

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 cum show cause notice dated December 09, 2015 in the matter of Sunplant Bio Energy Private Limited (SBEPL).

In respect of:

SR. No.	NOTICEES	PAN	DIN/CIN
COMPANY			
1.	Sunplant Bio Energy Private Limited	AAPCS3390F	U24100WB2011PTC158737
PROMOTERS / DIRECTORS			
2.	Awdhesh Kumar Singh	AKQPS6527G	00301404
3.	Girija Shankar Kumar	AKAPK2774R	00355512
4.	Sumanta Sinha	ALBPS3314F	03573218
5.	Neeraj Pathak	BAZPP2860B	03561265
6.	Sunil Kumar Jha	AMHPJ3198H	03566733
7.	Subir Gupta	BONPG5600Q	07133112
8.	Padmalochan Nayak	AHZPN2835J	06966981

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- Securities and Exchange Board of India (“SEBI”), vide an ex-parte interim order dated December 09, 2015 (“interim order”), had *prima facie* observed that Sunplant Bio Energy Private Limited (“SBEPL” or “the company” in short) and its promoters / directors, namely Shri Awdhesh Kumar Singh, Shri Girija Shankar Kumar, Shri Sumanta Sinha, Shri Neeraj Pathak, Shri Sunil Kumar Jha, Shri Subir Gupta and Shri Padmalochan Nayak (“noticees”), were illegally mobilizing funds from the public through schemes in the nature of Collective Investment Schemes (“CISs”) without obtaining certificate of registration from SEBI and thus contravened section 12(1B) of the

Securities and Exchange Board of India Act, 1992 (“the SEBI Act”) read with Section 11AA of the SEBI Act, 1992 and Regulation 3 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (“the CIS Regulations”). The noticees were also alleged to have contravened regulation 4(2)(t) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 (“the PFUTP Regulations”), which was brought into effect from September 06, 2013.

2. Prior to the passing of the interim order, a preliminary enquiry was conducted by SEBI into the alleged activities of mobilization of funds by the noticee company. Based on the preliminary enquiry, SEBI vide interim order cum show cause notice dated December 09, 2015 issued *inter alia* the following directions against SBEPL and its present and past Directors:-
 - a. Not to collect any fresh money from investors for its existing schemes;
 - b. Not to launch any new schemes/plans or float any new companies to raise fresh moneys;
 - c. Not to dispose of any of the properties or alienate the assets of the existing schemes;
 - d. Not to divert any funds raised from customers/investors, 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 SBEPL;
 - f. To furnish all the information sought by SEBI, vide letter dated March 14, 2014, including –
 - i. Scheme-wise amount mobilized since inception till date;
 - ii. Details of scheme-wise list of customers/investors;
 - iii. List of investors who have been refunded;
 - iv. Audited financial statements for last three years.
3. SBEPL and its abovementioned promoters / directors were also advised, vide the said interim order, to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act, 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 money collected from the investors under the scheme(s) alongwith interest, if any, promised to investors therein;
 - ii. Directing them to wind up such scheme(s);

- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
4. The said interim order came into force with immediate effect. The interim order was served on the company and Shri Sunil Kumar Jha by way of hand delivery. In respect of Shri Neeraj Pathak and Shri Sumanta Sinha, the interim order was served by way of affixture at their last known addresses. The interim order was served on Shri Subir Gupta and Shri Padmalochan Nayak by way of newspaper publication. Shri Awdhesh Kumar Singh and Shri Girija Shankar Kumar have acknowledged receipt of interim order through their respective letters dated February 05, 2016.
5. None of the noticees, except Shri Girija Shankar Kumar and Shri Awdhesh Kumar Singh, has filed any reply to the interim order-cum-SCN.
6. Shri Girija Shankar Kumar, through his letter dated December 28, 2015 *inter alia* requested for time of 45 days for submitting his reply to the interim order-cum-SCN. Thereafter, Shri Girija Shankar Kumar and Shri Awdhesh Kumar Singh, through separate letters both dated February 05, 2016, made identical submissions which are summarized below:
- i. They were appointed in Sunplant Bio-Energy Pvt. Ltd. as directors on 10/02/2011 and they resigned from the post of director on 30/04/2011. During their tenure, no amount was received as mentioned in the interim order. They could not start the business activity as per the objective of the company, therefore, they resigned from the post of directors and another Board of Directors took over the management of the company.
 - ii. During their tenure of directorship, there was neither any plan / brochure issued nor any amount received as mentioned in the interim order.
 - iii. They are in no way connected with the company after their resignation.
7. I observed that Shri Awdhesh Kumar Singh and Shri Girija Shankar Kumar, the noticee nos. 2 & 3, have not rebutted the preliminary findings made in the interim order regarding nature of schemes and the fund mobilizations thereunder. They have merely tried to extricate themselves from the affairs of the company on the ground that they had resigned from the directorship of the company prior to the fund raising.

