

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

ORDER

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

In respect of the show cause notices dated December 19, 2013 issued to Green Ray International Limited, its Managing Director, Mr. Mir Shahiruddin, and its directors, Mr. Mir Tahiruddin, Mr. Ayub Saha and Mr. Khalik Saha

Date of personal hearing : January 07, 2014

Appearances :

Mr. Amit Kumar Mallick, Chartered Accountant represented Green Ray International Limited, its Managing Director, Mr. Mir Shahiruddin, and its directors, Mr. Mir Tahiruddin, Mr. Ayub Saha and Mr. Khalik Saha.

For the Securities and Exchange Board of India :

1. Ms. Anita Anoop, Deputy Legal Advisor
 2. Mr. T. Vinay Rajneesh, Assistant Legal Advisor
 3. Ms. Poonam Hasnu, Assistant Manager
-

1. Green Ray International Ltd. (hereinafter referred to as "GRIL" / "the Company") had filed a writ petition (W.P.(C) No. 1211 of 2013) before the Hon'ble Jharkhand High Court, being aggrieved by the actions of the District Authorities of the Govt. of Jharkhand, wherein they had sealed the Company's premises. In addition to the respondents who were already named in the writ petition, the Court impleaded the Securities and Exchange Board of India (hereinafter referred to as "SEBI"), Reserve Bank of India (RBI), Ministry of Corporate Affairs and Registrar of Companies-cum-Official liquidator, as the Hon'ble Court felt that, they were necessary and proper parties in the proceeding before the Court.

2. Simultaneously, SEBI also conducted inquiry in order to ascertain whether the Company was engaged in fund mobilising activity from the public by floating or sponsoring or launching *collective investment schemes* as defined under section 11AA of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"). During the course of the inquiry, SEBI had advised (vide letter dated April 05, 2013) the Company to forward the following documents :

1. *Copy of the Memorandum and Articles of Association of the Company*
2. *Copy of the audited Balance Sheet and Profit and Loss account of the company for last 3 years.*
3. *Name, addresses and occupation of all the promoters/ directors of the company*
4. *Names and details of the key Managerial Personnel of the Company.*
5. ***Information in respect of the issue of preference shares/debentures***
 - (a) *Copy of the prospectus / Red Herring Prospectus/Statement in Lieu of prospectus / Information memorandum filed with RoC for issuance of debentures / preference shares.*
 - (b) *Date of opening and closing of the subscription list for the said debentures/preference shares.*
 - (c) *Details regarding the number of application forms circulated inviting subscription for debentures / preference shares.*
 - (d) *Details regarding the number of applications received.*
 - (e) *Details regarding the number of allottees and list of such allottees.*
 - (f) *Number of debentures / preference shares allotted and value of such allotment against each allottee's name.*
 - (g) *Details regarding subscription amount raised.*
 - (h) *Date of allotment of the debentures / preference shares.*
 - (i) *Copies of the minutes of Board / Committee meeting in which the resolution has been passed for allotment.*
 - (j) *Date of dispatch of debentures / preference share certificate etc.*
 - (k) *Details of the total number of applicants for each of its scheme besides the list of final allottees*
 - (l) *Copies of the application forms, pamphlets, advertisements and other promotional material circulated for issuance of debentures / preference shares.*
 - (m) *Terms and Conditions of the issue of debentures/ preference shares.*
6. ***Information in respect of schemes launched by the company for raising funds.***
 - (a) *A statement of mobilization and deployment of funds under various schemes duly certified by the statutory auditors of the company.*
 - (b) *Terms and Conditions of the schemes launched;*

- (c) *Structure of the Plans/Schemes;*
- (d) *Details of the Scheme(s) wise amount mobilized by you till date along with the number of investors under the schemes;*
- (e) *Promises or assurances or assured returns made in the scheme(s);*
- (f) *Copies of the Offer documents, application form, pamphlets, brochures of the scheme(s) launched;*
- (g) *Sample copies of the registration letter and allotment letter issued to the investors who subscribed to your scheme(s);*
- (h) *Sample copies of the agreement letter/contract required to be entered into by investor/applicant under your scheme(s);*
- (i) *Options available with the investor if he does not want to hold his investment till maturity;*
- (j) *Whether any instrument is issued to the investors after receipt of fund;*
- (k) *If such instruments are issued whether they are transferable;*
- (l) *In case the 'Scheme(s)' pertain to booking/ purchase of goods/ properties, please specify the options available with the investor if he does not want to possess the good/ property after payment of initial amount;*
- (m) *To confirm whether 'Scheme(s)' floated by the Company fall under the SEBI (Collective Investment Schemes) Regulations, 1999.*

3. The Company vide letter dated April 12, 2013 submitted the following documents/information :

- (a) The Managing Director of the Company is Mr. Mir Shahiruddin and its other directors are Mr. Mir Tahiruddin (appointed on 20.09.2007), Mr. Ayub Saha and Mr. Khalik Saha.
- (b) Form-32 dated 24.06.2010 with respect to the cessation of the directorship of one Sk Asaraf Taradar.
- (c) Form-32 with respect to the appointment of Mr. Mir Tahiruddin with effect from 20.09.2007.
- (d) Letter dated 08.07.2010 from the RoC, Cuttack, informing the Company that there is no objection in the availability of the name "Green Ray International Limited".
- (e) Copy of the fresh certificate of incorporation of the Company subsequent to the change of name from "Green Ray Marketing Services Limited" to "Green Ray International Limited".

- (f) Copy of fresh certificate of incorporation of the Company subsequent to the change of name from "Green Ray Marketing Services Private Limited" to "Green Ray Marketing Services Limited".
- (g) Copy of certificate of incorporation dated 22.12.2004 of Green Ray Marketing Services Private Limited. .
- (h) Copy of Memorandum of Association of the Company.
- (i) Copy of Articles of Association of the Company.
- (j) Copy of the audited balance sheet of the Company as at March 31, 2010 with profit and loss account.
- (k) Copies of the Income Tax Returns dated 31.12.2010 and 30.09.2009 of the Company.
- (l) Copy of balance sheet as at March 31, 2009 with profit and loss account.
- (m) Copy of the balance sheet of the Company as at March 31, 2008.
- (n) Copies of VAT documents.
- (o) The Company has not issued/allotted any type of preference shares or debentures to any person and therefore there is no application form, prospectus, subscription list, advertisement, etc.
- (p) It has not launched any type of scheme in the past and that it is dealing with direct selling and purchasing of bullions i.e., gold and silver coins for which it has filed VAT returns. The Company does not indulge in collective investment schemes and therefore it is not required to obtain a certificate of registration under the CIS Regulations.
- (q) As it is not running any type of schemes, it is not able to provide the statement of mobilization and deployment of funds.

4. Thereafter, on April 26, 2013, the Hon'ble Jharkhand High Court had passed an interim order *inter alia* directing SEBI to inquire into the affairs of the aforesaid petitioner company in respect of compliance of the respective statutory provisions. The petitioner company was directed to co-operate in the said inquiry.

5. Subsequently, SEBI had obtained the scheme brochure and some other documents from the Deputy Collector (Banking), Banka district during a meeting held in RBI on June 5, 2013.

6. The Company (*the petitioner in W.P. (C) No. 1211/2013*) filed an Interlocutory Application in I.A. No. 6777 of 2013 praying the Hon'ble High Court to allow them to resume their business (*as its business premises was sealed by the state government*) on the strength of their statement that they

have already subjected themselves to the jurisdiction of RBI as well as SEBI. In the Order dated November 29, 2013 passed in I.A. No. 6777/2013, which disposed off the said I.A., the Hon'ble High Court had directed SEBI to take an informed decision with respect to the petitioner company within a period of 10 weeks. The case is to be listed before the Hon'ble High Court in the third week of February, 2014.

7. In connection with the inquiry conducted by SEBI in order to ascertain whether the activities of Green Ray International Limited (hereinafter referred to as "the Company") is in the nature of a Collective Investment Scheme (CIS) and in compliance with the aforesaid direction of the Hon'ble High Court, SEBI issued a show cause notice dated December 19, 2013 (SCN) to the Company, its Managing Director, Mr. Mir Shahiruddin, and its directors, Mr. Mir Tahiruddin, Mr. Ayub Saha and Mr. Khalik Saha (collectively hereinafter referred to as "the noticees") alleging that the company through its different schemes / plans namely Real Gold Plan, Ever Green Plan, Marriage Plan, Tycoon Plan, Happy Nation Plan and Green Line Plan, was engaged in fund mobilising activity from the public, by floating or sponsoring or launching Collective Investment Schemes as defined under section 11 AA of the Securities and Exchange Board of India Act, 1992 (SEBI Act) without obtaining a certificate of registration from SEBI for operating CIS as required under section 12(1B) of the SEBI Act read with Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 ("the CIS Regulations").

8. The SCN advised the noticees to show cause as to why directions as deemed appropriate should not be passed against them under section 11(4) and 11(B) of the SEBI Act read with the CIS Regulations. In view of the timeline fixed by the Hon'ble High Court for taking an informed decision with respect to the company, the noticees were advised to submit their reply by December 31, 2013 and if they desired, to appear for a personal hearing fixed on January 07, 2014.

9. The Company filed its reply to the SCN vide letter dated December 30, 2013, wherein it *inter alia* made the following submissions :

- (i) In terms of clauses (i) and (ii) of the section 11 AA of the SEBI Act, the contribution or payment should be from an **"investor"** and that the company does not have any investors. It is stated "*The money is due to paid to the outsiders are only the **"Creditors"** of the organisation. It can be verified/confirmed from the Income Tax Department, Balasore Circle, Odisha*".

- (ii) The Company stated that an "investor" means a person who invests or buys or sells or deals in securities. The company referred to the definition of "securities" as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and stated that it does not deal with any of the instruments mentioned in the definition and therefore has no investors.
- (iii) With respect to paragraph 9 of the SCN, the company stated that the documents mentioned therein with respect to six different schemes are official documents for the reference of its employees and not for other persons.
- (iv) As regards the mention of 'higher marked up rate' above the market price for selling coins, the company submitted that under the Weights and Measures (Packaged Commodities) Rules, all packaged goods should carry certain essential information on the contents of the package such as its weight or volume, the name and address of the manufacturer, the date of manufacture and in case of food packages, the best before date and the maximum retail price (MRP). Till date no MRP has been fixed by the Government /Act/Authority in India for bullions traded in open market. If there was a market price for bullions traded in the open market, there would not be different coin rates from one bank to another, whether nationalised or private. The price of gold/silver is fluctuating and history is the only proof that these prices are always increasing.
- (v) With respect to the 'making charges', it was submitted that gold and silver coins are not directly extracted from gold mines. The raw material (raw gold) have to be converted in its own specification with respect to weight and design. In order to convert the raw material to a finished product, the company incurs some expenditure and it treats such expenditure incurred for conversion under the head 'making charges'.
- (vi) As regards the provision of repurchase, it stated that the company is into dealing /trading in gold/silver coins and therefore sale/resale and purchase/repurchase would be present.
- (vii) With respect to the use of the term "Scheme Holder" in paragraph 9(iii) of the SCN, the company referred to the definition of scheme under the SCRA which provides for a scheme for corporatisation or demutualisation of the recognized stock exchange and contended that a company is not covered under the said definition and therefore there could be no scheme holder. The chart /plan which was found in its office is for the understanding of the company's employees.

- (viii) As regards the closing date, the company stated that it has fixed date / period for payment to its creditors. The company and its creditors mutually agree for the credit policy in terms of period and terms and conditions.
- (ix) As regards the observation in the SCN that the investor has no power to sell the coins in the open market, the Company stated that it does not mandate its customers to buy/sell gold or silver coins from/to the company. It is their own discretion whether to buy /sell or deal with the company's products.
- (x) The Company stated that it has no investors but only creditors as they purchase goods without paying cash. It is only the period and mode of payment to such creditors that is mutually agreed between the company and the creditors. Therefore, SEBI cannot form an opinion that the payment made on instalment basis is part of pooled investment.
- (xi) The Company has referred to the definitions of 'buyer', 'seller', 'document of title to goods' and 'contract of sale of goods' and stated that there should be exchange of title of the goods from one party to another and the control over the asset lies with the buyer and not with the seller. The Company is the buyer and it is nowhere mentioned in the Act that the dealing of sale/purchase should be effective only after the full payment of consideration. The transaction could be in cash or in credit. As the Company is the buyer i.e., buying coins in credit, it should have control over the asset, in terms of the Act.
- (xii) The Company has paid sales tax as per the Sales Tax Act, filed returns with the Registrar of Companies, Cuttack and has also filed returns with the Income Tax Department, Balasore Circle.
- (xiii) In the light of the explanation, the allegation that the company is prima facie engaged in fund mobilising activity has not been established anywhere. Therefore, the company is not required to take registration under section 12(1 B) of the SEBI Act.

10. It is also noted that when a copy of the SCN was forwarded to Mr. Mahesh Tewari, Advocate, who is representing the Company in W.P. (C)1211/2013 before the Hon'ble High Court of Jharkhand, he too filed a response to the SCN vide letter dated January 04, 2014. While majorly reiterating the contents of the aforesaid reply of the Company, the learned advocate, *inter alia* stated the following :

(a) As far as the Company is concerned, there is no question of any risk to the person who gets his 'gold and silver gleans' after making payment for the same. The cost of the gold and silver gleans is according to the market price, which fluctuates from time to time as the same depends upon the fluctuations in the global market. The Company itself takes over the risk by buying gold on credit and making payment thereof according to the terms and conditions entered into by and between the seller (i.e., citizen) and the purchaser (i.e., the Company) and there is no relationship of any investor in the entire six schemes launched by the Company.

(b) The Company only deals in the trade of sell and purchase of gold and silver gleans and there is no investor but there are purchasers and sellers of gold and silver gleans.

(c) The SCN has alleged that the Company has been working as Non-Banking Financial Company (NBFC), whereas it is not an NBFC.

11. On January 7, 2014, the date fixed for personal hearing in the matter, Mr. Amit Kumar Mallick, Chartered Accountant, authorised by the noticees, appeared before me and stated that the company has already filed its reply dated December 30, 2013 in response to the SCN. During the personal hearing, the balance sheets of the company for the last three years were sought. The authorised representative stated that the Balance Sheet filed with respect to the year 2010-11 was the last filing made by the company. He further stated that as the company's premises were sealed by the Government Authorities, filings for the subsequent years could not be done. The representative referred to the Balance Sheet as at March 31, 2011 and stated that the total current asset was ₹ 45 crore which included loans, advances and deposits to the tune of ₹ 23.8 crore and inventories worth ₹ 9 crore. He further stated that the inventories which he referred was gold and silver coins. He also stated that the company made sales to the extent of ₹ 31 crore. The purchase figure of gold was at ₹ 30 crore. The representative also stated that the purchases are made from unregistered dealers which was the reason for such high value of purchase. When the representative was asked if the company could give secondary documents regarding such purchases, he replied that as the company's premises was sealed, they cannot do anything. He further submitted that the High Court banned the company from taking up any new business.

12. During the personal hearing, the authorised representative was asked to explain the business model of the Company. The representative submitted that the Company offers to sell gold or silver coins to its customers, who after purchasing them can sell them back to the

Company at a higher price as per the plans. This consideration amount payable by the Company to that customer is paid to the customer in instalments. The representative contended that the Company does not take deposits and carries on the business of sale and purchase of gold/silver coins.

13. I have considered the SCN, the reply of the Company, the Scheme related brochures, sample application form and other material available on record. I note that the Company had forwarded very few documents, in response to the notice of SEBI dated April 05, 2013, and did not forward the specific documents with respect to its claimed business of purchase and sale of gold and silver coins. SEBI has received a letter from the Asstt. Registrar of Companies, Odisha forwarding copy of the minutes (*with respect to the inventory of documents present in the sealed premises of the office of the Company as directed by the Hon'ble High Court*) dated 17.06.2013 along with an inventory of material/documents. SEBI also received another letter dated 04.07.2013 from the Asstt. Official Liquidator, Jharkhand High Court stating *inter alia* that "...the inventory of books, documents, papers and material in compliance with the Hon'ble High Court Order dated 26.04.2013 had been completed in respect of M/s Greenray International Ltd., and M/s Basil International Ltd. ". Vide the said letter, copies of the minutes of proceedings (of taking inventory) dated 15.06.2013 and 17.06.2013 were forwarded.

14. As already observed above, SEBI had received the following documents pertaining to the Company and its business from the Deputy Collector, Banka District :

- (a) Brochure explaining the schemes/plans launched by the Company.
- (b) Brochure/material explaining the role of commission agents and the manner in which the Company incentivises them.
- (c) Copy of fresh certificate of incorporation pursuant to change of name of Company.
- (d) Retail invoice dated 21.10.2012 with respect to a customer for an amount of ₹ 1,00,000/- for 28.363 grams of 24 carat gold coins.
- (e) Two documents dated 11.04.2013 and 12.04.2013 indicating the receipt of money from customers along with scheme code and deposit amount.
- (f) Payment slip dated 22.04.2013 for payment of ₹2500/- with respect to a customer containing scheme code.
- (g) Copy of an application form pertaining to a customer who has subscribed in the Real Gold Plan launched by the Company.

- (h) Purchase invoice dated 21.10.2012 for ₹1,15,000/- with respect to 28.363 grams of 24 carat gold coins.
- (i) Sample application form with respect to Happy Nation Plan (*with plan detail*) launched by Company.
- (j) Retail invoice dated 09.01.2013 for a customer for value ₹284/- with respect to 3.5 grams of fine silver coin.
- (k) Letter dated 01.08.2011 from the Office of Jt. Director General of Foreign Trade, Department of Commerce to the Company informing that it has been allotted Importer-Exporter Code along with certificate.
- (l) Copy of trade mark application status dated 20.07.2010
- (m) Copy of PAN card of the Company with PAN – AACCG5628B.
- (n) Certificate of registration under the Bihar Value Added Tax Act, 2005.
- (o) Copy of fresh certificate of incorporation subsequent to the change of name from "Green Ray Marketing Services Private Limited" to "Green Ray Marketing Services Limited".
- (p) Letter dated 08.07.2010 from the RoC, Cuttack, informing the Company that there is no objection in the availability of the name "Green Ray International Limited".
- (q) Certified copy of Form 23 dated 15.07.2010, alongwith attachments, bearing SRN-A89161632 approved on 16.07.2010. The attachments were: Memorandum of Association, Articles of Association and Resolution of the shareholders of the Company for change of name to "Green Ray International Limited" along with explanation for the same.

15. I note the following from the scheme related documents that are on record.

- (i) The Company has launched six plans as follows :
 - (a) Real Gold Plan
 - (b) Ever Green Plan
 - (c) Marriage Plan
 - (d) Tycoon Plan
 - (e) Happy Nation Plan
 - (f) Green Line Plan
- (ii) The following are the salient features of the **Real Gold Plan** :

Through this plan, a customer can buy 24 carat gold or fine silver coins at current market price with 41% additional charge (tax + making charge) from company by giving the same denomination as monthly instalments for 2 years, 3 years or 4 years as per the customer acceptance. If the customer desired to sell the gold/silver coins to the Company, it would be purchased with higher rate as per the table below :

REAL GOLD PLAN					
Tenure	Scheme closing	Selling amount	Purchase amount	Scheme benefit	Benefit in %
24 months	After 25 months	7,200	8,208	1,008	14%
36 months	After 37 months	10,800	12,960	2,160	20%
48 months	After 49 months	14,400	18,432	4,032	28%

The denomination of minimum purchase amount is ₹300/- per month and the purchase amount of every month must be same.

Scheme benefits depend on the denomination of the purchase amount.

Scheme holder cannot demand to close the scheme before the closing date of scheme.

(iii) The following are the salient features of the **Ever Green Plan** :

Through this plan, the Company purchases 24 carat gold or fine silver coins on credit at 12%, 18%, 28% and 38% higher of current market price by same monthly denomination upto 12, 24, 36 and 48 months respectively. The Company will pay credit amount which is outstanding from the above credit trading to the seller as per the terms accepted by him.

The denomination of minimum credit purchase amount is ₹336/- per month and the denomination of purchase for all months will be same.

EVER GREEN PLAN					
Tenure	Scheme closing	Selling amount	Purchase amount	Scheme benefit	Benefit in %
12 months	After 13 months	3,600	4,032	432	12%

24 months	After 25 months	7,200	8,496	1,296	18%
36 months	After 37 months	10,800	13,824	3,024	28%
48 months	After 49 months	14,400	19,872	5,472	38%

(iv) The following are the salient features of the **Marriage Plan** :

Through this plan a customer buys 24 carat gold or fine silver coins at current market price with 41% additional charge (tax + making charge) from the company and if customer wants to sell after 6 years, the Company would purchase the same coin with 60% extra amount from the concerned customer.

The minimum purchase amount is ₹500/- in this plan.

MARRIAGE PLAN			
Scheme duration	Selling amount	Scheme benefits	Purchase amount
6 years	1,000	600	1,600
6 years	10,000	6,000	16,000
6 years	50,000	30,000	80,000
6 years	1,00,000	60,000	1,60,000

(v) The salient features of the **Tycoon Plan** are as follows :

The Company makes the 1st credit purchase of 24 carat gold or fine silver coins from the seller at 14% higher of current market price. The Company will pay this 14% extra price and actual remaining amount after 1st year and 5th year respectively. The seller would have an option to sell gold/silver coins to the Company on credit for 1 year, from the beginning of each year that is from 2nd to 6th year at a higher rate i.e., 25%, 35%, 45%, 60% and 93.786% respectively on the refund amount of each year (the refund of this year or any previous year trading).

The minimum purchase in credit amount is ₹ 570/-. At the time of receiving the last payment from Company, the customer is supposed to surrender all documents related to this scheme.

TYCOON PLAN			
Scheme duration	Market price	After all trading	Scheme benefits
6 years	1,000	3,000	2,000
6 years	10,000	30,000	20,000
6 years	50,000	1,50,000	1,00,000
6 years	1,00,000	3,00,000	2,00,000

(vi) The important features of the **Happy Nation Plan** :

"Through this plan the company purchases 24 carat gold or fine silver coins on credit at 15% higher of current market price. Then the company will pay to the seller 50%, 15% and 20% of the market price of above purchase after 1 year, 2 years & 5th years respectively and remaining amount of above trading will pay by 12 equal monthly instalment within 12 months from the date of 1st trading. The seller may have an option to sale gold/silver coins to the company on credit from the beginning of each year i.e. from 2nd to 7th year at a higher rate i.e. 30%, 60%, 60%, 60%, 60% and 46.341% respectively on the refund amount of each year (the refund of this year or any lump sum amount of previous year trading). From the beginning of 2nd year to end of 6th year the company will pay instalment amount by 12 equal monthly instalments from the date of every credit purchase to next 12 months, as per the payment of instalments of 1st 12 months and remaining amount will pay after 12 months of such tradings. The company will pay instalment amount by 8 equal monthly instalments from the date of last trading to end of 8 months as per previous instalments paid and remaining amount will pay after 9 months from such last trading. "

The minimum purchase credit amount is ₹5750/-.

The Company will pay 2.5% of market price of 1st credit purchase in instalments for each month from the month of 1st trading to end of 80 months if the customer will trade all trading as per its terms and conditions.

At the time of receiving last payment from Company, to surrender all documents related to this scheme.

Scheme holder could not demand to close the scheme before closing date of scheme. If any seller becomes a defaulter for any trade, then he would have no provision to trade under the same scheme code.

HAPPY NATION PLAN			
Scheme duration	Market price	After all trading	Monthly instalment
81 months	5,000	15,000	125
81 months	50,000	1,50,000	1,250
81 months	1,00,000	3,00,000	2,500
81 months	2,00,000	6,00,000	5,000

(vii) The features of the **Green Line Plan** are as follows :

Through this plan, the Company purchases 24 carat gold/fine silver coins at 14%, 30%, 50% and 70% higher of current market price on credit for 13, 25, 37 and 49 months respectively.

The minimum purchase in credit amount is ₹1140/-.

GREEN LINE PLAN				
Scheme duration	Market price	Purchase on extra %	Scheme benefits	Total
13 months	1,00,000	14%	14,000	1,14,000
25 months	1,00,000	30%	30,000	1,30,000
37 months	1,00,000	50%	50,000	1,50,000
49 months	1,00,000	70%	70,000	1,70,000

16. I have also perused the copy of application form of one of the customers of the Company, who has applied in the Real Gold Plan launched by the Company. As per the said application (no. 59832), the individual has applied in the Real Gold Plan to purchase 24 carat gold/fine silver coins from the Company for "Scheme amount of ₹300/- per month" and "Scheme Tenure of two years". The application form also contains the name of agent (of the Company), his code no. and signature.

17. After having perused the scheme related documents, I observe the following :

- (a) In all the plans, the customer would be buying gold/silver coins at a higher mark-up. This price with the higher mark-up is invested by the customer with the Company, in instalments, as per the plan opted by him.
- (b) In all the plans, it is projected that the customer would be receiving his investment with a higher return than his investment amount, which return depends on the plan chosen by an investor/customer.
- (c) In the Real Gold Plan, a customer buys 24 carat gold coins with a 41% higher mark up. This value is paid by the customer in monthly instalments for 2, 3 or 4 years as chosen by him. The denomination of minimum payment under this plan is ₹300/- per month. As an illustration, if a customer pays ₹300/- every month for two years under this plan, he would be paying a total of ₹7200/-. The customer would be eligible for gold coins with respect to the said amount of ₹7200/-. Usually gold coins are sold in 1gm, 2gms, 5gms, 10gms and so on. Assuming the market price of 10 gm of gold is ₹32,000/-. Then, ₹7200/- can buy 4.44gms of gold. This weight, as can be seen, is not a standard weight for selling gold in the form of gold coins. If the customer is given two 2gms gold coins, how would the remaining 0.44gm gold be given to him, whether it would be in gold dust or cash for such weight. The scheme does not mention anything about this eventuality, which according to me would be a case with every customer who opts for this plan. As regards the return, the plan provides (with respect to the above example) that the Company would purchase back if the customer offers the same to it at ₹8208/-. In all probability, a customer who opts to pay ₹300/- as monthly payments for two years would be doing so, keeping in mind the promised returned of ₹8208/- by the Company. Therefore, it appears that the Company does not at all provide physical gold coins to the customer. All that the Company appears to do is to make entries in its books for having sold and purchased back the gold/silver coins. The Company collects money in a manner which is akin to a bank recurring deposit. This, therefore, also appears to be a money mobilising activity by the Company, in the guise of sale/purchase of gold/silver coins.
- (d) The Marriage Plan is also similar to the Real Gold Plan. The only difference is that, in the Marriage Plan, the tenure is fixed at 6 years. As per this plan, a customer purchases gold/silver coins from the Company at a mark-up of 41% to the current price. As an

illustration, if the market price of 1 unit of gold coin is ₹100/-, the customer would be paying ₹141/-. The Company is promising to pay back 60% more on this ₹141/- after a period of 6 years.

- (e) In both Marriage Plan as well as Real Gold Plan, the Company levies the additional 41% charge as 'Tax and Making Charge'. The same seems to be very substantial and has not been supported with any reasons. The Company has submitted that it incurs expenditure for making gold/silver coins. However, as mentioned above, this charge seems to be on a very higher side.
- (f) From the 'Profit and Loss Account for the year ended 31.03.2011' (attached to the balance sheet as at March 31, 2011), it is noticed that under the head "Income", the figures for "Sales (net)" is shown as ₹31.81 crore and the figure with respect to "Making Charges" is mentioned as ₹47.45 lakhs. The total income under the said heads is ₹32.28 crore (approx.). In Schedule G (Operating and Administrative Expenses), the amount spent on "Purchase" is shown as ₹30.25 crore. These facts were stated by the Company's representative also during the personal hearing. It is noted that in all the plans, it is stated that a customer would be purchasing gold/silver at a higher mark-up. If this was really the case, then the 'Purchase' figure cannot be equal to the 'sales' figure. The same (i.e., purchase figure) has to be substantially lesser than the "sales" figure. This aspect, therefore, is not in tune with the claimed scheme of the plans launched by the Company.
- (g) As per the balance sheet, the Company has received ₹45.50 crore (as on 31.03.2011) and ₹13.30 crore (as on 31.03.2010) as "Advance from Customer". These figures are substantial in terms of mobilization from the public under the plans launched by the Company.
- (h) In terms of the Green Line Plan floated by the Company, I note that the Company would *"purchase 24 carat gold/silver coins at 14%, 30%, 50% and 70% higher of current market price on credit for 13, 25, 37 and 49 months respectively."* The minimum purchase in credit amount is ₹1140/-. As an example, if a customer opts for a scheme duration of 49 months, then the Company would pay 70% extra of the market price of the gold/silver coins. However, this plan does not state as to how a 1 gm gold coin would be treated under the plan. As the plan states that the minimum purchase credit amount is ₹1140/-, it could

be inferred that this amount would be together with the claimed return of 14% or 30% or 50% or 70% as per the scheme duration chosen by the customer.

- (i) The Company has submitted some VAT forms. These pertain to Gold, Cosmetics and Readymade Garments. The amounts are relatively very modest running into a few thousand rupees in taxes paid. There is no evidence that the amounts mobilized were invested in purchase of Gold Coins. The fact that the amounts mobilized were not invested in Gold by the Company is reinforced if we look at the balance sheet of the Company for the year ended March 31, 2011. The advances from the customers are shown as ₹45.5 crore. The current assets consist of inventories of ₹9.4 crore, cash and bank balances of ₹ 11.8 crore and loans and advances made as ₹23.9 crore. It is clear that only about 20% of the amount mobilized is present as inventories ; as per the Company's own balance sheet. The composition of inventories is not indicated. Given the details in VAT forms submitted, this may or may not have been entirely consisting of gold. In my opinion, the VAT receipts submitted by the customers might relate to some ancillary/other business that the Company indulged in or these may have been paid just to create a smoke screen. I am convinced that the whole amount mobilized from the customers was not invested in gold, as per the professed business model of the Company.
- (j) During the personal hearing, the authorised representative of the Company also stated that the purchases are made from unregistered dealers which was the reason for such high value of purchase. Therefore, the very claim of purchase of gold/silver by the Company becomes questionable in view of the reason that the Company seems to be not offering gold/silver coins to its investors/customers but is operating a money mobilizing scheme which promises returns. I also note that the Advocate for the Company in his reply has stated that the SCN has alleged that the Company is 'working as an NBFC' and submitted that the Company is not an NBFC. The charge of functioning as an NBFC is not at all present in the SCN issued by SEBI.
- (k) It appears that the Company is mobilizing money from the public with a promise of higher returns under the guise of buying/selling gold in instalments. However, the 'scheme' as outlined in the plans indicate that the contribution or payments made by the investors in the plans launched by the Company are pooled and utilized for the purpose of the plan/arrangement.

- (l) All the six plans promises 'return' or 'benefit' to a customer. Therefore, it can be seen that payments made by the customers to the Company are made with a view to generate profit, returns or benefit.
- (m) In all the plans, the customer cannot demand to close the scheme before the closing date of the scheme. This implies that the customer has no say in the affairs of the operation of the plans. The customers/investors do not have day-to-day control over the management and operation of the schemes. Further, the gold/silver coins, which may form part of the business/schemes, whether identifiable or not is managed on behalf of the investors by the Company/its management.
- (n) The plans/schemes/arrangement, as discussed above, that are launched by the Company, are not protected by any of the clauses mentioned under section 11AA(3) of the SEBI Act.
- (o) The nature of the 6 plans launched by the Company and the 'scheme or arrangement' as envisaged therein, in the light of discussions made above, do satisfy all the clauses of section 11AA of the SEBI Act to classify the same as a collective investment scheme.
- (p) I have also perused a document which mentions about the role of a "commission agent" of the Company. In terms of the said document (*titled – Prime Role of Commission Agent*), the commission agents are provided more importance as the document states "*Company gives more importance to the commission agent than all staff, because these agents get reach the plans of company to the people. A big part of company's profit is devoted to the agents to encourage them to give their 100% efficiency for work*". Commission agents seem to be provided hefty compensation in order to enrol more customers /investors in the plans of the Company.

18. The Company has contended that it does not deal with "securities" as defined in section 2(h) of the SCRA. Having observed above that the plans of the Company are in the nature of collective investment schemes as defined under section 11AA, I note that in terms of section 11(2)(c) of the SEBI Act, SEBI could take such measures to protect the interests of the investors in securities, to promote the development of and to regulate the securities market, *inter alia* by registering and regulating the working of collective investment schemes. In the definition of "securities" as defined under the SCRA, securities includes '*units or any other instrument*' issued by

any 'collective investment scheme' to the investors in such schemes. The above reading would indicate that the Company by operating collective investment schemes is a person operating in the securities market, under the regulation of SEBI. I also find that the arguments of the Company referring the scheme to the scheme of corporatisation and demutualisation to be irrelevant and of no merit.

19. Section 12(1B) of the SEBI Act, mandates that any “*person*” shall not 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. Any person launching or sponsoring or causing to sponsor a collective investment scheme must be a company incorporated under the Companies Act, 1956 ; and should be 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 a certificate of registration from SEBI to do so, is in contravention of section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. SEBI has framed the CIS Regulations to regulate the activities of collective investments schemes, in exercise of powers conferred under sections 30 and 11 of the SEBI Act. 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, the Company has mobilized money from the public under its plans which are in the nature of collective investment schemes in contravention of the above statutory provisions.

20. I also find that the Company has stated that it has "customers" and does not have "investors". The same, to me, does not make any difference as the terms could be interchangeably used. The significant aspect would be to see whether such activity is in the nature of CIS as defined under section 1AA of the SEBI Act read with the CIS Regulations.

21. I also note the representative who had appeared on behalf of the noticees was making submissions with respect to the business model/plans launched by the Company. In this regard, it is noted that as per the scheme/plans, the customer pays in instalments for the value of gold/silver coin he agrees to buy and then sells it, if he desires, to the Company which purchases it a higher price. However, the representative had stated that the on re-purchase by the Company, the Company pays the higher price to such customer in instalments. Therefore, such

submissions of the representative seem to be in contrast to the business model as could be inferred from the plan brochures, as observed above.

22. In view of the above, I do not find any merits in the submissions made in the response sent by the learned counsel for the Company who represents the same in the Hon'ble High Court in W.P. No. 1211/2013.

23. I also note from the documents forwarded by the Office of the Registrar of Companies-cum-Official Liquidator, that there is on record a list of 229 names along with 'scheme codes'. The said names could be the customers of the Company. This number of investors in the plans of the Company could be more. The Company is not able to give any further details as it claims that all its records lie inside the premises that has been sealed by the state government.

24. From the foregoing, I find that the Company mobilizes money from the public with a promise of higher returns on such investments under the guise of buying/selling of gold/silver coins in instalments. Therefore, such payments made by the customers to the Company are made with a view to generate profit, returns or benefit. The customer has no say in the affairs of the operation of the plans or business of the Company. Further, the gold/silver coins, which may form part of the business/schemes, whether identifiable or not is managed on behalf of the investors by the Company/its management. Also, the customers/investors do not have day-to-day control over the management and operation of the schemes. These factors definitely satisfies the 4 conditions mentioned in section 11AA(2) of the SEBI Act in order to classify a scheme/plan/arrangement as a "collective investment scheme". It also needs to be noted that the plans/schemes/arrangement, as discussed above, that have been and are by the Company, are not protected by any of the clauses mentioned under section 11AA(3) of the SEBI Act. The Company is operating such collective investment schemes without obtaining the requisite certificate of registration from SEBI as required under section 12(1B) of the SEBI Act and regulation 3 of the CIS Regulations. This conduct of the Company is therefore in contravention of such statutory provisions.

25. The directors of the Company are Mr. Mir Shahiruddin (Managing Director), Mr. Mir Tahiruddin, Mr. Ayub Saha and Mr. Khalik Saha. The said persons therefore are responsible for the conduct of the affairs and business of the Company that includes carrying on and continuing with schemes/plans which are collective investment schemes without obtaining registration from SEBI for operating such activities. Therefore, the said directors are also responsible for the

default of the Company in launching and operating CIS without registration from SEBI, as required under law. Having noticed the above violations, I therefore deem it fit to pass necessary directions in terms of regulation 65 of the CIS Regulations read with sections 11 and 11B of the SEBI Act, in the interest of the investors in the securities market.

26. Therefore, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 and sections 11 and 11B thereof and regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions to safeguard the interest of the investors in securities market :

- a) Green Ray International Limited and its directors/promoters including Mr. Mir Shahiruddin (Managing Director), Mr. Mir Tahiruddin, Mr. Ayub Saha and Mr. Khalik Saha shall not collect any money from investors or launch or carry out any scheme which has been identified as a collective investment scheme in this Order.
- b) Green Ray International Limited and its directors/promoters including Mr. Mir Shahiruddin (Managing Director), Mr. Mir Tahiruddin, Mr. Ayub Saha and Mr. Khalik Saha shall wind up the existing collective investment schemes and refund the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, failing which the following actions shall follow:
 - (i) SEBI would initiate prosecution proceedings under section 24 and adjudication proceedings under Chapter VI of the Securities and Exchange Board of India Act, 1992 against Green Ray International Limited and its directors ;
 - (ii) SEBI would make a reference to the State Government/Local Police to register a civil/criminal case against Green Ray International Limited and its directors and its managers/persons in-charge of the business and its schemes for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds ;
and
 - (iii) SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, Green Ray International Limited.

27. Green Ray International Limited and its directors/promoters including Mr. Mir Shahiruddin (Managing Director), Mr. Mir Tahiruddin, Mr. Ayub Saha and Mr. Khalik Saha are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market till all the collective investment schemes are wound up by the Company and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.

28. The above directions shall come into force with immediate effect.

29. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

30. This Order is passed in compliance with the directions of the Hon'ble High Court of Jharkhand at Ranchi made vide Order dated November 29, 2013 in I.A. No. 6777/2013 in W.P. (C) No. 1211/2013 (*Green Ray International Limited vs. State of Jharkhand and others*). Accordingly, in respectful compliance, a copy of this Order shall be filed before the Registry of the Hon'ble High Court and the same be brought to the knowledge of the Hon'ble High Court for information, whenever the matter is listed next before the Hon'ble High Court.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : February 3rd, 2014

Place : Mumbai