

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 the matter of Touch Wood Limited.

In respect of:

Sr. No.	Noticees	PAN
1	Touch Wood Limited	AAACT9882C
2	Virender Kumar Mittal	AAXPM7090B
3	Sangeeta Mittal	AITPM7648D
4	Pawan Kumar Mittal	ALWPM2969H

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1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received an investor complaint regarding non-receipt of the maturity proceeds of investments made in a Teak tree investment scheme offered by Touch Wood Limited (TWL). The matter was examined by SEBI. The examination prima facie revealed that TWL had collected funds towards purchase of teak saplings/trees from the public by promising them huge returns and the amounts so collected were pooled for the purpose of plantation and nurturing of teak trees. The plantation activity was carried out on behalf of the applicants of the scheme by the company on land owned by the company and the investors were not having day to day control over the operation and management of scheme. On the basis of analysis of information and documents available with SEBI, it was alleged that the "Scheme" offered by the company is in the nature of a Collective Investment Scheme (CIS) as defined in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and that funds were raised under the scheme without obtaining requisite certificate of registration

from SEBI in contravention of section 12(1B) of the SEBI Act and regulation 3, 5, 68 and 69 of the SEBI (Collective Investment Scheme) Regulations, 1999 (CIS Regulations).

2. In view of above, a notice dated February 10, 2017 (hereinafter referred to as "SCN") was issued to the company and its directors, namely, Virender Kumar Mittal, Sangeeta Mittal and Pawan Kumar Mittal (the company and its directors are hereinafter collectively referred to as "Noticees") asking them to show cause why the teak tree investment scheme offered by them should not be declared as CIS and why appropriate directions should not be issued against them under Sections 11, 11B and 11(4) of SEBI Act and regulation 65 of the CIS Regulations for the alleged violation of the aforesaid provisions of the SEBI Act and the CIS Regulations.
3. In order to examine the investment schemes offered by TWL, SEBI vide letter dated March 19, 2014 had advised TWL to submit the information regarding its money mobilization scheme. The company did not furnish any information even after sending a reminder to them on June 12, 2014. The details of the scheme as observed from the documents received from the complainant (brochure of the scheme, application form, teak tree certificate etc.) and the documents obtained from MCA portal are as under.
 - a) Copy of the 'Teak Tree Certificate' issued to Prakash Kumar Didwania by TWL mentions that the certificate was issued on September 29, 1993. As per terms and conditions of the scheme, the maturity period of the investment under the scheme was 20 years.
 - b) The brochure of the scheme publicized that an investment of Rs. 1,300/- for a teak tree would give the investor an estimated return of Rs. 62,500/- after a duration of 20 years. It was also stated that the company owns free hold land of over 90 acres located near Jabalpur, which is one of the best teak belts in the world and that the teak plantation has been covered under insurance with NIC.
 - c) The features of the scheme and the terms and conditions of the scheme as observed from the Application Form are as follows:

- It has been stated that excellent quality teak saplings have been planted and are being properly nurtured to achieve best possible results in a period of 20 years.
- A person holding a certificate for investments made in the teak tree scheme (referred to as a Teak Scrip Holder in the application form), is entitled to the number of trees mentioned in the certificate together with lease on the piece or parcel of land or ground thereunto belonging, situated and lying at company's plantation for the period of scheme, which shall be undertaken by the company exclusively for the plantation on behalf of the applicant.
- The certificate holder shall have no right and title to the land after the period of the scheme, i.e. 20 years.
- Each Teak Certificate holders are given 2 Plant Identification Numbers (PIN) with respect on his purchase of one unit at the price of Rs.1300/-. First PIN has been called 'Original PIN' and the second a 'replacement PIN'. The replacement PIN becomes valid only in the event of death of the plant identified by the original PIN.
- A certificate holder or teak scrip holder shall be beneficiary of the concerned tree to the extent of the tree along from 12" above the ground level. The entire control and management of the tree and plantation shall be that of the company.
- The teak certificate is fully transferable and cashable, i.e. it can be sold, gifted or bequeathed at any time by paying Rs.50/- to the company.
- The delivery of the tree shall be at the ex-plantation site of the company.
- If desired by the certificate holder, the company shall cut the tree after the expiry of 20 years at the cost of the investor and sell and dispose of the timber. The company shall deduct its cost of operation from the sale proceeds and shall pay the remaining amount to the investor.
- For any return beyond Rs.62,500/- per teak tree, an investor shall share 20% of the excess amount with the company. For instance, if the tree fetches Rs.1,00,000/- the teak certificate holder shall get Rs.92,500/- and the company shall get Rs. 7,500/-.
- In case the tree is not claimed at the end of the scheme, the company will wait for six months. Thereafter, a further period of six months will be allowed but

all charges for the maintenance of the latter six months will be debited to the account of the certificate holder. If the certificate holder still does not claim the tree, the tree will be cut and stored at the risk and cost of the certificate holder. The tree will be so held in storage for a further period of six months. Thereafter, the realizable sale proceeds of the tree will be credited to the Unclaimed Tree A/c in respect of the tree, which will be paid to the investor whenever he/she presents the certificate of the company.