8. An opportunity of personal hearing was granted to all the noticees in order to comply with the principles of natural justice and the same was scheduled on May 22, 2017. Notice regarding the said personal hearing was published by SEBI on April 28, 2017 through Kolkata Edition of The Statesman (English) and Anand Bazar Patrika (Bengali) in respect the noticee nos. 1, 2, 4, 5 & 7. Similarly, in respect of noticee no. 8, publication of notice was done on April 28, 2017 in Bhubaneswar and Balasore Editions of Times of India (English) and Dhvani Pratidhwani (Odiya) respectively. In respect of noticee nos. 3 & 6, the newspaper publication was carried out on April 28, 2017 in the Patna Edition of Times of India (English) and Hindustan (Hindi). However, even after the service of notice effected through newspaper publications, none of the noticees appeared for the hearing nor submitted any reply or sought any extension of time. In view of the same, I am convinced that sufficient opportunities have been granted to the noticees and they are not keen to avail the same. I further note that except the noticee nos. 2 & 3, none of the noticees has filed any written reply/submission to the interim order-cum-SCN. In view of these facts and circumstances, I deem it appropriate to decide the matter *ex-parte* on the basis of material available on record, in respect of noticee nos. 1 & 4-8. In respect of the noticee nos. 2 & 3, the submissions made by them have been considered along with other material available on record.
9. I have examined the allegations levelled against the noticees in the interim order and the other material available on record. According to the interim order, the noticees were engaged in carrying out Social Forestry Scheme (*Sunplant Social Forestry Mission*) and Bio-Fuel Scheme (*Sunplant's Bio-Fuel Mission*), wherein money was mobilised from the public through a lump sum payment plan as well as regular instalment plan. In the interim order, after considering the available documents, a *prima facie* view was taken that the schemes in question satisfied the four tests of a collective investment scheme (CIS) as defined in section 11AA of the SEBI Act, 1992, namely (i) whether there was pooling of contributions for purposes of a scheme; (ii) whether contributions were made with a view to receive assured realisable value; (iii) whether the contributions were managed on behalf of the investors; and (iv) whether the investors did not have day to day control over the management of the scheme. I observe that the basic allegation against the noticees is that they were involved in illegal fund mobilizing activity, without obtaining registration as a CIS and thereby violated section 12(1B) read with Section 11AA of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the PFUTP Regulations. As stated above, the noticees have failed to address the *prima facie* conclusions in the interim order regarding the nature of the

mobilisation of funds under various schemes to be a CIS. In this regard, I observe that even the noticee nos. 2 & 3, who have responded to the interim order-cum-SCN, have not rebutted the findings in the interim order regarding the nature of mobilization of funds but have merely tried to distance themselves from the schemes of the company.

10. 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 reiterate that the activities of the company as described in the interim order constitute Collective Investment Schemes in terms of section 11AA of the SEBI and the same have been carried out by the company 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."

11. Having arrived at the findings as above, I now proceed to examine the submissions made by the noticee nos. 2 & 3, namely Shri Awdhesh Kumar Singh and Shri Girija Shankar Kumar. The said noticees in their replies have *inter alia* submitted that they had resigned from the directorship of the company on April 30, 2011 which was prior to fund raising or floating of *schemes* by the company. They have further submitted that during their tenure of directorship, neither any plan / brochure was issued nor was any amount received by the company. They have contended that they could not start the business activity as per the objective of the company and, therefore, they had resigned from the post of director. Subsequently, another Board of Directors had taken over the Management of the company. The said noticees have further submitted that they were in no way connected with the company after their resignation. Therefore, they should not be involved in the current proceedings by SEBI.
12. I have considered the said submissions made by noticee nos. 2 & 3. In this regard, I observe from information available on MCA21 portal that Shri Awdhesh Kumar Singh and Shri Girija Shankar Kumar had indeed resigned from directorship of the company on April 30, 2011. Further, I note from the balance sheet of the company for Financial Year 2011-12 that the company had a liability of Rs.4.88 Crores as on March 31, 2012 on account of 'Advance from Customers' which appears to be the money mobilized by the company from investors under the aforesaid *schemes*. I also note that the corresponding figure mentioned for Financial Year 2010-11 (as on March 31, 2011) is Nil. Thus, it appears that the company has mobilized money from investors under the aforesaid *schemes*, during the financial year 2011-12. However, I note from the Memorandum of Association of the Company that Shri Awdhesh Kumar Singh and Shri Girija Shanker Kumar are the promoters of the Company and held 50% shares each at the time of incorporation of the Company. Further, it is seen from the balance sheet of the company for the FY 2011-12 that both the notices continued to hold 50% shares each of the Company as on March 31, 2012. Thus, it appears that even after resigning from the directorship on April 30, 2011, the said two persons were still holding 100% control of the company as on March 31, 2012. As has been pointed above, the company had raised funds from public under the schemes during the FY 2011-12. Thus, it is clear that during the period when the company had raised funds under its CIS schemes in FY 2011-12, the said two

noticees were together holding 100% shares of the company and were having total control over the affairs of the company. In view of the same, I do not find any merit in the submissions made by the said noticees that they had no role in the fund raising by the company under the referred schemes. The same merely appears to be an attempt on their part to wriggle out of the legal responsibility arising out of the misdeeds of running unauthorised money mobilization schemes in the nature of CIS.

13. In view of the above observations and findings, I conclude that Sunplant Bio Energy Private Limited and its present and past directors / promoters, namely Shri Awdhesh Kumar Singh, Shri Girija Shankar Kumar, Shri Sumanta Sinha, Shri Neeraj Pathak, Shri Sunil Kumar Jha, Shri Subir Gupta and Shri Padmalochan Nayak, have contravened the provisions of section 12(1B) read with Section 11AA of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, by floating collective investment schemes without obtaining registration from SEBI.
14. I note from the records that there is no evidence available to indicate that the company was involved in fund raising activities post the insertion of the clause (t) in Regulation 4(2) of the PFUTP Regulations with effect from September 06, 2013. In view of the same, I am inclined to drop the charges of violation of Regulation 4(2)(t) of the PFUTP Regulations, made against the the noticees in the interim order. However, the same does not lessen the gravity of the violations of the abovementioned provisions of SEBI Act, 1992 and the CIS Regulations by the noticees.
15. As observed above, the noticees have failed to furnish the details sought by SEBI including the details of the investors, amounts mobilised from them and their whereabouts. In the absence of the above said vital information, it is difficult to ascertain the total amount of money mobilized by the company; the period during which the mobilization continued and the number of investors affected by the schemes of the Company. Considering the violations committed by the noticees in launching and operating schemes in the nature of CIS without obtaining registration from SEBI and the huge amounts said to be collected by them from the investors, I deem it necessary to issue appropriate directions to the noticees.

DIRECTIONS

16. In view of the foregoing and in the interest of investors and the securities market, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11B and 11(4) thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:

- (a) SBEPL and its promoters / directors, namely Shri Awdhesh Kumar Singh, Shri Girija Shankar Kumar, Shri Sumanta Sinha, Shri Neeraj Pathak, Shri Sunil Kumar Jha, Shri Subir Gupta and Shri Padmalochan Nayak, 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 three months 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, SBEPL and its present directors, namely Shri Sunil Kumar Jha and Shri Subir Gupta, 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 SBEPL and its promoters / directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the noticees.
- (b) SBEPL and its above named promoters / directors shall not alienate or dispose of or sell any of the assets of SBEPL except for the purpose of making refunds to its investors as directed above.
- (c) SBEPL and its above named promoters / directors shall with immediate effect 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 (a) above

to the satisfaction of SEBI and WRR is submitted to SEBI and for a further period of four years from the date of completion of the refund, as directed above.

- (d) The above named promoter / directors of SBEPL 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.

17. This Order shall be without prejudice to the right of SEBI to initiate prosecution proceedings under Section 24 and adjudication proceedings under Chapter VIA of the Securities and Exchange Board of India Act, 1992 against SBEPL and its above named promoters / directors, for the violations as found in this Order.

18. This order shall come into force with immediate effect. A copy of this Order shall be forwarded to -

- (i) all the recognised stock exchanges and registered depositories for necessary compliance with the above directions; and
- (ii) the Ministry of Corporate Affairs for information.

Date: September 18, 2017

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA