

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 January 14, 2015 in the matter of NICL India Limited (NICL).

In respect of:

SR. No.	NOTICEES	PAN	DIN/CIN
COMPANY			
1.	NICL India Limited	AADCN4728Q	U70100MP2010PLC024803
DIRECTORS			
2.	Phool Singh Choudhary	AIKPC8055F	02568846
3.	Harish Sharma	COUPS0677H	02929076
4.	Abhishek S. Chauhan	AGOPC3742P	02942287

- Securities and Exchange Board of India (“SEBI”), after a preliminary enquiry, had passed an ex-parte interim order cum show cause notice dated January 14, 2015 (“interim order”), wherein it had *prima facie* observed that NICL India Limited (“NICL” 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 company was 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 NICL and its directors, namely Phool Singh Choudhary, Harish

Sharma and Abhishek S. Chauhan (collectively referred to as “Noticees”), vide the interim order:

- a. not to collect any fresh moneys from investors from its existing schemes;
 - b. not to launch any new schemes / 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 NICL out of the amounts collected from the “customers” / investors under its existing schemes;
 - f. to furnish all the information sought by SEBI, including:
 - scheme wise list of investors as on date and their contact numbers and addresses,
 - the details of amount mobilized till date,
 - the details of amount refunded till date along with the details of mode of payment, duly certified by a CA,
 - commission / incentives paid to the agent / business associates for the promotion of the scheme, since inception till date,
 - PAN of all the directors of NICL,
 - all documents / information and clarifications sought by SEBI, vide letters dated December 03, 2013, June 04, 2014 and July 14, 2014 and not yet submitted.
2. NICL and its abovementioned directors were also advised, vide the said interim order, to file their reply, if any, to the prima facie observations in the interim order.
3. The said interim order came into force with immediate effect. The interim order was duly served on the company and all its above named directors. Thereafter, the company vide its letter dated March 04, 2015 submitted inter alia the following:

- (a) The company has stopped collecting any fresh money from investors from its existing scheme.
 - (b) The company shall not launch any new scheme/plan or float any new companies / firm to raise fresh money.
 - (c) The company and its directors shall not dispose of any properties or alienate the assets of the existing scheme without prior permission of SEBI.
 - (d) The company shall not divert any funds raised from public at large, kept in bank account (s) and / or in the custody of the company.
4. Vide the abovementioned letter, the company did not make any submissions regarding the *prima facie* observations in the interim order. However, it submitted various documents to SEBI and further sought 4 to 6 months to submit complete details. Vide letters dated March 20, 2015 and April 23, 2015, SEBI granted time till April 15, 2015 and April 30, 2015 respectively to the company to submit complete details. Thereafter, vide letter dated April 14, 2015, the company *inter alia* requested for time till May 31, 2015 to submit all relevant documents and also submitted that it is in the process of refunding money to investors, which was collected under the existing scheme of the company. Along with the said letter, the company also forwarded to SEBI certain documents related to investment in land by the company. Thereafter, vide letter dated June 03, 2015 and email dated June 04, 2015, the company sought time till August 30, 2015 to submit complete information to SEBI. It also *inter alia* submitted that it had given effect to all the restrictions and directions issued under the interim order, including stopping the collection of money from customer under land development scheme. Vide the said email, the company further provided a blank copy of Agreement cum Application Form for Customers. SEBI vide an email dated June 17, 2015 and letter dated June 18, 2015 granted time till June 30, 2015 to the company to submit its reply. Thereafter, SEBI received a letter dated August 13, 2015 from one Ms. Purnima Gupta, Advocate, on behalf of the company, *inter alia* requesting further time of eight weeks to file documents and reply. The company vide letter dated October 08, 2015 requested for an opportunity of personal hearing. SEBI vide letter dated October 12, 2015 advised the company to submit its reply within 7 days. An email dated October 28, 2015 was also sent to Harish Sharma, one of the directors of the company. Subsequently, vide email dated October 29, 2015 Ms. Purnima Gupta requested for 15

days' time to file detailed and final response from the Noticees. Vide email dated November 07, 2015 Ms. Gupta forwarded authority letter in her favour from the Noticees.

5. Thereafter, vide letter dated January 25, 2016, the company requested SEBI to provide various documents. Subsequently, SEBI received three complaints against NICL regarding public fund mobilization, which were forwarded to the company vide letter and email dated February 12, 2016. The complaints were resent to the company vide email dated February 23, 2016. Subsequently, SEBI also received a complaint against the company, forwarded by RBI vide its letter dated March 02, 2016. Thereafter, SEBI vide email dated March 09, 2017 provided various documents to the company and advised it to file its reply within 15 days. Thereafter, an opportunity of personal hearing was granted to the Noticees by scheduling the same on August 01, 2017. The notice of hearing was served on the Noticees through email to the company as well as to their authorized representative. However, none of the Noticees appeared at the personal hearing before me on the scheduled date nor submitted any reply or sought any extension.
6. Considering the above, I am convinced that sufficient opportunities have been granted to the Noticees to present their case. I further note that none of the Noticees has responded to the *prima facie* findings reached in the interim order as regards the nature of the money mobilization activities of the company. In view of these facts and circumstances, I deem it appropriate to decide the on the basis of material available on record.
7. 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 booking of plot, wherein different plans were offered and money was mobilised from the public through "*One Time Land Link Deal*" (P2 for 3 years, P3 for 5 years, P4 for 7 ½ years, P5 for 10 years & *Growth Return Deal* for 6 years) and "*Instalment Payment Deal*" (S1 for 3 year, S2 for 5 years, R8/5 for 8 years, S3 for 6 years and R8 for 8 years). In the interim order, after considering the available documents and material, 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 and utilization of contributions for

purposes of a scheme; (ii) whether contributions were made to the scheme by the investors with a view to receive profits, income, produce or property from such scheme; (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 and operation 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.

8. 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.
9. I note from the information obtained from MCA portal that Phool Singh Choudhary, Harish Sharma and Abhishek S. Chauhan are the present directors of NICL. Hence, these 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 from the balance sheet of the company for FY 2012-13 that the company has a current liability of Rs.6,98,53,812/- as on March 31, 2013 on account of *Advance Received Against Plot*. From the records, I note that the said amount broadly tallies with the money

mobilized by the company during various years, as submitted by the company to SEBI. The same is summarised in the Table below:

Financial Year	No. of Investors	Amount Mobilized
2010-11	68	7,39,500
2011-12	997	26,60,000
2012-13	7,663	6,64,54,320
Total		6,98,53,820

11. 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

12. 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) NICL and its directors, namely Phool Singh Choudhary, Harish Sharma and Abhishek S. Chouhan (i.e. Noticee nos. 1 to 4), are jointly and severally liable to wind up NICL's 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, NICL and its present directors, namely Phool Singh Choudhary, Harish Sharma and Abhishek S. Chouhan, 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 NICL and its directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the Noticees.

- (b) NICL and its above named directors (i.e. Noticee nos. 1 to 4) shall not alienate or dispose of or sell any of the assets of NICL or any other asset acquired out of the funds collected from investors of NICL, except for the purpose of making refunds to its investors as directed above.
 - (c) NICL and its above named directors (i.e. Noticee nos. 1 to 4) 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 sub-paragraph (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 NICL (i.e. Noticee nos. 2 to 4) 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.
13. 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: June 21, 2018

Place: Mumbai

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