- It has been also mentioned that the offer is on first come first serve basis with limited plantation and is valid up to the closure of the Public Issue of the scheme.

- d) Further, TWL in the brochure of the scheme, issued at the time of soliciting money from investors, has stated that: *“The value of a teak tree as on today is Rs. 25,500/- (i.e. Rs. 850 x 30 cft.). The average output of a teak tree is 30 to 40 cft. The market price in the present times is between Rs. 850 and Rs. 1,400 per cft. In the last 10 years the price of teak has gone up by more than 10 times. With the present rate of Rs. 850 per cft. at the end of the period over two decades the teak price at the modest inflationary rate of 7% p.a. will be Rs. 3289 per cft. Thereby fetching over Rs. 98,670/- for the tree. With utmost conservatism, we assume the value will be Rs. 62,500/-. Any return beyond Rs. 62,500/- the company shall share 20 % of the excess amount. For instance, if the tree fetches Rs. 1,00,000/- the teak holders shall get Rs. 92,500/- and the company shall get Rs. 7,500/-.”*
- e) It was also observed that the ‘Teak Tree Certificate’ includes a condition pertaining to buy back wherein it is stated that “The Company shall buy-back trees after 5 years from the applicants at the repurchase price to be decided by the Company at that time, if opted. Such offer must be made within three months from the expiry date of the above period. The period of five years will be calculated from the date of the Certificate.”
- f) It is observed from the balance sheet of the company (as available on MCA website) that as on March 31, 2014, TWL had outstanding amount of Rs. 19,65,795/- from teak applicants. This amount has remained constant since March 31, 2005.

4. The SCN was served upon the noticees. The company replied to the SCN vide letter dated April 10, 2017. In the reply, it has been stated by Virendra Kumar Mittal (Director of TWL) that the company is making efforts to protect the interests of the investors and return the money due to them as per the scheme. However, they are unable to do so as the growth of the trees planted under the scheme is not proper to cut it and sell in the market. Further, they cannot cut/fell trees without the permission of the District Forest Officer (DFO), Damoh, Jabalpur, Madhya Pradesh. The company has also furnished copy of memorandum and articles of association, copy of audited balance sheets of the company (for the years ending on March 31, 2014, March 31, 2015 and March 31, 2016), scheme brochure and copy of the letter written to the DFO seeking permission to cut trees, etc. Other directors have not filed any reply.
5. An opportunity of hearing was given to the company and its directors on August 14, 2017. It has been ascertained that the hearing notices were delivered to the company and its directors by speed post acknowledgement due. Virendra Kumar Mittal, Director of TWL, appeared for hearing. He stated that the shareholding of TWL was transferred by his parents in his name and in the name of his wife (Sangeeta Mittal) and his brother (Pawan Mittal). The company is having thousands of teak trees planted on approximately 100 acres of land in Damoh, Madhya Pradesh. The land and the trees on it may be utilised for refunding the money due to the investors. However, they are unable to do so as they are not having requisite permission to cut trees. During the hearing, the noticee was advised to furnish the following details and documents on or before August 31, 2017.
 - a) Name and details of all investors along with details of money collected and due to them.
 - b) Details of trees planted in the name of investors and details of trees planted in the name of the company.
 - c) Details of property held in the name of the company and copy of title documents.
 - d) Balance sheet for the FY 2016-17.
 - e) Copy of response of the competent authority to the letter written to him seeking permission to cut trees.

6. The Noticee replied vide email dated September 7, 2017. The company forwarded a list of around 767 investors in an excel sheet (as on March 31, 2016), copy of balance sheet for the year 2016-17 and a list of the properties held in the name of the company. It has been also stated that the company planted around 2,500 trees in the name of the investors and around 15,000 trees in the name of the company. With regard to copy of the response letter from DFO, it was stated that they were waiting for the response from office of DFO. As complete details on money mobilization and the response from the office of DFO was not furnished, the noticee was once again advised to furnish those details. Virendra Mittal replied vide email dated June 4, 2018. It has been stated that approximately Rs. 20 lakh were collected from the investors and that they have not received any response from the DFO.
7. I have considered the SCN, reply and the submissions made by the entities and the documents available on record. The entities have not disputed any facts as set out in the SCN. In order to proceed further in the matter, the first issue that needs to be determined is whether the mobilization of funds by TWL under its scheme for 'teak tree plantation' falls under the ambit of 'collective investment scheme'. In this regard, 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) ...”

8. 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 is 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 Collective Investment Scheme under the SEBI Act. Thus, it is necessary to examine the schemes offered by TWL 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.
9. With regard to the question as to whether the contributions received from the investors are pooled and utilized for the purpose of the schemes or not, it is observed that TWL solicits money from investors through its schemes of investment in teak tree. An investor/customer who is desirous of investing in the schemes offered by the company is required to make an application for allotment of teak tree/sapling and indicate the number of teak units which he/she wants to purchase. It was also stated that plants/saplings are limited and the offer is on first come first serve basis. Thus, any member of the public could have applied for allotment/plantation of the teak tree in his/her name. An investor was required to pay an amount of Rs.1300/- for each teak unit to the company and also abide by the terms and conditions mentioned overleaf of the application form. An investor, who is allotted a teak unit was issued a Teak Certificate indicating Identification Numbers of the plants which was allotted to him. Such an investor is entitled to the number of trees mentioned in the certificate. It is also noted that a certificate holder is entitled to the tree only from 12” above the ground level to the top. The planting of the sapling and its nurturing was to be taken care of by the company. Further, neither the noticees have contended nor is there anything on record to show that the investors had any control over the management of the scheme offered by the company. In view of the aforesaid, it is clear that TWL was collecting funds from the

investors for its scheme and the contributions/funds collected from the investors were pooled and utilized for the purpose of the 'scheme' offered by TWL.

10. It is observed from the brochure of the scheme that it induced investors to invest in the teak plantation scheme by offering huge return at the end of a period of 20 years. It was stated in the brochure, after taking into account the growth in the tree and rise in the price of teak wood over a period of two decades that the investment of Rs.1300/- in a teak tree will fetch a return of over Rs. 98,670/- in 20 years. The brochure of the scheme also stated that the company owns free hold land of over 90 acres located near Jabalpur, which is one of the best teak belts in the world and that the teak plantation has been covered under insurance with NIC. Thus, from the brochure issued by TWL and the terms and conditions mentioned in application form, it is observed that the company was pooling the investments and promised huge returns to investors at the end of a period of 20 years. Therefore, it is evident that the public invested in the 'teak tree investment schemes' floated by TWL on the backing of the 90 acres land parcel it had, with a view to receive profit/returns.
11. It is apparent from the brochure, pamphlets application form, that contributions made by the customers/investors towards the schemes offered by TWL are collected by TWL which in turn managed these funds on behalf of investors during the agreed term of Plan. As per clause D4 of the terms and conditions mentioned in the application form, "entire control and management of the tree and plantation shall be that of the company". Thus, even though the trees were identifiable, the contribution or investment forming part of the schemes were managed by TWL on behalf of the investors and investors were not having any day-to-day control over the management of the company.
12. Thus, the activity of fund mobilization by TWL for plantation, allotment, nurturing and maintenance of teak trees with a promise of huge return at the end of the term, when considered in light of characteristics and features of the teak plantation schemes, as discussed in the preceding paragraphs, satisfies the conditions specified in Section 11AA (2) of the SEBI Act. I am therefore convinced that TWL is carrying on collective investment scheme and was therefore required to be registered as mandated under section 12(1B) of the SEBI Act.

13. As per documents available on record, particularly the teak tree certificate issued to Prakash Kumar Didwania on September 29, 1993, it is seen that TWL was engaged in the fund mobilization activity since 1993. Section 12(1B) of the SEBI Act, 1992 was inserted with effect from January 25, 1995. The provision prohibited any person from carrying on the business of CIS and the schemes already in existence were permitted to continue till framing of regulations. Subsequently, CIS Regulations were framed in 1999 and as per regulation 5 of the CIS Regulations, all the existing CIS were required to make an application to SEBI seeking registration. 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 TWL has not applied for any certificate of registration to SEBI under the CIS Regulations for its fund mobilizing activity from the public, for the 'schemes' offered by it. Further, as per admission of the entity, an amount of approximately Rs.20 lakh were outstanding towards money mobilized from teak tree applicants. In this connection, I note that the Balance Sheet of TWL as on March 31, 2014 also shows that Rs.19,65,795/- as outstanding. This would also indicate that the scheme of TWL was not wound up and was in operation. Thus, TWL and its directors, by not applying for registration with SEBI as Collective Investment Scheme have violated Section 12(1B) read with section 11AA of SEBI Act, 1992 and regulations 3, 5, 68 and 69 of the CIS Regulations.
14. From the material available on record, it is observed that Virender Kumar Mittal, Sangeeta Mittal and Pawan Kumar Mittal are the Directors of TWL. As directors, these persons are in-charge of and responsible for the day to day affairs of TWL.
15. 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. TWL and its Directors viz., Virender Kumar Mittal, Sangeeta Mittal and Pawan Kumar Mittal 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. TWL 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, TWL 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 TWL and its noticee directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the noticees.
 - iii. TWL 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. TWL and the noticee directors are restrained from accessing the securities market and are 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.
16. 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: July 31, 2018

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER