

**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 Disc Assets Lead India Ltd. (PAN: AACCD4575E) and its Directors *viz.* Mr. Vivekanandam Janarthanan (PAN:AFFPJ9926C), Mr. Nithiyanantham Arunkumar (PAN: AFWPA7113H), Mr. Srinivasan Chidambaram (PAN:AJTPS6054J), Mr. Shyamchander Thanikodi (PAN:BPEPS8939C), Mr. Nithiyanantham Malathi Umashankar (PAN:AAOPU8534H) and Ms. S. Jeevalatha Sridhar (PAN:AKPPJ3044C).

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1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted a preliminary inquiry into the alleged illegal mobilization of funds by Disc Agrotech Ltd. (now known as **Disc Assets Lead India Ltd.** and hereinafter referred to as "**DALIL**"/the company), through various schemes such as "*Land Installment Scheme*", "*Product Package Scheme*", etc.

2. As part of the inquiry, SEBI, vide letter dated August 26, 2013 *inter alia* sought details of the schemes operated by the company.

2.1 In response thereto, DALIL, vide letter dated September 04, 2013, *inter-alia* stated:

- i. *"The name and registered Office address of the company has been changed and the present name is Disc Assets Lead India Ltd. and the registered Office address is, Old Door No. 59/1 (New No. 119) Canal Bank Road, C.I.T Nagar, Chennai 600035.*
- ii. *The company is a plot promoter and deals in buying and selling lands to its customers as per their requirement. It does not have any such scheme which falls under Collective Investment Scheme (CIS) as stated in SEBI's letter referred above."*

3. Subsequent to this, SEBI, vide letter dated October 03, 2013 sought the following details from the company:

- i Total amount collected,*
- ii Scheme wise and year wise details of total number of investors,*
- iii Amount repaid so far,*
- iv Audited financial statements for the last three years,*
- v Brochures/pamphlets etc advertising its schemes and explaining its plans / schemes.*

4. A site visit was also conducted by SEBI officials to the registered office of the company on February 12, 2014 and required them to furnish the documents sought by SEBI, vide letter dated October 03, 2013.

5. DALIL, vide letter dated February 17, 2014, submitted the following information/documents:

- i "Primarily DALIL is involved in buying and selling of land to its companies in various instalment basis for easy purchases. It has 3500 acres of agriculture and non agriculture land spread over in Tamil Nadu in the name of the company. It will not come under collective investment scheme,*
- ii As per its system, there is no provision for repayment of money paid by customers,*
- iii Once the instalments are paid, the piece of land for which they had paid will be registered in the name of customer,*
- iv If any customers break the instalment and unable to continue, DALIL will pay the amount paid by them,*
- v If SEBI directs to seek registration, the company is ready to do so by complying all legal requirements as directed by SEBI".*

5.1 Vide the aforesaid letter, DALIL also furnished the following documents:

- i Copies of Income Tax Returns and Financial Statements for the years 2010-11, 2011-12 and 2012-13,*
- ii Brochures/pamphlets,*
- iii Copies of a few sales deeds,*
- iv Details of the land purchased by the company in 6 districts of Tamil Nadu.*

6. As the company failed to furnish the complete documents/information sought by SEBI such as the total amount mobilized, scheme-wise and year wise details of total number of investors, amount repaid so far, etc., the company was advised, vide letter dated March 05, 2014, to furnish all the

documents/information sought by SEBI vide its earlier letter dated October 03, 2013. The company was additionally, advised to provide the following documents/information:

- i Copy of Memorandum of Association of the company;
- ii Certificate from auditors, certifying the exact business of the company and modus operandi of the scheme,
- iii A certificate from the auditors that the land which is being sold to investors is in the name of the company and that the money from the investors is not being utilized for the purchase the land.

**6.1** As no reply was received from the company, SEBI sent a reminder, vide letter dated March 17, 2014. Thereafter DALIL, vide letter dated March 29, 2014 *inter alia* submitted the following:

- i *"In the last year Central Government has passed resolution relating to Registration of the Land, meanwhile the State Government of Tamil Nadu also increased the guideline value of the land from April 2013. It becomes difficult to do land business, hence the company, DALIL has decided to close the sale of Land in an instalment scheme from the financial year April, 2013. It has slowly reduced the said scheme and completely stopped the scheme from October 2013 onwards. The company has hence abandoned the previous Land Installment Scheme from October 2013 and no customer has been admitted in the above scheme,*
- ii *We have closed the scheme, hence we don't have any scheme brochure in hand,*
- iii *At present, we are doing Plot sales on cash basis only. Immediate land registration will be made to the customer against the receipt of money,*
- iv *We are settling every day for the closed scheme members,*
- v *Our companies Assets have appreciated value of Networth more than our liability,*
- vi *Due to year end work it need one month time for preparation of Report regarding the exact number of customers input and output details".*

**6.2** Vide the aforesaid letter, the company also furnished the following documents:

- i A copy of the brochure pertaining to the "sale of plots on cash basis",
- i Memorandum and Articles of Association of the company,

- ii A Certificate issued by the Chartered Accountants, certifying "*DALIL is in the business of real estate that the land which is being sold is in the name of the company.*"

7. Subsequently, SEBI received a reference from *Additional Director General of Police, Economic Offences Wing, Chennai* regarding the mobilization of funds from public by DALIL without obtaining registration from SEBI.

