

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, 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 Viswas Real Estates and Infrastructures India Limited

In respect of Viswas Real Estates and Infrastructures India Limited and its Directors, viz. Mr. Vaka Saradhi and Mr. Eshararao Gundala.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), received an investor complaint that Viswas Real Estates and Infrastructure India Limited (hereinafter referred to as 'Viswas' or 'the Company'), a company with registered office at Plot No. 142 BD, 142 A, Shop No. 3, Balaji Commercial Complex, Bhagyanagar Colony, Opp. KPHB Colony, Hyderabad, has collected huge funds from the public. SEBI in order to examine the activities of Viswas advised it vide letter dated February 13, 2014, to explain the details pertaining to the schemes operated by it.
2. The letter issued to the Company returned undelivered. Thereafter, the details were obtained from the 'MCA-21 Portal' and the letters were also issued to the directors of Viswas i.e. Mr. Vaka Saradhi and Mr. Eshararao Gundala advising these to furnish the details of the schemes. This time again the letters returned undelivered.
3. As no reply was forthcoming, SEBI proceeded further on the basis of the material available on record and *prima facie* found that Viswas, its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala were engaged in the 'fund mobilising activity' from the investors and were promising land as part of the scheme/ arrangement. These activities fell within the ambit of 'Collective Investment Scheme (hereinafter referred to as 'CIS') as defined in Section 11AA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '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 the Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as 'CIS Regulations').

4. Thereafter, SEBI vide an *ad interim ex-parte* order dated August 08, 2014 (hereinafter referred to as '*interim order*') directed Viswas and its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala as under:

*“- not to collect any fresh money from investors under its existing schemes;
- not to launch any new schemes or plans or float any new companies to raise fresh moneys;
- to immediately submit the full inventory of the assets including land obtained through money raised by VREIL;
- not to dispose of any of the properties or alienate the assets including land obtained directly or indirectly through the money raised by VREIL;
- not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of VREIL;
- to furnish all the information/ details sought by SEBI within 15 days from the date of receipt of this order, including,*

- i. Details of amount mobilized and refunded till date,*
- ii. Scheme wise list of investors and their contact numbers and addresses,*
- iii. PAN of the aforementioned Directors and*
- iv. Audited Accounts for the last three years.”*

The *interim* order was issued against the Company and its promoters/directors to ensure that they did not collect further funds and also to safeguard the assets or property acquired through the funds mobilised from the investors. The aforesaid directions came into force with immediate effect.

Viswas and its directors were advised to file, if any, within twenty one (21) days from the date of receipt of the said *interim* order and also avail opportunities of personal hearing, if they so desire.

5. The *interim* order was forwarded to the Company and its directors vide separate letters all dated August 14, 2014. The letters were duly delivered to the Company and its directors by courier/ speed post. However, no reply was received either from the Company or from its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala. Before proceeding further with the matter, an opportunity of personal hearing was granted to the Company and its directors on December 12, 2014. The hearing was later rescheduled to December 18, 2014, due to certain administrative exigencies. On the date fixed for personal hearing, the Company and its directors failed to turn up. As the earlier hearing letter of the Company and Mr. Vaka Saradhi returned undelivered, one more opportunity of personal hearing was granted to the Company and its directors on January 23, 2015, in the interest of natural justice. On January 23, 2015, again the Company and its directors failed to turn up for the

personal hearing. From the status of the delivery of the hearing notices for the hearing dated January 23, 2015, it is noted that the same was delivered to the Company.

6. From the above, it can be inferred that the Company and its directors were aware of the present proceedings and that the service of the *interim* order on them is complete. Considering that reasonable opportunities to the Company and its directors have already been afforded for making the submissions in the matter, I find that further opportunity need not be afforded and the matter could be proceeded on the basis of the material available on record.
7. I have considered the *interim* order issued in the matter and the material available on record. The main allegation as against Viswas is that the plans/ schemes operated by it were in the nature of CIS and that Viswas was offering these schemes without obtaining registration from SEBI in contravention of the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations read with Section 11AA of the SEBI Act. The directors of Viswas were also alleged to be responsible for the illegal conduct of the business of the Company. The issue that now arises for my consideration is: Whether Viswas was operating a CIS without obtaining registration from SEBI?
8. **Whether Viswas was operating a CIS without obtaining registration from SEBI?**
 - a. I note that the Company was incorporated October 27, 2010. The registered office of the Company is situated at Plot No. 142 BD, 142 A, Shop No.3, Balaji Commercial Complex, Bhagyanagar Colony, Opp. KPHB Colony, Hyderabad. The directors of the Company are Mr. Vaka Saradhi and Mr. Eshararao Gundala.
 - b. As per the brochure Viswas has various plans/ schemes i.e.
 - 'Viswas Own Your Property Advance Scheme Monthly Plans' (hereinafter referred to as '**OYPAS**') 9, 10, 11 and 12,
 - 'Lumpsum Property Advance Schemes' (hereinafter referred to as '**LPAS**') Plan 13 'Silver Plan 3 years', Plan 14 'Gold Plan 4 years', Plan 15 'Diamond Plan 7 years', Plan 16 'LPAS-MIS Platinum' and
 - 'Own Your Property Advance Scheme (Daily) Plans 17 and 18' i.e. 'Golden Future Plan - I (540 days)' and 'Golden Future Plan - II (1080 days)'.

The plans/ schemes of Viswas have been elaborately discussed in the *interim* order. A sample of such plans has been brought out below:

Table A

PLAN-9 OYPAS for 1 year				
Monthly Installment (₹)	Total Property Advance Paid	Estimated Compensation Value (ECV)	Refund Amount with ECV (after 1 year)	Life Risk Coverage
500	6,000	600	6,600	6,600
1,000	12,000	1,200	13,200	13,200
1,500	18,000	1,800	19,800	19,800
2,000	24,000	2,400	26,400	26,400

Table B

PLAN -13 (Silver Plan 3 years)		
Lumpsum Payment (₹)	Refund after 3 yrs with Compensation	Life Risk Coverage
5,000	7,700	7,700
10,000	15,400	15,400
20,000	30,800	30,800
25,000	38,500	38,500

Table C

PLAN-14 (Gold Plan 4 years)		
Lumpsum Payment (₹)	Refund after 4 yrs with Compensation	Life Risk Coverage
5,000	10,000	10,000
10,000	20,000	20,000
20,000	40,000	40,000
25,000	50,000	50,000

Table D

PLAN-15 (Diamond Plan 7 years)		
Lumpsum Payment (₹)	Refund after 7 yrs with Compensation	Life Risk Coverage
5,000	15,000	15,000
10,000	30,000	30,000
20,000	60,000	60,000
25,000	75,000	75,000

It is seen from the details available that the plans were for different time periods like one year, two years, four years and five years upon a payment of minimum monthly installment in the range of ₹500 to a maximum amount of ₹2,000 and provided the compensation value (profits). Viswas also offered insurance coverage in conjunction with its schemes.

- c. I note that on receipt of an application along with the 'property advance' amount as per the plan opted by the investor, Viswas entered into an '**agreement**' with the investor. The relevant clauses of the 'terms and conditions (MIP)' in the agreement reads as under:

"1. Viswas ... is engaging business of marketing and selling of Plots, Sites, Estates, Plants and other related products.

2. The customers can obtain a plot against the Property Advance in any of the divided property of the VISWAS GROUP of ventures as per the layout provided by the company at the end of the plan period. The cost of the Property will be decided as per the selection of the land, actual size and location, if there is any price variation, the difference amount is levied/ refunded as the case may be.

... ..

4. ... There is no pre closure facility before 12 months from the date of booking/ commencement.

5. On non-receipt of the total sale consideration it will be treated as willful breach of agreement/ MOU/ commitments as the case may be, by the prospective customer and the proposed estate/ land/ plot etc., will be sold/ transferred to a new customer/ prospective customer without any intimation to the defaulter and the amount which was paid by the defaulter will be refunded by the company after 30 days from the expiry of the due date of last installment/ project period as noted on the application after deducting the documentation charges, survey charges, other incidental/ processing charges/ marketing expensive etc.

... ..

13. The company reserves the right to reject the applications without assigning any reason thereof.

14. The company reserves the right to alter or amend any/ all the terms and conditions stipulated above without assigning any reason thereof and without any notice.

15. For residential plots approval for conversion of land into the residential area will be obtained before the end of the project period. The company/ project management will obtained the same from the concerned agency department/ authority before registration. However, the Company/ management will not accept any responsibility for any eventual delay occurring in this regard.

16. The company reserves its right to refund the amount without compensation whatsoever by terminating the agreement/ contract/ if it is satisfied that it is necessary or expedient to do so or if the circumstances so warranted at any time before registration of the property."

It is noted that the agreement contained the name and address of the customer, date of booking, property advance paid, lockup period, mode of payment, nominee details, etc. however, the same did not identify the land allotted to the customer. Further, the Company has stated that the approval for conversion of land into the residential area will be obtained before the end of the project period. The same shows that the land was not ready for sale either on the date of application or on the date of agreement.

- d. Another document issued by the Company was '**Property Advance Receipt**' which contained the name and address of the customer, plan type, plan term, mode of payment, date of commencement, date of realisation, etc.
- e. Thereafter, the Company issued a document with the heading '**Collateral Security**'. A sample of this document read as under:

"Collateral security per every Rs. 100/- one 1 square yard of land situated under surveys no's which is acquired by the Company stands as collateral security for the customer ID ... name ..., equivalent to the value of amount paid ... and the value of the property offered by the company to above mentioned customer ID is ... sq. yards."

Thus, the document only mentions about the collateral to the amount paid. There are no references to sale of land.

- f. It is noted that the Company executed '**Simple Mortgage Deed**', wherein the mortgager is Viswas and the customer is mortgagee. The same mentions as under:

"AND WHEREAS the Mortgagor has approached the Mortgagee who is interested to invest a sum of Rs..... as Property Advance (OYLPAS) and for that the Mortgagor want to put mortgage his property for an extent of ... as mentioned in the schedule of property and the mortgagee herein also agreed the same and on this day the Mortgagor received an amount of Rs..... by Cheque/ Cash from the Mortgagee.

And in consideration of the said sum of Rs..... the said Mortgagor being absolute owner hereby transfers unto the Mortgagee by way of Simple Mortgage without possession of the property more described in Schedule hereto for a period of 24 Months from the date of execution of this Mortgage Deed.

And it is hereby agreed and declared that if the said sum of Rs..... with an interest of 12% per annum thereof shall not be paid within the period of 24 Months, according to the covenants herein agreed in that behalf it shall be lawful for the Mortgagee, ... , at any time or times, after the period expired can file a suit in the court of law, for recovery of the amount."

The document only mentioned about the details of the land mortgaged and has no details of the land allotted for sale to the customer. The document also mentioned about the assured return of 12% per annum on the investment amount.

- g. From the discussion above, it is observed that Viswas was inviting applications from the customers/ investors for obtaining plot under its various plans broadly categorised as OYPAS and LPAS. I also note the following:

- i. Viswas guaranteed assured returns on completion of the term as more specifically mentioned in the brochure as 'estimated compensation value'.
- ii. At no stage, the Company provided the details of the land allotted to the customers. The documents only mentioned about the details of the property of Viswas kept as collateral or mortgage.
- iii. On completion of the plan, the customer would get the refund of the amount paid.
- iv. The Company provided for an 'estimated compensation value' (ECV) for various tenures under its plans/ schemes.

From the observations as noted above, it can be inferred that the transactions of the Company were not in the nature of real estate transactions rather it can be said to be an investment scheme.

- h. Having considered the above, now I proceed to deal with the charges leveled against Viswas. The main allegation levelled against Viswas is that it is operating CIS without

obtaining registration from SEBI. Before proceeding further in the matter, it is necessary to note the background of CIS Regulations and how the provisions came to be framed. Several entities were mobilizing huge money by issuing various instruments and offering very high rates of return inconsistent with the normal rate of returns and then misutilising 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 Government of India felt that it was necessary to set up an 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 Government of India 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 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 CIS. The press releases further stated that instruments such as agro bonds, plantation bonds should be treated as CIS coming under the SEBI Act. All the companies having such activities were required to file information with SEBI. Moreover, general public was also informed that no person can sponsor or cause to be sponsored any new CIS and thereafter raise further funds. Meanwhile, a committee was formed to examine and finalize the draft regulations for CIS to structure a comprehensive regulatory framework. Subsequently, the notification of CIS Regulations was issued on October 15, 1999. As per the CIS Regulations, any person who has been operating a CIS at the time of commencement of the CIS Regulations was required to make an application to SEBI for the grant of registration under the provisions of the regulation, within a period of two months from the date of the notification. No entity was allowed to run a CIS scheme without obtaining the Certificate of Registration from SEBI.

- i. The definition for 'collective investment scheme' was inserted in the SEBI Act, 1992, vide the Securities Laws (Amendment) Act, 1999 w.e.f. February 22, 2000. According to the

definition, CIS means any scheme or arrangement which satisfies the conditions specified in Section 11 AA of the SEBI Act, which provides as under:

"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or [sub-section (2A)]¹ shall be a collective investment scheme.

[Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under the exemptions from CIS sub-section (3), involving a corpus amount of one hundred Crore rupees or more shall be deemed to be a collective investment scheme.]²

(2) Any scheme or arrangement made or offered by any [person]³ under which,

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.

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

(3) Notwithstanding anything contained in sub-section (2) [or sub-section (2A)], any scheme or Arrangement:

i. made or offered by a co-operative society

ii. under which deposits are accepted by non-banking financial companies

iii. being a contract of insurance

iv. providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund

v. under which deposits are accepted under section 58A of the Companies Act, 1956

vi. under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society

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

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

[ix. such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,]

shall not be a collective investment scheme."

The term 'securities' in section 2(h) of the Securities Contracts (Regulation) Act, 1956 was amended vide the Securities Laws (Amendment) Act, 1999, w.e.f. February 22, 2000, to include units or any other instrument issued by any collective investment scheme to the investors in such schemes.

¹ Inserted by Securities Laws (Amendment) Ordinance, 2014

² Inserted by Securities Laws (Amendment) Ordinance, 2014

³ Substituted for 'company' by The Securities Laws (Amendment) Ordinance, 2014

j. Let me now, proceed to test the characteristics of the impugned schemes/ plans floated and carried on by the Company against the four conditions under Section 11AA(2) of the SEBI Act.

i. The first condition is that *the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement*. Viswas took the contribution/ investments of the investors/ customers in accordance with its various plans/ schemes. It was said in the terms and conditions to the agreement that the customer could obtain a plot against the 'property advance'.

It is thus clear that the Company invited the customers to subscribe to one of the plans offered by it for purchase of plot. However, the agreement, receipts, collateral security, mortgage deed issued by Viswas, did not contain any details of the land allocated to the investors/ customers.

Viswas in the agreement also undertakes to convert the plots of land into residential area before the end of the project period. The same gave an indication that the plots of land were not ready for sale to the investors/ customers. Also, there is nothing on record to show that the land had existed on the date of taking deposits from the public. The same is sufficient to find that the 'contributions, or payments made by the investors, are pooled and utilised by Viswas for the purposes of the scheme or arrangement', the scheme being to accept contributions/ payments in the name of sale of land. Thus, satisfying the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act.

ii. The second condition is that 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*. As discussed above, the investors/ customers made payments towards the plans/ schemes promoted by Viswas. The brochure itself assured the investors/ customers of 'estimated compensation value' which meant nothing but profits. Further, the investors/ customers was also promised 'life risk coverage' and loan facility, which were also benefits. The same makes it clear that the investors/ customers made contribution/ payment with a view to receive the profits/ income/ property/ return on their investments that may accrue to them as applicable,

thus attracting the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.

- iii. The third condition is that *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors*. The fourth condition is that *the investors do not have day to day control over the management and operation of the scheme or arrangement*. In this regard, I note that the investors/ customers were not even provided with the specific/ identified plot at the time of payment of amount.

I also note that in the plans of Viswas, the customer/ investor decided *inter alia* the plan number, term of the plan, etc., at the time of making the initial contribution/ payment. The customer/ investor did not take part in the acquisition of land or in its development/ management. The customer/ investor also did not manage his investments in the plans/ schemes rather his investments were managed and utilized by the Company, which in the end offered 'estimated compensation value'. Further, the statement made by Viswas in the agreement that it would obtain approvals for conversion of land into residential area showed that the land was managed by the Company and the investors/ customers have no control over it.

The above discussion and the general scheme of activities of the Company, makes it very clear that the contribution, investment and property, if any, pertaining to the plans/ schemes were managed by the Company. Further, it is also clear that the customer did not have day to day control over the management and operations of the scheme or arrangement. Such day to day control over management and operations of such schemes were also looked after by the Company and its directors.

- k. As all the four conditions specified under section 11AA(2) of the SEBI Act are satisfied in this case, the schemes/ plans promoted, launched, carried on and operated by the Company are in the nature of CIS in terms of section 11AA(1). In this regard, I place my reliance on the observations of the Hon'ble Supreme Court, made in the matter of *PGF Limited & Ors. Vs. Union of India & Anrs.* (Civil Appeal No. 6572 of 2004):

"Therefore, the paramount object of the Parliament in enacting the SEBI Act itself and in particular the addition of Section 11AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with the fond hope that such investment will get appreciated in course of time. Certain other Section of the people who are worstly affected are those who belong to the middle income group who

again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.

38. Since it was noticed in the early 90s that there was mushroom growth of attractive schemes or arrangements, which persuaded the above vulnerable group getting attracted towards such schemes and arrangements, which weakness was encashed by the promoters of such schemes and arrangements who lure them to part with their savings by falling as a prey to the sweet coated words of such frauds, the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act. ...

... ..

40. It will have to be stated with particular reference to the activity of the PGF Limited, namely, sale and development of agricultural land as a collective investment scheme, the implication of Section 11AA was not intended to affect the development of agricultural land or any other operation connected therewith or put any spokes in such sale-cum-development of such agricultural land. It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded It is, therefore, apparent that all other schemes/arrangements operated by all others, namely, other than those who are governed by sub-section 3 of Section 11AA are to be controlled in order to ensure proper working of the scheme primarily in the interest of the investors.

... ..

42. Therefore, in reality what sub-section (2) of Section 11AA intends to achieve is only to safeguard the interest of the investors whenever any scheme or arrangement is announced by such promoters by making a thorough study of such schemes and arrangements before registering such schemes with the SEBI and also later on monitor such schemes and arrangements in order to ensure proper statutory control over such promoters and whatever investment made by any individual is provided necessary protection for their investments in the event of such schemes or arrangements either being successfully operated upon or by any misfortune happen to be abandoned, where again there would be sufficient safeguards made for an assured refund of investments made, if not in full, at least a part of it. In the light of our above conclusions on this ground it will have to be held that Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development.

... ..

It is needless to state that as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion.

... ..

53. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of the PGF Limited, namely, the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act and consequently the order of the second respondent dated 06.12.2002 is perfectly justified and there is no scope to interfere with the same. In the light of our above conclusions, the PGF Limited has to comply with the directions contained in last paragraph of the order of the second respondent dated 06.12.2002"

9. 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. The Company has clearly failed to do so. 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 'CIS'. A person can launch or sponsor or cause to sponsor a CIS only if it is registered with SEBI as a Collective Investment Management Company. Therefore, the launching/ floating/ sponsoring/ causing to sponsor any 'collective investment scheme' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. I note that Viswas launched a CIS without obtaining certificate of registration from SEBI, it contravened the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. Further, such illegal mobilisation of funds from the public is clearly in violation of the Regulation 4(2)(t) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

Therefore, I have no hesitation in holding that Viswas and its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala were engaged in the illegal fund mobilising activity by floating/ sponsoring/ launching, unregistered/ unauthorised CIS, as defined in the Section 11AA of the SEBI Act. The *interim* order has observed that Viswas has failed to furnish the details of the scheme as sought by SEBI. The order also observes that there appears to be deliberate attempt to avoid furnishing the details to SEBI. The directors of Viswas namely Mr. Vaka Saradhi and Mr. Eshararao Gundala have also chosen not to respond to the *interim* order and remain silent. In the absence of any reply/ defence on record, the directors of Viswas namely Mr. Vaka Saradhi and Mr. Eshararao Gundala are held to be responsible for the affairs of the Company.

10. In view of the observations made in this Order, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Sections 11(1), 11B and 11(4) thereof and Regulation 65 of the SEBI (Collective Investment Schemes) Regulations, 1999, hereby issue the following directions:
- a. Viswas Real Estates and Infrastructure India Limited and its directors namely Mr. Vaka Saradhi [PAN: AFHPV7774C] and Mr. Eshararao Gundala [PAN: AHIPG8660R] shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the scheme which have been identified as a Collective Investment Scheme in this Order.
 - b. Viswas Real Estates and Infrastructure India Limited and its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of four (4) years.
 - c. Viswas Real Estates and Infrastructure India Limited and its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala 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 thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.
 - d. Viswas Real Estates and Infrastructure India Limited and its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala shall not alienate or dispose off or sell any of the assets of Viswas Real Estates and Infrastructure India Limited except for the purpose of making refunds to its investors as directed above.
 - e. Viswas Real Estates and Infrastructure India Limited and its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.
 - f. In the **event of failure** by Viswas Real Estates and Infrastructure India Limited and its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala **to comply with the above directions**, the following actions shall follow:

- Viswas Real Estates and Infrastructure India Limited and its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala shall remain restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities, even after the period of four (4) years of restraint imposed in **paragraph 10 (b)** above, till all the Collective Investment Schemes of Viswas Real Estates and Infrastructure India Limited are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
 - SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against Viswas Real Estates and Infrastructure India Limited, its promoters, 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
 - SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, Viswas Real Estates and Infrastructure India Limited.
 - SEBI shall initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.
11. This Order shall be without prejudice to the right of SEBI to initiate prosecution proceedings under Section 24 and adjudication proceedings under Chapter VIA of the Securities and Exchange Board of India Act, 1992 against Viswas Real Estates and Infrastructure India Limited and its directors namely Mr. Vaka Saradhi and Mr. Eshararao Gundala, including other persons who are in default, for the violations as found in this Order.
12. This order shall come into force with immediate effect.
13. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

DATE : April 27, 2015
PLACE : Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA