

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 dated December 26, 2014 in the matter of Sai Prakash Properties Development Ltd. ("SPPDL")

In respect of:

Sr. No.	Noticees	PAN
Category :		
	Company	
1.	Sai Prakash Properties Development Ltd.	AANCS7178R
	Director(s)	
2.	Pushpendra Singh Baghel	AFZPB0624B
3.	Pushpanjali Singh Baghel	AFZPB0557M
4.	Ranvajay Pratap Singh Baghel	ATTPB8254D
5.	Mragendra Singh Baghel	BKJPB6325H
6.	Dheerendra Krishan Pratap	AXMPB0165C
7.	Sandeep Shankar	ANPPS8356M
8.	Shahendra Singh Baghel	ATTPB8244M

The aforesaid entities are hereinafter referred to by their respective names or collectively as "**the Noticees**".

- SEBI had passed an Interim order cum Show Cause notice dated December 16, 2014 (hereinafter referred to as "**Interim order**") against the Noticees based on the prima facie conclusion that the fund mobilising activity of Noticee No. 1 i.e. Sai Prakash Properties Development Ltd. ("**SPPDL**" / "**Noticee company**") falls within the parameters of a "collective investment scheme" as defined in section 11AA of the SEBI Act, 1992. Accordingly, the following directions were passed against the Noticees (including the directors of SPPDL):

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- a. *not to collect any fresh moneys from investors from its existing scheme;*
 - b. *not to launch any new scheme/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 Sai Prakash Properties out of the amounts collected from the "customers"/investors under its existing schemes;*
 - f. *to furnish all the information sought by SEBI, within 15 days of the receipt of this Order, including,*
 - i. *scheme wise list of investors and their contact numbers and addresses, who have invested in the scheme till date,*
 - ii. *the details of amount mobilized and refunded till date, "*

2. According to the Interim order, the noticee company had been raising money from the public through various payment plans for their *"Joint Ventureship Scheme"*. The payment plans of the company were listed as follows:

- *Single Installment Payment Plans (S1 for 66 months, S2 for 90 months, S3 for 108 months, Monthly Income Plan S4 for 60 months)*
- *Installment Payment Plans (M2 for 78 months, M3 for 96 months, M4 for 240 months)*
- *Monthly Income Plan (P1 for 72 months)*
- *Yearly Income Plans (P2 for 72 months, P3 for 72 months)*

3. The following prima facie observations in the Interim Order formed the basis for the decision therein:

- As noted from the Brochure, Application and Sample Certificate, the company was observed to have been collecting funds towards its Joint Ventureship Scheme. The balance sheet of the Company recorded such funds as *"Investors Advance"*.
- The investors were offered an "expected return of participation" as per the Certificate issued by the Company.
- The plot of land was allocated to the investors by way of an "Allocation Letter", as a collateral security to repay the amount agreed by the company, as per the investment plan.
- The property, contribution or investment forming part of the scheme, was managed by Sai Prakash Properties on behalf of the investors and the investors do not have day-to-day control over the management and operation of the Scheme.

4. Based, inter alia, on the above prima facie findings, the Interim Order concluded that SPPDL was carrying on a “collective investment scheme” as defined in section 11AA of the SEBI Act, 1992 and since it had failed to obtain registration as a collective investment scheme, the noticee company was alleged to be in violation of section 12(1B) of the SEBI Act. The Interim Order and notices for hearing were attempted to be delivered by post, but failed. Therefore these were delivered by way of newspaper publication as public notices in Times of India (*English*) and in Dainik Bhaskar, Nav Bharat Times and Dainik Jagran (*Hindi*). Though the Interim Order had asked the noticee company and its directors (collectively "**the Noticees**") to file their reply on the observations made in the Interim Order, no reply on merits has been filed till date by any of the Noticees except for one of the directors namely Sandeep Shankar. Since his reply is only on his role in the company's matters and not with respect to the allegations of a collective investment scheme having been carried out, I will first address this issue.
5. The said noticee Sandeep Shankar had vide letter dated November 12, 2018 filed his submissions in the matter. The proceedings in the instant case were initially heard by Whole Time Member(Shri Ananta Barua) and the noticee had appeared before the said Authority on November 12, 2018 to make his oral submissions. The proceedings were subsequently transferred to the undersigned, after which though an opportunity of personal hearing was scheduled for January 09, 2019, none of the noticees appeared. The summary of the Noticee No. 7 's written submissions, are as follows:
- (i) Sai Prakash Properties Development Ltd. (SPPL) was incorporated on 03-12-2009 and it commenced business from 09-12-2009. Though the noticee was appointed among the first directors of the company, during his tenure of 5 months i.e. till 22.04.2010, he was not involved in any of the money collection related matters. On the date of his resignation, his shares were transferred to the CMD Pushpendra Singh Baghel.
 - (ii) He was issued a no-liability certificate with effect from the date of his resignation.
 - (iii) Though a search was conducted at his residential premises on 10.09.2015 by CBI, SCB, Kolkata seeking documents or any information related to SPPDL, no incriminating document was found. The search report of CBI, a copy of which is produced, states the same.

- (iv) CBI has submitted its Final Report in the Court of Ld. Special Chief Judicial Magistrate, CBI Cases, Bhubaneswar, Odisha u/s. 173 CRPC on 08-02-2017 in which the names of Sandeep Shankar is not included as an accused.
- (v) A separate police investigation into the case was conducted by the Investigating Officer/SHO - PS Jalupura Jaipur City North who presented the Final Report in this case on 31-3-2017. On page no. 7 of this final report the IO/SHO has highlighted the fact that Sandeep Shankar (Saxena) was allotted 2492 shares in December 2009 and on 22-04-2010 all the aforementioned shares held by him were again transferred to the CMD of SPPDL, namely Mr. Pushpendra Singh Baghel and during the period from 03-12-2009 to 22-04-2010, Sandeep Shankar (Saxena) worked as a paid employee of SPPL which is made clear and testified by his bank account statement document. Page no. 8 of the aforesaid Final report records the conclusion that no criminal act has been proved to have been committed by Sandeep Shankar (Saxena).

6. I have perused Sandeep Shankar's written submissions and find merit in his contentions. I note, in particular, that the CBI and the State Police had been investigating the same instance of illegal money mobilisation under different provisions of law and the final report filed by the State Police have concluded that the noticee worked as a paid employee of the company and that his shares had been transferred to the MD (and promoter) of the company - Pushpendra Singh Baghel. The Final report filed by CBI has neither recorded Sandeep Shankar as an accused nor does it make any mention of a specific role played by Sandeep Shankar in the money mobilisation activity of the company. I note that Sandeep Shankar was a director of the company for only 5 months post the incorporation of the company. The company's shares was substantially owned by two persons i.e Pushpendra Singh Baghel (Noticee No. 2) and Ms. Pushpanjali Singh Baghel (Noticee No. 3). From the final report filed by CBI before the Special CJM, CBI Court, Bhubaneswar, it is also clear that the other noticee directors of SPPDL are all brothers/relatives of Pushpendra Singh Baghel. Therefore given that the company was owned and operated closely by family members and considering Sandeep Shankar's insignificant tenure in the company and the State Police/CBI's Final Report based on investigation conducted by them, it would be appropriate to dispose of the proceedings qua Sandeep Shankar without holding him jointly and severally liable to wind up the CIS and repay investors. It is not justified to

continue to hold him liable for winding up and repayment of the collective investment scheme solely because he was a director for a brief period of time. Nonetheless, he was expected to avoid any association with an illegal collective investment scheme or, having joined the same as a director he was expected to initiate steps to wind up the same. Necessary directions must therefore follow for this infraction.

7. I am satisfied that the Noticees were given sufficient opportunities to make their written and oral submissions but they, with the exception of Noticee No. 7- Sandeep Shankar, failed to utilise the same. In the absence of any reply on merits, I am convinced that the matter may be disposed off ex-parte qua the Noticees as well.
8. Based on the documents available, the Interim order came to the *prima facie* conclusion that 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 that - there was pooling of contributions, contributions were made with a view to receive realisable value, the contributions were managed on behalf of the investors and the investors did not have day to day control over the management of the scheme. None of the Noticees (except Noticee No.7) has responded to the Interim Order. Even Noticee No. 7 who has filed his written submissions, has not addressed the *prima facie* conclusions in the interim order regarding the nature of the mobilisation of funds under various schemes to be a CIS. 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 findings in the Interim order, I am compelled to reiterate that the activities of the noticees constitute a Collective Investment Scheme in terms of section 11AA of the SEBI and the same has been carried out by the Noticees without seeking a registration from SEBI thereby contravening section 12(1B) of the SEBI Act read with regulation 3 of the CIS Regulations. I also note that in terms of regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves illegal mobilization of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person without obtaining the necessary registration from SEBI. The aforesaid legal provisions have

already been discussed in detail in the interim order and therefore in the interest of brevity I do not find it necessary to reiterate the same.

9. After passing of the Interim order, upon further investigation by SEBI and based on a bank statement analysis, it was found that the Noticee company had collected atleast Rs 111,54,96,435 (One Hundred Eleven crore Fifty four lakh ninety six thousand four hundred and thirty five rupees only). Accordingly I find that this is the minimum amount illegally raised by the Noticee company and hence is required to be repaid to the investors.

DIRECTIONS

10. In view of the above, in the interest of investors and the securities market and for the reasons recorded in the aforesaid paragraphs of this Order, I, in exercise of the powers conferred upon me under Sections 11(1), 11B and 11(4) thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:

- (i) Sai Prakash Properties Development Ltd. (PAN- AANCS7178R) and its promoters/ directors, Pushpendra Singh Baghel (PAN-AFZPB0624B), Pushpanjali Singh Baghel (PAN: AFZPB0557M), Ranvajay Pratap Singh Baghel (PAN: ATTPB8254D), Mragendra Singh Baghel (PAN: BKJPB6325H), Dheerendra Krishan Pratap (PAN: AXMPB0165C) and Shahendra Singh Baghel (PAN:ATTPB8244M) 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, Sai Prakash Properties Development Ltd. and its directors namely, Pushpendra Singh Baghel, Pushpanjali Singh Baghel, Ranvajay Pratap Singh Baghel, Mragendra Singh Baghel, Dheerendra Krishan Pratap and Shahendra Singh Baghel (collectively hereinafter referred to as "**noticee directors**") 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 Sai Prakash Properties Development Ltd. and its aforementioned noticee directors to comply with the above directions, SEBI shall initiate recovery proceedings under the SEBI Act against the Noticee company and the noticee directors.

- (ii) Sai Prakash Properties Development Ltd. and the noticee directors shall not alienate or dispose off or sell any of the assets of the Noticee company except for the purpose of making refunds to its investors as directed above.
- (iii) Sai Prakash Properties Development Ltd. and the noticee directors 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 (i) above to the satisfaction of SEBI and WRR is submitted to SEBI and for a further period of seven years from the date of completion of the refund, as directed above.
- (iv) The noticee directors shall be restrained from holding position as directors or key managerial personnel of any listed company for a period of seven years from the date of this Order.
- (v) Sandeep Shankar shall be -
 - (a) restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities market, directly or indirectly; and,
 - (b) restrained from holding position as director or key managerial personnel of any listed company,for a period of one year from the date of this Order.

- 11.** 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 29, 2019

PLACE: Mumbai

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