

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1) 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 July 10, 2013 in the matter of Rose Valley Hotels and Entertainment Limited.

In respect of:

Sr. No.	Noticees	DIN/CIN	PAN
Company			
1.	Rose Valley Hotels and Entertainment Limited	U55101WB1997PLC 085759	AABCR2164G
Directors			
2.	Gautam Kundu	00773899	NA
3.	Ashok Kumar Saha	00939075	NA
4.	Shibamoy Dutta	00774250	NA
5.	Abir Kundu	01517458	NA
6.	Ram Lal Goswami	01320525	NA
7.	Abhijit Dutta	00233374	NA
8.	Lakshmi Narayanan	00418058	NA

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- Securities and Exchange Board of India (“SEBI”), vide an ex-parte interim order-cum-Show Cause Notice (SCN) dated June 10, 2013 (“interim order”), had *prima facie* observed that Rose Valley Hotels and Entertainment Limited (“RVHEL” or “the company”) and its directors 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 thereby, 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”). At the relevant point of time, as per the filings made by the company with the Registrar of Companies (RoC), Gautam Kundu, Ashok Kumar Saha, Shibamoy Dutta, Abir Kundu, Ram Lal Goswami, Abhijit Dutta and Lakshmi Narayanan were the directors of the company.

2. Prior to passing of the interim order, SEBI received a letter dated June 20, 2012, from the Additional Director General of Police, Office of the Director, Bureau of Investigation (E. O.), Assam, Guwahati (hereinafter referred to as “ADGP, Assam Police”), regarding the raising of funds by RVHEL and Rose Valley Real Estates Constructions Limited (hereinafter referred to as “RVRECL”). As per the aforesaid letter, RVHEL and RVRECL were stated to have collectively raised ₹ 1006.70 Crores from the public till February 2012. Further, RVHEL was stated to have launched a scheme titled Rose Valley Holiday Membership Plan (hereinafter referred to as “HMP”) in the year 2010. In the holiday plan, an investor can book a holiday package through payment of monthly instalments and upon maturity, such investor can either avail of the facilities i.e. room accommodation and services or opt for maturity payment i.e. a return on the investment with annualized interest. A brochure, application form containing the terms and conditions of the HMP along with a confirmation certificate evidencing subscription to such HMP, were also annexed with the aforesaid letter.
3. In order to find out whether or not RVHEL was carrying on activities of a CIS, SEBI vide letter dated March 1, 2013, advised RVHEL to submit the following documents relating to the HMP, by March 15, 2013, viz. –
 - (i) Total number of individuals who have subscribed to the plan(s);
 - (ii) Details (number of rooms available, etc.) about the accommodation provided/projected to be provided;
 - (iii) Total number of individuals who have actually availed the services (accommodation) under the plan(s);
 - (iv) Details of assets held by RVHEL;
 - (v) Total amount refunded by RVHEL towards principal investment and towards interest.

4. RVHEL vide letter dated March 15, 2013, and April 02, 2013 replied that it was in 'Time Share' business, which does not come under the purview and jurisdiction of SEBI. Thus the abovementioned information was not provided to SEBI. In order to protect the interests of investors and to ensure that only legitimate investment activities are carried on by RVHEL and no investors are defrauded, SEBI vide interim order cum show cause notice dated July 10, 2013 issued the following directions against RVHEL and its Directors, for preventing them from further carrying on with their fund mobilizing activity by launching 'collective investment scheme' without registration from SEBI :-
- not to collect any money from investors from its existing scheme
 - not to launch any new schemes;
 - not to dispose of any of the properties or alienate the assets of the existing schemes;
 - not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company.
5. The interim order came into force with immediate effect. The noticees were advised to file reply in respect of the interim order and to also indicate whether they desired to avail an opportunity of personal hearing. The interim order was delivered to the company and its five directors, namely, Gautam Kundu, Shibamoy Dutta, Ashok Kumar Saha, Abhijit Dutta and Abir Kundu through hand delivery and affixtures. Reply has been received from the company intimating SEBI of its new address and also from Shibamoy Dutta wherein he stated that the company has decided to wind up its scheme. However, no reply was been received from any of the other directors.
6. In order to comply with the principles of natural justice, an opportunity of personal hearing was granted to the company and its directors on September 07, 2016. The hearing notice to all the noticees except Ashok Kumar Saha and Ram Lal Goswami were delivered. In response to the hearing notice only Abhijit Dutta vide email dated August 30, 2016, submitted that he was appointed as a director for only 4 months in professional capacity and his role was to oversee Engineering functions for a few projects. However, no one appeared on the date of hearing. Subsequently, one of the directors Lakshmi Narayanan vide letter dated September 1, 2016 (received by SEBI on September 7, 2016) submitted that he is unaware of the matter and sought 15 days' time to file his reply. Another opportunity of hearing was granted on October, 19, 2016 to Lakshmi Narayanan, Ashok Kumar Saha and Ram Lal Goswami. The hearing notice was delivered to Ashok Kumar Saha and Ram Lal Goswami through paper publication. In response

to the opportunity of hearing, Lakshmi Narayanan vide letter dated October 18, 2016 submitted that he was not a director of the company till February 2012 and he would need to inspect the documents based on which SEBI passed the order and also sought 15 days more time to file his submission. No reply has been received from Ashok Kumar Saha or Ram Lal Goswami.

7. Considering the fact and circumstances of the case, one more opportunity of hearing was given to the company and its directors on March 03, 2017. The hearing notice was delivered to the company and Abir Kundu by hand delivery, to Gautam Kundu (through the office of the Superintendent, Presidency Correctional Home, Alipore, Kolkata); to Ashok Kumar Saha (through Jharpara Special jail, Bhubaneswar); to Shibamoy Dutta (through the office of the Superintendent District jail, Balasore); to Abhijit Dutta by affixture and to Lakshmi Narayanan by e-mail. Reply was received from Lakshmi Narayanan wherein he stated that he will be present in person or his representative will be present in the hearing. Gautam Kundu replied that his authorized representative would appear on behalf of him as he was not aware of legal proceedings and was also not fit to travel by train for medical reasons. Reply has also been received from Abhijit Dutta's representative stating that they were appearing on his behalf. However, no reply has been received from the company and the other directors.
8. On March 3, 2017 Abhijit Dutta through authorized representatives and Lakshmi Narayanan in person appeared for the personal hearing and made following submissions:-
 - a) Lakshmi Narayanan
 - That he joined the company on April 24, 2013 as an Independent & non-executive director;
 - That before joining the company he had no connection with the company or any of the directors and he was appointed as an expert in the field of hotel running / management, as the company was having 23 hotels, which he was supposed to manage and turn around, making them profitable;
 - That Mr. Chandan Khosla (General Manager) of the company introduced him to the company as an expert in hotel industry;
 - That he resigned from the company on February 7, 2014 and submitted Form 32 in support of his appointment and resignation;
 - That he had not attended any board meeting during the period and he had not received any remuneration from the company apart from the reimbursements.

- That he was not a party to the proceedings before Guwahati High Court against the company.

b) Abhijit Dutta

- That he is a Mechanical Engineer by qualification and he was offered to join the company on June, 2011 and he accepted the offer and joined the company on August 1, 2011;
- That on October 1, 2011, he joined as a non-executive director of the company;
- That he tendered his resignation from the company on January 16, 2012 by an email and the same was accepted by the company w.e.f February 1, 2012. (submitted copies of Form 32 and appointment & acceptance of resignation letters from the company);
- That he joined the company for maintaining, managing and implement various parks and projects of the company, however in the board meeting of January 16, 2017 he was asked to approve the financial statements of the company, about which he had no idea or expertise and he had confrontation with other board members and then immediately he resigned from the company by an email;
- That at the time when he resigned from the company, no investigation was initiated by any agency against the company;
- That at the time when he joined the company he did not understand the obligations and responsibilities of director and his understanding about his job profile was that he has to maintain and manage the parks and projects of the company, which is related to his field of expertise, therefore as a director had never authorised any action or finances of the company.

9. All other noticees failed to appear for the personal hearing. Considering the facts that the personal hearing notice to Ram Lal Goswami remained undelivered and Gautam Kundu from jail responded to the personal hearing notice submitting that he would appear through the authorised representatives, another opportunity of personal hearing was granted to the company and all directors on May 15, 2017 except Abhijit Dutta and Lakshmi Narayanan. In response to the personal hearing notice, Ram Lal Goswami through his wife Ms. Sampa Chakraborty responded vide letter dated April 27, 2017 and submitted that :-

A. Ram Lal Goswami

- (i) That he met with a life threatening accident in November 2010;

- (ii) That he also started suffering from lungs disease soon afterwards and after sometime lost his capacity to work and became totally bed ridden;
- (iii) That he was appointed as a Branch Manager in Rose Valley Resorts and Plantations in the year 1999 and Rose Valley Resorts and Plantations was suddenly shut down in 2001;
- (iv) That he joined as a Branch manager of Rose Valley Chain Marketing System Ltd in 2002 and got promotion in 2006;
- (v) That he was appointed as Director of the agency which Rose Valley Chain Marketing System Ltd had taken from LIC/GIC in 2009 and his salary was increased in 2010;
- (vi) That he was given the additional responsibility of Director on contractual basis in Rose Valley Projects Ltd in May 2010;
- (vii) That he stopped receiving salary in 2013 as he was no longer able to work and soon his job was terminated.
- (viii) That he was in no way involved with Rose valley Hotels and Entertainment Ltd after 2002 and even when he was involved with Rose valley Hotels and Entertainment Ltd., he never received any remuneration.

10. Authorized representatives of Abhijit Dutta vide letter dated March 27, 2017 and July 24, 2017 submitted a detailed reply to the SCN. The submissions are as follows:-

- The representative of Rose Valley Group held a discussion with noticee Abhijit Dutta regarding his availability to join Rose Valley Group. He was informed that they are looking for a senior person who can manage the operations and day to day functioning of RVHEL. He was given a representation that RVHEL is the hospitality venture of Rose Valley Group and it is engaged in the business of running hotels, resorts and amusement parks throughout the eastern part of India. He was also informed that the Rose Valley Group is desirous of aggressively expanding the operations of RVHEL by acquiring and developing new properties.
- That at no given point of time he was given any information or idea that RVHEL, apart from its business of operating hotels, resorts and amusement parks was also engaged in any fund mobilizing activities from the public, by floating or sponsoring or launching collective investment schemes including the HMP as has been mentioned in the impugned Order.

- He was formally issued an offer letter on 18 June 2011 (“Offer letter”) and was offered the position of Director and Chief Executive Officer (“CEO”). The offer letter issued to him clearly described his financial package and roles and responsibilities qua RVHEL. As per the offer letter, he was responsible for the following activities:
 - (i) Operation and Management of the amusement park, hotels and resorts of the company and to make theme self-sustainable profit centres,
 - (ii) To develop comprehensive systems and procedures for running and up-keeping of the amusement parks, hotels and resorts,
 - (iii) To develop an effective marketing set up for the amusement parks, hotels, and resorts,
 - (iv) To lead and guide a team of professionals under him to spread RVHEL’s presence in various states in India and abroad in connection with setting up of amusement parks, hotels, and resorts,
 - (v) To set up newly acquired park and hotel at Sikkim and make it fully operational and commercially viable and
 - (vi) To inspect all RVHEL’s properties on a rotational basis and submit his report and recommendations to Chairman from time to time.
- Thus after considering the offer made by RVHEL and the possible growth opportunities associated with it, he decided to accept the offer made by RVHEL. Subsequently, he was issued an appointment letter on August 1, 2011 (“Appointment Letter”) and was appointed as Director and CEO of RVHEL; the appointment letter further described the role and duties of our client in much more detail.
- That although he was offered the designation of CEO, he in effect was not the executive head of RVHEL and was only engaged in handling the operations, management, and developments of the various hotels and amusement parks of the company. It is submitted that the executive heads of RVHEL for all practical and legal purposes were Mr. Gautam Kundu, Chairman of RVHEL and Mr. Shibomoy Dutta, Managing Director of RVHEL.
- It was further submitted during hearing that under the scheme of the Companies Act, 1956, the designation of CEO is neither a recognized nor a statutory position. There is no specific duties or liabilities attached to the position of a CEO of an unlisted company. In such a scenario, for the purpose of ascertaining the role and liabilities of a CEO of an unlisted company, a reference has to be mandatorily made to the mutually agreed terms and conditions, between the parties i.e. the offer letter and the appointment letter in the present case, his past experience and actual circumstances of this case. At this stage, it is

pertinent to mention that both the offer letter and appointment letter at no given place makes any reference to the alleged HMP Scheme being offered by RVHEL to any prospective investors. It was submitted that a bare reading of these documents would clearly showcase to you that the entire role and responsibility of Abhijit Dutta in RVHEL was to operate, manage, maintain and develop the amusement park, hotels and resorts of RVHEL and he had no connection, role or responsibility in respect of the HMP scheme being offered by RVHEL.

- After two months of his appointment as the CEO, he was offered the position of a non-executive director and was so appointed on October 1, 2001. However, as a result of the said appointment, he was not given any additional role or responsibility. The said appointment also did not lead to any change in the remuneration, benefits or entitlement.
- He continued as a non-executive director only for a brief period of 4 months, and he subsequently tendered his resignation as a non-executive director and CEO of RVHEL on 16 January 2012. RVHEL subsequently accepted the resignation on 31 January 2012.
- It was submitted that during his short tenure of 4 months as a director, he was not a party to any decision making process of RVHEL pertaining to the HMP scheme and thus he cannot be held liable for any wrong doing on the part of RVHEL or its management.
- As far as the alleged HMP scheme is concerned, it is submitted that he became aware about the alleged HMP scheme being offered by RVHEL only after he had joined RVHEL. Upon inquiry, he was informed that the HMP scheme is a standard membership scheme, which is similar to the one being offered by other time share companies. He was further informed that the HMP scheme entitles its members to access and stay at the hotels, resorts and amusement parks of RVHEL for a certain number of days in a calendar year. At this stage, it is pertinent to mention that Noticee as a non-executive director was never informed that the membership of HMP scheme also promised its members, a monetary return on their investments if the investors decided to avail the same.

Lakshmi Narayanan, vide letter dated March 17, 2017 submitted a reply to the SCN in which he reiterated the submissions which were made during the personal hearing on March 3, 2017.

11. In view of the same, I am convinced that sufficient opportunities have been granted to the other noticees and they were not keen to avail of any opportunity granted to them. I further note that except the three noticees, none have even filed any written reply/submission to the interim order

cum show cause notice. 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.

12. I have taken into consideration the interim order and other material available on record. On perusal of the balance sheet filed by the company for the financial year 2012-2013 (as available on MCA portal), an amount of around Rs. 5000 crores is reflected under other current liabilities (refundable liability under membership plan).

13. In the light of the above observations, it is to be determined whether the schemes launched and operated by the noticees are in the nature of Collective Investment Scheme as defined under section 11AA of the SEBI Act. The provisions of section 11AA are referred and reproduced herein below:

“Collective investment scheme.

“(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 company under which,

- (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized 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.”*

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

(3) Notwithstanding anything contained in sub-section (2) 37[or sub-section (2A)], any scheme or arrangement— (i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law

relating to co-operative societies for the time being in force in any State; (ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934); (iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies; (iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952); (v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956); (vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956); (vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982 (40 of 1982); (viii) under which contributions made are in the nature of subscription to a mutual fund; 38[(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,] shall not be a collective investment scheme.]”.

14. In order to prove that the noticees were involved in illegal fund mobilizing activity as alleged in the interim order, without registration in violation of section 12(1B) read with Section 11AA of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations, the "schemes"/plans offered by RVHEL need to be examined. The four ingredients for a CIS activity with respect to RVHEL, are examined as under:

15. RVHEL has submitted that it is in ‘Time Share’ business and therefore will not come under SEBI's purview. On this ground, RVHEL has refused to submit documents in respect of the HMP, to SEBI. On an examination of the material available on record, it is prima facie observed that –
 - a) RVHEL offers different membership plans under the HMP i.e. standard, silver, gold, platinum and diamond, to intending investors.
 - b) When an investor subscribes to a particular plan offered under the HMP, he is required to make monthly payments on advance or instalment basis towards provisional allotment of facilities i.e. room accommodation and services, at resorts or hotels owned and managed by RVHEL.
 - c) The HMP plan once subscribed to, cannot be cancelled nor can the money paid in lieu of the facilities offered be claimed, before the completion of tenure for such plan.
 - d) Upon maturity or completion of tenure for payment of monthly instalments in respect of the relevant HMP plan, the investor becomes entitled to the facilities offered therein. However,

such investor may also cancel the HMP booking upon maturity or completion of tenure for monthly instalments, in lieu of maturity payment for non-utilization of the facilities i.e. the equivalent accumulated credit value under the HMP inclusive of annualized interest.

- e) The rates of annualized interest offered under the various membership plans of the HMP is reproduced below –

Type of Membership Plan	Annualized interest
Standard	11.96% - 17.65%
Silver	11.21%
Gold	12.61%
Platinum	15.38%
Combined Scheme- Diamond	11.2%

16. In his letter to SEBI, the ADGP, Assam Police stated that out of 21.90 Lakh investors of RVHEL, 4.13 Lakh have opted for maturity payment instead of availing the holiday package facilities offered under the HMP. As per the Interim Order passed by the SDM, West Tripura, RVHEL is alleged to have taken "recourse to unilateral and spontaneous cancellation of bookings of hotels in a routine manner so as to make returns" to the investors under the HMP. Further, the Interim Order states that complaints from the public have also been received by the Government of Tripura inter alia alleging RVHEL failed to entertain claims from such investors for maturity payment, on time.
17. From the above, I note that Noticee Company operates investment plans under the garb of selling holiday packages through the holiday plan, offered to the public. The contributions raised from the public in the form of monthly instalments, towards the holiday schemes are ultimately repaid to their subscribers as annuities of varying interest rates, as shown in the table above, by pooling the contributions. The annualized interest - i.e. the payment on maturity in lieu of the package, made the schemes attractive and lured the public to invest in them. The contributors / the public had no control over the scheme plans or the activities of Notice Company.
18. In view of the above, I find that the features of the holiday membership plan offered by Noticee No. 1 qualifies the mandates of a 'collective investment scheme' as defined in section 11AA of the SEBI Act, 1992. In this regard, I observe that even the noticee nos.6,7 & 8, 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.

19. From the above findings and observations, I conclude that the 'scheme' offered by the noticees with a promise of return / annuities satisfies the conditions specified in section 11AA (2) of the SEBI Act and therefore qualify as a Collective Investment Scheme as defined under the said section read with the CIS Regulations. In this context, it is relevant to refer to the observations of the Hon'ble Supreme Court of India in the matter of P.G.F Ltd. & Ors. vs. UOI & Anr. (MANU/SC/0247/2013) (hereinafter referred to as "PGFL Case"). The Hon'ble Court held that:

".....the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act."

Hon'ble Supreme court further held that :-

"...sub-section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from."

20. The requirement of registration and regulation of collective investment schemes as mandated under section 11(2)(c) and 12 of the SEBI Act therefore assumes much importance. The Hon'ble Supreme Court further observed as extracted below:-

"A reading of sub-Section (3) of Section 11AA also throws some light on this aspect, wherein it is provided that those institutions and schemes governed by sub-clause (i) to (viii) of sub Section (3) of Section 11AA will not fall under the definition of collective investment scheme. Therefore, by specifically stipulating the various ingredients for bringing any scheme or arrangement under the definition of collective investment scheme as stipulated under sub- Section (2) of Section 11AA, when the Parliament specifically carved out such of those schemes or arrangements governed by other statutes to be excluded from the operation of Section 11AA, one can easily visualize that the purport of the enactment was to ensure that no one who seeks to collect and deal with the monies of any other individual under the guise of providing a fantastic return or profit or any other benefit does not indulge in such transactions with any ulterior motive of defrauding such innocent investors and that having regard to the mode and

manner of operation of such business activities announced, those who seek to promote such schemes are brought within the control of an effective State machinery in order to ensure proper working of such schemes."

21. In view of the aforementioned observations of the Hon'ble Supreme Court of India in the PGFL Case, and in view of the abovementioned analysis and examination, I find that the activity of fund mobilization by RVHEL with a resultant promise of returns clearly falls within the ambit of 'collective investment schemes' as defined in Section 11AA of the SEBI Act.
22. To launch or carry on the activity of CIS and mobilize public funds from such schemes, it is mandatory under law to obtain a certificate of registration from SEBI. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations. Regulation 3 of the 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'. A person can launch or sponsor or cause to sponsor a collective investment scheme only if it is registered with SEBI as a Collective Investment Management Company. 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. Thus, I am inclined to concur with the prima facie findings in the interim order and find that the actions of Noticee No. 1 are in violation of section 12(1B) read with Section 11AA of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations.
23. As regard to noticee nos. 6, 7 & 8 namely Ram Lal Goswami, Abhijit Dutta, and Lakshmi Narayanan my observations are as below:-
- i) I have considered the submissions made by Ram Lal Goswami during the hearing and the copies of the documents submitted by him evidencing his appointment in the group companies in 1999 as branch Manager in Udaipur and the subsequent promotions till May 2010 when he was appointed as the director of Rose Valley Projects Limited. In this regard, I observe from the information available on MCA21 portal that Ram Lal Goswami was a director of RVHEL for a period from May 17, 2006 to June 27, 2014. Thus as per the MCA records, he was in the board of directors of RVHEL at the time of mobilization of funds. In view of the long period of association

of Ram Lal Goswami with the Noticee Company, I do not find any merit in the submissions made by the said noticee that he had no role in the fund raising by the company under the referred schemes. The same merely appears to be an attempt on his part to wriggle out of the legal responsibility for running the unauthorised money mobilization schemes in the nature of CIS.

- ii) I have considered the submissions of Abhijit Dutta. He was appointed as the CEO of the company on August 1, 2011 and after 2 months he continued as a non-executive director of the company till January 31, 2012. Thus he was associated with the company for a period of 6 months during which money mobilization as explained in abovementioned paragraphs took place. As per his own submissions, he was also overseeing the marketing of company's amusement parks, hotels and resorts amongst other responsibilities. I note that while assuming the position of non-executive director of the company, he had knowledge of HMP Schemes and hence his other submissions, distancing himself from the schemes are not acceptable.
- iii) I have considered the submission of Lakshmi Narayanan. He was an independent director of RVHEL for a period from April 24, 2013 to February 7, 2014 (i.e. for approximately 10 months). I have also considered the fact that Lakshmi Narayanan was appointed as an independent director subsequent to the mobilization of funds by the Noticee Company and had resigned thereafter. In view of the same, the allegation of money mobilization as a director of Noticee No. 1 against Lakshmi Narayanan appears to be unsustainable.

24. In view of the above observations, I hold Rose Valley Hotels and Entertainment Limited (Noticee No. 1) and its directors, namely Gautam Kundu, Ashok Kumar Saha, Shibamoy Dutta, Abir Kundu, Ram Lal Goswami and Abhijit Dutta (Noticee Nos. 2 to 7) 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.

DIRECTIONS

25. 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, which will be

subject to the directions otherwise passed or to be passed by the Hon'ble High Court of Calcutta in various Writ Petitions against Rose Valley Group Companies, including Noticee No.-1:-

- (a) That Rose Valley Hotels and Entertainment Limited and its directors, namely, Gautam Kundu, Ashok Kumar Saha, Shibamoy Dutta and Abir Kundu are jointly and severally liable to wind up the Holiday Membership schemes / plans, floated by them as tabulated at paragraph 15 (e) herein and refund the monies collected from the investors with returns 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';
- (b) Upon completion of the refund as directed above, within a further period of two weeks, Rose Valley Hotels and Entertainment Limited and its present directors, namely Gautam Kundu, Ashok Kumar Saha, Shibamoy Dutta and Abir Kundu, 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;
- (c) In the event of failure by Rose Valley Hotels and Entertainment Limited and Gautam Kundu, Ashok Kumar Saha, Shibamoy Dutta and Abir Kundu, to comply with the above directions, SEBI shall initiate recovery proceedings against them under the SEBI Act;
- (d) Rose Valley Hotels and Entertainment Limited and its directors namely Gautam Kundu, Ashok Kumar Saha, Shibamoy Dutta and Abir Kundu, shall not alienate or dispose of or sell any of the assets of Rose Valley Hotels and Entertainment Limited except for the purpose of making refunds to its investors as directed above;
- (e) Rose Valley Hotels and Entertainment Limited and its directors namely, Gautam Kundu, Ashok Kumar Saha, Shibamoy Dutta and Abir Kundu, shall, with immediate effect and for a further period of 4 years, be
 - (i) restrained from accessing the securities market and

- (ii) prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund to investors are complied with, as directed at sub-paragraph (a) and (b) above from the date of completion of the refund;
- (f) The past directors of the company namely, Ram Lal Goswami and Abhijit Dutta, shall be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, for a period of four years, with immediate effect;
- (g) Gautam Kundu, Ashok Kumar Saha, Shibamoy Dutta, Abir Kundu, Ram Lal Goswami and Abhijit Dutta (Noticee Nos. 2 to 7) shall stand disqualified from holding or assuming position as directors or key managerial personnel of any listed company for a period of 4 years from the date of this Order;
- (h) Considering the above facts and circumstances of the case, I do not deem it fit to continue with the directions passed against Lakshmi Narayanan in the interim order dated July 10, 2013.

26. 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 action in compliance with the above directions; and
- (ii) the Ministry of Corporate Affairs and Enforcement Directorate.

Date: November 15, 2017

Place: Mumbai

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