

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 in respect of interim order cum show cause notice dated March 17, 2015 in the matter of Mark Builders & Land Developers Limited.

In respect of:

Sr. No.	Noticees	CIN/DIN/PAN
1	Mark Builders & Land Developers Limited	U70109PB2011PTC035700
2	Shri Gurnek Singh	PAN-AXAPS6773K
3	Shri Sarabjit Singh	DIN-05114404
4	Smt. Kuljeet Kaur	PAN- AUTPK1595M
5	Shri Gursharanpreet Singh	DIN-06581134
6	Shri Narinder Sharma	DIN-0640614

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1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") vide an ex-parte ad-interim order dated March 17, 2015, prima facie observed that Mark Builders & Land Developers Limited (MBLDL) and its Directors, namely, Shri Gurnek Singh, Shri Sarabjit Singh, Smt. Kuljeet Kaur, Shri Gursharanpreet Singh and Shri Narinder Sharma (the company and its directors are hereinafter collectively referred to as “noticees”) were involved in illegal mobilization of funds from the public through various schemes or plans of booking and development of agricultural or residential plots of land, which were in the nature of Collective Investment Schemes (“CISs”) as defined under section 11AA of the Securities and Exchange Board of India Act, 1992 (SEBI Act), without obtaining requisite certificate of registration from SEBI and thus contravened section 12(1B) of the SEBI Act and regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1992 (CIS Regulations). It was also observed

that the fund mobilization activity of MBLDL through its various schemes prima facie amounted to fraudulent practice under regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 (PFUTP Regulations), which was brought into effect from September 06, 2013.

2. In view of the prima facie findings against the Noticees, they were directed not to collect any fresh money from investors under the existing schemes or launch any new scheme, not to divert any fund raised from the public and not to dispose of any assets, property etc. obtained through money raised by MBLDL. The noticees were also directed to submit details of amount mobilized and refunded, scheme wise details of investors, etc. The interim order also called upon the Noticees to show cause as to why the plans/schemes identified in the order should not be held as a “collective investment scheme” in terms of section 11AA of the SEBI Act and the CIS Regulations and why appropriate directions in terms of regulation 65 and 73 of the CIS Regulations should not be issued against them.
3. The said interim order was sent to the Noticees by postal service. Mr. Inderjit Paul, Advocate, vide letter dated July 18, 2015 requested that time to file reply by the Noticees may be extended till second week of September, 2015 on personal grounds. Vide letter dated December 1, 2015, the counsel again sought extension of time to file the reply. The reply on behalf of the Noticees was filed vide letter dated March 8, 2016. The submissions of the Noticees are as under:
 - The plans offered by the company are based on the concept of micro-saving for rendering real estate services to rural and urban poor. These plans are designed to provide flexibility in saving and help people in making an asset in the form of their shelter or land for agriculture purpose. The activities of the company cannot be termed as Collective Investment Scheme and may not be subjected to the provisions of the SEBI Act or the CIS Regulations.
 - The investigation in the matter was initiated on the basis of a complaint filed by one Kuljit Singh Chauhan. The rivals of the company always try to hamper the business of the company by lodging false complaints and manipulating the customers of the company. It has been submitted that the promoters of the company are law abiding and have been

complying with the provisions of law stipulated in different enactments which are applicable to company's business. The allegation leveled against the company as well as its promoters that they have been inviting and accepting funds from the public at large is without any conclusive evidence and based on a false complaint.

4. The Noticees also requested for time till May 2016 to file additional reply. However, no such reply was received. Subsequently, an opportunity of personal hearing was granted to the Noticees on July 11, 2017. Shri Inderjit Paul, Advocate and Shri Gurnek Singh, Managing Director of MBLDL appeared for the hearing. During the hearing, the counsel stated that the activities of the company did not fall under Collective Investment Scheme. He was asked to furnish a detailed reply on it. It was also submitted that they have already refunded money due to some of the investors and if a time period of six months to a year is granted, they will be able to refund the amount due to all the investors. The Noticees therefore were advised to furnish the details of investors who have been paid back in full and details of investors who are yet to be paid along with evidence of refund within 15 days. Vide letter dated August 3, 2017, it was stated by the company that the files and relevant documents were kept by one of the directors of the company, namely Narinder Sharma, who had left the company and was not responding properly. Therefore, they sought additional time to file the written submission and related documents.
5. The company has filed written submission dated December 28, 2017. Noticees have reiterated their earlier submissions. No detailed reply on why the schemes do not fall under CIS has been furnished. However, it was stated that in compliance with the directions in the interim order they have already refunded more than 70% of the funds collected to the investors and remaining amount will be refunded to the investors by the end of the year 2018. With regard to details on refund, the bank account statement of the company for the period October 23, 2013 to December 19, 2017 maintained with State Bank of India, Amritsar Branch has been furnished. Details of each investor, amount collected from each of them and the amount refunded and due to them have not been furnished.
6. It is noted that SEBI had received an investor complaint alleging that MBLDL is illegally mobilising monies from the public and not paying the redemption amount on maturity.

Therefore, in order to enquire further into the matter, SEBI asked for certain documents from MBLDL and details of schemes offered by it to the investors, amount mobilized and number of investors. Certain documents were also procured from Registrar of Companies, Chandigarh. The documents provided by the company vide letters dated February 10, 2014 and July 14, 2014 and the information collected from ROC is as under:

- (a) Memorandum and Articles of Association MBLDL,
- (b) Details of past and present directors,
- (c) Copy of Audited Balance Sheet and P&L Accounts as on March 31, 2012,
- (d) Copy Audited Balance Sheet as on March 31, 2013
- (e) Copy of Auditors' Report dated 31/03/2014,
- (f) Documents pertaining to plans and terms and conditions of plans which include copy of application form, general terms and conditions, agreement etc.
- (g) Copy of form of expression of interest for provisional booking of agricultural plot/ housing project/ commercial project,
- (h) A blank copy of acknowledgement letter,
- (i) Copy of three purchase deeds,
- (j) Form 1 filled on 29/11/2011 & and Certificate of Incorporation,
- (k) Form 18 filed on 29/11/2011,
- (l) Form 32 filed on 29/11/2011,
- (m) Form 23 filed on 17/01/2012,
- (n) Form 62 filed on 17/01/2012,
- (o) Fresh Certificate of Incorporation upon Change of name on conversion to Public Limited Company,
- (p) Form 20B dated 28/08/2012
- (q) Form 23 AC & Form 23 ACA 28/08/2012
- (r) Form 32 dated 01/10/2012,
- (s) Form 32 dated 30/04/2013,
- (t) Form 23B for the period 29/11/2011 to 31/03/2012

7. It is seen from the brochures and pamphlets issued by MDLDDL that it invited funds from the public for its schemes towards 'booking and development of agricultural or residential plots

of land' under its "*Plan 201, Plan 301, Plan 401, Plan 501, Plan 1101, Plan 1801 Silver, Golden, Diamond, Star, Platinum and Freedom Plans*". Under these plans, MBLDL accepts monthly, quarterly, half yearly and yearly instalments from public against plots of various sizes. Further, under its Single Payment Plans, the company mobilises funds from the investors for a term ranging from 2 years to 18 years and an estimated return is promised at the end of the term. It is noted that MBLDL has also investment plans such as '*Down payment Plan*'. The details of one such plan offered by MBLDL are as under:

Star Plan for 6 Years (Payment term -6 Years)

Plot area (Sq. Ft.)	Payment (in Rs.)				Consideration Value (in Rs)	Estimated Realizable Value (After 6 years) (in Rs.)	Help in case of accidental death (in Rs.)
	Monthly	Qtlly	Half Yrly.	Yearly			
600	500	1500	3000	6000	36000	55,800	100000
1200	1000	3000	6000	12000	72000	1,11,600	100000
1800	1500	4500	9000	18000	108000	167400	100000
2400	2000	6000	12000	24000	144000	223200	200000
3000	2500	7500	15000	30000	180000	279000	200000
3600	3000	9000	18000	36000	216000	334800	200000
4800	4000	12000	24000	48000	288000	446400	200000
6000	5000	15000	30000	60000	360000	558000	200000
12000	10000	30000	60000	120000	720000	1116000	200000

8. The Noticees have contended that the allegation of acceptance of funds from the public is based on false complaint. In this regard, it is noted from the letter dated July 14, 2014, that the company has stated during the course of preliminary investigation that the amount received against application for registration for plot/ commercial project etc. is called 'Requisite Earnest Money' and the company has reflected the same in Balance Sheet as on March 31, 2013 under the head 'Advance against Investment'. It is noted from the audited financial statements for the year 2012-13 that an amount of Rs. 0.74 Crore is reflected in balance sheet as '*Advance against Investments.*' The company has also provided details of the group 'advance against investment' in which names of 322 persons have been provided. The company has also stated

that they received requisite earnest money or registration amount from their customers at the time of execution of the application form, which is in the nature of “Expression of Interest”. In view of above, the contention of the Noticees that there is no evidence that they have accepted funds from the public is not acceptable.

9. The Noticees have contended that their activities are not covered under the term Collective Investment Scheme (CIS). In this regard, it is noted that the noticees have not filed a detailed reply on this issue. I have perused that prima facie findings in the interim order and the material available on record. In order to determine whether the mobilization of funds by MBLDL under its various schemes/plans for ‘booking and development of agricultural or residential plots of land’ falls under the ambit of ‘collective investment scheme’, it is important to refer to section 11AA of the SEBI Act, 1992 which provides the conditions to be fulfilled for determining a scheme or arrangement as a ‘collective investment scheme’. The provision reads as under:

“(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 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.

(3) ...”

10. In the context of the present case, it is noted that any scheme or arrangement where the payments or contributions of the investors are pooled and utilized for the purpose of a scheme with a promise of returns and the scheme being such that its day to day affairs are managed by persons collecting such contributions to the exclusion of the investors, it would qualify to be a CIS under the SEBI Act. Thus, it is necessary to examine the schemes offered by MBLDL in terms of the provisions in Section 11AA of the SEBI Act to ascertain whether it falls within the ambit of a CIS or not.
11. The basic issue for determination is whether the contributions received from the investors are pooled and utilized for the purpose of the schemes or not. In this regard, it is observed that MBLDL solicits money from customers through its various schemes of booking and development of plots of land. An investor/customer who is desirous of investing in the schemes offered by MBLDL is required to make an application and indicate the payment plan and the details of the initial payment etc. in the Expression of Interest form. It is noted from the copy of 'Registration Certificate' issued to an investor that no precise details of plot or the location of the property is specified in the said certificate. The 'Registration Certificate' issued to the applicant/ investor and the 'Terms and Conditions' forming part of the said certificate do not indicate the ownership aspect of the plot/land under the schemes offered by MBLDL. Furthermore, an 'Estimated Realisable Value' which the customer/ investor is entitled to at the end of the term is mentioned in the 'Registration Certificate'. In view of the aforesaid, it is clear that MBLDL is collecting funds from the investors for its scheme and the contributions/funds collected from the investors are pooled and utilized for the purpose of the 'scheme' offered by MBLDL.
12. From the 'Registration letter' issued by MBLDL to an investor and various schemes offered, it is noted that MBLDL promises an 'estimated realizable value' after the expiry of term. For instance, in Plan 501 (for 5 years) for a plot size of 1500 sq. ft., if an investor invests Rs.90,000/-, MBLDL is promising estimated realisable value as Rs.1,80,000/- at the end of the term i.e. he/she is entitled to Rs.90,000/- as returns. The 'Estimated Realisable Value' is higher than the contribution amount which the company promises its customers on maturity date. Further, in its reply July 14, 2014, the company also admitted that most of the customers prefer a refund of 'Requisite Earnest Money' with appreciation at the end of the tenure. Therefore, it

is evident that the investors / customers are investing in the 'schemes' floated by MBLDL with a view to receive profit/returns from the land booking/development schemes.

13. It is apparent from the brochure, pamphlets application form, Expression of Interest Form, agreement and the registration letter that contributions made by the customers/investors towards the schemes offered by MBLDL are collected by MBLDL which in turn manages these funds on behalf of investors during the agreed term of Plan. It is noted from the 'Registration letter' that the investor is not provided with details in respect of the plot/land purchased and the same is supposed to be allotted by MBLDL to its customers in future. The clauses of the 'General terms and conditions' forming part of the Expression of Interest Form provides that the registration of application and subsequent allotment of agricultural/ residential/ commercial unit or registration as beneficiary is at the sole discretion of the company and in case the unit is not allotted or registration as beneficiary is not accepted for any reason, the applicant shall not raise any objection. Clause 4 states "*The amount received towards EOI Form to book specific type of unit or to register as beneficiary in projects will not guarantee an allotment/ registration to the Applicant(s). In case the company is not able to allot unit/ register as beneficiary as desired/ specified by the Applicant, the company will offer the closest equivalent of the said type of the unit/project.*" Furthermore, as per Clause 9 of the agreement " *Unless specifically directed otherwise by the Customer, MBLDL shall be responsible for arranging the sale of the produce, if any, out of the said agriculture land, on behalf of the Customer. For the Purposes of arranging the sale of the produce as aforesaid, MBLDL shall have the sole discretion to decide as to whether the produce shall be sold to the wholesale market and / or to semi-wholesale market, and / or to one or more marketing company of MBLDL or may decide to sell at to any other market which MBLDL may consider appropriate for the sale of a particular grade of produce.*" This also indicates that the property, contribution or investment forming part of the schemes is managed by MBLDL. In light of the abovementioned facts and circumstances, it is clear that the property, contribution or investment forming part of the schemes are managed by MBLDL on behalf of customers/investors and they do not have any day-to-day control over the management of the company.
14. Thus, the activity of fund mobilization by MBLDL for allotment, development and maintenance and subsequent transfer of land, with a promise of return/"estimated realizable value at the end of the term', when considered in light of peculiar characteristics and features of such schemes, as discussed in the preceding paragraphs, satisfies the conditions specified in

Section 11AA (2) of the SEBI Act. I am therefore convinced that MBLDL is carrying on collective investment scheme under the garb of allotment/development/sale of plots of land and therefore was required to be registered as mandated under section 12(1B) of the SEBI Act and CIS Regulations. The launching/ floating/ sponsoring/causing to sponsor any Collective Investment Scheme and mobilization of funds from the public under such scheme can be done by any person only after obtaining requisite registration under section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. In this regard, I note that MBLDL has not obtained any certificate of registration from SEBI under the CIS Regulations for its fund mobilizing activity from the public, for the 'Schemes' offered by it.

15. From the material available on record, it is observed that Shri Gurnek Singh, Shri Sarabjit Singh, Smt. Kuljeet Kaur, Shri Gursharanpreet Singh and Shri Narinder Sharma are/were the Directors who are in charge of and responsible for the day to day affairs of MBLDL.
16. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 read with Regulation 65 of CIS Regulations hereby issue the following directions:
 - i. MBLDL and its Directors viz., Gurnek Singh, Sarabjit Singh, Kuljeet Kaur, Gursharanpreet Singh and Narinder Sharma shall not collect contributions/payments, either directly or indirectly, from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been so identified in this Order.
 - ii. MBLDL and its directors shall jointly and severally wind up its existing collective investment schemes and refund the contributions or payments collected from investors under the schemes with returns due to the investors within a period of three months from the date of this order. Upon completion of the refund as directed above, within a further period of seven days, MBLDL and its directors shall submit a winding up and repayment report to SEBI in accordance with the CIS Regulations. In the event of failure by MBLDL and its noticee directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the noticees.

- iii. MBLDL and the noticee directors shall not alienate or dispose of or sell or create any encumbrance on any of the assets of the company or any other asset acquired out of the funds collected from the investors of the company, except for the purpose of making refunds to the investors as directed above.
 - iv. MBLDL and the noticee directors are 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 mentioned above, to the satisfaction of SEBI and repayment completion certificate is submitted to SEBI and thereafter for a further period of four years from the date of completion of the refund, as directed above.
 - v. The noticee directors are restrained from holding position as director or key managerial personnel of any listed company for a period of 4 years from the date of this order.
17. This order shall come into force with immediate effect. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

Date: April 17, 2018

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER