BEFORE THE SECURITIES AND EXCHAGNE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

IN THE MATTER OF NGHI DEVELOPERS INDIA LIMITED

In respect of NGHI Developers India Limited, Mr. Pipal Singh, Mr. Bakshish Singh and Mr. Avtar Singh

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 and 73 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999

Appearance:

For noticee:	**Mr. J.S. Saluja, Advocate** **Mr. O.P. Singal, Advocate** **Mr. Pipal Singh, Ex-Director, NGHI Developers India Limited**
For SEBI:	**Mr. Mridul Rastogi, Assistant General Manager** **Mr. Pradeep Kumar, Assistant Legal Adviser** **Mr. Ankon Ray, Assistant Legal Adviser**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') on receipt of complaints from public came to know that a company, NGHI Developers India Limited (hereinafter referred to as 'NGHI') is collecting money from the public. SEBI advised NGHI to submit certain details/ documents in order to ascertain whether it was carrying on the activities of a 'collective investment scheme' (hereinafter referred to as 'CIS'). NGHI vide its various replies submitted the details and information. However, NGHI failed to provide the complete details/ documents as asked for by SEBI from time to time. On the basis of material available on record, SEBI *prima facie* found that NGHI, its promoters and also its directors namely Mr. Pipal Singh, Mr. Bakshish Singh and Mr. Avtar Singh are engaged in 'fund mobilizing activity' from public, by floating/ sponsoring/ launching CIS as defined in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act').

2. Thereafter, SEBI vide an *ad interim ex-parte* order dated July 09, 2012 (hereinafter referred to as the '*interim* order') directed NGHI and its promoters and directors to immediately stop collecting money, directly or indirectly, from investors under the

schemes/ plans offered by it and as identified in the *interim* order or launch any further plans/ schemes in the nature of a CIS. The *interim* order also directed as under:

> *"(b) The properties/ assets which have been owned or acquired in respect of or in pursuance of the plans/ schemes or earmarked/ allotted to the investors under the plans/ schemes, shall not be disposed of by NGHI Developers India Limited without prior permission of SEBI.*
> *(c) NGHI Developers Limited, its promoters and directors including Mr. Pipal Singh, Mr. Bakshish Singh and Mr. Avtar Singh are prohibited from buying, selling or otherwise dealing in securities and are restrained from accessing the securities market, directly or indirectly, or in any manner whatsoever. Further, they shall not be associated with any intermediary registered with SEBI.*
> *(d) NGHI Developers India Limited shall deposit the money collected from the investors under its plans/ schemes identified in this Order in a separate bank account within a period of 3 days from the date of this order. A report to this effect shall be filed within 3 days of making such deposit. It shall not withdraw the money so deposited without the prior permission of the SEBI in writing in this regard.*
> *(e) NGHI Developers India Limited is hereby restrained from replacing the certificates issued by Nicer Green Forest Limited with its bond or any other instruments by whatsoever name called.*
> *(f) NGHI Developers India Limited shall, within 7 days of receipt of this order, provide the details/ documents as required by SEBI vide letter dated September 08, 2011."*

NGHI and its promoters and directors namely Pipal Singh, Bakshish Singh and Avtar Singh, were advised to file their reply, if any, within twenty one (21) days from the date of the said *interim* order and also avail opportunities of personal hearing, if they so desire. The *interim* order further stated that the order shall be treated as a show cause notice by NGHI and its promoters and directors and they may show cause as to why the plans/ schemes identified should not be held as a CIS in terms of Section 11AA of the SEBI Act and the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as 'CIS Regulations') and why the appropriate actions under the SEBI Act and CIS Regulations; including directions for winding up of such plans/ schemes in terms of Regulation 73 of the CIS Regulations should not be taken/ issued against them.

3. Thereafter, SEBI issued public notices in the local dailies about the *interim* order. In the meantime, NGHI vide its letter dated July 30, 2012, sought extension of time for complying with the directions issued vide the *interim* order. NGHI vide its letter dated August 27, 2012, submitted reply to the *interim* order and asked for an opportunity of personal hearing. Pursuant to this, NGHI vide another letter dated September 10, 2012 (*received by SEBI on September 17, 2012*), produced a certified copy of the order dated

August 07, 2012 passed by the Hon'ble High Court of Judicature for Rajasthan at Jaipur whereby SEBI was directed to decide the matter, within a period of ten days from the date of filing of the reply by NGHI.

