,000
50,000	5,00,000	1,000	50,000
1,00,000	10,00,000	2,000	1,00,000
2,50,000	25,00,000	5,000	2,00,000
5,00,000	50,00,000	10,000	2,00,000
10,00,000	1,00,00,000	20,000	2,00,000

- (j) EIIL offers the above plan as a long term plan for higher returns and encourages the investors to subscribe to this in order to meet the future requirements of education and marriage of their children and for business. As per the above plan, an investor who invests Rs. 5,000/- for 18 years, after the maturity period, they are entitled to Rs. 50,000/- which is 10 times the amount invested.

- (k) As per the Monthly Payout System offered by EIIL, an investor is entitled to receive a monthly payment as return for his investment. The plan has two terms viz., six years and ten years. The amount is in multiples of ₹5,000/- with minimum of ₹50,000/- . It is also stated in the brochure that the above mentioned plan is "beneficial for investors looking for a regular source of income". The details of the plan as mentioned in the brochure is tabulated as under:

S. No	Consideration Value	Monthly Payout for 72 months	Monthly payout for 120 months	Guaranteed on Maturity	Plot Sq Ft	Help in case of death
1	50,000	438	500	50,000	1000	50,000
2	1,00,000	875	1000	1,00,000	2000	1,00,000
3	2,00,000	1750	2000	2,00,000	4000	2,00,000
4	5,00,000	4375	5000	5,00,000	10000	2,00,000
5	10,00,000	8750	10000	10,00,000	20000	2,00,000
6	50,00,000	43750	50000	50,00,000	100000	2,00,000
7	1,00,00,000	87500	1,00,000	1,00,00,000	200000	2,00,000

6. The details of the 'Schemes' offered by EIIL has to be considered in light of Section 11AA of the SEBI Act. The aforesaid 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. In the context of the abovementioned provision, the schemes offered by EIIL 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;***

As per the information/brochures furnished by the complainants, it is noted that EIIL solicits money from customers towards schemes of sale of plots. The amounts are collected for the scheme by offering "Regular Payment Plans of different maturities, Single Payment Plans, Monthly Payout Plans, Children Plans, etc. Under these plans, EIIL accepts monthly, quarterly, half yearly and yearly instalments from public against plots of various sizes. As per the plans the maturity date varies from 3 years to 10 years. The brochures also mention the rate of interest for different maturity periods. Under the various schemes/plans, EIIL promises that on maturity the investor is entitled to "payout amount" or a plot of land. It is also stated by the company that the amount received from investors is invested in land and the investors are allotted a plot @ ₹50/- per sq ft. EIIL also offers a feature of help in case of accidental death. It is noted from the customers list furnished by one of the erstwhile Director that EIIL had mobilised at least ₹11.27 Crores from 2554 investors under its various schemes. Thus, EIIL is collecting the funds from the investors for its schemes through various plans mentioned above and the funds collected are pooled for purpose of the 'scheme'.

Hence, the instant 'schemes' satisfy the first condition of "pooling of contribution or payments", stipulated in Section 11AA(2) of the SEBI Act.

- (ii) *The contribution 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.

EIIL solicits funds from the general public towards its different plans such as Regular Payment Plans of different maturities, Single Payment Plans, Monthly Payout Plans, Children Plans etc. The payment is received in monthly, quarterly and yearly instalments. The brochure mentions an amount as "*payouts on maturity*" for the investments in the plans. For instance, under the *Plan for Regular payment for 36 months*, if an investor invests ₹3,333/- for a period of 3 years for a plot size of 200 sq.ft., on expiry of the term of 3 years, the investor is entitled to a "*payout maturity amount*" of ₹12,182/-. Additionally, an Accidental Death Help of Rs. 10, 000/- is also offered to the investors of EIIL. In case of Children Plan the brochure mentions the yield as 10 times of the money invested.

In view of the above, it is clear that the second condition, which stipulates that the contributions or payments are made to such scheme of arrangement by the investors with a view to receive profits, income, produce or property as stipulated in Section 11AA (2) 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.***
- (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 Frequently Asked Questions (FAQ) mentioned in the brochure of EIIL that money invested in the company is in turn invested in real estate business and also in other activities of the group like road and civil construction, herbal farming, engineering and medical education, immigration and visa services. This indicates that the company receives funds from public and manages the funds by investing in different business such as real estate, etc., and offers returns to the investors. As seen from the FAQ "*the investor may be allotted the plot which can be located in any part of the country. However, the Company tries to allot the plot to the investor within the state he/she resides and tries that it is within a radius of 200 KMs*". In other words, the allotment of plot is at best tentative in view of what has been stated above. This clearly indicates that EIIL has the complete control

of the schemes and the investors do not have any say in the operation of the schemes/ arrangement. In view of the above, I find that the instant '*Schemes*' satisfy the third and fourth conditions stipulated in section 11AA (2) of the SEBI Act.

8. In light of the above analysis and examination, it appears that the schemes offered by EIL inviting investments from public, when considered in the light of the peculiar characteristics and features of such scheme, as discussed in the preceding paragraphs, *prima facie* satisfies all four conditions specified in Section 11AA (2) of the SEBI Act.
9. In this context, it is relevant to refer to the observations made by the Hon'ble Supreme Court of India in the matter of **PGF Limited & Ors. Vs. UOI & Anr.** (MANU/SC/0247/2013), it was observed that: "...It is imperative that the transaction of the PGF Limited vis-à-vis its customers have necessarily to be examined as to its genuineness by subjecting itself to the statutory requirement of registration with the second respondent followed by its monitoring under the regulations framed by the second respondent. 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..... Such pooled funds and the units of land are part of such scheme/arrangement under the guise of development of land."
10. 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 ("**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 EIL has not obtained the certificate of registration under the CIS Regulations for its fund mobilizing activities from the public, under the schemes offered by it. Considering the above, I am of the view that EIL is *prima facie* engaged in fund mobilizing activities from the public, by sponsoring or launching '*collective investment schemes*' 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.

11. Further, the activity of illegal mobilization of funds by EIIL 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").
12. It is noted that EIIL was advised to submit complete details regarding the schemes run by it, total number of investors, amount collected and the amounts repaid/ and registered in the names of investors since the schemes came into operation. It is noted that the company was called to SEBI office and advised to submit the complete information to SEBI. However, EIIL has not furnished this information to SEBI till date. When considered in the context of the abovementioned *prima facie* finding, the inescapable conclusion is that non-submission of the information with respect to their schemes to SEBI is nothing but an attempt by EIIL to conceal the true nature and operation of their fund mobilizing activity. As EIIL has not furnished relevant information mentioned above, facts and circumstances of the case warrant urgent measures to protect the interests of the investors otherwise irreparable injury may be caused to the investors.
13. Protecting the interests of the investors is the first and foremost mandate of SEBI. Under the circumstances, SEBI has to take immediate steps to prevent activities of companies or persons defrauding the investors and damaging the orderly development of the securities market. In order to ensure that EIIL and their Directors do not collect further funds under their scheme/Plans and to safeguard the assets/property acquired by EIIL and its Directors from the funds of the investing public until full facts and materials are brought and final decision is taken in the matter, it becomes necessary for SEBI to take urgent preventive action by way of this interim measure. In the light of the above, I find no other alternative but to take recourse to an urgent measure by way of an interim order against EIIL and its Directors for preventing them from further carrying on with the fund mobilizing activity by launching '*collective investment scheme*', without obtaining registration from SEBI in accordance with law.
14. In view of above, 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 Emerging India Infra Limited (CIN: U45209CH2009PLC031826) and its Directors viz., Shri Gurpreet Singh Sidhu (DIN-02783457), Shri Gurlal Singh (DIN-02992706), Shri Harminder Singh (DIN-02992650) Shri Ashok Kumar (DIN-02525771), Shri Sunil Singh (DIN-02787520) and Shri Prashant Sharma (DIN-02992706):

- *not to collect any fresh money from investors under the existing schemes;*
- *not to launch any new schemes or plans;*
- *not to float any new companies/firm to raise fresh moneys;*
- *to immediately submit the full inventory of the assets including land acquired through money raised by EIIL;*
- *not to dispose of or alienate any of the properties/assets acquired directly or indirectly through money raised by EIIL;*
- *not to divert any funds raised from public at large which are kept in bank account(s) and/ or in the custody of EIIL;*
- *to furnish all the information/details sought by SEBI vide letter dated April 28, 2014 within 15 days from the date of receipt of this order, including,*
 - i. Details of amounts mobilized,*
 - ii. Details of amounts repaid till date,*
 - iii. Scheme wise list of investors and their contact numbers and addresses including,*
 - the list of investors to whom land has been allotted and got registered and*
 - list of investors who have been repaid.*
 - iv. Details of commission paid on amounts mobilised above,*
 - v. Details of agents along with their addresses, etc.,*
 - vi. Audited Accounts for the last financial years i.e. FY 2012-13, 2013-14, and 2014-15;*
 - vii. PAN of the aforementioned Directors.*

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

16. This order shall be treated as a show cause notice and EIIL and its directors shall show cause as to why the plans/ schemes identified in this order should not be held as a 'collective investment scheme' in terms of the Section 11AA of the SEBI Act and the CIS Regulations and 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 issued against them.

17. EIL and its 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 whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

Place: Mumbai

Date: June 26, 2015

S. RAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA