

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1) 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 –

1. Disc Assets Lead India Ltd (CIN: U51211TN2006PLC059572 and PAN: AACCD4575E) and its Directors viz.:-
2. Mr. Vivekanandam Janarthanan (PAN: AFFPJ9926C);
3. Mr. Nithiyanantham Arunkumar (PAN: AFWPA7113H);
4. Mr. Srinivasan Chidambaram (PAN: AJTPS6054J)
5. Mr. Shyamchander Thanikodi (PAN: BPEPS8939C)
6. Mr. Nithiyanantham Malathi Umashankar (PAN: AAOPU8534H)
7. Ms. S. Jeevalatha Sridhar (PAN: AKPPJ3044C).

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1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted a preliminary inquiry into the alleged illegal mobilization of funds by Disc Assets Lead India Ltd. (formerly known as Disc Agrotech Ltd. and hereinafter referred to as "**DALIL**"/**the company**), through various schemes such as "*Land Installment Scheme*", "*Product Package Scheme*", etc. Upon preliminary inquiry, SEBI, vide an interim order dated August 20, 2015 *prima facie* observed that the company had launched Collective Investment Schemes ("**CIS**") without obtaining certificate of registration for carrying out such activity from SEBI as required under Section 12(1B) of the SEBI Act, 1992 read with regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1999 ("**CIS Regulations**").
 2. Subsequently, after giving an opportunity of hearing and considering the submissions made by the Company and its Directors i.e. Mr. Nithiyanantham Arunkumar, Mr. Vivekanandam Janarthanan, Mr. Srinivasan Chidambaram, Mr. Shyamchander Thanikodi and its former directors Mr. Nithiyanantham Malathi Umashankar and Ms. S. Jeevalatha Sridhar, SEBI passed an Order on March 30, 2016 ("**final order**") with the following Directions:

“(i) to abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in the Order;

*(ii) to wind up the existing Collective Investment Schemes and refund, through ‘Bank Demand Draft’ or ‘Pay Order’, the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer **within a period of three months** from the date of the Order and thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds;*

(iii) not to alienate or dispose of or sell any of the assets of the aforesaid company except for the purpose of making refunds to its investors, as directed above;

(iv) to file a certificate of such completion with SEBI, within a period of 15 days, from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India (ICAI);

(v) to immediately submit the complete and detailed inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form;

(vi) to restrain from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of four (4) years.”

3. DALIL vide its letter dated April 07, 2016 submitted the details of its assets and properties as on March 30, 2016. Further, the directors of the Company viz., Mr. Nithiyantham Arunkumar, Mr. Vivekanandam Janarthanam, Mr. Srinivasan Chidambaram, Mr. Shyamchander Thanikodi and its former directors viz., Mr. Nithiyantham Malathi Umashankar and Ms. S. Jeevalatha Sridha also submitted their asset details in compliance with SEBI's final order.
4. Thereafter, DALIL had filed an appeal no.175 of 2016 before the Hon'ble Securities and Appellate Tribunal (“SAT”) against the aforesaid order of SEBI seeking extension of time to repay the investors. Hon'ble SAT vide its order dated June 07, 2016 held “ *Since the*

appellant accepts the decision of SEBI and submits that steps have been taken to implement the order of SEBI, we grant extension of three months' time to comply with the order passed by the WTM of SEBI on March 30, 2016. It is made clear that the implementation of the order passed by WTM of SEBI on March 30, 2016 shall hence forthwith be under the supervision of SEBI and it would be open to SEBI to grant further extension of time if need arises. The appellant is at liberty to pay to investors through NEFT mode in addition to other permissible modes of payments. Appellant shall furnish proof of payment to SEBI from time to time."

5. Subsequently, SEBI received letters dated July 08, 2016 and July 11, 2016 from DALIL. SEBI also received separate but identical letters dated July 11, 2016 from its Director (Mr. Shyamchander Thanikodi) and former Directors (Mr. Nithiyanantham Malathi Umashankar and Ms. S. Jeevalatha Sridhar). The main submissions of the Company and its directors, *inter-alia*, are as under:
 - a) *"... on the one hand the Company is creating awareness through public notices for refunds, collecting claims from investors, hiring and training more employees to follow a systemized method in refunding monies to large number of investors. While on the other hand, the core committee established within the company is facing problems with regard to the potential buyers for its properties. It is pertinent to state that since the company has no liquid money, it is important for it to sell its properties in order to repay its investors.*
 - b) *It is important to bring to your good-self (SEBI) that the Economic Offence Wing (EOW) of Madurai had widely published notice in the vernacular newspapers stating that it had registered a case of cheating against company and it would take necessary legal action if any investors comes with the original receipt or relevant document. Hence, the potential buyers of the properties of the company are reluctant in buying the land of the company for want of confidence. Such challenges are limiting the productivity of the progress of company in repaying its investors and making it hard for the company to pay all its investors in the time period granted to it for the same.*
 - c) *It may please be noted that the investors have continued to show their reliance on the company but any further delay would amount to default and losing their trust. This would tarnish the image of the company which has been earned in all these past years.*
 - d) *The company desperately wants to comply with the directions passed by SEBI and therefore is desirous of your goodself (SEBI) appointing an Independent Director under section 149 (6) of the companies Act, 2013 for the purpose of monitoring the transactions of company with the buyers, as according to order of SAT, your goodself has to supervise the implementation of its order dated 30.03.2016. The*

company wishes to reassure that it is financially capable of repaying all its investors and for the same it is also willing to submit the necessary documents reflecting its financial capacity, if so required. The supervision and monitoring of SEBI would reassure the buyers of the properties and the company would be able to satisfy the repayment to the investors at the earliest.

- e) It is further being submitted that the company is facing difficulties with the potential buyers of the land. The company is facing a situation that the potential buyers are hesitating to buy the properties stating that there is a chance that the sale will be challenged and thrown as per the law of the state.*
- f) Apart from the concern about the notice published by EOW, the potential buyers are apprehensive to proceed further with the transaction due to the provisions mentioned in the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997. It is further submitted that according to the potential buyers, the provision contained in Section 8 of the aforesaid Act would invite judicial proceedings against them in the event of any default made by the company. It is further stated when a retired judge is appointed as nominee director/ committee member to dispose the property, the company can satisfy the buyer and sell its properties without any hurdle and settle all the investors with the timeframe stipulated by the company.*
- g) The remuneration to the nominee director/ committee member will be paid by the company as per the remuneration policies.*
- h) According to the order passed by the Hon'ble SAT on 7.6.2016, the company has time till September to repay approximately 10 lacs investors. The repayment process to such large number of investors involves enormous tasks. The company has to resolve these difficulties immediately in order to compete with the limited time granted to refund the investors."*

6. Subsequently, DALIL filed miscellaneous application no.189/2016 before Hon'ble SAT and *inter alia*, sought the following reliefs:

- a) To pass directions for appointment of a committee till the completion of sale and settlement process in the overall interest of justice, transparency and fair play.*
- b) To clarify the other Government Authorities/ Agencies/ Economic Offences Wing II, Madurai that the proceeding being done in the instant case is under the vigilance of SEBI and are accountable to SEBI.*
- c) To pass directions to repay about investors in their saving account of Nidhi Companies.*
- d) Pass any other such order which Hon'ble Tribunal may deem fit and proper.*

7. Vide the aforesaid application, DALIL *inter-alia* stated that EOW, Madurai passed directions prohibiting any transfer of DALIL's property to any buyer, which is also an

obstacle in repaying the investors within the given time period. From the submission made by the company before SAT, it was noted that DALIL had written to EOW, Madurai on August 16, 2016 informing that SEBI had already seized the matter and ordered to sell its properties and settle the investors. It is also observed that DALIL requested EOW to revoke its direction issued to the Registrar, Madurai for interim seizure of the properties belonging to DALIL and its Directors.

8. During the hearing on September 08, 2016, the Hon'ble SAT directed SEBI to seek additional information from the Company, if any and granted time upto two weeks to SEBI to deal with the matter. The matter has scheduled for hearing on September 28, 2016.
9. SEBI had also requested EOW vide letter dated September 12, 2016, to furnish details with respect to the action taken against the company along with the copies of orders/letter freezing the assets of the Company to communicate to the Hon'ble SAT. SEBI has not received any reply from the EOW till date.
10. In view of the above directions by Hon'ble SAT , SEBI vide letter dated September 12, 2016, sought the following details from the company :
 - a) Details of the restrictions imposed by EOW Madurai in selling its properties.
 - b) Copy of EOW Madurai letter dated July 14, 2015.
 - c) To clarify why proceedings by EOW Madurai were not brought to the notice of SEBI earlier.
 - d) Copy of the latest audited Balance sheet of the company.

The company was advised to furnish the aforementioned information by September 14, 2016.

11. In response, DALIL vide letter dated September 13, 2016 submitted the details sought by SEBI and also made the following submissions through its advocates viz., DPSA, Advocates and Solicitors:

11.1 *"Our client was initially unaware of the directions passed by the EOW to the land registry department. It is only in the second week of August a potential buyer informed the core committee of the Company about such EOW directions. It is further submitted that their client has not concealed any*

information known but rather was unaware itself and was prompt thereafter to share the information with SEBI. The concerns raised by the potential buyers are reiterated below:

- a) The potential buyers are apprehensive to buy our client's land due to the provisions mentioned in the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act, 1997. It is further submitted that according to the potential buyers, the provision contained in section 8 of the aforesaid Act would invite judicial proceedings against them in the event of any default made by the Company. They also have concerns that if they pursue with the transaction of buying the properties, they may also be involved in the proceedings.*
- b) The potential buyers for the want of confidence are now only willing to proceed further with the transaction, if SEBI would appoint a committee comprising of present and past directors of the Company, a retired High Court judge or any other person, whom SEBI may deem fit for this purpose. It is stated that the appointment of such committee would give assurance to the potential buyers, reflect transparency as well as validate the transaction at a fair market value*
- c) EOW has also widely published in the local newspapers stating that it will register case of cheating against their client and take necessary legal action, if any investor is willing to come up with the original receipt or relevant documents. Such advertisement in the newspaper is also impacting the potential buyers negatively, It is further stated that, a clarification to EOW is necessary that the instant case is being supervised by SEBI essentially so that DALIL could sell the properties and expedite the repayment process to the investors by complying with directions passed by SEBI rather than facing a fresh investigation which has being initiated by EOW, Madurai.*
- d) ...During the process of collecting the claims from investors, they found, that out of the total investors, approximately 5,64,000 investors do not have bank accounts as they are hailing from remote villages. However, they do have accounts kept in the Nidhi Companies which are declared so by the Government of India in erstwhile Ministry of Law justice and Company Affair and is published in the gazette of India. The aforesaid investors are not willing to open new bank account for this purpose. Therefore, it is requested to allow our client to repay these investors in their saving accounts in Nidhi Companies wherein they will also submit the copy of the receipt of the payment along with investor's details while filing the repayment report to SEBI.*
- e) That since there is very limited time remaining in accordance with the order passed by the SAT and in the backdrop of all the challenges as mentioned above which they faced post the previous order passed by the Hon'ble Tribunal on 07.06.2016, it is humbly requested to kindly grant an **extension of six months' time** for repaying the monies to the investors.*

- f) *That our client had never made a single default to its investors before the initiation of proceedings by SEBI. The investors are now demanding for refund but with such actions taken by EOW and any further delay would amount to more agitation amongst investors. This would also tarnish their image which has been earned in all these past year. Therefore, due to the paucity of time as well as urgency in the instance case, they have requested for the following:*
- i. *Pass directions to form a committee till the completion of sale and settlement process in the overall interest of justice, transparency and fair play;*
 - ii. *Pass directions to appoint any officer from SEBI to be on board of M/s Disc Asset Lead India Limited as SEBI thinks fit and proper*
 - iii. *Clarify the Economic Offences Wing, Madurai and any other investigating agency that the instant case is under your goodself vigilance and our client is only accountable to SEBI;*
 - iv. *Pass directions to repay investors in their saving account of Nidhi Companies; and*
 - v. *Grant an extension of six months' time to repay the investors.”*

12. I have considered the material available on record such as Orders passed by SEBI, Orders of Hon'ble SAT, submissions and requests made by DALIL and its Directors and former Directors, etc. On an examination of the same I note the following:

12.1 SEBI had passed the final order dated March 30, 2016 against DALIL and its Directors since the company was carrying out activities in the nature of CIS without obtaining SEBI's registration. After due consideration of the company's submissions, SEBI passed the final order and granted three months' time to DALIL to repay the investors. Thereafter, DALIL filed an appeal to the Hon'ble SAT. In the Appeal, DALIL sought extension of time to comply with the directions of SEBI to repay the investors. The same was also considered by Hon'ble SAT and vide Order dated June 07, 2016 Hon'ble SAT granted further extension of time upto three months.

12.2 During this period, DALIL vide representations dated July 08, 2016, July 11, 2016 and September 13, 2016 intimated SEBI about their difficulties to repay the investors due to the reasons stated therein (reproduced at paragraphs 5 and 11 above) and requested SEBI to consider (i) appointment of committee or appoint officers from SEBI on the board of DALIL (ii) allowing DALIL to repay investors

through their saving accounts with Nidhi Companies and (iii) extension of time upto six months to repay the investors.

- 12.3 As regards the request of DALIL for the appointment of committee or appoint officers from SEBI on the board of DALIL, I find that the same is not required as SEBI is empowered to take necessary actions under Section 28A of SEBI Act in case company ultimately fails to wind up and repay its investors. As SEBI had already considered all the facts and circumstances of the instant case in detail and passed the final order dated March 30, 2016 with suitable directions, I do not find any need to change the extant order.
- 12.4 As regards request of DALIL to allow payments through Nidhi Companies to its investors of remote villages, I note that SEBI vide its order dated March 30, 2016 *inter-alia*, clearly directed DALIL and its directors to wind up the existing CIS and refund the money to the investor through 'Bank Demand Draft' or 'Pay Order'. Subsequently Hon'ble SAT vide its order dated June 07, 2016 also allowed 'NEFT' as mode of repayment to investors. The modes of repayments stipulated in the earlier orders are necessary to ensure the genuineness of such repayments. I do not therefore find any necessity for any further modifications to be made in the extant order in this regard.
- 12.5 I note that the directions issued by EOW was not brought to the notice of SEBI either during the time of passing the final order dated March 30, 2016 or brought to the notice of Hon'ble SAT in the initial appeal made by the company seeking time to comply with SEBI's Order. Vide representation dated September 13, 2016, the Company claims that they were also unaware of such directions of EOW. I note that SEBI vide letter dated September 12, 2016 has also sought details from EOW, Madurai regarding the proceedings initiated against DALIL and its Directors. SEBI has not received any reply till date.
- 12.6 The Company and its Directors vide letter dated September 13, 2016 submitted a copy of EOW's letter received on June 16, 2016 (in Tamil along with translated version) addressed to Assistant Registrar, Madurai. From the said letter, I note that

EOW registered case no. Cr. No. 06/2016 against the company and its directors under section 406, 420 and 120(B) of Indian Penal Code and Section 5 of Tamil Nadu Prizes and Chits Money Circulation Scheme (Banning) Act, 1978. Vide the said letter EOW advised the Registrar, Madurai to arrange interim seizure of the properties belonging to DALIL and its Directors to avoid any transactions in the properties and also to furnish certified copy of the property documents and encumbrance certificate for 15 years.

12.7 I note from the submissions of DALIL (dated September 13, 2016) that the company has no liquid money to repay the investors and they are facing difficulties in disposing of their assets due to the prohibition of EOW on sale of its properties.

12.8 It is pertinent to mention that Economic Offences Wing (“**EOW**”) is set up by the State Government for preventing and investigating financial frauds on public. EOW is vested with powers under various statutes to protect the interests of depositors. Since EOW has already initiated proceedings against DALIL and its directors and seized the properties, it is not, in my view, appropriate or proper on the part of SEBI to interfere with the exercise of powers and functions of another Government Institution (EOW in the instant case) at this stage.

13. Considering all the circumstances, 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) read with 11B of the SEBI Act read with regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999 hereby pass the following directions :-

- i. SEBI shall take up the case with EOW:*
 - (a) to get full details of the proceedings initiated against DALIL and its Directors by EOW;*
 - (b) to record SEBI's claim with EOW of Rs.1137 crores plus interest payable to the investors of DALIL against the proceeds of sales, if any, effected by EOW;*
 - (c) request EOW to give prior information to SEBI in case they decide to release, for whatever reason, any of the assets seized.*
- ii. SEBI shall not take any further coercive steps for implementation of its Order dated March 30, 2016 till EOW completes its proceedings as mentioned at point (i) above.*

iii. DALIL and its Directors are directed not to alienate any of their assets in any form till the full repayment to investors is effected.

14. The representation of DALIL and its Directors are disposed of accordingly.

September 21, 2016
Mumbai

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA