

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 May 07, 2015 in the matter of USK India Limited (USK).

In respect of:

SR. No.	NOTICEES	PAN	DIN/CIN
COMPANY			
1.	USK India Limited	AABCU0988M	U70101MP2009PLC022207
DIRECTORS			
2.	Sanjay Verma	N.A.	02497975
3.	Shiv Ram Singh Tomar	N.A.	02396212
4.	Umesh Narwariya	N.A.	02423080

1. Securities and Exchange Board of India (“SEBI”), after a preliminary enquiry, had passed an ex-parte interim order cum show cause notice dated May 07, 2015 (“interim order”), wherein it had *prima facie* observed that USK India Limited (“USK” 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 USK and its directors, namely Sanjay Verma, Shiv Ram Singh

Tomar and Umesh Narwariya (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 USK out of the amounts collected from the “customers” / investors under its existing schemes;
- f. to furnish all the information sought by SEBI vide letters dated July 03, 2014; July 17, 2014, etc. including,
 - i. copies of the all the documents pertaining to the scheme offered by the company, including application form filed by an investor, agreement executed with an investor, certificate, allotment letter etc. issued by the company to an investor,
 - ii. the details of amount mobilized and refunded till date,
 - iii. Scheme wise list of investors and their contact numbers and addresses, including,
 - the list of all the investors to whom land has been allotted and got registered, and
 - list of investors who have been repaid.
 - iv. Comments in respect of the documents forwarded to USK India vide letter dated July 17, 2014,
 - v. audited financial statements for the FY 2013-14 and 2014-2015,
 - vi. Income Tax Returns filed by the company for financial year 2009-10 till date,
 - vii. PAN nos. of the company and its past and present Directors.

2. USK and its abovementioned directors were also advised, vide the said interim order, to show cause as to why appropriate directions under the SEBI Act and CIS Regulations including directions for winding up of such plans / schemes in terms of Regulations 65 and 73 of the CIS Regulations should not be issued against them. USK and its abovementioned directors were advised to file their reply, if any, to the *prima facie*

observations made in the interim order, within 21 days from the date of receipt of 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 by newspaper publication. Thereafter, the company vide its letter received by SEBI on May 29, 2015 submitted *inter alia* the following:

- (a) The company has stopped all public activities of the company including mobilization of any sorts of funds to or from public.
- (b) No new schemes whatsoever are being launched or are in pipeline of the company.
- (c) No assets / properties are disposed or being disposed of after coming into notice of the interim order.
- (d) No funds have been diverted since coming into notice of the interim order.
- (e) The company has total outstanding advances of Rs.2,67,66,543 collected for land purchase from 127 customers, as on May 25, 2015. (List was attached)
- (f) 13 customers have already been allotted plots which will be registered in their name once they make final payment of their land purchase instalments.
- (g) List of 13 customers who have completed the payment schedule and who have already been allotted land, along with copy of land registry.
- (h) List of 23 customers to whom amount is refunded and cancelled.
- (i) Total year wise amount of advances collected against land purchase is as follows:

Year	No. of Customer with Advance collected for land purchase	Total Amount Collected
2009-10	10	63,37,676
2010-11	32	1,12,19,812
2011-12	76	1,26,02,684
2012-13	17	40,32,451
2013-14	28	23,33,917
Total	163	3,65,26,540

- (j) Details of assets and properties of the company, as on May 25, 2015.

- (k) List of investors who have opted for withdrawal from land purchase scheme and who have been refunded. (The list contains total 577 names wherein same names appear at multiple places and a total amount of Rs.2,05,66,127/- is shown as refunded to them.
 - (l) The company never intended to operate any Collective Investment Scheme. Any coverage of the activities of the company in CIS Regulations is due to mistake / omission on part of the management of the company and they sincerely intend to rectify the same.
 - (m) Various land purchase options along with a return promised to customer were intended solely for the purpose of creating confidence among the potential buyer, with all intention to provide developed land to potential customer. Company worked very hard to procure land parcel to fulfil its obligation on this. A list of land parcel in the company's possession was enclosed.
 - (n) They understand that some of their activities have fallen under CIS Scheme though without intention and therefore, they would like to offer full and unconditional support to SEBI's proceedings.
 - (o) They request SEBI to allow them a reasonable time to rectify the unintentional and temporary violation by suitable remedies or corrections.
4. Vide the abovementioned letter, the company did not make any submission regarding the *prima facie* observations in the interim order. However, it submitted various documents to SEBI and further sought time till June 15, 2015 to submit further information sought by SEBI. However, no correspondence was received from the company afterwards.
5. An opportunity of personal hearing was granted to the Noticees by scheduling the same on October 26, 2016. The said hearing was adjourned. Thereafter, the personal hearing was again scheduled on August 22, 2017 before me. The notices of hearing were served on the Noticees by Speed Post Ack. Due / newspaper publication. However, none of the Noticees attended the personal hearing on the scheduled date and time 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 matter 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 ‘Purchase, development and maintenance of land’ under various plans, wherein money was mobilised from the public through “Single Payment Plan” and “Instalment Payment Plan (IPP)” (IPP No. A-6 for 6 years, IPP No. A-7 for 6 ¼ years, IPP No. A-8 for 8 years, IPP No. A-3 for 5 years, IPP No. A-4 for 5 years and IPP No. A-5 for 5 ½ 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 they 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 its various schemes being that of 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 Sanjay Verma, Shiv Ram Singh Tomar and Umesh Narwariya are the present directors of USK. 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 2013-14 that the company's current liabilities include a liability of Rs.3,65,26,540.25 as on March 31, 2014 on account of *Advance from Customers* received during FYs 2009-10 to 2013-14. From the company's submissions received by SEBI on May 29, 2015, I note that the company's total outstanding advances from customers as on May 25, 2015 stood at Rs.2,67,66,543/- and the total number of such investors stood at 127. I note that the company has claimed that it has mobilized money during FYs 2009-10 to 2013-14 from a total of 163 investors, out of which 127 customers are remaining with the company on May 25, 2015. However, I note from Annexure 2 of the company's submissions received on May 29, 2015 that it has claimed to have made refunds to a large number of investors (577 names with same names appearing at multiple places) who opted for withdrawal from the land purchase scheme. Thus, the company's claims are contradictory and cannot be fully relied upon. 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 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) USK and its directors, namely Sanjay Verma, Shiv Ram Singh Tomar and Umesh Narwariya (i.e. Noticee nos. 1 to 4), are jointly and severally liable to wind up USK'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, USK and its present directors, namely Sanjay Verma, Shiv Ram Singh Tomar and Umesh Narwariya, 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 USK and its directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the Noticees.
- (b) USK 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 USK or any other asset acquired out of the funds collected from investors of USK, except for the purpose of making refunds to its investors as directed above.
- (c) USK 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 USK (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.

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: July 27, 2018

Place: Mumbai

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