

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 March 31, 2015 in the matter of BNP India Developers and Infrastructure Limited (BNP).

In respect of:

SR. No.	NOTICEES	PAN	DIN/CIN
COMPANY			
1.	BNP India Developers and Infrastructure Limited	-	U45200MP2009PLC022303
PROMOTERS/DIRECTORS			
2.	Neelesh Singh Narwaria	-	02957549
3.	Devendra Kumar Sahu	-	06892158
4.	Som Datta	-	06951151
5.	Kedar Nagar	-	03339250
6.	Anil Kumar Pachhoriya	-	03589113
7.	Daya Nand	-	01868368
8.	Raghvendra Singh Narwaria	-	01451353
9.	Genda Bai	-	02636699

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1. Securities and Exchange Board of India ("SEBI"), after a preliminary enquiry, had passed an ex-parte interim order cum show cause notice dated March 31, 2015 ("interim order"), wherein it had *prima facie* observed that BNP India Developers and Infrastructure Limited ("BNP" or "the company" in short), was involved in illegal mobilization of funds from the public through schemes in the nature of Collective Investment Schemes ("CISs") without obtaining certificate of registration from SEBI and thus had 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. Accordingly, the following directions *inter alia* were issued against BNP and its directors, namely Shri Neelesh Singh Narwaria, Shri Devendra Kumar Sahu, Shri Som Datta, Shri Kedar Nagar, Shri Anil Kumar Pachhoriya, Shri Daya Nand, Shri Raghvendra Singh Narwaria and Ms. Genda Bai (“the noticees”), vide the abovementioned interim order cum show cause notice:

- i. not to collect any fresh money from investors under its existing schemes;
- ii. not to launch any new schemes or plans or float any new companies to raise fresh moneys;
- iii. to immediately submit the full inventory of the assets including land obtained through money raised by the company;
- iv. not to dispose of any of the properties or alienate the assets including land obtained directly or indirectly through the money raised by the company;
- v. not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company;
- vi. to furnish all the information/details sought by SEBI vide letter dated July 17, 2014 within 15 days from the date of receipt of this order, including,
 - a) Details of amount mobilized and refunded till date,
 - b) Scheme wise list of investors and their contact numbers and addresses,
 - c) the list of investors to whom land has been allotted and got registered,
 - d) list of investors who have been repaid,
 - e) Audited Accounts for the last three years, and
 - f) PAN of the company and all the Directors (past and present).

2. BNP and its abovementioned promoters / directors were also advised, vide the said interim order cum show cause notice (SCN), to show cause as to why appropriate directions under the SEBI Act, 1992 and the CIS Regulations including directions in terms of Regulations 65 and 73 of the CIS Regulations should not be issued against them.

3. The said interim order came into force with immediate effect. The interim order was served on the company and all its above named promoters / directors, except Shri Kedar Nagar, by way of newspaper publication. Shri Kedar Nagar vide his letter dated May 05, 2015 has acknowledged receipt of the interim order. None of the noticees, except Shri Kedar Nagar (noticee no. 5), has filed any reply to the interim order-cum-SCN.
4. Shri Nagar, through his letter dated May 05, 2015 *inter alia* made the following submissions:
- i. He was appointed as Business Development Officer by Mr. Raghvendra Singh Narwaria, Chairman / Managing Director of BNP India and BNP Insurance & Investment Services Ltd. vide letter dated 11.08.08. Hence, he was an employee of the company.
 - ii. As an employee, he was assigned field works and he used to collect commissions on sale of plot on advance payment and give collections to the company.
 - iii. Shri Raghvendra Singh Narwaria and Shri L N Mittal, Legal Advisor of the company, had fraudulently without his knowledge and consent made him a director of the company. Hence, his directorship is void-ab-initio.
 - iv. He was not aware of his directorship with the company. In fact, he came to know about the same when SEBI issued letter dated 17.07.2014 to all the directors of the company. Hence, he would be filing complaint against the offenders before appropriate authority and further would provide the complaint copy to SEBI within one week.
 - v. The statement in para 13 of the interim order that there was significant increase in the amounts raised by the company, i.e. from Rs.95 lakhs as on March 2010 to Rs.14.12 Crores as on March 2012 might be a true fact but he was not aware of the abovementioned amount collected by the company. He is not liable for the abovementioned amount, as his appointment as a director was without his consent and thus void.
 - vi. He wanted to testify and was ready to give testimonial evidence against the chairman, other directors, advisory member and the company in good faith for recovering the payments and contributions collected from the investors / customers which have been pooled and utilized by the company for the purpose of the scheme. He was ready to cooperate with SEBI, as directed, to stop the illegal mobilization of funds from public and in other activities regarding the company.

vii. As his appointment as director is illegal and void, he had no liability towards any investor / customer of the company and he should be discharged from the proceedings by SEBI.

5. 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 June 02, 2017. The notice of personal hearing was served on noticee nos. 3, 5 & 6 by Speed Post Ack. Due, and on noticee no. 4 by way of hand delivery. In respect of noticee nos. 1, 2, 8 & 9, the service of notice regarding the said personal hearing was effected by way of publication in newspaper by SEBI on April 07, 2017 through Patrika (Hindi, Gwalior Edition), Dainik Bhaskar (Hindi, Ujjain Edition), Dainik Udgar (Hindi, Bhind Edition), Madhyarajya (Hindi, Morena Edition) and the Times of India (English, Bhopal Edition). In respect of the noticee no. 7, the notice was published on May 05, 2017 in Dainik Jagran (Hindi, Agra Edition) and on May 19, 2017 in The Pioneer (English, Lucknow Edition). However, even after the service of notice in the above manner, none of the noticees appeared for the hearing nor submitted any reply or sought any extension. 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 Shri Kedar Nagar (the noticee no. 5), 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 all the noticees, except Shri Nagar, the noticee no. 5, in whose respect I have also considered the submissions made by him along with other material available on record.
6. 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 a “scheme” of “*purchase / sale, development and maintenance of land*”, wherein money was mobilised from the public through a lump sum payment plan, regular instalment plan and monthly income scheme. 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 no. 5, who has responded to the interim order-cum-SCN, has not rebutted the findings in the interim order regarding the nature of mobilization of funds but has merely tried to distance himself from the affairs and the money mobilization schemes of the company.

7. 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 *prima facie* 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 Act 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. However, 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, which provides that 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. 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.
8. Having arrived at the findings as above, I now proceed to examine the submissions made by Shri Kedar Nagar (noticee no. 5). Shri Nagar in his submissions has not disputed the *prima facie* findings of the interim order regarding nature of fund raising schemes but has merely tried to distance himself from the responsibilities as a director of the company. Shri Nagar in his reply has *inter alia* submitted that he was merely an employee of the company and was made a director in the company, without his consent, by fraud. However, the said noticee has failed to substantiate his claim with sufficient documentary evidence. In fact, I note that Shri Nagar vide his letter dated

August 28, 2014 had submitted to SEBI a copy of his letter dated July 27, 2014 addressed to the Board of Directors of BNP wherein he has *inter alia* stated that due to pre-occupation of his work and heavy overload, he would not be able to continue as director of the company with immediate effect and made a request to consider his resignation and communicate the same to the Registrar of Companies. The same indicates that Shri Nagar had continued as a director of the company with his knowledge and consent, prior to his resignation. In view of the same, I do not find any merit in the submissions made by Shri Nagar that he is not responsible for the affairs of the company as a director. The same merely appears to be an attempt on his part to wriggle out of the legal responsibility arising out of the misdeeds of running unauthorised money mobilization schemes in the nature of CIS by the company.

9. I note from the information obtained from MCA portal that Shri Neelesh Singh Narwaria, Shri Devendra Kumar Sahu and Shri Som Datta are the present directors of BNP. Further, Shri Kedar Nagar, Shri Anil Kumar Pachhoriya, Shri Daya Nand, Shri Raghvendra Singh Narwaria and Ms. Genda Bai have been directors of the company in the past, during the period of fundraising or thereafter, and have subsequently vacated directorship. Hence, these present and past directors are accountable for the acts of the company and are liable for contravention of the provisions of section 12(1B) read with Section 11AA of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, in respect of floating of collective investment schemes by the company without obtaining registration from SEBI.
10. 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. While the company has collected Rs.14.12 Crores as on March 31, 2012 as per its balance sheet for FY 2011-12, 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

11. 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) BNP and its directors, namely Shri Neelesh Singh Narwaria, Shri Devendra Kumar Sahu, Shri Som Datta, Shri Kedar Nagar, Shri Anil Kumar Pachhoriya, Shri Daya Nand, Shri Raghvendra Singh Narwaria and Ms. Genda Bai, 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, BNP and its present directors, namely Shri Neelesh Singh Narwaria, Shri Devendra Kumar Sahu and Shri Som Datta, 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 BNP and its promoters / directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the noticees.
- (b) BNP and its above named directors shall not alienate or dispose of or sell any of the assets of BNP except for the purpose of making refunds to its investors as directed above.
- (c) BNP and its above named 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 directors of BNP 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.

12. 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 BNP and its above named directors, for the violations as found in this Order.

13. 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 29, 2017

Place: Mumbai

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