The advocates for NGHI vide letter dated October 04, 2012, requested SEBI to vacate the direction issued vide the *interim* order. On October 15, 2012, SEBI also received a notice regarding initiating contempt proceedings dated October 08, 2012 received by SEBI from one Mr. Alankrita Sharma, an Advocate representing NGHI.

In the meantime, SEBI approached Hon'ble High Court of Judicature of Rajasthan for the extension of time to comply with the direction of the court dated August 07, 2012. SEBI afforded an opportunity of personal hearing to NGHI and its promoters and directors October 23, 2012. On the date fixed for the personal hearing, Mr. Pipal Singh, *ex-director*, NGHI, appeared before me along with Mr. J. S. Saluja, Advocate and Mr. O. P. Singal, Advocate and made submissions. The advocates of NGHI submitted that they have not been supplied with the copies of complaints received by SEBI. Upon this, the copies of the complaints were handed over to the advocates of NGHI on October 23, 2012, during the hearing. Further, in the course of hearing, SEBI asked NGHI if they had any sample of registered sale deeds (executed between itself and its customers) along with the layout plans etc. When NGHI replied in the positive, SEBI asked it to produce the same. NGHI sought two days' time to submit these documents, which was duly granted. It was also clarified that if NGHI has submissions to make, with respect to the complaints handed over during the hearing, the same may also be done within the time allotted. Thereafter, the advocates for NGHI filed their written submissions vide letter dated October 29, 2012.

4. The submissions of NGHI in brief are:

- The transactions of NGHI does not fall within the parameters of Section 11AA of the SEBI Act and cannot be termed as CIS. The transactions of NGHI are sale and purchase of agricultural land, its development and allied services. Further, the land which NGHI proposed to transfer to its customers is in actual existence and also in its possession.
- NGHI does not promise any assured return. Under the scheme, NGHI receives applications from its customers for the purchase and development of the agricultural land. NGHI has to transfer the land by executing the sale deeds in favour of the customers. The

transactions are genuine and the customer is under no obligation to sell the land to NGHI. Under the agreement, there is a provision that the customer will be free to sell the land at any time to any person as the customer pleases. The customers are under obligation to permit NGHI to develop the land.

- Every business transaction is an independent deal for the purchase of land and the purchaser can make cash down payment or can pay the consideration in installments. Under the 'cash down payment plan', the land is allotted to the customers within a period, generally not exceeding 270 days from the date of receipt of the consideration while under the 'installment payment plan' the land is to be allotted within a period, generally not exceeding 90 days from the date of receipt of 50% of the consideration.
- NGHI sells its specified asset for valuable consideration and there is no pooling as contemplated in condition (1) of the Section 11AA(2) of the SEBI Act. The piece of land is fully identified and on registration of the sale deed, the customer becomes absolute legal owner of the said land. The customer does not receive profits, income from produce or property by the transaction, but in fact he/ she purchases immovable agricultural land from NGHI. Hence, the conditions prescribed under clause (2) of the Section 11AA of the SEBI Act is also not fulfilled. Further, the agricultural land sold to the customer ceases to be the land of NGHI and therefore, under no circumstances can it be termed as forming part of the scheme or arrangement. The development of the land is done by NGHI as per the terms of the agreement and in case the customer commits a breach of the said agreement, NGHI shall have no right or title on the said piece of land and it can sue the customer for the damages for the breach of agreement. At the time when the registration of sale is done, the company is dealing for the said customer for the limited purposes of development of the said land. Hence, the condition (3) of the Section 11AA(2) of the SEBI Act is not fulfilled.

  Therefore, in the case of NGHI, it is said that none of the conditions as provided under Section 11AA(2) of the SEBI Act are collectively attracted.
- The payments from customers have not been received to run the business of NGHI, nor there exists any arrangement under the scheme to share the profits of the company from such business. The investment by the customer is not with a view to receive income, profit, produce or property as a gratis from NGHI.
- NGHI develops the land which has been purchased by the customer under the agreement and the customer pays NGHI for the services for development of land. The land which is

already in a developed form, incurs less development cost, whereas the land which is undeveloped incurs more cost in order to make it into cultivable form over a period of time.

- This subject matter of land comes under Entry 18 of the list II of Seventh Schedule of the Constitution of India. The enactment on this subject is within the domain of the State Government.
- It has been submitted by NGHI that the customer may not have day to day control over the development activities on the land but that does not mean that the customer has no right over the specific piece of land.
- The name of 'Nicer' in the logo of NGHI bears no relevance and/ or connection of whatsoever nature.
- There is not a single complaint on record from any of the NGHI customers, save and except the one referred to in the *interim* order. Nicer has paid to each and every customer who had applied for the purchase of the piece of land under the available scheme of Nicer. Hence, it appears that there is no liability of Nicer towards its customers as on date. Mr. Gurmeet Singh was paid back by Nicer on May 14, 2011 and on the same day he filed an application with NGHI for the purchase of fresh plot. Thereafter, Mr. Gurmeet Singh executed and signed regular agreement with NGHI.

5. I have considered the interim order, the oral and written submissions filed by NGHI and the material available on record. The issues those now arise for my consideration are as under:

a. Whether the schemes operated by NGHI are in the nature of CIS?

b. If so, whether NGHI had complied with the applicable provisions of the SEBI Act and CIS Regulation?

6. Whether the schemes operated by NGHI are in the nature of CIS?

a. I note that NGHI in its reply has strenuously argued that its transactions do not fall within the ambit of a CIS as none of the conditions as laid down in the Section 11AA(2) of the SEBI Act are attracted in its case.

b. I note that the *interim* order has discussed in detail about the application form and the 'standard agreement' submitted by NGHI vide its letter dated August 01, 2011, which was being executed between NGHI and its customers. The *interim* order states that NGHI invites contribution from applicants on the premise that it has made arrangements for purchasing/ procuring the land. NGHI has argued in its reply that it is the owner of the land and is in possession of the land. It has submitted the details of the properties acquired. It has also been submitted that it transfers the land by executing sale deeds in favour of the customers and it does not promise any assured return. I note that NGHI has submitted a list of its customers.

Having considered the submissions, I note that the above said 'standard agreement' submitted by NGHI discusses about the schemes of NGHI and states that it has undertaken to develop the land (clause 3 of the agreement), irrigate it (clause 6 of the agreement), plant saplings, crops, trees over the plot and use fertilizers, pesticides (clause 7 of the agreement). These facts show that the land remains in the use of NGHI. It is also seen that NGHI takes the responsibility of the sale of produce from the land on behalf of the customer in its own discretion and thereafter, the 'net sale proceeds' are to be given to the customer (clause 9 and 10 of the agreement). Thus, I note that the customers of NGHI has no role to play here and has no option but to merely accept the proceeds given to it and he/ she cannot raise any dispute over it. Under the 'standard agreement', I note that NGHI is entitled to keep such percentage of wastage (at the time of harvesting, grading and handling before the delivery/ sale) at such nominal levels (clause 14 of the agreement).

c. During the personal hearing, NGHI was asked to submit any sample of the registered sale deeds (executed between it and its customers) along with the copies of maps/ layout plans, etc. I am of the considered view that NGHI's assertion that it is simply in the business of selling of agricultural land can be given credence if there are at least a few cases where the land has actually been sold. The advocates for NGHI vide letter dated October 29, 2012, have submitted that 'there is not a single case/ transaction yet, which required registration with the Revenue Authorities, for the reason that their date of expiry of agreement may not be over and therefore, the registration is pending'. This submission appears to be an afterthought as during the personal hearing NGHI had submitted that they can submit the samples of registered sale deeds within two days from hearing. I note

that NGHI in its written reply has admitted that it has two plans i.e. ‘cash down payment plan’ wherein the land is allotted to the customers within a period, generally **not exceeding 270 days** from the date of receipt of consideration while under the ‘installment payment plans’ the land is to be allotted within a period, generally **not exceeding 90 days from the date of receipt of 50% of the consideration.** As per the details submitted by NGHI vide its letter dated August 27, 2012, it has customers since April, 2010 in the 'cash down payment plan'. Therefore, the current submission of NGHI that not a single sale deed has been executed by it in this period of two and half years only confirms the suspicion that the sale and purchase of land is only a ruse to escape from the applicability of CIS Regulations. It is highly inconceivable that NGHI could not demonstrate even a single completed transaction whereas even though more than two and half years have elapsed after the commencement of its business.

NGHI in its written submissions has also submitted that the letter of allotment issued to purchaser, clearly spells out that the sale deed in respect of the plot allotted, shall be executed and registered by the custodial services company Skynet Land Developers Pvt. Limited. I note that the reference has been made for the first time by NGHI in its written submissions filed pursuant to the hearing about the custodial services company called Skynet Land Developers Pvt. Limited. Further, no document in support of this has been submitted by it. These facts appear to be only afterthought of NGHI.

d. I note from the *interim* order that NGHI solicited funds from public through its 84 'customer service centres'. Further, the word 'scheme' in terms of clause 2 of Section 11AA of the CIS Regulations is used by NGHI in its own replies/ submissions. It is seen that ‘standard agreement’ of NGHI finds mention that it has made arrangements for purchasing/ procuring the land. NGHI receives contribution from the customers on the basis of the application form and the 'standard agreement'. It then issues certificate/ bonds against investments made by the customers in its plan/ scheme and collects substantial amount of contribution towards development charges. The sequence of these events show that NGHI may acquire the land after pooling of the investment/ contribution from the customers. However, it is seen that NGHI has not transferred any piece of land to any of its customers by executing registered sale deeds till date, even though it had started operating in March, 2010.

Further, as per the 'standard agreement', NGHI develops/ manages the land on behalf of its customers and takes the responsibility to plant trees, saplings, crops, fertilizers, etc. NGHI takes the responsibility of the sale of produce from the land on behalf of the customer in its own discretion. This clearly points out to the fact that the investor does not have day to day control over the management of the funds. Thereafter, the 'net sale proceeds' is to be given to the customer after deducting a percentage as wastage of produce during harvesting, grading and handling before delivery/ sale. This clearly demonstrates the sharing of income/ profits. NGHI's assertion that it offers no assured returns does not in any way detract SEBI from the fact that the income/ profits are proposed to be shared with investors.

I note that the infrastructural amenities including irrigation, power, buildings, security etc., are arranged by NGHI as part of the common pool. Considering this along with the fact that sale deed for the land has not been executed between NGHI and its customers till date, it can safely be concluded that the effective control over the land remains with NGHI. Moreover, the stipulation in the application form that NGHI reserves the right to discontinue, change, amend or modify the plan and introduce new plans at any time at its sole discretion further strengthens the case that the customers of NGHI do not have any day to day control over the management and operation of the plans and schemes.

The above referred method of operating its business as stated in the 'standard agreement' by NGHI clearly invokes the applicability of Section 11AA(2) of the SEBI Act.

e. Taking note of the above discussion, it can be said as under:

- **i.** NGHI has taken contribution/ investment from the investors/ customers, offered investment plans/ scheme and utilized it for the plans/ scheme.
- **ii.** The contribution made by investors/ customers in the plans/ scheme are with a view of receive profits through development and receipt of proceeds from sale of produce from the land.
- **iii.** NGHI in its submissions has admitted that the customers are under obligation to permit NGHI to develop the land. With this, it can be said that the property and the contribution/ investment forming part of the scheme are managed on behalf of the investors of such plans/ schemes.

iv. The investors/ customers do not have day to day control over the management and operation of the plans/ scheme.

f. Considering the above discussions, it can be said that the transactions between NGHI and its customers are not real estate transactions *simpliciter*, rather they satisfy all the ingredients of a CIS as defined under Section 11AA of the SEBI Act which provides as under:

> "*11AA(1) Any scheme or arrangement which satisfies the conditions referred to in sub section (2) shall be a collective investment scheme.*
> *(2) Any scheme or arrangement made or offered by any company 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.*"

Therefore, I have no hesitation in holding that NGHI and its promoters and directors including Mr. Pipal Singh, Mr. Bakshish Singh and Mr. Avtar Singh are engaged in the fund mobilising activity from pubic by floating/ sponsoring/ launching CISs as defined in the Section 11AA of the SEBI Act.

g. While concluding the above, I also observe from the details of the plans operated by NGHI as discussed in the *interim* order that the costs of the plots are almost the same. It needs to be considered that the value of each piece of land usually varies on the basis of its location and quality. However, in view of the facts and circumstances of the present case, I find that the schemes operated by NGHI give a picture that the land is being sold as a homogeneous commodity at a fixed price, which is feasible only if the land transactions are a veil for running a CIS scheme and not a genuine sale of agricultural land.

h. Before proceeding further, I find it necessary to place my reliance on the judgment of Hon'ble High Court of Judicature for Punjab and Haryana, in the matter of *PGF Limited* Vs. *Union of India & Ors*. wherein under the similar facts and circumstances, the Hon'ble High Court had held that **when each customer/ investor is a recipient of agricultural land (property) it is apparent that each customer/ investor is admittedly a recipient**

of one of the benefits as contemplated under Section 11AA(2)(ii), namely, "property". The Hon'ble Court further held that:

> *"It is clear also from the reasons recorded while drawing the aforestated conclusions, that a customer/investor as practically no accessibility to the agricultural land purchased by him; it is practically impossible for him to carry on agricultural/or developmental activities on the land purchased by him; the life line/blood stream of agricultural activity which include irrigational and drainage facilities along with ancillary inputs are to remain perpetually, under the control of the PGFL; it is also practically impossible for any customer/investor to have a day to day control over the agricultural land purchased by him. 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". In view of the totality of circumstances noticed above, it is not possible for us to accept the contention of the learned counsel for the petitioner, that the customer/investor, has day to day control over the agricultural land purchased by him or that he himself manages the agricultural land purchased by him. The aforesaid fact situation, therefore, leads to the only other conclusion possible, namely, the agricultural land purchased by a customer/investor is managed on his behalf. In view of the above, we are satisfied that PGFL satisfies the third ingredient/characteristic expressed in Section 11AA (2)(iii) of the SEBI Act."*

7. Whether NGHI had complied with the applicable provisions of the SEBI Act and CIS Regulation?

a. According to me, it is necessary to note the background of CIS Regulations before deciding on the issue whether NGHI is operating as a CIS. Government of India noticed that entities were operating in the securities market, who issued instruments against investments 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 inviting the investments, thereby not only causing loss to the investors who lost their life 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 the 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 CISs. It was against this background that Section 11AA of the

SEBI Act and the CIS Regulations came to be framed. 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, the various instructions issued by SEBI/ Central Government from time to time in respect of the functioning of the collective investment schemes.

b. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations. NGHI has failed to do so. It has neither applied for registration nor wound up the schemes in terms of the provisions of CIS Regulations. Regulation 73 of the CIS Regulations stipulates that an existing CIS which has failed to make an application for registration to SEBI shall wind up the schemes and repay in the manner specified in the said Regulations.

c. I observe that NGHI has failed to obtain registration from SEBI to operate the CISs and further failed to wind up its schemes and repay its investors and continued with the schemes., An existing CIS which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment in terms of Regulation 74 of the CIS Regulations and make such repayments to the existing investors in the manner in Regulation 73 thereof. However, as established in para 6 above, NGHI has failed to comply with the provisions of Section 12(1B) of the SEBI Act and Regulations 73 and 74 of the CIS Regulations.

8. NGHI has argued that it has no connection with Nicer Green Forest Limited (hereinafter referred to as 'Nicer'). On a careful examination of the Articles of Association and the Memorandum of Association of NGHI and Nicer as well, it is seen that the names of Mr. Pipal Singh and Mr. Bakshish Singh appear in both. Additionally, the word 'Nicer' in the logo of NGHI points to the close relationship between Nicer and NGHI. NGHI was incorporated on March 13, 2010 i.e., almost during the time when the proceedings initiated by SEBI against Nicer were going on. Hence, the argument of NGHI about denying any connection with Nicer finds no merit. Nicer was found operating CIS in contravention of the CIS Regulations and SEBI had directed Nicer vide order dated November 09, 2010 to wind up its existing CISs and refund the money collected by it under the scheme(s) with returns which are due to its investors as per the terms of the

offer. Further, Nicer along with its directors and promoters have also been *inter alia* debarred from operating in/ accessing the capital market for a period of five years for operating as an unregistered CIS by SEBI. Considering these facts, it can be said that NGHI along with its promoters and directors has subverted the SEBI order as against Nicer.

9. I note the submission of NGHI that the subject matter of agriculture land comes under Entry 18 of the list II of the Seventh Schedule of the Constitution of India and the enactment on this subject is within the domain of the State Government. In this regard, I place my reliance on the judgement of Hon'ble High Court of Judicature for Punjab and Haryana, in the matter of *PGF Limited Vs. Union of India & Ors.* Once again, wherein the similar argument was addressed by the Hon'ble High Court in the following words:

> *"90. The contention of the learned counsel for the petitioners, to the effect, that the activity of the 'PGFL i.e. sale and purchase of agricultural land and/or development of agricultural land cannot be regulated by a legislation enacted by Parliament, as it covers a subject enumerated under the State List, is in our view based on a misconceived foundation. The pith and substance rule is relatable to the objects and reasons of a legislation, and not to the activities of a party. The activities of a party are totally irrelevant, to the applicability, of the pith and substance rule. Stated in other words, while examining the issue of legislative jurisdiction, it is the pith and substance of the legislation, and not the pith and substance of the activities of a party, which are relevant. In drawing our conclusion, therefore the relevant question to be examined would be, whether the pith and substance of the legislation under challenge is "investor protection", and sale and purchase of agricultural land is an activity ancillary thereto; or whether, the pith and substance of the legislation under challenge, is sale and purchase of agricultural land and 'investor protection' is ancillary thereto. In answering the aforesaid quarry, the conclusion undoubtedly is in favour of the former i.e., the pith and substance of the legislation in question is "investor protection", whereas sale and purchase of agricultural land and/or development of agricultural land is incidental thereto.*
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> *92. The contention of the learned counsel for the respondent to the effect, that the subject of the legislation in question falls within the residuary clause i.e., Entry 97 of the Union List, in our view merits acceptance. We have concluded, hereinabove, that the pith and substance of the Legislature in question does not fall under the subject covered by Entry 18 of the State List. It is not the case of the learned counsel for the petitioners that the subject of "investor protection" falls in any other Entry under the State List. Therefore, in view of the legal position laid down by the Supreme Court in the decision rendered in Harbhajan Singh Dhillon's case (supra), Kartar Singh 's case (supra) and Naga Peoples Movement of Human Rights case (supra), namely, that in case the subject-matter of legislation does not fall in any entry under the State List, Parliament alone will have the authority to legislate thereon. Since no Entry under the State List and the Concurrent List in the Seventh Schedule of the Constitution of India, relates to the subject of "investor protection", we find the assertion on behalf of respondent No. 1, to the effect that Parliament had the right to legislate on the subject in hand, under Article 248 of the Constitution of India, read with*

Entry 97 of the Union List in the Seventh Schedule of the Constitution, because Entries 1 to 96 of the Union List also do riot cover the instant subject of legislation.
93. In view of the conclusions recorded hereinabove, we find no merit in the contention of the learned counsel for the PGFL on the issue of vires of Section 11AA of the SEBI Act."

In view of this finding of the Hon'ble High Court of Judicature for Punjab and Haryana above, I find no merit in the argument of NGHI.

10. NGHI in its written submissions has relied upon the judgement of Hon'ble High Court of Judicature for Rajasthan in the matter of *PACL India Ltd.* Vs. *Union of India*. I note that the facts of the present case differs from the facts before the Hon'ble High Court in the matter of *PACL India Ltd.* Vs. *Union of India*. The Hon'ble Court while considering the matter referred to the report of Mr. Justice K. Swamidurai (retd.) which reads as under:

"13. My conclusion is drawn as under:
(i) The land which the PACL proposed to transfer to its customers were found to be in actual existence as per the record of the PACL.
(ii) PACL was owner in possession of the land in question either as direct owners or owners by virtue of agreements for sale in their favour by the erstwhile owners and the Powers of Attorney in favour of the representative of PACL by the erstwhile owner, and by paying full amount of consideration to the erstwhile owner.
(iii) The development work on the lands in question was found to be carried out by PACL. While in certain cases, the development work was completed, in some cases, it was still in progress. In some of the cases, it was found that the customers had taken possession of the plots of land, had constructed cottages and were also carrying on their development work, in addition to the development work being carried out by PACL.
(iv) ***Sale Deeds have been executed and registered in favour of the customers of PACL and their names and addressed had been tallied with their details provided by M/s. Raj K. Agarwal and Associates, a certified copy of which was supplied to me.***
(v) The title and the possession of the agricultural land mentioned in the sale deeds, stood transferred unconditionally by means of registered sale deeds in favour of the customers.

Considering the above, the Hon'ble Court felt that the transactions entered between the petitioner company and its customers are genuine and they basically relate to the purchase and sale of the agricultural land. I note that in the present case NGHI has failed to provide even a single registered sale deed. The facts and circumstances of the instant case are different from the case wherein the above referred judgement of Hon'ble High Court of Judicature for Rajasthan was delivered.

11. I note the submission of NGHI that the complaint of Mr. Gurmeet Singh is *non est*. However, this does not affect the issue of NGHI operating as an unregistered CIS. As regards, the reference received from the Registrar of Companies, Rajasthan, there is no response from NGHI.

12. NGHI has been found operating CIS without obtaining a certificate of registration from SEBI, as required in terms of the SEBI Act and the CIS Regulations. Therefore, it is necessary that such schemes of NGHI are directed to be wound up and the monies of the investors, which have been invested in the schemes, are refunded to them by NGHI.

13. Before proceeding further, I note that SEBI vide its *interim order* dated July 9, 2012 had directed NGHI to deposit the money collected from the investors under its plans/ schemes identified in such order in a separate bank account within a period of three days from the date of the said order and also file a report to this effect within three days from the date of making such deposit. However, it is noted that NGHI has failed to provide any evidence of compliance with this direction till date.

14. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11B and 19 of the Securities and Exchange Board of India Act, 1992 read with the Regulation 73 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, hereby direct NGHI Developers India Limited to wind up its scheme(s) identified as Collective Investment Schemes in this order and refund the money collected by it under the scheme(s) with returns which are due to the investors as per the terms of the offer within a period of one month from the date of this order, failing which the following actions would follow:

a. Initiation of prosecution proceedings under Section 24 of the Securities and Exchange Board of India Act, 1992, against NGHI Developers India Limited / its promoters/ its directors/ managers/ persons in charge of the business of its scheme(s).

b. Debarring NGHI Developers India Limited / its promoters/ its directors/ managers/ persons in charge of the business of its scheme(s) from operating in the capital market and accessing the capital market.

c. Making a reference to the State Government/ local police to register a civil/ criminal case against NGHI Developers India Limited and its promoters/ directors for apparent offences of fraud, cheating, criminal breach of trust and misappropriation of public funds, and

d. Making a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of NGHI Developers India Limited.

15. The *interim order* restraining NGHI, its promoters and its directors namely Mr. Pipal Singh, Mr. Bakshish Singh and Mr. Avtar Singh from accessing or dealing in the securities market shall continue, till the schemes are wound up and all the monies are refunded to the investors, to the satisfaction of SEBI.

16. This order shall come into force with immediate effect.

PLACE : MUMBAI **PRASHANT SARAN**
DATE : NOVEMBER 06, 2012 **WHOLE TIME MEMBER**
SECURITIES AND EXCHANGE BOARD OF INDIA