8. SEBI examined the details of the company available on MCA website and Registrar of Companies, Chennai. Based on the information available at the website, including the details regarding the registered office of the company and details of its directors/promoters/share holders, SEBI, vide letter dated January 22 ,2015, *inter alia* sought the following information from the company and its Directors:

- i. *A brief note on the schemes operated by the company,*
- ii. *Details of past and the present directors, brochures, Pamphlets of its scheme,*
- iii. *Application forms submitted by any five investors to participate in the scheme,*
- iv. *Sample copies of registration letter, allotment letter and sale pertaining to any five of the investors invested in the scheme offered by the company,*
- v. *Sample copies of agreement/ contract entered into by five investors in the scheme,*
- vi. *Structure of the scheme,*
- vii. *Main conditions of the scheme,*
- viii. *Modus operandi of the schemes,*
- ix. *Details of scheme wise amount mobilized along with the total number of investors in the scheme and total number of investors refunded,*
- x. *A certificate issued by the auditors indicating that the money received from the investors are not used for the purchase of the land by the company,*
- xi. *No. of investors who opted for the rent out/ sales option of the scheme,*
- xii. *Complete details of the "Product Package Scheme" offered by the company along with the details of the investors invested in the said scheme.*

9. DALIL, vide their undated letter (received by SEBI on February 10, 2015), stated as under:

- "We are not operating any CIS Schemes,

- All the moneys paid by the customers for purchase of land are in the name of the company and no money was collected in the name of any promoter/director and no land is purchased in the name of promoters/directors.

9.1 DALIL also furnished the following documents:

- Memorandum and Articles of Association of the company,*
- Details of the Directors,*
- Copies of tax returns filed by the company,*
- Certificate from Chartered Accountants certifying that the company is in the business of real estate and that the land which is being sold is in the name of the company,*
- Copies of Application Form, Agreement, Registration letters, Allotment Letters and sale deeds, executed with five of the investors.*

10. Subsequently, SEBI, vide letter dated March 03, 2015, sought the following additional information:

- Number of customers to whom money has been refunded/consideration in monetary terms paid in accordance with terms of schemes along with details of amount paid. Details of default or delay in payment of the customers,*
- Number of customers to whom land was allotted but not registered in their name along with consideration paid by such customers,*
- Number of customers to whom the land was allotted but the land in the possession of the company for maintenance,*
- Number of customers to whom the land has been registered in name of the customers,*
- Details of customers/investors in your schemes including name, address and total amount paid, type of the scheme, amount of money refunded, whether land is registered in their name, if so details thereof.*

10.1 DALIL, vide letter dated March 16, 2015 reiterated the submissions made by them in their earlier reply (vide letter dated March 29, 2014). Additionally, they made the following submissions:

- *"From the beginning, no default is occurred to any one customer,*
- *We are selling plots on cash and carry basis only like a regular real estate business from September 2013. The plots are registered immediately after receiving lump sum payment from the customer,*

- *We have sufficient land which is mentioned in the balance sheet as stock in trade around 3500 acres of the land in the surrounding area of Madurai registered in the name of the company,*
- *The purchase value of the said stock of land is 206 crores. The market value of the said stock lands is appreciated into 10 times from the purchase value*

**10.2** Vide the aforesaid letter, DALIL also provided the following documents/information:

- List of properties held by the company (in the surrounding area of Madurai);
- Sample copies of application forms, agreements and registration letters,
- Copies of sale deeds executed with the customers,
- Brochures regarding the plots sold by them.

**11.** It is however, noted that DALIL failed to provide all the information/documents sought by SEBI, such as total amount mobilized, scheme-wise and year-wise list of investors, number of customers to whom the land was allotted (but retained by the company for development, maintenance etc.), details of "Product Package Scheme", etc.

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

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

- DALIL (Disc Assets Lead India Ltd.) (CIN:U51211TN2006PLC059572) was incorporated on April 20, 2006 as Disc Agrotech Ltd. The name of the company was changed to Disc Assets Promoter India Ltd. on May 18, 2010 and then to Disc Assets Lead India Ltd on April 5, 2013. The registered office of the company is situated at: Old Door No.59/1, New No.119, Canal Bank Road, C.I.T Nagar, Chennai, Tamil Nadu - 600035.
- The Directors of the Company are:

| Serial No. | Name of Directors                     | PAN/DIN                 | Date of appointment as director /               | Date of ceasing as director |
|------------|---------------------------------------|-------------------------|-------------------------------------------------|-----------------------------|
| 1.         | Mr. Vivekanandam Janarthanan          | AFFPJ9926C/<br>02292665 | Managing Director appointed on 15/05/2006       | N.A.                        |
| 2.         | Mr. Nithiyanantham Arunkumar          | AFWPA7113H/<br>01612408 | Joint Managing Director appointed on 15/05/2006 | N.A.                        |
| 3.         | Mr. Srinivasan Chidambaram            | AJTSP6054J/<br>03296079 | appointed as director on 06/12/2010             | N.A.                        |
| 4.         | Mr. Shyamchander Thanikodi            | BPEPS8939C/<br>03328678 | appointed as director on 06/12/2010             | N.A.                        |
| 5.         | Mr. Nithiyanantham Malathi Umashankar | AAOPU8534H              | appointed as director on 15/05/2006             | resigned on 24/07/2013      |
| 6.         | Ms. S. Jeevalatha Sridhar             | AKPPJ3044C              | appointed as director on 24/01/2011             | resigned on 26/07/2013      |

iii As per the Memorandum of Association of the company, the main object is "*to carry on business of farming, horticulture, sericulture, cultivators, etc., to carry on the business of manufacturing, refining, preparing, etc., to carry on the business of developers of urban and rural immovable properties, builder, etc.*"

iv The company has provided copies of the application form, registration letter, agreement, letter of allotment of farm plot(s) and the sale deed pertaining to a few "*customers*"/investors.

The details of the same are as under:

| Sl No | Name of Investors | Application No / Date | Agreement Date | Registration Letter -Date | Letter of Allotment-Date | Expiry date of the agreement | Sale deed Date |
|-------|-------------------|-----------------------|----------------|---------------------------|--------------------------|------------------------------|----------------|
| 1     | Manjula P         | 7569019 / 31.01.2008  | 31.01.2008     | 31.01.2008                | 30.09.2010               | 30.04.2013                   | 06.09.2013     |
| 2     | Poonkodi T        | 8043257 / 30.06.2008  | 30.06.2008     | 30.06.2008                | 28.02.2011               | 30.04.2013                   | 28.02.2014     |
| 3     | Kannan K S        | 8097430 / 12.11.2008  | 12.11.2008     | 12.11.2008                | 12.07.2011               | 12.02.2014                   | 23.12.2014     |
| 4     | Jarina Begam K    | 8216516 / 23.06.2009  | 23.06.2009     | 23.06.2009                | 23.02.2012               | 23.09.2014                   | 23.12.2014     |
| 5     | Murugan A         | 8248324 / 31.07.2009  | 31.07.2009     | 31.07.2009                | 31.03.2012               | 31.10.2014                   | 23.12.2014     |
| 6     | Lakshmi P         | 8174862 / 31.03.2009  | 31.03.2009     | 31.03.2009                | 30.11.2011               | 30.06.2014                   | 23.12.2014     |

- v From the aforesaid table, it is noted that the sale deeds were executed subsequent to the expiry of the agreement. Interestingly, the execution of all the aforementioned sale deeds happened subsequent to the initiation of inquiry by SEBI (*i.e.* subsequent to the letter dated August 26, 2013, by SEBI seeking details of the scheme offered by DALIL on August 26, 2013).
- vi It is observed from the documents (such as application form, agreement, registration letter, allotment letter, etc. forwarded by the company), that DALIL collects money from the public through its various payment plans for the scheme of "*purchase, development and maintenance of agricultural land*". The plans are broadly of two types:
- *Installment Payment Plan*
  - *Cash Down Payment Plan*
- vii The "*customers*"/investors who are interested in the aforesaid scheme of DALIL are made to execute an "*Application Form*" and an "*Agreement*" with DALIL. The application form contains basic details of the applicant (like name, address etc.), plan/product details (giving plan/product number, area, total consideration), etc. Following clauses are noted in the "*General terms and Conditions*" mentioned in the "*Application Form*":
- "*The applicant shall make the payment strictly as per the payment plans.*
  - "*In case of instalment land purchase plans, if customer makes a default by not paying one or more instalment for a period of 12 consecutive months from the due date, such default shall be treated as Breach of Agreement. If such breach occurs, the payment received till the last due under said plan refundable after deducting 20% of consideration comprising various costs and other incidental expenses and remaining shall be entitled to a simple Interest @ 12.5% P A and refunded after the completion of period of instalment.*
  - "*There will not be any change of plans or breach occur under cash down land purchase scheme. The payment once paid is refunded after the completion of the period of terms or plans.*
  - "*If customer after subscribing to any plan or plans of company fails or refuses to submit necessary documents, papers, photographs/ to complete the necessary formalities and execute the documents required for the purpose of effective transfer and maintenance of his/ her/ their products by company the same shall be construed as a case of opting out, In the event of such failure or refusal, company shall be entitled to appropriate 20% consideration, comprising various costs and incidental expenses. Company shall give 60 days' notice to the*

*concerned customer for compliance before his/her/their case is treated as a case of opting out and dealt with accordingly.*

- *The management of company reserves the right to discontinue / change/amend/modify or alter prospectively any of the rules/regulations and plans and introduce new plans at any time at its sole discretion with or without any notice.*
- *In case, the agreement entered between the customer and the company could not be given effect to, because of enactment of any law by State or Central Government, the customers are entitled to rescind the agreement, in which event, the company shall refund the amount paid by customer together with simple interest @ 12.5% per annum from the date of the agreement.*
- *The company reserves the right to change the location of the property allotment and allot you an alternate site at any other place.*
- *The sale deed is in respect of product [land] after the completion of periodicity of instalments, the product allotted to you, shall be executed and registered shortly where, however transfer of such small plot of land is prohibited by law or otherwise not possible / feasible / practicable, company shall arrange for transfer of title of the said plot in favour of customers in joint holding with other the customer."*

**viii** As per the sample copies of “*Agreement*”, executed by the company with its “*customers*”/investors, DALIL is engaged *inter alia* in the business of purchase, sale and development of agricultural land and waste land in India. DALIL also agrees to develop and maintain the land. Following clauses are noted from the said agreement:

- *Whereas DAL makes arrangement for sale of pieces of land with clear and marketable title to the extent of .....by purchasing/procuring land in favour of the customer and also on option of the customer develop and maintain the same.*
- *ALLOTMENT OF LAND: DAL shall issue an Allotment Letter to the Customer , describing the details of SAID LAND after identifying the same, within 270 days after receipt full consideration in case of Cash Down Payment Plans and 90 days after receipt of half of the consideration in case of Instalment Payment Plans.*
- *CONSIDERATION: The total consideration is .... for arrangement and execution of sale, registration of Sale Deed, development and maintenance of the SAID LAND during the term of this agreement and other incidental expenses.*

- *DEVELOPMENT AND MAINTAINCE : The DAL shall develop and maintain the SAID LAND from the date of Allotment Letter as per the Scheme/Plan opted by the Customer in Consultation with Agro experts and subject to the factors of soil condition, climate etc. The DAL shall have the rights and sole discretion to take final decision in all matters relating to development and maintenance including survey, demarcation identify the SAID LAND clearing, cultivation, Plantation, farming, rising of crops trees, plants, saplings, herbals etc. using fertilizers, pesticides, irrigation, harvesting and all are activities incidental thereof.*
- *COMMON AMENITIES: DAL shall provide for certain common amenities such as irrigation, drainage systems, pipelines, electrical lines which may laying through the SAID LAND either underground or over ground, motor pump sets, temporary sheds and structures etc., as per the final decision of DAL.*
- *PROHIBITION OF COMMON AMENITIES :The CUSTOMER or any other person or persons claiming under him shall not claim or ownership or right or interest over the common amenities staled in the clause [9]. No such person or persons upon regular expiry or this Agreement shall any way interfere in any manner, damage, tamper, destroy or disrupt the irrigation systems, power lines, pipelines, electric system and other common amenities including fittings and other implements.*
- *AGREEMENT PERIOD: The period of this agreement pertaining to the rights and obligations of parties, shall come into force only after Registration of the Customer and expires on the completion of the period specified in the Scheme/Plan opted by the Customer. The DAL shall remove its all machineries and equipment from the SAID LAND after expiry of the tenure of this Agreement.*
- *This Agreement can be extended on requisition of the Customer in writing within 30 days after expiry of this agreement and on mutually agreed terms and conditions. The DAL shall have the discretion to extend this agreement.*
- *The CUSTOMER can opt for withdrawal from the Scheme/Plan on written requisition. The amount paid by the CUSTOMER under plan opted by him, shall be refundable after deduction 20% of the amount towards the total consideration along with simple interest of 15% per annum for various costs and incidental expenses, The TDS and other taxes will also be applicable.*
- *FAILURE/REFUSAL TO COMPLETE FORMALITIES : If the CUSTOMER after registration, fails or refuses to furnish necessary documents or to complete formalities or to execute necessary documents required for the purpose of effective transfer of title of the SAID LAND in favour of the*

*CUSTOMER and development of the same, shall be construed as a case of withdrawal. In that event, DAL shall be entitled to invoke the terms in Clause 12. DAL may give 60 days' notice to the customer for compliance before his case be treated as a case of withdrawal*

- *MARKETING SERVICE: The customer has the option of retain or sell the SAID LAND as he become deem fit, on expiry of the agreement. To facilitate this liquidity, DAL provides its Marketing services to the customer(s). if the customer is desirous of avail the aforesaid marketing services, only at the end of this agreement. In case of this opting, the customer shall have to submit necessary documents required by DAL at least 30 days in advance along with a letter to Custodial Section of DAL.*
- *BREACH OF AGREEMENT :*

*1. BY DISC:*

*[a] In case DAL commits a Breach Agreement by not allotting the SAID LAND in favour of Customer in the manner agreed to CUSTOMER shall be entitled to terminate the agreement. In that event DAL shall refund the amounts paid CUSTOMER together with simple interest @12.5% per annum from the date of contract.*

*[b] In case DAL commits of Breach Agreement by not completing the development of SAID LAND in the manner agreed to CUSTOMER[s] shall be entitled to terminate Agreement, In which event DAL shall refund the amounts paid by the CUSTOMERS[s] after deducting cost of land registration expenses, development charges and other incidental expenses, and the balance amount, if any would be refunded together with simple interest at 15% per annum from the date contract.*

*2. BY THE CUSTOMER*

*.....*

*[B] Default after allotment / registration of land: In case of installment Payment Plans, if such breach occurs after the allotment of the said land, DAL shall be entitled to appropriate 20% of total consideration of cost, development charges and all other expenses incidental thereto. Where, however, such breach occurs after registration of sale deed. DAL shall entitle to recover. In addition to the aforesaid 20% the balance amount, if any, of original land cost outstanding from him together. However, in case CUSTOMER sells his land including trees, saplings, plants, crops and other items thereon to any*

*person. DAL shall only appropriate 20% of total consideration. The CUSTOMER shall bear the cost and other incidental expenses related to transfer of the said land ...*

- MISCELLANEOUS :

*[a] The DAL is not responsible for any confusion / misleading / misconception / misconstruction / misinterpretation / dishonesty / misappropriation / misconduct / false counselling occur in the field or down line of an applicant / customer and it is purely because of the misrepresentation and the false detailing of the introducer only. If it occurs the DAL shall have the right to terminate both of them."*

**ix** In response to the application form and the agreement executed by the "customer"/investor, the company issues a "Registration Letter". The "Registration Letter" contains the following:

- Details of the customer name/address and other details,
- Registration No. and date of commencement,
- Plan No. and term,
- Consideration and Plot size (Sq.Ft.),
- Periodicity of Installment and Duration,
- Mode of payment,
- Amount of instalment,
- Expiry date of agreement,
- Details of "Estimated Value at the end of the term" ,
- Date of Realizable value at the end of term.

**x** Following are noted from the "General Terms and Conditions" of the said "Registration Letter":

- *"Applicant shall make payment according to the payment plans.*
- *All remittance must be made by the agents to concerned branch office or the company directly.*
- *In case of instalment land purchase plans, if customer makes a default by not paying one or more instalment for a period of 12 consecutive months from the due date, such default shall be treated as Breach of Agreement.*
- *There will not be any change of plans or breach occur under cash down land purchase plan. The payment once paid is refunded only after the completion of the period of the terms of plans,*

- *The management of company reserves the right to discontinue/change/amend/modify or alter prospectively any of the rules/regulations and plans mentioned in the rule book 1 and 2 at any time at its sole discretion with or without any notice."*

**xi** As can be seen from the various clauses of the "*Agreement*" executed by the "*customer*"/investor and the "*Registration Letter*" issued by the company, no plot has been identified or demarcated against which the moneys are collected from the "*customers*"/investors. As per Clause 2 of the agreement "*DALIL shall issue an Allotment Letter to the Customer, describing the details of said land, after identifying the same, within 270 days after receipt full consideration in case of Cash Down Payment Plans and 90 days after receipt of half of the consideration in case of Instalment Payment Plans*".

**xii** The allotment letter, provided by the company, includes details regarding the plot numbers, Area in Sq.Fts, "*D. No.*", *Survey No.*, village and District, etc. Further the following clauses/terms are *inter alia* mentioned in the said letter of allotment:

- *" We are pleased to inform you that Farm plot(s) booked by you vide application dated ....have been allotted to you by DALIL as per the details given below:*
- *No. of Farm plot(s) ...., Area Sq, Ft.....D. No....., Survey No..., M. Plot No.....*
- ***However, DALIL, reserves the right to change the location of this allotment, and allot an alternate site at any other place within Tamil Nadu.*** *Title Transfer is also subject to timely payment of all future instalments by you.*
- *The allotment and the subsequent conveyance of the Plot, shall be only in conformity with terms and conditions of application and agreement executed. All the instalments paid by customer under ILPS(Instalment Land Purchase Schemes) Plan 2. Quarterly Rs..... to DALIL, until date, now stand appropriated by DALIL.*
- *All future instalments which are to be paid under the said plan, shall automatically stand appropriated by DALIL upon receipt.*
- *These appropriations shall cover the cost of procuring the said property and conveying it to the customer, developing the same. Administration and management fees and other ancillary expenses incidental thereto.*
- *This sale deed in respect of Farm Plots, allotted shall be executed and registered once full payment is received by the company. Where however, transfer of such small Farm Plot of land is prohibited by Law or otherwise*

*not possible/feasible/practicable, DALIL, shall arrange for transfer of title of the said Farm plot in favour of Customers in Joint Holding with other like Customer. DALIL shall execute / procure execution of Joint sale deed in favour of the said customers [including the Customer] conveying the proportionate area of the Farm plot to them where the title of the Farm Plot is transferred to the Customer in Joint Holding with other customers by means of joint sale deed from the office of concerned Sub-Registrar for and on behalf of concerned customer, and shall provide certified copy to each Customer, if the same is not possible / feasible / practicable, DALIL, shall provide a copy of the sale deed to customer duly attested by Notary Public. Where title of Farm Plot is transferred by means of specific separate sale deed. DALIL, shall arrange to provide said original sale deed to customer. "*

**xiii** The aforesaid terms in the allotment letter indicate that the company has the right to change the location of the identified land and to allot an alternate site at any other place "*within the State of Tamil Nadu*".

**xiv** On perusal the balance-sheet of DALIL as on March 31, 2014, the following facts are observed:

**a.** Under the head "*Other Current Liabilities*", the following are shown as amounts collected from "*Instalment Land Purchase Scheme Products Creditors*" (ILPS Product Creditors),

| Other Current Liabilities     |                      |                      |
|-------------------------------|----------------------|----------------------|
|                               | As on March 31, 2013 | As on March 31, 2014 |
| <b>ILPS Product Creditors</b> | 687,20,40,706.97     | 874,49,53,345.07     |

The status of opening and closing stock of land are as under:

| Inventories (in lakhs)                       |                  |
|----------------------------------------------|------------------|
| Opening stock of land (as on March 31, 2013) | 193,75,48,931.00 |
| Closing Stock of land (as on March 31, 2014) | 205,79,17,166.00 |

From the above, it is clear that as against the amount of ₹874.50 Cr. collected by DALIL through ILPS (Instalment Land Purchase Schemes) as on March 31, 2014, the closing stock of land held by the company as on March 31, 2014 is ₹205.79Cr.

**b.** Under the head "*Non-current Assets*", following are noted:

- An amount of ₹410.50 Cr. has been shown as "*Other Non-current Assets*". The break of the same as shown in the "*Notes forming part of the Schedule*" (Note No.7), are as below:

| <b>Non-Current Assets</b>                       |                         |
|-------------------------------------------------|-------------------------|
| Pre-paid Expenses for ILPS Product              | 410,49,01,595.35        |
| Misc. expenses (asset) increasing share capital | 1,14,200.00             |
| <b>Total</b>                                    | <b>410,50,15,795.35</b> |

The said amount of ₹410.49 Cr. of "*Pre-paid Expenses*" when compared to the amount of ₹874.49 Cr. collected under the "*ILPS Products*" (Item No. (a) above) shows that a disturbingly large amount - almost 47% has been spent as "*Pre-paid Expenses*".

