

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under sections 11(1), 11B and 11(4) 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 Rose Valley Hotels and Entertainments Limited.

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI") had received a letter dated June 20, 2012, from the Additional Director General of Police, Office of the Director, Bureau of Investigation (E. O.), Assam, Guwahati (hereinafter referred to as "ADGP, Assam Police"), regarding the raising of funds by M/s Rose Valley Hotels and Entertainments Limited (hereinafter referred to as "RVHEL") and M/s Rose Valley Real Estates Constructions Limited (hereinafter referred to as "RVRECL"). As per the aforesaid letter, RVHEL and RVRECL were stated to have collectively raised ₹1006.70 Crores from the public till February 2012. Further, RVHEL was stated to have launched a scheme titled Rose Valley Holiday Membership Plan (hereinafter referred to as "HMP") in the year 2010. Under the HMP, an investor can book a holiday package through payment of monthly installments and upon maturity or completion of tenure for monthly installments, such investor can either avail of the facilities i.e. room accommodation and services or opt for maturity payment i.e. a return on the investment with annualized interest. A brochure, application form containing the terms and conditions of the HMP alongwith a confirmation Certificate evidencing subscription to such HMP, were also annexed with the aforesaid letter.
2. As a matter of preliminary enquiry in order to ascertain whether or not RVHEL was carrying on activities of a 'collective investment scheme', SEBI vide letter dated March 1, 2013, advised RVHEL to submit the following documents relating to the HMP, by March 15, 2013, viz. -

- i. Total number of individuals who have subscribed to the plan(s);
 - ii. Details (number of rooms available, etc.) about the accommodation provided/projected to be provided;
 - iii. Total number of individuals who have actually availed the services (accommodation) under the plan(s);
 - iv. Details of assets held by RVHEL;
 - v. Total amount refunded by RVHEL towards principal investment and towards interest.
3. RVHEL vide letter dated March 15, 2013, replied that it was in '*Time Share*' business, which does not come under the purview of SEBI. In this regard, RVHEL drew reference to a meeting organised on February 11, 2013, at the instance of the Secretary, Institutional Finance and Programme Implementation Department, Government of Jharkhand at Ranchi (hereinafter referred to as "**Joint Secretary, Govt. of Jharkhand**") to discuss the business activities of RVHEL, which was attended by representatives of SEBI and RVHEL. RVHEL submitted that since the SEBI representative present at such meeting had mentioned that '*Time Share*' Schemes do not come under SEBI purview, it was at a loss to understand the reasons behind SEBI's advice to furnish various information in connection with the '*Time Share*' business.
4. Subsequent to receipt of the abovementioned letter dated March 15, 2013, SEBI vide letter dated March 19, 2013, replied to RVHEL as under –
- i. It was incorrect to state that SEBI had already concluded that the scheme of RVHEL did not come under its purview since the object of the meeting organised on February 11, 2013, was to brief the Joint Secretary, Govt. of Jharkhand, on the Writ Petition pending at Kolkata High Court between SEBI and RVRECL.
 - ii. Immediately after the aforesaid meeting, SEBI had addressed a letter dated February 13, 2013 to the Joint Secretary, Govt. of Jharkhand, to advise RVHEL to furnish the documents mentioned at para 2 supra, for ascertaining whether it comes under the purview of '*collective investment schemes*' as specified in the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**").

In addition to the above, RVHEL was once again advised vide the SEBI letter dated March 19, 2013, to submit the documents mentioned at para 2 supra to SEBI by March 31, 2013, failing which, RVHEL would be liable to be proceeded against under the SEBI Act and the Regulations made thereunder.

5. RVHEL vide letter dated April 02, 2013, *inter alia* replied to the abovementioned SEBI letter as under –

“Your letter under reference (SEBI letter dated March 19, 2013) is without Jurisdiction and uncalled for.

It appears from your above letter that you are attempting to wrongfully proceed against us in a pre-decided manner by giving reference as ‘Schemes of Rose Valley Hotels and Entertainments Ltd. without registration of SEBI’.

From the correspondence exchanged between yourself and us it is clear that you have not even considered the business of Rose Valley Hotels and Entertainments Ltd. coming under the purview of SEBI Act in any manner whatsoever.

We deny that it is incorrect to say that the scheme of Rose Valley Hotels and Entertainments Ltd. do not come under your purview as alleged. We deny that you have any jurisdiction to enquire into the affairs of the company which as per your admission does not come under your purview. ...”.

6. While the preliminary inquiry was in progress, SEBI received an *ad interim* Order dated June 12, 2013 (hereinafter referred to as “**Interim Order**”), from the Government of Tripura. Vide the aforesaid Order, which was passed by the Sub-Divisional Magistrate Sadar, West Tripura (hereinafter referred to as “**SDM, West Tripura**”) in accordance with the provisions of the Tripura Protection of Interests of Depositors (in Financial Establishments) (Amendment) Act, 2011 (hereinafter referred to as “**Financial Establishments Act**”), the following restrictions were imposed with immediate effect against the Agartala Regional Office of RVHEL –

“1. The Rose Valley, Agartala, is henceforth restrained from collecting or mobilizing any kind of monetary deposits from the public under any of the plan or schemes of the Rose Valley

Hotels and Entertainments Ltd., or of any other subsidiary comprised in the Rose Valley Group, until requisite statutory registrations, licenses and permissions are obtained, and produced to the satisfaction of the Competent Authority as defined under the Financial Establishments Act and until such restriction is revoked by a subsequent Order.

2. The Rose Valley, Agartala, shall make all due payment of entitlements of all its existing depositors against the plans/schemes such depositors hold under any nomenclature by the 31st July, 2013 and submit a compliance report accordingly to the Competent Authority as defined under the Financial Establishments Act.

3. Rose Valley Hotels and Entertainments Ltd., the Rose Valley Group as a collective entity, or any of the subsidiary companies of the Rose Valley Group, including the Directors and Associates, are hereby restrained from executing sale, transfer or alter the moveable and immoveable properties listed in the Statement annexed hereto and marked as Annexure – A, and any other moveable or immoveable properties subsisting or under construction anywhere in Tripura that is not mentioned in the Annexure – A, but otherwise legitimately belongs to the Rose Valley Hotels and Entertainments Ltd., the Rose Valley Group as a collective entity, or any of the subsidiary companies of the Rose Valley Group.”

7.1 The material available on record i.e. letter forwarded by the ADGP, Assam Police alongwith the annexures therein; the correspondences between SEBI and RVHEL; the Interim Order passed by the SDM, West Tripura alongwith the annexures therein, etc. have been perused. In this context, I note that RVHEL has not denied accepting funds from the public under its HMP. In view of the aforesaid fact and on the basis of the material available on record, I find it necessary to proceed with the instant matter, to determine whether or not the HMP offered by RVHEL is a ‘collective investment scheme’ in accordance with section 11AA of the SEBI Act.

7.2 Section 11AA of the SEBI Act reads as follows:

“(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (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."*

7.3. RVHEL has submitted that it is in 'Time Share' business and therefore will not come under SEBI's purview. On this ground, RVHEL has refused to submit documents in respect of the HMP, to SEBI. On an examination of the material available on record, it is *prima facie* observed that –

- i. RVHEL offers different membership plans under the HMP i.e. standard, silver, gold, platinum and diamond, to intended investors.
- ii. When an investor subscribes to a particular plan offered under the HMP, he is required to make monthly payments on advance or installment basis towards provisional allotment of facilities i.e. room accommodation and services, at resorts or hotels owned and managed by RVHEL.
- iii. The HMP plan once subscribed to, cannot be cancelled nor can the money paid in lieu of the facilities offered be claimed, before the expiry of tenure for such plan.
- iv. Upon maturity or completion of tenure for payment of monthly installments in respect of the relevant HMP plan, the investor becomes entitled to the facilities offered therein. However, such investor may also cancel the HMP booking upon maturity or completion of tenure for monthly installments, in lieu of maturity payment for non-utilization of the facilities i.e. the equivalent accumulated credit value under the HMP inclusive of annualized interest. For example, when an investor opts for maturity payment in the event of cancellation of the HMP booking under a particular scheme (HA4-5-STD), after making the payment of 60

monthly installments of ₹500 each, he would get a refund of ₹ 48,000, which is a return of 17.65% of annualized interest to the investor.

- v. The rates of annualized interest offered under the various membership plans of the HMP is reproduced below –

Type of Membership Plan	Annualised Interest
<i>Standard</i>	11.96% - 17.65%
<i>Silver</i>	11.21 %
<i>Gold</i>	12.61%
<i>Platinum</i>	15.38%
<i>Combined Scheme - Diamond</i>	11.2%

- vi. In his letter to SEBI, the ADGP, Assam Police stated that out of 21.90 Lakh investors of RVHEL, 4.13 Lakh have opted for maturity payment instead of availing the facilities offered under the HMP. As per the Interim Order passed by the SDM, West Tripura, RVHEL is alleged to have taken "*recourse to unilateral and spontaneous cancellation of bookings of hotels in a routine manner so as to make returns*" to the investors under the HMP. Further, the Interim Order states that complaints from the public have also been received by the Government of Tripura *inter alia* alleging RVHEL failed to entertain claims from such investors for maturity payment, on time.

7.4 From the abovementioned details in respect of the HMP offered by RVHEL, I note that –

- i. RVHEL operates investment plans through the HMP, which it offers to the public. The contribution in the form of monthly installments made by investors in response to plans offered under the HMP are pooled and utilized for the purpose of the HMP;
- ii. Such contributions towards plans offered under the HMP are made by the investors with a view to receive profits or income in the form of returns with annualized interest i.e. maturity payment.

- iii. The resorts and hotels, which are part of the HMP, are wholly owned and managed by RVHEL. Further, the contributions made by investors to the HMP are managed on their behalf, by RVHEL.
- iv. RVHEL has complete control on the plans offered by it under the HMP.

In view of the above, I find that the HMP has all the ingredients of a '*collective investment scheme*' as defined in section 11AA of the SEBI Act, as reproduced at para 7.2 supra, for ready reference.

7.5 RVHEL has submitted that SEBI does not have any jurisdiction to enquire into its affairs since SEBI has admitted before the Joint Secretary, Govt. of Jharkhand that '*Time Share*' business does not come under its purview. In this regard, I note that vide letter dated March 19, 2013, RVHEL was informed that it was incorrect to state that SEBI had concluded that its scheme did not come under SEBI's purview since the object of the meeting organised on February 11, 2013, was to brief the Joint Secretary, Govt. of Jharkhand, on the Writ Petition pending at Kolkata High Court between SEBI and RVRECL. RVHEL was also informed that pursuant to the aforesaid meeting, SEBI had written to that authority vide letter dated February 13, 2013, to advise RVHEL to furnish relevant documents in order for SEBI to ascertain whether it comes under the purview of '*collective investment schemes*' as specified in the SEBI Act.

7.6 I note that although RVHEL has submitted that it is in '*Time Share*' business and therefore outside SEBI's purview, the main characteristics of a '*collective investment scheme*' are found in the HMP offered by it. In this context, it may be pertinent to refer to the observations of the Hon'ble Supreme Court of India in *P.G.F Limited & Ors. vs. UOI & Anr.* (MANU/SC/0247/2013), wherein it had observed: "...sub-section (2) of Section 11 AA, which defines a collective investment scheme disclose that it is not restricted to any particular commercial activity such as in a shop or any other commercial establishment or even agricultural operation or transportation or shipping or entertainment industry etc. The definition only seeks to ascertain and identify any scheme or arrangement, irrespective of the nature of business, which attracts investors to invest their funds at the instance of someone else who comes forward to promote such scheme or arrangement in any field and such scheme or arrangement provides for the various consequences to result there from." In view of these

observations, I find that the SEBI Act is applicable to 'collective investment schemes' that engage in inviting investments or contributions from investors for investing in any asset which will *inter alia* result in a return on such investment. In this regard, the activity of fund mobilization under the HMP by RVHEL with a resultant promise of returns when considered in light of the other features of the HMP, as discussed in the preceding paragraphs, *prima facie* falls within the ambit of 'collective investment scheme' as defined under section 11AA of the SEBI Act.

7.7 I note that 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". Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "**CIS Regulations**"), provides that no person other than a Collective Investment Management Company which has obtained a certificate under the CIS 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. In my view, therefore, the launching/floating/sponsoring or 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. In this regard, I note that RVHEL has not obtained any certificate of registration under the CIS Regulations for its fund mobilizing activity from the public, under the HMP offered by it.

7.8 Upon a consideration of the aforementioned paragraphs, I am of the view that RVHEL is *prima facie* engaged in fund mobilising activity from the public, by floating or sponsoring or launching 'collective investment schemes' as defined in section 11AA of the SEBI Act without obtaining a certificate of registration from SEBI as required under section 12(1B) of the SEBI Act and the CIS Regulations. I, therefore, find that SEBI has full jurisdiction to proceed against RVHEL in the instant matter.

8. I note that RVHEL was advised to respond to the preliminary enquiry conducted by SEBI, on two occasions through SEBI letters dated March 1, 2013 and March 19, 2013.

However, on both occasions, RVHEL did not cooperate with SEBI as is evident from its refusal to submit the documents sought vide the aforesaid letters. In these circumstances, I find that reasonable opportunity has been afforded to RVHEL to respond to SEBI and its refusal to do so, when considered in the context of the abovementioned *prima facie* finding, leads me to believe that such refusal to submit the information sought was only to conceal the true nature and operation of the fund mobilising activity under the HMP.

9. Protecting the interests of investors is the first and foremost mandate for SEBI and therefore, steps have to be taken in the instant matter to ensure only legitimate investment activities are carried on by RVHEL and no investors are defrauded. In light of the same, I find there is no other alternative left but to take recourse through an interim action against RVHEL for preventing it from further carrying on with its fund mobilising activity related to '*collective investment scheme*', without registration from SEBI.
10. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11B and 11(4) of the SEBI Act read with Regulation 65 of CIS Regulations, hereby direct RVHEL and its Directors:
 - a. not to collect any more money from investors including under the existing schemes;
 - b. not to launch any new schemes;
 - c. not to dispose of any of the properties or alienate any of the assets of the schemes;
 - d. not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of the company.
11. The above directions shall take effect immediately and shall be in force until further orders.
12. This Order shall also be treated as a show cause notice. RVHEL and its Directors may show cause as to why appropriate directions under the SEBI Act and CIS Regulations

including directions in terms of Regulations 65 and 73 of the CIS Regulations, should not be taken against them.

13. RVHEL and its Directors shall, within 15 days from the date of receipt of this Order, file their reply, if any, to this order. RVHEL and its Directors may also indicate, in such reply, whether they wish to avail an opportunity of personal hearing in the matter.

Place: Mumbai
Date: July 10, 2013

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