

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4) and 11B of Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, in respect of Interim Order cum show cause notice dated June 29, 2015 in the matter of Bhoomi Devcon & Agritech Limited (Bhoomi Devcon).

In respect of:

SR. No.	NOTICEES	PAN	DIN/CIN
COMPANY			
1.	Bhoomi Devcon & Agritech Limited	AAECB4806G	U70101CT2011PLC022381
DIRECTORS			
2.	Lal Chand Vishvakarma	AKLPV6427H	03468327
3.	Radha Bai Vishwakarma	AKNPV1081D	03468309
4.	Ghasi Ram Vishwakarma	AMZPV6270A	03533189
5.	Sanjay Kumar Agrawal	AHUPA0336L	03576379

1. Securities and Exchange Board of India (“SEBI”), after a preliminary enquiry, had passed an ex-parte interim order cum show cause notice dated June 29, 2015 (“interim order”), wherein it had *prima facie* observed that Bhoomi Devcon & Agritech Limited (“Bhoomi Devcon” or “the company” in short), was involved in illegal mobilization of funds from the public through schemes in the nature of Collective Investment Schemes (“CISs”) without obtaining certificate of registration from SEBI and thus had contravened section 12(1B) of the Securities and Exchange Board of India Act, 1992 (“the SEBI Act”) read with Section 11AA of the SEBI Act, 1992 and Regulation 3 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (“the CIS Regulations”). The noticees were also alleged to have contravened regulation 4(2)(t) of the

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 (“the PFUTP Regulations”). Accordingly, the following directions *inter alia* were issued against Bhoomi Devcon and its directors, namely Lal Chand Vishwakarma, Radha Bai Vishwakarma, Ghasi Ram Vishwakarma and Sanjay Kumar Agrawal (collectively referred to as “the Noticees”), vide the interim order:

- a. not to collect any fresh money from investors under its existing schemes;
- b. not to launch any new schemes / plan or float any new companies to raise fresh moneys;
- c. not to dispose of any of the properties or alienate the assets of the existing 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 Bhoomi Devcon out of the amounts collected from the “customers” / investors under its existing schemes;
- f. to furnish the details of scheme wise list of investors and their contact numbers and addresses, including,
 - The list of investors to whom land has been allotted and got registered, and
 - List of investors who have been refunded.
- g. to furnish all the information sought by SEBI vide letter dated April 02, 2014

2. Bhoomi Devcon and its abovementioned directors were also advised, vide the said interim order, to show cause as to why appropriate directions / prohibitions under Section 11 of the SEBI Act, 1992 and in terms of Regulations 65 and 73 of the CIS Regulations, including the following, should not be taken / imposed against them.

- i. Directing them jointly and severally to refund any moneys/assets collected from the investors under the scheme, along with the requisite interest,
- ii. Directing them to wind up such plans/schemes,
- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities market for a particular period.

3. The said interim order came into force with immediate effect. The interim order was served on the company and all its above named directors by way of Speed Post Ack. Due / hand delivery. However, none of the Noticees, except Sanjay Kumar Agrawal (i.e. Noticee no. 5), provided any response to SEBI.
4. Noticee no. 5, Sanjay Kumar Agrawal, through his letter dated July 01, 2015 *inter alia* made the following submissions:
 - a) Presently he is not additional director of Bhoomi Devcon. Since he is not associated with the said company since 12.12.2013, he is not in a position to furnish any information or produce any documents.
 - b) He has also filed DIR-11 dated 26/08/2014 which is intimation of his resignation with the Registrar of Companies, Chhatisgarh. After filing the form, the status of his resignation is not yet updated as MCA Portal, as per new Companies Act, 2013. He has also intimated RoC, Gwalior on 02/04/2014 and RoC Bilaspur on 16/04/2014 about his resignation.
 - c) According to the sec. 260 of the Companies Act, 1956, Additional Director holds office only up to the date of the next Annual General Meeting. If reappointment is not confirmed, then this post is automatically terminated. The company and its officials failed to file his resignation, which is why he has informed RoC about his resignation. It is the duty of company and its existing officers to make filings about termination to RoC.
 - d) He requests SEBI not to take any legal action against him because he has already resigned from the company as additional director.
 - e) He has submitted to SEBI copy of Form No. DIR-11 filed with MCA regarding his resignation as additional director and copies of his resignation letters to the company and RoC (at Gwalior & Bilaspur).
5. An opportunity of personal hearing was granted to all the Noticees by scheduling it on July 31, 2017. The notice of personal hearing was served on the Noticees by Speed Post Ack. Due / Hand Delivery / affixture. However, even after the service of notice of hearing, none of the Noticees appeared for the hearing nor submitted any reply or sought any

extension. In view of the same, I am convinced that sufficient opportunities have been granted to the Noticees and they are not keen to avail the same. I further note that except Sanjay Kumar Agrawal (the Noticee no. 5), none of the noticees has filed any written reply/submission to the interim order. In view of these facts and circumstances, I deem it appropriate to decide the matter *ex-parte* on the basis of material available on record, in respect of all the Noticees, except Sanjay Kumar Agrawal, the Noticee no. 5, in whose respect I have also considered the submissions made by him along with other material available on record.

6. I have examined the allegations levelled against the Noticees in the interim order and the other material available on record. According to the interim order, the Noticees were engaged in carrying out a “*scheme*” of “*Advance property Booking plan*”, wherein 17 different plans were offered and money was mobilised from the public through “*Regular instalment plans*” (for 2 years, 3 years, 4 years, 5 years, 6 years and 9 years), “*Monthly Income Plans*” (for 6 years) and “*Lump sum payment plans*” (for 1 year, 2 years, 3 years, 4 years, 5 years, 7 years and 10 years). In the interim order, after considering the available documents, a *prima facie* view was taken that the plans under the *scheme* in question satisfied the four tests of a collective investment scheme (CIS) as defined in section 11AA of the SEBI Act, 1992, namely (i) whether there was pooling of contributions for purposes of a scheme; (ii) whether contributions were made with a view to receive assured realisable value; (iii) whether the contributions were managed on behalf of the investors; and (iv) whether the investors did not have day to day control over the management of the scheme. I observe that the basic allegation against the noticees is that they were involved in illegal fund mobilizing activity, without obtaining registration as a CIS and thereby violated section 12(1B) read with Section 11AA of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the PFUTP Regulations. As stated above, the Noticees have failed to address the *prima facie* conclusions in the interim order regarding the nature of the mobilisation of funds under various schemes to be a CIS. In this regard, I observe that even the noticee no. 5, Sanjay Kumar Agrawal, who has responded to the interim order-cum-SCN, has not rebutted the findings in the interim order regarding the nature of mobilization of funds but has only tried to distance himself from the affairs of

the company on the ground that he had already resigned from the additional directorship of the company.

7. I have perused the contents of the interim order and do not find any reason to differ with the *prima facie* conclusion arrived at in the interim order. In the absence of any evidence provided to refute the *prima facie* findings in the interim order, I reiterate that the activities of the company as described in the interim order constitute Collective Investment Schemes in terms of section 11AA of the SEBI and the same have been carried out by the company without seeking a registration from SEBI, thereby contravening section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the PFUTP Regulations, as alleged in the interim order.
8. Having arrived at the findings as above, I now proceed to examine the submissions made by Sanjay Kumar Agrawal (noticee no. 5). Sanjay Kumar Agrawal in his submissions has not disputed the *prima facie* findings of the interim order regarding the nature of fund raising schemes but has only tried to insulate himself from the responsibilities arising from being a director of the company. Sanjay Kumar Agrawal in his reply has *inter alia* submitted that he had resigned from the additional directorship of the company on December 12, 2013. I note from the records submitted by Sanjay Kumar Agrawal that he was appointed as an additional director of the company on 16/07/2011. I further note from the records submitted by the company to SEBI vide letter dated July 03, 2014, as mentioned in the interim order, that the company had started mobilizing money from public under its different plans from April 01, 2013 itself, which is before the date on which Sanjay Kumar Agarwal had purportedly resigned from the additional directorship of the company (i.e. December 12, 2013). The same indicates that Sanjay Kumar Agrawal was a director of the company during the period of fund raising. I note that in fact Sanjay Kumar Agrawal's name is still appearing in the list of directors / signatories of the company, as on date, on the MCA Portal. In view of the same, I do not find any merit in the submissions made by Sanjay Kumar Agrawal that he is not responsible for the affairs of the company as a director.

9. I note from the information obtained from MCA portal that Lal Chand Vishvakarma, Radha Bai Vishwakarma and Ghasi Ram Vishwakarma are the present directors of Bhoomi Devcon. Further, Sanjay Kumar Agrawal has been a director of the company in the past, during the period of fundraising, and has subsequently vacated directorship. Hence, these present and past directors are accountable for the acts of the company and are liable for contravention of the provisions of section 12(1B) read with Section 11AA of the SEBI Act, 1992 and Regulation 3 of the CIS Regulations and Regulation 4(2)(t) of the PFUTP Regulations, in respect of floating of collective investment schemes by the company without obtaining registration from SEBI and mobilization of money from public thereunder.
10. It is noted that the Noticees have failed to furnish relevant details sought by SEBI pertaining to the fund raising. While the company has claimed to have collected Rs.39,01,370 as on July 03, 2014, in the absence of various vital information, it is difficult to ascertain the total amount of money mobilized by the company; the period during which the mobilization continued and the number of investors affected by the schemes of the Company. Considering the violations committed by the Noticees in launching and operating schemes in the nature of CIS without obtaining registration from SEBI and the huge amounts said to have been collected by them from the investors, I deem it necessary to issue appropriate directions to the Noticees.

DIRECTIONS

11. In view of the foregoing and in the interest of investors and the securities market, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11B and 11(4) thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:
- (a) Bhoomi Devcon and its present and past directors, namely Lal Chand Vishvakarma, Radha Bai Vishwakarma, Ghasi Ram Vishwakarma and Sanjay Kumar Agrawal (i.e. the Noticee no. 1 to 5), are jointly and severally liable to wind up its existing collective

investment schemes and refund the money collected by it under the schemes with returns which are due to the investors as per the terms of offer within a period of three months from the date of this order. The refund shall be made through 'Bank Demand Draft' or 'Pay Order'. Upon completion of the refund as directed above, within a further period of seven days, Bhoomi Devcon and its present directors, namely Lal Chand Vishwakarma, Radha Bai Vishwakarma and Ghasi Ram Vishwakarma, shall submit a winding up and repayment report (WRR) to SEBI in accordance with the CIS regulations. The WRR shall be supported by the proof of the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds along with a certification of such repayment from two independent Chartered Accountants. In the event of failure by Bhoomi Devcon and its directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the Noticees.

- (b) Bhoomi Devcon and its above named directors (i.e. the Noticee no. 1 to 5) shall not alienate or dispose of or sell any of the assets of Bhoomi Devcon or any other asset acquired out of the funds collected from investors of Bhoomi Devcon, except for the purpose of making refunds to its investors as directed above.
- (c) Bhoomi Devcon and its above named directors (i.e. the Noticee no. 1 to 5) shall with immediate effect be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly, till the directions for refund/repayment to investors are complied with, as directed at subparagraph (a) above to the satisfaction of SEBI and WRR is submitted to SEBI and for a further period of four years from the date of completion of the refund, as directed above.
- (d) The above named directors of Bhoomi Devcon (i.e. the Noticee no. 2 to 5) shall be restrained from holding position as directors or key managerial personnel of any listed company for a period of 4 years from the date of this Order.

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

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

Date: March 28, 2018

Place: Mumbai

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