

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4) and 11B of Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, in respect of Interim Order dated December 09, 2014 in the matter of KMJ Land Developers India Ltd.

In respect of:

Sr. No.	Noticees	PAN
Category :		
	Company	
1.	KMJ Land Developers India Ltd.	AADCK4402G CIN: U70101MP2008PLC020823
	Director(s)	
2.	Santoshi Lal Rathore	AEXPR6319A
3.	Kanchan Rajawat Kushwah	AKLPR9493H
4.	Nirmala Rathore	AEUPR2841G
5.	Gopal Prasad Gupta	N.A.
6.	Mr. Dilip Jain	N.A.
7.	Sunil Singh	N.A.
8.	Mathura Bai	N.A.
9.	Sunil Singh Kushwah	N.A.

The aforesaid entities are hereinafter referred to by their respective names or collectively as **"the Noticees"**.

-
1. SEBI had passed an Interim order cum Show Cause notice dated December 09, 2014 (hereinafter referred to as "**interim order**") against the Noticees

based on the prima facie conclusion that the fund mobilising activity of Noticee No. 1 i.e. KMJ Land Developers India Ltd. ("**KMJ**") under the garb of a real estate business for the sale/purchase, development and maintenance of agricultural land falls within the parameters of a "collective investment scheme" as defined in section 11AA of the SEBI Act, 1992. Accordingly, the following directions were passed against the Noticees (including the directors and promoters of KMJ) :

- a. not to collect any fresh moneys from investors from its existing scheme;*
- b. not to launch any new scheme/plan or float any new companies/firm to raise fresh moneys;*
- c. not to dispose of any of the properties or alienate the assets of the existing scheme;*
- d. not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company;*
- e. to immediately submit the full inventory of the assets owned by KMJ Developers out of the amounts collected from the "customers"/investors under its existing schemes;*
- f. to furnish all the information sought by SEBI, including,*
 - i. scheme wise list of investors and their contact numbers and addresses,*
 - ii. the details of amount mobilized and refunded till date,*
 - iii. PAN of past directors of KMJ Developers*

2. The interim order was delivered to KMJ and Santoshi Lal Rathore, Director through by way of Speed Post with Acknowledgement (SPAD). Since the order could not be served on the other noticees, the interim order was served by way of newspaper publication for the said noticees on July 05, 2016.

3. On January 10, 2015 KMJ replied that the registered office of the company at Gwalior has been sealed by the Gwalior District administration. It also provided SEBI the mailing addresses of its directors- Kanchan Kushwah and Nirmala Rathore, and requested SEBI to consider the company's reply as

being made on behalf of the said directors as well. It further stated that a substantial amount due to the investors had already been repaid. SEBI was also requested to provide the entire set of copies based on which the order was passed and that the Directors or their authorized representatives be allowed to inspect the complete file of the case in the office of SEBI. The company sought time of 14 weeks to file their reply from the date of inspection of file in the office of SEBI and also wished to avail a personal hearing in the matter. On April 24, 2015, SEBI replied to the letter from KMJ, providing copies of documents sought for by KMJ. Specifically, with respect to KMJ's request for inspection, it was informed to KMJ that copies of all the relevant documents were enclosed with SEBI's reply. In response to the aforesaid letter from SEBI, KMJ, by way of letter dated May 08, 2015, informed SEBI that it was in the process of examining documents sent by SEBI and would file a detailed reply after the said examination and inspection of the case file. Subsequently no communication had been received from KMJ.

4. An opportunity of personal hearing was given to the Noticees on May 11, 2017 but was subsequently adjourned. Another opportunity of hearing was given to the Noticees on May 22, 2017. Two representatives of KMJ and its director Santoshi Lal Rathore, namely Harshika Bhadrika and Gopika Shah, both being Practising Company Secretaries from GHV & Co. appeared and made *inter alia* the following submissions-

- (i) Reply dated 08 May 2015 to the Interim order dated December 09, 2014 had been filed. However clarifications sought from SEBI in the said letter/reply have not been replied to by SEBI.
- (ii) The current address of Santoshi Lal Rathore is provided in the Letter of Authority given to the representatives.
- (iii) The property of KMJ had been seized in 2011 by the District Administration, after which no sale of property could take place in order to repay investors.

The representatives undertook to submit the following within a period of two days from the date of the Hearing:

- (i) Proof of Repayment to investors

- (ii) Source of funds for repayment to investors
- (iii) Affidavit submitting that all the directions in the Interim order have been complied with till date
- (iv) List of all properties and other information sought for in the Interim order

5. Despite the aforesaid undertaking, there was no reply from the representatives of KMJ and its director Santoshi Lal Rathore. The representatives were contacted over the telephone number provided by them, seeking submission of the documents which they had undertaken to provide. However it was informed by the representatives that despite having conveyed the same to the noticees, they have not received any instructions on providing such information.

6. In the interest of complying with the principles of natural justice, it was decided to accede to the noticees' request for inspection of documents. An opportunity of inspection of documents was provided on June 22, 2017 and the authorized representatives of the Noticees were informed about the inspection. However, neither the noticees nor their representatives availed of the opportunity provided to them. The representatives were also contacted over telephone, but SEBI officials were informed that the representatives did not receive any instruction from the noticees in this regard. The representatives were also requested to intimate the response of the Noticees on the issue of inspection, but no written response was provided by the representatives.

7. I am satisfied that the Noticees were given sufficient opportunities to conduct inspection and respond to the interim order as well as the clarifications sought during the personal hearing. By seeking further information from SEBI, it appears the Noticees are only attempting to adopt dilatory tactics and protract the proceedings against them.

8. According to the interim order, the noticees were engaged in carrying out a scheme wherein money was mobilised from the public through a lump sum

payment plan as well as regular instalment plan and was used to purchase land in many parts of the country. KMJ claimed to be engaging in development and maintenance of agricultural land. The available documents indicated that commission received by the company for such transactions was almost 5.5 times the cost of the land. In the interim order, after considering the available documents, a prima facie view was taken that the scheme in question satisfied the four tests of a collective investment scheme(CIS) as defined in section 11AA of the SEBI Act, 1992, namely that - there was pooling of contributions, contributions were made with a view to receive assured realisable value, the contributions were managed on behalf of the investors and the investors did not have day to day control over the management of the scheme. The submissions made by the noticees do not address the prima facie conclusions in the interim order regarding the nature of the mobilisation of funds under various schemes to be a CIS. The replies from the noticees are in the nature of seeking additional information from SEBI and avoiding a reply on merits of the nature of fund mobilisation. In its reply dated January 10, 2015, the noticees have also submitted that *"the Company has already paid substantial sum to its clients and therefore, no malafides or illegal motives can be attributable to the Company and its Directors."* Besides this, there is no additional information received by SEBI from the side of the noticees relating to the allegation in the interim order which are relevant for adjudication of the issue.

9. I have perused the contents of the interim order and do not find any reason to differ with the prima facie conclusion arrived at in the interim order. In the absence of any evidence provided to refute the findings in the interim order, I am compelled to reiterate that the activities of the noticees constitute a Collective Investment Scheme in terms of section 11AA of the SEBI and the same has been carried out by the noticees without seeking a registration from SEBI thereby contravening section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations. I also note that in terms of regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, dealing in

securities shall be deemed to be a fraudulent or an unfair trade practice if it involves 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 without obtaining the necessary registration from SEBI. Relevant extracts of the aforesaid legal provisions are reproduced below:

Section 12(1B) of the SEBI Act, 1992

"12.

...

(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, 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

"3. No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme."

Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

"(t) 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."

10. I note that the noticees were inter alia directed by the interim order not to dispose off any of the properties or alienate the assets of the existing scheme. However, complaints were received bringing to SEBI's notice that KMJ had sold properties after the interim order despite the restrictions imposed on such alienation. The information received was shared with the

Tehsildar of Bemetra, Chhattisgarh, within whose jurisdiction the said properties are situated. It was confirmed by the Office of the Registrar by letter dated December 29, 2016 that the alleged sales had infact taken place by way of sale deed Nos. 1505, 1506, 1507, 1664 and 1665. As part of the sale deed documentation copies of extracts of the minutes of the KMJ's board meeting were also enclosed, a perusal of which makes it amply clear that KMJ has actively flouted SEBI's direction imposing a restraint on disposal /transfer of its assets. The restraint orders were put in place in order to ensure that properties forming part of the scheme which was created using investors' money is not alienated to their detriment.

11. The aforesaid sale of properties by KMJ Land Developers Ltd. was brought to the notice of the representatives of the noticees during the personal hearing. The representatives claimed not to have any knowledge of the sale and promised to file an affidavit confirming that there has been no violation of directions contained in the interim order. However, as noted earlier in this Order, the representatives failed to provide any information or file an affidavit on the aforesaid lines, on the ground that the noticees had not given them any instruction to do so. The noticees have also not submitted any evidence to the effect that amounts raised from the aforesaid sale of properties were used to make refunds to the investors. The evasive and non-cooperative conduct of the noticees sufficiently confirms lack of bonafides on the part of the noticees.

DIRECTIONS

12. In view of the above, in the interest of investors and the securities market, I, in exercise of the powers conferred upon me under Sections 11(1), 11B and 11(4) thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:

- (i) KMJ Land Developers India Ltd. (PAN: AADCK4402G) and the noticee directors namely, Santoshi Lal Rathore (PAN: AEXPR6319A), Kanchan

Rajawat Kushwah (PAN: AKLPR9493H), Nirmala Rathore (PAN: AEUPR2841G), Gopal Prasad Gupta (PAN: N.A.) , Mr. Dilip Jain (PAN: N.A.), Sunil Singh (PAN: N.A.), Mathura Bai (PAN: N.A.) and Sunil Singh Kushwah (PAN: N.A.) are jointly and severally liable to wind up its existing collective investment schemes and refund the money collected by it under the schemes with returns which are due to the investors as per the terms of offer within a period of one month from the date of this order. The refund shall be made through 'Bank Demand Draft' or 'Pay Order'. Upon completion of the refund as directed above, within a further period of seven days, KMJ Land Developers India Ltd. and its directors namely, Santoshi Lal Rathore, Kanchan Rajawat Kushwah and Nirmala Rathore shall submit a winding up and repayment report (WRR) to SEBI in accordance with the CIS regulations. The WRR shall be supported by the proof of the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds along with a certification of such repayment from two independent Chartered Accountants. In the event of failure by KMJ Land Developers India Ltd. and its noticee directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the noticees.

- (ii) KMJ Land Developers India Ltd. and the noticee directors shall not alienate or dispose off or sell any of the assets of KMJ Land Developers India Limited except for the purpose of making refunds to its investors as directed above. The proceeds from any such alienation shall be deposited in an Escrow Account opened with a nationalised bank.
- (iii) KMJ Land Developers India Ltd. and the noticee directors shall be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to investors are

complied with, as directed at sub-paragraph (i) above to the satisfaction of SEBI and repayment completion certificate is submitted to SEBI and for a further period of seven years from the date of completion of the refund, as directed above.

- (iv) The noticee directors shall be restrained from holding position as directors or key managerial personnel of any listed company for a period of 4 years from the date of this Order.

13. A copy of this Order shall be forwarded to -

- (i) the Chief Secretary of the State of Chhattisgarh for information, records and necessary action, with specific reference to the observations contained in paragraph 10 of this Order; and,
- (ii) all the recognised stock exchanges and registered depositories for necessary compliance with the above directions.

Place: Mumbai

G. MAHALINGAM

Date: July 27, 2017

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA