

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 MAITREYA PLOTTERS AND STRUCTURES PRIVATE LIMITED

In respect of:

Sl. No.	Noticees /Name of the entities	PAN
1	Maitreya Plotters and Structures Pvt. Ltd.	AAFCEM9944B
2	Ms. Varsha Madhusudan Satpalkar	ACEPS9276L
3	Mr. Janardan Arvind Parulkar	AKNPP6001B

Background in brief

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") vide an ex-parte ad-interim order dated August 30, 2013 prima facie found that Maitreya Plotters and Structures Pvt. Ltd. (hereinafter referred to as "MPSPL/Company") and its Directors, namely, Ms. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar (the company and its directors hereinafter collectively referred to as the "Noticees") had indulged in illegal mobilization of funds from the public through schemes in the nature of Collective Investment Schemes (hereinafter referred to as "CIS") without obtaining certificate of registration from SEBI and thus had contravened section 12(1B) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") read with Section 11AA of the SEBI Act, 1992 and regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "CIS Regulations"). In view of the above said prima facie findings against the Noticees, they were directed inter-alia, not to collect any money from investors under their existing schemes and not to launch any new scheme. The interim order also prohibited them from diverting any fund raised from the public and

directed not to dispose or alienate any property or assets of the schemes offered by MPSPL.

2. Subsequent to the passing of the aforesaid interim order an opportunity of hearing was given to the Noticees. After hearing, SEBI passed a confirmatory order dated September 12, 2014 in the matter, confirming the directions issued against the Noticees vide the interim order dated August 30, 2013, till further orders. Thereafter, an investigation into the activities of the Company was conducted by SEBI for the period April 1, 2009 to August 30, 2013 (“investigation period”) to ascertain as to whether the activities undertaken by the Company during this period are in violation, if any, of the provisions of SEBI Act, 1992 and regulation 3 of the CIS Regulations. The findings of the investigation are discussed below.
3. MPSPL was incorporated on April 18, 2009. The board of directors of the Company as per Annual Report as on March 31, 2013 comprised of Ms. Varsha Madhusudan Satpalkar (Chairman & Managing Director) and Mr. Janardan Arvind Parulekar (Director).
4. As per the main objects of the Memorandum of Association, MPSPL is engaged in the business of real estate, i.e. of buying, selling, plotting, sub-plotting, letting out all types of land such as agricultural land, barren land, farmland, etc. and to subdivide the land into small pieces and to sell, lease out or otherwise dispose of any such land. Further, MPSPL is also engaged in the business as builders, developers and executors of projects, etc. In order to carry out the aforementioned activities, MPSPL purchases land in different States of the country in large quantity, divides it into smaller plots as per the requirement of the customers and then sells such smaller plots to the customers on one-to-one basis. After execution of an ‘Agreement to Sale’ and issue of an Allotment Letter, MPSPL undertakes the development work on behalf of the buyer in the allotted plot within a period of 4 to 6 years. MPSPL operates through various branches spread across several States. Contribution from the investors are collected at respective branches and then transferred to the Head Office.
5. In pursuance of the confirmatory order dated September 12, 2014, in order to understand the nature of activities of MPSPL and to examine whether they would fall within the ambit of CIS Regulations, SEBI made inquiries and sought certain documents from MPSPL with

respect to its various schemes, details of funds mobilized from the investors under the schemes, the year-wise funds collected from the investors, the manner in which the funds were utilized, etc.

6. Information were sought vide letter dated October 01, 2015 from the Company. Since, no reply received, a reminder was sent on October 27, 2015. Subsequently, summons dated November 20, 2015 was also issued, however, Company vide letter dated December 04, 2015 informed that “... .. *since we are not carrying on a CIS, information / data as sought by you ... does not apply to us and hence the same could not be provided.*” Since, information was not forthcoming from the company, summons dated January 20, 2016 was issued to the Chairperson & Managing Director (hereinafter referred to “CMD”) of Company seeking his personal appearance. It was informed that the CMD has been arrested by Economic Offences Wing (EOW) - Nasik on February 04, 2016 and all documents, laptops, computers and office building of the company have been sealed.
7. Since, no information was coming from the Company, SEBI sought information from EOW-Nasik as well as the information/data as available with the Registrar of Companies (hereinafter referred to as “ROC”). The EOW- Nasik while furnishing information also informed that a Committee has been formed by the order of Hon’ble Nasik District Court for payment to the investors. It was also informed by EOW that during the course of their investigation, it is observed that more than 20 lakh investors have been cheated by the Company involving more than Rs.1,250 Crore. The Company however vide its letter dated August 29, 2016 informed SEBI that the total amount mobilised/received by it towards advance for the purchase of land from the commencement of its business till August 30, 2013 was Rs.1775,17,27, 595/-. It was also stated by MPSPL that offices of Company were sealed by the EOW of the Nasik Police on February 4, 2016 in the course of investigation into FIR CR No. 34/2016 registered with Sarkarwada Police Station under sections 406 and 420 read with 120B and 34 of the Indian Penal Code and Sections 3, 4 and 5 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act) and all documents and computers were seized. Hence, they did not have access to their data regarding the customers who have paid the advances to the Company.
8. As the Company did not furnish the desired information citing the above reasons, based on the information available on records including the information received from

complainants, EOW, ROC and MPSPL, it is observed that Company had launched schemes for booking or purchase of plot of land and the money was mobilised either under Cash Down Payment Plan (CDP) or Instalments Payment Plan (IPP). Under CDP option, payment towards the booking of the plot was supposed to be made in a single instalment whereas under IPP, the payments were to be made in monthly/quarterly/yearly instalments over a period of time. It is also observed from the Letter of Intent/Offer Letter (LOI/OL) that the company had launched a number of such schemes as indicated from the LOI/OL annexed to the Show Cause Notice which bears 'Plan No. as 21'.

9. On examination of the business methodology of MPSPL, on the basis of the information available on record, it was alleged that MPSPL has launched/sponsored /operated various '*collective investment schemes*' attracting the definition prescribed under section 11AA of the SEBI Act without obtaining registration from SEBI in terms of section 12(1B) thereof and regulation 3 of the CIS Regulations. The Company was mobilizing funds from investors towards booking, purchase and development of plot/s of land under various schemes in which company was offering to sell plots of land to prospective buyers with option of returns, either under the CDP or IPP. After receipt of payments by the company, investors were given acceptance letter issued by MPSPL which mentioned an "anticipated value of developed plot", therein indicating that in case the Company was unable to provide land to the investor, they would be entitled to a return on the amount invested. The acceptance letter issued by MPSPL to its various investors did not contain any specifications of plot, except for the plot size. The investor was not aware of the plot location / status, at the time of making investments for the plot. A perusal of the various bank accounts of MPSPL indicated that credits to the accounts of the Company were mainly in the form of cash of different amounts, which were transferred to the Axis Bank account of MPSPL (Account no. 023010200025027). The Company had vide its letter dated November 25, 2013 informed that it has advanced money to 25 entities to acquire land, who acted as facilitator for MPSPL for purchasing agricultural land on behalf of MPSPL. Further, as per certain clauses of the Agreement for Sale executed with customers, MPSPL has the right to develop the plot of land and the purchaser (investor) was not allowed to interfere with the said rights of the vendor/Company (clause 8). Clause 13 of the agreement provided that "*On execution of agreement for sale / sale deed, registered before the concerned sub-registrar or public notary as may be feasible or practicable of the said property, either solely or jointly with other purchaser, the said title deeds pertaining to the sale of the said property shall be kept in the safe custody of Trustee(s) appointed*

by the vendor for the purpose”. From the above, it was alleged that Company was pooling contributions from the investors under the garb of sale of plot of land and the investor did not have any control over day to day management of the said land placed under the schemes or arrangement. Therefore, it was alleged that the scheme offered by MPSPL fulfilled the conditions of section 11AA of the SEBI Act, 1992.

10. In view of the above and based on the information and documents made available to SEBI, a Show Cause Notice (SCN) dated May 21, 2018 was issued to MPSPL and its directors, namely, Mrs. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar asking them to show cause as to why suitable action mentioned under para 11 of the SCN should not be initiated against them for the violation of section 11AA & 12(1B) of SEBI Act r/w regulation 3 of the CIS Regulations. Subsequently, a supplementary SCN dated August 13, 2018 was also issued to the noticees.
11. Vide the above mentioned SCN and supplementary SCN, Noticees were asked to submit reply/response within a period of 21 days from the date of receipt of the notice. The SCNs were served on the Noticees by affixing it at their last known address. No reply to the SCN has been received till date. In order to proceed further in the matter an opportunity of hearing was granted to the Noticees on January 3, 2019. The hearing notices were also served through affixture at the last known address of the Noticees. None of the Noticees or their authorised representative appeared for hearing. Noticees have been granted sufficient opportunity to file their reply and to appear for hearing, however, they have not availed the same. Therefore, I am proceeding to decide the matter on the basis of documents available on record.

Consideration and findings:

12. In order to have a proper appreciation of this matter, it will be relevant here to look into the background that prompted SEBI to have a policy and regulation on '*collective investment schemes*'. SEBI has statutory duty to protect the interests of investors in securities market and to protect the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. Section 11 of the SEBI Act has empowered it to take such '*measures*' as it thinks fit for carrying out those objectives and duties. Section 11(2) of the SEBI Act says that without prejudice to the generality of the provisions of section 11(1), the '*measures*' referred to in section 11(1) may provide for registering and

regulating the working of '*collective investment schemes*'.

13. During the late 1990s, the Government of India noticed that certain entities were soliciting investments and issuing instruments such as agro bonds, plantation bonds, etc. by offering very high rates of return, which were inconsistent with the normal rate of returns in such schemes. Such entities mobilized huge amounts from the public and then mis-utilized (misappropriated) these funds, for the purposes not disclosed at the time of soliciting these investments from public, thereby not only causing loss to the investors who lost their savings to such unscrupulous entities, but also eroding the confidence of the general public. Considering the high element of risk associated with such schemes, the Central Government felt that it was necessary to set up appropriate regulatory framework to regulate such entities. Hence, in order to protect the interest of the investors and to ensure that only legitimate investment activities are carried on, vide press release dated November 18, 1997, the Central Government communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc., are issued by different entities would be treated as 'Schemes' under the provisions of the SEBI Act and directed SEBI to formulate regulations for the purpose of regulating these Collective Investment Schemes. It was against this background that the CIS Regulations came to be framed by SEBI and the SEBI Act was amended to explicitly define '*collective investment scheme*' by inserting section 11AA therein. Thereafter, several press releases and newspaper advertisements/ notices were issued by SEBI from time to time in the leading newspapers of India bringing to the notice of the investors and the persons concerned, various instructions issued by SEBI/ Central Government from time to time in respect of the functioning of the collective investment schemes.
14. I have taken into consideration the contents of the SCN and the material available on record. The issue for determination is whether the mobilization of funds by MPSPL under its various schemes/plans for 'purchase or booking of plots of land' falls under the ambit of CIS in terms of section 11AA of the SEBI Act, 1992. Section 11AA, which provides for the conditions to determine whether a scheme or arrangement is a '*collective investment scheme*', 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.

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

(3) Notwithstanding anything contained in sub-section (2) or sub-section (2A), any scheme or arrangement—

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;

(iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);

(v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);

(vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956);

(vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982 (40 of 1982);

(viii) under which contributions made are in the nature of subscription to a mutual fund;

(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,

shall not be a collective investment scheme.

15. As may be observed from the above, in a case where payments or contributions of investors are pooled and utilized for the purpose of a scheme or arrangement with a promise of return or profit and the scheme offered by the person is such that it is managed by the person collecting such contributions to the exclusion of the investors in its day to day affairs, the said scheme then would qualify to be a CIS under the SEBI Act. Further, sub-section 3 of section 11AA provides that a scheme or arrangement offered by a person will not be treated as a CIS even if it satisfies the conditions mentioned in sub-section 2 or 2A of section 11AA, if the said scheme or arrangement is made or offered by persons falling in any of the categories of businesses mentioned in the sub-section 3 of section 11AA of SEBI Act. It is noted that MPSPL is a private limited company and there is nothing on record to even suggest that the business of MPSPL falls under any of the exceptions made in the sub-section 3 of SEBI Act. Having said that, it is now necessary to examine whether the schemes of 'purchase or booking of plots of land' offered by MPSPL satisfies the conditions prescribed under Section 11AA (2) of the SEBI Act to be called as Collective Investment Schemes or not.

Whether the contributions, or payments made by the investors were pooled and utilized solely for the purposes of the scheme or arrangement of MPSPL?

16. With regard to the condition as to whether the contributions were pooled and utilised for the purpose of the scheme, it is noted from the record and the interim order that the activity of collection of funds from the public were carried out by MPSPL through its various branches spread across several states. During investigation, information/documents pertaining to the money mobilisation under the schemes offered by MPSPL and the details about investors were sought from the Company. The Company informed that they are not in possession of the documents and data requested by SEBI, as all documents, laptops and computers have been seized by EOW – Nasik. SEBI obtained brochures issued by the Company from EOW-Nasik. It is observed that the Company had launched “Schemes for Booking or Purchase of Plot of Land” in which Company had invited contributions from the public by offering to sell plots of land of various sizes to the prospective buyers either under the CDP or IPP with monthly / quarterly / yearly instalments. As stated by the Company vide their letter dated August 29, 2016, the total

amount received by it towards advance for the purchase of land from the commencement of its business till August 30, 2013 was Rs. 1,775,17,27,595/-. A perusal of the various bank account statements of MPSPL indicate that credits to the accounts of the Company were mainly in the form of cash of different amounts, which were transferred to the Axis Bank account of MPSPL (Account no. 023010200025027). The Company had vide its letter dated November 25, 2013 informed that it had advanced money to 25 entities to acquire land, viz. Jaycee Homes Ltd., Shiv Prasad Patel, Tirath Prasad Patel, Munnibai Lalaman Sahu, Jaswantsingh Gorelal Meena, Prakash patel, Raghuvir Singh, Rajkumar Parmanand Patel, Ramsingh Prasad Meena, Arun Singhania, Krishna Kumar Vyas, Mahendra Singh Rathod, Mohor Singh, Shri Viratra Real Estate Pvt. Ltd., Yogendra Singh Rajput, Amrutlal Venaji Mali, Basantidevi Amrutlal Mali, M/s Vande Mataram Developers, M/s Farm Valley Enterprises, M/s Achievement Developers, M/s Sidhyog Associates, M/s Mrityunjaya Infrastructures, M/s Marta Kripa Infrastructure, M/s Ketaki Realities, M/s Madhukar Plotters. A perusal of the Axis Bank bank account of MPSPL indicate transfers / payments of money to some of these entities such as Mrityunjaya Infrastructure, Marta Kripa Infrastructure, Farm Valley Enterprises and Achievement Developers, Ramsingh Meena, Madhukar Plotters and Ketki Realities. It was stated that they acted as facilitator for MPSPL, for getting agricultural land purchased for and on behalf of MPSPL. It is also observed from the record that many of the above entities were directly or indirectly controlled by the Noticees such as M/s Mrityunjaya Infrastructures, M/s Marta Kripa Infrastructure, M/s Farm Valley Enterprises and M/s Achievement Developers, in which Noticee No 2 & 3 were partners.

17. The Company vide letter dated November 25, 2013 has claimed and contented that it has generated profit from several of its other businesses and profit earned from those businesses were also utilised for the purchase of the land or for making advance payment for purchasing lands. However, Company has not brought any evidence to substantiate the claim that money/consideration utilised towards the purchase of land/s were from resources other than the amount pooled/received from the investors/customers/purchaser. From the records available and analysis of balance sheet, bank accounts of the Company, it could not be found if the Company has generated any other profit which could have been used for purchase of land. It was only the money received from the customers/investors of the schemes floated by the Company which have been pooled and utilised for the purchase of land. The Balance Sheet of the Company shows that it did not

have sufficient surplus so as to make purchase of lands. At the same time, the liability of the Company in the Balance Sheet under the head 'Current Liability' showed continuous increase and there was significant increase of balance under the head 'Booking Amount' from Rs.358.35 Crore as on March 31, 2011 to Rs.1021.48 as on March 31, 2014. It is also found that simultaneously, on asset side of the Balance Sheet there is also an increase in the 'short terms loans and advances' which indicates that the amounts received from the investors were pooled under the head 'Booking Amount' and utilised by the Company.

18. It is clear that the contributions or payments received from investors were pooled and utilized by MPSPL for the purposes of the schemes/plans of the MPSPL. Further, Noticees have not furnished any justification as to why the purchase consideration of a plot of particular size of land would remain the same irrespective of the fact that the plots to be allotted to the prospective buyers were located in different geographical locations of the country. There is also no justification as to why the allotment of the land and the investment plans would be subject to the rules and regulation of the Company from time to time and binding on unit holder/ purchaser. The investors continued to be bound by the rules of the schemes even after the land was allotted to them. I am therefore of the view that the scheme offered by MPSPL was an investment scheme under the garb of allotment of land where the Company had pooled money from investors and utilized the same for the purposes of the scheme.

Whether the contributions or payments were 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?

19. With regard to the condition that the contributions or payments towards the scheme were made by the investors with a view to receive profits or property, it is noted from the acceptance letter issued by MPSPL to the investors that the letter indicated the total amount of consideration and the anticipated value of developed plot. For instance one such acceptance letter issued to an investor, namely Mr. Pradip Wamanrao Paraskar (Mr. Pradip) on October 3, 2011 mentioned the 'anticipated value of developed plot' as Rs.65,000/- as against the total consideration of Rs.37,500/- payable in three yearly instalment of Rs.12,500/- each thereby assuring an indicative profit on the investment to be made. In this case Mr. Pradip was expected as per agreement or acceptance letter to

make the payment of Rs.37,500 in three instalments of Rs.12,500/- each on yearly basis, however, there was another column pertaining to 'Payment Schedule & Duration' in the said letter in which the period was mentioned as '31/6 year'. The Company has also not submitted any justification as to why despite expiry of 3 year period on /around October 2014 in the case of Mr. Pradip, no sale deed has been executed transferring the land in favour of Mr. Pradip. I also note that subsequent to the development of plot of land, the purchaser gets an option for either getting allotted the plot of land or receiving a monetary amount in the form of estimated realisable value. It was also found that the Company was entering into an agreement of sale coupled with agreement for development of plot with the investors. It is noted from the Clause 4 of a sample Agreement for Sale, which deals with terms of Breach of Agreement by the Company/Vendor, that "(i) If the vendor fails to allot the said property to the purchaser as per the agreed terms and conditions, purchaser shall be entitled to terminate the agreement, in which event the vendor shall refund the amounts paid by the investor together with simple interest @12% p.a. from the date of agreement". As against their contention that the Company purchased land and engaged in effecting sale of such land in smaller denomination to the investors, the Noticees have not submitted any documents in support of the claims made. The acceptance letter issued by the Company further talks about an 'Estimated Realizable Value' which indicate that the investors/customer/purchaser have invested under the scheme/s with an option either to receive a plot of land or return on their investments, in case of non-receipt of land. In this connection a judgment of the Hon'ble Punjab and Haryana High Court in the matter of *PGF Limited vs. Union of India & others* may be referred to wherein the Hon'ble High Court held that when each customer/investor is a recipient of 'property' it is apparent that each customer/investor is admittedly a recipient of one of the benefits contemplated under section 11AA (2) (ii), namely, 'property'. In this context I note that the average return offered by MPSPL, when the investor opts for returns from his investment was, admittedly, about 12%. Till date, Noticees have not submitted any document substantiating that the investors had actually opted for allotment of land and instead, the evidence on record suggests that all investors have opted for refund along with benefits. It establishes that the investors predominantly contributed/paid the money to MPSPL with a view to receive a profit on the basis of returns offered by it under the garb of purchase/booking of plot of land. Under the circumstances, I find the schemes/plans satisfy the condition stipulated in section 11AA (2) (ii) also.

Whether the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, was managed on behalf of the investors?

20. With regard to the question as to whether the contributions received from the investors were managed by the Company, it is observed that the acceptance letter issued by MPSPL to its various investors did not contain any details of plot of land (such as plot number, location of plot etc.) except for the plot size. Hence the investor was not aware of the plot location / status, at the time of making investments for purchase of the plot. Even in cases where the investor had applied under the CDP, i.e. the entire consideration was paid in a single instalment, the date of handing over of “developed” plot was 4 years after date of the offer letter and till such time the investor will not know the particulars of the land allotted to him for which he has paid the entire amount. Thus, plots of land were not relatable to the investors. The money received from the investors was being pooled in by MPSPL in its account and was being used to make payments to various sellers of lands or to “facilitators” for purchase of lands from sellers. The investors, making payments to MPSPL were neither aware of, nor were made party to the transactions which MPSPL had with the sellers / facilitators. I note that at the time of making the contribution/payment, the investor only gets a promise to be allotted a piece of land in the properties developed and managed by the MPSPL or to get repaid along with promised benefits. At the stage of investment and even after that, the land unit is neither identifiable independently nor distinguishable. The identification of the land/plot to be allotted to such investor is the discretion of the Company. The investor does not take part in acquisition, development and management of property i.e. land /plot. He also does not himself manage his investments in the schemes rather his investments are managed and utilized by MPSPL. The records even do not suggest that the investor had option to get the development done by his own resources or as per his choice and discretion. Thus, there is no doubt that in the scheme offered by the Company the investor did not manage the property or had any say on his contribution or investment at any stage of the schemes. As discussed above, the right of investor was created at the time of making a contribution/payment, in an unascertainable and non-distinguishable land unit. The contribution/payment paid by the investors was to be used for the development of the land. Such development would undoubtedly be on behalf of the investors who may opt for land unit instead of return on investment. Thus, it is MPSPL which managed the property that was part of its scheme on behalf of the investors. The aforesaid facts and circumstances, therefore, lead to the only

possible conclusion that the land to be purchased by customers/investors through their contribution was to be entirely managed by the Noticees on behalf of the investors as per the terms of the scheme to the exclusion of investors. I, therefore, find that the schemes/plans of MPSPL satisfy the third condition stipulated in section 11AA (2) (iii) of SEBI Act.

Whether the investors did not have day to day control over the management and operation of the scheme or arrangement?

21. With regard to the question as to whether the investors had day-to-day control over the management and operation of the scheme or arrangement, it is noted from the sample 'Agreement for Sale' submitted by the Company that even after execution of the agreement an investor was not given title deeds of the property. Clause 13 of the Agreement states that *"On execution of agreement for sale / sale deed, registered before the concerned sub-registrar or public notary as may be feasible or practicable of the said property, either solely or jointly with other purchaser, the said title deeds pertaining to the sale of the said property shall be kept in the safe custody of Trustee(s) appointed by the vendor for the purpose"*. Thus, the scheme was managed in such a manner that an investor could not have any access and could not have exercised any control over the management of the fund or property. Clause 8 of the Agreement for Sale relates to the "Development and Maintenance Work". A perusal of the clause inter-alia indicates that the vendor, i.e. MPSPL has the right to develop the property and the purchaser (investor) was not allowed to *"ordinarily interfere with the said rights of the vendor."* Further, Clause 7 of the Agreement for Sale, mentions that *"Agreement Period: starts from the date of execution till the said property is developed and maintained as per the plan enclosed herewith"*. Thus, the agreement entered into between the investor and MPSPL, vests the Company with the right to carry out the development work on the plot of land. An investor was to be handed over the plot of land only after the development of the said plot is complete even where, the investor had paid the entire consideration of the plot under the CDP. Thus, the investors were not aware of the plot of land allotted to them and did not have any control on the utilisation of the fund for development and maintenance of the land. It is clear from the above analysis that the contributions/ investments received and the land purchased out of the same are pooled and managed by MPSPL on behalf of the investors who did not have any say in the management and operation of its schemes/plans. Investors of the scheme did not participate in the acquisition, development and management of the land. As the

investors did not have access to do anything on the plot of land that is yet to be identified and allotted to them, it is practically impossible for these investors to have a day to day control over the land which was to be allotted to them. In these facts and circumstance, I find that the only possible conclusion can be that the investors did not have day to day control over the management and operation of the schemes/plans of MPSPL and hence, the scheme satisfies the fourth condition stipulated in section 11AA (2)(iv) also. I note that the fourth condition is very crucial to hold any scheme/plan a '*collective investment scheme*' as observed by Hon'ble Punjab and Haryana High Court in the matter of *PGF Limited vs. Union of India & others* which reads as under:

“..... Day to day control with the customer/investor is one of the most important tests delineated by the Dave Committee for arriving at a final determination, whether or not; a scheme/arrangement is a "collective investment scheme".....”

22. In view of the aforesaid discussion and analysis, I conclude that the schemes (of purchase of plot of land and its management and development) offered by MPSPL and its directors, fulfil all the conditions of CIS as provided under Section 11AA(2) of the SEBI Act hence, the schemes of MPSPL were required to be registered as mandated under section 12(1B) of the SEBI Act and the CIS Regulations. The launching/ floating/ sponsoring/ causing to sponsor any CIS and mobilization of funds from the public under such schemes 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 MPSPL has not obtained any certificate of registration from SEBI under the CIS Regulations for its fund mobilizing activity from the public under various schemes offered by it.
23. In terms of section 12(1B) of the SEBI Act, no “person” shall sponsor or cause to be sponsored or cause to be carried on a '*collective investment scheme*' unless he obtains a certificate of registration from the Board in accordance with the regulations. In exercise of powers conferred under section 30 read with sections 11 and 19 of the SEBI Act, SEBI has framed the CIS Regulations to register and regulate the activities of '*collective investments schemes*'. Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a '*collective investment scheme*'. Therefore, a person can launch or sponsor or cause to sponsor a collective investment scheme only if it is registered with SEBI as a Collective Investment Management Company. Therefore,

the launching/ floating/ sponsoring / causing to sponsor any '*collective investment scheme*' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. Since MPSPL has launched various collective investment schemes without obtaining certificate of registration from SEBI, it has contravened provisions of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations.

24. From the material available on record, it is observed that Ms. Varsha Madhusudan Satpalkar and Mr. Janardan Arvind Parulekar are promoters and directors of MPSPL since its inception and were directors of the Company during the relevant time when funds were mobilised under various schemes of the company. Thus, these persons were in charge of and were responsible for the day to day affairs of the company as directors when the fund mobilisation activities were taken up by the Company.
25. Admittedly, in terms of the information furnished by the Company vide its letter dated August 29, 2016, the Company has stated to have received advance towards the purchase of land from the investors from the commencement of its business till August 30, 2013 to the extent of Rs. 1775, 17, 27, 595/-
26. From the records, I also note that several proceedings have been initiated against the Company by different entities and one such proceeding has been initiated by the competent authority under the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999. I also see from record that District Court Nasik has vide order dated 26/07/2016 allowed for constitution of a Committee for payment of the money due to the investors of MPSPL.

Directions:

27. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11B, 11(4) and 19 of the SEBI Act, 1992 read with regulation 65 of CIS Regulations hereby issue the following directions against the Noticees:-
 - i. That MPSPL and its directors are jointly and severally liable to wind up its existing CIS 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. The repayment and interest payment to the investors shall be effected only through Bank Demand Draft or Pay Order (both of which shall be crossed as “Non-Transferable”) or through internet banking channels such as NEFT or RTGS with appropriate audit trail.

- ii. Upon completion of the refund as directed above, within a further period of seven days, MPSPL and its directors shall submit a winding up and repayment report to SEBI in accordance with the CIS Regulations. The report 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.
- iii. That MPSPL and its directors shall not divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of MPSPL and they shall not alienate or dispose of or sell or create any encumbrance on any of the assets of the Company except for the purpose of making refunds to its investors as directed above. The above directions shall be subject to the permission of the Hon’ble District Court or the Committee constituted under the order of the Hon’ble District Court.
- iv. That MPSPL and the Noticee directors shall provide inventory of all the assets purchased in the name of the Company or its directors including all assets movable and/or immovable wherein Noticees have interest directly or indirectly in whatsoever manner, to SEBI within a period of 07 days from the date of this order.
- v. That MPSPL and the Noticee directors are 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 the 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. It is further clarified that the restrain to access securities market shall be inclusive of their existing holding of securities, including the units of mutual funds.

- vi. 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.
28. This order shall come into force with immediate effect and the directions passed under paragraph 27 (i) to 27(iv) shall be subject to the orders, directions otherwise passed or which may be passed, if any, by the Nasik District Court in the case arising out of charge sheet filed by Sarkarwada Police against the Noticees.
29. A copy of this order shall be served upon the Noticees, Stock Exchanges, Depositories and Registrar and Share Transfer Agents of all Mutual Funds for ensuring compliance with the above direction.

Date: January 31, 2019

S. K. MOHANTY

Place: Mumbai

WHOLE TIME MEMBER