

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(4) AND 11B OF THE 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 AND REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICE RELATING TO SECURITIES MARKET) REGULATIONS, 2003.

IN THE MATTER OF –

COMPANY		CIN	PAN
1.	M/S FUTURE GOLD INFRABUILD INDIA LIMITED	U70101MP2009PLC022305	AABCF3920E
DIRECTOR		DIN	PAN
2.	DHIRENDRA SINGH KUSHWAH	02699749	BGGPK7521R
3.	SATYENDRA SINGH	02699756	CDDPS5928P
4.	VINEET KUMAR PHALKE	05112694	APDPP0190C
5.	AFASAR KHAN	06791975	CLHPK5064N
6.	DINESH SINGH BHADORIYA	02722808	AJJPB1169R
7.	RAJKUMAR KUSHWAH	02441190	NOT AVAILABLE

BACKGROUND –

- 1.1 Securities and Exchange Board of India (“SEBI”) vide an *Ex Parte Interim Order cum Show Cause Notice* dated March 13, 2015 (“**Interim Order**”), issued the following directions against M/s Future Gold Infrabuild India Limited (“**Future Gold**”) and its Directors based on a *prima facie* observation that the fund mobilising activity carried out by the company under the garb of a real estate business for the sale, purchase and development of agricultural land fell within the parameters of a “collective investment scheme” as defined in Section 11AA of the SEBI Act, 1992 (“**SEBI Act**”), –

15. “... I, in exercise of the powers conferred upon me under Section 11(4) and 11B of the SEBI Act, 1992 and Regulation 65 of SEBI (Collective Investment Schemes) Regulations, 1999 (“**CIS Regulations**”), hereby direct M/s Future Gold Infrabuild India Limited (PAN: AABCF3920E) and its Promoters/Directors, viz. Mr. Dharendra Singh Kushwah (PAN: BGGPK7521R), Mr. Satyendra Singh (PAN: CDDPS5928P), Mr Vineet Kumar Phalke

(PAN: APDPP0190C), Mr. Afasar Khan (PAN: CLHPK5064N) and Mr Dinesh Singh Bhadoriya (PAN: AJJPB1169R):

- 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 Future Gold out of the amounts collected from the “applicants”/investors under its existing schemes;*
 - f. *to furnish all the information sought by SEBI, including*
 - i. *copies of all the relevant documents of the company viz. application form, agreement, certificate issued by the company etc.,*
 - ii. *the details of amount mobilized and refunded till date,*
 - iii. *Scheme wise list of investors and their contact numbers and addresses, including*
 - *List of investors to which land has been allotted and got registered, and*
 - *List of investors who have been refunded.*
16. *The above directions shall take effect immediately and shall be in force until further orders.*
17. *This Order shall also be treated as a show cause notice. Future Gold and its abovementioned Promoters/Directors may show cause as to why appropriate directions under the SEBI Act and CIS Regulations including directions for winding up of such plans/schemes in terms of Regulations 65 and 73 of the CIS Regulations should not be issued against them.*
18. *Future Gold 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. They may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.”*

1.2 As per the Interim Order, Future Gold and its abovenamed Directors (excluding Rajkumar Kushwah, entity at no. 7 of page 1) were *prima facie* found to have violated Section 12(1B) read with Section 11AA of the SEBI Act and Regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations, 2003**”). The relevant legal provisions are reproduced as under –

A. SEBI ACT, 1992.

SECTION 11AA – COLLECTIVE INVESTMENT SCHEME.

- (1) *“Any scheme or arrangement which satisfies the conditions referred to in sub section (2) shall be a collective investment scheme.*
- (2) *Any scheme or arrangement made or offered by any company under which –*

- a. *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;*
- b. *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;*
- c. *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*
- d. *the investors do not have day to day control over the management and operation of the scheme or arrangement.”*

SECTION 12(1B) – REGISTRATION OF STOCK BROKERS, SUB BROKERS, SHARE TRANSFER AGENTS, ETC.

(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: ... “

B. SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999.

REGULATION 3 – NO PERSON OTHER THAN COLLECTIVE INVESTMENT MANAGEMENT COMPANY TO LAUNCH COLLECTIVE INVESTMENT SCHEME.

- (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.*

C. SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES) REGULATIONS, 2003.

4. PROHIBITION OF MANIPULATIVE, FRAUDULENT AND UNFAIR TRADE PRACTICES.

- (2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:*
 - 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.*

- 1.3 The Interim Order was forwarded to Future Gold and its abovenamed Directors (excluding Rajkumar Kushwah entity at no. 7 of page 1) vide SEBI letter dated March 16, 2015, at the Registered Office address as obtained from the Ministry of Corporate Affairs website i.e. *MC21 Portal*. However, vide letter dated May 13, 2015, Future Gold informed SEBI that it had not received the Interim Order on account of having changed their Registered Office address.

- 1.4 As the Interim Order could not be delivered to Future Gold and its Directors, the Interim Order was served to them by way of a newspaper publication on November 24, 2015. No reply was however, received by SEBI from Future Gold and its Directors.
- 1.5 Future Gold and its Directors were thereafter granted an opportunity of personal hearing on October 26, 2016. The proceedings however, were adjourned on that date.
- 1.6 Thereafter, a fresh opportunity of personal hearing was granted to Future Gold and its Directors on July 24, 2017, on which date the aforementioned entities failed to appear.

FINDINGS –

- 2.1 At the outset, I note that sufficient opportunities have been granted to Future Gold and its Directors to file their submissions and also to avail of an opportunity of hearing in respect of the instant proceedings arising out of the Interim Order. However, Future Gold and its Directors have failed to file their reply to the Interim Order and have also not attended the personal hearing. In view of the aforesaid facts, I deem it appropriate to decide the matter *ex parte* on the basis of the material available on record.
- 2.2 In the instant proceedings, the allegations levelled against Future Gold and its Directors are that they were involved in mobilization of funds from the public without obtaining registration as a Collective Investment Scheme (“CIS”) and as a result, *prima facie* violated Section 12(1B) read with Section 11AA of the SEBI Act and Regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the PFUTP Regulations, 2003.
- 2.3.1 To adjudicate on the aforementioned allegations, the “Schemes” offered by Future Gold require examination *vis-a-vis* the four ingredients enlisted in Section 11AA, which are the characteristics of a Scheme that constitute a CIS.
- 2.3.2 Based on the Interim Order, I have appreciated the material available on record and make the following observations –
- I. Future Gold and its Directors were engaged in carrying out *Schemes* wherein money was mobilised from the public through lump sum payment plan/regular instalment plan towards the purchase and allotment of agricultural land, which was neither identifiable nor distinguishable at the time of execution of the ‘*Application cum Agreement*’ between the Company and investors or upon payment of consideration amount by such investors. Further, the following is also noted from the ‘*Application cum Agreement*’ –

“... Since fragmentation into smallest size of land may not be practicable, feasible, permissible under relevant revenue and local laws, the applicant shall have requisite share alongwith other allottees/ transferees in a particular piece of land. Future Gold shall execute/procure execution and registration of sale deed ensuring the title and interest of allottees/transferees in the joint holding with other applicant. Accordingly, symbolic possession of the plot shall be handed over to the customers. ... The Title Deeds pertaining to the sale of the said property shall be kept in the safe custody of trustee appointed by Future Gold.”

- II. An investor in the *Schemes* for which contributions were invited, is entitled to an ‘expected cost of product at the end of term’ or in other words, return or profit.
- III. The ‘*Application cum Agreement*’ states – ‘... the Company shall have the right to develop and maintain the said property in consultation with experts and customer shall not ordinarily interfere with the method and mode of development and maintenance of the said property’. From the aforesaid, it is evident that the lands stated to be purchased by the investors under the *Schemes* are managed on their behalf and such investors do not have day-to-day control over its development and maintenance.

2.3.3 Upon a consideration of the above, I find that the *Schemes* in question satisfy the four requirements of a CIS as defined in Section 11AA of the SEBI Act, viz. –

- a. There was pooling of contributions;
- b. Contributions were made with a view to receive assured realisable value;
- c. The contributions were managed on behalf of the investors, and
- d. The investors did not have day to day control over the management of the *Schemes*.

2.4 I have perused the contents of the Interim Order wherein it is recorded that as on March 31, 2013, Future Gold mobilized an amount of approximately ₹41 Lakhs from investors. From the material available on record, it is also observed that Future Gold issued Registration Certificate in response to the ‘*Application cum Agreement*’, to several of its investors till July 31, 2014.

2.5 It is noted from the Interim Order that Future Gold and its Directors failed to co-operate with SEBI in furnishing important information such as details of *Scheme* wise amount mobilized by the Company alongwith the number of investors under the *Schemes*, etc. Further, as stated in this Order, Future Gold and its Directors failed to respond to the Interim Order either through a reply or appearance at the personal hearing. In the absence of vital information concerning the *Schemes* launched by Future Gold, it is difficult to

ascertain the actual amount of money mobilized by the Company; period for which the mobilization continued and the number of investors affected by such *Schemes*.

- 2.6 As no evidence has been furnished to refute the findings contained in the Interim Order, I am compelled to reiterate that the *Schemes* of Future Gold constitute a CIS in terms of Section 11AA of the SEBI and the same has been carried out by Future Gold and its Directors without seeking a registration from SEBI thereby contravening Section 12(1B) of the SEBI Act read with Regulation 3 of the CIS Regulations.
- 2.7 Further, I find that Future Gold and its Directors have contravened the provisions of Regulation 4(2)(t) of the PFUTP Regulations, 2003 (inserted with effect from September 6, 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.
- 2.8 As per information available on the *MCA21 Portal*, the details of the present and past Directors of Future Gold, including the dates of appointment/cessation as Directors, are as under:

TABLE I							
	NAME OF THE PERSON	CAPACITY	DIN	PAN	RESIDENTIAL ADDRESS	DATE OF APPT.	DATE OF CESSATION
1.	SATYENDRA SINGH	DIRECTOR	02699756	CDDPS5928P	80/3 GRAM RIDOULI, TEHSIL: ATER, BHIND, MADHYA PRADESH-477111, INDIA	27.02.2012	CONTINUING
2.	VINEET KUMAR PHALKE	DIRECTOR	05112694	APDPP0190C	SHABD PARTAP ASHRAM, DIST.: GWALIOR, MADHYA PRADESH-474012, INDIA	23.01.2012	CONTINUING
3.	AFASAR KHAN	DIRECTOR	06791975	CLHPK5064N	BAG FARHAT AEJA, HUJUR, BHOPAL, MADHYA PRADESH- 462010, INDIA	17.01.2014	CONTINUING
4.	DINESH SINGH BHADORIYA	DIRECTOR	02722808	AjjPB1169R	E-93, BALWANT NAGAR, THATIPUR, GWALIOR, MADHYA PRADESH-474011, INDIA	27.02.2012	17.01.2014
5.	DHIRENDRA SINGH KUSHWAH	DIRECTOR	02699749	BGGPK7521R	P. O. BAJHAI, P. S. -UMARI, BHIND, MADHYA PRADESH-477001, INDIA	27.02.2012	14.08.2014
6.	RAJKUMAR KUSHWAH	ADDITIONAL DIRECTOR	02441190	—	—	11.03.2013	27.08.2013

- 2.9 I note that the persons at serial nos. 1–3 of Table I are the present Directors and continue to be responsible for the affairs of Future Gold. The persons at serial nos. 4–6 of Table I

are past Directors of Future Gold. As Directors, the aforementioned entities are liable for the alleged contraventions by Future Gold.

- 2.10 As far as Future Gold and its Directors i.e. persons at serial nos. 1–5 of Table I, are concerned, this is a Final Order with respect to the findings in the Interim Order and the directions against them are detailed in paragraph 3.1 of this Order.
- 2.11 During the course of these proceedings, it is noticed that Mr. Rajkumar Kushwah (serial no. 6 of Table I), was a Director in Future Gold for the period from March 11, 2013 to August 27, 2013. Future Gold mobilized an amount of approximately ₹41 Lakhs from investors as on March 31, 2013. As stated in the preceding paragraphs, Future Gold and its Directors *inter alia* contravened the provisions of Section 12(1B) read with Section 11AA of the SEBI Act and Regulation 3 of the CIS Regulations. As Mr. Rajkumar Kushwah was omitted to be covered under the directions in the Interim Order, I do not find any reason as to why such directions should not be extended to him in the interest of investors. Accordingly, the directions against Mr. Rajkumar Kushwah are detailed in paragraphs 3.2.1–3.2.2 of this Order.

ORDER –

- 3.1 In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(4) And 11B of the SEBI Act read with Regulation 65 of the CIS Regulations and Regulation 11 of PFUTP Regulations, 2003, hereby direct as under –
- i. The following entities are jointly and severally liable to wind up the existing collective investment schemes and refund the money collected by it under the Scheme 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 –

TABLE II			
COMPANY		CIN	PAN
1.	M/S FUTURE GOLD INFRABUILD INDIA LIMITED	U70101MP2009PLC022305	AABCF3920E
DIRECTOR		DIN	PAN
2.	DHIRENDRA SINGH KUSHWAH	02699749	BGGPK7521R
3.	SATYENDRA SINGH	02699756	CDDPS5928P
4.	VINEET KUMAR PHALKE	05112694	APDPP0190C
5.	AFASAR KHAN	06791975	CLHPK5064N
6.	DINESH SINGH BHADORIYA	02722808	AJJPB1169R

- ii. The refund as directed hereinabove shall be made through banking channels such as demand draft or electronic mode of transfer.
- iii. Upon completion of the refund as directed above, within a further period of seven days, M/s Future Gold Infrabuild India Limited and its present Directors, viz. Mr. Satyendra Singh, Mr Vineet Kumar Phalke and Mr. Afasar Khan, shall submit a Winding Up and Repayment Report (“**WRR**”) to SEBI in accordance with the CIS Regulations. The WRR shall be supported by proof of 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.
- iv. In the event of failure by M/s Future Gold Infrabuild India Limited and its Directors to comply with the directions at sub-paragraphs (i) and (ii) above, SEBI shall initiate recovery proceedings under the SEBI Act against them.
- v. M/s Future Gold Infrabuild India Limited and its Directors shall not alienate or dispose of or sell any of the assets of the company except for the purpose of making refunds to its investors as directed above.
- vi. M/s Future Gold Infrabuild India Limited and its 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 [as directed at sub-paragraph (i) above] are complied with to the satisfaction of SEBI and the WRR is submitted to SEBI and for a further period of **four years** from the date of completion of such refund/repayment to investors.
- vii. The Directors of M/s Future Gold Infrabuild India Limited i.e. entities at serial no. 2–6 of Table II, shall be restrained from holding position as Directors or Key Managerial Personnel of any listed company for a period of **four years** from the date of this Order.

3.2.1 In view of the reasons recorded at paragraph 2.11, Mr. Rajkumar Kushwah is directed to show cause as to why the directions recorded at paragraph 3.1 against M/s Future Gold Infrabuild India Limited and its Directors i.e. entities at serial no. 2–6 of Table II, shall also not apply to him. He shall treat this Order as a show cause notice with respect to himself and shall reply to the same within 4 weeks from the date of this Order. In the event Mr. Rajkumar Kushwah

fails to file a reply or make a request for an opportunity of personal hearing within the said 4 weeks, the findings in this Order with respect to his liability for the illegal mobilisation of funds by M/s Future Gold Infrabuild India Limited shall stand automatically confirmed and the directions at paragraph 3.1(i)–(vii) shall apply to him as well, without there being a fresh Order.

3.2.2 In the interim, however i.e. till completion of the aforesaid period of 4 weeks, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act hereby direct, with immediate effect, that Mr. Rajkumar Kushwah shall not –

- i. access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly;
- ii. associate themselves with any listed company or company intending to raise money from the public, or
- iii. dispose of, alienate or encumber any of its/their assets nor divert any funds raised from the public by way of sponsoring/causing to sponsor or carrying on/causing to be carried on the collective investment schemes.

3.3 This Order shall come into force with immediate effect.

3.4 A copy of this Order shall be forwarded to –

- i. Stock Exchanges and Depositories for their information and necessary compliance.
- ii. Ministry of Corporate Affairs for information

Place: Mumbai
Date: November 6, 2017

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