- Out of ₹40.46 Cr. shown as "*Non-current Investments*", DALIL has invested a total amount of ₹39.61 Cr. in three of its Wholly Owned Subsidiaries (as per Note No. 18 of the "*Notes forming part of accounts*"). The break-up as shown in the "*Notes forming part of the Schedule*" (Note No. 6) is as under:

| <b>Non-Current Investments</b>           |                             |
|------------------------------------------|-----------------------------|
| <b>Wholly Owned Subsidiary Companies</b> | <b>As on March 31, 2014</b> |
| DAL Toll and Road (P) Ltd.               | 11,00,00,000.00             |
| Disc Finance Corporation Ltd.            | 2,40,00,000.00              |
| Vikas Reality Private Ltd.- Chennai      | 26,21,19,400.00             |
| <b>Total</b>                             | <b>39,61,19,400.00</b>      |

- c. Out of the total amount of ₹141.73 Cr. recorded as "*Short-term loans and advances*" (as recorded in the "*Notes forming part of the Schedule*" (Note No. 9)), it is noted as under:

| <b>Short-term Loans and Advances</b>             |                         |
|--------------------------------------------------|-------------------------|
| Loans and advances ( <i>break up not given</i> ) | 119,28,26,475.26        |
| Eagles Eye Real estate                           | 16,11,87,010.00         |
| DAL Marketing Solutions Ltd.                     | 44,12,556.30            |
| <b>Total</b>                                     | <b>135,84,26,041.56</b> |

- No details available for ₹119.28 Cr. (shown as "*Loans and Advances*"),
- The remaining amount of ₹16.56 Cr. has been lent to Related Parties *viz.* Eagles Eye Real Estate (₹16.11 Cr.) and Dal Marketing Solutions Ltd. (₹0.44Cr.) (enterprises/entities in

which the Key Managerial Personnel (KMP) of DALIL and their relatives exercise significant influence (as per Note No. 17 of the "Notes forming part of accounts").

13. The aforementioned features of the so-called sale/purchase and development of agricultural land appear to be a "scheme" offered by DALIL and the same has to be considered in light of the provisions of Section 11AA of the SEBI Act. Section 11AA provides for the conditions to determine whether a scheme or arrangement is a "collective investment scheme". It 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."*

- 13.1 In the context of the abovementioned Section 11AA of the SEBI Act, the scheme of *Sale/Purchase and development of agricultural land* offered by DALIL, 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 DALIL, as noted from the "Application Form", "Agreement" and "Registration Letter" that the company is collecting funds from general public towards its scheme for the "sale/purchase, development and maintenance of agricultural land" through various instalment and cash down payment plans. It is important to note that no plot/land is identified and earmarked to the investors either at the stage when an individual "customer"/investor enters into the "Agreement" with DALIL or at the time of issuance of "Registration Letter". As per the terms of the agreement, "DALIL shall issue an Allotment Letter to the Customer, describing the details of said land after identifying the

same, within 270 days after receipt full consideration in case of Cash Down Payment Plans and 90 days after receipt of half of the consideration in case of Instalment Payment Plans". Neither the "Agreement" executed by the "customer"/investor nor the "Allotment Letter" issued by DALIL (after the receipt of full consideration in case of "Cash Down Payment Plan") specify any time period within which the land/plot is to be transferred to the "customer"/investor by way of a sale deed. Even more importantly, as per the terms of the said allotment letter, the company has an unfettered right to change the location of the said land so identified and demarcated in the said allotment letter to anywhere in the State of Tamil Nadu. It is further noted that an estimated amount ("*Estimated Value*"), which the "customer"/investor is entitled to at the end of the term is mentioned in the said registration letter issued by the company. This leads to the inescapable conclusion that DALIL runs a scheme and the moneys collected from the "customers"/investors by way of instalments and cash down payments are pooled for the purpose of the scheme.

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

***(ii) The contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.***

The "Registration Letter" issued to the "customers"/investors indicate an "*Estimated Realizable Value*"/return/profit at the end of the term. From a sample copy of the "Registration Certificate" issued by DALIL to one of its investors, it is noted that an investor opting for "ILPS (63 months)" where the "Consideration" is mentioned as ₹12,600/-, he/she has to pay an amount of ₹200/- monthly. After the term period of 63 months, the investor is entitled to an *Estimated Value at the end of the term*" of ₹18,000/- i.e. he/she is entitled to an amount of ₹5,400/- as profit/ return. In view of above, it is apparent that the contributions of the "customers"/investors (whether by instalments or cash down payment) are made to such scheme or arrangement with a view to receive the "*Estimated Value*"/profit/return.

I therefore, find that the instant scheme also satisfies the second condition stipulated in Section 11AA(2)(ii) 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, and***
- iv. ***The investors do not have day-to-day control over the management and operation of the***

***scheme or arrangement.***

Following clauses in the "*Application*" and "*Agreement*" indicate that contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed by DALIL, 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,

- *"The management of company reserves the right to discontinue / change/ amend/ modify or alter prospectively any of the rules/regulations and plans and introduce new plans at any time at its sole discretion with or without any notice*
- *DALIL, reserves the right to change the location of this allotment, and allot an alternate site at any other place within Tamil Nadu.*
- *DALIL, shall issue an Allotment Letter to the Customer , describing the details of SAID LAND after identifying the same, within 270 days after receipt full consideration in case of Cash Down Payment Plans and 90 days after receipt of half of the consideration in case of Instalment Payment Plans.*
- *The company shall have the rights and sole discretion to take final decision in all matters relating to development and maintenance including survey, demarcation identify the SAID LAND clearing, cultivation, Plantation, farming, rising of crops trees, plants, saplings, herbals etc. using fertilizers, pesticides, irrigation, harvesting and all are activities incidental thereof"*

The aforesaid clauses clearly indicate that the property, contribution or investment forming part of the scheme, is managed solely by DALIL on behalf of the investors and the investors do not have day-to-day control over the management and operation of the '*Scheme(s)/ Plan(s)*'. In view of the above, I find that the instant '*Scheme*'/Plan satisfies the third and fourth conditions stipulated in Section 11AA(2) (iii) & (iv) of the SEBI Act, 1992.

14. It is also 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.”*

15. In light of the aforesaid observations of the Hon'ble Supreme Court of India in the **PGFL Case**, and in view of the aforementioned analysis and examination, it is apparent that the fund mobilizing activity of DALIL, under the scheme of "*sale/purchase, development and maintenance of agricultural land*" with a resultant promise of profit/return / "*Estimated Value*" at the end of the "*scheme period*", *prima facie* satisfies all four conditions of Section 11AA(2) of the SEBI Act as discussed in the preceding paragraphs.

16. DALIL, vide letter dated February 17, 2014 submitted: "*Primarily DALIL is involved in buying and selling of land to its companies in various instalment basis for easy purchases..It will not come under collective investment scheme*".

In a Real Estate sale transaction, the land is identified and located upfront and thereafter is sold to individual purchasers. The plot of land is clearly identified by delineating and defining the boundaries in the agreement for sale itself, so that the developed land is finally transferred to the individual purchaser in terms of the agreement. In the instant case, as already mentioned in the preceding paragraphs, the plot is not identified or demarcated by DALIL either at the time of execution of the "*Agreement*" or at the time of issuance of "*Registration Letter*" in respect of the scheme. The land/plot is identified in the "*Letter of Allotment*", which is issued to the "*customers*"/investor "*within 270 days after receipt of full consideration in case of Cash Down Payment Plans and 90 days after receipt of half of the consideration in case of Instalment Payment Plans*". It is important to note that even though land is identified in the "*Letter of Allotment*", the company reserves its right to change the location of the said land to an alternate site at any other place within the State of Tamil Nadu. In other words, no investor under the scheme can be sure of what he is entitled to after the expiry of the agreement period. It is also noted that as per the "*Registration Letter*" issued by DALIL to the customers, an "*Estimated Real Value*" /profit/return at the end of the "agreement"/scheme period is offered to the customers.

In view of the above analysis, it is clear that the Scheme towards "*Sale/Purchase, development and maintenance of agricultural land*" being conducted by DALIL is not akin to a typical Real Estate business. In my view, the fund mobilizing activity of DALIL, is most certainly in the nature of a '*collective investment scheme*' as defined in Section 11AA of the SEBI Act.

17. It is further noted that DALIL vide letter dated March 29, 2014 stated: "*DALIL has decided to close the sale of Land in an instalment scheme from the financial year April, 2013. It has slowly reduced the said scheme and completely stopped the scheme from October 2013 onwards*".

On perusal of the balance sheet of the company as on March 31, 2014, it is however, observed that under the head "*Current Liabilities*", as on March 31, 2013, DALIL collected an amount of ₹687.20 Cr. from the "*Instalment Land Purchase Scheme Products Creditors*" and this has increased to ₹874.50 Cr. on March 31, 2014. This is contrary to the assertion of DALIL that it had decided to close the sale of land in an instalment scheme from the financial year April, 2013 and that it had slowly reduced the said scheme and completely stopped the scheme from October 2013 onwards.

18. In terms of Section 12(1B) of the SEBI Act, "*no person shall sponsor or cause to be sponsored or cause to be carried on a 'collective investment scheme' unless he obtains a certificate of registration from the Board in accordance with the regulations*". Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "CIS Regulations") provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a '*collective investment scheme*'. Therefore, the launching/ floating/ sponsoring/ causing to sponsor any '*collective investment scheme*' by any '*person*' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. In the instant case, DALIL has launched '*collective investment scheme*' without obtaining certificate of registration from SEBI, contravening the provisions of section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

19. It is further noted that Mr. Nithiyanantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram and Mr. Shyamchander Thanikodi are the present directors and Mr. Nithiyanantham Malathi Umashankar and Ms. S. Jeevalatha Sridhar are the past directors of DALIL. The activity of illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to carry on any collective investment scheme by any person amounts to a fraudulent practice in terms of Regulation 4(2)(t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities Market),

2003. Considering the fact that no prior registration was obtained by DALIL in respect of the aforesaid activities in the nature of collective investment scheme, I am of the view that DALIL 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, which reads as follows:

*"Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person".*

20. DALIL was advised to respond to the preliminary inquiry conducted by SEBI, through several SEBI letters dated August 26, 2013, October 03, 2013, March 5, 2014, January 22, 2015, etc. However, on all these occasions, DALIL failed to furnish complete information/documents sought by SEBI such as (i) the total amount collected, (ii) the details of total number of investors, (iii) number of investors to whom money has been refunded in accordance with terms of schemes, (iv) number of customers to whom land was allotted but not registered in their names and (v) number of investors to whom the land has been registered, etc.. In these circumstances, I am of the view that non-co-operation on the part of DALIL when considered in the light of the abovementioned *prima facie* findings, leads to the inescapable conclusion that such refusal to furnish the information sought by SEBI was only to conceal the true nature and operation of the fund mobilizing activity.
21. It is important to note (as already discussed in Paragraph No. 12.1 (xiv) above) that out of the total amount mobilized of ₹874.49 Cr., DALIL has assets in the form of land only to the extent of ₹205.79 Cr.. The remaining funds have been used by the company for the following purposes:

- ₹410.49 Cr. as "*Pre-paid Expenses*",
- ₹119.28 Cr. as "*Loans and Advances*", the details of which are not provided in the balance sheet and the realisable value not known,
- ₹39.61 Cr has been invested in its wholly owned subsidiaries,
- ₹16.56 Cr. has been lent to related parties.

All the above data does lead to an inevitable conclusion that not everything has been bonafide with the manner in which the funds raised from investors have been utilized by DALIL, for

instance, almost 47%, being spent on "*Pre-paid Expenses*" and a good portion of the remainder being lent to associates and related parties.

Protecting the interests of investors is the first and foremost mandate for SEBI. Under the facts and circumstances as detailed above, 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 DALIL and its directors do not collect further funds under its schemes and to safeguard the assets/property acquired by DALIL and its directors out of 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 an interim measure. In the light of the same, I find no other alternative but to take recourse through an interim measure against DALIL and its directors.

22. In view of the above, I, in exercise of the powers conferred upon me under Section 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby direct Disc Assets Lead India Ltd. (PAN: AACCD4575E) and its Directors *viz.* Mr. Nithiyanantham Arunkumar (PAN: AFWPA7113H), Mr. Vivekanandam Janarthanan (PAN:AFFPJ9926C), Mr. Srinivasan Chidambaram (PAN:AJTPS6054J), Mr. Shyamchander Thanikodi (PAN:BPEPS8939C), Mr. Nithiyanantham Malathi Umashankar (PAN:AAOPU8534H) and Ms. S. Jeevalatha Sridhar (PAN:AKPPJ3044C):

- i. not to collect any fresh money from investors for its existing schemes;*
- ii. not to launch any new schemes/plans or float any new companies to raise fresh moneys;*
- iii. not to dispose of any of the properties or alienate the assets of the existing scheme;*
- iv. not to divert any funds raised from customers/investors, kept in bank account(s) and/or in the custody of the company;*
- v. to immediately submit the full inventory of the assets owned by DALIL,*
- vi. to furnish all the information sought by SEBI, vide letters dated October 03, 2013, January 22, 2015 and March 03, 2015 and not yet submitted, including,*
  - (a) Scheme-wise amount mobilized (for both Cash Down Payment Plans and Instalment Payment Plans/"Land Installment Scheme"), since inception with year-wise break-up of amount mobilized, amounts repaid, etc.*

*(b) Details of scheme-wise list of customers/investors (for both Cash Down Payment Plans and Instalment Payment Plans/"Land Installment Scheme") along with their names, addresses and telephone numbers including,*

- list of investors to whom land has been allotted and got registered,*
- list of investors to whom land was allotted but not registered in the name of the customers,*
- list of investors who opted for the rent out/sales option of the scheme,*
- list of investors who have been refunded.*

*(c) Details of the "Product Package Scheme" offered by DALIL, in the manner specified in item No.vi (a) and (b) above,*

**vii.** *to furnish the Audited Balance Sheet as on March 31, 2015,*

**viii.** *Details and item-wise break-up of ₹410.49 Cr. shown as "Pre-paid Expenses for ILPS Product" under the head "Other non-current Assets" (of the Balance Sheet as on March 31, 2014),*

**ix.** *Full details and Item-wise break-up of ₹119.28Cr. shown as "Loan and Advances" under the head "Short-term loans and advances" in "Current Assets" (of the Balance Sheet as on March 31, 2014), including a special mention of all loans to its Related Parties/Wholly Owned Subsidiaries/Associate companies/entities,*

**x.** *Details of item-wise commission paid to agents/investors for the promotion of the schemes (all schemes floated by the company), since inception till date.*

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

**24.** This order is without prejudice to the right of SEBI to take any other action that may be initiated against DALIL and its Directors, in accordance with law.

**25.** This Order shall also be treated as a show cause notice. DALIL and its abovementioned Directors may show cause as to why appropriate directions/prohibitions under Section 11 of the SEBI Act and in terms of Regulations 65 and 73 of the CIS Regulations including the following, should not be taken/imposed against them:

- i. Directing them jointly and severally to refund any moneys/assets collected from the investors under the scheme, along with the requisite interest,
- ii. Directing them to wind up such plans/schemes,
- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities market for a particular period.

26. M/s Disc Assets Lead India Ltd. and its abovementioned Directors shall, within 21 days from the date of receipt of this Order, file their reply, if any, to the prima facie observations made herein. The company and its Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai  
Date: August 20, 2015

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