

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of IPN Developers & Allied Limited

In respect of:

S. No.	Name of the Entity	PAN	CIN/DIN
1.	IPN Developers & Allied Limited	AADCI0486L	U70101MP2012PLC029241
2.	Shri Nageshwar Panchal	ALTPP5193K	06379966
3.	Shri Dilip Devda	BIGPD0520B	06466196
4.	Shri Shankar Lal Yadav	AGOPY4099F	06466213
5.	Shri Hari Singh	DQZPS1931J	06466231
6.	Shri Dashrath Singh Panwar	ASHPP0730D	06379962
7.	Shri Rajesh Panchal	BRDPP6591G	06379970

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1. IPN Developers & Allied Limited (hereinafter referred to as “**IDAL**”/ “**the Company**”) is a company incorporated on September 18, 2012 with CIN: U70101MP2012PLC029241. Its registered office is at 1st floor, Reliable trade Centre, T.I.T, 80-Station Road, Ratlam (MP) - 457 001.
 2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received complaints from some persons against IDAL alleging illegal mobilization of funds and undertook an enquiry to ascertain whether IDAL had launched collective investment schemes without obtaining a certificate of registration from SEBI.
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Order in the matter of M/s IPN Developers & Allied Limited

3. On enquiry, SEBI *prima facie* found that IDAL is engaged in fund mobilizing activities from the public, which is in the nature of a Collective Investment Scheme. Therefore, SEBI, vide an *interim ex-parte* Order dated June 22, 2015 (hereinafter referred to as “**interim order**”) passed the directions against IDAL and its Directors, viz. Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav, Shri Hari Singh, Shri Dashrath Singh Panwar and Shri Rajesh Panchal (hereinafter collectively referred to as ‘**Noticees**’).
4. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded.
- a) The scheme/plan offered by IDAL by way of “*Purchase/sale and development of land*” is nothing but a smokescreen for its fund mobilizing activity, which squarely falls under the definition of ‘*collective investment scheme*’ as defined in Section 11AA of the SEBI Act. Such fund mobilizing activity by IDAL is without obtaining certificate of registration from SEBI and thus contravening the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.
 - b) Considering the fact that no prior registration was obtained by IDAL in respect of the aforesaid activities in the nature of ‘*collective investment scheme*’, thus it can be viewed that IDAL and its directors/promoters are illegally mobilizing funds from the public, which *prima facie* amounts to a fraudulent practice in terms of Regulation 4(2) (t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003.
5. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated June 22, 2015 with immediate effect-.

M/s IDAL & Allied Limited (PAN: AADCI0486L) and its Directors/Promoters viz. Mr. Nageshwar Panchal (PAN: ALTPP5193K), Mr. Dilip Devda (PAN: BIGPD0520B), Mr. Shankar Lal Yadav (PAN: AGOPY4099F), Mr. Hari Singh (PAN: DQZPS1931J), Mr. Rajesh Panchal (PAN: BRDPP6591G) and Mr. Dasbrath Singh Panwar (PAN: ASHPP0730D)-

- 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 IDAL out of the amounts collected from the "purchasers"/investors under its existing schemes;*
- f. to furnish all the information sought by SEBI, including,*
 - i. Copies of all the documents pertaining to the scheme, issued to the investors including the document/agreement executed with the investors,*
 - ii. scheme-wise list of investors as on date and their contact numbers and addresses,*
 - iii. the details of amount mobilized till date,*
 - iv. the details of amount refunded till date along with the details of mode of payment, duly certified by a CA,*
 - v. Copies of the registration documents/ sale deed in respect of all the land/properties purchased by IDAL including the one located at Barkbedakalan,*
 - vi. all documents/information and clarifications sought by SEBI, vide letters dated May 05, 2014, and July 22, 2014 and not yet submitted.*

6. The interim order also directed the IDAL and its Directors/promoters to show cause as to why appropriate directions under the SEBI Act and CIS Regulations including directions, prohibiting them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and/or for refunding the investors, any money/assets collected from them under the scheme along with the requisite

interest and for winding up of such plans/schemes in terms of Regulations 65 and 73 of the CIS Regulations, should not be issued against them.

7. Vide the said interim order, IDAL, its abovementioned Directors/promoters were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
8. *Service of interim order:* The copy of the said interim order was sent to the Noticees vide letters dated June 25, 2015 and July 14, 2015. The said interim Order was delivered to Shri Nageshwar Panchal, Shri Dilip Devda and Shri Dashrath Singh Panwar. Subsequently, vide notification dated December 16, 2015 published in newspaper *Dainik Bhaskar, Indore* Noticees were notified by SEBI, that interim order dated June 22, 2015 was issued against them and they were given a final opportunity to submit their reply within 15 days at the given address.
9. Subsequently, vide letter dated May 15, 2017 noticees were granted opportunity of personal hearing on August 07, 2017. The said hearing notice was delivered by way of SPAD to the company, Shri Dilip Devda, Shri Shankar Lal Yadav, Shri Rajesh Panchal and Shri Dashrath Singh Panwar. Thereafter vide notification dated June 29, 2017 published in newspaper *Ajay Bharat, Bhopal Edition*, notification dated June 29, 2017 published in newspaper *Patrika, Bhopal Edition*, notification dated June 29, 2017 published in newspaper *Chaitanya Lok, Dhar Edition*, notification dated June 29, 2017 published in newspaper *Times of India, Bhopal Edition*, notification dated July 04, 2017 published in newspaper *Uday Desh, Morena Edition*, notification dated July 04, 2017 published in newspaper *Dabang Duniya, Ujjain Edition* and notification dated July 04, 2017 published in newspaper *Patrika, Gwalior Edition*, the Noticees were notified by SEBI that they will be given the final opportunity of being heard on August 07, 2017 at the time and the venue mentioned therein.
10. The hearing date was rescheduled to August 16, 2017 and the same was intimated to the noticees vide hearing notice dated August 01, 2017. The said hearing notice was delivered by way of SPAD to Shri Shankar Lal Yadav, Shri Dilip Devda, Shri Rajesh Panchal and Shri

Dashrath Singh Panwar. However, the hearing notice could not be served to all the noticees. In view of the same, the hearing was rescheduled and the final opportunity of personal hearing was granted to the noticees on November 27, 2017. The intimation of the said hearing was made to Shri Shankar Lal Yadav, Rajesh Panchal and Shri Dashrath Singh Panwar vide hearing notice dated August 24, 2017. Further, vide notification dated September 14, 2017 published in newspaper *The Pioneer, Bhopal Edition* and notification dated September 14, 2017 published in newspaper *Dainik Bhaskar, Ratlam Edition*, Noticees namely IDAL, Shri Nageshwar Panchal and Hari Singh were notified by SEBI, they would be given the final opportunity of being heard on November 27, 2017 at the time and the venue mentioned therein.

11. *Hearing and submissions:* Shri Dilip Devda vide his letter received by SEBI on November 13, 2017 submitted his reply and made the following submissions-

- a) *That he was made director in IDAL fraudulently by company's management.*
- b) *That they took his signature on papers without his information and performed activities in his name without his knowledge.*
- c) *That he was the agent for the company and was never acting as a director. Thus he is not at all responsible for any work done by the company in his name.*
- d) *In this reference, he enclosed his Identity Card*

12. Rest of the Noticees have not filed any replies as on date. All the Noticees neither availed the opportunity of hearing on November 27, 2017 nor sought any adjournment of the personal hearing.

13. I have considered the allegations and materials available on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.

- (1) *Whether the arrangement/scheme as alleged in the interim order has been launched and was running by IDAL?*
- (2) *Whether the major attributes of the arrangement fall within the definition of collective investment schemes*

as defined in section 11AA of SEBI Act?

- (3) *If so, whether the noticees have violated Section 12(1B) 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 and are thus liable*

ISSUE No. 1- Whether the arrangement/scheme as alleged in the interim order has been launched and was running by IDAL?

14. I have perused the interim order dated June 22, 2015 for the allegation of *launching and running a collective investment scheme*. I note that none of the noticees has made any submission before me on the allegation of launching of collective investment scheme. In view of the same, I am compelled to proceed in the matter on the basis of material made available on record. On the basis of material available on record the following is *interalia* noted-

- a) As per the letter of IDAL dated June 28, 2013, IDAL claimed to have accepted amounts from interested buyers as "*advances for booking of plots*" and issued brochure to public offering its schemes/plans.
- b) The payments plans as per the brochure copy forwarded by the complainant indicates that IDAL has *interalia* offered the following plans-

Single Installment Plans (*One Time Plan-5 Year 5 Month LP-1, 8 Year 5 Month LP-2, 11 Year LP -3, 16 Year 6 month LP-4, 21 Year 6 Month LP-5*)

Instalment Plans (*1 yr CP Plan-A, 2 yr CP Plan-B, 3 Year CP Plan-C, 4 yr CP Plan-D, 5 yr CP Plan-E and 12 yr CP plan-F, 5 yr RI Plan-1, 5.6 yrs RI Plan-2 and 6 yr RI Plan-3.*)

One of the plans (as furnished by the company) is reproduced below:

IPN Project "A" R I- 5 years

<i>S.No</i>	<i>Size of Plot (sq.ft)</i>	<i>Plot Rate Sq.ft (Rs)</i>	<i>Cost of Plot</i>	<i>Installment (Rs)</i>				<i>Appreciated Value (Rs)</i>
				<i>MLY</i>	<i>QLY</i>	<i>HLY</i>	<i>YLY</i>	
1	100	350	35000	100	295	580	1150	8600
2	100	350	35000	200	590	1170	2300	17200
3	100	350	35000	300	885	1760	3450	25800
4	100	350	35000	400	1180	2350	4600	34400
5	100	350	35000	500	1475	2940	5750	43000
6	200	350	70000	600	1770	3530	6900	51600
7	200	350	70000	700	2065	4120	8050	60200
8	200	350	70000	800	2360	4710	9200	68800
9	200	350	70000	900	2655	5300	10350	77400
10	200	350	70000	1100	2950	5890	11500	86000
11	300	350	105000	1200	3245	6480	12650	94600
12	300	350	105000	1300	3540	7070	13800	103200
13	300	350	105000	1400	3835	7660	14950	111800
14	300	350	105000	1500	4130	8250	16100	120400
15	300	350	105000	1600	4425	8840	17250	129000
16	600	350	210000	1700	4720	9430	18400	137600
17	600	350	210000	1800	5015	10020	19550	146200
18	600	350	210000	1900	5310	10610	20700	154800
19	600	350	210000	2000	5605	11200	21850	163400
20	600	350	210000		5900	11790	23000	172000

On perusal of the above plan *IPN Project A Plan R 1- 5 Years*" it is observed that under the said plan/scheme if the "*purchaser*"/investor invested in "*Monthly Instalment plan*", where the "*Cost of Plot*" is mentioned as Rs. 35000/-the investor has to pay Rs. 100/- as monthly instalment for a period of 5 years. After the expiry of the agreed period, he/she would receive an amount of Rs. 8,600/- as "*appreciated value of plot*"/expected sum payable/return over and above the "*Cost of plot*" which is Rs. 35,000/-, *i.e* the investor is entitled for an amount of Rs. 43,600/-.

- c) IDAL has submitted vide its letter dated June 28, 2013 that the buyers are required to submit application form to buy the so claimed "property" through IDAL. As per the clauses of the sample *Application Form for provisional Allotment of Plot* submitted by IDAL, the investor is required to remit the amount in favor of IDAL which will be treated as advance towards sale of consideration, however the registered sale deed will be executed only after receiving full consideration of plot along with the late payment (if any). As per the sample *Application Form* submitted by IDAL, it also identifies the plot, which is to be purchased. However, when the company was asked to support its contention by providing certified true copy of the application forms executed by IDAL with its customers mentioned at S. No. 1 to 10 of its list of investors, IDAL failed to submit the same. Therefore, there is no evidence provided by the company, which indicates that the application was indeed for allotment of plot as claimed by IDAL.
- d) The company in its letter dated June 28, 2013 has claimed that the allotment letter is issued to the investors who purchase land through the scheme/offer made by the company and submitted sample "*Allotment Letter*" containing the columns for information w.r.t. Plot No, Plot Size, Plot Type, Khasra No., Village, District, State, allotting, provisionally, the plot described in the said letter to the investors. . The sample "Allotment Letter" so submitted also had the clause that the company shall execute the Sale Deed in respect of this allotment only after receipt of full consideration as per the plan agreed upon. However, when the company was asked to support its contention by providing certified true copies of allotment letter issued to its customers mentioned at S. No. 1 to 10 of its list of investors, IDAL failed to submit the same. Therefore, there is no evidence

provided by the company, which indicates that Allotment letter had identifiable plots as claimed by IDAL in its sample allotment letter.

- e) The company in its letter dated June 28, 2013 has claimed that the agreement to Sell is issued to the customers who purchases land through company's scheme/offer and submitted sample copy of the '*Agreement to Sell*'. In this regard SEBI vide letter dated July 22, 2014 asked IDAL to provide certified true copies of issued Agreement to Sell executed with its customers mentioned at S. No. 1 to 10 of its list of investors to support its contention, however IDAL neither submitted any copy of Agreement to Sell executed by IDAL with the investors nor any registered copy of Agreement to Sell. Therefore, there is no evidence provided by the company to evidence that they are actually entering into the agreement to sell.
- f) I note that the complainant forwarded the certificate issued by IDAL to a *purchaser*/investor in the schemes of IDAL pursuant to investing in the plans, the contents of which inter alia are as under-

Certificate Date of commencement	Plan No./Term	Mode of payment	Consideration Amount	Installment of subscription on payment	Subs. Due date	Expected sum payable on expiry of term	Date of last pmt.	Expiry Date	No. of units
16/11/13	R1	MLY	30000	500	16/12/13	43,000	16/10/18	16/11/18	5

** 10% bonus will be paid on consideration amount of regular instalment is not lapsed.*

It is noted from the above "*Certificate*" issued by the company (provided by the complainant) that it does not contain any reference to any plot at all and it appears to be a pure scheme for returns with expected sum payable on expiry of term. Therefore, I disbelieve the contention of IDAL that the scheme was for the purpose of allotment of plot.

- g) Further, I note that the Balance Sheets pertaining to FY 2011-12, 2012-13 and 2013-14 reflects that IDAL has collected a sum of Rs. 3,23,400/- claimed as Advance for booking of plots. The extract of the same is as under-

Liabilities	31.03.12 (Amount Rs.)	31.03.13 (Amount Rs.)	31.03.14 (Amount Rs.)
Advance for booking of plots	Nil	Nil	3,23,400
Total	Nil	Nil	3,23,400

- h) I note that on being asked about the said plans offered and money collected by the company, IDAL, vide its letter dated June 28, 2013 submitted that it accepted amounts against booking from interested buyers and had collected money (amount of Rs. 3,61,700/-) from 30 investors for "*Scheme-I, Project A*" (*Plan No. R1*) located at Barkhedakalan, however it is noted that the name of the investor mentioned in the complaint is not included in the list furnished by the company. Further on analyzing the information furnished by IDAL *vis a' vis* the material available on record furnished by the complainant, it is observed that the brochure furnished by the complainant contains details of about 12 "*Installment Payment Plans*" and 5 "*Single Installment Plans*", however, the copy of brochure furnished by the company mentions only one plan, *viz.* "*Plan RI- 5 Years*". I find that on being asked to clarify on the said discrepancies, the company failed to give any clarification. In view of the same, I do not find the list of investors and brochure furnished by the company to be authentic and reliable. It is further noted that the company also failed to provide the executed copies of either the application forms or allotment letters or any agreement/contract executed with its "*purchasers*" / investors for investing in the scheme offered by the company. In view of the above, I conclude that the noticee failed to provide any evidence to support its contention that the plans were offered for the purposes of allotment of plots.
- i) The company in its letter dated June 28, 2013 stated *IDAL bought tracts of land initially and continues to acquire and create a huge land bank.....then develop it and sell it in small chunks to buyers.* In this regard, IDAL was required to provide the

- a) Title deeds of the property stated to have been owned by the company,
- b) Whether IPN Developers is registered with local state government of Madhya Pradesh, as builder/real estate developer, for developing the aforesaid property located at Barkhedakalan, If yes, provide the copy of same,
- c) The details of development activities carried out by the company from date of purchase till date.

In response to this, IDAL, vide letter dated July 30, 2014 sought 30 days' time to provide documents/information sought by SEBI. SEBI, vide letter dated August 01, 2014, advised the company to provide the requisite data by August 07, 2014. Copies of the said letter were also marked to all the directors of the company. However, till date the company and the directors have not furnished the required data/documents sought by SEBI.

15. In the facts and circumstances as mentioned above coupled with the failure on the part of the company to furnish any supporting documents or clarifications sought by SEBI and absence of any reply, I am inclined to conclude that the contention of the noticees have no merit. I also conclude that the arrangement/scheme as alleged in the interim order has been launched by IDAL raising at least an amount of Rs. 3,61,700/- from at least 30 investors during at least FY 2013-14. The number of investors, funds mobilized and the period of mobilization has been collated from the documents submitted by IDAL and therefore, it is concluded that the actual number of investors, amount mobilized and the period of mobilization could be more than the above indicated figures specially for the reason that name of the investor mentioned in the complaint is not included in the documents furnished by the company.

ISSUE No. 2- Whether the major attributes of the arrangement fall within the definition of collective investment schemes as defined in section 11AA of SEBI Act?

16. On perusal of the material available on record, I now analyse to consider whether the four conditions mentioned in section 11AA (2) of SEBI Act are satisfied in the instant arrangement. Section 11AA of SEBI Act reads as follows:

"(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.]

(i) Any scheme or arrangement made or offered by any [person] under which,

(i) 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;

(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) [or sub-section

(2A)], any scheme or Arrangement:

i. made or offered by a co-operative society

ii. under which deposits are accepted by non-banking financial companies iii. being a contract of insurance

iv. providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund

v. under which deposits are accepted under section 58A of the Companies Act, 1956

vi. under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society

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;
[ix. such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,]
shall not be a collective investment scheme."

17. Perusal of the above section shows that any arrangement or scheme to be considered as collective investment scheme has to satisfy the four conditions mentioned in section 11AA (2) of SEBI Act and the same should not fall within any of the exceptions mentioned in section 11AA (3) of SEBI Act.

i. 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.

I note that IDAL had circulated brochures soliciting subscription/ purchase of various plans offered by it, having an expected refund amount/expected sum payable. Admittedly, the Company accepted the money from the customers for subscribing to its plans/ schemes in the name of Payment Plans. I note that IDAL vide its letter dated June 28, 2013, had admitted that it has collected money from interested buyer/investors. The financial statements furnished by the company also indicates that the IDAL has accepted money from public and collected at least a sum of Rs. 3,61,700/- from investors under its various plans. I note that the investors were offered an expected sum payable on expiry of term of plans for the money they had invested which is reflected from the certificate issued by IDAL to the investors detailing the consideration amount paid by the investors and the expected sum payable amount. Further, there is no document on record submitted by the noticees to evidence that the money collected from investors was actually demarcated / segregated investor wise. These facts show that the 'contributions, or payments made by the investors, are pooled and utilised by IDAL for the purposes of the scheme or arrangement', the scheme being to accept contributions/ payments for expected sum payable. Hence, the instant "scheme"/plan satisfies the first condition stipulated in Section 11AA (2) (i) of the SEBI Act.

- 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.***

As discussed above, the Company collected funds from its customers through various Installment plans. It is observed from the clauses/contents in the "Certificate" furnished by the complainant and the details of a payment plan provided by IDAL that the schemes/plans offers its investors expected return upon maturity of plan. In light of the above, it is observed that the contribution/investment is made by the investors in the scheme with a view to receive/earn profit/return. In view of the same, I conclude that the second condition, which stipulates that the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property as stipulated in Section 11AA (2) (ii) of the SEBI Act is also fulfilled.

- iii. The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors and***
iv. The investors do not have day-to-day control over the management and operation of the scheme or arrangement.

As per the information available on record, it is apparent that IDAL was collecting money from public at large. At the end of the agreement period, the "Purchasers"/investors are entitled to get an amount as "expected sum payable"/return/profit. The terms and conditions in the Certificate states that the *General Terms & Conditions and other Terms of Rule Books as amended from time to time, shall be deemed to be part of this Certificate*", which indicates that the company has the unilateral authority to change the general terms & conditions and other terms of rule books at any time. Further, I observe from the brochure inviting subscription in the plans offered by IDAL that it does not have any feature, which states that the money collected under the plans can be managed by the investor themselves or they have any say or control as to how and where the money has to be invested by the company. In view of the said facts, it is apparent that IDAL solely manages the

investments on behalf of "*purchasers*"/investors and the investors do not have day-to-day control over the management and operation of the '*Scheme*'. It is therefore, clear that the instant schemes/plans satisfy the conditions stipulated in Section 11AA(2)(iii) & (iv) of the SEBI Act.

18. Section 11AA (3) of SEBI Act provides for situations when any scheme or arrangement is not considered as collective investment scheme. Section 11AA(3) of SEBI Act reads as follows

3) *Notwithstanding anything contained in sub-section (2), 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 cooperative 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;*

shall not be a collective investment scheme

In the instant matter, I note that IDAL has not claimed any of the aforesaid exclusions and thus the abovementioned exclusions under 11AA (3) of SEBI Act are not applicable to IDAL.

19. In view of satisfaction of all the four conditions and non-applicability of exclusions, I find that the instant arrangement /schemes falls within the definition of collective investment

schemes. As all the four conditions specified under section 11AA(2) of the SEBI Act are satisfied in this case, the schemes/ plans promoted, launched, carried on and operated by the noticees are in the nature of CIS in terms of section 11AA(1). In this regard, it would be relevant to place reliance on the observations of the Hon'ble Supreme Court, made in the matter of PGF Limited & Ors. Vs. Union of India & Anrs. (Civil Appeal No. 6572 of 2004):

"Therefore, the paramount object of the Parliament in enacting the SEBI Act itself and in particular the addition of Section 11AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with the fond hope that such investment will get appreciated in course of time. Certain other Section of the people who are worstly affected are those who belong to the middle income group who again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.

38. Since it was noticed in the early 90s that there was mushroom growth of attractive schemes or arrangements, which persuaded the above vulnerable group getting attracted towards such schemes and arrangements, which weakness was encashed by the promoters of such schemes and arrangements who lure them to part with their savings by falling as a prey to the sweet coated words of such frauds, 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.

...

40. It will have to be stated with particular reference to the activity of the PGF Limited, namely, sale and development of agricultural land as a collective investment scheme, the implication of Section 11AA was not intended to affect the development of agricultural land or any other operation connected therewith or put any spokes in such sale-cum-development of such agricultural land. It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for

investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded It is, therefore, apparent that all other schemes/arrangements operated by all others, namely, other than those who are governed by sub-section 3 of Section 11AA are to be controlled in order to ensure proper working of the scheme primarily in the interest of the investors.

... ..

42. Therefore, in reality what sub-section (2) of Section 11AA intends to achieve is only to safeguard the interest of the investors whenever any scheme or arrangement is announced by such promoters by making a thorough study of such schemes and arrangements before registering such schemes with the SEBI and also later on monitor such schemes and arrangements in order to ensure proper statutory control over such promoters and whatever investment made by any individual is provided necessary protection for their investments in the event of such schemes or arrangements either being successfully operated upon or by any misfortune happen to be abandoned, where again there would be sufficient safeguards made for an assured refund of investments made, if not in full, at least a part of it.

... .. In the light of our above conclusions on this ground it will have to be held that Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development.

... ..

It is needless to state that as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF

Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion.

... ..

53. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of the PGF Limited, namely, the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act and consequently the order of the second respondent dated 06.12.2002 is perfectly justified and there is no scope to interfere with the same. In the light of our above conclusions, the PGF Limited has to comply with the directions contained in last paragraph of the order of the second respondent dated 06.12.2002"

ISSUE 3- If so, whether the noticees have violated Section 12(1B) 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 and are thus liable:

20. 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. The prohibition is on every person. 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, sponsor, or launch a 'CIS'. A person can launch, sponsor, or cause to sponsor a CIS 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.
21. In respect of the allegation of violation of reg. 4(2)(t) of SEBI (Prohibition of Fraudulent and

Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (FUTP Regulations, 2003), it may be noted the FUTP Regulations was amended with effect from Sept 06, 2013 and clause (t) to reg. 4(2) was inserted which reads as follows:-

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

(a)...

"(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."

22. Subsequent, to introduction of reg. 4(2) (t) of FUTP Regulations, 2003, the illegal mobilization of funds by means of collective investment schemes are deemed to be fraudulent. The company carrying on unregistered collective investment schemes and all those persons who are directors as on and after the date of introduction of reg. 4(2) (t) of FUTP Regulations, 2003 on September 06, 2013 will be liable for action, for violation of reg. 4(2) (t) of FUTP Regulations, 2003. In the instant case, I note that IDAL ran scheme after introduction of reg. 4(2) (t) of FUTP Regulations, 2003 on September 06, 2013 also. Therefore, the company and all those persons who are directors as on and after the date of introduction of reg. 4(2) (t) of FUTP Regulations, 2003 on September 06, 2013 will be liable for action.
23. I note that Shri Dilip Devda has submitted that he was made a director in IDAL fraudulently by the company's management who took his signature on papers without his information and performed activities in his name without his knowledge. That he was the agent for the

company and was never acting as a director and thus he is not at all responsible for any work done by the company in his name. In this regard, I note that Shri Dilip Devda himself has admitted to have signed papers. Further, I note that he had a pecuniary relationship with the company and was receiving gratification from the company. I note that though he admits to acting as the agent for the company, he denies being a director of the company. I note that apart from a mere claim that he has fraudulently been made a director, he has not submitted any documents to show that he has raised such a grievance with the company specially when he was acting as agent of the company and could have communicated the same to the company. In the absence of any record to substantiate his claim, I am inclined to go as per MCA records.

24. From the documents available on record/MCA records, I find that the present Directors in IDAL are Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav. I also note that, Shri Hari Singh, Shri Dashrath Singh Panwar, who were earlier Directors in IDAL, have since resigned. The details of the appointment and resignation of the directors are as following:

Name of the directors	Date of appointment	Date of cessation
Shri Nageshwar Panchal	September 18, 2012	Continuing
Shri Dilip Devda	January 02, 2013	Continuing
Shri Shankar Lal Yadav	January 02, 2013	Continuing
Shri Hari Singh	January 02, 2013	May 24, 2015
Shri Dashrath Singh Panwar	September 18, 2012	January 02, 2013
Shri Rajesh Panchal	September 18, 2012	January 02, 2013

25. In the instant case, the scheme/plan offered by IDAL is nothing but a cover-up for its fund mobilizing activity, which squarely falls under the definition of '*collective investment scheme*'. It is

also observed that such fund mobilizing activity by IDAL was without obtaining a certificate of registration from SEBI, contravening the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. I note that as discussed earlier, IDAL has launched and run this collective investment scheme raising at least an amount of Rs. 3,61,700/- from at least 30 investors during at least FY 2013-14. I also note that Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav were directors of IDAL since 2012-13 till present date. In view of the violation committed by these directors and the company, they are liable to be issued appropriate directions and be debarred for an appropriate period of time.

26. I note that Shri Hari Singh was Director of IDAL during the FY 2012-13, 2013-14 and 2014-15 and resigned on May 24, 2015. A person cannot assume the role of a director in a company in a casual manner. The position of a 'director' in a public company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof. Any director cannot therefore wriggle out from liability. A director who is part of a company's board shall be responsible and liable for all acts carried out by a company. Accordingly, Shri Hari Singh was also responsible for all the deeds/acts of the Company during the period of his directorship and was obligated to ensure IDAL does not undertake fund mobilizing activity without obtaining a certificate of registration from SEBI and thus contravening the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. In view of the failure to discharge the said responsibility, the aforesaid director is also liable to be issued appropriate directions and to be debarred for an appropriate period of time.
27. The activity of illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to carry on any collective investment scheme by any person amounts to a fraudulent practice in terms of Regulation 4(2)(t) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities Market), 2003. Considering the fact that Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh were directors of IDAL as on the date of introduction of reg. 4(2) (t) of FUTP Regulations, 2003 on September 06, 2013 and no prior registration was obtained by IDAL in respect of the aforesaid activities in the nature of 'collective investment scheme', IDAL and Shri Nageshwar

Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh were illegally mobilizing funds from the public and these directors were causing IDAL to carry on any collective investment scheme which amounts to a fraudulent practice in terms of Regulation 4(2) (t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003. In view of the violations of Regulation 4(2) (t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 by Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh, the aforesaid directors are also liable to be debarred for an additional period of time.

28. I note that Shri Dashrath Singh Panwar and Shri Rajesh Panchal were appointed as Directors of IDAL on September 18, 2012 and resigned on January 02, 2013. I note that the aforesaid directors resigned prior to the mobilization of funds by the Noticee Company. There is no material available on record to show that the said directors were involved at the time of launching of the scheme. In view of the same, the allegation of money mobilization as a director or causing to carry on any collective investment scheme of IDAL against Shri Dashrath Singh Panwar and Shri Rajesh Panchal appears to be unsustainable and thus the benefit of doubt is extended to these directors and no directions are issued against them.
29. Section 12 (1B) of SEBI Act stipulates that 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 unless he obtains a certificate of registration from the Board in accordance with the regulations. The stipulation is on every person who sponsors or cause to be sponsored the collective investment scheme. It may be seen in a typical sponsoring of collective investment scheme, the company though in the eye of the law sponsors the schemes, the same is cause to be sponsored by the directors who are involved in the sponsoring of the scheme. In view of this, the prohibition not to launch the unregistered CIS is on the Company as well as the directors independently. Even otherwise after the introduction of reg. 4(2) (t) of CIS Regulations, the unregistered collective investment activity is considered as fraud under FUTP Regulations. It is a settled principle of law, that in case of fraud the corporate veil of the company can be lifted to see the real perpetrators of fraud. Since the Company is

caused to sponsor the unregistered CIS schemes, which includes collection of contributions as part of the scheme, by the directors on behalf of the Company, it would be appropriate that the corporate veil in this regard can be pierced to see the real perpetrators. The SEBI Act along with the CIS Regulations, provide for various remedies in the interest of investor protection. Section 11B of the SEBI Act being one of the pivotal measure for the purpose of investor protection under which remedial tool of refund is envisaged. CIS Regulations provides for two different set of measures under Regulation 65(c) and Regulation 65(d) of the CIS Regulations. Under Regulation 65(d) of CIS Regulations, SEBI has powers to direct the disposal of the assets of the collective investment scheme in a manner as may be specified in the directions which can be by way of winding up of the scheme. Under Regulation 65(d) of CIS Regulations, SEBI has powers requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the collective investment scheme. SEBI Act also has prescribed the other set of measures under section 11B of the SEBI Act. Therefore, SEBI in exercise of its mandate under Regulations 65 of the CIS Regulations read with Section 11B of the SEBI Act can take various investors measures in case of unregistered collective investment advisory activities. The said measures can include winding up of the schemes and direction to refund the money collected. While the Schemes can be directed to be wound up for repayment of the contributions of the investors, it does not absolve the obligation of the directors who collected the money on behalf of the company by causing the company to launch unregistered collective investment schemes from repayment. Therefore, the directors who collected the money on behalf of the company are also liable for repayment under section 11B of the SEBI read with regulation 65(d) of CIS Regulations to refund the money collected by them, during their tenure of directorship. Accordingly, the contributions collected are liable to be repaid both by winding up of the scheme of the company and by repayment by the directors in their personal capacity. However, as stated earlier the liability of the directors is independent and the same can be enforced by way of direction to make refund under regulation 65(d) of CIS Regulations read with section 11B of SEBI Act.

30. In view of the observations made in this order, 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:

- (i) IDAL shall wind up the existing Collective Investment Schemes and refund the money collected by the said company under the schemes with returns which are due to 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' both of which should be crossed as "Non-Transferable" or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.
- (ii) The present directors of IDAL namely Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav shall ensure that directions under sub para (i) is complied with.
- (iii) Upon completion of the refund as directed above at sub para (i), within further period of seven days, IDAL and its present directors namely Shri Nageshwar Panchal, Shri Dilip Devda, and Shri Shankar Lal Yadav shall submit a winding up and repayment report (WRR), separately or jointly, 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 peer reviewed Chartered Accountants who are in the panel of any public authority or public institution.
- (iv) In case of failure of IDAL to repay the investors as per directions at para (i), Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh, (all in their personal liability to make the refund) jointly and severally with IDAL, shall refund the money collected by the said company during their respective period of directorship under the schemes with returns which are due to investors as per the terms of offer within

a further period of two months. The refund shall be made through 'Bank Demand Draft' or 'Pay Order' both of which should be crossed as "Non-Transferable" or through any other appropriate Banking channels, with clear identification of beneficiaries and supporting bank documents.

- (v) Upon completion of the refund as directed above in sub para (iv), Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh shall file a report of such completion of payment with SEBI, within further period of seven days, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.
- (vi) In event of failure by IDAL, Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh to comply with the directions as sub para (i) and (iv) above, SEBI shall initiate recovery proceedings under the SEBI Act against the IDAL, Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh.
- (vii) IDAL, Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh shall not alienate or dispose of or sell any of their assets except for the purpose of making refunds to its investors as directed above.
- (viii) IDAL, Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh shall abstain from collecting any money from the investors in respect of the schemes identified as a Collective Investment Scheme in this Order.
- (ix) IDAL, Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh 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 the investors are complied with, as directed at pre paras to the satisfaction of SEBI and WRR/ Report of completion of payment with SEBI is submitted to SEBI and for a further period of **six** years from the date of completion of the refund, as directed above.

- (x) Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh shall be restrained from holding positions as directors or key managerial personnel of any listed company for a period of six years from the date of completion of the refund, as directed above.
- (xi) IDAL, Shri Nageshwar Panchal, Shri Dilip Devda, Shri Shankar Lal Yadav and Shri Hari Singh shall not launch any Collective Investment Scheme or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws after the expiry of period of debarment as mentioned in paragraph 30(ix).
31. This order shall come into force with immediate effect.
32. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.
33. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies, for their information and necessary action with respect to the directions/ restraint imposed above against the Company and the individuals.
34. A copy of this Order shall also be forwarded to the Local Police/State Government for information.

DATE: March 16, 2018

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**